

Bangladesh

Emergency and the Aftermath

2007–2008

Moudud Ahmed

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The University Press Limited

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Dedicated to
my wife Hasna, our son Aman and daughter
Ana who also suffered like me without me

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Preface

For the first time since its independence in 1971, Bangladesh had a magnificent spell of a democratic rule for a period of fifteen years, 1991 to 2006, with power transferred from one government to the other peacefully following elections duly held under neutral care-taker governments. But unfortunately before the country could take any solid roots to democracy, a coterie of generals led by the Chief of Army Staff forced the President of the Republic to proclaim Emergency in the country on 11 January 2007 and Bangladesh again, in violation of the Constitution, moved from democracy to an authoritarian rule, thus bringing an end to the cherished goal to march forward to sustain a stable democratic order.

I was jailed again like many others, including the two former Prime Ministers-Sheikh Hasina and Khaleda Zia, for 1 year 8 months without any trial as a victim of a drive against the politicians which every military does once they take-over power to establish their rule disrupting the constitutional process. During this unelected regime good governance disappeared and those who always advocated the high ideals of good governance went silent. On the contrary, some multinational agencies, foreign embassies and a section of civil society took the position in favour of the Emergency and thereby encouraged the disruption of democratic process. It was a tragic period for Bangladesh which witnessed the demolition of every fabric of democratic order. There existed no ethics in the governance of the country not to speak of rule by Constitution. During the period every institution and every section of society was under attack by an aimless, thoughtless and radarless government backed by the Army Chief at the cost of the image of his own institution.

The purpose of this study is to examine and analyze the tenure of an illegal government and what motivated it to disrupt the progress of Bangladesh for which millions had suffered and sacrificed 24 years to earn their independence through a bloody war. It will take a considerable time for any government to recover from the aftermath of

the Emergency and the wounds inflicted upon the nation by that interim regime.

It was a faceless government having had no leader officially established to lead the regime. It was a kind of government not known to modern political science. A government may have weaknesses, politicians may have failures, but the kind of a regime Bangladesh had in 2007 and 2008 cannot be described easily. There was no government as such, other than a combination of few individuals, civil and military, who committed the greatest crime against a nation aspiring to be prosperous within a short period of time. That dream was shattered.

As the book was written while I was in jail, I take full responsibility for any mistake. The views expressed in this book are exclusively mine and has no connection with the political party I belong to. Readers will find the translation of Part One of this book in my prison dairy *Karagare Kemon Chhilam* published by The University Press Limited in Bengali early last year.

May 2014

Moudud Ahmed

PART ONE

On Remand

What could happen in Italy about 500 years ago?

"Once a man has been in a torture chamber his senses never forget certain things, the wet darkness, the cold stink of human ordure, the rats, the screams. Once a man has been tortured there is a part of him that never stops feeling the pain. The punishment known as the strappado was among the most agonizing torments that could be inflicted on a human person without killing him outright. His wrists were fastened behind his back, and the rope that bound them passed over a pulley hanging from the ceiling. When he was lifted off his feet by that rope the pain in his shoulders became the whole world"

Salman Rushdie

Quoted from The Enchantress of Florence page 240.

"Can you hear the screams," asked one of the interrogating officers. I could hear the screams of someone being beaten up, not very far from where I was sitting on a stool. My eyes were blind-folded so I did not know who had asked me the question. I said, "yes I can hear the screams." With a loud thump on the table the voice came back, "the same may happen to you also." I was terrified and mute, I felt meek and helpless. I was in a torture house, or the blackhole as the people call it. I would never have believed I would be in a place like this at the age of seventy. I tried to hold courage in the face of this onslaught.

I was in one of the dungeon cells of the Field Intelligence Unit (FIU) of the military, originally meant to deal with enemies of the state, foreign or national, involved with high treason. As I sat terrified, another officer started swearing at me viciously. I could hardly believe I was in my own country. Another person, who sounded like he was in charge, introduced the group as officers to me without disclosing any name or rank. He told me that politicians are the worst enemies of the people, and castigated them in the most despicable language. "Politicians have done nothing for the country," were his final words.

I tried to measure up the status of the officers present. Were they really the officers of the army we were so proud of? Still hearing the

screams in the background, but less frequently and lower, I asked myself, how old were they? Were they our boys, citizens of Bangladesh? Were they trained to be discourteous to their elders, to their parents? Were they oriented to be cruel and brutal to their own citizens, their own brothers and sisters? What did their instructors in the military academy, for which we allocate a huge amount of fund every year, teach them about human values? We know from text books that every military must have an external enemy for without one they cannot be trained to fight. Who are their enemies? What kind of family background did these officers have? Were they from farming families? Government or military officials? Why did they show so much venom against politicians? What sort of generals would order them to do this kind of work?

While these questions swirled through my mind, an unpleasant sound of iron rods and chain brought me back to the reality of sitting in front of the interrogators, like a moorhen. I expected to be tied in chains with iron bars between my groin from the back, like the occupation army did to thousands of innocent youths who were suspected of being freedom fighters during the Liberation War. But they did not do so. "The sounds were meant to weaken you psychologically," they were frank enough to say. "What was the purpose of doing that to me?", I asked. The answer came in a torrent of disgust on the prevailing situation in the country. The interrogators then abruptly stood up and before leaving said that they may need to talk to me again.

I was then led by two men to an uneven narrow passage into a small shabby room with windows and doors sealed with tin sheets and no ventilation. It had only a bare wooden flat bed (*chowki*) without any pillow or mattress. It was dark and wet, with a mug in a corner into which I was expected to urinate. When the men left, the steel door locked from outside. I was now alone after nearly eight hours from the morning, sitting in the lightless concrete hole, although I was sure the sun was shining outside. I felt dwarfed, angry and dejected. Why have I been arrested, why have I been brought here? I asked this question to myself repeatedly. I thought a lot but could not find a rational answer. My name was not there in the list of "*durnitibaj*" published in the newspapers nor I had any bad reputation of being "corrupt." So I concluded, my arrest was nothing but a political vendetta against the politicians as a class, and I have been made a special victim.

The interrogators seemed to be young in age, not more than 30, which meant they were born long after the war of Bangladesh and its independence achieved in 1971. But they must have at least read how this independence was achieved after a relentless struggle of 24 years; how the martyrs like Barkat, Salam, Jabbar, Rafiq shot by police had to give their lives in pools of blood on 21 February 1952 to establish Bangla as a state language, and laid the foundation of the struggle leading to the independence. In course of time, every student, every young person, men and women, became a part of this struggle. The more repressive the colonial rule of Pakistan, the more resistance they built. Later, the Six-Point Formula, a charter of right to live with a fully autonomous status for East Pakistan, presented by Sheikh Mujibur Rahman at a conference at Lahore in 1966, further accelerated the aspirations of the people to gain more independence to govern themselves. It worked to spur a mass upheaval in 1969. The upheaval forced the unconditional withdrawal of the Agartala Conspiracy Case, which had Sheikh Mujib in the dock for 11 months to be hanged on charges of treason for conspiring to secede East from West Pakistan. This ultimately led to the collapse of the military regimes of Ayub Khan and then of Yahya Khan through the first ever general election held in 1970. The subsequent denial of the mandate of the people by a brutal army crack down on March 25, 1971 forced the people to take-up arms to fight a bloody war to achieve their independence.

These young officers were perhaps not taught by their military instructors that a state is born out of politics and it is the politicians who create states. State is politics and politics is state. There cannot be a state without politics. Attempt to de-politicize a society is sheer madness and an anti-thesis to science of politics. The strength of a state lies in the political leadership and its institutions; to destroy those is to destroy the state itself.

These officers had only received a partial idea of how the country achieved its independence in their courses of military training, which was not enough to give an insight into the genesis of the birth of this nation. None of them had taken part in the language movement, had ever been taken to jail for the cause of the people, had seen the upheaval in 1969 or had taken part in the war in 1971. The Chief of Army Staff himself was only a young man at the time and had been recruited into the army after the independence, commissioned in January 1975 as an officer in Special Short Course-1. He had no role in

achieving the freedom of the people. Perhaps this made it easy for them to say that the politicians had done nothing for the country.

It was a dark night and the morning breeze on 21 February 1955 was cool. The Pakistan government had barred all kinds of assemblies and meetings to forestall the observation of the Language Day led by the Central Students Action Committee. They were going to hoist black flags in all the educational institutions, wear black badges and hold meetings in the memory of martyrs of the language movement killed on 21 February 1952. The United Front Government of East Pakistan elected in 1954 was dissolved by a decree under Article 92(A) and the province was ruled by the President through his nominated Governor. I was about 16 years old, having finished school (Matriculation) just about a year ago, and was a student of Dhaka College, which was situated closed to the main Railway Station known as Fulbaria. As planned, we assembled at a tea stall decided on beforehand. Myself, Serajuddin, who we called "Marshall" because of his height and strong physique, and Shah Moazzem Hossain, the General Secretary of the Students Union, scaled over the low-wall of the college into the overgrown grass field adjacent to the main building. In no time, Marshall climbed up the water-pipe as fast as a lizard, and hoisted a black flag hidden in his waist on the pole meant for the national flag. We were happy with our achievement and had a cup of tea back at the railway station, paying the tea stall a hefty tip out of our great satisfaction over the work we had done. But as soon as we left the station, we realised that we were being followed by two men with bicycles. We became apprehensive and quickened our pace, but they kept pace with us. It was nerve-racking. We started running slowly suddenly sprinted, entering a narrow alley at Kaltabazar. We saw to our relief the two on cycles passing straight with a speed leaving us behind. They had missed us. As decided before, Wadud, a school friend, was waiting for us only a few hundred yards away in the same vicinity to give us shelter for the rest of the night. As soon as we entered his house, we could hear the sound of a motor vehicle stopping somewhere nearby and blowing of whistles by policemen, and fast moving footsteps surrounding the house. Serajuddin did not waste a second—he entered the kitchen, climbed on to a table, broke open the windows and then three of us jumped into the next house, which happened to be a hostel of Jagannath College students. The students helped us disappear from the scene.

At the end, however, the arrest could not be avoided. In the gleaming morning sun we walked back the long way to the university campus, first to Fazlul Huq Hall and then to Salimullah Muslim Hall, the principal seat of the language movement—where hundreds of students lay on the floor of the entrance of the dormitory determined to stop the police from entering it to pull down the black flag from the roof. Tension and commotion continued to mount further with more students joining the loud and repeated slogans "*Rashtrabhasha Bangla Chai.*" Dr. Osman Ghani, the Provost of the Hall, took a strong stand for the students and declined the Police Superintendent his permission to enter the Hall premises, which the students considered a great victory. Then the students moved to the Arts Building, where under the legendary mango tree "*Amtala*" hundreds of students assembled and it was decided that the government's restrictive law (Section 144 of the Code of Criminal Procedure) was to be violated by taking out processions. As soon as this was acted upon, violence with police erupted and 110 students including all the senior leaders were arrested. They were herded in trucks and sent to the Dhaka Central Jail, where all were locked in one big hall room for a month, myself being the youngest of the lot. Back in 1952, on the same day, I was a school boy wanting to join the movement at the medical college dormitories (where the Shaheed Minar stands today) where I had personally seen the shots being fired closeby and blood split had stained my clothes.

It was late and I was now feeling hungry and desperately needed some water to drink. In the darkness, with the steel door locked, there was no one I could call or communicate with. I slammed the door several times to draw the attention of my captors but none responded. The time was 5 in the afternoon. By that time I had urinated in the mug, and then thought of drinking it to quench my thirst like Morarji Desai the former Prime Minister of India used to do, reportedly for medical reasons, almost made me vomit, but there was nothing in the stomach to throw up. Yet the smell of the urine continued to dominate the odour of the room. After an hour or so, a flicker of fading sunlight appeared through the perforated sealed window, giving me the full sight of the tiny room. The door opened and two men entered, one with an aluminum pot of assorted rice, lentil (*dal*) and vegetable (*bhajee*) with a tin container of water, most likely contaminated, and the small bag of personal items I had packed before leaving home in

the morning. While putting all these items on the floor, one of them said in a low voice, "these men are 'haramzadas' (bastards), Allah is not going to tolerate the torture they inflict on people. There are nine others like you in this building, each one is being subject to inhuman treatment. These men are worse than beasts. They torture without killing just to make it more painful." The other man accused the politicians—why were we giving so much money for the upkeep of such a huge army, for a small country like Bangladesh where millions die of starvation and ill-health every year. He asked me to hold courage and predicted the end of the present rulers. They were obviously civilian employees, and their names were Liakat and Kabir.

I looked at the food, totally uneatable, and the tin of water lying on the floor. But I was hungry, and finally grabbed the food pot before the running cockroaches could get to them. I ate all there was and with eyes closed gulped the water. The cockroaches however did not give up. They mounted on the empty pot as soon as I left it in the corner of the room. I could hear the unlocking of the door and soon Liakat and Kabir re-appeared. Liakat cleared the food pot and glass but not the urine mug, which he said would be done by the cleaner later on. Kabir asked me to get ready. "What for?", I asked. "The officers have come, they want to talk to you." Then he was swearing at them in filthy language. I stared at him and he looked back with no smile on his face.

My eyes were once again wrapped with a black cloth, and I was led through the same passage as before to the room and seated on the stool as before. It was the same drill—the same questions, same threats, same sermons and the same incineration of the politicians. I could guess that they were at least three in number and it was the same team. I could feel that the room was brightly lit with high powered bulbs used for torturing captives. I was apprehending that soon my eyes would be unbound, and the piercing light would burn into my eyes while they continued to ask me the questions. But they did not do so.

They decided to remain anonymous. "Why do you do politics?" one of them asked. I felt like asking him in return why he was in the army. But I restrained myself in case this angered them into beating me. I was thinking of a reply when the impatient interrogator raised his voice in anger and repeated the question. I said without thinking, "Politics is an emotion, an expression, a gene born within, a driving force motivated to feel concerned about others, about those surrounding you, problems and issues that dominate and influence

the life of the people. Politics is an indomitable urge of the inner-self, an expression of love and patriotism." But they were not happy with my answer. "Politicians are thieves, you do politics only for money," said one of them. "No, not all of them, the real politicians make lot of sacrifices instead of making money," I retorted in a fearful voice.

I felt like as if I was in a cage. They all laughed aloud. "How much money do you have? You must have made lot of money since you have been in the government many times and held high positions like the office of the Prime Minister and Vice-President." I felt like hitting them, but how could I do that in such a situation? "You have sealed all my bank accounts and seized all the papers, files and documents, so you have everything with you to know how much money I have," I said in a controlled tone. "But no, it was not the money in the banks we are talking about, it is the hidden money you have," one of them said with an insinuating laugh. "I have no hidden money, nor have I or any member of my family any business or stocks or shares or sleeping partnership in any entity," I wondered, if they had already known what amount of hidden wealth I had, why were they asking me? I said, "The only house we own was built in 1976, long before I joined the government." "You have 300 bighas of land at Savar," one of them said. "We have only 3 bighas of land at Savar, bought in 1974 at 3000/- taka per bigha." I answered, and said they could take away the rest of the land if they so wished, I was ready to give it to them in writing. This remark did not please them. I realised that they did not really have any correct information and were basing their questions on fake notions. The officers then left with a warning that I should think over the night and tell them the truth all about the wealth I had, stolen and hidden, the next morning, otherwise they would take the skin off my body.

I was back in my hellhole of a cell with its fragmented wall plasters, damp and wet. The room looked even more grim and dirty at night with a feeblish light on. It had other inhabitants too. Besides the lizard and cockroaches, it had rats and large number of ants traveling in rows, in the most disciplined manner like the soldiers showing off on Independence Day in the parade ground. The mosquitoes were not at rest either. They were ferocious, buzzing in my ears, giving sufficient warning about their intended attacks. I was worried they might carry the germs for dengue fever. As the night grew longer, without any net or coil, they had a feast. I was wondering how my blood tasted to the

mosquitoes. May be it was nothing, a neutral taste. I could not fight them but as despair was overtaking me I wanted at least to protect myself as best as I could.

I pulled the bag and took out the *lungi*, and changed into the attire I used to sleep in at night. I rested myself sitting on the *chowki*, cross-legged, face-down with the *lungi* covering my head but in minutes I was suffocating and had to break out of the fabric shell, only to repeat it again after a while. It reminded me of my teacher Mr. Ganguly telling us when I was 13 in Class VII at the St. Gregory's High School that "necessity is the mother of invention." But this invention was not working. When I heard the door opening I felt relieved for a moment thinking that they would bring me a mosquito net, a pillow and a mattress to sleep on. But there was nothing, not even any more food or water for the night. With the rotation of duty, two new men appeared. "You have to get ready sir," one of them said apologetically. "What for, it is past midnight," I said. "Some big officers have arrived, they do that intentionally only to give people like you *koshto* (trouble) unnecessarily." I heard him but I had to go. I did not bother to change and nodded at them to take me out. "You have to go upstairs," he said when he was putting the black band over my eyes. The stair-way was too narrow; only one person could climb at a time. We stepped up the stairs slowly one by one, 22 altogether.

Inside the room, I was seated on a chair, not a stool, which marked a change in the atmosphere. It was more relaxed and less tense. The interrogators, I could feel, stood up as I entered and took their seats again. A larger team – 4 or 5 – perhaps more senior in rank, introduced themselves just as officers without names or ranks. "We have come to discuss politics with you," said one of them, may be the leader. "Why me and why in such a condition when I cannot see you, nor do I know your names or ranks?." "Names or ranks are not important, our purpose is more important," came the reply. How many governments were operating in the country at the moment, I asked myself. So far I knew of only two, one a civilian "showcase" represented by a former World Bank employee, and the other by the Army Chief. But it now appeared that there were wheels within a wheel. "You are a distinguished lawyer. You have been in the government for a long time, you have served two military regimes in the past to bring back democracy. So your opinion and views would be valuable to us" said one of them. "Who do you mean by us?" I asked. "The military," said

one of them, upbeat and confident. "Corruption has to be nipped off and the political culture had to be changed to make the country move forward in peace and prosperity, and it was only the Army who could do it. The two female leaders, Khaleda Zia and Sheikh Hasina, had to be thrown out of politics and the country needed a new, more stable and sustainable, system. It will be a real democracy without chaos and political confrontations." The words sounded very familiar. "Since the politicians have failed, the Army has to run the country and so the "bloody" politicians must not be in state craft anymore. The crusade against the corrupt politicians will be aimed to achieve democracy for the people. Honest and competent people will run the country."

I was waiting for an opportunity to answer them because the subject aroused my interest. Before they outlined their plan any further, I broke the monologue "How would you eliminate Begum Khaleda Zia and Sheikh Hasina from politics? Both are extremely popular leaders loved by millions of people."

"Both of them are corrupt and we will force them to leave the country and go into exile like it was done in Pakistan." "But Bangladesh is not Pakistan and the strategic global importance of Pakistan was different; the military led by Parvez Mosharraf was chosen by the United States to suit their goals for a war on terror which could not be achieved by any of the two leaders: Benazir Bhutto or Nawaz Sharif," I said. "Why would the West or even India choose you to govern Bangladesh? What would be your agenda?" They had no specific answer to my question but the debate heated up. I said "In your government, no one knows who is the boss, who is running the country. The notion that the military was at the helm of affairs behind the scenes was not good enough for the people to understand who the leader is. People look for a leader to run the country. This uncertainty, dichotomy and vacuum is dangerous for the country." The officers were hesitant but came out with their plan. "As soon as the two leaders are out of the country, the Army Chief would assume the office of the President." "But how? Under the Constitution, he cannot. Moreover how are you going to force the two leaders to leave the country?" "If they don't leave we will have them convicted in courts on charges of corruption. The courts will be under our control."

"That will make them even more popular as our common masses would neither believe that they were corrupt nor would they accept such verdicts. They would call it a political victimisation. They will

launch a movement for their release. The Pakistan government at one stage had instituted 19 cases against Sheikh Mujibur Rahman—mainly on charges of corruption, but he emerged not only as the most popular leader and architect of Bangladesh, but is revered and honoured as the father of the nation.”

I wanted to see their reactions, their faces, their eyes, whether they were angry or bewildered or arrogant or gentle and amiable. Were they frowning at me? What did they look like? One thing I was sure of, they were immature, inexperienced, suffering from an euphoria and lust of power, with a utopian scheme which had no relation with the realities on the ground. It was difficult to make an assessment of them by just talking without seeing them. But they were optimistic about their plan to establish a civil-military partnership in running the affairs of the state, more in line with those of Turkey, Indonesia, Thailand, South Korea and the Philippines; a kind of democracy with the military integrated into the administration of the state.

But this state of affairs was nothing new for the military leaders of developing countries once they tasted political power. Whenever the Generals become ambitious and greedy they can create numerous excuses in the countries where democracy is nascent to take over the reign in the name of restoring “stability” and “real democracy.” I was in university when Field Marshall Ayub Khan usurped power in October 1958, the beginning of military coup in Pakistan, only months before the first ever general election was scheduled in early 1959. He established a kind of “basic democracy” suited to the “genius of the people” and ruled the country for nearly 11 years with such an iron hand that the country at the end broke-up in two pieces, leading to the birth of Bangladesh. Later Zia ul Haq, another General of Pakistan, reigned a further 11 years with his own model of “democracy.” He had promised to return the country to democracy in three months when he had seized power from an elected government. At the end, he and the accompanying American Ambassador were killed when their aircraft was brought down by a bomb.

In Bangladesh, Hussain Muhammad Ershad as the Chief of Army Staff mobilised all the cantonments to unite the Army to share power in the administration of the country, which he proclaimed in public for months, before he took over power from an elected government. Ershad made no bones about his intentions. He was candid about military sharing political power by circulating through newspapers

well-drafted literature informing of his concept of a civil-military rule for “a long-term stability” which he thought would be most suitable for the people of Bangladesh. But once Ershad assumed office and settled down, he abandoned the idea of giving the military a constitutional role to share power in the civil administration, and ruled the country with his own model of democracy for nearly 9 years. Ershad, like all other Generals who have once assumed political power, started his rule with a crusade against corruption and corrupt politicians but ended up relying on the same politicians. Soon he earned a bad name for himself for being the most corrupt and debauched head of the government; he was unseated by a popular uprising, convicted and sentenced under the normal laws of the land.

But the difference this time was that the military was working behind the scenes, using the umbrella of a civilian emergency as a cover to play a dominant role in exercising political power. The interrogators were frank enough to suggest that it was not palatable nor a sustainable solution. They wanted their Chief, Moeen U Ahmed, as the President, a corruption-free stable government run by honest and competent people and the old culture of political confrontation to come to an end. They toyed with different options; sought my views, but had really no definite idea or how to go to achieve their objectives.

“Are you thinking of a Martial Law?” I asked. “No, we cannot alone run the country, nor will Martial Law have any international support. That would put the military definitely in the dock both at home and abroad.” one of them said. “Are you thinking of an oligarchy where the government could be run by honest and competent people only? Who would select them? What would be their criterion? The Constitution says all the power in our republic belong to the people.” “This is why we sit with you, to find out how we can materialise our plan,” they replied.

“Your plan is not going to work,” I said. “If democracy is to be sustained, your scheme is bound to fail. Any sharing of power by the military will necessitate amendment of the basic structure of the Constitution, which if challenged, will be struck down by the Supreme Court. Even if you impose Martial Law and suspend the Constitution by Martial Law Proclamation, and they are ratified by two-thirds majority in an elected Parliament, the Supreme Court is still going to strike it down on the same ground that it would be contradictory to the fundamental structure of the Constitution, just as the Supreme Court

had done in respect of the Eighth Amendment relating to bifurcation of the High Court Division." The officers sounded very disappointed, shook hands with me and expressed their desire to sit with me again and called the men to take me back to my cell.

It was more difficult to climb down the narrow staircase than to climb up with the eyes blinded. While going down, I told myself, "Look at the audacious teams down stairs who scream at me as a worthless corrupt politician, and those upstairs who come to seek my advice about how the army could share power to demolish democracy and the Constitution." Anyhow, I rather enjoyed being with them without any cockroaches or rats or hearing the buzzing sound of mosquitoes, and the discussion was interesting. At least I had some light on their design to noose the nation. But they seemed to be indecisive, and it seemed as if they were played in the hands of unknown forces. The final decision was not in their hand. If Moeen U Ahmed had personality, leadership and command, he would have moved more decisively and methodically in a cohesive manner. Did all the key Generals support him? Were they united to back him to assume a direct role in the administration of the country? I was not sure.

It was almost 4'o clock in the morning. I was tired. The light was on. The ants were gone. They must have collected their food and gone into one of the holes in the corner of the floor. Did the ants or cockroaches or rats sleep? Did they need any rest like the human beings do? But I desperately needed some sleep and there was no way I could have any with the mosquitoes around. I lay down on the bare chowki with my legs and arms clasped together sideway covered by the lungi upto my face. Somehow I fell asleep and was woken up by the unlocking of the door. A man with two pieces of cold bread (*ruti*) and some kind of vegetable (*bhaji*) with a glass of water entered, put them on the floor and showed me where the toilet was, in case I wanted to use it, pointing at the end of another narrow passage, but said I had to give them advance warning as the same was being used by other inmates who I never had seen. "Where do I wash my face?" I asked. "Over there in the same direction as the toilet was, an open basin fixed to the wall opposite the toilet." I asked, "Where were those who were on duty yesterday?" He stared at me and whispered, "They have been moved away as they talk too much with our guests." I looked at him, he seemed to have something to say but only nodded and left, locking the door.

On 12 April, 2007, two days ago, I had taken the family out for a private dinner at Hotel Serina to celebrate the 2nd wedding anniversary of Zorah and Aman, now 31, our intellectually challenged son. Since Hasna, my wife, was abroad, and the political activities in the country were not congenial, it was to be a low-key affair. We all dressed up, which Aman loves; his first cousins Duli and Mridula, looked gorgeous. We had lovely Italian cuisine. Both Aman and Zorah enjoyed the evening. On 14 April that is today, Aman was to return to England at the end of his spring vacation to attend his courses on the opening of his special college in Oxford. By the end of the week, I was to leave for Germany on a Fellowship to Heidelberg University to write another book.

Soon after we returned home, Aman and Zorah said good-bye, went upstairs to their bedroom. At 11 p.m. about 20 members of the Joint Forces led by one Major Redwan, all gunmen in civil clothes, stormed into our house in a commando style without any court order and searched the house for more than nine hours. They found some bottles of alcoholic drinks gifted by diplomats and friends, kept to serve foreign guests, and 200 silk *sarees* sent in October 2001 just before the end of tenure of our government from the Prime Minister's Relief Fund. These had not been distributed due to time constraint and the prevailing political situation. Moreover, women in villages did not like silk fabrics which came to the Prime Minister's Fund from abroad. For the last 30 years or so I have distributed thousands of sarees and lungis every year, to the poor of the constituency from my personal resources, like most of the public leaders in South Asia do.

During the search, I begged the intruders not to disturb our son and explained that this kind of intrusion could have a very adverse reaction in him but they did not care and barged into Aman's room. He and his wife were terrified. Aman stood by his bed bewildered. I tried to behave as normally as possible, gently asked them to go to the next room. Aman while leaving asked, "Why? Who are these people?" I feared that he would burst out and create an unpleasant scene. I did not say anything in case it caused further irritation in him, kept silent and he left following his wife, extremely nervous and unhappy. The imprint of this horrendous attack in his quiet life would perhaps cause a permanent stir in his small world.

After the search ended at about 7.30 in the morning of 13th April, the army major told me, "You are under arrest, you have to go with us.

Get ready." "Do you have any court order?", I asked. "We don't need any," he said. It was no use arguing with him. There was no one else in the house except the domestic servants. As the telephone lines were already disconnected, I could not contact anyone, not even close relatives. In any case no one was allowed to enter the house, surrounded by a large contingent of policemen and lots of army vehicles. It was almost like a war situation—guarding a defeated enemy camp. I am a peace-loving person, I hate guns, never shot a thing in my life, and there was no need of such huge preparation to arrest me. What a waste of money, I thought. I had a quick wash, changed into a Safari and packed some essentials in a bag without knowing for how long I would stay away. I picked up the phone again but it was still dead. At about 9.30, I was put into a vehicle with darkened windows, immediately blindfolded and driven away, followed by a dozen vehicles with armed men. It was like a scene you see in movies, a drug baron or arms dealer or mafia leader being captured from hiding, taken to jail with heavy security guards on both sides of the vehicle so that he could not escape. As I was leaving the house I thought of Aman and Zorah, and my heart started weeping. When they would come down they will see their father had gone. They would not imagine that he was taken to a hellhole to suffer extreme humiliation and torture.

It was 14 April, Bengali New Year's Day. One hour later, two men arrived again to say I had to go "Where to?", I asked. "To the same people on this floor you had been to yesterday." One of them by then had disclosed his name as Hazrat Ali. He said in a feverish tone, "You are in all the newspapers today, headlines in red ink, with big photographs. They had found huge quantity of foreign alcohols hidden in your house and silk sarees belonging to the government meant for poor people stolen by you." Before I said anything he asked, "Will the public believe that?" I said, "At the beginning, yes, then they will gradually lose interest and forget about it." "But it has done lot of damage to your reputation" he said. The orchestrated character assassination and public humiliation of politicians by the military regimes was universal. Media trials in such cases were more important than the actual legal proceedings in third world countries. It is too common, I said to myself.

I changed into my Safari and asked them to blind my eyes before they approached me. I was back to the same torture room, not

knowing what to expect. They sounded as arrogant as yesterday, but were fewer in number. "How did the discussion go last night?" One of them asked. It was a hard question to answer, not knowing what they would like to hear. "Well, well, very well," then I ran out of words. Inside, I was burning in rage, cursing them for their behaviour and abusive language of yesterday. But I restrained myself and went silent. "So have you thought over the night to disclose all your hidden wealth?" "I don't have any hidden wealth," I said. I did not have to think about that, although I was up almost the whole night because of the mosquitoes and late night interrogation. "You will be produced before the court this morning and you will know about the offences you have committed." I immediately felt so happy and relieved "O Allah, I will be out of this place to go back to civilisation." Nothing could be better than this, for a moment I forgot what I had gone through the day and night yesterday.

But the good feeling was momentary only. They told me that I would be photographed by a video camera and that I would have to sign a piece of paper. "For what?" I asked, "You will find out when you see it." Before I said anything they left the room. My blind was taken off. I could now see the room, one of many I presumed. It was a horrendous sight—there were various kinds, shapes and size of iron rods and bars, metal chains, ropes, thick and thin, electronic devices, instruments, powerful high voltage lights, all meant to assault and torture the human body, with the ceaseless energy of the interrogators fed and reared out of public money.

Hazrat Ali informed me that there were three other similar rooms for the same purposes and the next team would soon come to take the photograph and signature after finishing with another captive. He then left. Two persons, one haggard with 2 cameras hanging from his thin shoulders and another half-bearded with a plastic file entered the room. Without any warning the cameraman started taking pictures at random from different angles. Once done with the normal cameras, he took out his digital video camera and finished his job in the same manner as he did with the other. The other person looked equally grim, took out a printed piece of paper, placed before me to sign. It was a short statement disclosing that I was treated well and had faced no problem while in custody. It was all a total lie, but there was no point in arguing. I wanted to get out of the place. I signed it with the hope that I would never see this place again.

I was blind-folded again and led to a vehicle with wooden seats. The accompanying guards said it was a prison van and they were policemen. It was a long road to travel upto the old town where the district courts were located. I could not see anything but the journey reminded of my childhood. I grew up in Dhaka from the age of about 10, relocated from Calcutta where I was born. My father, a theologian, a scholar in Arabic and Persian languages, was Professor of Aliah Madrasah, the highest seat of religious learning of South Asia. He was given the responsibility of shifting this huge institution to Dhaka after the awesome partition of India in 1947 following the communal riots causing dislocation of millions of people in cross-border migration. Old Dhaka was the heart of the new capital with only quarter of a million inhabitants. The 4-wheel twin-horse carriage was the only common public transport. Most of the areas had no electricity, no sewerage system, no telephone lines, no television, no running tap water. Yet life was peaceful, pleasant, more intimate. We lived in a government allotted house in Islampur close to the lower courts. I was now taken there also close to Shakhari Bazaar, famous for artisan jewellerys made of *shamukh* for generations by Hindu community where we used to be engrossed in all joyful Puja celebrations and the beautiful meals they used to offer. Not very far from there was the missionary school, St. Gregory's High School, where in 1948 I was admitted to class IV.

In my blinded predicament, I was trying to figure out where we could be when the traffic was not moving much. It could still be the new town now spread all over, in all directions, with an inhabitation of nearly 8 million people, predicted to be one of the 10 mega cities of the world by 2012. In last 60 years of my living in this city, I saw it all develop stage by stage, particularly how fast it has grown in last 38 years after the independence of the country, at which time the total population was only 75 million. It had now increased to 150 million. It has been an exhilarating experience for a lover of Bangladesh. The narrow roads with lamp post burned in kerosene, filled in everyday by a ladder man, are now wide and shine under modern sodium lights. Memory runs back fast to the days when I had seen huge hundred-year old banyan and *kalajam* (a kind of blackberry) trees were pulled down by roaring bull-dozers in the face of the protest march of the city environmentalists, bleeding the streets all along the road from Shahbag to Tejgaon airport. Rows of magnificent *Krishna Churas*,

Shefali, Shimul, Katgolap, Kathalchapa were all mutilated to enhance the look of the new Dhaka. The transformation of the life of city dwellers from kerosene-lit hurricane to powerful fluorescent lights; from cleaning of sewerage, human soils, physically by “*domes*” and “*methors*” to automatic flushing water; from the use of dried beetle-leaf hand-fans to ceiling fans and air coolers; from teleprinter to fax; from postal letters to e-mails; from hand-driven operator-run telephones to cell phones; from black and white to coloured LED television screens with more than 100 channels; from burning timber and dry leaves to piped natural gas for cooking food at homes (not only now limited to the town dwellers but to the housewives in many of the villages); these were all remarkable.

I remembered the joyful excitement we had at home when we had an electric iron for pressing clothes instead of burning coals and a toaster for bread. The installation of an analogue telephone set was a real thrill. It was always a joyous occasion each time when our nine brothers and three sisters sat in a circle on a mat on the floor being served food by our dearest mother in her own hand. Father and mother would never have their meal before we all had finished. If anyone of us was late for any reason my mother “*Amma*” would wait for him till he had returned. She would serve food to my father first before she would take it for herself, however late it may have been.

The prison van started moving slowly and I asked about its location. It was on the VIP road, near Sonargaon Hotel, answered one of them. Since the time I was put into the van, the policemen were continuously complaining about the rising prices of the essential commodities which had by that time increased by 70% to 240%. One kilogram of coarse rice commonly eaten by the masses was now costing 38 taka compared to 16 taka a year ago under the last government; cooking oil was being sold at 130 taka compared to 42 per kilogram, and one kilogram of lentil (*dal*) at 100 taka compared to 35 and so on; giving the full run-down of the prices of all the essential items causing a great hardship to all sections of people.

“But you get ration at subsidised prices,” I said. “They are not enough for all in the family, we have to always buy additional amounts from the market.” They were all angry and were abusing the government in filthy words for all its misdemeanors and failures. One of their brothers working in a jute factory in Khulna lost

his job along with 600 others without any compensation and at least 6 of such factories were closed in the same area in course of 3 months, not only throwing thousands of workers on the street but their families and children too. There was no end to their complaints. They also hated the military officers watching and bossing over them in everything they do. Their senior officers were always under surveillance by military agencies. The management of the Jail gate and the entire jail administration were being run at the dictates of the military officials. "We are only constables, we don't have enough to eat and send children to school but we have been asked to submit statement of our wealth. What wealth we can have, we are so poor. But look at the troops in the army and their big officers, they have not been asked to submit any such statement. They are so much better off than we are but they are not touched nor their officers owning houses and businesses required to submit any statement of assets," complained one Havilder, claimed to be senior amongst them. He was not in a mood to stop narrating the miseries of his colleagues and families. By that time, they said, we were going through the university area, having passed the crossing of the Shahbagh Avenue leaving behind the Post Graduate hospital and the BIRDEM, the largest public diabetic hospital of the country and the grave of Poet Nazrul Islam the national poet laid at the University Mosque premises. These are newly built areas, the beginning of the new town, one could say.

It was 1956, about 50 years ago. I just had myself admitted to an Honours Course for a Bachelor degree in Political Science. The course term was yet to commence and we were waiting for the classes to begin. A devastating flood had hit the country, inundating the large low lying areas, causing miseries to millions of people all over the country, forcing them to leave their homes with their children and belongings. The government in desperation opened up camps (*longarkhanas*) and gruel kitchens to provide shelter and food to the surviving victims to overcome the situation. Hundreds of voluntary organisations moved to those camps to provide relief, clothes and medicines in whatever form they could. It was one of the pleasant characteristics demonstrated by the people of all shades once again to unite in the country, to stand by the suffering people at a time of any national crisis or calamity. With some friends we also formed a voluntary group and left for Shahjadpur in Brahmanbaria district 80

kilometer from the capital, one of the worst affected areas, where Moulana Abdul Hamid Khan Bhashani, the legendary mass leader had gone.

It was one of many over-crowded camps, with about 300 families living under one single tarpaulin tent without any kind of privacy. With the screaming children playing all around, there were old men, women, invalids, youths and poor farmers; it was a total chaos and the noise was deafening. Yet there was resilience in them, the urge to help each other. At the time of feeding, the youths took care of the elders, the mothers of the children, earmarked volunteers with yellow badges looked after the invalids and sick. Sitting in rows with their pots and pans whatever they had, they were served "*Khichuri*," an assortment of rice, lentil and potatoes with pieces of meat, from one end to the other of each row. With widespread diseases, mostly diarrhea and dysentery, the hygienic condition was dreadful. The scarcity of drinking water and make-shift latrines forced many of them to use the nearby river for both washing their wastes and drinking from the flowing water. No appeal to stop shouting and screaming through tin-made loudspeaker called "*chunga*" helped much in brining any discipline.

In this camp seven children were born in five days with the first-aid doctors and medicines at hand, but it was the village women in the camp who really helped in the delivery and care of the babies. I was standing nearby of such a delivery site covered by sarees all round to see that everything went well and witnessed for the first time in life how a baby was separated from the mother by severing the umbilical cord with a small knife. Once the lights run by generators were turned off, nights were relatively quiet except the screams of the babies. After finishing our work, including making a check-list of what we had to do the next day, we used to walk back along the river bank where our boat was tagged to a thick bamboo pole. Stars were shining in the water of the river, countless numbers of them, with a reflective moon fading away. Tired and exhausted, we ate what the common kitchens offered for all others and the only thing we needed now a sleep in the boat, both sides open in a gentle wind blowing across the bow. In the dark night with no moon in sight any more, some "*jonakies*" blinking at times. The boat swaying in a rhythm in the small waves made the sleep even more pleasant.

On the fifth day, as every other day, the postman from a nearby bazaar arrived to distribute letters, mostly for the officials and also to see what was going on in the camp. This time he handed me over a telegram saying "political situation tense, come sharp." It was from Farmanullah Khan, an upright dynamic student leader, President of Chhatra Shakti, the student organisation I had joined. I left the camp at once and reached Dhaka the same evening to learn that Col. Abdel Nasser, ruler of Egypt and a great leader of the Non-aligned Movement, had nationalised the operation of the Suez Canal which was earlier given to an Anglo-French conglomerate on a lease to manage this vitally important international water-way. A war had now broken out. British and French fighters started bombing Egypt and killing innocent people. The students' Action Committee of Dhaka University decided to stage a demonstration to condemn such an attack and to express their solidarity with the Afro-Asia and Latin American oppressed people against the "hegemonistic imperialist designs," a cliché we frequently used during those days.

Hussain Shaheed Suhrawardy was then the Prime Minister of Pakistan leading the Bangali representatives and Aaur Rahman Khan was the Chief Minister of the United Front government in East Pakistan. Both were sympathetic to the cause of Egypt. But they were not sure what ought to be the official position of Pakistan being a member of SEATO and CENTO, defence organisations set up by the United States against Soviet hegemony. The Non-aligned Movement was seen as an anti-West, anti-capitalist and friendly towards the Soviet Union, which represented global communism. The two super powers were engaged in cold war over their sphere of domination in a divided world.

It was a huge demonstration participated by all sections of students from all over the city, demanding of the government to officially condemn the barbaric Anglo-French attack on Egypt. We first went to the French Consular Office at Road No.2, Dhanmondi and pulled the French flag down despite the barricade on the road put up by the police. Then we turned to take a long but highly spirited procession all the way to Topkhana, close to the Press Club, where the British Consular Office was situated. The students broke open a heavily guarded police-barricade, aimed at the High Commission building on the top of which the Union Jack fluttering in a southern wind. There was a wall around the building and a narrow ditch just outside

making it difficult to climb. I was only a first year student and not supposed to be in the forefront when the senior leaders were present. But as soon as I saw the building and the flag I moved up to the fore. It was both excitement and a kind of adventurism that led me to rush forward to climb the wall followed by few others. I was almost on the top of the wall and ready to jump onto the ground of the High Commission when I heard a loud commanding voice "charge" from not so far away. At once a gang of policemen rushed towards me and started beating me mercilessly all over my body. I fell down to the ditch and the police continued the assault. By that time I was fully unconscious with severe pain and went silent.

After 3 days in an oxygen mask I woke up and saw my legs strung upwards, flowers all over my body and three political leaders—Aaur Rahman Khan, Abu Hossain Sarker, the two rivals and contestants for the post of the Chief Minister of a fragile coalition government of the United Front, and Sheikh Mujibur Rahman, the rising turk of the Awami League sitting in the middle surrounded by students. It was a bed in a general ward of Dhaka Medical College Hospital, almost next door to the old University. Despite the heavy sedatives I was in great pain. With the lessening effect of the medicines the pain went on increasing, a pain that continued to revisit me through the rest of my life. The next day I heard that I was brought to hospital by Din Mohammad Khan, a friend of mine. "Police abandoned beating you with rifle butts thinking that you were dead," Dinu said, "you were almost dead but Allah has saved you. On the rumor that a student was killed, the public went wild and burnt down the whole of the timber-built magnificent British Information Service Center," he added.

The next day, I realised that my right arm and leg had lost all sensitivity and when asked, the nurse said "Both of them are almost paralysed. The condition of your right leg is very bad, Professor K. S. Alam the Chief of Surgery is thinking to amputate it from the knee down to save your life." The news scared me, my whole body felt the pain, my mind went numb. I could not imagine that I was going to be a crippled person to live with one leg for the rest of my life. I was finished for everything, for good. What was the use of saving such a life?

"He will soon come on a round to see you, you can talk to him," said the nurse. She could not bear looking at me. Perhaps she was also thinking what would happen to me in future, what kind of life I would

have, who was going to look after me? She finally gave a kind look before she left, leaving me weeping in pain with eyes closed, tears falling in streams.

But after a month of a speedy recovery, the decision to amputate the leg was cancelled, but the Professor warned "Your right knee could continue to be weak, vulnerable and the right-arm shoulder will bear a permanent injury. You have to take care of yourself." I was immensely relieved. But looking back, in sheer frustration, perhaps it would have been better to have been crippled than going through this pain in the blackhole for having joined politics. Life would have been perhaps better than what it was right now.

For more than one month in hospital, my revered father to whom I was the dearest son, did not come to see me, not out of any discontentment but only because he was not able to bear seeing me lying in bed waiting to be lamed for the rest of my life with one leg walking with a crutch. He was unable to absorb that sight. Finally he came to visit me persuaded by Moulana Habibullah, an uncle, and father of Shahidullah Kaiser and Zahir Raihan (two renowned writers, both murdered by the Pakistan Army in 1971) when he heard that the decision of amputation was cancelled. When he sat by my side, tears rolling, with hands raised, face down, with all humbleness my father prayed for me for a long time.

When after nearly two more months I returned home I realised that my extremely gentle loving mother, a conservative and introvert, was no more a normal person. She had lost her equanimity. She would go out of the house without any "burqa" and walk down the "mahalla" to fetch a rickshaw to go to Shah Sahib, her spiritual mentor at Paribag. She had never done any such thing before. She was doling out to me all the little savings she had hidden in her steel trunk under her bed. She suffered from hyper delirium as long as I was confined to bed. I then discovered how much of deep love she had for me in her heart. She gradually recovered once I started getting better but I would never forget those devastating days and sad memories.

The immediate impact of all these brutal injuries on my body forced me to drop-out from all kinds of physical games. I was a good athlete, a hockey player in school team when I was only in Class VII at St. Gregory's School, captain at the Nabakumar Institution from where I finished school. Till I entered the university I played hockey, cricket, football in local leagues. In the annual athletic competition including

cycling I always had prize winning position. I had to abandon all of them, I was out of the playing fields for the rest of my student life. With a little unguarded movement my right-arm shoulder used to get dislocated causing unbearable pain till the bone joint was back to its place. This agony continued till the time I went to England to study, where in an arduous six-hour operation by a reputed Egyptian-British Surgeon, a pin was implanted to stop the dislocation. But that almost permanently restricted the movement of my right arm. With age, these old injuries started to come back. The metallic pin had degenerated causing excruciating pain from time to time in the right shoulder. According to the specialists in Singapore and London it required immediate replacement. An appointment was made to have the operation done in 2005 at the famous Hospital for Special Surgery in New York, but it could not be done because of the political turmoil at home. The injured right knee also weakened the left knee because of its over-use to give support to the right one. Despite the injuries, my political activities as a prominent student leader however continued in full vigour for the four glorious years in the university.

The old prison van carrying me to the court was in a terrible shape. Every time it stopped it made a big noisy jerk, shaking my whole body in pain—the same when it started again. I was sitting tight, upright, so that I did not fall down if it braked suddenly, to avoid any accident; the policemen standing up were rolling on each other in dire agony. The van, a small prison by itself, was closed from all sides with a tiny line of iron wired ventilation at the top. I felt more uneasy when the sudden rain water from outside were drenching my clothes while sitting on the fragile wooden bench, helpless in the dark, eyes shut. I was told we were in Nawabpur now, the heart of the old Dhaka, the road leading to all the lower courts, civil and criminal, the offices of the District Magistrate and the Deputy Commissioner.

When the van stopped my eyes were unfolded. It took me few seconds to adjust myself with the daylight and the surrounding court premises. By that time a large number of lawyers and public had gathered to greet me and I was taken to the court escorted by police. The public rushed from all directions, some stretching to shake my hand or just to touch me, some watching from distance, some threw flowers, even petals. It was a pleasant sight compared to the dreadful night I had with the interrogators and the mosquitoes. Indeed it was an immensely rewarding feeling for a politician, to be amongst the

people he belongs to. I did not know that media had already announced that I would be produced before the court on that day.

Soon I was standing in the dock before a Magistrate in a crowded court room. A lawyer whispered through the iron bars to say that Intelligence agents were all around. "We are going to move for your bail." I nodded with a smile at him, a junior Barrister practicing with me for many years now. "We will have at least 100 advocates signed to stand for your bail." I told him not to create any chaos and "whoever was the senior-most should move the bail application, not all together. Do not embarrass the court." But I was eager to know the charges. What hidden money had they discovered and what charges of corruption could they have against me? The demeaning words used by the interrogators again and again last night, "Politicians have done nothing for the country, they are all corrupt" was ringing in my ears, insulting, agonising.

Soon all my eagerness to hear the charges melted away proving the hollowness of what those young officers were asking about last night. A police court inspector read out the FIR, the initial charge, that I had smuggled alcohol into the country without due authority under Section 25B of the Special Powers Act punishable with a sentence of death! Some of the lawyers and public whispered, some laughed aloud, some coughed on hearing the charges, some cleared throats with no physical need, the newsmen took it as a joke and the Magistrate had his head down, concentrating on nothing. On the other hand on the same day, as I was told, newspapers made headlines of news leaked out to them by the government agencies that I had confessed to have amassed huge wealth to the interrogators last night, a part of the game military plays with the politicians to assassinate their characters and belittle them in public eye. More astonishing, the prosecution applied for a 7-day remand for further interrogation on which the Magistrate, without raising his head unhesitatingly allowed a 4-day police remand. This was in violation of the directions of the Supreme Court who made it mandatory for police remand that interrogation be conducted only by the investigating officer in the presence of a lawyer, a prior examination of the health condition of the accused by a designated doctor or a medical board and re-examination of the accused by the same doctor or Board to see whether he suffered any injury after such remand. When the application for bail was moved it was immediately rejected and the Magistrate left the place

leaving the court room in a pandemonium. The lawyers and public were abusing the prosecutors and blaming the Magistrate for ignoring the law.

In great dismay and disappointment, I was taken back to the waiting prison van, blind-folded, and soon left the court premises. Since it was a police remand, I was expecting the interrogation to take place at the Gulshan Police Station where the case was lodged. I was wondering what they would do with me for 4 days! To be sure, I asked the policemen where I was to be taken. "We don't know yet, we are waiting for orders." Orders from where? The answer was, "the Major of the Joint Forces." To my horror, I could now learn from the conversation over the wireless set used by one of them saying "Yes sir, no, not to the Police Station. Yes sir, yes, I understand." This news terrified me. Was I going to the same place again, the same rathole for another four days? One night was bad enough, now four nights to be grilled, tortured, bunked and locked in the darkness with cockroaches, ants, rats and human screams around. The very thought jarred my nerve system. Then I thought I must hold courage, stand up to face the falsehood, the evil forces of destruction, the misguided tyrants trying to wreck the state. But for whose benefit? Have they thought ever for once who were going to be the beneficiaries if the political institutions were destroyed in Bangladesh?

In the manifesto of the Awami League, drawn up in the light of their experiences of the role of military in Pakistan, they had stated that Bangladesh did not need any large regimental army. India, was a "neighbour of eternal friendship," and in any case Bangladesh would not be in a position to contain the military might of India if any war situation occurred. It had to be defended by its people who would always be ready to do so under a compulsory military training programme binding every youth in the country. So after the independence, although the institutions of Army were installed in the traditional British model followed by India and Pakistan, the original idea of keeping it at a low-key was sustained by meager budgets from 1972 to 1974. While it was left half-fed, ill-equipped with lesser facilities, in demoralising conditions, a special countervailing force, called Rakkhi Bahini, was raised in the country with a larger budget, modern equipments, better training and living conditions. It was done to avoid dependence on the army for any need inside the country and

at the same time keep them away from the people and to discourage them from playing any political role in future.

Whereas, the Bangladesh army was born in a war. It was not only a bloody war but a political war for the independence of the country. The freedom fighters from within the army were the principal forces, the guiding spirits, the hard core of the new army combined with the ambition of playing a political role in the governance of the country. So it was not only the meager budget, it was the loss of prestige and honour of the freedom fighters in society which had sown the seed of deep frustration in the armed forces. This led to the killing of the two most popular leaders of the country. It was the ambition and despair of the freedom fighters which caused the assassination of the father of the nation and also of Ziaur Rahman, the proclaimer of the independence of the country. The only difference—Mujib was a victim of a political decision he took to keep the army subdued under his authority and Zia was the victim of restoring the army to its original position of honour and prestige as an institution. But the fate was same for both.

A silent majority of the middle class intelligentsia held Ziaur Rahman primarily responsible for beefing-up the army beyond the necessary limit, and which at the end devoured him. In the background of the one-party rule and killing of Sheikh Mujibur Rahman, Zia once installed in power, resurrected the army to identify and promote his politics of Bangladesh nationalism. His theme was that the country needed a disciplined strong well-equipped army to defend its borders against any foreign aggression. The Rakkhi Bahini was hence dissolved and the army was on its track and emerged as a powerful contending force, raised and prepared with the fearful potential to play a political role once again. Zia increased the defence forces from 24000 to 76000, its budget from Tk. 750 million in 1974-75 to 2062 million in 1975-76 and Tk. 2194 million in 1976-77, and three times more in course of 2 years. It was a political decision taken by his government at the relevant time that made the army of today far better-fed and maintained than ever before. So it was the nationalist politicians led by Ziaur Rahman who decided to invigorate the defence forces of the country. I thought I should remind my arrogant interrogators when they insult and humiliate the politicians like me.

The bitter experience of military activism in politics demonstrated in the developing countries and the analytical studies of their

institutions has consistently suggested that once the army had tasted political control of a society and then was overthrown by a mass upheaval, it was only an interregnum before their desire to return to power again overwhelm them. There was hardly any freedom fighter in Bangladesh army without the ambition or desire, rejuvenated from time to time by lust and greed, who would not like to play a political role. But the situation in Bangladesh army was not only limited to any theoretical plane, it goes much beyond, much deeper to cut its own roots. This time some ambitious non-freedom fighter Generals, some members of the civil society inspired by two editors and some incompetent diplomats, deliberately designed to deface Bangladesh as a democratic state.

It was a long drive back again. Each time the van braked over a pothole it jerked forward causing further pain in my right shoulder. But as soon as the van was on a smoother road I knew we must have crossed the Gulistan area, beginning of new Dhaka. We passed the Secretariat, the seat of the government, turned right at the old High Court building passing the Supreme Court, Kakrail mosque into Hare Road with Ramna Park on the left and ministers' residences on the right including the elegantly rebuilt "Sugandha," where the Queen of England stayed during her state visit to Pakistan in 1962 renamed as Gana Bhaban after the independence, and used by Sheikh Mujibur Rahman to run his office as the Prime Minister. The van then slowed down as it approached the turn close to Hotel Sheraton originally known as the Intercontinental, the only decent hotel in Dhaka before the independence. The thought of the hotel immediately flashed back the memories of the beginning of the war that gave birth to a new nation. All these thoughts I could only visualise in the blackness of blindfold. The traffic was hardly moving. This has always been the same on this street before it joined the prime boulevard of the city called VIP Road beyond the traffic lights.

It was the night on 25 March 1971, the Pakistan Army launched its brutal attack on the innocent Bengalis who voted for their right of self-determination, giving the Awami League a majority with 167 seats out of 300 in the first ever general election held in Pakistan in December 1970 under the aegis of Martial Law of General Mohammad Yahya Khan. He had announced Sheikh Mujib as the future Prime Minister of Pakistan. But it was a wish which the Generals of Pakistan did not take so easily, nor was Mujib any more interested in governing Pakistan

betraying the massive verdict people had given him to secure a complete autonomy to free themselves from the colonial rule of last 24 years. The negotiations began at Shu Gandha where the President and the Chief Martial Law Administrator Yahya Khan was residing, hardly 500 meters from this hotel. When the negotiation between Mujib and Yahya Khan was at the final stage and Mujib had almost secured what he wanted for his people by peaceful means, a fully autonomous East Pakistan within the framework of a "confederation," the powerful Generals turned away. They allied with Zulfiqar Ali Bhutto the flamboyant leader who had secured 85 seats for his Pakistan Peoples' Party, the single largest in West Pakistan. Bhutto demanded to have two Prime Ministers in Pakistan, Mujib for the East and himself for the West. This only created a deadlock in the negotiating process and frustrated the tentative agreement reached between Mujib and Yahya Khan. So the talks finally failed and any path of any negotiation for a peaceful solution ended during the day. It seems that it was just the other day these historical events took place, all floating in my mind as a living witness. By the late afternoon, when Mujib, sitting at his residence at Dhanmondi came to know that the Pakistan army had decided to crack down to defeat his election victory and crush the people to subjugation by using guns, he passed instructions to his trusted men to leave the city and organise people for resistance with whatever they had.

The hotel was swarmed with foreign journalists from all over the world who were following the increasingly tense, volatile, breathtaking changing events. In last two years, people were witnessing how a movement of the Bengalis for a right to live as equal citizens was gradually rolling into a battle for independence. By the evening Yahya Khan had already left for Pakistan, leaving the cleansing task to other Generals to accomplish. As I was briefing the foreign reporters, about 40 of them, on what had happened during the day leading to the breakdown of the talks, a blackboard was put up at the front entrance asking everyone to stay in and not to try to leave the hotel, for security reason, a signal of an imminent danger every one assumed. We all reached upstairs on the tenth floor, had the large suite opened facing west and north, and half of the city came within our view. A black Mercedes followed by two other vehicles entered the entrance of the hotel. There was Zulfiqar Ali Bhutto in a hurry. He stayed the night in the Presidential rooms on the eleventh floor to view the east and south

from where he could see the other half of the city. Hearing this, the excited journalists, rushed to see him, knocked his door but the leader was resting. He would not talk, said one of his aides and shut the door. One of the senior correspondents remarked "he must be having his glass of Royal Salute on the rocks and enjoying the evening." "I bet," said another, they all laughed.

Within less than an hour, a large convoy of armed vehicles of trucks and jeeps with automatic weapons mounted on them came out of Shu Gandha where Yahya Khan was residing for the negotiation, passed the front of the hotel, turned left and then right at the corner of the PG hospital towards the university. Apprehending that his house would be attacked, I phoned the house for the second time to advise that Sheikh Mujib should leave at once for his safety but the telephone had already been disconnected. Another convoy from the north rolled down from the cantonment with truck-full of soldiers and rockets stalled on the road just down below us. All the journalists were busy clicking their cameras with zooms at full length, taking notes, changing positions, rushing from one room to the other, end to end, jostling and hassling, pushing and patting, all hysteric, almost theatrical. The troops jumped out of vehicles, moved into the narrow lane in the west from the main road, attacked the office of the *Daily People*, a popular English newspaper chanting "Allah hu Akbar," "Pakistan Zindabad." Having accomplished their task they mounted on the trucks, moved in the same direction as the others did. Rockets were fired and firearms were blazing, deafening the ears. The sound was coming from all over the city, the burnings, thick clouds mixed with red smokes were within our sight, near and distant. Dhaka was ablaze, in flames.

At about 3 in the morning an Air Force bus stopped in front of the hotel. A small contingent of armed men dashed through the swinging door and announced that "all the foreign journalists are expelled, you are to leave in ten minutes, get your baggage for the bus standing outside." A smart young officer recognised me and whispered, "We have caught the big bird." I immediately understood the message, Mujib must have been arrested. The journalists, all went to their rooms, down again as hurriedly as they could. In one of the rooms, I helped my friend Simon Dring of the *Daily Telegraph* and the AP photographer to hide underneath the bed, they wanted to stay back. At the airport, as reported later, the journalists were all searched down

to their under-clothes, shoes, socks; notes and films confiscated; disgraced and bolted out on a plane to the other side of Pakistan.

One hour later before the dawn in the ash-gray fog heavily spread all over, Zulfiqar Ali Bhutto had left the hotel. On arrival in Karachi, he told the reporters "God has saved Pakistan." The same day under the diplomatic protection of the British High Commission, Simon Dring dispatched his first report telling the world that "Pakistan was finished." The next day when the curfew was lifted, for two hours we stood together to mourn the death of nine eminent university professors lying in a row in a field closed to a dormitory slain by the Pakistan army. It was a carnage, a genocide, continued for 9 months killing, looting, raping, burning as they wished to mutilate the aspirations of the Bengalis to emerge as a nation. On 27 March, in the late afternoon, we heard over the radio the voice of one Major Zia declaring the independence of Bangladesh. The war had started.

Two days later when the curfew was further relaxed, on 28 March 1971, still unmarried, without telling my parents, I abandoned my legal practice and left Dhaka to join the war. It was a lonely decision, an inner urge to be a part of the struggle to liberate the country. At that moment nothing was more important in life. With me joined Mustafa a friend. We started a journey filled with emotion and adventurism, fears and apprehensions, avoiding all the places where Pakistani troops were stationed. We walked for miles through the paddy fields, took rickshaws in the village paths, climbed on buses in isolated metal roads, with a tiny bag in hand. We could see from distance long lines of vehicles on the highway that had been stopped by the Pakistani soldiers with green helmets frowning, shouting, searching each person, an enemy.

We headed for the north, spent the night in the village home of Prof. Noman in Brahmanbaria, once a popular college teacher, now retired. While eating the Professor stared at us with a smile, his dark affectionate eyes still as penetrating as they were when he used to address his students lecturing on the advancement of human civilisation. He said, "So you are going to fight a war with the mighty Pakistan military without any firearms in hand, bamboo sticks against automatic Chinese sub-machine guns, ah?" I said, "But the Vietnamese did that against the mighty Americans." He seemed happy to hear the answer. "To fight such a war you will need sanctuary and supply of logistics, where are you going to get them from? You just saw what

happened in Dhaka." We did not yet know what shape this war would take nor its dimensions. But we came to know from the people of the village, who by that time assembled in quite a sizeable crowd in the front yard of the house, that they were already thinking of preparing themselves for a resistance. They would first organise orientation and training. We asked who is going to lead you? They immediately said in unison "Professor Noman." Now we understood why the old teacher was asking such searching questions. The next morning before we left to cross the river to go further to the north close to the Indian state of Tripura, Professor Noman shook our hands firmly and said in a low voice, "Wish you all the best," his eyes were wet. We said, "Two of us are not going to fight in the field with arms. We first need a radio station to tell the people what was happening and what they ought to do. Communication with people was the most essential tool to win a war."

On our way at Teliapara surrounded by thick tall trees at the edge of a sloping tea garden, we were astonished, pleasantly surprised, that a military camp had already been established to train the youths of the area; one group undergoing a class of physical exercise and another being trained how to use a gun. I was even more happy to find Khaled Mosharraf, a major, had started to organise and lead a war against the Pakistan Army. He was soon joined by Major Nurul Islam. Both were friends and my contemporaries in the university in late 50s. We heard that they were in touch with some Indian officials across the boarder, who were readily extending their co-operation. So we thought sanctuary and logistics needed in such a war were already on the agenda of those who were preparing to fight the war on the ground. After a sip of tea we left them behind with their work and felt confident that if the Pakistan army from the desert of Baluchistan had arrived here even bamboo sticks would be good enough to subdue their machine guns in a terrain like Taliapara. A country full of rivers, canals, tributaries, dighies, ponds, ditches, fields of paddy, Jute and sugar cane, hilly areas in the north and bushes in the south were not a place where 100,000 soldiers could fight 75 million people.

The purpose of our joining the war was to install a small radio station run under our own control to cover the northeastern districts of Bangladesh. We arrived in Agartala, the provincial capital of the state of Tripura. We stayed two days. Having had no experience of this kind of adventure, we were told that equipments were available but we

needed a radio engineer of our own as Tripura was in acute shortage to provide any such technical personnel. It never occurred to us that we would face such a problem. It made us extremely disappointed, as we reached here after two days of arduous journey with a great hope that we would be the first to go on the air to tell people that we were ready to achieve our independence on our own. We decided to go back to Dhaka to find a radio engineer.

With Mustafa Monowar, the eminent artist, we now started our journey back to the capital, deliberately unshaven, wearing lungi and a smudgy shirt with sandals in foot, an umbrella in hand and our little bag slung over the shoulder like perfect villagers. It was again walking, boats to cross rivers, rickshaws and buses whichever was convenient; no one suspected us of being engaged in any "anti-state" activity. We were now fully committed to subvert Pakistan to achieve our own independence. Everything went fine till we were on the metal road near Narshingdi, 20 kilometers from the capital. We were on a bus which suddenly came to a screeching halt, almost taking the vehicle over the curve into the ditch down below. We thought we were saved from a deadly accident without realising that we landed in the hands of the Pakistan army for something far worse. The bus was immediately surrounded by the uniformed men with guns in hand, who signaled all to get down, about 20 or so, lined us up in a row with all the belongings dropped in front of us. A machine gun was now fixed on the ground aiming at us. We were scared, terrified; our faces turned white and we waited with remembrance of Allah before becoming martyrs so early in the war. All kinds of imagination filled our thoughts.

They started searching our bags, body, clothes, exposing our private parts before even asking whether we were Hindu or Muslim. They were not speaking Urdu. They were using a different dialect, perhaps Pashtu or Punjabi. Once completing the search, the soldiers moved out to stand behind the gunner, the marksman adjusting his automatic machine with the roll of thick long golden bullets on a leather strap waiting to be released, a trigger to kill us in seconds. Our breath was running out, repeating the verses of the Koran seeking mercy of Allah knowing that death was inevitable, a mass murder. Some one who looked like an officer yelled at them from a distance in a language difficult to hear or understand. He was coming closure appearing in the silhouette against the setting sun. When he arrived

they saluted him, and he said to them something not audible. A handsome round faced officer with green eyes, stubborn but soulful, waved at us raising hand with all the five fingers in his palm signaling us to leave. We turned back, jumped over the ditch into the paddy fields in the direction of the high rise buildings of the capital city hazily in sight. I never ran so fast in my life, Mustafa Monowar following behind. We survived.

When we arrived in Dhaka, the city looked barren, desolate, deserted, lights on in full beam but most of the shops closed; rickshaws plying freely over the roads normally used by motor vehicles; no traffic jam; it was not even 8.30 in the evening. The hawkers on the pavements had disappeared with hardly any shopper around. The number of pedestrians could be counted on our fingers. We decided not to go home, and instead see Baiju Apa, wife of revered NAP treasurer Sayeedul Hasan, later killed by Pakistan Army in the month of May, to discuss our problem and stay at her residence in Eskaton, for safety. On arrival there we had found a hot debate was going on the future of the war. Although about half of the population of the city had left for villages, either out of fear or to organise resistance, the capital seemed quietly gone under the control of the military junta. Baiju Apa got in touch with two radio engineers. The next day we met them, discussed our need, but none agreed to go with us leaving their children and family behind. The following day we left Dhaka again on a different route and arrived at Agartala to find that a small radio station had already started functioning with an engineer brought in from Calcutta. We happily joined them.

Soon I heard that Tajuddin Ahmed, the astute leader and General Secretary of the Awami League, almost next to Sheikh Mujib in command, had arrived to join his colleagues at the Agartala Circuit House to form a government in exile. He was advised to do so by the Indian authority after his meeting with Mrs. Indira Gandhi in New Delhi last week. Immediately my mind drifted away from political broadcasting to real politics. Tajuddin was told in Delhi, and correctly so, that in order to receive support and assistance at the official level he had to form a government. Five leaders, Syed Nazrul Islam, Khandaker Moshtaque Ahmed, Mansur Ali and Kamaruzzaman locked themselves from inside in one of the rooms for almost the whole day. They criticised Tajuddin for going to Delhi alone but mostly debated as to who would hold what portfolio in the exile

government. Once Tajuddin came out saw us sitting in the next room. He was frank in telling us "Are we going to fight the war or fight for the portfolios? This is what is going on inside. Moshtaque Bhai is creating the biggest problem." The next day all appeared happy, a tentative government was agreed upon with Syed Nazrul Islam as the Acting President in the absence of Sheikh Mujib who was elected President, Tajuddin as the Prime Minister, Moshtaque was given the Foreign Affairs, Mansur Ali, Finance and Kamaruzzaman got Home and Relief etc. The same day five of them were put onto an Indian Cargo plane on a journey to assume the formal leadership of the exile government to conduct the Liberation War of Bangladesh. We also left Agartala for Calcutta on the next day by a normal commercial flight.

Following this, a Proclamation of Independence, the anchor sheet of freedom drafted in Calcutta was enacted on 10 April 1971, by the representatives of the people elected in 1970-71 for the National and Provincial Assemblies from East Pakistan giving effect from 26th March 1971, one day after the Pakistan Army waged a war against the people of Bangladesh. Under this legal cover, the members of the government in exile took oath in an installation ceremony on 17 April held at the "Amra Kanon" a historical place where battle of Plassey against the British invaders took place 200 years ago, still free from the control of the Pakistan Army. It was organised by Dr. Tawfiq-e-Elahi Chowdhury, the Sub-divisional Officer of Meherpur of Pakistan Civil Service who had switched allegiance to turn into a liberation commando. With the ceremony over, the government moved to Calcutta at the Theatre Road under the full support of the Indian government for sanctuary and logistics to conduct the war to liberate the country from the occupation-army of Pakistan.

By May 1971 when the liberation forces were not yet organised, the Pakistan Army consolidated its position over the capital and the district headquarters without much resistance. At the same time as the international media predicted that it was to be a long-drawn protracted war, like the one in Vietnam, Bangladesh went out of limelight in the world news to its great disadvantage in getting outside support for the cause of the independence. By then, with a small team, I had already moved to 9 Circus Avenue, the office of Mr. Hossain Ali, the Deputy High Commissioner of Pakistan, who had turned his allegiance in support of Bangladesh. We opened the External Publicity Division and a Research Wing to brief foreign press, prepare publicity

materials to build world opinion and position papers on various crucial issues to assist the government of Tajuddin Ahmed. It was an extremely exciting time. We started publishing and dispatching world over an English comprehensive weekly bulletin "Bangladesh" with latest news on the war, assist the radio station "Bangladesh Betar" broadcasting the heroic achievements of the freedom fighters all over the country and daily briefings of newsmen. It was a day and night work, nothing else was in our thoughts other than the war.

To keep our war alive in the international media I had taken some of the eminent journalists and television crews into the pockets of territory still free from Pakistan occupation, mostly to the annoyance of the Indian authorities. After one such visit, renowned journalist John Pilzer wrote "Death of a Nation." It was a front page headline story published in the British *Daily Mirror*, which with a circulation of 20 million a day was the largest in the world. I remembered taking Michael Charlton, the great producer of the most celebrated BBC one-hour television program "Panorama" viewed worldwide, into the military camps of the freedom fighters operating from within our territory. Same with Martin Woollacott of the *Guardian*, Loren Jenkins and Tony Clifton of the News Week magazine, Andre de Borchgrave of the *Time Magazine* and many others. During the entire period of war I briefed around 250 foreign journalists, slept at night on a couch and was sustained with a monthly allowance of Rupees 300 as a non-party volunteer. I had but one shirt and a pair of trousers, which I washed by hand every week.

It was a big challenge. The case of Bangladesh war for independence had to be brought back to the front pages of world newspapers. In any war, propaganda has always been the most effective instrument of victory. With so many events happening all over the world: wars, confrontations, starvations, famine, cyclones, tornadoes, a sustained place in the world press for months together was difficult to attain. Newspaper editors, as known universally, are always after hot, fresh, sensational, exciting news to keep their readers happy. So unless there was something new happened in the war attention of the journalists would quickly turn to other directions.

By the end of May, about 10 million people had crossed the border. The atrocities, loot, burning, rape and torture of the occupation army made people flee to the refugee camps in the surrounding states of India, the large ones being in and around Calcutta. The visit of Senator

Edward Kennedy to the refugee camps at Salt Lake and other areas helped to bring the news of enormous relief operations, largest so far in recent history, to the media broadsheets for a week or so. But again the news of the war in Bangladesh went into oblivion. I phoned Peter Hazelhurst, the famous correspondent of *The Times* stationed in New Delhi, a close friend, to come back and write on Bangladesh. "I can't Moudud," he said, "There is nothing new to write about, this war will go on." "What to do then?" I asked. "My editor will only allow me to come if you can arrange an interview for me with Tajuddin, the Prime Minister, actually fighting in the war as you claim" with these words he hung up.

But Tajuddin was running his government sitting in Calcutta, although officially they were all out fighting the war in the fields. I phoned Amirul Islam the Principal Aide to Tajuddin and we decided to arrange the interview. The next day I informed Peter that Tajuddin had agreed to give the interview. "Excellent" he said. By the time he arrived in Calcutta it was the last week of June when the rainy season had just started. As arranged before, Amirul Islam took Tajuddin, crossed the border into a remote corner of Meherpur, which was of no importance for any physical control of Pakistani soldiers. After about an hour, Peter and I arrived waiting for Tajuddin near a mud shed. Soon we saw him walking towards us from a distance beyond the thickly planted mango trees, an automatic rifle in his hand with boots and helmet looking like a real guerrilla fighting a war against an occupation army. Tajuddin welcomed Peter with an evergreen smile, confident and assertive about his leadership in the war. They sat on the stool inside the shed while we keep watch standing outside. The interview did not last more than 40 minutes. When a canon was fired at some distance, the interview came to an end and Tajuddin hurried back to the same direction he came from giving the impression that he was rushing to join his forces. The next day the interview was published in three columns in *The Times of London*, a photograph of Tajuddin with a gun in hand, "Bengalis determined to win the war" said the headline.

By the beginning of July when Peter was still in town covering other aspects of the war involving India, more rain started pouring from the dark heavy cloud over Calcutta, the real monsoon, washing away many of the refugee camps, causing untold miseries to millions of people. In one such evening from the camps near Salt Lake in

Calcutta, Peter phoned, "Moudud I am going to shake the world." "What has happened?" I asked. "You do not know what is happening here in the refugee camps, babies are starving, children are floating in the swelling flood, women are all soaked, old people trembling, shivering, no food, no medicine, no hygiene, no sewerage, no drinking water, everything had gone out of control, all arrangements have collapsed, millions are going to die. In my reports I have urged for world support." I could hear Peter sobbing, emotion swayed his soul. I was crying too. I did not know what to say. But despite my tears and sadness, I was happy that Bangladesh was in the news again. The Pakistan Army was to be blamed for this human tragedy. For India alone it was not possible to overcome such a massive humanitarian task, the war must come to an end soon.

The same heavy rain in Bangladesh changed the terrain of the country dramatically. The Pakistani troops having not seen so much of water in their life took shelter into their camps allowing the *Mukti Bahini*, the freedom fighters, to consolidate their positions upto the capital Dhaka. They intensified their counter-attacks and started killing enemies in booby traps in the fields and narrow canals. The monsoon made the *Mukti Bahini* go for the real war. By the end of August the Pakistani troops were further pushed back to their barracks, holding their positions only on the raised metal roads while the *Mukti Bahini* took control of the rest of the country.

After the reports of Peter Huzelhurst were published, within a week Calcutta was filled with foreign journalists from all over the world. I became a spokesman for Bangladesh. Whoever came to cover the refugees also covered the war and I was there to assist them, take them round into our militia camps near the border giving them the first-hand account of the success of the *Mukti Bahini*. "It is not going to be a long-drawn protracted war as you predicted few months ago, it is going to be a much shorter one and Bangladesh was going to be free of the enemy forces within months," I told them. By the end of September in spite of the unhelpful official position taken by some of the governments including the United States, the world public opinion had a spontaneous sweep for the cause of the people of Bangladesh. Sidney Schanberg of the *New York Times*, the author of the great movie, "The Killing Fields" based on Vietnam, became emotionally attached to the struggle of the Bengalis like Peter Huzelhurst. The two journalists, along with Martin Woollacott, Jhon Pilger, Simon Dring,

Peter Gill, Loren Jenkins, Tony Clifton and some others made all the difference by creating an overwhelming world public support for Bangladesh. Peter Huzelhurst did not return to New Delhi for a long time.

As a part of our effort to internationalise the Bangladesh issue and to establish the credibility of a functional government engaged in war within our territory, freed or under control, arrangements were made to print postage stamps in England for our use with the initiative of John Stonehouse a Member of Parliament and a former Minister of the Labour Party and Donald Chesworth a renowned social leader engaged in charities like Christian Aid and OXFAM. It was raining the whole night but the day broke with a mystic glow of sunshine, bright and beautiful. A mud house had already been erected the previous week, on the top a national flag fluttering in the mild breeze. A sign board underneath read in Bengali "Postal Department, Keshabpur Branch, People's Republic of Bangladesh." On a yard covered by water a bamboo fence surrounded the first Post Office of the new Republic. It was inaugurated by cutting a red ribbon by the two distinguished guests amidst thunderous applause of the members of the *Mukti Bahini* and hundreds of villagers chanting slogans in rhythm. There were a large number of newsmen with cameras to record the occasion. It was a new thrill, a joy, a pride in every face, half-clad children, men and women, youths and the old. It was real. Eight beautifully printed postal stamps of different denominations with photograph of Sheikh Mujibur Rahman, the founding father, were placed on the table, with me sitting on the other side. I stamped them with a cancellation seal. I was designated as the first "Post Master General of Bangladesh" without any formalities, a title still carried in the legendary heritage of the postal service of the country. The postage stamps affixed on envelopes containing our news bulletins were sent out all over the world.

It took a long time for the prison van to move forward to cross-over the traffic lights at the far end of the eventful Intercontinental Hotel where it turned right. With the cracks and cranks, slow and fast, loud and quiet, bumping up and below, horns honking outside, a synchronised noise let me dose off again, stretching my legs in the open space knowing that none was sitting near around me. I was alone with the policemen standing at the far end. The thought of going back to the same hole caused a shiver in me, blocked my vision, froze my

pulse. Last time in one night they did not go that far with me but this time in four nights they may do, the fear of which made my heart shudder. With any unaccountable government, arrogance is not power, power is arrogance.

I could feel that the van had now turned into a narrower lane, rough with broken bricks underneath the wheels, moving us unevenly from one side to the other; it slowed down and stopped with a grinding halt. I was held by hand disembarking the van, four steps up, turned left, right again, through the familiar narrow passage into a room. The blinder over my eyes was removed but I kept my eyes closed for a while to adjust with the day light but there was no light. It was the same room, dark and stinking. The same Intaz Mia with a morose face said, "You must be tired, take some rest." Then dropping my bag on the floor he left but said nothing about food. I sat there on the same bare *chowki* without any mattress or pillow. It must have been now late afternoon, 14 April, the Bengali New Year's day.

Two years ago on this day of Aman's wedding, the "*bou-bhat*," a return-dinner, from the groom's side in honour of the bride, was celebrated in a grand reception in the specially designed glittering banquet hall of the Pan Pacific Sonargaon Hotel with 15 hundred guests: politicians, ministers, ambassadors, professors, poets, writers, editors, columnists, painters, old friends and relatives of both sides. Most pleasing for us was the presence of Professor Roderick Mac Farquhar and his friend from Harvard, Alexander Duffy from London and Justice Sohan Lal Saraf and his wife from Calcutta, who came all the way to attend the wedding. Aman, 30, our son, looked strikingly handsome with his dark Moss Brothers suit purchased by his mother, a matching shirt and a white striped fashionable tie, a silk handkerchief half-falling from his breast pocket, a style he loves. He was standing at the entrance with Zorah who looked bright and beautiful in a specially woven red and golden *saree*, greeting the guests. The Prime Minister Khaleda Zia arrived with all her charm and elegance followed by President Professor Iajuddin Ahmed and his wife. Both the President and the Prime Minister separately blessed the bride and the groom on a raised platform with videos and mass of flashing cameras all over. With the blessing ceremony over, the Prime Minister moved around the guests, nodded, smiled, bowed, talked and once returned to her seat, a scintillating dance performance was presented for the celebration of the New Year before the dinner was served.

The pleasant memories were soon overtaken by the reality of the darkness. As the evening arrived, the dim electric light was switched on from outside. The ants, cockroaches and rats were present, mosquitoes were beginning to know the presence of human blood. More disturbing and distressing were the groans, moans and screams I was hearing at this hour of the evening coming from the adjacent rooms. "Do they not have anything else to do other than slashing people?", I asked myself. I was feeling extremely weak and dizzy now. What I needed most was some water, not to quench by thirst but more to have my medicine, the life saving drugs that I carried in my bag everywhere. The turmoil of last two days kept me without medicine, the hydrocortisone, a steroid and a dose of thyroxin every day. In 1988, when I was the Prime Minister, doctors in Dhaka detected that I was going to be blind for good. I would never see anything again. I was flown out on an emergency basis and my skull was opened at The National Hospital, Queen Square, London to have the pituitary tumor removed to retain my eyesight by the 75 year old Professor Lindsay Simon, a world renowned neuro surgeon, in a seven hour operation. Since then, for last 20 years without missing a day I have been on this medicine, and every year the dose was adjusted by a specialised blood test conducted by Professor Stafford Lightman of Bristol University, to maintain a balance in my hormone system. In a letter written in August 2007 to my wife, after my arrest, he warned that "harsh conditions are potentially extremely dangerous to his health."

After slamming the door several times the lock rattled, a key was turned, the door was slightly opened just enough to see Intaz Mia standing outside with his sunken eyes asking if I wanted anything, "I need some water," I told him. The door was closed. I pulled the bag, sat on the *chowki*, took out the required medicines and waited. After a while he came back with some assorted food and water in an unwashed aluminum container. I ate the food without looking at it, drank the water as much necessary to swallow the medicines with eyes closed and thanked him. "You have to go with me now, they are waiting to talk to you." I asked whether I could get a mosquito net. With an apologetic look, Intaz said, "I will ask for one." My eyes were covered again, one hand was held, tight, and I was led to the room likely to be the same one as before, to sit on a stool with a table in front. Everything seemed familiar, including the smell.

I could hear the sound of boots entering the room, then people pulling chairs to sit closely, all of them facing me without knowing how many were there and whether it was the same team as the first one of yesterday. As they never disclosed their ranks or pronounced their names, I had to wait to hear what they had to say, tense and agonised. I was already too tired and had no energy, yet I had to hold patience to keep cool as I knew if I argued with them they would assault me, beat me up. Now that I know their political plan to have the Army Chief installed as the President from the late night team who came to seek my advice, I was wondering what would be the attitude of the officers who came to interrogate me now. Since it was no more a simple police remand but a remand for torture, it was difficult for me to assess what to expect.

“So, have you thought about it?”, “Thought about what?”, I asked. “About disclosing the hidden money you have. We gave you time to think about it before we left you yesterday.” It was the voice of the same aggressive young officer who threatened to beat me yesterday. He sounded more impatient today. He did not know how well-behaved his seniors were with me last night. I said, “I have no hidden money. I am not engaged in smuggling or hoarding. I am a professional lawyer engaged in my legal practice only. I have no other financial stake anywhere else.” Before I finished, another person asked me in a raised voice, “What about your rich clients?” “What about them?” I asked. “The money they may have stacked for you.” I answered, “For the last five years as a Minister, I was neither in practice nor had I had any client.” By this time it was clear that these officers had really nothing solid to ask me, nor had the army had any information about any hidden money that I might have. They were on a wild goose chase. It was a sheer harassment. The court allowed the police to take me on remand to ask questions relating to the case of having alcohol at my house but it was not the police or any police station, the army officers were asking me questions while blindfolded having nothing to do with the case in court and at a place having nothing to do with police. It was a dungeon of the Defence Field Intelligence.

I could hear someone screaming not very far away, and wondered who it might be. May be another politician or a businessman or a civil servant, beaten-up to confess the crimes he might not have committed. One of those sitting in front of me told the other, it was a businessman they were sizing up to know how much money he had accumulated

and how many businesses he had and how much cash he was willing to surrender to help build hospitals for the poor. "Already we have collected more than 500 crores and confiscated 55 very expensive vehicles for this purpose," said another. "This is what our Chief desires to do with all this ill-gotten wealth of the corrupt politicians and businessmen," said the one, more aggressive than the others. Another one sounded a little bit skeptical, "I am not sure about that." Realising that I was sitting in front of them, he did not proceed any further with his comments. All on a sudden they stood up and one of them said, "We will talk to you again later on in the day." They never came again on that day.

I was taken back to my room, a pigeon hole, eyes unbound, locked up, all alone, shaken and devastated. I looked at the insects around me, relaxed and happy compared to the human companion they had. The dampness of the broken floor and the walls around made me shiver once again. The thought of spending three more days here in the same blackhole took away all my resistance, made me feel non-existent and yet I was still alive and not dead. On 14 November 1982 one week after I had persuaded Begum Khaleda Zia to step into politics, the junta members of General Ershad brought me to a similar place like this. I had been arrested for organising the visit of Khaleda Zia to her husband's grave and instigating anti-Ershad slogans at Sher-e-Bangla Nagar on the death anniversary of the martyred leader. One night on that occasion was bad enough to forebear the kind of torture and agony compared to the last night. On that occasion, there was at least a cause to suffer imprisonment. We had taken a stand against martial law to bring democracy back. This time there was no cause except humiliation at the hands of those who had no aims other than destruction.

The next morning, 16th April, I was again taken to the same place where the interrogators were already in some kind of conversation. Soon after I was made to sit on the stool, the same drill began but the grilling this time was more about my wife Hasna. She is a laureate of the Global 500 awarded at the Rio World Summit on Climate in 1992. To the military she was nobody, a person not worth a penny. That she was a teacher in America and at the Dhaka University, daughter of Poet Jasimuddin and had played an active role in organising the campaign with Senator Edward Kennedy for the liberation of Bangladesh while working at the UN in 1971, Fellow at Oxford, an

author, an environmentalist and a former Member of Parliament did not mean anything to them, nor did they care to know about them. To them she was my wife, a politician, and therefore as corrupt as her husband and had to be destroyed. Many other wives were also incarcerated along with their husbands. It was a new kind of family torture never practiced before, not even by the Pakistan Army in 1971. Hasna, like many other wives, would have been in jail today languishing with way-side prostitutes and others in ordinary cells, to sleep on the floor with a brick to rest the head on. If that had happened, I once thought, we would rather have committed suicide together than to live in this world. Luckily due to sheer providence, Hasna left the country only a week before I was arrested. Allah saved us both.

Soon after the Emergency was declared, with the mass arrest of the politicians, it became clear that the regime was not going to hold any election but to perpetuate power to fulfill the ambition of the Army Chief, at whose instigation the Emergency was proclaimed. I decided to leave the country and go back to the same Asia Institute of Heidelberg University to continue with my academic pursuits. With the encouragement of Frank Meyke, the German Ambassador, the Friedrich Ebert Stiftung, a renowned foundation based in Berlin responded immediately offering me a Fellowship to do research on my next book, and the Institute agreed to provide all the facilities as they did in the past on three other occasions in 1976, 1980 and 1996.

It took about two months to complete these arrangements from both sides. In the meantime, realising the unstable situation in the country, before I finally committed to the date of my arrival at the University, I phoned Fakhruddin Ahmed, the Chief Adviser, to find out whether there was any restriction on my leaving the country. He was rather happy to hear that I was going to Germany on a Fellowship and said that there was no such restriction and wished me well. My call to him was followed by a call from the Home Secretary, confirming the same. I then felt better in confirming my schedule to the Foundation, the Institute, the Professors and others in Heidelberg. About ten days before our scheduled departure, we invited the German Ambassador to have dinner with us at home and he wished me a successful visit before we said goodbye to him. The next day I phoned Fakhruddin again to inform him about my date of departure and he happily reaffirmed what he had stated earlier and wished me well.

But Fakhruddin, though head of the interim government, was not sure about his authority. One hour later the Home Secretary Abdul Karim phoned me to say that the Chief Adviser has advised me to check with the Director General Field Intelligence about my leaving the country which I immediately did and the General on the other side of the telephone sounded extremely courteous and asked me to phone him back in the afternoon. But that afternoon never arrived. The General would not receive my telephone calls anymore. I asked Hasna to leave the country without disclosing to her my apprehensions and she left in the first week of April, one week before our scheduled date of departure. Soon after Hasna left I cancelled my visit "for some unavoidable circumstances" and officially communicated the same to the German authority. After a week, with all the newspapers flashing in headlines the news about my arrest they all came to know what could be the "unavoidable circumstances." If Hasna was in the house with me on the day I was arrested she would have been in jail today.

"So, where is your wife now?" "She is in London," I said. "What is she doing there?" "She has gone to see our daughter," I said. "How much money has she got?" I replied, "As much as I have, as she does not have any earning of her own." "But she runs two NGOs raising huge sums from foreign donors and she has her own business, where does she keep her money?" With each question the voice of the officer kept getting louder. "Her NGOs are absolutely voluntary, mostly financed by me and not by any foreign donor and she has no other business of any kind." "She has made plenty of money by giving jobs or transferring officials through you." "She has no money other than mine and she has never done anything like that." I could feel my answers did not make them happy. At this time one of the officers accused Hasna with a loud voice, "But she has properties and bank accounts in foreign countries and she goes abroad very frequently." "Yes she travels to attend all-paid international conferences as an invited participant; in some years, three to four times. She has bank accounts in UK and USA which everyone does to deposit cheques of any kind of earning abroad from such international assignments. She has a small flat in Washington DC in her name purchased by me from my earnings as Fellows at Heidelberg, Oxford, Harvard and as a visiting Professor at the Elliot School of The George Washington University." They did not seem to be satisfied with all these answers. One of them blurted out, "When is she going to return?" I took courage

and said, "Not as long as you run the country." The answer came, "In that case you will have to live without your wife for the rest of your life." They all laughed, a sarcastic laugh. "We will prosecute her also." "For what?" I asked. "We don't need a reason" were the last words.

There was virtually no more interrogation in the next two days excepting the rituals. The same kind of drill, same questions, same threats, humiliation and sarcasm. The political team also showed up again in the late night of 16th April. They flattered me, trying to allure me with good options. I did not budge. My nights went sleepless; food intakes reduced to minimal and drinking of contaminated water only for swallowing medicines. The ants, the rats, the cockroaches continued to be regular companions with the occasional sound "tik tik" of the lizards registering their hidden presence and responding to my various thoughts.

On 17 April, I was up the whole night fighting with mosquitoes. At the same time, the thought that I would see the world again tomorrow on my way to the court at the end of the remand was exciting. I would see the sun, the sky, the clouds, streets, rickshaws and normal human beings once my eyes were unfolded, and taken to the court room from the prison van. I would see lawyers, friends and masses of well-wishers—something to look forward to, something so precious and not aptly describable, a rare resonance of the revival of life, a rejuvenation of heart and soul.

On 18 April, I had already packed before anyone woke up. It was 8 in the morning. As soon as Intaz Mia unlocked the door, I was ready to go. But Intaz was sobbing with a piece of stale bread and a glass of water in hand. He knew I had to have my medicine. I quickly had a bite of the bread before taking the medicine and held his hand to say good-bye. He touched my feet but covered my eyes with the black band and took me upstairs through that narrow staircase. I never saw Intaz Mia again.

While I was wondering why I was brought upstairs again, my blind was taken off. I was made to sit on a chair in front of a small table. I saw a man with a movie camera focusing on me with his film rolling. I was asked to read out the typed paper placed on the table looking at the camera like a live broadcast addressing the people. I said I wanted to read what was written. I was shocked when I read the paper. They wanted to record in my own voice a statement admitting all the crimes Hasna and I had supposedly committed at home and

abroad. A self-incriminating evidence as if, made voluntarily, a confessional statement which also stated that while in custody I have been treated extremely well. This was a preposterous proposition for a lawyer like me to not only admit but have it recorded in a video camera.

I refused to read it. As soon as I declined my eyes were blind folded again. The goons appeared. They were furious and started using threatening words, "If you do not do what we ask you to do you will be again brought back here on remand and next time you will know what physical assault is like." The words shook me. "Everyone brought here had to do the same thing, they have to read out the statement before the camera and sign it as well, otherwise we will do what we have said we will." I felt helpless. The threat of returning to this place to suffer assault and torture shattered me. In two hours time I would be before the court and then back to this *rat hole* again. The judge would not hesitate a second to grant remand again if prosecution had asked for it. I was torn in two pieces but refused and requested them not to insist on it. As they went on threatening, I finally agreed to say only what I thought I could say. The goons had gone and sent in a new draft. My eyes were uncovered and again I refused to read it before the camera or sign it. The third draft reduced my risk to some extent and once retyped I recorded the statement facing the camera and signed it. I knew such a statement would have very little evidential value since it was not made before any judicial magistrate but as the fear of remand, assault and torture filled my mind, I had no other option.

In the midst of hundreds of people in the court premises, I came out of the prison van; some were cheering me and clapping with many as onlookers. A large contingent of police escorted me with my lawyers, trying to surround me in a great jostle, to appear before the court. One of the lawyers told me about the scandalous news published against me in all the newspapers for last 4 days reported as to have been the confessions I made to the Joint Forces during the interrogation. Each of the reports I was shown was a lie. This is what they have been doing with regard to all others to assassinate the character of the politicians in public eye, a part of the military design to demolish the politicians in order to achieve their own goal. As a prisoner, I had no opportunity of lodging any protest or condemn such activities or contradict the reports. It was only a one-sided propaganda against the politicians conducted by the Joint Forces during their

regime at the behest of the Army Chief to justify their rule. Anyhow, luckily as the prosecution did not ask for any further remand the court ordered that I may be sent to jail. I felt relieved and happy. At that particular moment the prospect of living in jail seemed to be as good as heaven compared to the blackhole of the cantonment. After a brief hour in the court, with flashing media cameras and masses of people outside, I was hurriedly rushed into the prison van to commence my journey to live in Dhaka Central Jail once again after nearly 11 years.

In February 1955, I was in this jail for the first time for a month. It was the historic Language Movement, which led to the independence of Bangladesh. I was 16 or so, just having passed my secondary examinations, and a student of first year in Dhaka Intermediate College. Of the 110 students arrested and detained in jail, I was perhaps the youngest. In 1956, as a student of First year of Honours Course at Dhaka University, I was under police custody in Dhaka Medical College where I was taken senseless, after being mercilessly beaten up by police while demonstrating against the Anglo-French attack on Egypt on the issue of Suez Canal nationalised by President Gamal Abdel Nasser, a leader of the Non-aligned Movement.

After the independence of Bangladesh on 29 December 1974, one day after the Emergency proclaimed by Sheikh Mujibur Rahman, as a prelude to his turning the country into a one-party monolithic system by amending the Constitution on 25 January 1975, I was arrested from my residence and detained in Dhaka Central Jail for nearly three months as a security prisoner without any trial under the Special Powers Act. Then, on 14 November 1982 I was arrested by the Martial Law regime for initiating anti-Ershad slogans at the first public appearance of Khaleda Zia at the shrine of Ziaur Rahman on November 7 at the Sher-e-Bangla Nagar. Ershad detained me in Dhaka Central Jail for eight months. I was convicted by a Martial Law Court on trumped-up charges and then released unconditionally having had the conviction and sentence set aside on a review. In December 1990, after the fall of Ershad government of which I was the Vice-President, I was arrested and jailed for over three months and released by an order of the Supreme Court. In February 1996 when the BNP government of Begum Khaleda Zia was crumbling in the face of a movement of all the opposition parties combined together, I was arrested along with 6 other national leaders but released after 16 days due to mounting public pressure.

So, this time, on my sixth arrest, I entered the familiar precinct of Dhaka Central Jail again. After the independence, each time I lived in this jail I passed my days in Cell 26, now called "Champakali" a conclave facing south with a wide verandah, a spacious court yard, a garden and a large kitchen (*chouka*) of its own. It is a jail within the jail, with a separate enclosure. Despite the dampness, broken plasters and uneven floor to have a room for yourself, however small, was something every prisoner of the past appreciated including Sheikh Mujibur Rahman, who spent 11 years in prison mostly in this cell. That was before he became the symbol of Bangali nationalism and led the nation to independence.

So at the prison gate before my name was registered as an under-trial prisoner (*hajati*) I asked the Deputy Inspector General (DIG) Prison, Haider Siddiqui, a Major of the Army seconded to the Prison service, whether I could get a space in Cell 26 where I lived before. I was told that the place was not the same as before and it would take several days to make it ready. So in the first few nights, for security reason, I was taken to a secluded room on the second floor of the hospital building.

On the first night it was a turmoil. A seasonal storm known as "*kalboishaki*" battered the open windows from one side to the other, and leaked water dripped from the roof flooding the entire floor. I rushed to shut the windows, four of them, but could not do anything as there was no system to close them, no knob, no bolt, or latch (*chitkani*). I could not save the bed either. It got wet, soaked in rain from all sides. It was dark, the lights were out and there was none I could call. I was wondering what was happening to the patients in the hospital. Were they facing the same situation? I just hoped that they were safe and dry. I had a sleepless night and yet it was better than the blackhole where I spent last 5 nights since my arrest.

The next morning dawned with a spread of bright sun shine, a smiling face, as if there was no thunder, no storm, no rain the previous night. All was quiet and serene, birds singing, sparrows flying all over across the ceiling, rearranging their straw homes dismantled by the last night's storm. It was pleasant and harmless. I had to re-organise myself too. The morning I was arrested, before leaving home, I quickly packed a few things into a bag based on my past experience; four candles, two match boxes, a torch light, a lungi, a kurta, one soap, tooth paste and brush, shaving kits, sleepers, medicines, some books,

writing materials and whatever else I could lay hand on. Because of the storm and darkness I could not make use of any of them last night. To my surprise, when I opened the bag left underneath the bed, nothing was damaged.

By eight in the morning the room was wiped and cleaned, the bed was taken out under the sun to dry, the windows were fixed with ropes so it could be shut to save the room from rain if it occurred again, fresh water was brought into the room in a bucket (*balti*) with a plastic mug. A piece of bread (*ruti*) and a small portion of vegetables (*bhaji*) arrived on an old aluminum plate with a glass of water. I was hungry and ate all that was given and gulped the water to take my medicine. I could subscribe only to "listed newspapers," mostly propaganda sheets heavily censored under the Emergency Rules, not worth reading. I arranged a small table and a chair and started writing down my experiences immediately without wasting any time. I passed six days in this room mostly with rain in the evening and sun in the morning.

Compared to an ordinary prisoner, a class I or a Division prisoner, as they call them, normally classified as tax payers, prominent citizens and politicians had enjoyed the privilege of having a *chowki*, a thin cotton mattress, a pillow, a bed sheet, a mosquito net, slightly improved food, a table and a chair, a commode and a cold shower with a basin, all set in one open floor for everything-eating, sleeping, reading, praying, writing and bathing. One is lucky to have a room for himself. Otherwise it would be a curtained space with common toilet and water facilities shared with all others in one large room. For each of such class 1 prisoners the assigned *Faltu*, selected from among the convicted prisoners sentenced for life, was to clean the room, do the bed, serve the food, wash the clothes and utensils—all being part of a tradition introduced by the British for the politicians who were jailed for fighting for the independence of India.

On 24 April 2007, I was moved to the corner room of Cell 26 facing south with a large window to the east. It was most comfortable as it had plenty of sun and air. It was a place where I had lived on two other occasions, in 1974-75 and 1982-83. This cell had 12 rooms in a 126 year old building built by the British. The ceiling was 30 feet high, 10 feet wide and 18 feet long. Though generally damp, the plastered walls were flaking and ants, rats and cockroaches were not infrequent visitors, this was the room where I had showered in cold water and

wrote three books in the past on Bangladesh politics: *The Constitutional Quest for Autonomy, Era of Sheikh Mujibur Rahman* and *Democracy and the Challenge of Development: A Study of Politics and Military Interventions in Bangladesh*, all published by The University Press Limited, Dhaka.

PART TWO

Chapter 1

Proclamation of Emergency and the Interim Regime

On 11 January 2007, Bangladesh again moved from democracy to an authoritarian rule, scuttling the existing democratic process. The armed forces led by the Chief of Army Staff forced the President to proclaim Emergency, and follow the instructions laid out to him by the designated Generals. With that interruption came an end of the cherished goal of Bangladesh to march forward to achieve a stable democratic order. A coterie of ambitious generals backed by an international coalition,¹ dismantled all the institutions of good governance overnight with a political agenda of their own.

In 1975, Sheikh Mujibur Rahman the founding architect who struggled and established democracy by giving a fine Constitution decided to defile the same within two years to turn the country into a one-party system. Here also, a party having had the support of more than two-thirds majority in the Parliament in 1975 led the country into a more disastrous end, once more reconfirming that the society was still disorganised, unstable and vulnerable with leaders not having the correct level of maturity, tolerance and intellectual articulation to sustain democracy. Their perception of democracy was still confined to *hartals*, violence and mass agitation, the only road for them to go to power. The perception of governance was guided more by a rule of person than an institution, without realising that rise of authoritarianism in democracy was much more dangerous than the

¹ See *The Daily Star*, 13 January 2007 and denial by the diplomats, *The Daily Star*, 15 January 2007. It was however a widely accepted public perception that both the US Ambassador and UK High Commissioner played an active role in encouraging imposition of Emergency and stopping the election. With them joined other western diplomats including EU and the UN agencies. *The Daily Star*, 12 January 2007. See also the *Daily Naya Diganta*, 15 October and 2 November 2008. The *Daily Amar Desh*, 31 July and 19 October 2008.

authoritarianism of a military dictator. The people therefore fell in a dichotomy. They did not like authoritarian rule of any kind, neither military nor democratic, but they also did not like to see an unelected government to continue governing the country.

Whereas, the most remarkable feature of the Constitution of Bangladesh made effective from 16 December 1972, recognised as a respectable piece of document of international standard, much improved over the other written Constitutions of South Asia, was that it did not contain any provision for preventive detention nor any provision for Emergency. In other words, citizens enjoyed an unfettered right to liberty and none could be detained in custody without trial and in the absence of any provision in the Constitution a state of Emergency could not be proclaimed to suspend the fundamental rights to disrupt the democratic order and disturb the constitutional process.

In the making of the Constitution, the general aspirations of the people nurtured in the 24-year long struggle for independence, were seen to have been largely reflected, by adequately guaranteeing all the universally recognised rights of citizens embodied in the charter of the United Nations. Although the provisions for preventive detention or a state of Emergency were no more considered inconsistent to those rights in many democratic states, the law makers in Bangladesh in pursuit of their high idealism to establish a sanctified democratic society decided to avoid these two features because of the bitter experience the people had in the past.

These provisions were widely abused by the British and subsequently by the central government of Pakistan. The British had these laws to perpetuate their colonial rule largely to contain the growing public agitation for the independence of India and the Pakistan ruling elite used these laws against their own citizens to govern the country by force without any national election for 24 years.² During its first 9 years without any Constitution and the last 15 years under the Constitutions of 1956 and 1962 with an intervening period of a direct rule under Martial Law, countless people had suffered imprisonment, torture and humiliation due to the laws like the Security of Pakistan Act 1952, East Pakistan Public Safety

² See for more detail Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman*, The University Press Limited, Dhaka, pp. 119-124.

Ordinance 1958 and Defence of Pakistan Rules 1964. Besides, the laws on prevention detention, the Emergency provisions of the British rule and subsequently under their own Constitutions of 1956 and 1962, the powers of emergency were used most arbitrarily depriving the country from building a normal democratic system.³ The Emergency imposed by President Ayub Khan in 1965 war with India was not lifted till 1969, when he was forced to leave office in the face of a mass upheaval. The constitutional history of Pakistan was a history of arbitrary exercise of powers by the Chief Executives under proclamations of Emergency and Martial Law Orders and all the actions taken under these instruments ultimately weakened the political institutions. These led to suppression of opposition and putting thousands of citizens into jail without any trial for indefinite periods. The experience of Pakistan showed that whenever such laws were incorporated into the Constitution, however well-intentioned they might have been, the tendency to misuse them was overwhelmingly predominant. These authoritarian powers were therefore considered contradictory to the concept of nourishing a living democracy. Since the formation of the United Front based on a 21-point programme as long back as in 1954, the Awami League committed itself not only to repeal the anti-human rights black laws but also to remove any such arbitrary prerogative powers enabling a government to exercise which could retard the progress of democracy.

It is in this background the Awami League law makers decided not to include these provisions in the Constitution enacted in 1972. But the fast growing opposition in the country and the deteriorating law and order situation shook the confidence of the government and the stark realities of political management of the new state led them to take adequate measures to bring the situation under control. In order to do so the same Awami League government moved to take refuge to the "colonial instruments" to incorporate into the Constitution the authoritarian provisions of preventive detention and Emergency. On 20 September 1973, hardly 6 months had gone since their victory in the election with a thunderous majority, the Constitution (Second Amendment) Bill was passed to amend Article 33 and add a new part to the Constitution for including the provisions for Emergency.

³ See the Tamizuddin Khan Case 1952 BLD Federal Court 240 and Asma Jilani Case PLD 1952 SC 139.

The Emergency Provisions

The Emergency provisions were incorporated in a new Part IX(A) in the Constitution by the same amendment Bill with three new Articles 141(A), 141(B) and 141(C). Pursuant to the amendment made in Article 33, the Government enacted in February 1974 the Special Powers Act 1974⁴ to provide an instrument for preventive detention under which allegedly more than 40,000 political opponents were arrested during that regime. The same government, in order to usher in a monolithic system to “materialise” a “socialist transformation’ in the country, on 28 December 1974 proclaimed a state of Emergency in the country under the new provisions of Article 141(A) and suspended all the fundamental rights and their enforcement by any court of law. Then on 25 January 1975, the Parliament passed the Fourth Constitution (Amendment) Bill to establish a one-party system in the country. The second time a state Emergency was imposed in Bangladesh was by the Ershad government on 28 November 1990 in the face of a mass upheaval, but the Emergency restrictions were violated to bring down the regime on December 6th, eight days after the Emergency was proclaimed.

On 3 January 2007, once the grand alliance led by the Awami League had decided to boycott the election scheduled for 22 January and their candidates had withdrawn their nomination papers from all the 300 constituencies, it plunged the country into a new crisis leaving the BNP-led alliance alone to participate in the election. The run-down of the events for the next seven days only escalated the apprehension that the country with a one-sided non-credible election would only sink in more violence and uncertainties making the path of democracy even more untenable. If the election was held on schedule, it would have ensured the continuity of the Constitution and fulfillment of its mandate as it happened when one-party elections were held in 1988 and February 1996 to enable the national politics to take its own course, allowing the politicians to resolve their own problems. The Army Chief so long loyal to the government and supported continuity of the democratic process, decided to intervene on the pretext that the country needed to come out of this impasse and the military was to be ready to play the role to “salvage the nation.”

⁴ See for more detail Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman*, The University Press Limited, pp. 180-185.

On 11 January 2007, Professor Iajuddin Ahmed, the President proclaimed a state of Emergency under Article 141(A) of the Constitution on the ground that the security and economic life of Bangladesh was threatened by internal disturbances. On the same day, by another order the President suspended the enforcement of all the fundamental rights contained in Chapter III pursuant to Article 141(C) of the Constitution. The next day on 12 January, the Emergency Power Ordinance was promulgated to take full control of the state. On the next day, on 13 January, by another order the President suspended all the cases pending before any court for the enforcement of fundamental rights contained in Chapter III till the time the state of Emergency was in operation. On 25 January, the government announced the Emergency Power Rules framed under the Ordinance to give retrospective effect from 12 January.

Non-Party Care-Taker Government

On the same night of 11 January, the President stepped down from his post of Chief Adviser and nine of the Advisers also resigned. In his address to the nation⁵ while giving the reasons for the Emergency, the President stated that “any election without participation of all the parties will not be acceptable at home and abroad.” He said that the “whole nation had plunged into an abyss of concern, instability and uncertainty seriously affecting discipline in all areas.” The President, however, assured the nation that the newly constituted interim government “will hold a free, fair, neutral and acceptable election to Parliament within the shortest possible time in consultation with all the parties concerned.”⁶

This scheme, practiced in no other democracy in the world, is a transitory arrangement to have an interim government with the sole purpose of ensuring a free and fair election guaranteeing the people their freedom of choice to elect the next government. A special Chapter IIA was inserted in Part IV of the Constitution under the Thirteenth Amendment incorporating 4 Articles 58(B) to 58(E) to enumerate the nature and character of the interim government. It is to be a non-party care-taker government with a Council of Advisers headed by the Chief

⁵ The speech of the President was presumed to have been if not written but endorsed by the Army Generals.

⁶ *The Daily Star*, 12 January 2008.

Adviser with the status of the Prime Minister, and ten other Advisers with the status of Ministers who would not be a member of any political party or any organisation associated with or affiliated to any political party, nor would be a candidate for election to the Parliament. In other words, the Council of Advisers would not have any political agenda nor any kind of political interest in the result of the ensuing election and the government, and each of the Advisers would maintain complete neutrality between the contending parties and in the conduct of the election. During the period, unlike an elected government, the Council of Advisers would be collectively responsible to the President, and the President had the overwhelming power in taking executive decisions of his own in all matters including the administration of the Defence Forces and proclamation of Emergency without having to take any advice from the Chief Advisor (Article 58(E)). The scheme is absolutely a temporary, transitory and *ad-hoc* arrangement to enable an elected government to return so that the un-elected interim government could be replaced at the earliest possible time.

In Article 58(D) in the new Chapter IIA, the functions of the interim non-party care-taker government were specified. It "shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic; and except in the case of necessity for the discharge of such functions it shall not take any policy decision." The interim government "shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of Members of Parliament peacefully, fairly and impartially." The language of the Constitution and the intention of the lawmakers is very clear, candid and without any ambiguity whatsoever. The interim government will just carry on with the routine day-to-day functions of the government and for obvious reasons being temporary, *ad-hoc* and an un-elected government, will not take any policy decision of any kind unless required only to carry on the routine work and nothing more. Their main task would be to provide aid and assistance to the Election Commission to hold a free, fair and impartial election.

As far as the general election is concerned, the plenary responsibility of holding it vests with the Election Commission under Article 119 of Chapter VII of the Constitution. As for the time for holding the general election, Article 123(3) makes it mandatory for the

Election Commission to hold it within 90 days. It provides that “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.” Unlike any by-election for which the Constitution provides under Article 123(4), a provision empowering the Election Commission to extend the time for another ninety days for reasons of an act of God, but in respect of the general election it must be held within the specified time of ninety days to ensure the continuity of democracy, the most vital structure of the Constitution. The Article 58(B)(1) provides that the interim government will function from the date on when the Chief Adviser enters upon his office “till the date on which a new Prime Minister enters upon his office after the Constitution of the new Parliament” and Article 58(C)(1) provides that “the non-party care-taker government shall stand dissolved on the date on which the Prime Minister enters upon his office after the Constitution of new Parliament.” These provisions are made in such a manner to ensure the continuity of the government and its functions without any kind of vacuum falling in between; and also in order to meet with any kind of contingencies such as delay in appointing the Prime Minister in a case when no party or alliance gains an absolute majority in a hung Parliament, or a leader of such a party takes time to show that he enjoys the support of the majority Members of Parliament to be called upon by the President to form the government. Notwithstanding such post-election incidences, the general election must be held within 90 days as specified by the Constitution. Since the incorporation of the Thirteenth Amendment in the Constitution, two general elections, one in June 1996 and other in October 2001, were held within 90 days without any problem under a non-party care-taker government. Both the elections, acclaimed to have been free and fair, had seen the Awami League winning the one in 1996 and the BNP in the other one in 2001. The system had therefore been tested and accepted by the parties as well as the people as a mechanism to hold a free and fair election for a smooth continuity of a democratic order in the country. So the duration of the interim government is constitutionally tied to the election of the new Parliament within the stipulated 90 days.

The Emergency provisions contained in Part IX of the Constitution are also designed to be contingent upon certain extraordinary situation, and are very much temporary in nature and content. Since

the provisions infringe upon the fundamental rights of citizens and disrupt the democratic process, particularly when Emergency proclaimed on the ground of internal disturbance giving wide scope for their abuse and misuse, the invocation of the Proclamation itself demands serious scrutiny and the provisions applied need to be construed strictly keeping the basic structure of the Constitution in mind. Because of these fears of abuse, Emergency provisions were not included in the original Constitution as it was thought that such provisions could endanger the cherished goal of democracy of the newly born country.⁷

Under Article 141(A)(1), the President could issue a Proclamation of Emergency if he was satisfied that "a grave emergency exists in which the security or economic life of Bangladesh or any part thereof is threatened by war or external aggression or internal disturbance." This power was now an exclusive prerogative of the President. In normal circumstances, if there was an elected government, before issue of such a Proclamation, it would have required the counter signature of the Prime Minister. But if it had to be exercised during the period of an interim government, as it was done at the given time, the power was given exclusively to the President, nor did it need the consent of the Chief Adviser or the Council of Advisers.

Under Article 141(A)(2), a Proclamation of Emergency (a) could be revoked at any time by a subsequent Proclamation, (b) was to be laid before the Parliament, (c) cease to operate at the expiration of one hundred twenty days unless before the expiration of that period it was approved by a resolution of Parliament. The proviso attached to Article 141(A)(2)(c) is made to meet with a contingency where the Proclamation is issued at a time when Parliament stands dissolved or the dissolution of Parliament takes place during the period of one hundred and twenty days referred to in Sub-clause (c), the Proclamation would cease to operate at the expiration of ninety days from the date of which Parliament first meets after its re-constitution,

⁷ See the ironic comments of Dr. Kamal Hossain, saying that emergency could continue for an indefinite period and his support for the illegitimate interim government.

See the *Daily Jugantor*, 10 and 19 February 2007, 23 June and 27 October, 2008; the *Daily Ittefaq*, 10 and 16 February 2007, 19, 24 and 25 October, 18 and 19 November 2008; the *Daily Manab Zamin* 19 July and 27 September 2007; the *Daily Naya Diganta* 27 November 2007; the *Daily Amar Desh*, 14 and 24 June 2008; the *Daily Amader Shomoy*, 23 June 2008; the *Daily Prothom Alo*, 11 October 2008 and the *Daily Jai Jai Din* 12 October 2008.

unless before that expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

Under Article 141(B), six Articles relating to fundamental rights guaranteed under Part III of the Constitution are suspended for the period of the operation of Emergency. It also empowers the government to make laws or take executive actions affecting such rights which however were to terminate as soon as the Proclamation was no more in operation. These rights relate to freedom of movement (Article 36), freedom of assembly (Article 37), freedom of association (Article 38), freedom of speech and press (Article 39), freedom of profession or occupation (Article 40) and right to property (Article 42). The effect of this Article 141(B) was that the government could suspend and regulate the freedom of political activities, as well as the media and press during the period of Emergency, which the government did by making the Emergency Power Rules on 25 January 2007 under the Emergency Power Ordinance promulgated on 12 January 2007.

Under Article 141(C), which provided suspension of the enforcement of fundamental rights during the period of Emergency, the President had already made two Orders, one on 11 January suspending the right of any citizen to exercise his right to enforce the fundamental rights in any court of law and the other one on 13th January 2007 suspending the proceedings of any case for enforcement of fundamental rights pending in any court of law. In effect, as soon as the Emergency was proclaimed the political activities were banned with restriction on freedom of press and suspension of the powers of the Supreme Court in enforcing the fundamental rights of citizens.

On 12 January 2007, Dr. Fakhruddin Ahmed, a former Governor of Bangladesh Bank and once an executive of the World Bank in Washington, was sworn-in as the Chief Adviser of a non-party caretaker government in the manner prescribed in the Third Schedule of the Constitution. But as to his appointment as the Chief Adviser, a serious question remained unsettled. The question was under which provision of the Constitution he was appointed by the President before he took the oath of office. There is no provision in the Constitution other than Article 58(C) for appointment of the Chief Adviser and other Advisers of a non-party caretaker government, but under Article 58(C) other than two retired Chief Justices and two retired judges of the Appellate Division, any citizen could be appointed under Article 58(C)(5) in consultation with the major political parties. Once that

provision was exhausted, the President himself could assume the office of the Chief Adviser under Article 56(C)(6) of the Constitution. But then on the Proclamation of Emergency, when the President resigned from the post of Chief Adviser he was obliged to follow the provisions laid in Article 58(C) to look for the judges and if no judge was found he was mandated to invite the major political parties under Article 58(C)(5) of the Constitution for consultation before appointing any citizen as the Chief Adviser. So having not followed the constitutional provisions in appointing the Chief Adviser and banning of political activities, leading to the cancellation of the general election scheduled earlier within the mandatory period of 90 days, the very inception and journey of the second Council of Advisers, known as the interim government, embarked on an illegal path outside the provisions of the Constitution. Consequently, the very beginning of the military-backed Council carried a sign of bad faith in their intentions in playing a role as a neutral care-taker government.

However, as the public at large and all sections of people wanted an end of the prevailing untenable state of political violence and uncertainty arising out of the obstinate positions taken by the two major alliances, the Proclamation of Emergency was seen as a relief and received an overwhelming support of the political parties as well. As the President in his address to the nation had assured that the election would be held at the "shortest possible time," both the major alliances immediately demanded a free and fair election to hand over power to an elected government as soon as possible.⁸ Both the alliances also wanted withdrawal of the Emergency which the President termed as a "temporary action."

By the time the Council of Advisers, which could not exceed ten in number other than the Chief Adviser, was constituted partly on 13 January 2007 and finally on 16th January and the Election Commission announced that it would invite the two major alliances to discuss how to hold the next parliamentary election,⁹ and Justice M.A. Aziz, the controversial Chief Election Commissioner, having resigned had paved the way for the reconstitution of the Commission, the overall situation in the country soon came down to a state of complete normalcy. With the suspension of all political activities, accepted by all

⁸ See *The Daily Star*, 15 January 2007.

⁹ See *The Daily Star*, 15 and 16 January 2007.

parties for the time being, peace was fully restored wiping off all the conditions which led to the Proclamation of Emergency. So the purpose of the Emergency was fully served within two weeks of its Proclamation.

The general expectation was that the phase of an un-elected government, notwithstanding its illegality, would be as temporary as the Emergency itself. They would quickly move to hold the election, and the Election Commission pursuant to the direction already given by the Supreme Court would only update the electoral roll,¹⁰ which could take a maximum of one month, and finally announce the election schedule so that with an extended time compelled by circumstances¹¹ it could be completed within 90 days to hand over power to an elected government to secure an honourable exit for the interim government like the previous interim governments did in 1996 and 2001. It was also expected that during the time of the interim government the law and order situation would improve, prices of essential commodities, which could not be allegedly contained by the last BNP-led government because of their own "patronised corrupt syndicates," will now come down and the power sector would improve by more competent managers to reduce load shedding. So, excepting the above, nothing more was desired of the interim government other than the routine work of a government of the kind it was supposed to perform under the Constitution.

By the time Dr. Fakhruddin Ahmed, 9 days after assuming the office, addressed the nation on 21 January, he spoke of wide ranging issues including the stand of the government to transfer power through a free and fair election at the "earliest possible time" but without any time schedule or specific agenda of his government. He and his Council of Advisers were aware that they had extreme

¹⁰ See 11 BLC (AD) (2006) 113.

¹¹ The tenure of the Parliament elected in 2001 expired on 27 October 2006. Under Article 123(3) the election of the next Parliament was to be held within 90 days i.e., 25 January 2007. So for the first Council of Advisors with the President himself as the Chief Advisor under Article 58(C)(6), the date of election was scheduled for 22 January 2007, within 90 days as stipulated by the Constitution. After the Proclamation of Emergency when Dr. Fakhruddin Ahmed took oath of office as the new Chief Advisor it was not possible in the prevailing extra ordinary circumstances for the second Council of Advisors to hold the election within 25 January 2007. The interim government backed by the military could at best plead to extend its tenure upto another 90 days from 12 January 2007 to hold the election, which would have expired on 12 April 2007. But the illegitimate interim government continued till December-January 2008-2009.

limitation in taking any significant initiative on any matter on their own. On the other hand, although technically the armed forces were acting in aid of the civil authorities, the hard fact was that the civil government itself having been installed by the Army, the power of taking policy decisions in wider issues was not in their hands and the Chief Adviser had to act at the dictate of the Army. So the Council of Advisers had only a subservient role to play, functioning more as an extension of bureaucracy. As the days passed by, the functions of the civil government appeared to be one of a lesser importance than working on any meaningful agenda for the future of the nation. Soon it became evident that there was another government functioning in the country, a wheel within, as an invisible force.

The position of the President appeared to be even more diabolical. Under the Constitution, powers given to the President for the interim period were enormous. The Council of Advisers was to be collectively responsible to him and the President could pass any executive order without requiring any advice from the Chief Adviser. More so, he was in charge of the administration of the Defence Forces. With the Emergency laws in force the President was to be the strongest person in the government but he appeared to be in the weakest position. He also came to realise that although he had all the powers but he could not exercise any of them against the wishes of the military Generals. So the President, was reduced to an ornamental titular office and had himself withdrawn into the back yard of the government for a relaxed life with occasional visits to health resorts like Kuakata or Cox's Bazaar or to Singapore for a medical check-up or to a university in New Orleans where he studied to address seminars.

Interestingly, in the absence of any official Martial Law,¹² the nature, character and composition of the unseen government was not known, primarily because the coterie of Generals, although they had an Army Chief, could not agree to any single leadership. More so, the generals also knew, there would be no international support for any direct military rule which could also at the same time affect the interest of Bangladesh troops taking part in the UN peace keeping missions abroad. However, having been carried away with the momentary

¹² The Army Chief disclosed on many occasions both at home and abroad that he could have declared Martial Law prior to 11 January 2007 but he opted for Emergency. Also see the *Daily Prothom Alo*, 24 May 2007 and the *Daily Anar Desh*, 19 October 2007.

public support for the interim government, the Army Chief with his Generals in collaboration with some members of the civil society engaged themselves in evolving a political agenda for the interim regime instead of holding the election. They, having had no experience of mass politics examined various options how to reshape the politics in Bangladesh in the name of changing the political culture of the country. The idea of “minus-two” meaning the exclusion of Khaleda Zia and Sheikh Hasina from the national politics of the country, was vigorously promoted with a thought of tailoring politics and political courses of the nation.¹³

Duration of the Interim Government and Emergency

The argument that an emergency could continue till a new Parliament is elected and the interim regime headed by the Chief Adviser could continue till a new Prime Minister entered his office was not only fallacious but went directly against the very basic roots of the Constitution.¹⁴ The argument that both the regime and the Emergency however illegitimate or unconstitutional they might have been, could continue for an unlimited period is itself incomprehensible. Did the makers of the Constitution, when it was amended to incorporate the Emergency provisions by the Second Amendment in September 1973 and for the Chief Adviser to continue till the new Prime Minister entered upon his office by the Thirteenth Amendment in March 1996 mean that both could continue for eternity? Then what was the purpose of retaining the rest of the Constitution alive? This kind of argument to allow the illegality of an interim government to continue along with the Emergency, both being recognised as a temporary feature for a period not to extend beyond it was absolutely necessary, would be contrary to the fundamental structure of the Constitution.

¹³ See *The Daily Star* and the *Daily Prothom Alo*, published during this period how much support they rendered to this agenda of the regime.

¹⁴ It was most astonishing to see that such an argument was put forward by a person like Dr. Kamal Hossain who claimed to have authored the original constitution in which he decided not to have any provisions for Emergency and preventive detention and all because of fear of misuse of such powers and the same person known to be an advocate of human rights and rule of law was now pleading for and encouraging an illegal government to continue and took a stand against citizens' right to bail. See the *Daily Manab Zamin*, 19 July 2008.

The most important of all is that democracy being the basic feature of the Constitution of Bangladesh the rest of the structural pillars such as the Republic, a unitary state with separation of powers, independence of judiciary with guaranteed fundamental rights, flow from the concept of democracy the Constitution has enshrined. The Constitution has not only upheld democracy as the foundation of all the social and political institutions but has strongly guarded them in unequivocal terms. As sovereignty belonged to the people, the supremacy of the Constitution has been established as the solemn expression of the people. Any attempt to scuttle this supremacy and its fundamental structures, notwithstanding what grounds and excuses were used for its justification, would be unconstitutional and suffer from illegality. While striking down the amendment of Article 100 of the Constitution incorporated by the Eighth Amendment duly passed by the Parliament with two-thirds of its elected Members, the judges of the Appellate Division in their judgment did not hesitate to discard such amendment in order to uphold the basic structure of the Constitution. According to the Supreme Court, even by exercising their amending power given by the Constitution, the Parliament could not do so to demolish any of its own structures.¹⁵ If in this context, the principles enunciated by Justice Khairul Haque in his judgment on the Fifth Amendment were applied, the argument that an interim government installed under Article 58(B) and 58(C) and an Emergency proclaimed under Article 141(A) of the Constitution would continue for an unlimited period would have no ground to stand.¹⁶

So the treacherous path adopted by the regime to lengthen its rule only led the country into a deeper crisis. The more time passed the more illegalities they were committing. Having had no sanction of legitimacy to govern even for a day after 90 days of their assuming office, this amounted to a crime committed against the people who are the only source of power under the Constitution. Democracy being the fundamental structure of the Constitution any other regime not elected in accordance with law would be illegitimate. The only exception the Constitution has allowed is the existence of a non-party care-taker government for a period of 90 days within which time the general election must be held, incorporated as a device to strengthen democracy further for having a government elected freely and fairly.

¹⁵ See BLD Special Issue, Volume IXA, 1989.

¹⁶ See BLT Special Issue (HCD), 2006; also 62 DLR(AD) 298.

As always practiced, once the election is held it could take a few days for a new Prime Minister to assume his office for various reasons but as soon as he is appointed by the President, the incumbent Chief Adviser was automatically to go out of office. With the Proclamation of Emergency, this needed to be more strictly followed as the proclamation was a derogatory measure which retarded democracy rather than advancing it and ought to have been withdrawn or revoked as soon as the conditions for which it was proclaimed were no more in existence. In this case, the country returned to absolute normalcy within two weeks after its proclamation and as such the Emergency ought to have been revoked immediately to allow the people to prepare themselves to elect a new Parliament in adherence to the mandate of the Constitution. It was an entirely deceitful argument to say that since there was no Parliament to either reject it or endorse the emergency could continue for eternity. Here, whether any Parliament was there or not the President under Article 141(A)(2)(a) could revoke the Emergency by another proclamation at any time, and so even the limit of 120 days linked with the existence of a Parliament to fulfill the proviso under the same Article was also irrelevant. Since the Proclamation of Emergency had suspended the fundamental rights and interfered with the independence of judiciary it contradicted the supremacy of the Constitution and continuation of such an Emergency beyond a day was a violation of the Constitution. As for the so-called reforms of political parties or wiping out corruption both being a matter of long drawn process, neither the interim government nor any Emergency was required, nor the Article 141(A) had said so.¹⁷

So both the “drive against corruption” and the need for “political reforms,” were used as a political bogey to perpetuate an illegal regime, with dangerous consequences. The failure to introduce a new political culture and eradication of corruption from society, the phenomenal price escalation of essential commodities, acute power shortage, rising unemployment and inflation, crisis of food and fertilizer and finally the general neglect of people during the three successive floods followed by a devastating 280 km speed “Sidr,” could push the country into a dark syndrome of a “failed state.” With Khaleda and Hasina in jail, the renegade leaders disappearing from

¹⁷ See newspaper reports how Khandaker Delwar Hossain was made to resign at gun point in order to promote another forum within BNP in support of the government. See the *Daily Amar Desh*, 31 October 2007.

the scene fearing mass wrath, the country could plunge into a much larger chaos and instability. In such a vacuum, the two leaders could also again emerge as the saviours of the nation and take the country back to the old political order.

On the other hand, if the interim regime had any honest intention to abide by the Constitution, they could only concentrate on the single agenda of holding a peaceful election and have the Emergency revoked under Article 141(2)(a) of the Constitution as soon as normalcy had returned.

Chapter 2

Drive Against the Politicians

No sooner than the Emergency was proclaimed, instead of moving for holding a free and fair election, a well-orchestrated, organised mass propaganda was launched against the politicians, as any martial law regime would do, trying to establish that every politician was a thief and the politicians had done nothing for the country excepting making money for themselves. Thus a well calculated political agenda was adopted to rule the country for an indefinite period by an unelected military-backed "interim government." The bad name widely carried by the last BNP government primarily surrounding the office of the Prime Minister and the party office at Hawabhaban, provided a strong excuse to whip up the campaign against the politicians as a class. The sustained campaign of baseless allegations of swindling thousands of crores of take was focused in the front pages of all the newspapers controlled by the government agencies under the Emergency Rules.¹ In the absence of any strong, unified and co-ordinated military leadership, the task of ridding the country of corruption was taken over by the junior inexperienced army officers. They used their unchecked power ruthlessly. The campaign soon spread panic when renowned businessmen and other professionals including civil servants were picked up and confined without any charge. These young officers were working almost independently of the government and without any control. They attacked too many people across the board, making it difficult to sustain their efforts. Corruption cannot be removed or changed to any significant degree unless the system of governance itself is changed and monitored regularly by an accountable institution. Thus, without any guided principle or criterion, their list of corrupt persons was prepared by politically motivated agencies outside the Anti-Corruption Commission.

¹ For detail, see the newspapers from February 2007 through the whole year.

As with all the martial law governments, the politics and the politicians were the first target. A full organised campaign was started against the politicians by the Army Chief himself. He accused the politicians of having done nothing for the country in last 36 years, and said they were all corrupt, and thieves who had stolen 20 billion takas. A sustained propaganda in newspapers and television channels by way of massive scandalisation and character assassination of politicians, many of whom had played a very important role in achieving the independence of the country, taken an active part in the Liberation War, suffered imprisonment since their student life, and had contributed in the struggle of 24 years against the colonial rule of Pakistan were all lined up as corrupt persons, and the campaign continued in such a manner as if it was the only one agenda of the interim government to carry on. The election became a peripheral matter. The civilian government backed by the military had to undertake the responsibility for this vicious campaign which struck at the very roots of the state itself.

Corruption is endemic and a universal menace. It is there in every country of the world, rich or poor. Each country has developed its own way of controlling corruption both by law and traditional practices through efficient institutional means. Corruption has prevailed in poorer countries in a crude form not only among the politicians or public leaders but people of all spectrum of society, from public functionaries down to any trade, service or profession. It affects both the individual as well as the society. Corruption must be contained by public awareness and by personal examples set by people occupying a leadership position in their respective fields. The political leaders, ministers, secretaries, public representatives from Parliament to the union parishad, chairman and directors of public corporations, Directors and Managers of banks, Vice-Chancellors, Principals of colleges, headmasters of schools, factory managers, leaders of professions, trades, business and every person who holds a responsible position in society would need to develop an ethical and moral standard to develop an anti-corruption culture.

It cannot be removed by a one-time operation. It cannot be an *ad-hoc* crusade against a particular class or only when an Emergency or Martial Law is declared. It then becomes counter-productive and subject to abuse and victimisation. Nor it can be a political agenda by itself. Since corruption is a social menace, any drive or crusade against

corruption has to be a social agenda covering all persons, inside the government and outside without any discrimination. If only the politicians or the political opponents are made a target, it would immediately be interpreted as an act of victimisation for political reasons. But if corrupt politicians are dealt with in the same manner, whether they are a part of the government or opposition, then the efforts would be more effective.

The nation has seen two units in one government during the interim period; much worse was that the country was run without any recognisable central leader.² In the absence of any cohesive central leadership, the whole situation was reduced to an unaccountable rule outside the control of the civilian administration. The Army Chief tried to give an impression of being in command but citizens doubted whether he had much control. The operations were conducted largely by the Majors and Colonels heading the Joint Forces and Task Forces. The formal interim government headed by Dr. Fakhruddin Ahmed as perceived by people had neither any role nor any say in the operations conducted by these Forces led by Army officers.³ While the civilian government functioned only through bureaucratic channels upto the upazila level in the normal mundane manner, the armed forces spread all over the country acted on their own to fulfil their own agenda. In the name of aiding and assisting the civilian government, they actually took up the most dominant role to play upto the thana level. The decision to arrest politicians or MPs, political workers or public representatives or street vendors or shop owners or criminals was made by the army officers and not the police.⁴ Consequently, in the name of removing unlawful structures from the government land, the life of small traders and ordinary people were massacred in the cities and bazaars of the rural areas of the country, affecting more than one million people.

The campaign also targeted the two most remarkably popular leaders of the country. One was Sheikh Hasina, a former Prime

² For the purpose of this study the author has used at times the word "regime" to include both the civil and military units of the government combined together.

³ There were numerous examples where the Chief Adviser appeared helpless in cases of unlawful detention, torture and repression when his interventions were just ignored.

⁴ It was reported that during the first 3 months of the interim government 268000 persons were arrested by the government agencies. See the *Daily Manab Zamin*, 11 December 2007, in the first 18 months, 437466 persons were arrested.

Minister, daughter of the founding father of the nation—assassinated on 15 August 1975, and the President of the Awami League and Khaleda Zia and a former Prime Minister, widow of President Ziaur Rahman—assassinated on 30 May 1981, who declared the independence of the country in March 1971, and Chairperson of the Bangladesh Nationalist Party. Both the leaders were put in jail, and stigmatised by organised character assassination on a massive scale.

The goodwill of the interim regime had disappeared as soon as they drifted away from their principal task of holding an early election. Neither the Constitution in Article 141(C) nor the Proclamation of Emergency issued on 11 January 2007 had anything to do with the universal social vice of corruption. The character assassination of the respectable politicians without whose sacrifice the nation could not have achieved independence and without whose contribution the present level of development could not have been attained, was actually aimed at the destruction of the political institutions of the country.

Politics gives birth to a state, it applies to any state anywhere in the world from the beginning of human civilisation. State is politics and a state without politics is incomprehensible. On the contrary, politics is the strength of the state, its source of power and survival. In a sovereign body politic, the stronger the political institutions are, the more sustainable the state is, nourished and developed to meet with the aspirations of the people. The politicians may and will make mistakes as much as they succeed but since politics is a science of reality, it has a mechanism of its own to rectify the mistakes. It is achieved through a normal process dictated by law of nature. Neither any imposed law nor any force can do anything to rectify it. Only social pressure, public opinion and the party leaders from within are the peaceful natural sources to play a role for any such rectification or improvement. Force is the last instrument to work, and if it is used it has always been self-defeating and counter-productive. Not only that, it only produces more violence, instability and uncertainty in the state. The best option is to leave everything to the people as the ultimate source of power. Let them choose their own leaders through a free and fair elections.

Political Reforms and the Reformists

The interim regime then embarked on another issue completely outside its jurisdiction. All of a sudden, statements were made by

some Advisers linked to the military and echoed by some newspapers that for sustaining democracy “reforms in political parties” were necessary. The most relevant reform at the time required for the holding of a free and fair election was the re-constitution of the Election Commission which was already done by replacing the old set of the Chief Election Commissioner and other Commissioners, including its Secretary and other senior officials by an entirety new set to ensure a fair and neutral election in the country. But these statements demanding “political reform” with which the interim government should have had nothing to do in terms of the oath they had taken under the Constitution was a part of their political agenda known as “minus-two” formula, designed to create alternative political platforms in the country.

With clear signals from the military, in a country already over populated with no dearth of people to run for politics, some renegades and fall-outs of the mainstream politics rushed to join this agenda. They had two sole objectives: firstly to save themselves from the wrath and repression of the government agencies on being charged with corruption; and secondly to fulfill the desire of sharing the spoils of power. This led to promotion and formation of different political groups and platforms under the patronage of the regime⁵ and promoted ideas like “government of national unity,” “all-party national government” and a “National Security Council” involving the military to take the effective charge of the government. Despite the ban on all political activities under the Emergency Rules including in-door meetings, these vested groups and individuals continued to conduct their political activities unabated, as they were sponsored by the regime.

The political role of the regime soon became more apparent when they started holding meetings with some leaders of the two major political parties. These renegade leaders driven by both fear and greed were willing to join hands with the Army. They claimed to be in favour of political “reforms” within their respective parties and soon came to be known as the “reformists.” Both the Generals and the

⁵ Five such new platforms were created under the patronage of the regime despite the ban on political activities under the Emergency Rules. Attempts were also made to make some of the leaders of two major political parties Awami League and the BNP to take initiative at the instigation of the government agencies to split them for “reforms” within their respective parties. See the *Daily Amar Desh*, 30 December 2007.

renegade leaders involved in this exercise were aware that with the two leaders Khaleda Zia and Sheikh Hasina at the helm of affairs of their respective parties, none of the groups would have any chance of achieving their goal. So they sought to remove these two leaders from the mainstream politics, in order to weaken the political institutions of the country.

The “minus-two” theory emanated from a coterie of ambitious Generals who wanted to play a more direct role in the political affairs of the state. This was once promoted by General Hussain Muhammad Ershad before he took over power from an elected government back in 1982.⁶ At the beginning they wanted the Army Chief to assume a more direct role in running the affairs of the state—if necessary, by assuming the office of the President, when the public memory was still fresh about the mess the two politicians made and the interim regime enjoyed public support. They wanted to force the two leaders into exile. They allowed Sheikh Hasina to go to the United States to see her daughter and at the same time almost succeeded in getting Khaleda Zia agree to leave the country for Saudi Arabia with her younger son. In a statement at the airport before her departure for the United States, Sheikh Hasina assured that once the election was held, in which she believed her party, the Awami League would win, she would give validity to all the illegalities of the interim regime.⁷ But when she decided to return, the government issued an order to ban her entry into Bangladesh. Faced with mounting protest at home and abroad, the government at the end had to cancel that order and allow Hasina to return home. Having failed to keep Hasina out of the country, Khaleda too refused to leave the country. With the failure of keeping the two leaders out of the country, the immediate plan of the Army Chief to take a more direct role in the affairs of the government had to be abandoned.

As the “reformist” factions could not make much headway, it was then planned to debar the two leaders from taking part in the election by convicting them on various criminal charges and ostracise them from their respective parties on legal grounds. Parliament would then

⁶ See for more detail Moudud Ahmed, *Democracy and the Challenge of Development*, The University Press Limited, Dhaka, pp. 222-235.

⁷ See the *Daily Prothom Alo* and *The Daily Star*, 16 March 2007. Earlier Hasina also claimed that the interim government had come into existence as a product of their movement. See the *Daily Ittefaq*, 2 February 2007.

be comprised of the “reformist” groups and other chosen henchmen backed, supported and financed by the military unit of the regime elected to serve all their desired purposes. Firstly, the new Parliament would give validity to all the illegalities of the interim regime and ratify all the acts, deeds and things including corruption, all the unlawful arrests, detentions, killings, tortures in custody and the repressive offences they committed during that period of illegitimacy under the garb of Emergency. Secondly, to make necessary amendments in the Constitution to ensure a role for the armed forces in the administration of the country or at least have the Army Chief elected as President by the new Parliament. With a hand-picked Parliament and a weak government, without any strong political leader, the Generals in the cantonment would be in a dominant position to dictate the terms of governance, which would in due course militarise the civil administration, following a model once practiced in countries like Turkey, Indonesia, Thailand, the Philippines or South Korea. It would ultimately change the existing political culture of Bangladesh and ensure “peace, stability and prosperity for the country.” Hartal, violence and political confrontations would come to an end. It would be a corruption-free country with honest and competent people running the government; “honey and milk” would start flowing and people would live happily thereafter.

To serve this agenda, criminal cases had to be cooked up against the two leaders. They found a couple of well-known black-money-holder businessmen, picked up at gun point either to face charges against themselves and go through the terror of physical torture at the hidden blackhole chambers of the Defence Field Intelligence; or opt for filing cases against Sheikh Hasina for extortion of money from them when she was holding the office of the Prime Minister of the country. As they opted for the second one, Sheikh Hasina was arrested on 16 July 2007⁸ and put into a sub-jail. Threats of bringing more charges against her persisted and eventually another case was lodged for illegally awarding business for kickbacks. Khaleda Zia was also arrested on 3 September 2007⁹ and put into one of the two newly built residential quarters designed for the residence of Speaker and Deputy Speaker at Sher-e-Bangla Nagar, now turned into sub-jails for the two

⁸ See the *Daily Prothom Alo* and the *Daily Ittefaq*, 17 July 2007.

⁹ See the *Daily Prothom Alo* and the *Daily Ittefaq*, 4 September 2007.

leaders, on a similar charge of misuse of power. At the same time, a concerted media propaganda was launched against both of them, full of scandals to assassinate their characters.¹⁰

The renegade leaders of both the parties were all part of their respective governments in the past, held important portfolios, performed all their assigned duties as confidants of their respective leaders as Prime Ministers. All the issues of reform raised had never been mentioned before, nor had they been found to be necessary when they were in the government or in the opposition, and most of them were the closest surrogates of their leaders at the time. The reform proposals they were advocating now primarily meant to marginalise Sheikh Hasina and Khaleda Zia, which they knew would be impossible to do under their respective party constitutions. So, in no time they were considered as turncoat agents of the government and lost their credibility both in the rank and file of the party as well as the public at large.

Abdul Mannan Bhuiyan, the former Secretary General of BNP for 11 years, closest confidant of Khaleda Zia, docile and cowardly in nature, was the first to take initiative. Having been assured by his new military mentors that Khaleda would never be allowed to return to politics and they would take appropriate measures to ensure that she was convicted by the trial court on charges of corruption, Mannan Bhuiyan made his 15-Point reform proposals¹¹ to make BNP a democratic party, disqualifying Khaleda Zia to hold the post of the Chairperson any more. Although indoor politics was still banned in the country, Mannan Bhuiyan was allowed to hold political meetings at his residence, address the media and hold press conferences whenever he wished. He gathered around him some other leaders and MPs mostly known to be corrupt and not likely to get party nomination in the next election, to claim that “reforms” were necessary to make BNP a more dynamic political party to meet with the aspirations of the people.

¹⁰ See all the national dailies prior to and after their arrests. The propaganda continued for months after months during the entire year of 2007 and part of 2008. Same applied to other eminent politicians as well.

Also see all newspapers on 17 July and 4 September 2007, the *Daily Ittefaq*, 17, 24 and 26 April, 3 and 8 September 2007; the *Daily Amar Desh*, 15 April, 30 May, 26 July, 5 August and 25 October 2007; the *Daily Prothom Alo*, 19 February 2007; *The Daily Star*, 20 February 2007 and the *Daily Jugantor* 6, 24 and 28 March 2007.

¹¹ See the *Daily Manab Zamin*, the *Daily Amar Desh* and the *Daily Ittefaq*, 26 June 2007.

But the proposal to exclude Khaleda Zia from the party leadership at once generated bitter reactions among the rank and file all over the country. It isolated the renegades at once from the mainstream of the party and compelled Mannan Bhuiyan to take refuge of police escort to move out of his residence. On the death anniversary of President Zia on 30 May 2007, when he visited the Mazar under heavy police guards was chased away by the party workers loyal to Khaleda Zia.¹² During the period of floods, none of them had the courage to go out of Dhaka to help the poor. The MPs who gathered round him could not go back to their constituencies where most of them faced a revolt by the party workers.

The renegades of the Awami League led by Amir Hossain Amu, Abdur Razzak, Tofail Ahmed and Suranjit Sengupta, all senior members of the Awami League Presidium, made public statements¹³ separately with almost identical reform proposals aimed at excluding Sheikh Hasina from the party leadership, although the language they used was not as candid as that of Mannan Bhuiyan. The public perception turned out to be the same about them as well. They also suffered from the threats of their new masters and at the same time could not resist the greed to share power. These reforms they were advocating were aimed at removing Sheikh Hasina from the party leadership. Anyhow, they all faced the same insult, humiliation and isolation, as the BNP renegades did, from among the rank and file of their party. At a subsequent stage, when M.A. Jalil, the Secretary General of the party who had remained loyal to Sheikh Hasina, was arrested on charges of corruption he also made a statement from hospital in favour of "reforms" on an understanding that he would be allowed to go abroad for medical treatment. However, the situation in the Awami League changed once Hasina was arrested and put into jail—this generated much resentment at all levels of the party that the renegades lost their courage to hold on to any of their reform proposals and immediately returned to the mainstream of the party, this time to save themselves from the wrath of their own party workers.

In BNP, something different happened. Hours before Khaleda Zia was arrested, she as the Chairperson of the party expelled Mannan Bhuiyan not only from the post of the Secretary General but also from

¹² See the *Daily Amar Desh*, 2 September 2007.

¹³ See the *Daily Ittefaq*, 1, 3, 5 and 15 July 2007.

the primary membership of the party, and appointed Khandaker Delwar Hossain the former Chief Whip and a senior member of the Standing Committee as the new Secretary General of the party.¹⁴ This action was widely welcome by all the rank and file in the country and considerably weakened the position of the renegades. Having found that they could not make any headway any further, the activities of this group were now limited to occasional claim that Mannan Bhuiyan was still the Secretary General which had no legal basis as the party constitution gave the Chairperson absolute authority to appoint or remove any person from any post or position of the party. In the course of their programme to discuss electoral reforms with the political parties initiated by the Election Commission, when the new Secretary General demanded to lead the party for the discussion with them, the Commission was under pressure not to do so.

On 29 October 2007, two senior military officials entered the residence of Khandaker Delwar Hossain and demanded that he resign with a threat to kill his entire family. A terrified Delwar signed the paper to save his life but immediately fell ill and taken to a hospital.¹⁵ On the same day at midnight, Mannan Bhuiyan at the instance of the military officials invited all the available members of the Standing Committee for a cup of tea at the residence of Saifur Rahman, the former Finance Minister. He had earlier "retired" from politics but had found that his two sons and the only daughter were booked for criminal offences and himself under constant pressure on being charged with corruption any time. The tea party with two senior military officials in attendance was then turned into a preplanned meeting of the Standing Committee of BNP without any prior notice or agenda. Saifur Rahman read out a typed resolution making himself the Acting Chairman and Major (Retd.) Hafizuddin Ahmed, a former Minister, as the new Acting Secretary General of the party on relieving Khandaker Delwar Hossain on ground of ill health, and by reversing the decision of the Chairperson reinstated Mannan Bhuiyan as a member of the Standing Committee.¹⁶ Under the BNP constitution, no meeting of the Standing Committee could be convened without the

¹⁴ See the *Daily Amar Desh*, 4 September 2007.

¹⁵ See the *Daily Amar Desh*, 30 October 2007.

¹⁶ Zillur Rahman the acting President of the Awami League called it a "midnight coup." See *The Daily Star*, 31 October 2007.

consent of the Chairperson and there was no provision in the Constitution for any post of acting Chairperson or acting Secretary General. Saifur Rahman told the press that “legality of such action ought to be ignored to take the party forward.” But Dr. R.A. Ghani, a senior member of the Standing Committee later disclosed that he was invited to have tea with Saifur Rahman and then forced to sign the paper already typed containing the resolution and there was no meeting whatsoever.¹⁷

So the interim regime, instead of following the mandate of the Constitution, not only indulged itself in taking far-reaching policy decisions of public importance; it also took upon itself the responsibility of restructuring the society and politics of the country. They wanted to eliminate “corruption” and introduce “reforms” to bring a change in the political culture of Bangladesh. While both issues were very important for the country, they could not be resolved by any magic formula. As both were subject to a continuous process, the undertaking of such a task by an interim non-elected unaccountable regime was not only illegal and unconstitutional but preposterous. The self-engineered agenda was only a devise to perpetuate their illegal rule without spelling out any defined time or target. Both the duration of the regime as well as the state of Emergency being limited, temporary, *ad-hoc* and contingent in nature, taking-up some unattainable agenda like reforms in political culture and uprooting of corruption led people to question the bonafide of the regime.

Drive Against Corruption

In less than a month after the new Council of Advisers had taken oath of office, the nature and the role of the interim government had changed in violation of the mandate given under the Constitution. Although supposed to have been a “non-party” neutral *ad-hoc* government, it took up issues of highly political nature at the instance of the military unit of the regime who had now developed their own political agenda. It left the regular work of the government to Dr. Fakhruddin Ahmed and his Council of Advisers as their front men while the crucial policy decisions were being taken by the Army Chief in the cantonment. Although the political agenda of the military remained vague, unexplained and hidden at the beginning, it

¹⁷ See the *Daily Amar Desh*, 6 November 2007.

gradually came to surface when instead of going ahead with the holding of election within 90 days in compliance with the provisions of the Constitution, the regime shifted their position to a more long term programme. Initiated by some renegade politicians joined by a section of civil society led by editors of two daily newspapers and some western diplomats¹⁸ the military received an early support to disrupt the democratic process in the country by way of proclaiming Emergency to materialise their own scheme.¹⁹

The interim regime, without a mandate from the people nor from the Constitution embarked on a drive against corruption, just like a government functioning under Martial Law, making the politicians a target as a class. At the instruction of the military agencies operating under the umbrella of the Emergency Power Rules, it soon became a subject of high drama with scandalous allegations widely published in the print media that all the political governments were corrupt. So the regime, chose to adopt a highly political agenda, with a goal this time much larger and vicious in design than those undertaken by the past military governments. In order to materialise their scheme they tried to link corruption with election so as to debar the politicians from being able to contest in the next election.

This crusade against corruption was primarily left to the younger section of the Army specially selected, without any defined guidelines. The interim government of Dr. Fakhruddin had no say in it. Because of the sensitiveness of the word "corruption," everyone seemed to be in favour of curbing corruption and to this end gradually the net of the campaign was spread to include the business community and a number of civil servants. BNP being the last government obviously became the immediate target. In course of time the political agenda of the regime became more clear when the scheme of "minus-two" was revealed. It led to the arrest of political leaders close to Khaleda Zia including those having had no reputation of being corrupt and leaving out some others known to be corrupt. They wanted to split the party in the name of reforms. The scheme eventually led to the arrest of Sheikh Hasina and indictment of her sister and Khaleda Zia with two sons put in jail in order to materialise their political design. For

¹⁸ See the article of Farhad Mazhar, the *Daily Naya Diganta*, 1 December 2007.

¹⁹ See the proceedings of a round table discussion organised by *The Daily Star*, on 27 and 28 January 2007.

conducting their operations two special forces were developed. One called the Joint Forces created under the cover of the Rule 2(a) of the Emergency Power Rules 2007 and the other called the Task Force created by an administrative order without any legal sanction, legalised retroactively after being in operation for nearly 6 months by an amendment of the Emergency Power Rules in September 2007, by adding a general Rule 21(A)(1) to the Rules. It was never disclosed to public as to how these forces were formed and who they were accountable to. Both these Forces were led by army officers mostly in the rank of a Major and comprised of members of other agencies of the government. Unlike the Police, RAB or the BDR,²⁰ these Forces had no code of conduct and acted more as storm-troopers. Although Rule 16(3) of the Emergency Power Rules 2007 provided that in conducting any kind of search of any place the law enforcing agencies were to follow the provisions of the Criminal Procedure Code,²¹ the Joint and the Task Forces, like the Rakkhi Bahini created by the Awami League in 1972, conducted all their operations in violation of law or any civil norms. As the Forces were not accountable to any publicly known authority, the citizens already frightened and terrified by their actions, had no place to go for any redress.

Besides the politicians, the regime turned to the business community, raided their houses, offices, banks, godowns, factories and arrested them including the family members. The discriminatory "list" prepared without any legal basis included the most prominent entrepreneurs, owners of both established and rising industrial houses employing thousands of people in the country. As soon as a "list" was leaked to the newspapers, a large number of big ones had fled the country but those found were either arrested or harassed or blackmailed. This created a great amount of panic amongst the business community and a sense of fear and insecurity pervaded entire business environment. The ten largest importers stopped operating their trading, hundreds of factories closed down, godowns shut off, exports declined, employed people lost their jobs, payment of salaries to the employees was halted, borrower's defaults in payment to the banks multiplied and new investment for both local and foreign

²⁰ BDR has subsequently been renamed as Border Guard Bangladesh (BGB).

²¹ The residence and Law Chambers of the author was searched without any warrant or order of the court. Thousands of such incidents of illegal search were conducted during this period.

sources stopped, leading the country to a total economic disarray.²² No one in the regime, civil or military, had the courage to speak out or stop this self-inflicting disastrous damage caused to the economy of the country by some young officers under a totally misconceived notion, as they did with the politicians. It appeared that none had any control over them, confirming the impression that Bangladesh was run by a leaderless government.

The operations of the Joint Forces were not only limited to midnight raids and arrests of the politicians and businessmen along with their family members. They took them blind-folded to an unrecognised place called "blackhole" of the Field Intelligence. The politicians and businessmen alike were beaten up mercilessly, tortured physically by different instruments and metallic devices, kicked all over the body with threat to life on many occasions before they were produced before a court, disregarding the mandatory provision of doing so within 24 hours of any arrest.²³ On many occasions, arrest was not recorded at once and there are instances where persons were detained, tortured and physically assaulted upto 120 days before producing in court.²⁴ Thus the practice has been, once produced before a court, take them out again on remand, not to any police station but to the same "blackhole" and inflict the same treatment in the name of interrogation in violation of all principles of human rights and values.²⁵ Politicians of great eminence having taken part in the war in 1971, sacrificed and struggled for the cause of the people for 40 to 50 years, elected several times as Members of Parliament, were made to kneel-down, blind-folded and then kicked around and beaten for hours by officers not born till after the independence of the country.²⁶

The law of the land speaks of "police remand" not of a remand to any blackhole or joint interrogations. The filthy abusive language and

²² See the newspaper reports, April-December 2007.

²³ The author himself was interrogated blind folded in the most inhuman manner both before he was produced in court as well as after he was taken on remand.

²⁴ If happened to many including Shona Rafiq of Awami League, Quamrul Huda, brother of Barrister Nazmul Huda, a former Minister and Abu Sufian a Director of the Bashundhara Group.

²⁵ Sheikh Selim, Obaidul Quader, Salauddin Ahmed all former MPs and Ministers and many others would bear as witness one day in public how much they were physically tortured by the Joint Forces while in custody.

²⁶ For reasons of propriety names are not mentioned to preserve the honour of the persons concerned but if there is any public enquiry in future the names would be disclosed.

behaviour of the officers during these sessions of interrogations were despicable. This indicated the bad orientation and training they were having in the cantonments. The guidelines for remand and interrogation are already defined both in law and the pronouncement of the Supreme Court.²⁷ It was extremely perplexing and mysterious as these Forces did not seem to be accountable to any one for their actions. The public perception was that each unit of the Joint and Task Forces was acting independently, not accountable to any particular publicly known central authority. Because they were "hunting corruption," no one could dare to interfere with their work because any such interference would have been perceived by the young officers to be an act of trying to protect "corruption." In the absence of any publicly known authority for their accountability, the ultimate responsibility for all their operations and atrocities fell on the Chief of Army Staff.

So both the "drive against corruption" and the need for "political reforms," were used as a political bogey to perpetuate an illegal regime, with dangerous consequences. The failure to introduce a new political culture and eradication of corruption from society, the phenomenal price escalation of essential commodities, acute power shortage, rising unemployment and inflation, crisis of food and fertilizer and finally the general neglect of people during the three successive floods followed by a devastating 280 km speed "Sidr," could push the country into a dark syndrome of a "failed state." With Khaleda and Hasina in jail, the renegade leaders disappearing from the scene fearing mass wrath, the country could plunge into a much larger chaos and instability. In such a vacuum, the two leaders could also again emerge as the saviours of the nation and take the country back to the old political order.

On the other hand, if the interim regime had any honest intention to abide by the Constitution, they could only concentrate on the single agenda of holding a peaceful election and have the Emergency revoked under Article 141(2)(a) of the Constitution as soon as normalcy had returned.

²⁷ See BLD, Vol. XXIII, 2003, p.115 (HCD).

Chapter 3

Corruption Laws

Background

Corruption has been a social vice from the inception of mankind, although its forms, nature and character have changed through the growth of civilisation. In modern society it has become almost a part of the system excepting that some countries have achieved more than others in containing this menace. Although corruption has many facets with multi-dimensional variables, not all moral wrongs are considered as corruption. In the world, as it is today, the word "corruption" is largely confined to money and wealth, a pecuniary gain procured either by abusing power by a public servant¹ or an accumulation of wealth by any citizen found to be disproportionate to his known sources of income. So no act of negligence, inefficiency or causing loss to the state for indecisions or taking wrong decisions by themselves would be considered as corruption committed on the part of any public functionary. This is how corruption has been defined and perceived to be an offence and almost similar forms have been adopted in all the countries of South Asia to confront and contain corruption among public servants in dealing with public funds belonging to the state.

The economy of British India was in a mess at the end of the Second World War. This opened new opportunities for public servants to engage in making quick money by corrupt practices using official power. A new law, the Criminal Law Amendment Ordinance was promulgated in 1944 to deal with the situation by making it applicable to the provisions of Sections 161, 165, 406, 408, 409, 417 and 420 of the

¹ As defined under Section 21 of the Penal Code, it includes not only civil servants but any person engaged in the service of the government and drawing salary or remuneration, from an elected Member of the Union Parishad upto the Members of Parliament and Ministers.

Penal Code to punish the offenders. Subsequently as this law was found to be insufficient to deal with the rising volume of offences, a new law, "The Prevention of Corruption Act" was enacted which on receiving the assent of the Governor General took effect on 11 March 1947, only five months before the partition of India, to deal with bribery and corruption among public servants. Although both India and Pakistan had adopted the law in their respective dominion, because of the turmoil caused by the partition the law remained dormant till each country proceeded to deal with the law according to their own need and requirement. In Pakistan, in order to ensure a more effective implementation of the law a further law was enacted namely, The Anti-Corruption Act 1957 on 17 August. Its two important features were: (1) a new body called the Bureau of Anti-Corruption was created for enquiring into and investigation of offences relating to corruption for prevention of crime with a Director-General as its head; and (2) authority was given to the government through the Bureau to demand a declaration of assets from any person in prescribed manner if it was satisfied that, on the basis of information it had, such person had assets disproportionate to his known sources of income. The Act contained a schedule of a wide range of offences under 13 different laws which not only included offences under the Prevention of Corruption Act 1947, but went to the extent of covering offences of smuggling, hoarding and even offences under the Official Secrets Act and the Passport Order for which existing laws were sufficient to deal with.

Under the scheme of this law the Bureau of Anti-Corruption was to function as a Directorate of the executive branch under complete control of the government. It has generally been attached to the office of the Chief Executive of the country. It had no independence and was completely dependent on the government to operate. Moreover with a vast schedule of offences under different laws the focus on containing corruption got diluted and failed to produce any meaningful result.

The Act of 1947 only applied to public servants and dealt with five kinds of offences amounting to "criminal misconduct" which included bribery and obtaining pecuniary gains for himself or for any other person by abusing his position as a public servant. Of the 5 offences under this provision Section 5(e) provided that a public servant would be said to have committed an offence of "criminal misconduct" if he or any of his dependents was in possession of wealth disproportionate to

his known sources of income. For any offence committed under this law the sentence of imprisonment could extend upto 7 years or with fine or with both and the pecuniary resources or property to which the criminal misconduct related could also be confiscated to the state.

Since neither the Act of 1947 nor the Act of 1957 produced any mechanism for an effective trial of the offenders, a more comprehensive special law was enacted namely the Criminal Law Amendment Act 1958 by repealing an earlier Act of 1948 for trial of offences relating to corruption. The law was to apply to all the persons accused of being abettors and the number of offences for trial under this law was shortened as enumerated in its schedule which included the offences connected with the public servants provided in Sections 161 to 166, 168, 217, 218, 403 to 409, 417 to 420, 465 to 468, 471 and 477(A) of the Penal Code and all the offences under the Prevention of Corruption Act 1947 with concomitant attempts, abetments and conspiracies related thereto. So the Anti-Corruption Act 1957 nor its provisions relating to the declaration of assets and punishment for possession of assets disproportionate to one's known sources of income, whether he was an ordinary citizen or a public servant, was not specified in the schedule of the Criminal Law Amendment Act 1958.

Primarily a procedural law, the main features of the Act of 1958 were: (1) it defined "public servant" more elaborately; (2) it created special courts with judges designated as special judges to try and punish offences specified in the schedule within the jurisdiction as determined by law; (3) the government could by a notification in the official gazette include other offences under this law by amending the schedule; (4) a time-limit for investigation of 180 days; (5) it provided special procedure for the trial of the cases and powers of the special judge; (6) a prior sanction of the government was mandatory for the prosecution of any public servant; (7) it provided special rules of evidence; (8) court was empowered to impose a sentence of fine which was not to be less than the gain found to have been derived by the accused from the corrupt transaction with an order of confiscation of the whole or any part of the property of the accused to the government; and (9) the rule making power to implement the law was vested in the government.

Since 1958, the Bureau of Anti-Corruption, a low profile outfit completely controlled by the executive branch of the state and run

under the political authority of the government of the day, continued to contain and control corruption among public servants. But because it was dependant on the government for almost everything, starting from logistics to obtaining of sanction of the government before instituting a case against any public servant, the Bureau suffered from all kinds of limitations. It had to rely on the government prosecutors, police and other paraphernalias to work for it. Although the judges of the judicial service were to act freely but the law provided that Metropolitan Magistrate or any Magistrate of first class belonging to the civil service cadre under the executive branch could also function as special judges contravening the concept of independence in discharging their duties.

After the birth of Bangladesh in 1971, the set-up continued as before. Corruption being a sensitive and a highly relative subject, law had given powers to the officials of the Bureau to intrude into the life of private citizens and public servants. In spite of all its legal and organisational constraints the Bureau was able to punish a sizeable number of public servants, mostly of junior level, but the rate of conviction was much less than that of the ordinary criminal courts. Because of the in-built weakness of the legal system and interventions of the higher courts, the Bureau was unable to achieve any desired result and the rate of disposal of cases, because of the delay in the procedure itself, did not help in building any good image for the Bureau.

On the other hand, with the growth of economy the areas of corruption also multiplied providing expanded opportunities for public servants to indulge in corruption. With a larger public fund, the wings of corruption had also spread manifold. It was not only for the big money which had no direct effect on the common man as such to feel the pinch, but corruption practiced for small money in every government office from the union level to thana, district and central offices in the capital and elsewhere, had, in physical terms, directly affected the most ordinary citizens of the country. As in any other emerging economy in the developing world, corruption in Bangladesh became widespread and gradually took its roots at all levels. The spectrum of the menace was so large and wide that it was not easy to contain it in any effective manner by any government. The most pertinent question was where to begin and how and what could be the most useful machinery to deal with it. As the menace soon became a

part of the system, accepted by even ordinary people that at every stage an extra amount of money whether one called it a "bribe" or "bakshish," sometime even offered voluntarily, would be needed to have any work done at any office, and the government functionaries seeking easy and quick money were not reluctant to indulge in corrupt practices for replenishing their meager salaries to give their children better education and food with a rising cost of living.

Corruption as a general social ill came to the limelight at the national level during the Ershad regime. When General Ershad staged a coup to take over power by removing the elected BNP government in March 1982, he accused the fallen government of Justice Abdus Sattar being "inefficient and corrupt" and pledged to the nation that he would make the country "free of corruption." But as soon as Ershad settled down to rule the country his administration earned the reputation of being the most corrupt regime and continued to remain so till the time he was over-thrown by a mass upheaval in early December 1990.

With every change of government in Bangladesh the politicians have been made the first target for retaliation and the easiest way was to give them a bad name of being corrupt. So victimisation of political opponents, when a government falls or a new government is formed, has long been a part of the political culture in Bangladesh.² During the rule of Ziaur Rahman, the Martial Law Courts convicted, mainly on charges of corruption, a large number of former ministers of the Awami League government of 1972-75. But some of the same politicians were used by the regime in various ways to serve their own political interests after they were released. When the elected government of the BNP, headed by Sattar, was removed by the new martial law regime of Ershad, they imprisoned all the former ministers of the BNP government on charges of corruption and had many of them convicted by the martial law courts. Later when they were released, Ershad inducted many of them as his Ministers, thus proving how false these cases were.³

It is more common a practice when the military leaders take over power by removing civilian governments they launch their first attack

² The same, in varying degrees, is true of all the major countries in South and South East Asia.

³ For detail, see Moudud Ahmed, *Democracy and the Challenge of Development*, The University Press Limited, Dhaka. Ershad had the author convicted in a Martial Law Court. He then set aside the conviction on review and inducted him as a Minister. Later Ershad made him the Prime Minister and afterwards the Vice-President of Bangladesh.

on the politicians. This has happened not only in Pakistan and Bangladesh, but also in almost every country where military interventions have taken place. However, this practice is no longer unique to military regimes. In the last three democratic regimes, the same victimisation of the opponents has taken place once a new government was installed in power.⁴ When the BNP returned to power in 1991, the first crusade was launched against Ershad and his ministers on charges of corruption. Except Ershad, who was imprisoned for more than five years, no one else was convicted of any offence.⁵

One of the main issues raised strongly by the Awami League while in opposition, like any other opposition in the past, against the ruling BNP government in 1991-96 was corruption. They brought all kinds of allegations of corruption against all the Ministers including the Prime Minister and demanded their trial and resignation. They also made a pledge that they would publish a white paper on corruption of the present government once they were voted to power and put them on trial for the crimes they had committed. They also made a pledge that they would make the country free of corruption. They would also ratify the UN Convention against Corruption.

So when Awami League returned to power in 1996, they tried to uphold their pledge. Before even publishing any white paper the government turned to almost all the former ministers of BNP government and started filing series of cases on charges of corruption against the former Prime Minister, Begum Khaleda Zia, her brother and son and others of her Cabinet.⁶ These cases were filed not to eradicate corruption or make the country free of corruption but only to harass and humiliate political leaders of the other side arising out of a

⁴ In Sri Lanka, after the general election held on 10 October 2000 resulted in a hung Parliament, the ruling People's Alliance and the main opposition, the United National Party, reached an agreement to resolve some of the outstanding problems. They agreed to introduce legislation to set up an independent Election Commission and an independent Public Service Commission. They also agreed to introduce media reform and bring an end to political victimisation and harassment. The aim was to introduce a new political culture in Sri Lanka. They also decided to discuss constitutional changes necessary to resolve politically the long ethnic civil war in Sri Lanka, *The Daily Star*, 23 October 2000.

⁵ Subsequently when the BNP fell from power, it joined hands with the same Ershad to form an alliance against the Awami League government of 1996-2001.

⁶ See the *Daily Janakantha*, 24 September 1996, 9, 16, 20 and 21 October 1996; the *Daily Ittefaq*, 2 October 1996.

kind of vengeance and vendetta. The idea was more to make them suffer than go for any conviction or sentence. During the entire tenure of 1996-2001 none of these cases was proved in any court of law and most of them were eventually quashed by the Supreme Court.⁷

In the first Cabinet meeting of the Awami League government, Sheikh Hasina as the Prime Minister took the initiative for submission of statements of wealth of all the ministers including herself and the decision of the Cabinet was greeted by all sections of people.⁸ At a subsequent stage the government indicated that all the high officials of the administration would be required to submit their wealth statements.⁹ The government claimed that all these steps were being taken to keep the government free of corruption. Within 3 September 1996, the date fixed for submission of statements by the Ministers, 18 out of 26 had submitted¹⁰ but the thing ended there. There was no follow-up, no verification, no clarification and no action to make them known to public. No wealth statement was submitted at the end of their tenure in 2001 for the people to judge whether the Ministers had acquired any wealth during that period and committed any corruption. The government also did not take any initiative to ratify the UN Convention Against Corruption during their entire tenure of 5 years. Not only that, the Awami League government failed to take any effective measure to keep corruption under any kind of control and the report of Transparency International published on 27 June 2001, just prior to the expiry of the term of the government, had labeled Bangladesh as the most corrupt country in the world.¹¹ Although the government rejected the Report but it had caused a great damage to the image of the outgoing regime as well as the country.¹²

The opposition led by the BNP also raised all kinds of allegations of corruption against the ruling government including that of the Prime Minister and made a similar pledge as the Awami League did when they were in the opposition that it would eradicate corruption

⁷ See 55 DLR (HCD), p. 596 for quashment of proceedings against Begum Khaleda Zia in Air Bus purchase case.

⁸ See the *Daily Sangbad*, 3 July 1996.

⁹ See the *Daily Janakantha*, 2 October 1996.

¹⁰ Ibid.

¹¹ See *The Daily Star*, 28 June 2001; the *Daily Ittefaq*, 28 June 2001; the *Daily Jugantar*, 29 June 2001.

¹² See the *Daily Jugantar*, 8 October 2003 for more detail.

from the society once they were re-elected. After the publication of the report of the Transparency International and prior to the election held on 1 October 2001, Begum Khaleda Zia, as the leader of the opposition, while addressing a mammoth public meeting at Dhaka, announced that once in power, "BNP will make Bangladesh as a Number One corruption-free state of the world."¹³

In the election, the BNP-led alliance gained a massive victory with two-third majority in the Parliament. Soon after the assumption of office the government took almost all the Ministers including the Prime Minister of the last government to task. By January 2002, 29 cases involving 69 persons were filed on charges of corruption.¹⁴ In retaliation to what the Awami League Government did to Begum Khaleda Zia, several cases were filed against Sheikh Hasina and like Khaleda, Hasina also had to appear in different lower courts for bail.¹⁵ It was almost the same drill excepting that the persons were different. This time however the tirade was pursued with more vigour than the last government. The escalation of such vendetta against one another among the two parties when they came to power each time went to a higher degree. Within 100 days of its rule, the BNP-led government published a 2-volume (793-page), *White Paper* on some 40 cases of corruption allegedly committed during the rule of the last Awami League government. The *White Paper* was officially released in a press conference.¹⁶ Several other cases were also filed outside those alleged in the *White Paper* both before and after its release. Many of the former Ministers were put in detention under the Special Powers Act for investigation purposes.¹⁷ Within less than two months a dozen of corruption cases were instituted against Sheikh Hasina and six of her Ministers but not a single case resulted in conviction.¹⁸ But it subjected them to a great amount of harassment, humiliation and character assassination and the people in general also perceived that such

¹³ See *The Daily Star*, 10 July 2001.

¹⁴ See the *Daily Matribhumi*, 22 January 2001.

¹⁵ See the *Daily Inquilab*, 3 July 2002; the *Daily Banglabazar Patrika*, 29 August 2002. All the bail petitions for Khaleda Zia between 1996-01 were moved by the author.

¹⁶ Haris Chowdhury, Political Secretary to the Prime Minister released the documents. See *The Daily Star* and the *Daily Prothom Alo*, 24 January 2002.

¹⁷ See the *Daily Ittefaq*, 9 April 2002; the *Daily Bhorer Kagoz*, 30 October 2002; the *Daily Prothom Alo*, 14 August 2002 and 11 December 2002.

¹⁸ See *The Daily Star*, 12 December 2002.

actions were nothing but political victimisation. Cases of corruption against politicians, even if successful, do not disqualify them from doing politics. In the case of Ershad, he may have been debarred at one stage from taking part in the election to be a Member of Parliament but continued to be recognised by both the major political parties as a key factor in national politics.¹⁹ No trial in respect of cases of Awami League leaders could be held largely due to the staying of proceedings by the Supreme Court. Like that of Khaleda Zia, all the proceedings in respect of cases against Sheikh Hasina were also stayed by the Supreme Court at various stages.²⁰ Once the *White Paper* on corruption was published some Awami League supporters filed a writ petition challenging the constitutional validity of such *White Paper* in the Supreme Court which was summarily dismissed.²¹

Before each general election almost all the political parties, particularly the two major parties, the BNP and the Awami League, in their manifestoes pledged to the nation that they would make the country "free of corruption" and to achieve that goal they would establish an independent anti-corruption commission once they were elected. Like many other pledges this one was also ignored by both the BNP government in 1991-1996 and the Awami League government in 1996-2001. None of them did anything because the existing machinery, the Bureau of Anti-Corruption having had been an appendage of the Prime Minister's Office was found suitable for them to use the laws on corruption for political victimisation against each other rather to eradicate corruption in the country. As a fully controlled agency of the government, the Bureau would do nothing against those who were in or around power and could only act against those who were opposed to the government.

During the BNP-led government 2001-2006, the sustained and continuous reports in all sections of media about corruption caught public eyes both at home and abroad. With a free media, nothing went unnoticed and scandals of corrupt practices were regularly focused in all the newspapers. Since no effective action was taken by the government, corruption only took deeper roots. The actual extent of

¹⁹ In 2006 prior to the scheduled election both Khaleda and Hasina negotiated with Ershad to join their respective alliances and finally Ershad joined the grand alliance led by Hasina.

²⁰ See the *Daily Prothom Alo*, 19 December 2002; the *Daily Ittefaq* and the *Daily Sangbad*, 19 December 2002.

²¹ See the *Daily Manab Zamin*, 7 February 2002.

corruption or how much the office of Prime Minister or Tarique Rahman was personally involved became less relevant than the public perception it carried. This perception was reinforced by the reports of Transparency International on corruption of the politicians²² and the grafts realised or paid every year²³ in various public sectors. During the entire BNP-led regime, Bangladesh was shown to have retained its position as the most corrupt country of the world. Although government officially rejected or ignored the reports, the fact is that the image of the country was eroded worldwide through international media.

In the meantime however, the pressure was mounting within the government to act to its commitment on corruption. The multilateral agencies and donor countries repeatedly registered their concern on the formation of an independent Commission. Finally the government pursuant to the pledge given in the election manifesto decided to establish an independent Anti-Corruption Commission and started working on it towards the end of 2002. As practiced by the then government, like for any other reformative laws, pre-legislative consultation with various groups of civil society was initiated with the active support of the Transparency International, Dhaka. Recommendations were invited and similar laws of other countries particularly those of South Asia were examined before the draft was finalised.²⁴ In the given political mindset of the leaders of the government and the bureaucracy at large it was not an easy task. The thinking was that the Commission could not be made absolutely independent in the socio-political context of the country and such independence ought to be allowed to evolve gradually in stages and so a total exclusion of the power of the executive would not be practical.

Since the issue of corruption is very sensitive and could involve important and respectable citizens it was necessary to ensure that the law would not be misused or abused and applied in any wrongful manner and citizens were not harassed and humiliated in public without sufficient caution and due process of law. One of the most important objectives was to ensure that the Commission would act

²² See the *Daily Prothom Alo*, 19 April 2004.

²³ See the *Daily Janakantha*, 21 April 2005.

²⁴ The author as the Law Minister arduously worked to prepare this draft. It has a long story which the author intends to narrate in his autobiography.

independent of any political consideration so that there was no political victimisation. As corruption was wide-spread and multi-facet it would be impossible for the Commission to lay its hand in all the sectors or on all the public functionaries. Although the primary target would be the public servants in general but the focus would obviously be on those who held high offices whether in the government or Corporation or nationalised Banks or the Supreme Court.

After a long deliberation the mother law on corruption, the Prevention of Corruption Act 1947, was retained as it was. The Anti-Corruption Act 1957 enacted to create the Bureau of Anti-Corruption for the purpose of inquiry and investigation had to be repealed and the Criminal Law Amendment Act 1958 enacted to try the offences committed relating to corruption needed drastic amendments in order to ensure the creation of a fully neutral, independent and effective Commission to deal with corruption.

The Anti-Corruption Commission Act 2004

On being approved by the Cabinet the government in fulfillment of its electoral pledge to the nation placed the Anti-Corruption Commission Bill before the Parliament on 10 July 2003. The same day it was referred to the Parliamentary Standing Committee for its consideration. Once the Bill was placed before the Parliament it generated more debate and criticism pointing out some of the weaknesses particularly relating to the selection process of the Chairman and Members of the Commission, its economic independence, power to prosecute the offenders on their own without depending on the police and inclusion of Section 109 in the schedule to indict any person as an abettor to the offence committed. All these reactions published through editorials, articles and letters in daily newspapers led to another series of meetings, seminars and round table discussions to improve the law further. The intention of the government was to establish a truly independent Commission.²⁵

The most controversial of all the provisions was the selection process of the Commission which was vitally important for its independent character. In the original Bill (Section 7) the selection committee was to recommend six names to the President for

²⁵ See for detail Moudud Ahmed, *Shangslude Ja Bolechi* (Speeches in Parliament). The University Press Limited, Dhaka, 2005, p. 243 and the Parliamentary Proceedings, February 2004, Parliament Secretariat.

appointment from amongst whom the President would appoint one of them as Chairman and two others as Commissioners. Since the Finance and Law Ministers were included in the selection committee there was questions as to its appropriateness.²⁶ The government readily accepted the suggestion and the names of the Ministers were taken out and the Committee was now reconstituted with a judge of the Appellate Division nominated by the Chief Justice in the 5-member selection committee. Secondly, changes were made to secure financial independence of the Commission once the budget was approved by the Parliament in line with the independence enjoyed by the Supreme Court and the Parliament Secretariat. Thirdly, the Commission was now empowered to prosecute on their own any person for any offence committed under the law with their own prosecutors without having to depend on the police or the government appointed personnel—all done to make the Commission as independent as possible. Lastly, Section 109 of the Penal Code was also included in the schedule of the law to punish any person for abetment in any of the offences under the law. The Commission was also empowered to arrest any person with prior sanction of any competent court.

In order to lay emphasis on corruption of public functionaries and public servants the schedule of offences was shortened to highlight and concentrate on the main purpose of the law and to avoid the numerous laws earlier included in the schedule of the Anti-Corruption Act 1957 creating a wide scope for misuse of law and power to harass and humiliate people. But the provision contained in Section 5(e) of the Prevention of Corruption Act 1947 with regard to an offence of having more asset than known sources of income applicable to only a public servant, were now incorporated in the new law (Sections 26 and 27) to include all the citizens of the country to account for their wealth not being disproportionate to their known sources of income. After nearly 7 months of deliberations, changes made in the original Bill in an amended form was placed before the Parliament by the Parliamentary Standing Committee on 17 February 2004. The Bill was passed on the same day after a lively debate.²⁷ On passing of this law, the Bureau of Anti-Corruption stood abolished. As it needed time for

²⁶ The author himself was opposed to having any Minister in the Committee. See for detail in the second part of his *autobiography* yet to be published.

²⁷ See *Gazette* notification dated 23 February 2004. The author as the Law Minister worked hard to prepare the draft.

a massive administrative rearrangement to give any effect to the law, the Act was made effective from 9 May 2004.

Moreover, the offences enumerated in the schedule of the Anti-Corruption Commission Act 2004 were to be tried by a court of a special judge according to the provisions made in an existing special law called the Criminal Law Amendment Act 1958. So in order to make the Act 2004 effective, the Act of 1958 had to be amended to remove certain obstructions for ensuring a complete independence for the Commission to function. Under the Act of 1958 the government still had lot of control in matters of trial of public servants on charges of corruption, such as a prior consent of the government was required before institution of any proceedings against any such public servant, power of the government to appoint prosecutors for conducting such cases, withdrawal of any case by the government at any stage and appointment of Magistrates who were still under the executive control to function as special judges. In order to amend all those incompatible provisions including the schedule of offences, a new Bill Criminal Law Amendment (Amendment) Bill 2004²⁸ was introduced in the Parliament on 4 July. Under the new Bill, all the powers of the government were now transferred to the Commission and any provision by which the executive branch could have any authority or role either directly or indirectly over the prosecution of public servants were removed. Accordingly, Sections 3(2), 4(5)(b), 6(1)(b), 6(2) under which Magistrates could be appointed by the government as Special Judges and hold trial to convict and sentence a person and procedures relating thereto and the power of the government to amend the schedule and transfer of cases to such courts contained in Sections 5(2) and (4) were all deleted. Sections 6(5) under which requirement of sanction of the government for prosecution of a public servant for an offence and Section 6(6) under which the power of the government to appoint public prosecutors to conduct cases were also deleted. Under Section 10(4) the power of the government to withdraw any case from prosecution of any person was now amended to empower the Commission to exercise the same power, and as a consequent measure Section 10(6)(2) was also amended to give the same power to the Commission to present any appeal before a higher court from an order

²⁸ The author moved both the Bills. See for more detail, Moudud Ahmed, *Shangshade Ja Bolechi* (Speeches in Parliament), The University Press Limited, Dhaka, pp. 285-288.

of acquittal passed by a special judge. Section 12(2)(a) relating to making rules regarding granting sanction in respect of authorizing any person was deleted. In other words, every incongruity and inconsistency contained in the Criminal Law Amendment Act which stood in the way of an independent functioning of the Commission was now removed. The Bill after having been scrutinised, examined and improved was placed by the Standing Committee before the Parliament on 12 July 2004 for consideration and was passed on the same day.²⁹

In summary, in contrast to the Bureau of Anti-Corruption, a truly independent and neutral Commission was now established to effectively deal with the corrupt practices primarily of the public servants and functionaries. For this purpose the earlier Act of 1957 was repealed and suitable amendments were made in the Act of 1958 to ensure the maximum freedom and independence for the Commission to enable it to function on its own to combat the menace of corruption. Based on the recommendation made by the selection committee (Section 6), once the Chairman and the Commissioners were appointed by the President (Section 7) they could be removed only by the way a Judge of the Supreme Court could be done (Section 10(3)). In other words, they could not be removed by any executive order and would hold a permanent office for a tenure of 4 years and on its expiry would not be entitled for re-appointment (Section 7) to any other public office. The qualifications mentioned (Section 8) would only imply that such Commission would consist of men of great integrity who enjoyed public respect and credibility in society and known to be absolutely neutral without any bias or political motivation. Although they have the exclusive power of prosecution but the Commission was to act as a quasi-judicial body when it was giving any decision in respect of any such prosecution. The Chairman of the Commission, as its chief executive (Section 12), would play the pivotal role in running the institution.

Besides all other functions enumerated in Section 17, the primary task of the Commission would be to conduct enquiry, investigation and institution of cases for the offences committed under the schedule of the Act. The Commission also at its own initiative could enquire

²⁹ See the *Gazette* notification dated 18 July 2004. Also see for detail Moudud Ahmed, *Shangshude Ja Bolechi* (Speeches in Parliament), The University Press Limited, Dhaka, p. 285.

into any allegation of an offence under the law. The Commission has been vested with special power of enquiry and for the purpose investigation (Sections 19 and 20) given to its concerned official to exercise power as that of an officer in-charge of a Police Station. The Commission, on reasonable suspicion that any person having wealth disproportionate to his known sources of income could arrest that person with prior permission of the court (Section 21). That the Commission would be independent in the discharge of their functions and enjoy financial independence were ensured by Sections 24 and 25 of the Act. Sections 26 and 27 of the Act of 2004 relating to declaration of assets and having properties disproportionate to one's known sources of income contained a penal provision of imprisonment upto 3 years for furnishing any false information (Section 26) and 10 years of imprisonment (Section 27) for having an excess wealth in place of 7 years. The offences under this Act (Section 28) were to be tried under the Criminal Law Amendment Act 1958. The written approval of the Commission was made mandatory before filing any case against any person (Section 32) and the Commission was to have its own permanent prosecution unit comprised of their recruited prosecutors (Section 33). The Commission was entrusted with the power to frame the Rules to fulfill the purpose of the law with the prior approval of the President (Section 34). The schedule of offences was shortened to 4 laws, the principal ones being the offences under the Prevention of Corruption Act 1947 and Sections 109, 161-167, 217, 218, 408, 409 and 477(A) of the Penal Code.

Purpose of the Law and the Commission

A law is generally made to provide a legal vehicle to implement a defined purpose. As it is only a means to achieve an end, no law is considered sacrosanct. It is developed through its trial, practice and application and is always subject to change if such need arises to ensure its real objective. It is on the personality, knowledge, integrity, neutrality and courage of those who are entrusted with the responsibility of running any such independent institution would depend the successful implementation of the real purpose of the law. It applies to all the constitutional and statutory institutions assigned to exercise their powers and functions independently. It applies to the Supreme Court, the Election Commission, the Public Service

Commission and the office of the Comptroller and Auditor General as well. The distinction being that the Anti-Corruption Commission deals with giving stigmas to citizens at an individual level involving his right to property, honour, dignity, social status and reputation, calls upon the Commission to be more restrained, cautious, consistent and harmonious in its performance. As it has the role of a prosecutor it is more the reason why the Commission while taking any decision whether to lay any charges against any citizen or not must act as a quasi-judicial body, applying its judicious mind before taking any such action so that the law is not misused or abused to harass or humiliate any person. Since due process of law, as the cardinal principle for the administration of justice was to be followed, there was no scope for any rush or hurry to prosecute any person when the law was there to take its own course in its own manner. The function of the Commission was to conduct an enquiry, an investigation, submit a charge sheet and lead the prosecution to prove its case and the rest was upto the court upon hearing the defence to decide the matter under the existing laws of the land. In order to achieve its objective it would be required to build its own institutional strength and capacity in all areas particularly in developing expertise in enquiry, investigation and collection of evidence with credible witnesses to prove its case before a competent court of law. The Act of 2004 or its application would have nothing to do with what kind of political government was running the country as long as the Constitution was in full operation. When the law was enacted it was never contemplated to have any abnormal law like the Emergency Ordinance to be in operation and even if it was so to be, the Act would operate under the normal existing laws to deal with the offences of corruption and the Commission would continue to act independently.

Hussain Shaheed Suhrawardy a great national leader and a brilliant barrister, while arguing a case defending a person accused on charges of corruption in the Supreme Court of Pakistan, commented that the Anti-Corruption Law was the most corrupt law of the land. He called it corrupt not only because the people working for implementing the law were corrupt but he emphasised that the law itself was a corrupt law because it gave too much of power to the authority to misuse the law in any way it wanted to harass, humiliate and blackmail any citizen it liked. This scope of exercising such arbitrary power and authority made the law corrupt by itself.

The primary purpose of the Anti-Corruption Commission Act was to take into account the misdemeanors of the public servants while carrying on with their official functions rather than the public at large and all the offences, other than Sections 26 and 27, included in the schedule related to any act of corruption on the part of the public servants who made pecuniary gains by abusing their official position under the provisions of the Prevention of Corruption Act 1947. Sections 26 and 27 of the Act of 2004 were an offence committed by any citizen, but since Section 5(e) of the Prevention of Corruption Act 1947 related to the same offence applicable to public servants it was reasonable to presume that Sections 26 and 27 would be made applicable to all citizens other than the public servants. If a public servant which included a Minister and a Member of Parliament and any other public functionary or their dependants having had wealth disproportionate to their own sources of income, it was expected that proceedings would be drawn against them under Section 5 of the Prevention of Corruption Act 1947 rather than using the omnibus provision of Sections 26 and 27 of the Act 2004 not only because it provided a higher sentence of 10 years in jail instead of 7 years, but it was also easier to harass and punish for another 3 years for submitting untrue statements which could be unintentional for some genuine reasons particularly if the accused was in jail and did not have any access to his records or documents or his lawyers for any consultation before submitting such statements.

Secondly, the other purpose of making the Commission independent free of political authority and influence was to enable it to take into account any public servant presently holding any public office. In other words whenever allegations of corruption or any scam arose in respect of the public servants or representatives holding any high position at the given time, the Commission would not hesitate to move at once to hold an enquiry to see if there was any truth in it. Since the areas of corruption had too many facets and touched almost all the public offices from the grass-roots levels upto the Secretariat of the government, the goal of the Commission was expected to contain corruption in the selected areas of high offices for exemplary punishments whether it was a Minister or a Member of Parliament or a Secretary or a Chairman of a Corporation or a Managing Director of a state-owned Bank or head of any other authority or department of the government to produce better and more effective results. When the

Commission functions outside the capital the target would be the public functionaries holding the top positions in their respective offices and the local public representatives. So it would be more worthwhile for the Commission to be an effective institution to enjoy public trust if it would concentrate first to handle corruption of those who were currently holding any office rather than chasing those who were no more in office or left the public office quite a while ago. Finally, the Commission as an independent institution would not have anything to do with the politics of the country and keep itself away from the government. Unlike the erstwhile Bureau of Anti-Corruption it would not allow itself to be used under any circumstances, as a tool of the executive authority to carry out any political agenda of the government.

Failure of the First Commission

The Anti-Corruption Commission Act 2004 having been made effective on 9 May and the amendment of the Criminal Law Amendment Act been enacted in July of the same year, the Commission was now legally established for a full operation. On the recommendation of the Selection Committee the President appointed a retired Judge of the Supreme Court as the Chairman with a former Vice-Chancellor of Dhaka University and a retired civil servant as the Commissioners.³⁰ Establishing any new institution particularly by abolishing an existing one, the task was an extremely complicated exercise. Although law made it independent for its functional operations but the institution had to be established first, for which the new Commission had to largely depend on the Cabinet Division under the Rules of Business, for its initial budget, logistics, organogram, framing of Rules under the Act, dissolution of the Bureau of Anti-Corruption and scrutiny, screening, posting and placement of its officers and employees—all being enormously time consuming, took the Commission a long time to settle down to start functioning in any meaningful manner. Besides all these bureaucratic problems, question was also raised as to the constitution of the Commission being politically biased to deliberately make it ineffective in dealing with the allegations of corruption against those in the government or those

³⁰ Justice Sultan Hossain Khan was appointed as the first Chairman of the Commission with Professor Moniruzzaman Mia as one of the Commissioners by the President on the advice of the Prime Minister.

wielding political patronage. Secondly, the Commission suffered from a serious lack of internal cohesion among its own members which weakened the leadership of the Commission in running the organisation. This became almost a public knowledge when media covered stories of open discord between the Chairman and another Commissioner Professor Moniruzzaman Mia over various policy issues. So by the time they had the opportunity to start their actual functioning, the Commission became controversial and failed to make any impact. By the time the BNP-led government had its term expired on October 27, 2006 and the political situation in the country took a different turn, the functioning of the Commission became even less significant.

In summary, the reasons why the Commission could not function were: (1) the criterion of final selection of the Chairman on a political consideration was wrong; (2) The Chairman aged about 80, a former Judge and Chief Election Commissioner belonged to one branch of discipline and the senior of the two Commissioners, a former Vice-Chancellor and diplomat belonged to another discipline of life; although both served under the BNP regime in the past at some point but did not get along with each other. There was a clash of personality between them, blown up by the media which destroyed the effectiveness of the organisation right from the beginning; (3) delay in preparing and approving the organogram of the Commission and finally after a long time when it was approved, it was slashed down to half by the government; (4) delay in framing and getting approval of the government of the Rules under which the Commission was to function; and (5) the chaos and anarchy caused in screening the officers and employees of the former Bureau of Anti-Corruption involving a major administrative and financial reorganisation. Section 35 of the Act provided that the Bureau would stand dissolved on the day the Commission was constituted. In Sub-section (C) it said that on its dissolution all the officers and employees of the Bureau would be deemed to be the officers and employees of the Commission and they would remain employed in the service and would receive the salary and allowances determined by the government. But this automatic absorption of transfer from one agency to another was made subject to the conditions contained in Sub-section C(2) to the effect that the same would be done according to a procedure to be decided by it. The Commission would retain those officers and employees it would find fit and suitable and ask the government to withdraw the rest. This

created havoc for the organisation. Firstly the Commission itself was not functioning cohesively and secondly in the absence of any clear guideline the problem of absorption could not be resolved for a long time.

Senior bureaucrats always follow the mind of their masters. Having realised that the political will of the government was not strong enough to see that the Commission functioned immediately or effectively and the Commission carried no great importance for the government, the bureaucracy went slow on the matter. Otherwise with little bit of cooperation and support from the Government, the problems of the organogram, the Rules and the employment of the officers and employees of the Bureau could be promptly resolved. On the issue of the dispute between the Chairman and one of the Commissioners, instead of allowing them to fight in public, the matter could be resolved in no time by making one of them to resign, had the government desired so.³¹

On the question of signing and ratification of the UN Convention Against Corruption,³² the same mindset worked, without any ostensible reason. It was difficult to identify whether it was because of short-sightedness on the part of the government or its general ineptness or lack of determination to fight corruption that there was so much of reluctance in signing the Convention. Normally such kind of Conventions, once signed and ratified, domestic or international laws are enacted if so required as a follow-up obligation. But here the government went ahead and performed the obligation other way round. Bangladesh enacted a national law before signing or ratifying the UN Convention and yet the government was reluctant to sign the Convention.

On 3 August 2005, the Ministry of Foreign Affairs forwarded a summary containing proposal to signing the UN Convention Against Corruption for the approval of the Prime Minister. It was mentioned in the summary that only signing of the Convention would not put

³¹ From author's own knowledge.

³² The author first wrote to the Foreign Minister on 12 December 2004 saying that since the government had already created a law against corruption, the government ought to sign the Convention. Having not received any reply the author wrote again on 15 May 2005 saying that if Bangladesh had signed it would increase the country's international image. On 1 June 2005 the Foreign Minister wrote to say that initiative had already been taken for further examination. Since then 16 months had elapsed but the Convention was not signed.

Bangladesh into any obligation and there was no time limit for ratification of the Convention on the part of any state and so the Ministry recommended for the signature of the Convention. The summary was submitted signed by the Foreign Minister, the Adviser of his Ministry as well as the Secretary but it was not approved as communicated to them by the office of the Prime Minister by a letter of 13 August 2005.

Moreover by then more than 120 countries including the neighbours like Sri Lanka, Nepal, Pakistan, Afghanistan, Malaysia and Thailand had signed the Convention. Sri Lanka had already ratified it. The number required for ratification and adaptation of the Convention was already in place and the Convention as the global tool to fight corruption was going to enter into force on 14 December 2005.³³ So there was no reason why Bangladesh should not have proceeded to sign the Convention. Although it had 5 years in hand but it did not do so.

So, it was not understandable why the three successive democratic governments did not agree to sign this Convention, particularly when Bangladesh was blamed as the most corrupt country in the world. They did not realise that unwillingness to sign the Convention only reinforced the suspicion about the existence of widespread corrupt practices in high places in Bangladesh. With regard to the last BNP-led government it was more intriguing because the country had already established an independent Commission by enacting a law in 2004 and so the decision not to sign the Convention had no rationale and spoke of the ill-conceived perception of those who advised the Prime Minister not to sign the Convention.³⁴

However, after the demise of the BNP-led government followed by a failed attempt to hold a non-participatory general election, the interim government backed by the Army under the umbrella of Emergency forced all the three members of the Commission to resign. So, the Commission was reconstituted, the law was further amended, Rules were framed, organogram was approved with the manpower the Commission desired to have and within months it stood on its feet to function, obviously now with a political goal to achieve.

³³ The author sent a copy of the letter dated 6 November 2005 of Transparency International addressed to him to the Foreign Minister by a letter dated 9 November 2005 urging upon him to take a personal initiative in this regard.

³⁴ The Convention has been signed by the interim government in April 2007.

Chapter 4

The Role of the Anti-Corruption Commission: Basic Rights Violations

Once the Anti-Corruption Commission was reconstituted, instead of playing an independent role to perform its functions under the law, sadly, it became a part of the government and devoted itself to carry out the political agenda of the military.

Since the independence of Bangladesh and even before, when Ayub Khan took over power in 1958, with the change of every government crusade against the politicians on charges of corruption has been a common feature. The practice had been to indict and punish the Ministers and leaders of the fallen government, largely as an act of retaliation to humiliate the politicians as a class. But this undesirable culture developed and continued with the political change of an elected government as well. Here, unlike the earlier interim governments ruled in 1990-91, 1996 and 2001, the interim government installed in January 2007 for the same purpose of holding the election, adopted a different role to fulfill the political design of the military unit of the government. Neither in Article 141(A) of the Constitution under which the Emergency was proclaimed nor in the Proclamation itself nor in the Emergency Power Ordinance 2007 under which wide powers and functions were undertaken, the word "corruption" appeared to empower an interim government to apply the Ordinance or the Rules made thereunder to curb corruption among the politicians. In order to carry out the vendetta against the politicians the agenda of corruption was inserted only by a subsequent amendment of the Emergency Ordinance.

Corruption is endemic and universal in nature prevailing in every society, rich or poor. In poorer society of developing countries corruption takes a crude form and the common people suffer from the

ills of corruption not at the hands of Ministers or their politicians but at the hands of local tahsil office, land revenue office, banks, agricultural and other local government offices of hundred kinds at various levels and at various service organisations like telephone, electricity, water, gas, sewerage, tax departments, ports and public organisations. Unless corruption was removed from those offices where the common people pay a cost, attack only on the politicians has always been seen and suspected as a measure of victimisation with political motives. It is not unlikely that there would be politicians who were corrupt or socially known to be corrupt and none would object to taking stern action against them in accordance with law. In Japan, it is quite a common phenomenon that even within less than a year a Prime Minister goes out of office on charges of alleged corruption and it happens in many other developed countries when individual Ministers are taken to task on charges of corruption but attacking the politicians as a class has taken place in Bangladesh, as it happened in 1982 when Ershad seized power from an elected government and in 2007 when the army entered into the government under the cover of Emergency. In Pakistan similar scenario pervaded when General Pervez Musharraf took over power. At the end however, once the initial spell of vendetta and sadism is over by taking action against the politicians particularly to scandalise them largely for public consumption, the military regimes turn back to the politicians for their own survival in power. So in 2007 the Anti-Corruption Commission only carried out what they were told to do by the regime.

Contrary to their own mandate to act as an independent body enshrined in the Anti-corruption Commission Act of 2004 and the Rules made in 2007, the reconstituted Anti-Corruption Commission started functioning based on the list of politicians prepared by military agencies calling them "corrupt" or "*durnitibaj*" before even any case was filed, not to speak of proving any one to be corrupt by any competent court of law. Various unknown forces and agencies not sanctioned by law started preparing the lists and leaked to the press wild stigmas against the politicians for sheer scandalisation and character assassination. The Chief of Army and some of the Advisers took an active part in this campaign against the politicians calling them "*durnitibaj*" which the Commission only echoed. Organisations like Joint forces, Task Forces and a committee on corruption were in operation outside the legal structures of the Act of 2004. A National

Co-ordination Committee (NCC) of Grievous Offences including corruption headed by an Adviser,¹ a retired Major General, started functioning outside the purview of any law over the head of the Anti-Corruption Commission and its Chairman in derogation to the Act of 2004 and emerged as the forerunner of the crusade against corruption. With another powerful General working on the Committee as the Chief Co-ordinator, it assumed more importance than the Commission itself. Although the Chairman of the Commission expressed his dissatisfaction over such stupory but he had no option other than to accept their superiority in implementing the political agenda of the regime. As a result, although announced on its behalf, none of the 4 lists of politicians and others who were called as “corrupt” or “*durnitibaj*” was prepared by the Commission and no case was initiated by them against persons named in any of the lists during the entire year of 2007 and none of the politicians convicted and punished during that period was done on their own initiative, although under the Act of 2004 it was the power and function of the Commission as an independent organisation to initiate, investigate and deal with any case of corruption. Although it started functioning as early as February 2007, the so-called “National Co-ordination Committee” (NCC) was officially constituted by an administrative order on 8 March 2007 without any legal authority. After almost 7 months of its operation without any legal sanction, the government on 10 September 2007 by an amendment of the Rule 21 of the Emergency Power Rules under Section 3 of the Ordinance legalised the Committee giving retrospective effect.² But this after-thought-cover still did not resolve the legality of its functioning in violation of the Anti-Corruption Commission Act of 2004.

With all its illegality, the NCC emerged as the most high-profile body of the military-backed government to carry on with the crusade against “corruption” causing a great deal of damage to both the institutions of politics and economy of the country. The Committee comprised of 20 members and to conduct its operation it divided the country in 7 areas. It had 62 Task Forces each headed by an army

¹ General (Retd.) M.A. Matin was the Chairman and Lt. General Masud Uddin Chowdhury, a close ally of the Chief of Army Staff was the Chief Co-ordinator of the Committee, the latter however had fallen apart from his compatriot at a later stage in 2008 with reports that he indulged himself in corruption by amassing huge wealth during that short period.

² See the *Gazette* notification dated 10 September 2007.

officer and 14 zonal and metropolitan committees to work under them. The National Co-ordination Committee and not the Anti-Corruption Commission claimed the success in dealing with 197 “*durnitibaj*” politicians, businessmen and civil servants published in newspapers in 4 lists they had prepared on the basis of “pick and choose” on political consideration largely decided by the military agencies from behind the scene. According to their lists 80 were arrested and the rest were either absconding or fled the country. Upto 11 January 2008, on the first anniversary of the interim government, while the NCC published an account of their success also in effect admitted that they usurped the power and function of the Anti-Corruption Commission and destroyed its independence. The Committee had 227 cases submitted against 129 persons, another 179 cases were filed with different police stations of the country on their recommendation. Altogether the NCC had conducted enquiry and investigation into 488 cases before handing over their reports to the Anti-Corruption Commission³ for prosecution.

Although Matin was an Adviser under Dr. Fakhruddin Ahmed, the NCC was basically a political body created at the instance of the military unit of the regime. In the first year of the interim regime, other than that of Khaleda Zia and Sheikh Hasina⁴ the Committee prepared and published four lists of 197 politicians and eminent business entrepreneurs on the basis of which the Anti-Corruption Commission later on carried out their enquiry, investigation and prosecution. In the first list there were 50 names, in the second 51, in the third 39 and in the fourth one 55, with 2 names misplaced. Out of the list of 197, the Anti-Corruption Commission was able to complete trial in 19 cases including almost half conducted in absentia, 25 cases were under trial and 68 were under investigation. Out of another 455 cases, the Committee referred 207 cases to the NBR and 51 cases to RAB or Police. The NBR had tried 12 cases and the Police 14 cases. The Committee claimed that trial of 30 percent of the total cases was completed in the first year which included a large number of cases tried in absentia.⁵

After having committed all the illegalities for nearly 16 months, the same retired General M.A. Matin, Chairman of the NCC announced to

³ See for detail the *Daily Amar Desh*, 25 June 2008.

⁴ Also the author, whose name was not in any of the lists published before he was arrested.

⁵ Also the author against whom a case was instituted almost one year after his arrest.

admit that the Committee had no legal sanction and it would no more function as it had done before as it was the function of the Anti-Corruption Commission to deal with any case of corruption.⁶

Nonetheless, it was also not untrue that there were certain persons close to the office of the Prime Minister, who indulged in corruption and the BNP-led government being the last one, memory was still fresh about some of those acquiring wealth in course of 5 years at a phenomenal speed. Most of them were not politicians in the traditional sense. They were basically businessmen who somehow procured nominations and won the elections with black money to enter into politics to earn a seat of social respectability and make further money by flourishing their own business or men who were close to powerful leaders of the government under whose patronisation they made their wealth. Because of freedom of press nothing remained hidden in society.

But for a government of such a temporary nature bound to a role limited by the Constitution, the scope of dealing with corruption in such a large scale could however not be considered as an agenda of any high priority. Most important of all was that if the interim regime had so desired to deal with corruption of public functionaries as part of their "routine function" under the Constitution, the Anti-Corruption Commission was the only body who could take appropriate action against them under the due process of the existing laws empowered by the Act of 2004 and the Rules made in 2007.

But it did not happen that way. The drive against the politicians as a class as being "corrupt" was taken up by the military unit as the prime agenda of the regime arousing sufficient suspicion about their intentions. If they had concentrated on a selected number who really earned the reputation of being corrupt in the last government and actions were taken against them applying the normal existing laws of the land none would have raised any question. Instead of behaving like an interim government under Articles 58(B) and 58(D) of the Constitution they adopted for themselves a role like that of a regular Martial Law government.

The political motive of the regime was further demonstrated when on 25 January 2007 the Anti-Corruption Commission Act 2004 was inserted in Rule 15 of the Emergency Power Rules 2007, which neither

⁶ See the *Daily Amar Desh*, 25 June 2008 and all other daily newspapers of the same day.

the Emergency Power Ordinance nor Article 141(A) of the Constitution allowed them to do. Neither of them contemplated to include all-time offences like corruption, which had nothing to do with the "security or internal disturbance" affecting the "economic life" of the country. When such Rules are made to supersede the provisions of the mother law, the insertion of laws connected with the law and order situation and internal disturbance affecting normal life like the Arms Act, the Explosive Substances Act, Foreign Currency Regulation Act, Special Powers Act and Drug Control Act under Rule 14 of the Emergency Power Rules were understandable as they were in consonance with Section 3 of the Emergency Power Ordinance and Article 141A of the Constitution but the insertion of the Anti-Corruption Act 2004 under Rule 15 was deliberately done as an act of bad faith in contradiction to the Ordinance and the Constitution to stifle the due process of law only to victimise and hurriedly punish the politicians by any means on charges of corruption and disqualify them from contesting in the next election.

While the procedural provisions contained in the Emergency Power Rules 2007 relating to time-frame for trial without any amendment of the Criminal Law Amendment Act under which such trials were held were not tenable, more untenable were the provisions affecting the substantial rights of citizens to secure access to justice, right of self-defence and a fair trial. It caused a gross miscarriage in dispensation of cases amounting to denial of justice. The essential precondition of a fair trial is the right of self-defence entitling an accused the right to know the reason of his arrest, consult his lawyers, appear in court and obtain bail to defend himself to seek justice. The trial ought to be open, transparent and public. The environment of the court would be free of any outside interference and the judge would be independent in the discharge of his duties in adjudicating a case.

The basic rights enjoyed by a citizen under the existing laws essential for a fair trial were denied by the Emergency Power Rules, such as, (1) A person could be arrested without any warrant of any court under Rule 16(2); (2) Case filed under the Act of 2004 would not entitle the accused to bail at any stage by any court which included the Supreme Court⁷ (Rule 19(d)); (3) During the trial if any irregularity

⁷ See the judgments delivered by the Appellate Division in Criminal Appeal Nos. 5 and 6 of 2008 dated 26 February 2008 and Criminal Appeal No. 65 of 2007 on 15 April 2008.

was committed in the proceedings or any illegal order passed or act done by the trial court, the accused was debarred from seeking any remedy in a higher court including the Supreme Court (Rule 19(6)); (4) Under Rule 15(b) even before the institution of any case against any person, all his properties including bank accounts could be attached and frozen; (5) Under Rule 11(3) once convicted and even though the Appeal was admitted, the Supreme Court was debarred from granting bail or stay the judgment of the trial court; and (6) Under Rule 11(5) once convicted, an accused was debarred from contesting any election despite the fact that his appeal was still pending and it could succeed at the end. The objective was to debar all the prominent politicians from being elected to Parliament after having them convicted in the special courts by any means under the garb of the emergency laws.

Arrest and Process of Indictment

The characteristics, features and the horrendous sequences of arrest and trial of the persons mostly politicians, on charges of corruption, under the Act 2004 and the Rules 2007 in total disregard to the principles of rule of law, due process of law, natural justice, human rights, the existing laws and the Constitution, could be narrated as follows:

1. The Joint Forces comprising 20 to 25 personnel mostly in civil clothes, led by an officer of the Army, often a major, would surround and raid in a commando style the residence of a politician, businessman or civil servant⁸ mostly at night not only terrorising the family but the whole neighbourhood. Then for as many hours as they wished: search, seize and confiscate anything they liked and arrest the husband and in many cases wife and children without any order of any court.⁹ Rule 16(3) of the Emergency Power Rules called on the Joint Forces to follow the procedure laid in the Code of Criminal Procedure but it was ignored in all raids and searches conducted during the entire period. On such a raid whether it was a home or an office, the Joint Forces would seize all files, documents, property deeds,

⁸ It applied to any businessman or civil servant or any other arrested citizen. In most of the time the media and the regime have used the word "politician" to include businessmen, civil servants or any other person affected by such operation.

⁹ See for example the case of Iqbal Hasan Mahmood, a former State Minister, arrested along with his wife, son and daughter, a student of Dhaka University. Later mother and daughter were released by the High Court Division after being in jail for months.

bank accounts, cheque books, personal papers, passports and correspondences without giving any seizure list.¹⁰ It was common for the Joint Forces to visit the house repeatedly to interrogate the helpless wife and other members of the family without any notice or make threatening telephone calls demanding more information about the arrested person.¹¹

2. The Joint Forces would then take the arrested politician blindfolded to an unknown place, notoriously called blackhole, an outfit of the Defence Forces Intelligence and interrogate him day and night without disclosing the identity of those who were interrogating him and without producing him before any court, which they had to do within 24 hours under Article 33 of the Constitution. They would detain the person whether a politician or a businessman or anybody else, for as many days as they liked, inflicting upon him inhuman physical torture and forcing him to make confessions to procure evidence against himself in violation of Articles 35(4) and (5) of the Constitution.¹²
3. When such arrests were made and the person detained without being produced before any court for days and weeks, the family members were not informed about his whereabouts subjecting them to further agony, mental torture and insecurity. The extent of harassment and humiliation of wife, children, including retarded children had never been seen in Bangladesh in last 36 years, not even during its two military regimes. To make the wife as an accomplice in any offence, allegedly committed by the husband had not only been contrary to law but exposed an attitude utterly cruel and inhuman.¹³

¹⁰ See Writ Petition No. 6302 of 2007 filed by the author in the High Court Division against such illegal search of his Chambers when the Joint Forces forcibly entered at midnight by breaking the door and took away all the records, files, bank accounts, documents of foreign clients etc. on 14 April 2007 without giving any seizure list.

¹¹ Such incidents occurred in cases of Mir Nasir Uddin, former State Minister, Mozibur Rahman Sarwar, a former Mayor of Barisal, Fazlul Huq Milon, a former Member of Parliament from Gazipur and many others.

¹² Illegal detention and extreme physical torture conducted in cases of the Awami League MP Rafiqul Anwar, Shona Rafiq 39 days, Quamrul Huda, brother of Barrister Nazmul Huda 33 days, Giasuddin Mamun 47 days, Abu Sufian of Bashundhara Group 120 days and many others.

¹³ See cases of Mrs. Sigma Huda, Mrs. Sabera Aman, Mrs. Iqbal Hasan Mahmood, Mrs. Naser Rahman, Mrs. Anwar Hossain Manju, Mrs. Dr. Mosharraf Hossain, Mrs. Md. Nasim,

4. When such a person was produced before the court, and granted police remand, he was not taken to any police station but to the same blackhole, blindfolded, as soon as he was out of court, and again interrogated, tortured, physically assaulted,¹⁴ subjected to cruel and inhuman treatment.¹⁵ Whenever an arrested person was in their custody whether on remand or without, such person was forced to sign a printed confessional statement incriminating himself and appear before a digital camera to record the same statement¹⁶—all done in violation of the Constitution.
5. Once arrested and taken to the blackhole, also known as the “torture cell,” with or without remand, the intelligence officers would leak out reports, claiming to be confessions made by the arrested persons, some wild and fictitious tales of corruption to the newspapers who printed them most prominently as lead news as a propaganda for public consumption to show what good things were being done by the government through these interrogations, although at a later stage when any case was filed against such a person, the FIR did not reflect anything published in the newspapers.¹⁷
6. Soon after the care-taker government was installed, inspired and engineered by the military unit, the intelligence agencies of the military launched a massive, sustained and orchestrated propaganda against the politicians by publishing reports of character assassination. The campaign was participated in by all important office holders in the regime from the Chief Adviser to the Chief of Army. While the Chief Adviser and others

Mrs. Obaidul Quader, Mrs. Mirza Abbas, Mrs. Atiqullah Masud, Mrs. Sheikh Helaluddin, Mrs. Monika Debnath, Mrs. HBM. Iqbal, Mrs. Shahjahan Siraj, Mrs. Moqbul Hossain, Mrs. Helaluzzaman Talukder, Mrs. Ziaul Huq Zia and many others. At the end of the trial many were convicted. See the *Daily Ittefaq*, 16 October 2008.

- 14 At least 12 public representatives including some well established politicians within the knowledge of the author in Dhaka were physically assaulted in a severe manner.
- 15 See the statement made by Tarique Rahman, the *Daily Ittefaq* and the *Daily Amar Desh* 10 January 2008 who was beaten and tortured causing severe damage to his lumber system.
- 16 The author after taken on remand to the blackhole, a Defence Field Intelligence out-let, was forced to sign such a statement and appear before a camera under a physical threat.
- 17 A vociferous campaign of character assassination was done deliberately only to humiliate the politicians in public eye. See the *Daily Ittefaq*, 10, 15 September 2007 and 16 May 2008.

refrained from quoting any figure the Army Chief¹⁸ was however very open and candid when he alleged that Tk. 20,000 crores were looted in the energy sector alone without knowing that the figure he quoted far exceeded the total budget allocation of that sector for the entire 5 years. At a later stage when cases were filed against the former State Minister for Energy, in none of them the word “energy” or “electricity” appeared in the FIRs, not to speak of stealing any money from that sector by abusing his office.¹⁹ This synchronised propaganda continued for months, prominently published in daily newspapers giving an impression that the nation had nothing better to do than punish some politicians on charges of corruption.

The campaign against Tarique Rahman, son of the former Prime Minister, that he amassed wealth of thousands of crores of taka, finally turned out to be some trumped-up trivial cases of extortion of couple of crores of taka and his wealth statement disclosed to have assets not even exceeding 5 crores. The same happened with most of the leaders including that of Sheikh Hasina.²⁰

7. Once arrested under Section 54 on mere suspicion calling a politician or any other citizen “*durnitibaj*” without any specific case, an illegal order of detention under Section 3 of the Special Powers Act, contrary to the judgment and order of the High Court Division²¹ that “No police officer shall arrest a person under Section 54 of the Code for the purpose of detaining him under Section 3 of the Special Powers Act 1974” would be served upon him so that he could not seek any bail and be held up in jail for as long as the government wanted by extending the order of detention till a specific case could be made out against the detainee. As a result hundreds of politicians and other

¹⁸ See the *Daily Amar Desh*, the *Daily Manab Zanin*, the *Daily Dinkal*, 28 March 2007.

¹⁹ The case against the former State Minister for Power was largely related to tax evasion in respect of his family business having had nothing to do with his official position.

²⁰ See the *Daily Dinkal*, 10 April 2007, the first extortion case filed by a Tajul Islam Faruk, a businessman for an amount of 30 million Taka in Tejgaon P.S. Case No. 30(4)2007 dated 09.04.2007 against Sheikh Hasina.

²¹ See 23 BLD (HCD) 2003, p. 115.

citizens were in jail without any specific case or trial for a long period in derogation of his right to liberty.²²

8. Once arrested or a case filed against a politician or any citizen on charges of corruption by the Commission, the accused continued to be in jail and could not obtain any bail because of Rule 19(Gha) of the Emergency Power Rules which imposed a bar on the court to grant any bail whereas an alleged professional criminal as a murderer or a daylight rapist could seek bail and the court could exercise its discretion to grant such bail. But in a case under the Emergency Power Rules the accused politicians were debarred even from seeking any such bail. This bar had shut the door of justice for thousands of other innocent victims due to the abuse of power by the executive.
9. Because of the Emergency Power Rules and the short-sighted interventions of the Appellate Division²³ both in matters of detention and bail, involving two very basic rights of citizens relating to freedom and right of self-defence, the arrested politicians, big or small, known to be corrupt or not or indulged in corruption or not, guilty or innocent were now put at par to pass an indefinite and uncertain period of time in jail.
10. Soon after the Emergency Power Rules were made on 25 January 2007 and much before the Anti-Corruption Commission was reconstituted, a long list of more than a thousand people, later reduced to 420, was prepared by the military agencies under the authority of National Co-ordination Committee (NCC) to start the drive against the “*durtinibaj*” or “corrupt” politicians countrywide. The Commission, although an independent body, had no role in preparing the list or initiating any case against those persons nor in arresting them. In a midnight raid, the Joint Forces under the cover of the Emergency Power Rules, based on an initial list of 50 persons prepared by the NCC, an illegal body, arrested 34 persons mostly

²² The author was also served with an order of detention to stop his release on bail and to gain time to institute a new case. See the judgment in Criminal Miscellaneous Case No. 3875 of 2007 and the order of stay by the Appellate Division in Criminal Miscellaneous Petition No. 164 of 2007 and subsequently setting aside the judgment of the High Court Division by the Appellate Division in Criminal Appeal No. 65 of 2007.

²³ See the judgments of the Appellate Division in Criminal Appeal No. 65 of 2007 and Criminal Appeal Nos. 5 and 6 of 2008.

former Ministers and public representatives belonging to both the BNP and the Awami League terrorising all sections of people in direct violation of the Anti-Corruption Commission Act 2004.

11. The search, seizure and arrests were done without following the laws and rules and a list of the "corrupt" persons was handed over to the Commission before it was reconstituted. The names were published in the newspapers stating that action under the Anti-Corruption Act 2004 was being taken against them. In the absence of the Chairman and Members of the Commission who had already resigned, the Secretary of the Commission, who had no authority to act as the Commission, started taking action against the "corrupt politicians" without any lawful authority. This illegality was subsequently legalised by amending Section 18 of the Ordinance giving retrospective effect.²⁴
12. While the politicians were already in jail mostly under order of detention and before any Rules framed under the Anti-Corruption Commission Act 2004 to enable the Commission to take any action against anybody under the same Act, the Secretary of the Commission, without any lawful authority issued notices on 18 April 2007 to all the 50 persons of the first list demanding submission of statements of wealth and income within 72 hours under Rule 15(Gha) of the Emergency Power Rules and Sections 18 and 26(1) of the Anti-Corruption Commission Act 2004 to show that they had no wealth disproportionate to their known sources of income without any prescribed forms and procedure as required by the same Section 26(1) of the Act 2004. Under Rule 15(Gha)(5) the prisoners were also warned that if any one had submitted any wrong or incorrect or false statement he would be liable to a sentence upto a maximum 5 years and minimum 3 years and in addition all the properties of that person would be confiscated in favour of the government. Being already in jail and having had no access to any document or paper which were already seized by

²⁴ See the *Gazette* notification dated 18 April 2007. Under Section 26(2) of the Act, the sentence was for a maximum of 3 years but Rule 15(Gha) of the Emergency Rules enhanced it to 5 years with a minimum of 3 years which was violative of Article 35(1) of the Constitution. Moreover mere Rules, being a subordinate legislation, could not have superseded the provisions of a parent law, i.e., Section 26 of the Anti-Corruption Commission Act 2004.

the Joint Forces on the day of their arrest and to consult any lawyer, the statements of wealth and income in ordinary papers were submitted through the jail authorities. Since the statements were submitted hurriedly based on sheer memory, they obviously had mistakes, omissions and errors which were humanly impossible to avoid, made them already liable for a sentence of minimum 3 years and confiscation of all their properties, a punishment set in advance even before the trial had commenced. Consequently for the subsequent offence under Section 27 of the Act 2004 for having wealth beyond known sources of income, a punishment for a sentence of another 10 years could also be predicted even before the trial was held,²⁵ notwithstanding the quality of evidence and deposition by the witnesses.

13. About the remaining persons of the list not yet arrested, notices were sent out by the Secretary of the Commission again without any legal authority, to submit the statements within 72 hours in the office of the Anti-Corruption Commission by being physically present under the assurance that they would not be arrested if they had done so. But when they had gone and submitted their statements in ordinary papers, in breach of the assurance, each of them was arrested soon after they submitted their statements in the premises of the Commission. Although these politicians were free to prepare their statements but 72 hours was far too inadequate to prepare a proper statement and once arrested they were also served with an order of detention under Section 3 of the Special Powers Act 1974. All these politicians already called "*durnitibaj*" continued to remain in jail for months without any trial before cases were filed against them officially by way of any charge sheet.

14. The essential precondition of the basic right of self-defence is the right of an accused to have free access to his lawyers for

²⁵ In every case of those 50 persons adjudicated, the trial court, without any exception, had awarded a sentence of maximum 3 years under Section 26(2) and maximum of 10 years under Section 27(1) of the Act 2004 without taking any of the mitigating circumstances of both facts and law into consideration.

At a later stage however all the convictions and sentences awarded by the trial courts were set aside and the politicians of the first list of 50 were freed by the Supreme Court on the ground that the notice issued by the Secretary of the Commission was without jurisdiction. See 62 DLR (AD) 290.

consultation guaranteed by Article 33(1) of the Constitution. This right was denied to every person arrested on charges of corruption throughout the entire period of the regime. On the contrary, senior lawyers of the country were enlisted by the Commission in their own panel under threat by the military agencies to work for the government and not for the accused politicians. Responsible high officials of the regime made statements in public urging the lawyers not to defend the accused persons. A handful of lawyers who had come forward as a part of their professional obligation to defend the arrested persons was continuously threatened by military agencies to refrain themselves from doing so. Even the personal staff of the accused persons who would keep in touch with their lawyers was threatened in the same manner and there are examples where they were illegally detained and physically tortured purported to extract information about the politicians in jail.²⁶

15. Those who were in jail under an order of detention had no access to lawyers as it required the permission of the Ministry of Home Affairs which was constantly denied and the jail authorities would not allow any lawyer other than the relatives to visit them.²⁷ Lawyers were not allowed to visit the accused persons even after cases were filed against them by the Commission.²⁸ Even when any court had ordered such

²⁶ One personal staff of the author already a heart patient having had an open heart surgery and kidney ailment was detained for 3 days and mercilessly beaten and tortured to the extent that one of his kidneys was damaged. Even after he was released he was under constant threat and was refrained from visiting him at the jail for more than two months. The description of torture he had gone through is horrifying to narrate here but will be done so on an appropriate occasion.

²⁷ The author while already in jail was put under detention to stop him from being released on a bail earlier granted by the High Court Division was denied to consult any lawyer for 3 months from July to September 2007 despite two letters he had written to the Home Secretary through the jail authorities.

At a later stage the Supreme Court declared that any notice served by the Commission to submit statement of assets upon a person who is in jail is illegal. It has held "A notice must allow a reasonable time to check-up the details of the assets of a person, if necessary, on examination of his records and after consultation with his lawyers and other concerned persons." ... such a notice "is no notice in the eye of law."

See 62 DLR (AD) 290.

²⁸ Once the case started against the author the lawyers including Barrister Mahbub Uddin Khokan was told not to visit the author for any consultation otherwise the jail authorities

permission to any lawyer to visit his client, the jail authorities did not allow such visits “on the instruction of higher authorities.” The denial of right to consult lawyers was meted out to even leaders like Sheikh Hasina and Khaleda Zia, former Prime Ministers of the country.²⁹

16. Although at a later stage the time for submitting the statements of Wealth and Income was made for 7 days extendable to 15 days and the Forms and procedures were prescribed by the Anti-Corruption Commission Rules framed and published on 29 March 2007,³⁰ the basic denial of rights remained. The accused had no access to necessary documents, papers, bank statements and bank accounts which were illegally seized by the Joint Forces on the day of his arrest, or soon thereafter, as the accounts had already been frozen and his lawyers for any consultation before submission of the statements within the time-limit under Section 26(1) of the Act 2004 to avoid further punishment and confiscation of properties for even unintentional errors and mistakes. As a consequence, in all the concluded cases the trial court handed down a maximum of 3 years of imprisonment with confiscation of properties on the ground of submitting incorrect statement without giving any consideration to the fact that an accused was asked to swim after having his hands and feet fully tied to the ground. On the other hand, those who absconded to avoid these detentions or did not submit such statements suffered the same punishment which looked ridiculously discriminating between three categories of the alleged offenders: (1) those who had to file the statements within 72 hours without any prescribed forms and procedures required by law under an illegal notice without the approval of the Commission; (2) those who submitted the statements in the prescribed forms and procedures under the Rules framed in March 2007; and (3) those who neither suffered detention nor submitted the statements, were all subject to same punishment.

would be forced to transfer him to Dinajpur a northern most low grade jail of the country. So again from 2 December no lawyer could come to visit the author at the jail till May 2008 when his lawyer at last obtained an order on 14 May 2008 from the Court of the Additional Chief Metropolitan Magistrate, Dhaka, to visit him for consultation.

²⁹ See the *Daily Amar Desh*, 12 January 2008.

³⁰ See the *Gazette* notification dated 29 March 2007.

Abuse of Law and the Trial

The purpose of enacting the Anti-Corruption Commission Act 2004 was to have an independent Commission primarily to deal with corruption of public servants. It would act on its own with its own prosecution unit free of any political or outside influence of any other branch of the state and punish those guilty tried in a court under the existing law, the Criminal Law Amendment Act 1958 as amended in 2004. The principal objective was to take into account the public servants including the public representatives whether as a Minister or a Member of Parliament or in any other capacity down to the level of the Chairman of the Union Parishad for offences committed under the Prevention of Corruption Act 1947 and the provisions related to corruption of public servants contained in the Penal Code as included in the schedule of the Act 2004. These provisions of law are related mainly to acquiring of pecuniary gains by abusing official position of the 5 kinds mentioned in the Act of 1947 out of which Section 5(e) deals with question of owning or possessing properties by a public servant or any of his dependants disproportionate to his known sources of income and, if found guilty, such public servant could be punished with an imprisonment upto a maximum of seven years or with fine or with both and confiscation of properties related to the offence. For the same offence of having wealth beyond one's known sources of income an omnibus independent provision was made, applicable to all citizens, in Section 27 of the Act 2004 for which a person could be punished for a maximum of 10 years but minimum of 3 years with fine and confiscation of properties. Connected with this provision was, Section 26 incorporated for punishment of a maximum of 3 years of imprisonment for submitting incorrect statements.

So the distortion of the Act 2004 and its wrongful application has taken place in the following manner.

1. As discussed already, the Emergency was proclaimed to contain a political situation in order to resolve a political crisis. Since the Proclamation was temporary in nature made for a particular purpose, to incorporate the existing self-contained laws like the Anti-Corruption Commission Act 2004 or the Income Tax Ordinance 1984 into the Emergency Power Rules, a subordinate legislation made outside the ambit of the Emergency Ordinance³¹ and Article 141(A) of the Constitution,

³¹ It was later amended giving retrospective effect which was itself unconstitutional.

was not only a violation of the Constitution but obviously done with a surreptitious motive to victimise and punish the politicians.

2. When the Anti-Corruption Commission Act was enacted it was never contemplated that it would, despite being an independent body, be turned into an operative instrument to serve a political purpose of any particular regime and more so under such Emergency Power Rules.
3. While the main purpose of the law was to punish public servants for acquisition of properties or making any pecuniary gains by misusing or abusing their official position, excepting two cases, one against Sheikh Hasina and the other against Khaleda Zia, not a single case had been instituted against any of the 80 listed public servants, ministers or politicians for committing corruption by misusing or abusing their public office or position.
4. All the cases against the ministers and politicians including Sheikh Hasina and Khaleda Zia on the allegation of having wealth beyond their known sources of income were mischievously instituted not under Section 5(e) of the Prevention of Corruption Act 1947 as public servants but under the omnibus provision of Section 27 of the Act of 2004 meant for all other citizens
5. The Commission resorted to apply Sections 26 and 27 of the Anti-Corruption Commission Act to institute cases against the public representatives for allegedly having wealth more than their known sources of income because it was easier to institute such cases for a higher sentence without having to prove any abuse of official position against any person at any time whether he was a politician, a professional, a businessman, a small trader, a contractor or owner of any hut. The law could be used to humiliate, harass and blackmail any citizen in Bangladesh. Moreover, although such cases of allegedly having more wealth than known sources of income were more related to evasion of tax, a civil offence, but they were used as cases of corruption and thus applied as a criminal offence.

Taking the advantage of the state of Emergency in the country and suspension of fundamental rights, the Commission did not hesitate to

scuttle the strict provisions of checks and balances embodied in the Act of 2004. The Commission was in a rush to somehow hurriedly indict the politicians for a quick conviction under the relevant Emergency Rules enacted for this purpose. The gross illegalities committed by the Commission in instituting cases under Sections 26 and 27 of the Act relating to such offences were as follows:

1. After receiving allegations against any person that he is in possession of wealth beyond his known sources of income, the Commission under Rule 5 of the *Bidhimala* (Rules) 2007 was to have a 3-member committee with at least one of them to be a member well-reputed in society as an honest person, to screen such allegation thoroughly to come to the conclusion to hold an enquiry. In none of the cases filed against the politicians the Committee took any such decision nor was it known whether any such Committee was ever constituted and published in any government gazette.
2. Prior to sending a notice under Section 26(1) of the Act demanding any statement of wealth to any person the Commission had to have sufficient materials on record to satisfy itself that the person concerned was actually in possession or owned wealth disproportionate to his known sources of income. In none of the cases filed, the Commission had any such records before they issued the order under Section 26 of the Act.
3. It was clear and obvious that the Commission violated Rule 5 and Rule 17 of the *Bidhimala* 2007 because the list of persons against whom the cases were filed were not prepared by them and were handed over to them by another illegal body called the National Co-ordination Committee (NCC) headed by one of the Advisers General (Retd) M.A. Matin, and the Commission just followed the list and filed the cases in complete disregard of the aforesaid mandatory provisions of law.
4. Rule 6 was violated as no decision was given by the Commission under any guided principles, nor was there any recommendation under Rule 3(8) of the Rules for any meaningful consideration of the Commission. Once the designated officer was to commence enquiry after the Commission had followed the procedures laid in Rule 5 and

17(1), under Rule 8 a personal hearing was to be given to the person concerned by giving him a written notice with all the allegations against him and the said person was entitled to controvert the allegations brought against him orally or in writing in the presence of his lawyers within the time specified in the notice. After such a hearing the concerned officer was to submit a report to the Commission under Rule 7 of the *Bidhimala* by filling Form 2 in which it has been made mandatory that such enquiry officer would enclose the statement made by the accused person with all the allegations made against him and his statement against such allegations under Rule 7(Cha) and the studied comments of the Enquiry Officer on such statement under Rule 7(Chha) of the *Bidhimala*. Although Rule 8 mentioned that such hearing would be given if the Commission had considered it necessary but the Rules 7(Cha) and (Chha) made the whole provision of granting this opportunity mandatory on the part of the Commission to allow him clarify his position by way of controverting the allegations to convince the Enquiry Officer and the Commission not to proceed with the case. So not only the completion of enquiry was illegal without any such hearing but the very approval of the Enquiry Report and the decision to file a formal FIR against the concerned person was equally unlawful.³²

5. Rule 7 was violated as the Enquiry Officer was not appointed by the Commission in the prescribed manner.
6. Under Rule 11 of the *Bidhimala* the same opportunity of a hearing was to be given to the accused person during the time of investigation so that he could refute and controvert the allegations and explain his position in writing and without such a hearing the approval of the report of the Investigation Officer and the decision to file the Charge Sheet by the Commission was totally illegal.

In order to materialise the political agenda of the regime the mandatory provisions of law were mutilated in blatant

³² In the case of author, he was denied of any hearing without giving any cogent reason although he formally requested in writing for such a hearing. The arbitrary exercise of discretion was by itself illegal. Same principle will apply to the provisions under Rule 11 of the *Bidhimala* in respect of granting hearing during investigation.

violation of Rules 7, 8 and 11 of the *Bidhimala*. In not a single case the aforesaid opportunity of being heard, a fundamental principle of natural justice, was given to any accused politician by the Commission without giving any cogent reason as to why they did not consider it necessary to do so. If the Commission was really prudent and functioning independently in order to maintain the transparency of the due process of law, the violation of these provisions of law and procedures would never have taken place. If the checks and balances as envisaged in the law were followed the abuse of law at such a large scale could have been avoided. The credibility of the Commission would not have gone that low.

7. Under Rules 7 and 10 of the *Bidhimala* 2007 the stipulated time-limit has been frequently violated by the Commission to the detriment of the accused persons and forced them to suffer imprisonment for an uncertain period without any bail or trial. Under Rule 7, it was mandatory for the Enquiry Officer to submit his report within a maximum period of 30 working days and under Rule 10, the Investigation Officer to submit his report within a maximum time of 60 days, whereas in most of the cases the Commission committed illegality in approving the report of the officers in violation of the aforesaid provisions of law.³³
8. Article 35 of the Constitution has been violated in as much that a plain reading of the FIR and Charge Sheet showed that the entire case has been made out based on the statement of wealth and income submitted by the accused and use of the same by the prosecution as evidence against him.
9. Since the provisions of a special law are construed strictly as much as that a person is to be sentenced up to 3 years of imprisonment if he failed to submit his statement of wealth and income even one day after the time stipulated in the notice issued under Section 26(1) and the appeal must be filed within 30 days after the conviction without any scope of any condonation of delay even for a day by any court including the Supreme Court, both to the disadvantage of the accused person, the provision of Rule 10 for completion of the investigation

³³ In case of the author, the Enquiry Officer took about 100 working days and the Investigation Officer took 150 days to submit their reports.

within 60 working days can be deemed to be equally mandatory and the prosecution cannot expect any preferential treatment in violation of the principles of equality before law. But the Commission denied following this principle, saying that such time-limit was not mandatory.

10. Although the Anti-Corruption Commission has the role of a prosecutor but because of the nature of responsibility in determining and examining the offences before cases are instituted, the law has also cast upon the Commission to play an independent quasi-judicial role to apply its mind in a judicial manner while giving its approval at different stages. In at least 5 such stages the Commission is vested by law to grant approval in processing a case on charges of corruption—(a) for the acceptance of a case after scrutinising and screening the allegations received; (b) for the issue of the Notice under Section 26 of the Act 2004 demanding the wealth statement on being fully satisfied that they had sufficient information and records in hand to come to such a conclusion that the person concerned was already in possession of wealth disproportionate to his known sources of income; (c) on appointment of an Enquiry Officer for holding the formal enquiry; (d) for approval of the report of the Enquiry Officer and the decision to file the FIR; (e) for approval of the report of the Investigation Officer and the decision to submit the Charge Sheet against an accused. In each of such stages the law obligated the Commission to thoroughly examine the reports and records with a judicious application of mind before it granted its sanction to proceed with any such case.
11. Rules 13 and 15 read with Section 32 of the Act were violated as due process was not followed by the Commission in approving the report of the Investigation Officer and the submission of the charge sheet in court.

It was seriously contended by the lawyers of the accused persons that in most of the cases not all sanctions were given by the Commission and even in cases where such sanction was given, they were only mechanical in nature and could not be said to have been an effective approval granted after any serious deliberation.³⁴ There was

³⁴ At a later stage in a large number of cases the High Court Division issued Rule on this point of non-existence of lawful sanction of the Commission and proceedings in those cases were quashed. See 61 DLR (HCD) 772 and 63 DLR (HCD) 40, 162.

no application of mind on the part of the Chairman and other Commissioners in dealing with the processes of these cases.

Methodology Used in Prosecuting Cases

The methods used by the Commission to institute a case for allegedly acquiring wealth beyond known sources of income against any person, the exercise of which was extremely arbitrary, discriminatory and derogatory to the spirit of the laws, were:

1. Once the Commission had adopted a list handed over to it by a political agency of the government under the name of a National Co-ordination Committee (NCC), it would serve a notice upon the "corrupt" or "durnitibaj" under Section 26(1) of the Act 2004 saying that since the Commission had come to a firm belief that such person had amassed a large amount of properties in his own name or in the name of his wife, children and other dependants³⁵ that person was required to furnish all the information in a statement with regard to his wealth, liabilities and income in prescribed Forms within a specified date and if he did not do so or submitted any wrong or incorrect information he would be liable to a punishment under Section 26(2) of the Act 2004 for a maximum term of 3 years.
2. Once the statement of wealth, liabilities and income was submitted the Commission was to authorise an officer to hold an enquiry. The Enquiry Officer then framed a case against that person based on the same statement of wealth he had submitted by inflating or distorting the amounts shown in the statement to their own liking. In other words, use the same against the accused person as evidence in violation of Article 35(4) of the Constitution. For example, if some one had shown Tk. 50 lakh for the construction of his house say in 1990, the Enquiry Officer would have it increased to Tk. 80 lakh as dictated by the Joint Forces based on some presumptive calculations on the current value made by some hired engineers of Public Works Department sitting in their offices without considering the value of rod, cement, sand or labour etc. of the period when the

³⁵ Whereas in no case they had any such records or materials to arrive at such a "firm belief." But the "media" trial of the man started immediately. He was already called "durnitibaj" before his trial and conviction.

house was built. The same method was used with regard to all other items like boundary wall, household goods, electrical fittings, furniture, books and so on and at the end it is invariably shown, without exception, that the “*durnitibaj*” politician had more wealth than his known sources of income and he had concealed the differences.

3. Based on the report submitted by the Enquiry Officer, on the approval of the Commission, a formal case is instituted by filing an FIR with the concerned Police Station under Sections 26(2) and 27(1) of the Act of 2004 alleging that the person had concealed information and had acquired wealth disproportionate to his income and therefore liable for punishment. In order to have the case tried under the rigours of the Emergency Power Rules, Rule 15(Gha)(5) was added to increase the punishment from a maximum 3 years to a minimum of 3 years for any incorrect statement and confiscation of property.
4. After submission of the FIR, the Commission is to appoint an official as an Investigation Officer who would conduct the investigation based on the FIR, collect evidence, examine witnesses and take their statements under the law and all the materials required to substantiate the allegations. Based on his report a charge sheet is prepared and on the approval of the Commission the same is submitted in the concerned court of the Special Judge to commence the formal proceedings under Sections 26(2) and 27(1) of the Act 2004 and 15(Gha)(5) of the Emergency Power Rules. Once the court takes cognizance of the charge sheet, charge of the offence was to be framed against the accused person in his presence.

Taking the advantage of the Emergency Power Rules and the arbitrary and discretionary powers it enjoyed, the Commission served the initial notice and had the enquiry and investigation held in total disregard of its own laws namely the *Bidhimala* of 2007 and the Act of 2004 as narrated earlier.

Since the issue of corruption is sensitive in nature, so as a public policy and in public interest, such provision of law needed to be construed strictly to ensure that the law was not misused or abused in any manner and the spirit of the Act of 2004 was correctly applied in order to save the honour of citizens and protect them from public harassment and humiliation. So in such cases of allegations of

corruption the principles of natural justice were to be ardently followed. The law makers having been aware of it made it incumbent upon the Commission to be cautious and judicious in deciding to prosecute any citizen on charges of corruption. But the Commission, while issuing the notice under Section 26(2) of the Act and in filing the FIR and the Charge Sheet did not follow any such principles. On the contrary the Commission violated its own laws and the Rules. As already stated, prior to submission of any kind of report of an enquiry or investigation under Rules 8 and 11 of the *Bidhimala*, the Commission was obliged to grant a hearing to the accused person. But no such opportunity was given before the notice³⁶ was issued or before the FIR was filed nor before the charge sheet was submitted. The Commission seemed to have been more interested in the character assassination of the politicians than performing its statutory functions.

The Commission at the behest of the government agencies launched a vicious and malicious campaign against the accused politicians by leaking out information of fake and fictitious allegations not only at the time an accused was arrested or was on remand but at every subsequent stage of enquiry and investigation which had no relevance to the FIR or the Charge Sheet submitted.³⁷ That is one of the reasons why no hearing was given to any accused person to defend his position during the time of enquiry or investigation as required by law so that they could conduct one-sided vilifications against the politicians to undermine them in public eye and inflict punishment on them in a media trial before the real trial had taken place. The accused being in jail had no opportunity of repudiating such allegations.

Nature of Trial and Denial of Justice

Although the Criminal Law Amendment Act was used as a cover but the trials had actually taken place under the Emergency Power Rules

³⁶ See the judgment of the High Court Division in Writ Petition 6854 of 2007 filed by Sheikh Hasina challenging the Notice issued upon her to submit her statement of wealth on the same ground and the Writ Petition No. 8576 of 2007 filed by the author. See also the incongruity in the language used in three different places in issuing the Notice.

³⁷ In the case of the author, at the time of enquiry on his wealth statement, a six column red-ink lead story was published in some newspapers alleging he had forged bank transactions and received bribes of millions of takas for transfer of Sub-registrars, Kazis, Judges and Public Prosecutors but only four days later when the FIR was filed none of it was in the FIR dated 16 September 2007 Gulshan P.S. Case No. 47 of 2007. The same happened to almost all others including Sheikh Hasina, Khaleda Zia and Tarique Rahman.

regulating and restricting the due process of law and independence of the courts in adjudicating the cases which constituted a denial of justice. The application of the normal and existing laws, not available any more to the accused persons, took away the right to a fair trial which every citizen was entitled to have under the Constitution. As rule of law was trampled instantly by the Proclamation of Emergency and the course of the existing laws like the Anti-Corruption Commission Act 2004 and the Income Tax Ordinance 1984 were made subservient to the Emergency Power Rules 2007, free and fair trial was a far cry. So the propaganda of the government at home and particularly to the foreign community that the trials were being held under the existing laws was totally false.

Firstly, the judges could not function freely and independently in the presence of the army and intelligence officials sitting in the courts monitoring the proceedings. As a result, however, weak or feeble the case or the depositions were, the judgments in all the cases seemed to have been predetermined³⁸ which would be evident from the fact that in all such courts judgments were similar in awarding the maximum punishment including fine and confiscation of properties. For example, under Section 26(2) of the Act for submission of incorrect statement of wealth the sentence could be upto 3 years which meant the court could award a sentence of 3 months or even less if found appropriate depending on the merit of the case but in every case the court had awarded the maximum of 3 years sentence. By adding Rule 15(Gha)(5) in the Emergency Power Rules the independence of the court was curtailed by forcing the court to award sentence of minimum of 3 years notwithstanding the weight or merit of the evidence. Similarly under Section 27(1) of the Act the punishment prescribed in the law was for a maximum of 10 years with a minimum of 3 years, but in every case punishment awarded was for 10 years of imprisonment irrespective of the merit of the case or evidence. No mitigating circumstances like notice of 72 hours or 15 days to submit 100 percent correct statements for the accused being in jail without having access to records, documents or bank statements or lawyers for consultation were ever considered by any court.

Secondly, the trials were held at a distant place away from the mass of ordinary people, heavily guarded by the security forces

³⁸ the statement of Sheikh Hasina alleging that the courts delivered judgments as stated. *The Daily Mannab Zamin*, 14 January 2008.

restricting the entry of even lawyers. Since the public was not authorised to enter into the court rooms and media was restricted in covering the proceedings, it was not an open public trial³⁹ as envisaged by Article 35(3) of the Constitution.

Thirdly, the power of the court to grant bail or grant adjournment was taken away under Rules 19(Gha) and 19(Kha) respectively of the Emergency Power Rules. However necessary it was for dispensation of justice, the court could neither grant bail nor adjourn the hearing beyond 3 days. As a result, in a case the wife of a former State Minister, suffering from breast cancer was made to lie on the floor on a stretcher in the court room for 14 days during the trial and in the case of another wife of a former Minister, because of her acute illness was on a wheelchair all through the trial, both taken from the hospital each day to be tried as co-accuseds because the court had neither the power to grant them bail nor adjourn the trial not exceeding 3 days under the Emergency Power Rules.⁴⁰

Fourthly, the political agenda of the regime was designed to have the accused politicians including Sheikh Hasina and Khaleda Zia convicted and sentenced "by any means" however distorted the methods were or however unfair the trial was. In order to achieve this goal, besides the restrictions on bail and adjournment, under Rule 19(Uma) no accused could go to the Supreme Court against any illegality or impropriety committed at any stage by the lower court till the trial was over and the judgment delivered, denying the accused a fair trial and the Supreme Court was denied of a power enjoyed for more than hundred years to intervene in such events for ensuring justice.

Finally, as the primary goal was to isolate the politicians from the people, provision was made to ensure that such persons once convicted could be debarred from taking part in the election. So to get the accused convicted became the primary objective, notwithstanding the quality of evidence or illegalities of the proceedings. Under Rule 11(3) of the Emergency Power Rules such a person would not be entitled to bail or stay the judgment of the trial court till his appeal was disposed of, no matter how many years it took. Under Rule 11(5) the

³⁹ See statement of Sheikh Hasina alleging that court was holding trial in camera. Khaleda Zia made the same allegation when she appeared before a court. See the *Daily M Zamin*, 14 January 2008.

⁴⁰ The former was Sabera Aman, wife of Amanullah Aman and the latter was Sigma F wife of Barrister Nazmul Huda.

convicted politician would not be able to take part in the election of the Parliament which was contrary to existing laws, judicial precedents and Article 66(d) of the Constitution. If the old dictum of Lord Denning, that justice should not only be done but must be seen to be done, is any guideline in jurisprudence, the way these trials were held under the Emergency Rules made the entire process of prosecution and trial a mockery of justice held only in courts like Kangaroo Courts.

The Anti-Corruption Commission lost its independence and neutrality and so did the courts on the day the Emergency Power Rules 2007 included the Anti-Corruption Act 2004 within its ambit and the Commission before and after its reconstitution engaged itself in prosecuting only those listed by an executive agency, NCC, linked to carry out the political agenda of the Army Chief. Consequently in the drive against corruption the Commission only had to go along with a highly discriminatory policy of victimising and harassing those politicians who did not fit into the political scheme of the regime. It not only left out a large number of widely known corrupt politicians, businessmen and other professionals on political consideration but also did not lay its hand on any of those who were favoured by the regime. Nor the Commission could act independently in demanding the statement of wealth from the Advisers alleged to having more wealth than income.⁴¹ Nor did the Commission had the courage to probe into the allegations surfaced in the media about the Army Chief. It was also intriguing to see why no allegations of corruption could be framed by the Commission against any of the army officers serving or retired.

While a speedy trial was desirable and accepted as a right enshrined in Article 35(3) of the Constitution but the makers of the Constitution never contemplated that Emergency Rules would trample the continuity of the normal laws of the land or would allow any trial where public would have no access or the defence would be denied of consultations with their lawyers or it would allow any perpetration of injustice done by way of denying justice to apply the dictum "Justice hurried is justice buried." In most of the cases hurriedly completed and judgments delivered so far were based on weak and concocted evidence, incongruous and unreliable depositions and the illegalities committed by the Commission in instituting such

⁴¹ See the *Daily Manab Zamin*, 14 January 2008.

cases. So most of the convictions would not stand the test of law at the time of hearing of the appeals.⁴² So what would be the result at the end? It would fulfill a political design of venom, vendetta and character assassination against some of the politicians chosen by the regime and to shut them in jail for as long as possible but eventually most of them would walk out of prison firstly on bail despite the incongruous judgments of the Appellate Division and then be declared innocent after winning the Appeals.

If there was no Emergency or the interim government was functioning under the Constitution for only 90 days like the other 3 interim governments had done in the past or the Emergency Rules were not made applicable to the normal existing laws like the Anti-Corruption Commission Act 2004 or Income Tax Ordinance 1984 or cases were not instituted for offences committed before the date of the Proclamation of Emergency,⁴³ the Commission could still function under its own laws and the Constitution. In a normal situation an accused would have been entitled to bail, consult his lawyers whenever he wished, prepare his defence to his own satisfaction and seek remedy from the Supreme Court if the lower court had committed any kind of illegality during the trial. If convicted he could obtain bail on the admission of appeal, had the judgment of the trial court and its order of confiscation of properties stayed and would have expected a fair trial conducted in an open court with judges functioning freely and independently in a democratic environment. That would put the Commission into the real test for it to function effectively and punish the corrupt “*durnitibaj*” politicians or anybody else. Its discretionary power in pursuing a “pick and choose” policy or

⁴² This came true in the first of such cases when in the Appeal of Mr. Mohiuddin Khan Alamgir, a Member of Parliament and a former State Minister of the Awami League Government, the High Court Division had set aside his conviction and sentence of 13 years and acquitted him of all the charges of corruption with regard to his wealth and income upheld by the Appellate Division. See *The Daily Star* and all the newspapers on 14 July 2009. In every such appeal the Anti-Corruption Commission had lost and the convicted politicians were freed. See 15 BLC (HCD) 107 and 62 DLR (AD) 290.

⁴³ The controversy whether any offence committed before the Emergency was proclaimed could be tried under 3(Ka) of the Emergency Ordinance needed interpretation of the Appellate Division, although the High Court Division held that 3(Ka) would not apply to such cases. This Section 3(Ka) was subsequently incorporated in the Emergency Ordinance. See *Gazette* notification on 16 April 2007. At a later date the Appellate Division in a controversial judgment however reversed the decision of the High Court Division.

any misuse of Sections 26 and 27 of the Act 2004 would have been under constant scrutiny forcing the Commission to exercise those powers with caution and yet survive as an independent, respectable, permanent institution with its own honour and dignity.

So the performance of the Anti-Corruption Commission suffered from a dire lack of integrity. Instead of being able to perform more on its own, free from any political influence during the tenure of a non-party care-taker government, the status of the Commission was reduced to a more subservient position than the erstwhile Bureau of Anti-Corruption. The performance of the Commission if examined and analysed in the light of this discussion, would be seen that the law has not only been misused or abused extensively but the institution of the Commission itself has been debased to such an extent that it would never be able to stand up to survive as an independent entity in future. Having set a precedence of working almost as an agent of the regime in carrying out its political motives every government in future would tend to use the Commission in the same manner.

Instead of playing a quiet, normal and dignified role, the presence of its Chairman was loud, noisy and media-loving. In the national context, the best of the beneficiaries of the entire operation of the "drive against corruption" were the best of the looters, those who had really plundered the plums and made themselves rich overnight at the cost of the nation and yet remained free to thrive other than those few put in jail. Those who were listed by the NCC and prosecuted by the Commission were also lucky to stand on the same footing of those who were not corrupt but were put in jail with them. They were as much a "*durnitibaj*" at par with Sheikh Hasina or Khaleda Zia and some other senior leaders whose arrest on charges of so-called corruption only honoured and morally boosted the real offenders. Again, the big ones arrested were also equated with those who were apprehended on charges of stealing relief goods worth only Tk. 2000 or on charges of extortion of the same amount or little more.

Having had arrested the politicians of all grades and varieties and not found any evidence of corruption against many of them, ego worked more than reason. Having found no formidable case, a large number of politicians including Sheikh Hasina were charged with the trumped-up offences of extortion forcing private individuals to file such cases, although extortion by itself was not an offence to come under the Act 2004. The misuse of the law for harassment of

respectable citizens on charges of extortion went to the extent of confining many others including Kazi Zafarullah, a renowned businessman and Awami League leader for an amount of Tk. 50,000, Abdul Awal Minto, the former President of the Federation of the Chambers of Commerce and Industries for Tk.50,000, and Mohammad Motiur Rahman Talukder, a former MP from Barguna convicted and sentenced for 17 years on a charge of extortion of Tk. 50,000.⁴⁴

Despite all the wild publicity about the corruption of politicians with allegations of stealing thousands of crores of taka, not a single case could be filed against any of the national leaders including those of Sheikh Hasina or Khaleda Zia. None of the alleged extortion cases against Sheikh Hasina exceeded 4 crores.

The case of NIKO contract was ridiculous as it cited an imaginary loss of 26,000 crore takas, knowing that there could not be any criminal case for any loss incurred in a decision by any Prime Minister on behalf of the government under Section 5 of the Prevention of Corruption Act 1947. The allegation that Sheikh Hasina allowed NIKO, a Canadian company in a Joint Venture with BAPEX, a government company, to explore gas in three abandoned fields in Feni, Chattak and Kamta by allowing them an additional area of Chattak (East) and relaxing the tender procedures in violation of standard practices and thereby caused a loss of about 13,000 crores taka. Khaleda Zia as the successor Prime Minister had caused a further loss of another 13,000 crores for allowing the terms of the contract to continue was ridiculous. Firstly, a criminal case based on an imaginary loss of gas was by itself a preposterous preposition. Secondly, on both the issues, inclusion of Chattak area as a whole and abandoning of tender procedures was part of the joint Venture Agreement between the NIKO and BAPEX as an international contract had to be honoured. Thirdly even if the decision given by the government of Sheikh Hasina and continued by Khaleda Zia was irregular, it would never constitute a criminal offence. Finally, if the contract was so harmful for the country why was it not rescinded by the interim government to stop continuing loss to the nation and why had the Chief Adviser and his men not been prosecuted for the same offence? Having found no other case of

⁴⁴ See the verdict in Case No. 59 of 2007 of the Court of the Addl. Session Judge, Barguna given on 20.9.2007 in G.R. Case No. 103 of 2007. There was a competition among the judges of the lower courts in awarding highest sentences, largely due to fear generated by the presence of the army personnel observing the proceedings in the court.

corruption against either of them, the interim regime introduced this case more for scandalising and humiliation than punishing them for corruption. The proceedings of this case like the other similar cases against the two leaders were stayed by the Supreme Court.

So had there been no Emergency or the Emergency was revoked would then the drive against corruption not continue? Would it come to a halt? Would the Commission not carry out its functions any more? Would there be no cases instituted any more against the corrupt “*durnitibaj*” politicians? Was it meant to be a one-time operation? Is that the position the Commission wanted to take?

Whereas when the Anti-Corruption Commission Act 2004 was enacted by an elected Parliament, the Commission was perceived to operate as an independent institution in a democracy under the normal existing laws following the principles of “due process of law,” free of any political influence or consideration. It was never contemplated that an Emergency or Martial Law would be required for the Commission to function.

Role of the National Board of Revenue (NBR)

Otherwise a traditional institution, the NBR is the principal revenue collecting agency of the state run under a comprehensive law called the Income Tax Ordinance 1984. In a small economy like that of Bangladesh the national budget depends on the mobilisation of the internal resources of the country, the largest portion of which comes from the collection of income tax, VAT, customs tariff and duties, all being controlled and supervised by the NBR. Being a part of the most vitally important financial sector, the effectiveness and competency of the NBR has always been a priority in the agenda of every government. Persuasion, orientation and transparency in motivating the citizens to pay their due taxes on time has always been the core philosophy of collection of revenues and the responsibility of the Tax authorities has always been to gain and enjoy the public confidence so that they can pay their taxes in a simple and easy way without any hassle or harassment or additional cost in bribery and gratuity.

The Ordinance of 1984, which repealed the English Law of 1922, is a self-contained basic legislation amended from time to time, based on the same principle of collection of revenue practiced in other countries of South Asia. Although the number of registered tax payers claimed to be about 3 million (TIN holders) but not even half of them actually

pay taxes, the lowest number in this region in ratio to population. The number of those who pay tax designated as Members of Large Tax Payers Unit would not exceed 15% and the rest are all small and medium size non-corporate tax payers. The reforms in the philosophy of taxation and its collecting system have always been an important issue for the governments as well as the tax-payers. The most pertinent challenge has always been to enlarge the net of taxation over those who are liable to pay tax and removal of difficulties faced by those who pay the tax due to anomalies and in the system of assessment and the bureaucratic procedures followed by the tax authorities.

Nonetheless non-payment of tax by those who are liable to pay and evasion of tax by both the paying and non-paying groups, is an universal phenomenon, a common psyche works among the citizens in almost all the countries of the world, rich or poor, although the scale and dimension varies from country to country. It is also a common fact that there is no country where individuals or corporations do not tend to evade tax in some form or other, taking the advantage of the law and the system practiced in a given country. But again, each country has developed its own laws and system to cope with the issue and in some countries like in Scandinavia such incidences are far less acute than others in Europe. In developing countries like Bangladesh the issues are not only acute but complicated because of the over-all socio-economic environment and the inherent weaknesses in the collecting system itself practiced under the man-made procedures followed in the offices of the NBR. Over the decades the system has grown in such a manner that one could go on doing business or earn money without paying any tax and there are many who would just avoid the tax authorities for the fear of being harassed once they fall into their net and there are who pay taxes as are necessary without disclosing all the income. There would be few citizens particularly amongst the professionals like doctors, engineers, architects, accountants, lawyers, corporations or individuals who would be able to claim that all their incomes are disclosed to the tax authorities in full. The corruption, malpractices, irregularities and harassment in the offices of NBR are also responsible for the growth of such a culture in the revenue sector. So the culture of evasion of tax, like in any other country prevails in Bangladesh and it has always been so in the past and would continue to be so in future too. The remedy lies for minimising such tendency is in the rationalisation of laws, rules and procedures, introduction of

modern technology, a transparent and accountable methodology in collection of taxes, a continuous sustainable monitoring mechanism and the restructuring of the NBR itself.

But despite all the problems, weaknesses and challenges found both by the tax-payers and the tax authorities, NBR as an institution of revenue collection had so far maintained a stable independent system having had nothing to do with the politics of the country. It maintained its own identity in collecting revenues in accordance with the budget estimates notwithstanding the nature and system of government, nor had it anything to do with the political party in reign at a given time. The NBR and its collecting authorities have followed the procedures laid in the statute with two fundamental principles: (1) pursue a policy of collection and not punishment for augmentation of revenue; and (2) maintain confidentiality in all its dealings and transactions with the tax payers as contained in Section 163 of the Ordinance.

But strangely enough, soon after the Emergency was proclaimed the NBR started doing things what it did not do in last 36 years. Abandoning its own statutory obligations and the tradition of independence it had maintained in the past, the NBR joined the bandwagon campaign against corruption engineered by the military unit of the government as a political agenda of the regime and subjected itself to the Joint Forces and other agencies and allowed its own Central Intelligence Cell to accept the command of others who had nothing to do with the collection of taxes. Nor the NBR objected to making its own statute, the Income Tax Ordinance 1984, subservient to the Emergency Power Rules 2007 when this law was included in Rule 15 of the Rules. Like the Anti-Corruption Commission, the NBR joined the crusade against the politicians for tax evasion and started acting by way of intersecting bank accounts of the politicians and businessmen with wide publicity in newspapers violating its own rules of confidentiality.⁴⁵ The NBR started invoking its powers under Sections 113(f) and 117(4) of the Ordinance by freezing bank accounts and collecting information of all such accounts from the banks which they

⁴⁵ The first such action taken was against the author who was not in any list of the "corrupt" persons, by an order of 1 March 2007 passed by the Central Intelligence Cell of the NBR without any notice to him or giving any prior hearing for tax evasion. The author was shocked and challenged the order in Writ Petition No. 2461 of 2007 still pending in the High Court Division for final disposal. The freezing order was blown-up in the media.

had hardly done before and brought the institution of NBR into the limelight of media by the frequent appearance of its Chairman in television channels and newspapers, who otherwise in the past always maintained a low profile in public. Such action only created panic in the mind of all professionals and businessmen causing erosion of their trust and confidence in the NBR.

More startling was that the NBR for the first time had started prosecuting the citizens in criminal courts on the ground of tax evasion. The NBR breaking away from its long standing tradition joined the war of vendetta against the politicians by directly invoking Sections 165 and 166 of the Ordinance 1984 without any prior notice or hearing or any proceedings drawn for assessment or reassessment or revision of the income tax returns earlier filed. Under Section 165, for making false verification, punishment could be upto a sentence of 3 years and under Section 166, for concealment of income, punishment could be to the extent of 5 years of imprisonment. Till November 2007 the NBR made a search of a total 410 bank accounts, frozen and seized 119 bank accounts including those of some eminent businessmen.⁴⁶ The common methodology used by the NBR in most cases was that once a person was found guilty of purportedly having more wealth than his known sources of income, the NBR soon thereafter filed a separate case against the same person based on the same income the person had already been punished for by the court of a Special Judge. Upto October 2007, 46 cases on the ground of tax evasion were approved by the NBR and in at least 12 such cases the accused persons were tried under the Emergency Power Rules and convicted and awarded highest sentences of 3 years under Section 165 and 5 years under Section 166, although the law allowed a minimum of 3 months for both the offences.⁴⁷ Moreover, the offence of evasion of tax being basically a civil offence, trial of the accused in the court of the Special Judge under the Criminal Law Amendment Act and the Emergency Power Rules and invocation of penal provisions unilaterally without

Having seeing the newspapers when the author phoned up both the Chairman and the Director General they were apologetic saying that they did it at the instructions of the higher authorities. When asked why it was given in the newspapers again they expressed their ignorance about it. The immediate effect of such an action was, it terrified all the professionals and businessmen fearing similar action against them.

⁴⁶ See the *Daily Manab Zamin*, 11 December 2007.

⁴⁷ As mentioned earlier, the courts monitored by the military agency officials appeared to be in a competition to award the highest sentences.

following any prescribed procedure raised issues of law and the legality of such trials and convictions. On such and many other grounds almost all the judgments were challenged in the High Court Division for final disposal.

In the meantime however the government on 4 June 2007 issued a notification⁴⁸ signed by the Secretary of the Internal Resources Division of the Ministry of Finance who happened to be also the Chairman of the National Board of Revenue considering the growing pressure of all sections of tax payers protesting against such arbitrary actions of criminal prosecution by the NBR and to collect more revenue, granted an exemption for those who had not paid tax on their undisclosed income in the preceding 5 years, on payment of 25% tax with a fine of another 5% within the specified time and any one did so no further penal action would be taken against him. In other words, the government provided an opportunity to the tax payers to pay a tax of 30% on their income so long undisclosed and untaxed to legalise all their income for which they would not be asked any question.

Here again, the NBR played the most undesirable role of discrimination by not allowing a number of the former Ministers and public representatives to deposit their tax on payment of 30% as allowed by the notification, although till the last year with a payment of only 7% one could legalise all his untaxed and undisclosed income. And yet NBR refused to accept any such tax from the politicians on a flimsy ground that NBR already had allegation of tax evasion against them whereas the whole relief given in the notification was for those who did not pay or evaded payment of tax to immune them from any kind of penal action for such tax evasion.⁴⁹ This discriminatory behaviour of the NBR made this institution more an organisation to serve the political desire of the regime rather than collect revenue for

⁴⁸ Although under SRO No. 98 Ain/2007, *Gazette* notification dated 4 June 2007, the government exempted all the citizens from the offence of tax evasion on payment of a fine of 5% on top of the normal tax of 25%, this contradictory policy of exemption and persecution pursued by NBR made its position more ridiculous.

⁴⁹ After the publication of the notification in the newspapers the author on 14 July 2007 submitted an application to the appropriate official of the NBR through the jail authority assigning an amount of Tk. 4 crores subsequently refixed at Tk. 3,84,51,994.00 from his seized FDRs on account of his professional income which he had not paid unintentionally due to his heavy political preoccupations and for not being advised correctly by his tax adviser. To his utter shock the author received a letter dated 19.7.07 from the office of NBR refusing to accept the revenue of the state on a ground that they had allegations of tax

the state. This self-contradictory and discriminatory provision of the Notification scared away a large number of tax payers as a result of which the government's revenue income on this count, was far below the amount it expected.⁵⁰

On the question of prosecuting the tax payers straightway under Sections 165 and 166 of the Income Tax Ordinance without any proceedings on assessment or reassessment of the income on the returns of a tax payer or any tax escaped earlier, and have them convicted and sentenced upto an extent of 3 years for making false statement and 5 years for concealment of income, in other words upto 8 years for tax evasion, a writ petition was filed by a former State Minister challenging the proceedings against him in the court of a Special Judge under the aforesaid section of the Income Tax Ordinance and the Emergency Power Rules. The High Court Division having heard the Rule for 16 days assisted by some eminent lawyers as Amicus Curiae delivered a comprehensive judgment on 5 December 2007, elaborating the entire philosophy and laws of taxation followed and practiced in South Asia.⁵¹ The court made the rule absolute declaring the proceedings pending in the court of the Special Judge illegal and unlawful by saying, "Commencement and continuance of the trial of the petitioner in Special Case no. 6 of 2007 in the 5th Court of the Special Judge at Sher-e-Bangla Nagar, Dhaka must be held to be a serious abuse of the process of the court and vitiated from its very inception."

evasion against the author which was not only contradictory to the purpose of the notification but totally illegal and politically motivated. Moreover the author was never informed of any such allegation nor he was served with any notice nor there was any case against him anywhere. The author had challenged this letter of refusal as being unlawful and malicious in Writ Petition No. 7057 of 2007 upon which the High Court Division issued a Rule and directed the NBR to collect the aforesaid amount which they did not do for political reasons. A notice of contempt of court was issued and the matter awaited disposal for a long time due to non-submission of any Affidavit-in-Opposition from NBR to avoid facing the court.

⁵⁰ See the *Daily Amar Desh*, 2 October 2007 and the *Daily Prothom Alo*, 12 July 2007.

See the *Gazette* notification SRO No. 98 dated 4 June 2007.

⁵¹ See the judgment delivered by Justice Mohammad Abdur Rashid in Writ Petition No. 7451 of 2007 filed by Iqbal Hasan Mahmood. This illustrious pronouncement was however reversed on 20 May 2008 by a controversial judgment of the Appellate Division presided over by the then Chief Justice Md. Ruhul Amin in Civil Appeal No. 88 of 2008. Subsequently, despite this judgment, the High Court Division in similar matters continued to issue Rule and stay the proceedings. See 60 DLR (AD) 147 and 60 DLR (HCD) 88.

During the hearing, the lawyers of NBR admitted that it had never in the past initiated any such prosecution under Sections 165 and 166 of the Income Tax Ordinance upon which the Court observed, "it was disclosed on behalf of the Board that no such prosecution for offences of concealment of income or furnishing false statements in the verification in the returns or document was ever initiated in this part of the world." The Court asked, "Why then the time of Emergency was so suited to them to flood the special courts with such prosecution?" The above questions of the Court only confirmed the allegations of how much and to what extent an institution like the NBR allowed itself to be used as a vehicle to fulfill a political agenda of the interim regime and how much it was motivated to prosecute and victimise the politicians and public representatives under the garb of Emergency which they had never done before.

As the Income Tax Ordinance was included in the Emergency Power Rules and NBR accepted the political subordination of the National Co-ordination Committee on corruption it pushed the authorities of taxation into an abyss of disharmony in the financial management of the state. Consequently, this high-profile controversial role and its surreptitious self-defeating interpretation of its own SRO with regard to payment of the 30% tax for tax evasion made itself subject to severe criticism by all sections of the tax payers particularly the business community as soon as NBR started to intrude into their bank accounts. In the process the traditional conservative institution of NBR lost the trust and confidence of the people. Instead of encouraging and inspiring the tax payers to pay more tax, the over-enthusiastic Chairman of the Board frightened the people to the detriment of the national interest. Although the Chairman of the Board was removed⁵² at a later stage but a colossal damage was already done to the nation, as soon as the NBR under his authority decided to break the statutory discipline of confidentiality of transactions between the tax-payers and the tax authorities and started prosecuting the tax payers in criminal courts straightway for evasion of tax. The effect of all the measures the NBR took was disastrous for the normal business environment. The respect for laws and their age-old practices in collection of taxes, given away to a stop-gap *ad-hoc* umbrella of Emergency, was not only short-sighted but it inflicted a permanent

⁵² See the *Daily Amar Desh*, 23 December 2007.

injury to the system itself setting a bad precedence for the future. The system of collection of taxes being a continuous process it was extremely unwise for the NBR to embark on a "one-time operation" to take the ill-conceived advantage of the Emergency. As the list of those who were made targets for NBR to take action was prepared by the politically motivated National Co-ordination Committee, the NBR had lost its organisational and statutory independence.⁵³

Role of Bangladesh Bank

The most suicidal of all was, when the Bangladesh Bank, the repository of trust and confidence of the citizens irrespective of their profession and the custodian of the discipline and confidentiality of banking transactions, started taking a direct role in summoning the details of the accounts of those listed by different agencies of the government. Terming the politicians or businessmen as "*durtinibaj*" before they were found guilty, the Bank like others, also went for wide media coverage by publishing a list of 199⁵⁴ such "*durnitibaj*" to show its unison in the political "drive against corruption." Without considering the damaging effect on the overall economy of the country and public confidence and trust in the banking system, several agencies engaged themselves in asking all the Banks to furnish detail information of bank accounts of individuals, companies and business houses. Instead of resisting such kind of illegal instructions, the Central Bank of the country took up just an opposite role damaging its own standing, authority and dignity. During this period it was found that besides the Bangladesh Bank, the National Co-ordination Committee, the Anti-Corruption Commission, the NBR, the DGFI, RAB, Task Forces and even the Joint Forces⁵⁵ were demanding of the banks to supply to them information about the accounts of persons they named and the banks, violating their own rules and discipline, out of fear, were obliged to forward such information to the detriment

⁵³ The National Co-ordination Committee referred 207 such cases to NBR. See the *Daily Ittefaq*, 18 January 2008.

⁵⁴ See the *Daily Manab Zamin*, 6 August 2007. In this list of 199 given by the Anti-Corruption Commission, 80 belonged to BNP, 60 to Awami League and 3 to Jamaat-e-Islami.

⁵⁵ See that even an intelligence agency demanded the bank accounts of Latifur Rahman, former President of the Metropolitan Chamber and Commerce and a leading industrialist although the government announced not to disturb the businessmen anymore. See the *Daily Ittefaq*, 8 January 2008 and the *Daily Jugantar*, 7 January 2008 on Latifur Rahman.

of their own institutional interest as well as that of their clients. The disastrous effect was that people at large stopped depositing money into the bank and those who could manage started sending the money out of the country. Then, the newly imposed condition that for withdrawal of any amount above Tk. 5 lakh from his account a person had to explain the reasons to the satisfaction of the bank for such withdrawal and some time referred to the Central Bank for clearance had a bleeding effect on business and investment in the country. Once the names of individuals or companies published in newspapers asking for banking information, it was not the number of persons or their names but the fear, panic and tension it created ruined the public trust in the banking system as a whole.⁵⁶

⁵⁶ See how the drive against corruption seriously affected the banking system causing reduction in both borrowing and deposit and increased the volume of loan default and idle money. *The Daily Naya Diganta*, 31 August and the *Daily Amar Desh*, 2 January 2008, and the *Daily Manab Zamin*, 1 January 2008.

Chapter 5

The Conspiracy Theory

Weakening Bangladesh as an Independent State

That leads one to the next question, was there any hidden agenda backed by forces who were attempting to weaken Bangladesh politically and economically? Was it a conscious, deliberate attempt to destroy the political institutions of the country and dismantle its socio-political structure? Why the politicians as a class was attacked? In no society, political leaders emerge overnight. It is something gifted, developed and grown through time and events of history. Similarly, all professions are developed through experience and expertise, struggle and sacrifices over time. So to try to destroy the politicians or political institutions was to destroy the roots of the state. It is very easy to destroy an institution but very difficult to build it. While the politicians create the state they also make mistakes and cause distress to people at times, but the state under no circumstances could be sustained without them and without political institutions.

In a marginal economy like Bangladesh, it has taken more than 3 decades to raise the country to the present level. Ms. Hua Du, the country Director of the Asian Development Bank in Dhaka said, "Bangladesh is facing the worst economic crisis of last 36 years" while presenting a quarterly report of the Bank on Bangladesh.¹ When the independence was achieved it had no economic base, no infrastructure, no industrial or international business experience worth mentioning. It had no private sector as such, no fiscal or banking expertise. From that minimal position Bangladesh entrepreneurs have taken the country to a position of a more substantial level by pushing the nation into a new phase of development where people have a higher purchasing capacity, a better

¹ See the *Daily Amar Desh*, 15 December 2007.

standard of living and bigger opportunities for employment and investment. The random attack on the most potential and established business and industrial houses grown all through these years had not only hit the foundation of the economy but shaken whatever base it had built for gaining a respectable seat in the competitive world economy. The late realisation of the civil administration that such actions, against the economy of the country had caused an irreparable damage to its progress was not easy to prevail upon the military unit of the regime. That is why the half-hearted decisions taken for the recovery of the economy could not be implemented and all their efforts finally failed to have any impact on the overall situation in the country. The shattered confidence of the business community could not be recovered during the entire period of the interim regime.

After the Emergency was proclaimed the political turmoil and confrontations subsided and the overall situation calmed down. It was then expected that in the absence of frequent hartals, demonstrations, strikes, blockades, mass protests and political harbingering between the two major parties and their leaders business would now thrive, banks would flourish, exports would multiply, prices of essentials would be contained, law and order situation would improve, investment and employment would increase, new factories would be installed, load-shedding of electricity would go, the GDP growth rate would exceed 7.5%, imports would accelerate and the syndicates under political patronisation would vanish to relieve people of their market manipulation and the people would see a new life of peace and prosperity in Bangladesh. The people, however, by the time a year had expired, started wondering why in such an otherwise peaceful environment where political confrontations had ended in the absence of the two lady leaders fencing at each other with murderous swords, the decline in every respect had been so sharp and prominent, despite the sacrifice people had to endure in foregoing their democratic rights and suffer the rigorous autocracy of the Emergency laws. Compared to the loss running into billions of takas in economy and the suffering of the nation in terms of its image, social stability, political strengths and democratic institutions—the arrest, humiliation, character assassination accompanied by physical torture of around 100 politicians and businessmen including the two former Prime Ministers could be said to have been insignificant. Who is going to be held responsible for the enormous loss caused to 150 million people only to punish 100 of

them, when vice of corruption and corrupt practices would continue in any case? Who is going to compensate for inflicting such a permanent injury upon the very foundation and sovereignty of this country?

As strong political parties were the essential preconditions to build political institutions, Bangladesh reached a better position compared to most of the countries in South Asia. The emergence of two major political parties, equally mass-based, having grass-roots support and organisation had been an advantage to develop a healthy and stable political system in the country. Despite all their inadequacies and failures in coming to an agreement on appointment of an acceptable Chief Adviser in 2006 and their continued politics of confrontation that followed, the reality was that in the context of Bangladesh the parties represented the people's power. But at the same time the bitter experience of Emergency and its rigorous Rules under a repressive regime was expected to modify and reform their style of leadership and their respective parties to bring about effective reforms within their parties and change the political culture.

So the attempt of the Army Chief, inspired and supported by his civil cohorts, confined in seminar rooms of luxurious hotels of the capital and having no link with the "people" they talk about, to impose reforms on political parties was not going to yield any result and it did not. In the process the attempt made was only to weaken the two major political parties aimed to extricate the two leaders from the leadership position of the respective parties to enable the ambitious Generals to establish their own leadership in the country.

Was it then a hidden agenda pursued by the interim regime to weaken the state sovereignty? Was there a deep-rooted conspiracy, national and international, to turn Bangladesh into a Taliban entity and weaken it as a state? With a hand-picked Parliament elected by dubious means and a weak government run by some Generals, ultimately leading to the destruction of the Army itself by being put against its own people, could it be a design to reduce the country into a dysfunctional "failed state" or "a protectorate"? Is it what the United States or India, the two most relevant friends of Bangladesh would like to see it to happen? Will the people of Bangladesh accept it? Is the new experiment in Afghanistan going to work in Bangladesh? Would India be happy to see this to happen to Bangladesh when they have so many problems of their own?

Chapter 6

The Upheaval

Dhaka University in Revolt

For the common man all over the country resentment against the interim regime had run deep much sooner than expected. They were not very much concerned about the corruption of the politicians and businessmen. What they did not like the public deception the interim government had committed when they turned away from holding the election “at the shortest possible time” and moved to a long-term political agenda and run the country as a regular government. As soon as they found their expectation of having a normal life with prices of essential commodities within their reach or at least not increased further, the electricity was more easily available, employment opportunities were widened and daily labourers could look forward to have them employed during the day and feed their children was thwarted, they started reacting in various ways. Despite the emergency restrictions on the media, they started vindicating the grievances of the small traders whose shops and stores were removed forcibly from thousands of village bazaars, on the half a million hawkers who were thrown out of the streets of the cities and towns, asset-less people who were evicted from the slums on government land, factories which were closed down without paying the workers their legitimate dues, farmers who were beaten up by police for demanding fertilizer at a fair price, whereas corruption remained as before at all levels.

So what followed in the afternoon of 20 August 2007 as a “minor incident” in the playground of the Dhaka University when some students were beaten up and one of the teachers insulted by soldiers of a nearby army camp was only an explosion of the resentment of the people against the interim regime boiled over without any prior motivation or preparation or organisation or any leadership. It led to

an outburst of the students in thousands to engage in clashes with the law enforcing agencies throughout the night in the campus when more than hundred students and five journalists suffered injury.¹ The students demanded immediate withdrawal of the army camp from the university area, punishment of those who were responsible for the incident and treatment and compensation for those who were injured. As the demands remained unresolved, the situation next day had worsened with the students of other institutions and the public at large joining spontaneously the "movement" spread all over the capital demanding the withdrawal of Emergency and return of democracy in the country. The "movement" without virtually any formal leadership was conducted under the banner of a "Student Movement Council." It was further intensified when the University Teachers Association came forward with a much stronger voice to express their sympathy and solidarity on the issue and held a procession joined by the students forging a unique unity of all the teachers and students, irrespective of their political affiliations, to advance the demands for the withdrawal of Emergency and return of democratic rights of citizens.

The next day, August 21, the students of the nearby universities were also on the streets joined by huge number of public causing a havoc in the city life. They burnt vehicles, chanted slogans, held meetings and rallies both in the old and new city areas. Thousands of street vendors who were evicted and dispossessed of their business joined the demonstration. The small shop-keepers, workers recently unemployed, rickshaw pullers, day labourers, slum dwellers and various other classes of people joined in to vent their anger. On the Shahbagh Road an army vehicle was burned down with the driver beaten up. Effigies of the Chief Adviser and the Army Chief were put on flame in front of the residence of the Vice-Chancellor and a second effigy of the Army Chief was burned by the female students in front of the Aparajeyo Bangla.² All the educational institutions observed strike on the day and held similar meetings and rallies in and around their own campuses. Demonstrations were held in all the universities of the country and the students at Chittagong, Rajshahi, Sylhet and other places were on the streets in an extremely defiant mood. The Dhaka University Syndicate came out with a statement condemning the

¹ See for detail all daily newspapers of 21 August 2007.

² See the newspaper reports of 22 August 2008.

police action claiming that their brutality had exceeded all past record including the occupation period of Pakistan army of 1971. The students wanted their 3-point demands fulfilled within 24 hours otherwise educational institutions all over the country would go for strike for an indefinite period. All the pending examinations of the universities were postponed.³ In the meantime, although in an emergency meeting presided over by the Chief Adviser and attended by the Army Chief it was decided to withdraw the army camp from the university campus, hold a judicial enquiry into the incident and they expressed their regret to what happened in the university, the intensity of the protests only multiplied because of the barbaric atrocities of the police inflicted on the general students all-over the night in almost all the dormitories including those of women. The excessive police atrocities committed in the Chittagong and Rajshahi Universities where an army vehicle was also burned created a similar tense situation in the two most important Divisional Headquarters outside Dhaka. In a meeting of the Dhaka University Teachers Association, a 14-point demand was passed including the immediate withdrawal of the Emergency and the teachers decided to hold a silent procession in sympathy and support of the demands of the students and the atrocities they had suffered at the hands of the police. The Syndicate in its meeting also declared that police would not enter the campus unless they were called upon to do so by the university authorities.

On the third day, August 22, the violence had spread dramatically all over the city and other metropolis of the country, with more common people spontaneously taking part in it, demonstrating their anger and dissatisfaction over the issues bringing all the economic activities to a stand-still position. These demonstrations and protest rallies in all places of the capital including the old areas of Dhaka led to blazing of 25 vehicles, damaging another 300, besides attack on banks, police stations, shops, offices and petrol pumps. In the surrounding areas of the university campus the police attacks and the counter-attacks by the students continued for the whole day injuring more than 50 and the same kind of violent fights with the police occurred in every major college in town from Jagannath University to Titumir College. The violent demonstrations took place in almost

³ See the *Daily Ittefaq*, and the *Daily Manab Zamin*, 22 August 2007.

every district town of the country including all the public universities and major colleges⁴ causing injuries to hundreds of students and damaging of public vehicles and properties.

As the situation was going out of control the government backed by the army decided to go for action. Curfew was imposed in Dhaka and all the District towns for day and night, the Dhaka University and all other public universities of the country were closed down including all the colleges of the Divisional Headquarters, the residential halls of all the universities were shut off and students were asked to vacate the dormitories. In the same evening the Chief Adviser addressed the nation and blamed some “undesirable forces and opportunists” for creating an anarchic situation in the country and the government had to take some stern measures. He said that the army camp was already withdrawn from the University campus and those responsible for the beating of the students at the playground would be punished. An enquiry by a retired Judge of the Supreme Court was to be held to investigate into the unfortunate incident. According to a government press note released in the same evening, it blamed the outside forces and non-students to create such an abnormal situation.⁵

The curfew paralysed not only the capital but the entire country. Again because of its ineptness, the government imposed a 24-hour round-the-clock curfew, without announcing any break or closure of public offices, banks and courts. The government employees and other working people walked miles to get to their offices only to hear the announcement at about 10 a.m. that government offices would remain closed and so would the banks and courts. It was also announced that none ought to be on the streets during the curfew hours whereas all those came out had to return home. But by that time as all the law enforcing agencies including the RAB and the troops were on the streets to enforce the curfew, hundreds of people including the school going children and teachers were harassed, insulted, beaten and arrested. With the mobile network cut off, the miseries of people increased. They faced extreme difficulties in buying daily necessities, treatment of patients, transportation to hospitals and due to hold-ups at the bus and launch terminals, railway stations and airports, the harassment was unending.

⁴ See the *Daily Ittefaq*, 23 August 2007 and other daily newspapers of the same day.

⁵ See for more detail, the *Daily Ittefaq* and all other daily newspapers on 23 August 2007.

The university campus and the surrounding areas were taken over by the army along with other law enforcing agencies. The students who could not leave at night because of curfew and had to stay back were all mercilessly beaten up and arrested. All the student hostels of the city were raided by the Joint Forces. At the Aziz Super Market premises at Shahbagh, adjacent to the university, where students resided on their own arrangement were hauled and lined up in two rows and then beaten, causing fatal injuries and then took away 26 students to unknown places. Such physical torture continued throughout the night and the following day.⁶ Similar raids were conducted in all the colleges of the city including the Jagannath and Agricultural Universities and the Alia Madrasah at Bakshibazar where hundreds of students were arrested. The same kind of raids and arrests were made in all the Divisional towns of Rajshahi, Barisal, Chittagong, Sylhet and Khulna.

During this period members of both the electronic and print media also suffered and a large number of them including the photo journalists, to the extent of more than hundred, were either taken to the police station or beaten up in the middle of the street although they had their accreditation cards with them. About 30 of them were beaten up at Motijheel Police Station alone. While the government announced that news reporters would not need any curfew pass, the Joint Forces kept on ignoring such orders. They insisted on having curfew passes for which no office was yet set up.⁷ The government by an order under Rule 5(1) of the Emergency Power Rules debarred the private television channels ETV and CSB to broadcast or display any programme relating to the incidents occurred in the country on the ground that they were critical of the government.⁸

At about 11 a.m., the government announced to relax the curfew for three hours from 4 to 7 p.m. but the mobile network was kept shut again during that period causing a great amount of inconvenience to public. According to the reports published in newspapers, the US State Department, the United Nations agencies, the World Bank and others expressed their concern about what was happening but they all supported the action taken by the government. A spokesman of the US

⁶ See for more detail the *Daily Amar Desh* and all other daily newspapers on 24 August 2007.

⁷ See the *Daily Amar Desh*, 24 August 2007.

⁸ *Ibid.*

Embassy in Dhaka confirmed their support for the government and welcomed the announcement of the Chief Adviser that curfew would be withdrawn as soon as the situation came under control.⁹ During the 3-hour relaxation of curfew thousands of people stranded at various places who were now returning home suffered extreme humiliation at the hands of the law enforcing agencies at the security check posts.

As a reaction to the effigy burnt of both the Chief of Army and the Chief Adviser by the demonstrators in broad day light in the university campus, the law enforcing agencies to show their allegiance to the government stormed not only on the students with a venom by arresting and instituting criminal cases but also on the academics, a shameful episode never happened in this country before. By the second day of the curfew, 19 criminal cases in 13 Police Stations in the city were lodged against 40,000, largely students, 2500 at Rajshahi University, 500 at Barisal B.M. College and 350 at the Pabna Edward College.¹⁰ On the next day the number of accused including members of public reached 100,000 and another 20 cases were filed in Savar, Chittagong, Khulna, Barisal and other towns accusing 17,000 persons.¹¹ In Dhaka alone, 76,000 people were shown as accused followed by random block raids, surveillance and arrest on suspicion in 35 cases.¹²

In simultaneous operations on 24 August the Joint Forces led by the army officers arrested five distinguished professors of Dhaka and Rajshahi Universities. In a mid-night raid which recalled the tragic attack and slaughtering of the teachers by the Pakistan Army during the Liberation War in 1971, the Joint Forces arrested Professor Dr. Anwar Hossain, the General Secretary of the Dhaka University Teachers Association, Prof. Harun-ur-Rashid, the Dean of the Department of Social Science, Professor Sayedur Rahman Khan, former Vice-Chancellor and two other teachers, Professor Malay Kumar Bhowmick and Professor Abdus Sobhan of Rajshahi University.¹³ The arrest of such professors and the way they were forcibly taken away from their homes, intruded by more than a dozen armed personnel at

⁹ Ibid.

¹⁰ See the *Daily Amar Desh*, 25 August 2007.

¹¹ See the *Daily Amar Desh*, 26 August 2007.

¹² See the *Daily Amar Desh*, 27 August 2007.

¹³ See the *Daily Amar Desh*, 25 August 2007.

each residence, to unknown places and detained and interrogated for the rest of the night in sub-human conditions on charges of violating the Emergency Rules and instigating the students to do so, shocked and stunned the nation.

The government decided to ignore the public sentiment and went ahead to prosecute the teachers. The professors of Dhaka University were taken on remand for 4 days and those of the Rajshahi University for 10 days. On police remand, they were not taken to any police station but to some surreptitious blackholes of military intelligence where no humane conditions exist. The two teachers of Rajshahi University on remand were brought to Dhaka for interrogation by the same agencies in the same manner. Interrogated, grilled and tortured, the professors suffered extreme humiliation, and the agony and anxieties of the wives and children were not easy to redress. Although the Chief Adviser assured the Acting Vice-Chancellor when the latter, out of desperation, called on him to express the concern about their well-being, and demanded that the teachers be treated in a respectable manner,¹⁴ it did not help in mitigating their suffering. Along with the teachers, the President of the Central Committee of the Jatiyatabadi Chhatra Dal, a student affiliate of BNP earlier arrested on the same ground was also taken on remand for 4 days. The teachers being accused under the Emergency Rules were not entitled to any bail either. After the days on remand the teachers were brought back to the courts in Dhaka and Rajshahi in a shattered condition. In the court at Dhaka, terrorised and tortured, the General Secretary of the Dhaka University Teachers Association, Dr. Professor Anwar Hossain although told the pressmen that the teachers deeply regretted the attack on the members of the armed forces “who represented the symbol of national unity and solidarity and as the guardian of the students they offered sincere apology to all the members of the armed forces including the Chief of Army”¹⁵ with the expectation that the army would now forgive and forget the incident but to their utter dismay the helpless teachers were again taken on remand for another 4 days in an identical case arising out of the same incident to the same blackhole where they had already passed the last 4 days.¹⁶ In a letter

¹⁴ *The Daily Amar Desh*, 26 August 2007.

¹⁵ *The Daily Amar Desh*, 31 August 2007.

¹⁶ *The Daily Amar Desh*, 31 August 2008.

published later by his wife revealed that Professor Anwar Hossain also told in the court on the same day that like the uniformed soldiers the students, teachers and public also had the right of dignity and by frightening people none could rule the country. Professor Hossain demanded immediate withdrawal of the Emergency and an early election so that the army could go back to the barracks with honour.¹⁷

The bewildered government in desperation looked for the reasons and motives of those who created such an explosion. Like any other government without any popular support, this regime also quickly turned to find out the unknown, speculative, imaginary demons as scapegoats instead of looking into the right causes of such an eruption of public sentiment. One of the reasons why such a large number of students and the leaders of the teaching community were arrested and tortured was to find out who were the forces behind the upheaval so that they could shift the failure of their own intelligence agencies in carrying out their primary responsibility of detecting the true causes or take measures before such kind of incident had occurred.

The reports leaked out to the newspapers by the government agencies, out of these interrogations, pointed to a conspiracy to disrupt the interim government and designed to put the armed forces against the people for political gains. According to these reports about half a dozen of university professors and owners of some private television channels along with the leaders of Chhatra League and Chhatra Dal were engaged in this scheme. Professor Anwar Hossain, as a part of a plan, sent two students to the Dhaka University play ground to pick up a fight with the army personnel.¹⁸ As practiced by the regime with regard to the politicians, the government agencies resorted to the same method of furnishing false, wild and slanderous stories to the press about the teachers and the upheaval, primarily to divert the attention of the people. It was so ridiculous to suggest that those who were arrested and interrogated had voluntarily recorded such self-incriminating stories and helped in assassinating their own character. In such a situation the tendency has always been to discover a conspiracy theory by the intelligence agencies to please their mentors suggesting that the violent movement outside the campus was

¹⁷ See the letter of Mrs. Ayesha Akhtar, the *Daily Manab Zamin*, 21 October 2007.

¹⁸ See for detail the *Daily Amar Desh*, and all other newspapers on 25, 26 and 27 August 2007.

financed by the BNP and the Awami League leaders¹⁹ and the teachers and student leaders were behind the movement to spread all over the country to overthrow the government.²⁰ Finally no less than the Army Chief himself came out supporting the same allegation at a meeting at Shafipur where he disclosed that the 3-day incident was a conspiracy of some “dishonest and corrupt politicians” in order to demolish the image of the regime but he claimed that the government had handled the matter with a strong hand.²¹ He alleged, without any specifics, that millions of taka were spent by the evil forces to let the anarchy loose and destabilise the government. But the Army Chief neither disclosed the identity of those evil forces nor the people heard anything about it at any later stage.²² So the position of the interim government in their own versions of the incident was extremely vague and self-contradictory. While the sources of the intelligence agencies engaged in interrogation revealed that it was the University Teachers Association and student leaders who were behind the plan to spread the movement all over the country to over-throw the government but the Army Chief was asserting that some dishonest and corrupt politicians were engaged in this conspiracy.²³ So in the end, the root causes of such a public revulsion to the interim regime remained in oblivion to the detriment of their own interest and they failed to take remedial measures for any political solution of the crisis the country was facing.

But instead, the regime went for repression of the teachers and students which only frightened and alienated the entire community of the academics and their pupils all over the country. The police at the instance of the military intelligence agencies hurriedly, in less than two weeks, filed two charge sheets to prosecute 8 professors and 12 students under the Emergency Power Rules alleging that they were responsible for the violence and burning of a vehicle of an Army personnel of DGFI.²⁴ As bail was denied to them under the Emergency

¹⁹ Ibid.

²⁰ Ibid. See also the article “Prove the allegations of the attempted subversion,” *The Daily Star*, 27 August 2007.

²¹ *The Daily Amar Desh*, 26 August 2008.

²² See the editorial, the *Daily Amar Desh*, 26 August 2007.

²³ See for both reports the *Daily Ittefaq*, 26 August 2007.

²⁴ See the *Daily Amar Desh*, 2 September 2007 and the *Daily Ittefaq*, 3 September 2007.

Rules all the teachers in Rajshahi including 3 others who surrendered at a later stage were now sent to jail. At the same time the government agencies also sought to remove six teachers by way of a temporary dismissal from their posts even before they were found guilty of any offence. The two professors including the General Secretary of the Teachers Association on the completion of their remand of 8 days were sent to jail in Dhaka.

At the same time, the government agencies persisted on preparing the charge sheets against teachers and students in at least 13 cases out of 53 they had filed against thousands of students and members of public, for which few hundreds were already in jail, mostly under the Special Powers Act without any charge or trial. Although the Joint Forces and Police engaged all their resources to make out all the cases, at the end since they failed to identify the persons to have been directly involved and for lack of evidence they had to submit final reports in 38 cases and left the other two for further investigation relating to the burning of an army staff vehicle.²⁵ Finally, on 9 September 2007, charge sheets in 13 cases in total were filed in the Court of Chief Metropolitan Magistrate, Dhaka, accusing 4 professors and 36 students in two cases which included 15 activists of Dhaka University. The teachers now included Professor Sadrul Amin, the President of the Teachers Association and Dr. Neem Chandra Bhowmick against whom warrant of arrest was issued and when both of them complied with the warrant they were sent to jail. So with the submission of these 13 Charge Sheets and 38 final reports the earlier propagation involving thousands of students and others proved the hollowness of the FIRs and immediately brought a sigh of relief to all the students and teachers who were so long hiding or fleeing from their homes.²⁶

The Vice-Chancellor who was on a visit to the United States when the movement took place, on his return took fresh initiative for the withdrawal of cases and release of the teachers and students as the resentment and dissatisfaction among the whole community were running high. Moreover the universities having been shut down were now faced with multifarious problems, the most fundamental of all being to restore a peaceful environment before they were opened. In a meeting of the Syndicate held on 8 September, it was decided to

²⁵ See the *Daily Amar Desh*, 9 September 2007.

²⁶ See the *Daily Ittefaq*, 10 September 2007 and the *Daily Amar Desh*, 14 September 2007.

“exchange views” between the senior members of the faculties led by the Vice-Chancellor and ten high military officials led by the Chief of General Staff Sina Ibn Jamali at a restaurant in Gulshan Residential Area. In this 5-hour long session both sides expressed their earnest desire to settle the whole matter. They discussed the over-all situation of the university as well as other problems in general. In the meeting, the Generals accused the teachers of instigating the students to create such a situation and the teachers tried to prevail upon the Generals that normalcy could not return to the campus without an early release of the teachers and students to which response from the army officers was that “none was above the law.”²⁷

Despite all such efforts and mutual assurances the government agencies however seemed adamant on proceeding with the cases. At Rajshahi on 18 September charge was framed against²⁸ Professor Golam Satter and Professor Sarwar Jahan and 12 others, mostly students, for burning the army vehicle²⁹ and on October 22, two more charge sheets were submitted against 12 students for committing violence in the campus. As a result proceedings of these cases were continued by the prosecution with full vigour monitored by the military agencies all through the months of September to November. Finally, on 4 December 2007, a Rajshahi Court had convicted four professors out of six and sentenced them to 2 years of rigorous imprisonment for leading a silent procession in violation of the Emergency Rules 3(4) and Section 245 of the Penal Code.³⁰ This conviction and sentence of such professors for exercising their right of expression and free play of thoughts, generated a sharp reaction not only amongst the students but the public as a whole all over the country.³¹ On 9 December, five days after the conviction, under the mounting public pressure and realising that such action would have far-reaching political effect against the government, the President, on applications received from the spouses of the professors, had granted pardon to the convicted teachers under Article 49 of the Constitution.³²

²⁷ See the *Daily Amar Desh*, 14 September 2007.

²⁸ See the *Daily Amar Desh*, 5 December 2007.

²⁹ See the *Daily Ittefaq*, 19 September 2007.

³⁰ See the *Daily Amar Desh*, 5 December 2007.

³¹ See *The Daily Star* and the *Daily Inquilab* and other daily newspapers on 5 and 6 December 2007.

³² See the *Daily Ittefaq*, 10 December 2007.

In the meantime, more initiative was taken to release the teachers and students of Dhaka University in order to restore a congenial academic atmosphere in the campus before the re-opening of the country's prime almatmater and nerve-centre of the capital. But after 66 days of closure when the university was re-opened on 28 October³³ to their utter dismay, the teachers and students started returning to the campus with their compatriots still languishing in jail for more than two months now. The assurances so far given by the civil unit of the government failed to produce any fruitful result and it clearly appeared that the power of taking any decision was not in their hand. The hawks of the military unit of the regime sometime seen and visible and some time unseen and invisible, was not prepared to give in. The students who were still recovering from the wounds inflicted on them by the police decided to go for agitation and started demanding the release of their teachers and colleagues. But before the movement took any concrete shape the country was shattered by a 250 km per hour cyclone called "Sidr" on 15 November sweeping away 29 coastal districts affecting 10 million people and turning at least half of them homeless.

After the calamity was over, on 4 December the students observed a programme of "human chain" with black bands covering their face, the Vice-Chancellor called on the Army Chief and the Chief Adviser, for the release of those who were in jail.³⁴ He reported that the imprisoned teachers would be released and they would soon be amongst them to take part in all the activities. But since there was no visible progress of such negotiation the "most senior Professors" of the university came out openly to stage a procession in front of the Aparajeo Bangla on 6 December protesting the conviction of the four teachers of the Rajshahi University. They called for immediate release of all the teachers and students held in Dhaka and Rajshahi based on a three-point programme which included the assertion of their right to free thoughts and conscience and to uphold the same at any cost. They maintained that their colleagues had committed nothing wrong in exercising their right to conscience by rendering support to the students for a rightful cause and would continue to do so. Arresting and convicting the teachers amounted to a direct attack on their

³³ See the *Daily Amar Desh*, 29 October 2007.

³⁴ See the *Daily Amar Desh*, 5 December 2007.

academic freedom.³⁵ On 7 December, the University Teachers Association in a largely attended meeting passed an unanimous resolution adopting a programme of wearing black badge on 10 December and a sit-in on 11 December. They announced a 5-day ultimatum for the release of the teachers and students and rejected the proposal of giving any kind of bond.³⁶

The military agencies then entered into negotiation with the university authorities and the high officials including the Education Adviser and assured them that the imprisoned teachers and students would be released.³⁷ On receiving such assurance the Teachers Association in a meeting held on 9 November decided to postpone their programme for 2 weeks with the hope that their demand in the meantime would be fulfilled. But the teachers were hoodwinked and taken for a ride. While the demand of the university was for an unconditional release, the military officials meant "release through a lawful process." It was to be a withdrawal of the cases by an order of the government through the Ministry of Home Affairs, a power given under the Criminal Procedure Code to withdraw a criminal case at any stage of the proceedings. While the assurance raised hope in the campus and the community, and the general public were waiting to see the end of this humiliation of the teachers with an honourable unconditional release, all their hopes were shattered when it was found that instead of withdrawing the cases and releasing them from jail, the court on 11 December had now framed a formal charge against the 4 professors and 15 students for holding meetings and processions in violation of the Emergency Rules and were told that they would have to go through the trial and once they were convicted they would be granted clemency by the President under the Constitution if they applied for his mercy on an admission that they had committed the offence.³⁸ More shocking was that on the next day 12 December, a charge sheet was submitted against the 4 teachers and 15 students in the second case as well.

This kind of insult and harassment of the teachers had an extremely adverse reaction amongst all sections of people all over the country. In

³⁵ See the *Daily Manab Zamin*, *The Daily Star* and the *Daily Amar Desh*, 7 December 2007.

³⁶ See the *Daily Manab Zamin*, 8 December 2007.

³⁷ See the *Daily Ittefaq*, the *Daily Amar Desh* and the *Daily Manab Zamin*, 12 December 2007.

³⁸ See the *Daily Ittefaq* and the *Daily Amar Desh*, 9 December 2007.

their reaction to framing of charges and decision of the government to go ahead with the proceedings, the spouses of all the 4 professors asserted that their husbands had done nothing wrong and they would not submit any mercy petition if they were convicted.³⁹ In an interview with BBC, the son of Professor Anwar Hossain expressed the same reaction and asserted that the government had already committed a breach of trust by pushing the proceedings to go through instead of releasing them unconditionally as promised. The military, however, took the stand that the teachers had to be convicted first. They made sure by their own mechanism that this was done and once proved guilty of the offence they could apply to the President for clemency. So it was more a question of ego and prestige of the Army than solving the issue in an honourable manner. This rough course taken by the regime had caused further resentment amongst the people bearing far-reaching political consequences. The insult and humiliation of the teachers and repression and physical torture of the students by an unelected regime under the rigorous laws of the Emergency, had a potential to explode at any moment.

The Enquiry Commission

In the meantime, the report of the one-man Enquiry Commission headed by a retired Judge of the Supreme Court constituted on 25 August was submitted to the Chief Adviser. Such Commissions are a device used by governments to primarily defuse a tense situation in the country at a given time and to offer people a hope that appropriate action would be taken against those responsible for any such occurrence. But as in this case, the governments go on taking action on such incidents whichever way they desire without waiting for the report of any such enquiry. In most cases these reports are never published and why it is not done so has never really been answered.⁴⁰ So at the end, this kind of reports carries no value, not even for any academic interest. This kind of reports is often deliberately delayed and is generally done for more as a psychological solace to the people.

In this case the Enquiry Commission interviewed 104 persons and submitted its 100 pages report after 79 days instead of 15 working days

³⁹ *The Daily Ittefaq, the Daily Amar Desh, the Daily Shanakal and the Daily Anader Shomoy*, 13 December 2007.

⁴⁰ While in the government the author insisted on the publication of at least two reports, one on the incident at the girls dormitory Shamsunnahar Hall and the other on the grenade attack on Hasina on 21 August 2004, but the Prime Minister was advised otherwise.

originally granted. Although it was never officially published but according to the Chairman of the Commission it neither had put any blame on the teachers to lend support to the students nor made any recommendation for their release nor the report made any comment on the brutalities and repression on the students committed by the law enforcing agencies. Without identifying any person or organisation it reported that the "movement" had some political connection and that some political organisations, without naming any, used the evicted hawkers, slum dwellers and some outside elements to beef up the "movement." Although the student protests arose out of a sudden occurrence was spontaneous at the beginning but it turned into a different direction because of political instigation.⁴¹ The report, however, made 28 recommendations, many of them sensitive but important, like the amendment of the University Ordinance 1973, debarring the political parties from having student organisations and the teachers having connection with any political party, separate community police for the campus, holding of elections of Dhaka University Central Students Union (DUCSU) and other Halls, amendment of the proctorial law and more transparency and accountability of teachers in their duties and responsibilities. Like any other in the past, the report would remain in the shelves of some senior Assistant Secretary to gather dust without even being opened to implement any one of them.

Backlog of Academic Sessions

One of the most pathetic failures of the largest, highest and prime institution of the country has been its inability to maintain the examination schedules, causing a great misery to thousands of students not only jeopardizing enormous financial loss but the future of their career. The agony and the consequences of missing a year or two or even three without any fault of his own in terms of age, money, social and family responsibilities has ruined the life of thousands of students in course of last 3 decades. Besides the inefficiency and innumerable drawbacks of the university authorities, the politics and political interventions in the university affairs have made no less contribution in this national tragedy unknown in any part of the world. Although there are some Departments and Institutes of the

⁴¹ See for detail the *Daily Amar Desh*, 16 November 2007.

university where examinations are being held on schedule but the mainstream examinations fall far behind their schedule ranging from one to three years.

During all the regimes since the independence, the Dhaka University had to be closed down for political reasons on many occasions and each time it was closed down the classes and examinations were suspended and a "session jam" gradually built up, one term affecting the next term, one year affecting the next year. It was like once late, always late causing delay in maintaining the next schedule. During the rule of Ershad, the university was closed down more than any other time and on each occasion the classes were not resumed for months. The last occasion when the university was shut down under an Ordinance made in October 1990 empowering the government to directly order such closure by the falling regime of Ershad, the university teachers revolted and in November 1990, they decided to take classes in violation of the government decree in order to keep the university open and in the face of such defiance the Ordinance was revoked ultimately ending to the fall of Ershad on 6 December 1990. But again, during the 15-year run of the democratic regimes, although the university was not shut down at the instance of the government but the authorities of the institution had to do so on many occasions and failed to make any substantial recovery because of the inherited backlog.

On this occasion, the immediate effect of the 66-day closure costing the state 5 million taka for each day, 800 examinations some of which related back to 2004 had to be postponed. It was to take now 3 months to complete and add another 6-month jam to the delays already existing. The students of the departments and classes run under the 3 Deans and a Departmental Chairman who had been in jail would suffer for even a longer period than the others after they would be released.⁴² In most of the departments, a 4-year Honours Course would take 6 years to complete and there are some, may sound unbelievable, run upto 10 years⁴³ debarring hundreds of students every year from entering into the service of the government because of the age-limit. The curse of "session jam" affected all the 10 public universities in Bangladesh including the Engineering University,

⁴² The *Daily Manab Zamin*, 31 October 2007.

⁴³ *Ibid.*

ranging from 1 year to 4 years and in the Dhaka University, for an average of 2 and a half years.⁴⁴

End of Trials and Release of Teachers

During these months, the government and the military, played a hide and seek game with the university authorities. On the one hand they were aware that the united movement of the teachers and students could go beyond control which they did not wish to happen. On the other hand they also had to contain the strong sentiment of the soldiers in the barracks about such "misdeeds" going unpunished. So the talks and trials continued simultaneously in the midst of highly intensified agitations in the campuses joined by all sections of students and teachers. In any event it was realised by the government that the teachers and students now detained in jail had to be released soon before the situation deteriorated any further.

So the end of the trials and the release of the teachers and students were equally dramatic and intriguing. On 21 January 2008, in one of the two cases which was tried for holding meetings and processions in the university areas in violation of the Emergency Rules, the Court of the Additional Chief Metropolitan Magistrate by its judgment convicted and sentenced 4 absconding students but acquitted all the 4 teachers and one student in custody and 10 other absconding students which created a mixed reaction but the teachers and most of the students having been acquitted made them happy.

The next day, on 22 January 2008, in the second trial for burning the army vehicle another Court of Additional Chief Metropolitan Magistrate, three out of the 4 teachers namely Dr. Anwar Hossain, Dr. Sadrul Amin and Dr. Harun-or-Rashid were convicted and sentenced for 2 years of imprisonment but acquitted Dr. Neem Chandra Bhowmick and all 15 accused students. More astonishing was that within two hours after the conviction and sentence was pronounced by the court, it was announced that the President of the Republic had granted an unsolicited pardon to those who were convicted. By the late afternoon all the professors were out of Jail. Led in a procession they walked upto the Shahid Minar where Dr. Anwar Hossain reiterated that none would be allowed to shut down their right of speech and conscience and they would go on speaking the

⁴⁴ See the article of Begum Jahan Ara, the *Daily Anar Deshi*, 20 November 2007.

truth. Finally, he said that Dhaka University shall never lower its head to anybody.⁴⁵

So all the teachers and students were freed in Dhaka and Rajshahi and all the pending cases withdrawn. But they suffered insult, humiliation, assault and imprisonment for long 5 months.⁴⁶

This entire episode proved once again the weak and inept nature of the government. Although the convulsion of August 20-22 was calmed down by repressive measures under a military curfew but the public resentment against the regime was amply demonstrated. Because of the inefficiency, indecision and egotism the matter was dragged on for such a long period allowing the agitation in all universities to grow and then at the end surrender to the demands of the teachers and students. With the withdrawal of all cases involving about 100,000 people instituted all over the country during the movement, the government lost its face and showed how vulnerable its relationship with the people had become. The situation in the law courts and the so-called independence of Judiciary was also exposed. The present regime had reduced the Judiciary into a subservient agency of the executive and had inflicted a permanent injury to its independence by dictating the Judges to do what they wished them to do. In this case also the interference with the judicial process was nakedly exposed when in a pre-planned drama in one case the accused teachers and students were acquitted and in another, on the next day, convicted and then within hours the President granting pardon although none asked for such mercy. The trial magistrates did exactly what they were told to do.

Despite the release of the teachers and students which might have given moments of joy to the entire community over their victory but the psychological wound inflicted upon them and the inhuman treatment they had gone through continued to remain as a scar in the minds of every teacher and student all over the country. At one point of history this wound might surface for a retaliation more forceful than the guns of the barrel could contain.

⁴⁵ See for detail of the entire episode and the role of the University teachers and students during this period, Dr. Anwar Hossain (1) *Karagare Dhaka Bishwabiddalay; Remand-o-Karagarer Dinlipi*, and (2) *Jaban Bandi* both published by Osman Gani, Agami Prakashani, Dhaka, February 2008. Some of the facts stated by the author in this chapter are based on these two books.

⁴⁶ See the *Daily Manab Zamin*, the *Daily Ittefaq* and the *Daily Amar Desh*, 23 January 2008. See also the newspapers of 22 and 24 January 2008. See also for detail, Dr. Anwar Hossain, *Karagare Dhaka Bishwabiddalay; Remand-o-Karagarer Dinlipi*, Agami Prakashani, Dhaka, February 2008.

Chapter 7

Judiciary

Judiciary has always held a pivotal position not only in the Constitution but also in the society as a whole. It is a respected institution where people honour the judges at all levels. Compared to the other branches of the government judiciary has been considered to be in a far better position. Courts are considered as the last resort to get justice. The Supreme Court enjoyed a unique position of authority and of all the three organs of the state it represented the most important one being paramount in its continuity, power and responsibility. It has played a balanced and moderating role as the guardian of the Constitution.

One of the major tasks of the Supreme Court has been not only to interpret law but to elucidate, expound, enhance and expose the law for the benefit of the community in the context of the changing needs. But this largely depended on the judges: their knowledge, wisdom, leadership and tradition. The judges mostly are enlightened and look beyond the horizon in performing their functions. So when a matter is heard by them on points of public interest or public policy the court gets an opportunity to serve the interest of the larger and broader community and enrich its own tradition.

Notwithstanding the nature of the governments, the Chief Justices and Judges have in the past maintained their dignity in upholding the image and authority of the Supreme Court and the supremacy of the Constitution. The Judges did not hesitate to react whenever any attempt was made to undermine its authority. Almost all the Judges including those alleged to have political leanings in the past have shown prudence and neutrality in discharging their duties.

The Supreme Court had also opened the doors for public interest litigations. Although it was reluctant to entertain such petitions under article 102 of the Constitution but in course of time it changed its views

and passed some illustrious judgments in favour of public interest and public welfare.¹

On human rights issues and on issues of rights of citizens, the Supreme Court in Bangladesh has played a remarkable role. It has zealously guarded the rights of citizens when powerful political leaders were holding high executive offices in 1972-74. Its judgments have protected citizens from the wrath of detention without trial under the Special Powers Act of 1974 and properties taken away from those who were not Bengalis by origin under the Abandoned Property Order 1972.² In a conflict between a citizen and the government, the primary responsibility of the court, according to Lord Denning, would be to tend to stand by the side of the weak as it is a fight between two unequals, one is much smaller compared to the strength of the other. This is the dictum the Supreme Court has followed.

During the political regimes in 1972-74 and 1991-2006 opponents were subjected to the repressive actions of the ruling governments but they enjoyed the protection of the Supreme Court.³ On its own motion a Bench of the High Court Division ordered the release of a person from prison who had been an under-trial prisoner for more than 12 years.⁴ The Supreme Court has also made historical pronouncements on issues like the independence of judiciary. In the judgment of the Masdar Hossain vs Government⁵ the 12-point directions of the court has paved the way to compel the successive governments, normally reluctant to relax the power of the executive over the judicial magistrates, to eventually implement the mandate of Article 22 of the Constitution.

Supreme Court has also made some historical pronouncements on issues relating to rule of law and principles of liberty. Even during the period of the indomitable rule of Prime Minister Sheikh Mujibur Rahman, Justice D.C. Bhattacharya in Mohsin Sharif vs Government

¹ BLD 2003 Vol. XXII, XXIII, p. 115, HCD on Sections 54 and 167 of the Code of Criminal Procedure.

See 1 MLR (1996) (AD), p. 325; 51 DLR (1999) (AD), p. 332; 58 DLR (2006) (AD), p. 58 and p. 28 BLD (2005) (AD), p. 366.

² See 28 DLR (AD), p. 120; 30 DLR (AD), p. 101; 32 DLR (AD) p. 216 and p. 225 .

³ See 31 DLR (AD), p. 1; 27 DLR (HCD), p. 122 and p. 187.

⁴ 45 DLR 643 State vs Deputy Commissioner Satkhira and others.

⁵ 52 DLR 82 AD Government vs Md. Masdar Hossain and others.

delivered a judgment reported in 27 DLR (HCD) on page 186 where he did not hesitate to expose the repression and atrocities committed by the draconian Jatiya Rakkhi Bahini and declare its functioning to have been illegal. The court directed the government to set-up an enquiry committee to find out the whereabouts of Shahjahan, a young opposition political activist, allegedly killed by the Rakkhi Bahini while in their custody. Similarly the same Bench presided over by Justice D.C Bhattacharya on 17 September 1974 at the height of the Awami League rule directed the government to produce Chanchal Sen son of the Communist leader Shanti Sen to produce before the court and having had found his detention illegal ordered to release him at once, reported in 27 DLR (HCD) on page 122. Another most illustrious judgment delivered by the full court of the Appellate Division on 2 September 1977 when the country was under Martial law is the case of Abdul Latif Mirza vs the Government, as reported in 31 DLR (AD) on page 1. This historical judgment in upholding the citizens' rights to life and liberty is considered a milestone of the judiciary as an institution. Whether it was a democracy or a Martial Law the Supreme Court held its ground and did not compromise on the issues of rights of citizens. In the background of this glorious tradition of the judiciary and the courageous role played by the Judges, the country entered into a frustrating phase during the military-backed interim government when the Emergency was proclaimed on 11 January 2007.

The Darkest Chapter

When Justice Mohammad Ruhul Amin, an amiable, erstwhile practicing lawyer took the oath as the Chief Justice of Bangladesh on 2 March 2007 hopes rose high among the judges and lawyers that dispensation of justice would see a new dimension and the Judiciary and particularly the Supreme Court would assume a dynamic role in defending the Constitution and protecting the rights of citizens. But it did not happen so. Although complete separation of Judiciary from the executive organ of the state took effect on 1 November 2007, the Judiciary has suffered the maximum humiliation from the executive during his time and his tenure would be known as the darkest chapter of Judiciary in Bangladesh. The public perception had been that while the High Court Division on some fundamental issues stood by the citizens to protect their rights under the Constitution, the Appellate Division took an opposite stand in interfering and stopping almost

every interim order on human rights passed by the High Court Division, contrary to the established principles earlier followed by the same Division. To public mind, the Appellate Division acted more like a defender of the executive rather than guarding the Constitution upholding the rights of citizens against the excesses committed by the agencies of the regime. Almost every interim order or even a bail granted by the High Court Division has been stalled by the Appellate Division before deciding the points of law involved, whether cases against them could be tried under the Emergency Power Rules⁶ at all. Such intervention was also applied in respect of the politicians including that of Sheikh Hasina and Khaleda Zia. In the past, the Appellate Division had withheld a bail granted by the High Court Division only in exceptional cases.

The same sequence of events happened when Sheikh Hasina and later on Khaleda Zia and many others⁷ challenged the very legality of the Notice of the Anti-Corruption Commission demanding the wealth statements violating its own Rules, the interim order of the High Court Division staying all proceedings was stayed by the Appellate Division with an order for an expeditious disposal of the Rule. Once the Rule was made absolute by the High Court Division by a full judgment after hearing both sides, the Appellate Division had stayed the judgment itself.⁸ While disposing of all these cases the Appellate Division failed to consider the draconian and unconstitutional provisions contained in various Rules of the Emergency Power Rules. It was sadly noticed that instead of safeguarding its own power and independence, the Appellate Division had abrogated its authority allowing the Emergency Power Rules to supersede not only the mother laws but the Constitution itself. They ignored the point that Emergency was proclaimed to deal with internal disturbance arising out of political confrontation between the two major alliances and not to deal with cases having nothing to do with the law and order situation. It was expected that as the highest court of the country and as the repository of the trust and faith of people to protect their rights

⁶ See the *Daily Ittefaq*, 21 September 2007.

⁷ The author was a petitioner in a separate but identical writ petition.

⁸ On the Notice of the Anti-Corruption Commission the High Court Division delivered the judgment on 21 November 2007 in Writ Petition No. 6854 of 2007 and the Appellate Division stayed the same almost instantly and finally rejected it by allowing the Appeal filed by the government. See 60 DLR (AD) 172.

from the excesses committed by the executive organ of the state, the Supreme Court would play its due role based on the mandate given by the Constitution.

Anyhow, hopes were raised again when at a seminar held at the South Hall of the Supreme Court Bar on 11 August 2007, the Chief Justice in a statement as the chief guest assured the nation that "the Supreme Court played a crucial role in the past at the critical junctures of the nation. It is doing so at present and will do so in future to pull the nation out of mire."⁹ With the flashing of the pronouncement in all the newspapers, the nation felt assured that the Supreme Court would now play its due role to protect and defend the Constitution. As he admitted that the nation was in a critical juncture, the Supreme Court would now come forward to pull the nation out of the present situation.

This statement of the Chief Justice generated lot of interest not only in the common circles but also among the jurists and members of civil society. Although the former Chief Justice Mustafa Kamal refrained himself from making any comment but Justice Golam Rabbani, a former Judge of the Appellate Division said that he would not make any comment "because Chief Justice Ruhul Amin was junior to me. He does not do what he says."¹⁰ While the comment of Justice Rabbani was disappointing, Justice Naimuddin Ahmed, a former Judge of the High Court Division, was more forthcoming in his suspicion as to "how the Chief Justice would keep to his words by playing a role in the "critical juncture" the nation was going through at this moment." Referring to a comment made by another former Chief Justice Mahmudul Amin Chowdhury in the same seminar, Justice Naimuddin Ahmed said, "number one and the main task of the present government is to hold the election of the national Parliament as soon as possible. The function of the care-taker government is to perform the routine work and to provide all kind of assistance to the Election Commission for holding a fair election and the Constitution has not given them any power to take any policy-making decision. Whereas the present government has already taken many policy decisions." According to Justice Naimuddin, "it would be the people who would decide who is a thief or corrupt or honest or competent. The

⁹ See the *Daily Amar Desh*, 12 August 2007 and other newspapers.

¹⁰ See the *Daily Amar Desh*, 16 August 2007.

government cannot elect public representatives according to their own choice or wishes.”

Justice Naimuddin raised the question that if the Supreme Court really wanted to come forward to play a role in the “critical juncture” of the nation “then why are they not in public interest issuing a writ suo motu? If they were sincere, the Supreme Court could have issued such writ tomorrow and ought to direct the government and the Election Commission to hold the election within a time frame as determined by it.” So Justice Naimuddin Ahmed concluded that it was no point making such statements as the Chief Justice did.¹¹

Justice K.M. Sobhan, another retired Judge of the Supreme Court, with a hopeful expectation, referred to the glorious role of the Supreme Court in the past when during the rule of Ershad it pronounced at their own initiative that “Martial Law was not above the Constitution and the Constitution was the supreme law of the state.” Justice Sobhan said that by making such a statement the Chief Justice had possibly reminded everyone that if the present government did anything illegal or contrary to the Constitution the Supreme Court would not hesitate to intervene.¹²

Most of the other members of the civil society in their reactions expressed the view that by that statement the Chief Justice indicated that the Supreme Court would play a bold role in future in protecting and defending the Constitution.

To the surprise of all including some of his own colleagues on the Bench, it was gradually revealed that the Chief Justice made the statement having something completely different in his mind. It was not comprehended that he made the statement in a reverse sense which shattered the hope of Justice K.M. Sobhan and affirmed the fear and apprehension expressed by Justice Golam Rabbani and Justice Naimuddin Ahmed. It appeared that after making the statement the Appellate Division took a role which did not protect the rights of citizens. In criminal proceedings, right to bail is considered to be a basic right of every citizen and the discretion is given to the court to

¹¹ See the *Daily Amader Shomoy*, 13 August 2007. See also the article of Justice Naimuddin Ahmed published in the *Daily New Age*, 9 September 2007.

¹² See also Mahfuz Anam in his article “My Lord we beg to differ” in which he asserted that the Supreme Court had failed to play its due role on some critical issues in the past, *The Daily Star*, 13 August 2007.

decide. Under Rule 19(D) of the Emergency Power Rules bails granted by the High Court Division were generally not upheld by the Appellate Division and thereby forced many thousands to remain in jail without trial. In a series of decisions in the past the Appellate Division had always held the view that refusal of bail would amount to awarding punishment to a person before being proved to be guilty, which according to them was contrary to principles of justice. In cases like having wealth disproportionate to one's known sources of income or in a case of extortion allegedly committed by some politicians, bail would have been normally granted even by a lower court not to speak of the Supreme Court but here in many cases bail granted by the High Court Division to any politician or businessman who were put in jail for months without trial were stayed or reversed by the Appellate Division. By doing so the Supreme Court gave precedence to Emergency Power Rules, a mere subordinate legislation, over the normal existing laws and the Constitution. In effect, the Appellate Division defended the Emergency Power Rules as against the existing laws and the Constitution. In every case filed by the Anti-Corruption Commission, however illegally done in violation of their own laws and rules, such as the Notice served under Section 26 of the Anti-Corruption Commission Act or an FIR filed without giving any hearing under Rule 8 of the Anti-Corruption Commission Rules 2007 or making out a case based on the statement submitted by the accused in violation of Article 35(4) of the Constitution when an order of stay of the proceedings was passed by the High Court Division, the Appellate Division immediately intervened. This allowed the illegality to persist and an irregular non-transparent trial to continue to pass a pre-determined judgment convicting and sentencing the accused, in a court what a kangaroo court would do.

In a case to cite as an example, under Sections 26 and 27 of the Anti-Corruption Act 2004, the Commission demanded a statement of wealth of moveable and immovable properties and liabilities in prescribed Forms and detail of sources of income under the relevant Rules and in more than 180 FIRs so far submitted in court, the Anti-Corruption Commission made out their case based on the statements submitted by the accused persons. But in one case having found that the accused had far more income than his wealth, admitted in the FIR and the Charge Sheet, the Anti-Corruption Commission introduced a new element of "personal-family-professional-social and political

expenses” which was neither in the Act nor such a statement was demanded under the Notice. Unlike the Income Tax returns, the Anti-Corruption Commission Act and Rules were to examine whether a person had wealth disproportionate to his known sources of income and the statement of his personal or family and other expenses taken and assessed annually by the Income Tax department was considered not to be the concern of the Anti-Corruption Commission. Moreover neither the Act of 2004 nor the Rules of 2007 defined any “Expenditure” which could entail thousands of items nor there was any prescribed Form for the accused to fill-in or respond. Whereas in this particular FIR some wild, imaginary and absurd figures of more than 7 crores were shown as expenses on account of personal, family, professional and house hold expenses.¹³ As soon as the High Court Division issued the Rule and stayed the proceedings, the government and the Anti-Corruption Commission instead of filing an application to vacate the order in the High Court Division, an old tradition always practiced by the Appellate Division to follow, the government rushed to the Appellate Division. During the hearing while most of the judges expressed their views against such a blatant illegally but the next day Chief Justice Ruhul Amin pronounced the order staying the order of the High Court Division allowing the Anti-Corruption Commission to go ahead with the proceedings based on the fictitious “expenses” which the law did not permit them to do and they did not do so in 180 FIRs till then filed by them. So in all these cases when the Appellate Division intervened at the very initial stage to stop the interim orders passed by the High Court Division,¹⁴ it also sent a wrong signal not only to the suffering public that they might not get justice from the highest court of the country, but also it encouraged the government agencies and the trial courts to act in a manner highly prejudicial to the interest of the accused persons. It frustrated all the processes of getting a fair trial resulting into a conviction and sentence notwithstanding the value or quality of evidence adduced.

¹³ Gulshan P.S. FIR No. 47 dated 16 September 2007. It was a case against the author. An example of a design for a pre-determined conviction. The Appellate Division intervened to stay the interim order of the High Court Division in Writ Petition No. 9068 of 2007. In the charge-sheet such amount of imaginary expenses was increased to about 9 crores and included his social and political expenses.

¹⁴ In about 122 such cases the Appellate Division allegedly intervened and stayed the interim orders of the High Court Division. See for references Cause List of the Appellate Division dated 26 November 2007, 3 and 13 December 2007, 14, 16 and 21 January 2008.

Contrary to public expectation as well as the mandate of the Constitution and the oath they had taken to “preserve, protect and defend the Constitution” and “do right to all manner of people according to law, without fear or favour, affection or ill-will,” why did the Chief Justice play such a role? In public mind all the orders of intervention made and non-delivery of full judgment on some crucial decisions of the High Court Division in matters of bail and detention led them to easily conclude that such actions neither helped to maintain neutrality or transparency or the Constitution. The performance of the Appellate Division was widely perceived to have been regressive, in not upholding its own authority and supremacy as the guardian of the Constitution. In all their decisions pertaining to Emergency Power Rules the Appellate Division by intervening and staying the interim orders or the judgments of the High Court Division had sadly affirmed again and again that the Emergency Power Rules were to have precedence over the existing laws and the Constitution, whereas it ought to have been the other way round. While the High Court Division tried to defend the Constitution and was not willing to abrogate its authority, the Appellate Division adopted an opposite role as a result of which the government or the office of the Attorney General did not give much importance to what orders the High Court Division had passed because they were certain that such orders would be reversed by the Appellate Division.

One of the decisions of the Appellate Division which stunned and shocked all concerned was when it pronounced that no court including the Supreme Court would grant any bail to any person once arrested under the Emergency Power Rules. It reversed the judgment of the High Court Division presided over by Justice Nazrul Islam Chowdhury after a lapse of more than a year of its delivery.¹⁵ At the ground level it meant that any person in custody accused of any offence under the Emergency Power Rules would continue to remain confined in jail for an indefinite period without any trial. So thousands of innocent people who were in jail already and those added every day were debarred from getting any bail.¹⁶ The police and the law enforcing agencies at the Thana and District levels abused the

¹⁵ See 59 DLR HCD 287 and 60 DLR AD 82.

¹⁶ See the *Daily Manab Zamin*, 17 May 2008.

Emergency Rules to the maximum, making the ordinary people to suffer most.¹⁷

The members of the Bar also accused the Appellate Division of abusing its power under Article 103 by making the High Court Division dysfunctional whereas the latter enjoyed a plenary and exclusive power and jurisdiction given by the Constitution under Article 102. According to them such random intervention in almost every interim order made and the major judgments delivered by the High Court Division in exercise of their constitutional power had not only lowered the dignity, image and constitutional authority of the High Court Division but degraded the status of the constitutional court to the level of a court of magistrates. It was not only the lawyers but all the judges of the High Court Division were unhappy and frustrated about the way the Appellate Division treated the orders and judgments of the High Court Division. In private conversations they were quite outspoken in expressing their resentment over the matter.

One of the devastating effects of this judgment on bail was that the highest court of the country, granted a license to an unelected illegitimate government to misuse and abuse the Emergency Power Rules in any way they liked whereas the Supreme Court being the preserver of the Constitution was supposed to stand against any kind of arbitrariness to uphold the principles of rule of law and justice.

Before Ruhul Amin retired as the Chief Justice another equally disappointing Judgment was delivered on 20 May 2008 by the Appellate Division on the question whether the tax authorities could directly prosecute any citizen in a criminal court under Sections 165 and 166 of the Income Tax Ordinance 1984 which they did not do before this Emergency was proclaimed, for making false statements and concealment of income in violation of various provisions including Section 83 and Section 93 of the Tax Ordinance. In an excellent elaborate judgment delivered on 5 December 2007 by Justice Mohammad Abdur Rashid of the High Court Division¹⁸ assisted by eminent lawyers as *Amicus Curiae* held the view that such provisions were not meant for any arbitrary use. After elaborate discussions on the principles of due process of law, rule of law, natural justice and numerous judgments of

¹⁷ After this judgment delivered on bail, the Supreme Court Bar Association decided in protest not to bid any farewell to the Chief Justice nor to welcome the new Chief Justice, a departure from a long-standing tradition.

¹⁸ See 60 DLR HCD 88.

the Indian Supreme Court, the court pronounced a 8-point judgment and quashed the proceedings against the petitioner under Sections 165 and 166 of the Income Tax Ordinance.

Soon after the delivery of the judgment, the government and the National Board of Revenue, (NBR) filed a provisional application upon which the judgment was stayed and finally on 20 May 2008, the Appellate Division after hearing the appeal has reversed the entire judgment of the High Court Division. In simple words, after this judgment¹⁹ the NBR whose principal responsibility was to collect revenue and not to prosecute the tax-payers, could now take the citizens to jail to face trial without any due process of law. The judgment only encouraged the NBR to abuse the law, scare and frighten the tax-paying citizens, force people to remain outside the tax net or not pay tax at all. The arbitrariness of the provisions of law which the NBR was forced to use as a part of the political agenda of the regime to harass and humiliate the politicians under the cover of the Emergency Rules did not only destroy the image of the NBR but seriously affected the broader spectrum of the entire business environment. While the Appellate Division being the highest court of the country was expected, as in any other country, to condemn and reject any kind of arbitrariness in the application of any law but it did not do so. On the contrary like in other judgments, the Appellate Division presided over by Chief Justice Ruhul Amin did just the opposite degrading the authority and image of the Supreme Court.

The lawyers in the corridor of the Supreme Court looked at it as a strange unison between the government and the Appellate Division. The comment of the former judge Justice Golam Rabbani that the "Chief Justice Ruhul Amin does not do what he says" was manifested in almost all the ceremonial statements he made as the Chief Justice in public. In all his speeches he was extremely eloquent in defending the supremacy and independence of Judiciary, rights of citizens and ensuring justice for them. At the fifth annual meeting of Judicial Service Association held in Dhaka on 29 December 2007, Justice Ruhul Amin as the Chief guest of the occasion, having had already denied the

¹⁹ See 60 DLR AD 147. After the judgment a large number of politicians were made victims by the National Board of Revenue by directly indicting them in criminal proceedings under Sections 165 and 166 of the Income Tax Ordinance 1984. Subsequently however for a review of this Judgment a Review Petition under Article 105 of the Constitution being Review Petition No. 108 of 2009 was filed and still pending for hearing.

ordinary right of bail²⁰ and release from illegal detention without trial of citizens earlier granted by the High Court Division²¹ said without any hesitation that “the court was the last resort of any hope for the people and they would have no other place to go if they were denied justice.”²² He further emphasised that “in order to make the independence of judiciary meaningful and credible to people” the Chief Justice urged upon the judges to work with “dedication, sincerity and efficiency.”²³ Whereas when he was sitting in the courtroom his performance was just the opposite. Perhaps the Chief Justice did not realise what the people thought about him when they compared his pronouncements made in the court room and the statements he was making in public. Sheikh Hasina, the former Prime Minister made it abundantly clear when she told the press that the judgment in her so-called extortion case tried in a court “held in camera had already been written down.”²⁴

The Judges of the Appellate Division were aware that the Emergency Ordinance was a temporary law and the purpose of its Proclamation was served well enough as soon as the situation arising out of the political confrontation and violence had calmed down. The internal disturbance for which Article 141(A) was invoked was no more visible for the Emergency to continue and the President ought to have revoked the emergency under Article 141(2)(a) by another Proclamation. There was no Martial Law in the country, nor the Constitution was suspended and Emergency was a time-framed temporary instrument during which period only the enforcement of the fundamental rights could remain suspended but the Constitution of the country was very much alive and the judges had taken oath to preserve it. The judges also knew that it was preposterous to visualise that the Emergency or the interim government could continue for an unlimited period in contravention of the basic structure of the Constitution. So both the continuation of the Emergency as well as the interim government was illegal and unconstitutional and the Election Commission taking two years to hold the election was a direct violation of Article 123 of the

²⁰ See 60 DLR AD 82.

²¹ See the order passed by the Appellate Division in Criminal Petition for Leave to Appeal Nos. 119-122 of 2007.

²² See the *Daily Amar Desh*, 30 December 2007.

²³ *Ibid.*

²⁴ See the *Daily Manab Zamin*, the *Daily Amar Desh*, 27 December 2007.

Constitution. For the judges, the politics of the interim government should not have concerned them in upholding the laws and the Constitution. The Emergency Rules could not amend or supersede the normal existing laws or the Constitution and could not have taken away the power of the Supreme Court in dealing with cases under the existing laws having had nothing to do with the internal disturbance for which the Emergency was proclaimed. In resolving these legal issues of high public importance the judiciary by asserting its own authority and independence could play a dynamic role in the "critical juncture" of the nation by taking initiative suo motu. On the contrary, the Appellate Division by its various orders, in effect surrendered itself to the Emergency Power Rules causing an irredeemable damage to the institution of judiciary.²⁵ Since the Appellate Division was the highest court, it made everything easy for the regime to be content with their role notwithstanding what the judges were doing in the High Court Division. With 10 trial judges in the Special Courts where judgments could be dictated in a kind of a closed door trial, continuously monitored by agency officials, the regime had their heyday as far as the judiciary was concerned.

Chief Justice Ruhul Amin perhaps could tell the nation one day under what kind of pressure he was discharging his duties during this period. If he says he was not under any pressure then the only conclusion would be that he was just not fit to be the Chief Justice of the country nor he had the correct mindset or courage to sit as a judge. His public statements were only a delusion and when he advised the young judges²⁶ not to administer justice to get public applause he meant that they should concentrate like he did, to get the ovation of the military-backed executive at the cost of public interest.

Many questions agitated the mind of the lawyers and the public at large, like what were the judges afraid of? Were they frightened in case they were prosecuted for having more wealth than their income or of any tax evasion committed in the past while practicing as a lawyer? Or were the rest of the judges of the Appellate Division innocent victims of the flaws of the Chief Justice? Were they blackmailed by the government agencies? What did the Chairman of the Anti-Corruption Commission tell the Chief Justice when the former called on him? Was

²⁵ See Farhad Mazhar, "Kaekti Binita Prasna," *the Daily Naya Diganta*, 18 December 2007.

²⁶ See the *Daily Amar Desh*, 30 December 2007.

he informed of any allegation of corruption against him which the Anti-Corruption Commission had in their hand? Was he told that he must co-operate or otherwise face the charges of corruption? Was it true that the Chief Justice had taken one new plot of land from RAJUK²⁷ by concealing the fact that he already owned another plot in the capital area in violation of existing law? Did he disclose all his income as a practicing lawyer truthfully and pay the due taxes? Although at a later stage the Chairman of the Anti-Corruption Commission in order to dispel the allegations said that his visit was only a courtesy call²⁸ why did the Chief Justice not decline to grant him an audience knowing that the Chairman was virtually the chief prosecutor of the cases on corruption against the politicians and businessmen who were in jail and he as the Chief Justice or his judges were to adjudicate upon these cases at one stage or another?

What did the Law Adviser, who was never put to a test by the Anti-Corruption Commission to prove that his wealth was not disproportionate to his known sources of income or he had truthfully disclosed all his income as a practicing lawyer and was not guilty of any evasion of tax²⁹ tell the Chief Justice each time he called on him? The Law Adviser was very outspoken about the corruption of the politicians and held them responsible for everything that was wrong in the country and wanted them to be punished and his government was very unhappy the way some of the High Court Judges were performing their duties by granting bail and staying the proceedings of the lower court in respect of former Ministers including Sheikh Hasina and Khaleda Zia.³⁰ Did he also prevail upon the Chief Justice to stop all the interim orders of the High Court Division? When the Law Adviser started threatening the judges in public by making statements that the government was considering to take action against the "incompetent and controversial" judges of the Supreme Court³¹ did it not constitute an offence for the Chief Justice to draw contempt

²⁷ Rajdhani Unnayan Katripakha, a statutory state organization for development of lands and their allotments to public at a comparatively cheaper price.

²⁸ See the *Daily Amar Desh*, 4 December 2007.

²⁹ See *The Daily Star*, 30 December 2007 for one of his many inconsistent and derogatory statements.

³⁰ *The Daily Amader Shomoy*, 29 November 2007.

³¹ *The Daily Manab Zamin*, and *The Daily Amar Desh*, 27 November 2007.

proceedings against him? In fact the Law Adviser wanted to frighten all the judges including those of the Appellate Division to keep them on their toes so that they behaved in the manner the government desired. Following statement made by the Law Adviser, being one of the policy-makers, the government agencies also started feeding the media that 17 to 20 judges would be forced to resign with the sole purpose to blackmail and terrorise them.³² With this kind of statement from an Adviser of a Ministry having had direct link with Judiciary, how could any Judge of the Supreme Court or any other court feel free and independent to function for dispensation of justice? Was it not the responsibility of the Chief Justice to at once protest and defend his judges in the absence of any proceedings against them before the Supreme Judicial Council under Article 96 of the Constitution? Or was the Chief Justice himself scared of such threats and news items? Since some of the comments made in the print media on many such issues amounted to contempt of court why were these newspapers not taken to task under the law to uphold the image and authority of the Supreme Court?

So the separation or independence of judiciary is only a myth unless seen to be practiced in reality. The Supreme Court has always been independent since its creation under the Constitution in 1972 and with the separation from the executive organ of the state by recently bringing the judicial magistrates under the control of the Supreme Court, it has only strengthened its independence further. How much effective the independence is, depends upon the performances of the judges, their intellectual ability, courage, knowledge, moral integrity, faith and conviction in the discharge of their duties and the institution they represent. The independence of judiciary and its extent of effectiveness in actual performance also depends on the kind of government the country has and what kind of political support the judiciary enjoys to foster its independence. So it is the system of government and the personality of judges who run the judiciary is more important than what is there in the statute books or the Constitution to ensure a meaningful and effective materialisation of the independence of judiciary. With a military-backed interim government without any legitimacy, run under the Emergency laws disregarding the basic structure of the Constitution, how could one

³² *The Daily Amader Shomoy*, 29 November 2007 and the *Daily Dinkal*, 6 December 2007.

conceive that the separation of judiciary would have any effective impact in the judicial system of the country when conceptually the independence of judiciary and the Proclamation of Emergency are not only self-contradictory but self-destructive.

Therefore, the credit the interim government would like to claim to have implemented the decision of the Supreme Court for the separation of judiciary had borne no substance. Rather by interfering in the administration of justice both physically and by the Emergency Rules it has destroyed right from its first day the very potential of any benefit the public could have derived from such a separation. A government itself being illegitimate and unelected having had no conviction nor any faith in rule of law could have any commitment for any such actual separation. It was done more as an eye-wash only for public consumption. With the disappointing role of the Chief Justice and the Appellate Division, the lower courts, despite the theoretical separation, became subservient to executive interferences more than ever before. Not only the courts of judicial magistrates all over the country were victims of interference of the local administration dictated by the military personnel, all the 10 courts of special judges sitting in the secluded precincts of the Parliament at Sher-e-Bangla Nagar, where most of the politicians and their spouses and children were tried were soon identified as "Kangaroo Courts" or "Star Chambers," as they functioned under continuous pressure and surveillance of the intelligence agency officials who would sit in the court rooms monitoring the judges. That the judges were not free to function with an open mind was reflected in their style of writing the judgments and convicting all the principal accused persons by awarding the highest period of sentence irrespective of the merit or the evidential value of the depositions.³³

All the cases tried by the 10 Special Judges had been under Sections 26 and 27 of the Anti-Corruption Commission Act 2004 or Sections 165 and 166 of the Income Tax Ordinance 1984. Under Section 26, for giving wrong information about the wealth a sentence extending upto 3 years or fine or both could be awarded but in all cases the sentence had been the maximum 3 years and not a day less. Similarly under Section 27, if wealth was found however wrongfully calculated to be disproportionate to one's known sources of income, a sentence of

³³ See the *Daily Naya Diganta*, 6 November 2007.

maximum of 10 years and minimum of 3 years with fine and confiscation of property could be awarded but in all the cases the sentence has been the maximum of 10 years and not a day less, with fine and confiscation of property whether the amount involved was 0.1 lac or 10 million or 100 million. Under Section 165 of the Income Tax Ordinance for making false statement, the offender could be punished with imprisonment which could extend upto 3 years but not less than 3 months with fine or both but in every case the sentence awarded had been 3 years and not a month less and under Section 166 for the offence of tax evasion, the offenders could be punished with imprisonment which could extend to 5 years but not less than 3 months with fine or both, but in every case tried the sentence awarded had been 5 years and not a month less with fine irrespective of the volume of amount involved. So however pathetic it might have been, as soon as a case was taken up by any of the Special Judges the accused and his lawyers, however strong and well argued the case was, could predict the sentence in advance before the farcical trial was completed.³⁴ So if any case was under the Anti-Corruption Commission Act, each accused faced a total sentence of 13 years and if it was under the Income Tax Ordinance it was for a total of 8 years.³⁵

The purpose had been to convict the politicians by any means only to debar them under Rules 11(3) and 11(5) of the Emergency Power Rules from getting any interim bail or stay of the judgment of the trial court so that they could not take part in the election. So even if the appeal succeeded in the High Court Division some time in future it did not matter for the regime as it was only interested in the conviction and sentence to be given by the obliging courts for the time being. So the Special Courts also were perceived to be working in consonance with the prosecution under the umbrella of "separation and independence of judiciary." Encouraged by the decisions of the Appellate Division or at least by not been stopped or censored by it by any of its actions, the extent of interference by the government agencies in the lower judiciary went beyond any comprehension. The general pattern pursued by the regime for hauling up people by the

³⁴ See for the comments made by Sheikh Hasina, the *Daily Manab Zamin*, the *Daily Amar Desh*, 27 December 2007 predicting her conviction and sentence as soon as her trial commenced.

³⁵ Ironically, after the withdrawal of Emergency all such convictions and sentences awarded by the trial courts were set aside by the High Court Division and re-affirmed by the Appellate Division on Appeals thus acquitting all the convicted politicians.

Joint Forces under Section 54 of the Criminal Procedure Code followed by an order of detention under Section 3 of the Special Powers Act in violation of the direction of the Supreme Court³⁶ has been only to cook up cases against that person, citing some examples might be useful to know the depth of the malfeasance, misuse of law and distortion occurred in the field of judiciary during this regime, such as:

1. After the High Court Division released the accused on bail, his lawyers had submitted an application for a bail bond to the court of Metropolitan Special Tribunal No. 1 for its approval with a copy of the release order, a routine formality to take a few minutes requiring only a signature of the judge, kept the lawyers waiting for hours or perhaps the whole day “to receive instructions from the appropriate authority” and then contrary to the normal practice of allowing one or two lawyers as local surety, passed an order asking to furnish the bail bond signed by the Principal of any Government College of the petitioner’s constituency as surety. This unusual order was passed with the sole purpose of delaying the process of release, knowing well that, firstly such a Principal, being a government servant, would most likely refuse to be a surety to take the risk to be on the side of a politician opposed to the regime specially when the country was under Emergency, and secondly even if the Principal agreed it would at least take more than a day or two to travel all the way to the far away constituency and return with his signature. In the meantime as expected and practiced by the regime in respect of hundreds of such individual citizens, the accused while already in jail was served with an order of detention to allow the government to file another case against him so that he could not get out of jail.³⁷ The purpose of interference from the government side was well served as the petitioner could not be freed although he was granted bail and his detention was subsequently declared illegal.³⁸

³⁶ See the judgment reported in 23 BLD, High Court Division, 2003, p.115.

³⁷ This happened in the case of author himself. Bail was granted in Writ Petition No. 6799 of 2007 and the Court of Metropolitan Special Tribunal No.1 in Case No. 452 of 2007 corresponding to GR Case No. 297 of 2007, asked a Government College Principal of his constituency 130 km away from the capital to be a surety. See also the *Daily Anwar Desh*, 5 October 2007.

³⁸ While already inside jail, the author was also served with an order of detention under the Special Powers Act.

2. In a writ petition filed challenging the constitutionality of Rule 11(3) of the Emergency Power Rules which debarred the Supreme Court from its inherent power of granting bail to any convicted person pending Appeal, a Rule was issued for Sabera Aman, a cancer patient convicted for 3 years as an abettor of her husband Amanullah Aman, a former State Minister, the High Court Division released her on bail on 9 December 2007, after having been already in jail for 10 months. In order to complete the procedure of executing a bail bond, a mere formality, when the lawyers went to the concerned court of the Special Judge, Court No. 1 at Sher-e-Bangla Nagar on 12 December with a copy of the release order, they were asked to see him next day for no ostensible reason. When the lawyers went to him on 13 December, a Thursday, the Judge was in his office but said he was on leave on that day and would not pass any order and delayed it for another 3 days being holidays for the weekend and victory day, 14-16 December. On 17 December, instead of a lawyers' surety the judge asked to get the local Union Parishad Chairman to sign the surety which was the Hajratput Union of Keranigonj. When they presented the bail bond signed by the Chairman endorsed by a senior lawyer of the Bar who went upto Keranigonj to get the signature, the judge asked for the physical presence of the Chairman with a certificate of the Upazila Nirbahi Officer (UNO) that he is the Chairman. At the same time the local commander of the Military Camp at Keranigonj called the Chairman Haji Amanul Haq elected for 31 years not to leave the area and the UNO was told not to issue any certificate. As nothing remained secret, the judge confided to his staff, that he did everything what he was told to do by the Major who was monitoring his court apparently working at the "instruction of higher authorities." This interference delayed her release for nearly a month. Sabera Aman, already under treatment in the Prison Cell of the Post Graduate hospital had 3 children, youngest one being 7, had none to attend them at home. The rumor was that military was not sure whether to ask the Anti-Corruption Commission to go for an appeal before the Appellate Division to stop her release or cook up a fresh case

against her so that she could be held in jail as long as it was possible.³⁹

3. On a similar point of law whether Rule 11(3) of the Emergency Power Rules, being a mere subordinate legislation under the Emergency Ordinance, could make any provision superseding the mother laws, i.e., the Ordinance and the Code of Criminal Procedure or the Constitution itself to take away the power of the Supreme Court in a pending appeal to grant bail to the convicted person, a Bench of criminal jurisdiction of the High Court Division by two separate orders released on bail (i) a young Barrister, Helaluddin convicted for 3 years as an abettor of his father, on some bank transactions of a fund left by his mother, killed in a car crash near Jeddah; and (ii) Sigma Huda, herself a senior lawyer and a human rights activist for more than 30 years, convicted for 3 years as an abettor of her husband, a former Minister, in a bribery case. Sigma Huda, a UN Rapporteur on Refugees was seriously ill and taken on a wheel chair every day during the entire trial had already been in jail under treatment for about 10 months. The bail was granted for 6 weeks and both the convicted persons were asked to surrender their passports to the concerned courts with their bail bond, the process of which was deliberately delayed under some pressure on the judge below so that their release could be stopped. In the meantime, within 5 days after the orders were passed, and without the copy of the full judgment, when the government moved a provisional appeal in the Chamber, a single Judge of the Appellate Division on 18 December stayed the orders of bail.⁴⁰ What had gone wrong with the mindset of those who decided to stop them from being released or the judges of the Appellate Division to stop

³⁹ Although at a later stage the government moved to cancel her bail in the Appellate Division but it did not work as by that time she was already released by a sheer luck. When such hidden, silent and secret forces operated none could say whether they were doing such things at the instruction of any central command or doing on their own.

⁴⁰ The judiciary was already suffering from an image problem. Now, each and every brick of the edifice of judiciary was pulled down by the regime systematically piece by piece to destroy the last refuge of the people to seek justice. The author fears that the precedence of a naked interference in the legal process established by the interim regime would most likely be practiced by the subsequent governments in a more horrifying manner. The *Daily Amar Desh*, 19 December 2007.

the bail? A wife of a dacoit or a thief knows from where or how her husband gets the food and money for her and the children, gives him shelter at night. When the husband is arrested and indicted are the wife or the children made abettors in such cases? A state run on brutality and cruelty could not expect its government to have any human face to show any respect for its people.

4. Within less than a month after the judiciary was finally separated by a grand launching ceremony, held on 1 November 2007, when the Chief Justice Ruhul Amin⁴¹ called upon all the judges of lower and higher judiciary to work with honesty, dedication and complete neutrality to ensure an effective separation of the judiciary from the executive organ of the state, a new crisis arose. In an extortion case filed by a businessman Ajam J. Chowdhury coaxed in a trade-off by an agency of the regime against Sheikh Hasina, the former Prime Minister and President of the Awami League, the government by a *Gazette* notification on 26 November, transferred the Dhaka Metropolitan Session Judge's Court from its normal seat in old Dhaka to a secluded and heavily guarded Parliament premises at Sher-e-Bangla Nagar to try this particular case where there was no free or open access for people or media. A writ petition was filed in the High Court Division challenging the legality of the government order to transfer the court since the judiciary was now separated from the executive.⁴² It was argued that such an order of the executive branch transferring a court for a particular case without the sanction of the Chief Justice amounted to interference with the administration of justice and contrary to the judgment delivered in Masdar Hossain Case.⁴³ It was a violation of the very spirit and concept of separation of judiciary from the executive. It was also argued that since it was more of a "Star Chamber" and not a public trial, it violated Article 35 of the Constitution. The High Court Division issued a Rule⁴⁴ upon the government to show cause

⁴¹ See the *Daily Amar Desh*, 2 November 2007.

⁴² See *The Daily Star*, 10 December 2007.

⁴³ 2000 BLD (AD) 104.

⁴⁴ The Rule was issued on 9 November 2007.

within 4 weeks why such order of transferring the court ought not be declared illegal and stayed the proceedings of the case for a period of 3 months. On receiving the order of the High Court Division, the Metropolitan Sessions Judge, adjourned the proceedings of the case till 8 March 2008. It was expected that the Supreme Court would assert its position as it did in fully implementing its directions for the separation of Judiciary from the executive organ to uphold its own authority. But on 13 December 2007 on an application filed by the government, the Appellate Division stayed the order of the High Court Division without going into the merit of the case.⁴⁵

So the performance of the Appellate Division and its perceived bias for the government terming the politicians in custody as “corrupt” or “*durnitibaj*” before they were proved to be so became an anathema for public to accept that justice was no more available from the highest court of the country. The judges of the Appellate Division perhaps did not realise that if the doors of justice were closed the only recourse for the people would be to resort to violence. The inconsistent, contradictory and derogatory treatment of politicians and others by the courts at all levels on charges of corruption compared to the murderers, rapists, terrorists and other offenders of grievous crimes, like the one Amin Mia who chopped off the head from the body of a young female lawyer Nasreen Akhter Tuli for giving legal protection to his frequently tortured wife and went round the streets in Dhaka by holding the severed head with dripping blood in his hand,⁴⁶ did not only smack of discrimination but it violated the cherished principles of equality and rule of law.

It is not only the separation or independence of judiciary but it is the integrity and mindset of the judges which mattered most particularly when they are sitting in the highest court of the country deciding laws not only for the present but for the future as well. A point of law is a law the way a judge looks at it and can be interpreted in many ways depending in what state of mind the judge was to look at it, for which diverse and contradictory precedents would also be available. So if the mindset of a judge was to take the same biased view as of the prosecutor or the government, then the

⁴⁵ See the *Daily Ittefaq*, 14 December 2007.

⁴⁶ See the *Daily Ittefaq*, 24 and 26 October 2008.

neutrality of the justice delivery institution would certainly end up in a doom. One could however argue that the performance of the same Appellate Division would have been completely different or even opposite if the judges did not have to act under the fear of the regime and the Emergency Rules were not prevailing—could be no excuse for any defence for the highest court of the country where a sufferer or a victim of the illegalities of the executive branch of the state went to seek justice and the Constitution was still supreme under which they all had taken oath of office. This loss of public faith in the trial courts as well as the Appellate Division had drastically weakened the government position on their drive against corruption of the politicians and others. The public and the political parties now started looking to the streets rather than the courts for justice. The social equity, balance and harmony the Appellate Division was expected to maintain between the contending forces in society having had failed, a state of anarchy, indiscipline and volatility was bound to return as reactive forces. The general politicians apart, the sheer fact that Sheikh Hasina was accused of two extortion cases allegedly committed 10 years ago and both, Sheikh Hasina and Khaleda Zia, the two former Prime Ministers were accused of awarding a contract for exploration of gas for a combined loss of more than Tk. 26,000 crores in a case called “NIKO case” was never believed by their millions of supporters all over the country, notwithstanding what punishment the courts had awarded them. So if justice was not seen to have been done by the courts to their leaders who had more than 80% of the voters of the entire nation supporting them in the last election, the matter would ultimately be decided by the people resorting to streets as witnessed in the past, unless the political compulsions of such potential convulsion force the regime to either release them from prison or withdraw such atrocious cases from the ambit of the Emergency Rules.

The Judgments

Besides the frequent interventions in staying the interlocutory interim orders of the High Court Division in at least 4 judgments of great public importance involving basic human rights, such interference by the highest court of the country was bitterly criticised by the Bar and the civil society. As these matters were deeply connected with the supremacy of the Constitution and independence of Judiciary having

far-reaching effects, the pronouncements of the highest court of the country need a careful study, particularly when it involves interpretation of law and their constitutionality. In interpretation of any provision of law, besides following some cardinal principles, it is the mind-set, intellect, knowledge and conviction of the judges who embark on giving any interpretation of law either way, are vitally important. The focal points of these judgments reflected how the mind of the judges worked in such fundamental issues in a situation like that of Emergency.

The principal issues elaborately discussed by the illustrious judgments of the High Court Division covering the constitutionality of some of the provisions of the Emergency Power Rules but rejected by the Appellate Division were whether: (1) Rule 19(Gha) of the Emergency Power Rules 2007 could take away the power and authority of the Supreme Court to grant bail to any accused citizen in a pending case or held in custody under the Emergency Power Rules without any specific case; (2) Rule 11(3) of the Emergency Power Rules could exclude the power and authority of the High Court Division to grant bail to any accused citizen in a pending appeal after conviction and sentence awarded by any trial court in a case of corruption; (3) Rules 19(Eea)(1) and (4) of the Emergency Power Rules read with Section 3(Ka) of the Emergency Power Ordinance could empower the government to transfer any case for trial under the provisions of the Emergency Power Rules even if the offence was committed prior to the date of promulgation of Emergency on 11 January 2007; and (4) Sub-rule 3 of Section 491 of the Code of Criminal Procedure could exclude the power and authority of the High Court Division to issue direction in the nature of Habeas Corpus and release the person from preventive detention during the subsistence of the Special Powers Act 1974.

In the first case, on the jurisdiction of the High Court Division in granting bail under Section 498 of the Code of Criminal Procedure, besides going into the constitutionality of such a subordinate legislation under the Emergency Ordinance, the issue was simple whether the words "court or tribunal" used in Rule 19(Gha) would include the Supreme Court to oust its jurisdiction to grant bail if any accused person was arrested under any provision of the Emergency Power Rules even when no specific case was started against him. While the same words "court or tribunal" used in Rules 19(Ka), 19(Kha) and 19(Uma) meant only the lower court or tribunal as against the

Rule 19(Uma) where the law makers used the additional words “higher court” to include the Supreme Court. In other words, whether the same words “court or tribunal” used in Rule 19(Gha) would include the Supreme Court or not. Although there was no ambiguity in the law but the issue became a matter of interpretation raised by the Attorney General on behalf of the state.

The High Court Division presided over by Justice Nazrul Islam Chowdhury in a judgment delivered on 22 April 2007, after a long hearing assisted by eminent lawyers as Amicus Curiae that the High Court Division had the power to entertain application for bail under Section 498 of the Code of Criminal Procedure notwithstanding the provision contained in Rule 19(Gha) of the Emergency Power Rules and bail was granted to the petitioners.⁴⁷ In its interpretation of law the court besides following its earlier decisions, relied on various principles pronounced in the judgments, delivered by the Supreme Court of India and Pakistan as well. While discussing a series of decisions, the court quoted from a judgment of its own Appellate Division⁴⁸ the following:

We are to remember another cardinal principle as to the interpretation of law relating to the curtailment of jurisdiction of the superior courts. It is well settled that in a democratic country with an independent judiciary the jurisdiction of the superior courts are not to be interpreted to have been taken away and if it is so intended, it may be done by the appropriate legislative or constitutional authority by express words and not by implications.

The High Court Division based on such past decisions of the Appellate Division observed:

Therefore the context around the instant legislation, is a clear manifestation without any obscurity, that the framer of the said Rules, deliberately refrained from using the expression to include the Supreme Court within the ambit of Rule 19(Gha) of the said Rules.

So finally as a reply to the question whether the High Court Division could entertain an application under Section 498 of the Code of Criminal Procedure the judges concluded by saying that—

“This court can entertain applications under Section 498 of the Code of Criminal Procedure despite Rule 19(Gha) of the said Rules, even with a non-obstante expression.”

⁴⁷ See the judgment in Criminal Miscellaneous Case No. 3875 of 2007 delivered on 22 April 2007, 59 DLR, High Court Division 287.

⁴⁸ See 34 DLR (AD) 125.

But no sooner the judgment was delivered the highly motivated interim government with all its weight of Emergency powers rushed to the Appellate Division with a provisional application⁴⁹ upon which the court stayed the judgment of the High Court Division without realising what injustice was being done to thousands of innocent people who were held in jail for months without any formal charge or trial. Having had obtained an order of stay which was a fillip for the executive to arrest more people at random and put them in jail, the government was not in a hurry to file a regular leave petition and when it was done after nearly 4 months in September 2007, the Appellate Division without much deliberation had found that the submission made by the Additional Attorney General deserved their consideration and granted leave for a full hearing maintaining the stay of the judgment.

It then took a long year for the Appellate Division to finally hear the Appeal and deliver a judgment in April 2008⁵⁰ reconfirming their earlier order of stay. Relying on the provision on the definition of "court" which was to include the Supreme Court given in Article 152 of the Constitution, an omnibus general definition not applicable to any particular law, not to speak of any subordinate legislation like the Emergency Power Rules, where the highest court of the country ought to have been more zealous, alert and vigilant in upholding its power and authority. Instead it accepted the stand of the executive that the "court" in 19(Gha) included the Supreme Court. This disappointing judgment not only undermined the highest court of the land to have ignored its constitutional mandate in public eye but according to a highly esteemed former Attorney General this judgment was a "last nail in the coffin"⁵¹ and a severe blow to the rule of law in the country. Although in the judgment it mentioned that Rule 19(Gha) would not be a bar for the High Court Division to grant bail if it was a case without jurisdiction, Coram non-judice or malafide but it was nothing innovative in the light of the general principles of due process of law. The actual effect of it was that the doors of the Supreme Court were shut down for any citizen however innocent he was to get any bail for

⁴⁹ See the Criminal Miscellaneous Petition No. 164 of 2007 and leave was allowed by the judgment delivered in Criminal Appeal No. 65 of 2007 in April 2008, 60 DLR(AD) 82.

⁵⁰ Ibid.

⁵¹ Comment of Rafique-ul Huq, former Attorney General. See the newspaper reports.

as long as the Emergency would remain in force in the country, a situation inconceivable to exist in any civilised society. Whereas in matters of interpretation of law like the present one, some other judges would have perhaps given a completely different judgment to save the rights of citizens and the supremacy of the Constitution.

The second one, equally regressive and inconceivable, was a judgment delivered by the Appellate Division to exclude the power and authority of the High Court Division enjoyed under the existing laws and Constitution in granting bail to a person convicted and sentenced in a subordinate court. Whereas persons convicted for daylight murder or rape or any other heinous crime when sentenced for life enjoy the right to submit applications for bail and the High Court Division has the power at their discretion to grant bail to such persons if it had found sufficient grounds to do so.

But under Rule 11(3) of the Emergency Power Rules, a subordinate legislation under an Ordinance emanating from a Proclamation invoked to meet with a temporary phase of internal disturbance caused by a political deadlock over the holding of a free and fair election, a situation which had passed long time ago, but yet the state of emergency questionably continued illegally, the High Court Division was barred from granting bail to any person convicted in the court of the Special Judge sitting almost in camera in a secluded place at Sher-e-Bangla Nagar. However unfair the trial had been or however untenable the depositions were, an accused convicted and sentenced to imprisonment under the laws mentioned in Rules 14 and 15 of the said Emergency Power Rules, was not entitled to seek bail till his appeal was disposed of which could take an indefinite period running into years.

Two cases were heard together, one of Mir Mohammad Helaluddin, a young barrister son of a former State Minister⁵² convicted and sentenced for a term of 3 years under Section 27(1) of the Anti-Corruption Commission Act 2004, as an abettor of his father and of Sigma Huda, as an abettor of her husband, a former Minister convicted and sentenced for a term of 3 years under Section 161 of the Penal Code,⁵³ the High Court Division delivered the judgment

⁵² Mir Mohammad Nasiruddin was sentenced for 10 years.

⁵³ Nazmul Huda was sentenced for 13 years.

following the same principles of law as enumerated and interpreted by them as to whether Rule 11(3) of the Emergency Power Rules had excluded the power and jurisdiction of the High Court Division to enlarge any convicted citizen on bail pending the hearing of an appeal. On examining the existing laws, the constitutionality of the Emergency Power Rules, the earlier precedents and judicial pronouncements, the High Court Division came to the conclusion that Rule 11(3) of the Emergency Power Rules was not applicable in respect of offences under the enactments mentioned in Rules 14 and 15 and that the "appellate court" mentioned in Rule 11(3) did not include the High Court Division of the Supreme Court as its jurisdiction having been given by the Constitution could not be curtailed or excluded by a subordinate legislation unless done by an explicit expression.⁵⁴

In a similar manner as soon as the judgment was delivered by the High Court Division the overzealous interim government running after the politicians filed an appeal and the Appellate Division stayed this judgment, granted leave and reversed the entire judgment of the High Court Division.

Interpretation of law is a discretionary exercise of wisdom of the judges. It could be tilted either way depending on the mindset more than the wisdom. In order to justify their decision to reverse⁵⁵ the enlightened judgment of the High Court Division, the Appellate Division⁵⁶ cited some decisions and examples which were not relevant to the present situation in Bangladesh and the conditions upon which the Emergency was proclaimed in the country. Most of the references and quotations highlighted by them related to situations obtained prior to or after the second world war and of the laws enacted in Bangladesh to contain a totally ravaged situation prevailed immediately after the bloody war in 1971. The argument of the Appellate Division to justify the superiority of the Emergency Power Rules over their own authority and the Constitution on the ground that "extreme situation demanded extreme legal measures," sounded irrelevant and out of place when it referred to the case of Hirabayashi vs United States (1943) which arose out of the confinement of the

⁵⁴ See the decision given in Criminal Appeals Nos. 3742 and 4813 of 2007 dated 13 December 2007 by the High Court Division.

⁵⁵ See the judgment of the Appellate Division in Criminal Appeals Nos. 5 and 6 of 2008 heard on 24 and 26 February 2008, 2008 BLT AD 256.

⁵⁶ *Ibid.*

Japanese-Americans for their disloyalty in the Tar-peper barracks for three years done for "military necessity" and suspension of constitutional rights were sanctioned by the court during "war times." The quotation of Lord Atkin without giving any context and citing the laws like Habeas Corpus Suspension Act and the Emergency Defence Act 1939 enacted during the war, are other examples where the Appellate Division had faltered in substantiating their judgment. The Indian decision cited had also no relevance to the case in Bangladesh. The citation of laws like PO 8 and PO 50 of 1972⁵⁷ which were enacted to contain the situation with regard to the collaborators and the illegal arms arising out of the Liberation War were even more ill-cited and so were the decisions mentioned by the Appellate Division⁵⁸ in the context of the present Emergency in Bangladesh after 36 years of its independence. This is how on wrong premises, erroneous arguments and misconceived citations, the Appellate Division, according to the views of the senior advocates of the Bar, instead of moving forward abrogated its own authority and turned its position to appear as subservient to the executive organ of the state.

In 2007, Bangladesh was not in a war nor there was any in the immediate past nor there was there the remotest possibility of any war in future. The Emergency was proclaimed for reasons, not unknown to the judges, arising out of an internal political crisis between two contending parties racing to get elected through an election, when one of them decided to boycott the election by accusing the other party for planning to stage a rigged election. So in comparing the emergency situation in Bangladesh with the situation arising out of the Second World War or the Liberation War of Bangladesh, the judgment of the Appellate Division was most disappointing.

Ironically, the judgment also suffered from self-contradiction. On the one hand it allowed the appeals by rejecting the judgments of the High Court Division but on the other hand allowed the High Court Division to grant bail in cases of short sentence not exceeding 3 years if the appeal could not be disposed of within 90 working days for no fault of the appellant and or in the case of serious illness endangering life. The members of the Bar argued that if that was the view of the

⁵⁷ Bangladesh Collaborators (Special Tribunal) Order 1972 (PO 8). See *Gazette* notification dated 24 January 1972.

⁵⁸ See the judgment in Criminal Appeal Nos. 5 and 6 of 2008.

Appellate Division why had it limited to those sentenced upto 3 years only? On what logic or rationale the same could not be extended to all cases?

Before concluding the judgment in the appeals the judges, however did not fail to re-emphasise that whatever law the Appellate Division declared had the binding effect on all other courts in the country under Article 111 of the Constitution. Notwithstanding the context of this observation, it is true that under the Constitution the position of the Appellate Division is impregnable as the arbiter of law and whatever it declares is to be considered as the final and complete dictum which could not be challenged anywhere else as to be unfair or illogical. So finally what laws the Appellate Division had laid in this regard were that in Bangladesh the doors for bail, a universally recognised right, were now closed in all courts including the highest court of the country not only for all those thousands who were held in custody without trial under the Emergency Power Rules, but also for those convicted under the Emergency Rules notwithstanding all the merits they had in Appeals. It was not only the Chief Justice but all the judges of the Appellate Division of this period would go down in history as to have played a role in establishing regressive examples of justice for a nation which used to be at one time proud of its judiciary.

In the third case, a historical judgment,⁵⁹ in which the High Court Division in its elaborate deliberation, after 6 days of hearing assisted by 6 eminent lawyers as *Amicus Curiae*, upheld the supremacy of existing laws and Constitution was reversed by the Appellate Division on issues of great constitutional importance. While the High Court Division asserted the power and authority of the Supreme Court, the Appellate Division took a subdued role in surrendering the same to the Emergency Power Rules, a subordinate legislation of a temporary state of Emergency and thereby abrogated its own dominion as the apex institution of justice to the detriment of the rights to life, liberty and property of citizens.

It was a make-belief extortion case trumped-up against Sheikh Hasina, instituted more for political harassment than proving any substance of it, allegedly committed by her cousin Sheikh Fazlul

⁵⁹ See the judgment delivered by Justice Shah Abu Nayeem Mominur Rahman in Writ Petition No. 6576 of 2007 on 6 February 2008. BLD 2008 HCD 161 in Sheikh Hasina vs the Government.

Karim Selim, a former Member of Parliament in the year 2000, under her patronage 7 years before the Emergency was proclaimed. If the case was conducted under the normal course of existing laws the matter would not have come upto the highest court of the country. Both the accused would have been free on bail and defend themselves in a normal court and prove their innocence in a free and fair public trial. But once the case was put for trial under the Emergency Power Rules an accused could be deprived of all his rights of a fair trial including the right to bail both prior to and after the conviction and his right to contest the election to hold any public office. Since these restrictive provisions of the Emergency Power Rules were derogatory to the rights guaranteed in the Constitution, Hasina was not willing to accept such injustice without vindicating her grievances.

In a writ petition filed in the High Court Division, Sheikh Hasina challenged the authority of the government to sanction the transfer of her case for trial under the provision of the Emergency Power Rules and more so a case in which the alleged offence was committed prior to the Proclamation of Emergency. So the writ petition did not only involve the mere interpretation of Rules 19(Nya)(1), (4) and (5) of the Emergency Power Rules and Section 3(Ka) of the Emergency Power Ordinance made effective retrospectively, it also attracted the whole range of the concomitant provisions of the Emergency Power Rules, the Emergency Ordinance, the existing mother laws and the Constitution for dispensation.⁶⁰

The High Court Division identified the principal issues for the disposal of the writ petition which were whether: (1) the alleged criminal offence committed prior to the Proclamation of Emergency could be tried under the provisions of the Emergency Power Rules 2007 in view of Section 3(Ka) of the Emergency Power Ordinance and Articles 93 and 35 of the Constitution; (2) the incorporation of the penal provisions in the Rules 15(Gha), 19(Gha) and 19(Cha) of the Emergency Power Rules were inconsistent with the provisions of Articles 27, 31, 32, 33 and 35 of the Constitution and are void in view of Article 26(2) read with Article 7(2) of the Constitution; (3) the sanctions given under Rules 19(Nya)(1) and (5) of the Emergency Power Rules were valid for the trial of the cases under the Rules arising out of the alleged offence committed prior to the promulgation of the Emergency.

⁶⁰ See the submissions made by the lawyers in Writ Petition No. 6576 of 2007. BLD 2008 HCD 161.

Based on the arguments forwarded on each of these 3 issues by the lawyers of both sides and the submissions made by the lawyers invited to assist the court as Amicus Curiae supported by series of precedents, the High Court Division held the view that neither the Constitution nor the Emergency Power Ordinance had provided any authority to the government to frame Rules or any part thereof giving retrospective effect thereon and therefore by the Emergency Power Rules framed under the authority of the Emergency Power Ordinance, the offence committed prior to 11 January 2007 could not be tried under the provisions of the Emergency Power Rules and for that matter no sanction could be given for the trial of such cases. It also held that the provisions negating the authority of the court to grant bail under Rules 19(Gha), 10(2), 11 and 15(Gha) of the Emergency Power Rules being inconsistent with the provisions of Articles 31, 32, 33 and 35 of the Constitution as well as Sections 426, 496, 497 and 498 of the Code of Criminal Procedure, were void. Further, since the Rules 3, 4, 5, 6, 7, 8 and 15(Gha) were inconsistent with the existing laws as well as the provisions of Articles 27 to 35 of the Constitution, the said Rules to the extent of the inconsistency for containing the provisions of penalty and sentence, were void as per Article 26(2) of the Constitution.

Having taken oath to "preserve, protect and defend the Constitution" the judges of the High Court Division asserted that such an oath had cast upon them a duty to "read and apply" the provisions of the Constitution "strictly," when rights of citizens are infringed. The suspension of the immunity by Article 141(B) on the rights guaranteed by Articles 36 to 40 and 42 of the Constitution did not "affect the court's power or authority in protecting the rights covered by Articles 27 to 35 of the Constitution."

In summary, the High Court Division in their judgment held that:

1. Any case arising out of an offence committed prior to the date of promulgation of the Emergency, i.e., 11 January 2007, could not be tried under the Emergency Power Rules 2007.
2. The existing Rules framed under the Emergency Power Ordinance 2007 were not retrospective in view of the objectives detailed in Section 3(1) of the said Ordinance 2007; the Emergency Power Rules is prospective.
3. For the purpose of granting sanction, consideration ought to be given to the importance of the offence committed and not the

status or importance of the accused and that such offence must affect or be related to the objectives detailed in Section 3(1) of the Emergency Power Ordinance 2007.

4. The Rules framed under a statute being a sub-ordinate legislation the same could not curb or infringe a right or benefit given by a Statute, hence the penal provisions as well as the provisions curbing the right to bail as contained in the Emergency Power Rules 2007 were void and not enforceable.
5. The Emergency has not curtailed the power and authority of any court, and the court retained its power and authority to deal with bail and other matters in accordance with the existing laws in force.

As a result, the High Court Division made the rule absolute and declared the proceedings of the case⁶¹ against Sheikh Hasina and her cousin Sheikh Fazlul Karim Selim to be without lawful authority.

Soon thereafter the interim government filed a petition for leave to appeal before the Appellate Division against the judgment and order of the High Court Division. In their order dated 25 February 2008, the Appellate Division while narrating all the 15 submissions made by the Additional Attorney General did not mention any of the submissions made by the lawyers of Sheikh Hasina who opposed the leave petition. The Appellate Division while granting leave to appeal by its order stayed the judgment of the High Court Division and suspended the proceedings of the trial court till the disposal of the appeal.⁶²

While rejecting the judgment and order of the High Court Division, the Appellate Division in Civil Appeal No. 46 of 2008⁶³ again upheld the various provisions of the Emergency Rules over the Constitution and gave their reasons. It was unfortunate that on every point, the decision given by the High Court Division, was discarded by the Appellate Division. On the question of trying offences committed prior to the Proclamation of Emergency the Appellate Division found no illegalities and infirmity in the sanction given by the government in hearing the case under the laws mentioned in Rules 14 and 15 of the Emergency Power Rules. The Appellate Division also held that there is

⁶¹ Gulshan Police Station Case No. 34 dated 13 June 2007.

⁶² See the order passed by the Appellate Division in Civil Petition for Leave to Appeal No. 376 of 2008.

⁶³ See 2008 BLD (AD) 163 in the Government vs Sheikh Hasina.

nothing in the Emergency Power Ordinance or Emergency Power Rules 2007 which contravened the provisions of Article 35(1) of the Constitution. It also held that a trial under the procedures different from what obtained at the time of the commission of the offence or a trial by a court different from that which had competence at the time could not *ipso-facto* be held to be unconstitutional.

In substance, while the High Court Division upheld the supremacy of the Constitution over all other laws including the Emergency Power Rules, the Appellate Division being the highest court of the country ruled the other way round, causing a great set-back in the progress of law for protecting the rights of citizens.

In the fourth case, the Appellate Division went to the extreme point of forbidding the liberty of citizens in cases of preventive detention in contrast to its tradition of playing a historical role in upholding the rights of citizens in the past.⁶⁴ Soon after the Proclamation of Emergency thousands of citizens were arrested, the figure being more than 400,000 as disclosed officially at a later stage, ranging from rickshaw pullers to renowned politicians, bus drivers to big business house bosses, street vendors to slum dwellers and fashion shop owners to fishermen across the country. They were held up initially on suspicion under Section 54 of the Code of Criminal Procedure or Rule 16(2) of the Emergency Power Rules but then served with an order of detention under Section 3 of the Special Powers Act, in violation of the judgment and directions of the Supreme Court,⁶⁵ in the absence of any lawful charge and detained in jails for an indefinite period. The enforcement of fundamental rights having been suspended by an order of the President under Article 141(C) of the Constitution soon after the Emergency was proclaimed, in order to secure release of any citizen from custody against unlawful detention, normally done under Article 102 of the Constitution, the detained persons resorted to take refuge of the High Court Division under Section 491 of the Code of Criminal Procedure 1898, a power and authority exercised for more than one hundred years. By February 2007 hundreds of petitions were filed before the appropriate Bench of the High Court Division for the

⁶⁴ See the earlier discussion on the role of the Supreme Court in the past in upholding the rights of citizens in matters of preventive detention under Section 3 of the Special Powers Act 1974.

⁶⁵ See Volume XXIII 23 BLD (HD) 115.

liberty of citizens under the Code to issue directions in the nature of a habeas corpus. Section 491 which empowered the High Court Division "whenever it thinks fit" to direct "that a person illegally or improperly detained in public or private custody within such limits be set at liberty."

Under the Constitution (Second Amendment) Act 1973, Article 33 was amended to empower the Parliament to make law to arrest any person for preventive detention which resulted in the enactment of the infamous law called the Special Powers Act 1974. Following this, Section 491 of the Code of Criminal Procedure was amended on 25 July 1974 to insert a subsection 3 saying that "Nothing in this Section applies to persons detained under any law for the time being in force providing for preventive detention." The High Court Division in all the cases where citizens were detained "illegally or improperly" under Section 3 of the Special Powers Act 1974, held the view that the restriction imposed by Sub-section 3 did not in any way curtail or infringe the inherent power and authority of the High Court Division to examine the legality of any detention of any citizen and if the Court had found such detention illegal or improper the detainee was set at liberty. Since the Appellate Division did not pass any judgment contrary to the series of decisions settled by the High Court Division, its inherent power and authority to give directives in the nature of a habeas corpus continued to remain paramount in the reported law books of the Supreme Court. The inherent power of the High Court Division assumed even more importance as an alternative venue because of the Proclamation of Emergency under which citizens were apparently debarred from enforcing the fundamental rights under the jurisdiction of Article 102 of the Constitution.

In an illuminating judgment delivered on 26 February 2007,⁶⁶ after hearing the arguments of 18 eminent lawyers of both sides for 6 days by Justice M.A. Abdul Wahhab Miah, the High Court Division forcefully asserted its position in upholding the supremacy of the law and Constitution and the inherent power of the court to protect the rights of citizens who were illegally deprived of their liberty and freedom. The Attorney General representing the unelected interim government argued on 3 points. Firstly, the applications for release of

⁶⁶ See the judgment in Criminal Miscellaneous Case Nos. 21, 22, 36 and 76 of 2007 reported in 27 BLD (HCD) 105. The author was still free to have the privilege in arguing the case on behalf of some of the detainees.

detainees under Section 491 of the Code of Criminal Procedure were not maintainable. According to him the High Court Division was barred by Sub-section 3 because of the existence of the law of preventive of detention namely, the Special Powers Act 1974 under which the petitioners were detained by a duly executed order backed by Rule 21 of the Emergency Power Rules 2007. Secondly, he further argued that the Sub-section 3 was inserted in Section 491 to put an embargo upon the Court from exercising any jurisdiction conferred on it in Clauses (a) to (e) of Sub-section (1) of Section 491 in case of preventive detention given under the provisions of the Special Powers Act and therefore the court ought not to have issued any Rule in the respective applications. In view of such an embargo the court was purportedly barred from seeing whether the order of preventive detention passed by the executive authority was issued legally or properly as it was a matter of "subjective satisfaction" for keeping a person in preventive detention and the court could not question such a satisfaction of the executive authority. So in view of the embargo put by Sub-section 3 of Section 491 of the Code a person had no legal right to approach the High Court Division challenging an order of preventive detention. Thirdly, the Attorney General asserted that although Chapter XXXVII of the Code was titled as "Directions of the nature of a Habeas Corpus" but it was not the same as contemplated in Article 102(2)(b)(i) of the Constitution. So the court could not apply the principles of law enunciated in the cases under Article 102 in exercising its jurisdiction in the nature of habeas corpus under Section 491 of the Code. More so, in view of the fact that the fundamental rights had been suspended any interference by this court with an order of any preventive detention would amount to indirectly protecting the suspended fundamental rights guaranteed in Part III of the Constitution. Therefore, according to the Attorney General the government had not committed any illegality in passing the respective detention orders and the detainees were held in custody legally and properly. However the lawyers appearing on behalf of the detainees rebutted all the arguments submitted by the Attorney General supported by series of national and international decisions.

In their elaborate judgment the High Court Division after discussing all the aspects of the law and the precedents had found that the court had under Section 491 of the Code an inherent power "whenever it thinks fit" to use its discretion in determining whether a

citizen was held in jail "illegally or improperly." On the question of maintainability of the applications the court concluded by saying that "Sub-section 3 of Section 491 of the Code has not put an absolute bar upon this court to exercise the discretionary jurisdiction in giving directions of the nature of habeas corpus particularly as provided in Clause (b) to Sub-section (1) of Section 491 to examine as to whether a person is detained illegally or improperly in case of preventive detention and consequently we hold that all the applications are maintainable in law." On the question of the ouster of jurisdiction, the court observed that "if the submission of the Attorney General is accepted, once an order of preventive detention is passed the jurisdiction of this court will automatically be ousted then this court will be unclothing itself from exercising a discretionary power vested in it by a statute while clothing the executive authority under Section 3 of the Special Powers Act with arbitrary and unbridled power to detain any person in the name of preventive detention under the said section at their whims and such a situation would lead to a jungle law." In other words if the argument of the Attorney General was accepted, the insertion of Sub-section 3 would lead to making the whole section of 491 of the Code redundant. Moreover, according to the court, the provision of Section 491 was not suspended by the Emergency Power Ordinance or by the Rules there-under.

On the question of the enforcement of fundamental rights suspended under the Proclamation of Emergency, the court held the view that the power conferred upon the court being discretionary and could be exercised as and when it "thinks fit" to examine and pass an order on the "illegal or improper" detention of a citizen invocation of fundamental rights was not necessary. The provision and power under Section 491 stood independent of the fundamental rights guaranteed in the Constitution and the scope of Section 491 was "much more wider than the constitutional provisions in dealing with a case of habeas corpus" and had nothing to do with the fundamental rights enshrined in the Constitution. Moreover, Section 491 of the Code being a pre-constitutional legislation, mere insertion of Sub-section 3 in 1974, the power conferred upon the High Court Division could not be abridged. On the issue of the "satisfaction" of the detaining authority which the Attorney General insisted to be a "subjective" one, the court held that in view of the series of decisions by the highest courts of the subcontinent there could not be two

standards, one for the writ jurisdiction and one for the statutory jurisdiction to measure the issue of “satisfaction” and this had to be an “objective satisfaction” on the part of the executive⁶⁷ before an order of detention was passed.

The issue whether the insertion of Sub-section 3 in Section 491 of the Code had ousted the jurisdiction of the court to deal with the rights of citizens held in custody in preventive detention was not a new one. In series of cases in the past the government lawyers had agitated this point but the High Court Division consistently upheld its authority and jurisdiction and maintained the same for 34 years and none of the judgments of the High Court Division on this point was reversed by the Appellate Division.⁶⁸ On the other hand, it was also true that a full-dress examination of this point of law was not done by the Appellate Division as in one of such cases they left the matter to be decided in an appropriate case.⁶⁹ So in substance, the High Court Division decreed that it had the jurisdiction under Section 491 of the Code of Criminal Procedure to interfere with an illegal detention though there was an enactment providing for preventive detention.

No sooner the judgment of the High Court Division was delivered on 26 February 2007, the interim government went to the Appellate Division with a provisional application and the court granted an order of stay of the judgment itself which surprised all the members of the Bar as it not only stopped the liberty of those detainees whose petitions were disposed of but for hundreds of such detainees who were waiting for their release on the same grounds. The government then filed a regular petition for leave to appeal against the judgment and order of the High Court Division in respect of 58 such other detainees who were till then ordered to be freed by the court.⁷⁰

Although the question whether Sub-section 3 of Section 491 would debar the High Court Division in dealing with the liberty of any citizen held in custody under a law providing preventive detention was

⁶⁷ See 27 BLD (HCD) 105. The decisions cited were: 17 DLR Dhaka1, 19 DLR (SC) 403, 20 DLR (SC) 248, 21 DLR (SC) 1, 31 DLR (AD) 1, 40 DLR (AD) 178, 51 DLR (AD) 1.

⁶⁸ See 27 BLD (HCD) 105. Decisions cited on this point whether insertion of Sub-section 3 in Section 491 had ousted the jurisdiction of the High Court Division were: 50 DLR 399, 44 DLR 603, 38 DLR 93.

⁶⁹ 54 DLR (AD) 157.

⁷⁰ Criminal Petition for Leave to Appeal Nos. 119-122 of 2007, 92-95 of 2007 along with 50 miscellaneous petitions heard and disposed of together by the Appellate Division.

settled by the High Court Division but since the Appellate Division had so far not given any decision on the issue, grant of a leave for this purpose was not unexpected. So at the time of hearing of this petition when the Appellate Division instead of accepting the judgment of the High Court Division and the law prevailed for more than 3 decades including their own support for it, was leaned to go against the judgment, the members of the Bar appearing for the detainees finally urged upon the court to the effect that if the court had decided to grant leave let them do so to examine the issue and give their own judgment but let the detainees already under order of release go free, which the court could have easily done and at the same time settle the law for future either by accepting the judgment of the High Court Division or rejecting it. But the Appellate Division did not agree to do so. It granted leave on the grounds submitted by the Attorney General and stayed the entire judgment and release of the detainees.⁷¹ More tragic was, for some unknown reasons, the appeal was never heard in this case for any final pronouncement on the issue during the tenure of the Chief Justice Md. Ruhul Amin.

If analysed in the correct perspective, the 4 judgments delivered by the High Court Division and their intervention at all stages and the subsequent reversal of them by the Appellate Division created a clear public perception that while the High Court Division on each occasion was eager to maintain the power and authority of the Supreme Court, the Appellate Division abandoned its own role of supremacy; while the High Court Division tried to uphold the supremacy of law and the Constitution, the Appellate Division surrendered its authority to the Emergency Power Rules 2007, a mere subordinate legislation under an Ordinance and Proclamation meant to have been in operation for a short and temporary period to meet with the conditions for which they were introduced, and finally, while the High Court Division tried to guard and protect the rights of citizens against the brutal aggression of the executive, the Appellate Division took not only a back-seat but extended an indirect supportive hand to enable the executive to perpetuate its repression on the citizens of the country under the garb of Emergency against the mandate of the Constitution.

⁷¹ See the order passed in the Criminal Petition for Leave to Appeal Nos. 119-122 by the Appellate Division dated 3 April 2007. The author also argued in this case defending the judgment of the High Court Division on behalf some of the detainees.

With the departure of Chief Justice Md. Ruhul Amin in a state of ignominy without any farewell from the Bar on 1 June 2008, the Appellate Division under the new Chief Justice M. M. Ruhul Amin initially returned to the old and established tradition of maintaining the judicial principles of generally not interfering at the instance of the state with every interim order of the High Court Division and allowed the High Court Division to exercise its due power and jurisdiction under the Constitution. When the High Court Division, both under the writ and criminal jurisdictions, reopened the doors for granting bail earlier shut by the Appellate Division by two previous controversial judgments and started to exercise their authority to issue Rules for quashing proceedings and granting bail giving their own grounds on interpretation of those two judgments, the Appellate Division under the new Chief Justice showed reluctance to interfere on mere provisional applications and had the matters sent back to the High Court Division for adjudication. This attitude and action of the Appellate Division had immediately changed the general environment of the higher judiciary and helped in restoring the image and authority of the Supreme Court. At the same time it also enabled the release of hundreds of citizens languishing in jail for months without charges or held in custody on flimsy intangible grounds. Although on occasions the Appellate Division also appeared to have suffered from extraneous constraints and passed inconsistent orders as regards bail in respect of certain political individuals but its general attitude and performance had certainly changed to uphold the rights of citizens and the Constitution.⁷²

⁷² As for example on 20 August 2008, bail granted to the author by the High Court Division in Criminal Miscellaneous Case No. 13661 of 2008 was stayed by the Appellate Division on 28 August in Criminal Petition for Leave to Appeal No. 433 of 2008. Whereas on the same day and thereafter bails in respect of all others granted by the High Court Division were allowed by the same Division. The author was reported that the Chief Justice had to do it under some kind of pressure. As a result the author had to stay in jail for more than 2 months while almost all his co-prisoners were freed on bail. The author suffered imprisonment for a long period of 20 months without any substantive trial.

Chapter 8

Economy

Before Emergency: Achievements of Bangladesh

During the rule of the interim regime the usurpers and a renegade section of the civil society maligned the politicians by saying that they have done nothing for the country other than making money. These irrational and unfounded statements were made only to discredit the politicians and political institutions in the country. The sustained propaganda combined with the character assassination of the politicians was aimed at giving an impression that there had to be a fresh beginning under the new leadership of the military to “salvage the nation.”

Whereas inspite of all the constraints and political instability caused by a one-party system followed by two major military interventions Bangladesh has made a remarkable progress both in the economic as well as social sectors. Many multinational development agencies have cited Bangladesh as a role model for development in the international forums. The Noble Laureate Amartya Sen praised Bangladesh to have performed better than India in education and health sectors. Professor Muhammad Yunus while responding to the citation of the Swedish Committee awarding him the Noble Peace Prize in Oslo in December 2006 cited Bangladesh to enjoy the distinction as a lead country in eradication of poverty and the role played by the Grameen Bank, in turning millions of assetless women into a productive force.

The first and foremost of all the achievements has been the pride of the people of being a free and independent nation after a long struggle of 24 years, culminating in the war of liberation in 1971 led by the great political leaders of the country at the cost of extreme sufferings and sacrifices of millions of people. Thousands of political leaders, workers and students and their families have suffered beginning with the

martyrs of the language movement till the independence was finally achieved. The contribution of the political leaders like Moulana Abdul Hamid Khan Bhashani during all the years colonised by Pakistani ruling elite and the emergence of Sheikh Mujibur Rahman, a symbol of Bangali nationalism, through the elections of 1970 when the movement for autonomy turned into a movement for a total independence from Pakistan backed by the declaration of independence by Major Ziaur Rahman, ignited the armed struggle to blossom a new nation with a sovereign territory of its own. It is politics which gave birth to Bangladesh and it was the relentless struggle of the people led by the politicians which brought its independence.

After the independence the war-ravaged country had no economic base.¹ There were no Central Bank, no Planning Commission, no policy-making forums, no ministries of Foreign Affairs, Finance, Home, Establishment and no structure of any central administration, no armed forces and besides all, no experience of running a sovereign state. The nation had to start from the scratch in every respect and the politicians who led the movement to create the nation now took the most arduous responsibility of building it. The achievements attained over this period upto the year of 2006 can be seen in Table 8.1.

Besides, enrollment of children in primary and secondary schools has reached 98% in 2006, the highest in South Asia, the gender equity in the schools has been achieved in course of last 15 years with more girls than boys enrolled in schools and education for girls free of tuition fees raised upto college level in 2002.

By 2006, Bangladesh had achieved an annual growth rate of 6.7% with a per capita income close to 500 USD. If the momentum of growth reached in 2006 could be carried on with a projected annual growth rate of 7 to 8% for next 5 to 7 years, Bangladesh was poised to achieve by 2012, 95% literacy and a 3000 USD per capita income with only 5% people living below the poverty line. Bangladesh, termed as an emerging tiger in international media, was seen as a land for growth at a faster rate than any others in South Asia and projected to reach the middle income group of countries in another 10 years. The country started to attract large foreign investments amounting to over 10

¹ See for detail, Moudud Ahmed, *Era of Sheikh Mujibur Rahman*, The University Press Limited, Dhaka, 1983.

See for the growth figures, *Bangladeshi Economic Review 2008*, Ministry of Finance, March 2009.

Table 8.1: Achievements of Bangladesh

Subject	1972	2006
Budget	Tk. 525 (crores)	Tk. 70000 crores (141 times larger)
Export	\$ 250 million	\$ 12.1 billion
Remittance	Non-existent	\$ 5.97 billion
Per Capita Income	\$ 75	\$ 485
Food Production	9 million tons	28.5 million tons
Population Growth Rate	3.4%	1.4%
Population Living Below Poverty Line	78%	44%
Life Expectancy	43 years	65 years
Fertility Rate	7%	3%
Child Death	239	69 per thousand
Death at Birth	145	46 per thousand
Drinking Water	20%	95%
Immunization	10%	85%

Source: Collected from various government publications and reports.

billion US dollars from 8 foreign companies including Tata Group of India, High Tech Group of Saudi Arabia, Vulcan Energy of USA and Dhabi Group of UAE. Goldenm Sachs, world's most reputed US investment analysts, enlisted Bangladesh as one of the 12 countries in the world where foreign companies would go for investment in the next decade. The first ever visits of Bill Gates, the richest man in the world and Ted Turner the media mogul to Bangladesh in 2006 had only borne the testimony of a great confidence in Bangladesh for foreign investments. Like many other countries, Bangladesh could certainly achieve much more if it had a better political stability and a more competent administration.

Notwithstanding the one-party rule and the two spells of Martial Law administration, whatever has been achieved so far to bring Bangladesh to this level has been the contribution of the politicians of all the governments of last 36 years. The irresponsible utterances of the interim regime that politicians had done nothing for the country must have been intended to destroy Bangladesh as a sovereign entity. The interim regime failed to realise what amount of incalculable harm they had done to this nation particularly when such statements were made by persons no less than the Chief Adviser and the Chief of Army

not only at home but also at the General Assembly of the United Nations and other world forums. The interim government had no other agenda other than holding and trying the politicians. They perhaps did not think even for once about their own legal standing and that such statements against the established politicians of the country would only further erode the confidence of foreign investment and foreign countries would be cautious in extending their assistance and investment in the country.

Decline in Economy

Notwithstanding the authority of the interim government to administer the country beyond the constitutional limits, the fact is that the regime had turned the “emerging tiger” into a mouse in a year’s time. Their failure in containing the prices of essential commodities, the rising inflation, large scale unemployment and massive violation of human rights, created deep frustration amongst the people. The Table 8.2 illustrates the economic decline Bangladesh had suffered during the misrule of the interim government.²

In an earlier UNCTAD report published in 2007, it has shown a decline of 6% in foreign investment,³ the same trend having been reflected in a World Bank Report published at the same time showing a drop of 17 ranks. In the U.N. Human Development Report of the same year Bangladesh has lost 3 ranks to 140 from 137 of 2006.⁴ So in the first one year of the interim government, Bangladesh has seen its worst economic decline, a country which had the potentials to catch up with the rest of the world had now lost its track once again.⁵

The two most important sources of foreign currency earning for Bangladesh are the exports of ready made garments, an ever growing sector employing about 2.5 million workers mostly women and the remittances coming from the citizens working abroad, both developed

² See for more detail, Dr. Rezwana Siddiky in his article “Larai Hoke Agea Jawar,” “Pichye Parar Noy,” the *Daily Naya Diganta*, 18 November 2007 and the figures published by the Center for Policy Dialogue, Dhaka, and the *Daily Amar Desh*, 1 November 2007.

³ See the *Daily Amar Desh*, 17 November 2007.

⁴ See the *Human Development Report 2007* and also the *Daily Ittefaq*, 30 November 2007. The decline in economy deteriorated further in 2008 in all the indicators.

⁵ The decline in economy deteriorated further in 2008 in all the indicators. See the *Global Competitiveness Report 2008*, the *Daily Ittefaq*, 9 October 2008.

Table 8.2: Decline of Economy

Subject	2006 (Rank)	2007-2008 (Rank)
Economic Competitiveness	92	107
Business Competition	99	118
Essential Needs of People	98	116
Infrastructural Developments	100	120
Macro-Economic Stability	69	87
Health and Primary Education	97	105
Increasing Productivity	78	91
Higher Education and Training	111	126
Efficiency in Product Market	78	93
Efficiency Level of Labour Market	70	76
Stability in the Currency Market	56	75
Adjustment with Technology	116	125
Expansion of Market	33	36
Improving Quality of Products	94	111
Sector Reforms	100	117

Sources: Report of the *World Economic Forum 2007 and 2008*; *UNCTAD Report 2007 and 2008*; *World Bank Report 2007 and 2008*; *U.N. Human Development Report 2007 and 2008*; *Global Competitiveness Report 2008*.

largely in the last 20 years. In the garment sector, in the month of September 2007 alone the export had declined by 23%.⁶ In the manpower sector, although the remittances continued to increase primarily because of devaluation of taka as against dollar and the pressure on the relatives of the expatriates of the fast increase in the prices of essentials and rising cost of living in the country, but still Bangladesh had started losing labour market in UAE and Kuwait to India and Indonesia due to mishandling of the problem by the interim government.⁷ In that year total export had declined by 21% and in garment sector it was 24%.⁸ The scope to export skilled manpower to Canada and South Korea came under severe strain causing a great loss to the country.⁹

⁶ See Dr. Rezwan Siddiky, the *Daily Naya Diganta*, 18 November 2007.

⁷ *Ibid.*

⁸ *The Daily Ittefaq*, 8 October 2007.

⁹ *The Daily Amar Desh*, 11 October 2007.

So the performance of the interim government in the economic sector had been dismal. Besides the huge decline of exports, the inflation rate rose to 10.2% with no fresh investment, and the economy recorded a speedy rise in unemployment, a drastic fall in the housing sector and a decline in the annual GDP growth rate. The public deposits in banks continued to decline being more than 7 billion taka in one month from June to July 2007.¹⁰ A huge amount of 100 billion taka was piled up in banks as idle money which was a phenomenal rise of 51% compared to the same period of last year.¹¹ The distribution of loan in the agriculture, the most vital sector of economy did not reach even 13% in the first 3 months of the fiscal year 2007-2008.¹² The default in bank loans increased by 30 billion taka in the first 9 months of the regime.¹³ The proposals for any new investment with the Investment Board declined by almost 50% compared to 2006.¹⁴ The immediate socio-economic effect of such a fall in the economy was the instant rise of migration of people from the rural to the urban areas, particularly towards the capital Dhaka, causing further concentration of slums, crimes and beggars in the city.¹⁵ Ms. Hua Du, the Country Director of the Asian Development Bank expressed the economic situation in Bangladesh as the most critical of last 36 years.¹⁶

This down-syndrome in the economy of the country occurred within less than a year, largely caused by an irresponsible, thoughtless and mischievous attack on the politicians and the business community in the name of removing corruption using the Emergency Rules, which not only failed to bring any result but on the other hand proved to be extremely counter-productive both in politics and business. Besides the fall shown in the 12 indicators by the *World Economic Forum Report 2007* followed by the *Global Competitiveness Report 2008*, the fall in all the vital areas of economy abundantly reported by both the government and non-government research institutions at home during this period had far-reaching consequences. The threat, panic, physical

¹⁰ See the *Daily Ittefaq*, 11 October 2007.

¹¹ See the *Daily Amar Desh*, 22 October 2007 and 4 November 2007.

¹² See the *Daily Ittefaq* and the *Daily Amar Desh*, 29 October 2007.

¹³ See the *Daily Amar Desh*, 21 November 2007

¹⁴ See the *Daily Amar Desh*, 3 November 2007.

¹⁵ See the *Daily Jai Jai Din*, 11 October 2007.

¹⁶ *ADB Quarterly Report*, November 2007. See also the *Daily Manab Zamin*, 28 February 2008.

torture and terrorisation carried with the so-called “drive against corruption” not only destabilised the economic momentum the country had gained in the last decade, had now caused a permanent injury to the potential this nation had. With nearly 50 renowned businessmen either in jail or abosconding¹⁷ on charges of corruption of various nature and another 200 fleeing the country it not only caused an enormous increase of loan default to the banks but closure of hundreds of factories for non-payment of salaries and sale of products, shrinking of exports and production causing a serious economic crisis for the country. With all the 8 to 10 trading houses controlling more than 80% of the imports not being in operation virtually created a regressive situation in the market of all kinds of commodities. A rise in the foreign exchange reserve to 5.30 billion US dollars in October-November 2007 was seen by the economists as an accumulation largely occurred due to a slowed economy with less transactions in international imports and business operations.

The argument that reduction of corruption would lead to efficiency and economic progress had proved to be wrong in Bangladesh. Arrest, harassment, torture and punishment of politicians and businessmen under the abnormal laws of the Emergency Rules only produced a negative result in all fronts. Instead of increasing the GDP growth rate to move the country forward it had caused a serious set back and the economists were predicting that a recovery would take three to four years to come to the level of 2006. The recovery of about 9 billion of taka (877 crore) and 2.5 million US dollars from some businessmen under duress, which the government had to return later on¹⁸ as against 200 billion of takas (20,000 crore) claimed by the Army Chief¹⁹ to have been siphoned off to foreign countries from Bangladesh during the political governments was insignificant compared to the infinite harm and damage done to the economy of the country. The cost-benefit ratio would only prove the idiosyncrasy of the whole exercise conducted by the regime. The dislocation in the industrial sector alone not only caused unemployment of thousands of workers, its effect in the banking sector was irredeemable. Dr. Huget Lebal, the global Chairperson of the Transparency International based in Berlin, while on a visit to Bangladesh in early November 2007 in a statement only

¹⁷ For detail see the *Daily Amar Desh*, 2 October 2007.

¹⁸ See *The Daily Star*, 31 October 2007.

¹⁹ See the *Daily Naya Diganta*, 18 October 2007.

confirmed the real situation in the country when she said that “with the drive against corruption the growth rate was supposed to improve but in Bangladesh the opposite has happened.”²⁰ More so the status of Bangladesh as one of the corrupt countries remained same in the rating and no change had taken place. On the contrary a study of the local office of Transparency International has revealed that corruption had increased in the public offices where the common people go and the rate of bribery had gone up since the installation of the interim government.²¹

In many developed countries corruption is rampant. In Japan almost every year or two a Prime Minister or Minister resigns on charges of some sort of corruption but their leaders do not go round the UN or world forums announcing the same. In Bangladesh the anti-corruption drive against big business was linked with the drive against the politicians. Private capital growth within the country has been the driving force of the economy. This is what have been seen in the United States, Japan or South Korea or any other country including India. The beginning has largely been the same in each of these countries. A very small fraction of this venture capital has grown out of taxed income. On the contrary, in every country in the initial years such capital has grown out of untaxed, windfall, ill-gotten wealth which was reinvested within the country and this helped creation of more wealth and employment. Once the economy reaches a steady level they are gradually brought within the regulatory machine. But even “buccaneer” capitalists contribute to social development by way of philanthropic investments. The power and strength of private capital was not born over night nor it came down from the sky—they were the fruits of those who could gather them by whatever means available. Bangladesh was just starting to encourage private capital growth and the economy was at a take-off stage when this attack was launched to destroy it.

Taxing on income lawful or otherwise, is a mandatory duty of the state. So is the obligation of those who have incomes to pay to the state for which procedures exist in specific laws. But to arrest and harass them en masse, frighten them as a community, force them to flee the country, freeze all their bank accounts, raid their corporate offices and close their factories, blackmail them to give evidence against the

²⁰ See the *Daily Ittefaq*, 4 November 2007.

²¹ See the *Daily Ittefaq* and the *Daily Manab Zamin*, 5 April 2008.

politicians, torture them physically and blind-fold them in the name of interrogation in the most inhuman conditions, arrest family members including wife and children, instigate media campaigns against them and bring criminal proceedings and punish them hurriedly without due process of law under the rigours of the Emergency Rules was unique in Bangladesh. These extreme measures were designed to destroy the economic base of this country. After about 8 months of rule by the regime statements were made by high officials including the Chief Adviser and the Army Chief²² not to harass the businessmen anymore but the damage was already done and their purpose of destroying the economy was well served by that time.²³

Prices of Essential Commodities and Rise in Poverty Level

As in the power sector, the performance of the interim regime in containing the prices of essential commodities was even more disappointing. The last political government was continuously accused of failing to control the prices but soon after the interim government started to run the country the people at large, who cared more about their daily life than the corruption of some individuals, were dumfounded to see how fast the prices of all the essential commodities went on rising almost every week under a “corruption-free” government. So for the common man the drive against corruption did not mean anything because corruption in the institutional forms continued for them as before and they never believed that it would ever go. But the prices of most essential six items of commodities like rice, flour, lentil, edible oil, potato and onion increased by 30% to 217% during the first 9 months of the unelected regime.²⁴ Despite all the stern measures taken by engaging the Joint Forces, Task Forces, BDR and even the Army the prices continued to rise more than they were rising in the world market as the regime lost the confidence of the business community who was not in any mood to co-operate with the government. Repression and co-operation could

²² See daily newspapers on 6 September 2007.

²³ Case of Abdul Awal Minto and his interview in the *New York Times*. See the *Daily Amader Shomoy*, 29 November 2007.

The Tata Group, the largest business conglomerate in India decided to withdraw their multi-million dollar investment proposal from Bangladesh. See the *Daily Manab Zamin*, 1 January, 1 August 2008. See also the *Daily Amar Desh*, 3 January, 6 July 2008.

²⁴ See *The Daily Star*, 8 November 2007.

not go hand in hand. While torturing and jailing the big businessmen and at the same time asking for their co-operation under threat and coercion could never work in a free market economy as it did not do during the Awami League rule of 1972-74 when the government engaged the Army and Rakkhi Bahini to control the market. With the prices of the essentials rising accompanied by a decrease in their purchasing capacity, the people who had welcome the interim government in January 2007 started cursing them. Compared to the prices prevailed before the departure of the last political government in October 2006, in less than nine months, the prices of coarse rice used by common people increased by 33%, flour 78%, soya bean 67%, palm oil 60%, onion 20%, potato 90% and powder milk by 52%. The over all expenditure on essential items for a middle class family rose to 60% to 70% during the first 9 months of the interim regime.²⁵ The prices of coarse rice continued to rise from Tk. 18 in 2006 to Tk. 38 in December 2007 and soya bean oil from Tk. 56 to Tk. 130 per liter, a rise of more than 100%, in both the items, which the people had never experienced before. During the period of interim regime due to the increase of price of essential commodities, inflation, the cost of living and the mismanagement of economy, about 40 million people were directly affected and at least 20 million people were pushed back below the poverty line.²⁶

So the question would continue to loom for many years to come as to why a temporary unaccountable regime instead of addressing the most urgent issues of the people like food and employment and sustaining the economic momentum gained during the last three political governments opted for such unsustainable agenda as "wiping off corruption" amongst the politicians and implementation of "political reforms," completely outside the mandate of the Constitution? What led them to get involved in subjects which they knew could not be resolved? If it was the agenda only of a few Generals to fulfill their political ambition who were they accountable to? The Chief of the Army Staff? Although it started with the arrest of some persons socially reputed to be corrupt, but then it degenerated into a large scale attack on the established politicians and businessmen. It finally extended to other sections of society including civil servants creating a widespread fear and terror amongst all classes of people.

²⁵ See the *Daily Amar Desh*, 29 October 2007 and *The Daily Star*, 8 November 2007.

²⁶ See the *Daily Manab Zamin*, 15 March, 4 April and 4 May 2008 and the *Daily Ittefaq*, 24 August 2008.

To sustain any sovereign state it would require a stable political system based on consent of people and a strong economic base. In its geo-political context it is even more relevant for Bangladesh to have mass-based people oriented strong political institutions and a breakthrough momentous economy to sustain its independence and strengthen the sovereignty of the state. Corruption, while admitted to be a major social vice amongst many others needs to be controlled but it could never have precedence over the vitals of the state and its political institutions required to safeguard the supreme interest of the people. If the drive against corruption was limited to only those few politicians or businessmen or bureaucrats who were known to be corrupt or had earned a social reputation of being corrupt and were given exemplary punishment even with more severe sentences the present need of analysing the motives of the interim regime would not have arisen. But the nature, character and extent of the present drive accompanied by terror, torture and physical assault on the politicians as a class with such venom, anger and attrition calls for a deeper study to understand the intentions of those who had conceived such a vicious attack on the state itself.

Was it a rudderless, leaderless, threadless, headless, faceless regime without any central authority? Two wheels within one government, one led by Fakhruddin and the other by the Chief of Army General Moeen U Ahmed and his faction of the field officers assigned to carry out the operation on corruption and political reforms? One presumption could be that this twin agenda of "corruption" and "political reforms" was taken up with clean intention, in good faith, to build a new "corruption-free society" and a "new political culture" but it was belied by their illegal and malafiede activities. It could not be justified in the context of the prevailing realities of the country. It was a fact that since the government was an *ad-hoc* regime and the Proclamation of Emergency was a temporary law, there was no way such an unattainable agenda could be materialised during such an untenable fragile period of administration. In effect what happened was that the regime used a sensitive and popular issue like "corruption" only to humiliate, blackmail, threat and frighten anybody they did not like by abusing the Emergency laws.

Food, Fertilizer and Famine

Along with the phenomenal rise of prices in the essential commodities the nation faced a great danger of food deficit in the country. The

failure of the government to adequately handle the two consecutive floods and the cyclonic hurricane "Sidr" on November 15 hitting 16 coastal districts affecting a population of over 10 million and an unknown number of human lives, roughly estimated to be over 10,000 made the situation only worse. Even before the occurrence of the floods, to avoid hunger and famine, experts were already warning of an acute food shortage in the country as the food reserve in the godowns declined far below the buffer stock the government was supposed to maintain throughout the year. Although the government estimated shortage of food reserve to be 1 million tons by March 2008 but the economists and food analysts disputed those calculations and estimated that the government would need to procure an estimated 1.8 million tons²⁷ to avoid an impending famine. Although the government had requested for 0.5 million tons of rice rather than cash from foreign donors as relief aid on account of the floods but due to the shortage of world food production almost all the rice-surplus countries were running short in stock in their respective states or were not willing to sell to maintain their own reserve, causing consequential rise in prices and non-availability of rice in the world market. So it was feared that the government would not be competent enough to procure the required 1.8 million tons by March 2008 plunging the country into a deep crisis similar to the one the nation faced in 1974 when the country experienced a large-scale famine.²⁸

Added to this was the fear of loss of production in food grains due to the mismanagement of import, allotment and distribution of fertilizer all over the country. In any calamity in the past, the farmers had played the vital role in rehabilitating themselves by their own resilience and initiatives. They worked extremely hard to produce more in their fields in order to over-come the loss they had suffered and pay back their debts to retain the land in their possession. At that crucial time it was not any kind of charity that they would look for. What the farmers needed was the inputs on time? Soon after the floodwater receded the farmers wanted to return to their fields and what they were primarily seeking was seed and fertilizer. That should have been the first priority in any post-flood rehabilitation programme which the government adopted without any forceful co-ordinated

²⁷ See the *Daily Amar Desh*, 30 November 2007.

²⁸ See for what happened in 1974, Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman*, The University Press Limited, Dhaka, pp. 245-252.

drive. The fact that the government was an unelected one having had no connection with the people and no mechanism of any direct feedback system, which the public representatives would normally provide, made the situation even worse.

Although its share in GDP was declining, agriculture still constituted the mainstay of Bangladesh economy, about 51.69%²⁹ in employment of labour compared to 9.71% in manufacturing and its sectoral share in GDP stood at 16.91% compared to 17.05% in manufacturing sector at constant prices of 1995-96.³⁰ Food stock and feeding the people has always been the top most priority for every government in the past. In normal circumstances, the minimum food reserve ought to be about 1 million tons, for which food godowns were built in 1980-81 by President Ziaur Rahman to save any part of the country from food shortage. Under a constant monitoring system food was to be imported if necessary in advance to maintain the minimum reserve and particularly ensure availability of sufficient stock in godowns in the famine-prone areas of Kurigram, Rangpur and Mymensingh. With sufficient warning in hand a competent government would always be in a position to avert any famine due to food shortage. But it appeared that, again due to its untenable position as an unaccountable government and its inexperience and incompetence, despite constant warning and media reports for months, it allowed the reserves to go down to 735,000 tons about 265,000 tons less than required. With almost a total failure in internal procurements,³¹ and the colossal loss caused by the floods and cyclone, the interim government faced the biggest challenge to procure a total deficit of 3.9 million tons³² of food grains from the international market and at the same time secure a reserve of 1 million tons by March 2008.

So as soon as water receded after the floods, the farmers were now ready to restore the economy but the government was found unprepared. The slow disbursement of agricultural loan to the extent of only 14% in the first three months of the financial year upto September³³ and non-availability of fertilizer at the time of need,

²⁹ Ministry of Finance, *Bangladesh Economic Review*, 2006, Dhaka, p. 34.

³⁰ Ministry of Finance, *Bangladesh Economic Review*, 2006, Dhaka, p. 27.

³¹ *The Daily Amar Desh*, 29 November 2007.

³² *The Daily Amar Desh*, 2 December 2007.

³³ *The Daily Ittefaq and the Daily Amar Desh*, 28 November 2007.

caused a great amount of frustration among the millions of farmers all over the country. In a large number of places they lost their patience.

Firstly due to shortage of nearly 1 million tons of fertilizer at the national level at the beginning of July 2007 the stocks in the godowns did not have sufficient urea to distribute to the dealers as a result of which the government did not have enough to meet with the demands of the farmers. Consequently in a market where demand was far more than the supply, smuggling, black marketing and selling at a price higher than fixed by the government was inevitable. So where the farmers were ready to pay even a higher price, fertilizer was not available. Secondly, monitoring of stocks, allocation, distribution and sale at the rural level totally failed because, in the absence of the elected representatives, the interim government had to depend on the district bureaucracy who always faced difficulties in dealing with the masses. All this allowed the dealers to take the full advantage of the situation. Thirdly, availability and supply of fertilizers particularly urea, TSP, DAP and MP on time when the farmers needed them most could not be ensured. Finally the gross mistake in relying on the calculation of a theoretical demand found to be far less than the real demand on the ground, made it even more difficult for the local administration to handle the situation. In making their calculation the government also failed to realise that the farmers were using more fertilizer which increased by about 10%, 3 lac tons in 2007 in order to increase their produce in the fields.

Having lost the *aman* crop the farmers were in need of urea for *boro*, the largest crop, almost 60% of the total rice crop and the seasonal *robi* crops like potatoes, onions, chilies, lentil, wheat, maize and mustard at a time period to yield better results. This lack of availability of fertilizer at hand on time at the grass-roots level forced the farmers to resort to demonstrations and protests leading to violence, ransacking of local government offices, homes and shops of local dealers. Confrontation with police occurred causing fatal injuries to a large number of farmers almost all over the country stretching from Rajbari to Rangpur, Naogaon to Noakhali, Mymensingh to Munshiganj, Bogra to Bagmara, Jessore to Jamalpur, in at least 25 districts, where such incidents of demonstrations and violence took place over the demands of the farmers for fertilizer.³⁴

³⁴ The *Daily Prothom Alo*, 13 November 2007. See also the *Daily Amar Desh*, 21 August 2007, 23 August 2007, 24 August 2007, 26 September 2007, 24, 26 and 28 October 2007, 7, 9, 11

So it was a case of total mismanagement of the interim government having had no one to be accountable to, whereas the situation would have been completely different if there was an elected government in the country. In that kind of situation either the government would have to minimise the crisis or face the wrath of the opposition in the streets all over. With an estimated demand of 2.81 million tons of fertilizer, the government had less than half a million tons of stock in October 2007 and was running short of nearly 1 million tons of estimated demand for that season besides the estimated procurement already planned. The estimates made public through media appeared to be more confusing because of the contradictory figures of stocks and demands of fertilizer prepared by different departments and the Ministry and the government could not make it clear exactly what was its stock, the actual demand, the timing of the procurement, the amount manufactured locally and the quantity to be imported. On the question of district-wise allotment, distribution at the upazilas through 4800 dealers for 68000 villages were all done without any co-ordinated supervising mechanism.³⁵ While the government always continued to say that there was no shortage of stock, it was more a problem of distribution but the local situation suggested that there was a huge deficit of stock due to which the distribution system itself had collapsed.³⁶ Although in some places the stocks were there in the godowns but the farmers did not get fertilizer in hand because of lack of effective monitoring system. The closure of two out of six factories engaged in manufacturing fertilizer in the country due to lack of raw materials in the peak season at Ghorasal and Chittagong only created further uncertainty about its availability.³⁷

In one of the estimates the total demand of fertilizer was fixed at 39 lakh 44 thousand tons consisting of 28 lakh 18 thousand for urea,

and 30 November 2007; the *Daily Ittefaq*, 31 October 2007; the *Daily Manab Zamin*, 8, 9 and 12 November 2007.

³⁵ The *Daily Prothom Alo*, 13 November 2007. See also the *Daily Amar Desh*, 21, 23 and 24 August 2007, 26 September 2007, 24, 26 and 28 October 2007, 7, 9, 11 and 30 November 2007; the *Daily Ittefaq*, 31 October 2007; the *Daily Manab Zamin*, 8, 9 and 12 November 2007.

³⁶ See the *Daily Ittefaq*, 14 November 2007 and the statement of the Adviser for Industries claiming no shortage and the attack and loot of fertilizer by the farmers reported side by side.

³⁷ The *Daily Manab Zamin*, 11 November 2007; the *Daily Amar Desh*, 2 December 2007 and 10 October 2007.

4 lakh 76 thousand for TSP, 4 lakh for MOP and 2 lakh and 50 thousand for DSP against which for the first three items the stocks government had upto the first week of November 2007 was only 6 lakh 17,537 tons.³⁸ So the government continued to procure fertilizer but the allocation to the grass roots level was always less than the requirement in every item, down by 30% to 70%, throwing the farmers at the mercy of the government officials and the unscrupulous dealers. As a result, in some places the farmers had to pay even three times more than the official price. Finally, like in all other sectors, because of the thoughtless drive against the businessmen on charges of corruption the import of fertilizer in the private sector also declined. The reduction of subsidy from 25% to 15% allowed since 2004 on potash and TSP at that crucial time, caused a great amount of resentment amongst the importers who felt less enthusiastic about importing those two items.³⁹ Moreover once imported, the importers had to wait for months to release the amount of subsidy from the government. The Fertilizer Association was extremely dissatisfied with the way the importers were harassed because of the erratic policies of the government and the bureaucratic tantrums and hurdles in non-payment of their arrears of subsidy and non-cooperation of the banks in opening LCs on time.⁴⁰ So the required import of fertilizer limited to about 25 firms in the private sector failed to meet the expectation, which eventually affected very badly the food grain production of the country.

As a result, due to the high rise in prices of every commodity, wide spread unemployment, decreased purchasing capacity and stoppage of development work in the rural area, a large section of poor, jobless, malnourished population started to die because of starvation. Although the press, muzzled by the Emergency Rules did not adequately cover the extent of the famine but the NGOs, civil societies and the eminent economists had openly disclosed that the country was going through a silent famine. The Food and Agriculture Adviser of the Government admitted this when he said that if not "silent" but the country was nonetheless going through a "hidden famine."⁴¹

³⁸ *The Daily Prothom Alo*, 13 November 2007.

³⁹ *The Daily Naya Diganta*, 25 October 2007.

⁴⁰ *The Daily Amar Desh*, 18 October 2007.

⁴¹ See the *Daily Mannab Zamin*, 4 April 2008 and also see 28 October 2007, 12 February, 5, 6 and 13 April 2008; the *Daily Ittefaq*, 29, 30 and 31 October 2007.

Chapter 9

Civil Order and Violation of Human Rights

Law and Order Situation

Inspite of the fact that the country was under the rigours of the Emergency laws and most political leaders locked up in jail together with a ban on hartal, strikes and lockouts, the over all law and order situation did not show any significant improvement. Although the political confrontation and agitational programmes of political parties subsided and the number of organised killings and the activities of the known criminals decreased to some extent at the beginning but the number of other crimes like dacoity,¹ abduction,² extortion,³ rape⁴ and murder⁵ increased considerably all over the country. During the entire year of 2007 almost every newspaper reported all these crimes which not only increased in number but made the life of the ordinary people most insecure. In the villages, all over the country, the rise in crimes was phenomenal whereas the victims in most cases had found no remedy because of the inadequacies of the local police. People felt helpless in the absence of their representatives to whom they would have normally gone to ventilate their grievances and seek relief. The rise in the prices of essential commodities, eviction of hundreds and thousands of street hawkers, vendors, slum dwellers, small shop owners and traders in the bazars, closure of mills and factories across

¹ See the *Daily Manab Zamin*, 15 January 2008 and the *Daily Shumakal*, 29 November 2007.

² See the *Daily Ittefaq*, 9 December 07 and 10 December 2007.

³ See the *Daily Ittefaq*, 26 and 11 December 2007 and the *Daily Manab Zamin*, 26 December 2007.

⁴ See the *Daily Manab Zamin*, Report of *Adhikar*, 6 January 2008.

⁵ See the *Daily Ittefaq*, 30 November 2007, 8 December 2007; the *Daily Amar Desh*, 30 September 2007, 12 October 2007, 9 January 2008 and the *Daily Manab Zamin*, 15 January 2008.

the country and the rise of unemployment added to the increase of crimes. All these issues relating to life and property remained unheeded because the government did not represent the people and was not accountable to anyone.

Human Rights Violations

The record of human rights violation of the interim regime was unprecedented.⁶ It was not only because the government was being run in violation of the Constitution but the Proclamation of Emergency was itself contrary to the fundamentals of rule of law. Once the Emergency was proclaimed it was not unexpected that the country would have to go through a rough time and in many areas the basic rights of citizens would be abridged and compromised with the hope that within the shortest possible time the interim government would ensure holding a free and fair election and leave the administration of the country to the elected representatives in accordance with the mandate of the Constitution. It was also expected that being a temporary, non-party, care-taker government, it would not indulge itself in any overt act in violating the human rights of citizens by way of misusing or abusing the Emergency laws. On the one hand the fundamental rights of citizens guaranteed by the Constitution were suspended blocking the way of seeking any remedy in courts of law for breach of their right to life, liberty, property, assembly, association, speech, thought and conscience, equality and equal protection of law, on the other hand the Emergency Power Rules were introduced further to transgress those rights by way of bringing the normal existing laws under the purview of the Rules. As a result such Rules not only took away the rights of citizens to get bail and their right of self-defence but also they had curtailed the age-old power and jurisdiction of the courts including those of the Supreme Court.⁷

Besides these provisions made in the Emergency Rules⁸ and the behaviour pattern of the regime as demonstrated on the ground, the violation of human rights was stretched to an unmanageably low and degrading level. Interference with the functions of judiciary particularly in the trial courts became a day-to-day routine work of the

⁶ See Rashed Khan Menon, the *Daily Manab Zamin*, 6 January 2008.

⁷ See the Rules 11, 14, 15, 19(Gha) and 19(Uma) of the Emergency Power Rules.

⁸ See for more discussion at Chapters 4, 6 and 7.

agencies of the government. Whatever rights were left under the constraints of the Proclamation and the Emergency Rules, were further wiped off in respect of dispensation of justice beginning with the denial of the right to consult a lawyer,⁹ the execution of bail bond in cases when bail was granted by the High Court Division,¹⁰ re-arresting the person under Rule 16(2) of the Rules¹¹ at the jail gate once released on bail and then the trial monitored by officials of the agencies sitting in the court till the judgment was delivered. All these not only caused a distortion in laws and their applications, amounting to a gross denial of basic human rights but such kind of interference in the justice system made a mockery of the trial courts.

The high ideals of “good governance” and “rule of law” had gone to oblivion under the claws of the Emergency Rules and its extreme all-round abuse was also demonstrated in the re-arrest of citizens at the jail gate released either on bail or freed from detention granted by the Supreme Court. Under the garb of Rule 16(2) of the Emergency Power Rules equivalent to Section 54 of the Criminal Procedure Code, an omnibus power given to the Joint Forces to arrest any one without any warrant of any court of law. Among many such instances, were: (1) Kazi Mohammad Zafarullah, a senior leader of the Awami League and a close aide of Sheikh Hasina having been in jail for 8 months without trial and finally released on bail by the High Court Division was arrested again under Rule 16(2) of the Emergency Power Rules just outside the jail gate; (2) Dr. Tawfiq-e-Elahi Chowdhury, a retired Secretary of the Ministry of Energy, accused as an accomplice in Barge Mounted Power Plant graft case with Sheikh Hasina as the principal accused, was released on bail but as soon as he was out of the jail gate he was re-arrested on 11 December 2007, under Rule 16(2) of the Emergency Power Rules¹² and handed him over to the officers of the

⁹ See for the same allegations of Sheikh Hasina, the *Daily Manab Zamin*, 20 January 2008 and that of Khaleda Zia. The author was also denied to consult his lawyers for 3 months July-September 2007 and then from 2 December 2007 till May 2008 when his lawyers out of desperation had to obtain an order of the Court to meet with him at the jail.

¹⁰ In a Writ Petition being No. 6799 of 2007 when the High Court Division granted bail to the author on furnishing bail bond the trial court was instructed to delay the process and the Judge took 7 hours for instruction from higher authorities to arrive at a decision which normally should have taken 10 minutes as to who ought to sign as surety for the bail bond.

¹¹ See the cases of K.M. Zafarullah and others rearrested at the jail gate once released on bail by the High Court Division.

¹² See the *Daily Amar Desh*, 12 December 2007.

Lalbagh Police Station; (3) Jahangir Sattar Tinku, a businessman of Chittagong; (4) Md. Hasan both known to be close to Awami League; and (5) Akhter Hamid Paban, son of Khandaker Delwar Hossain, the Secretary General of BNP, all were rearrested on 19 December 2007, soon after their release at the jail gate at Dhaka¹³ under Rule 16(2) of the Emergency Power Rules. Four days later the same happened to (6) Mahmud Hasan Babul a Special Assistant to Sheikh Hasina when he was re-arrested under Rule 16(2) of the Emergency Power Rules at the jail gate as soon as he was released after being in jail for 11 months without any trial or charges; (7) Abdul Awal Mintoo, former President of the Federation of Chambers of Commerce and Industries and himself a renowned industrialist was in jail for 6 months without trial. When released by an order of the High Court Division he could not leave the jail as a fictitious case of extortion of a meager Tk. 50,000 was filed against him hurriedly to stall his freedom. He was a man who himself paid millions of taka for charities and funds for political parties. It was only done to harass and insult him. He had to get another order of release from the High Court Division to secure his liberty.¹⁴

Examples of similar misuse of power and violation of human rights was also applied to (8) Syed Tanvir and (9) Syed Galib the two co-accused with Khaleda Zia in a proceeding known as GATCO Case; (10) Nurul Islam Babul, Chairman of Jamuna Group of Industries; (11) Redwan Ahmed a former State Minister; and (12) Jainul Abedin Faruk, a former Member of Parliament who were all arrested at the jail gate under the garb of Rule 16(2) of the Emergency Power Rules¹⁵ immediately after their release granted by the High Court Division.

The fate of (13) Shah Abdul Hannan, a retired Brigadier General and a former Minister, an outspoken adviser of Khaleda Zia, was even worse. As Hannan took a public stand against the BNP renegades engaged by the military unit of the regime to split the party in the pretext of "reforming" the party, series of fictitious criminal cases were filed to keep him in jail. Every time he was ordered to be released by the Supreme Court he was shown to be under arrest in another such

¹³ See the *Daily Ittefaq*, 20 December 2007.

¹⁴ See the interview of Abdul Awal Mintoo published in the *New York Times*, 26 November 2007, the *Daily Amader Shomoy*, 29 November 2007.

¹⁵ See the *Daily Manab Zamin*, 24 and 27 December 2007 and the *Daily Ittefaq*, 29 December 2007.

case and the dramatics of misuse of power continued for months and finally when he was granted bail in all such cooked-up cases, the government had served upon him an order of detention under the Special Powers Act.¹⁶

In the first year of the interim regime the law enforcing agencies had arrested 437,466 persons. Of these only 778 were known criminals. A large number of them were innocent citizens across the country and most of whom had undergone extreme harassment and torture. It is not known what really happened to all of them or how many of them were produced before any court as required by law or indicted for any offence they had committed. This staggering figure revealed on 10 December 2007 by the Home Secretary¹⁷ did not disclose much detail as to what really happened to most of them. The fact that 14000 policemen and more than 200 RAB members were punished in some form or other for breach of discipline and corruption¹⁸ only confirmed the misuse of power committed by the law enforcing agencies in going for large-scale arrests only for the purpose of torture and terrorisation. As most of these arrested persons were neither presented in court nor sent to jail it was presumed that some of them were killed and most of them were subjected to harassment, blackmail and extortion before they were released.

In the first twelve months of the interim regime 184 persons were killed in custody of the law enforcing agencies, a figure which exceeded the record of any yearly account of the past.¹⁹ Out of 184, 130 were killed in what they called "cross-fire" or "encounter," 30 due to physical assault, 13 in gun-shots and 11 persons due to various kinds of unexplained torture.²⁰ In addition to these extra-judicial killings during the same period, 459 women were subject to physical repression out of which 241 were children. Of them 56 women and 23 children were raped and killed and 119 women and 72 children were victims of gang-rape.²¹

¹⁶ The detention order was also declared illegal and he was finally freed. In some of the cases the family members of Hannan Shah were made accused who had to suffer the same humiliation and harassment.

¹⁷ See the *Daily Manab Zamin*, the *Daily Amar Desh*, 11 December 2007.

¹⁸ See the *Daily Manab Zamin*, 16 January 2008; see also the *Daily Ittefaq*, 5 September 2007.

¹⁹ See the report published by *Adhikar*, a human rights watch group in the first week of January 2008.

²⁰ *Ibid.*

²¹ *Ibid.*

During the same period, at least 35 working journalists were injured, 13 were arrested and harassed, 83 were threatened and another 13 were taken to court for cases filed against them arising out of their professional duties.²² The residence of a journalist was attacked and one journalist had to give an undertaking that he would not publish any report without prior approval of the Bangladesh Rifles (BDR) engaged in checking smuggling. At least two television channels were severely warned against their coverage of the incidents of Dhaka University in August 2007 when army personnel in uniform were assaulted and chased away by irate students and members of the public. All newspapers were repeatedly instructed to follow the restrictions imposed by the Emergency Power Rules.

Although it was supposed to be a non-political neutral care-taker government,²³ during the same period, compared to only 47 in number and none related to politics held in jail in 2006, 929 persons, mostly political leaders and workers were arrested and put in jail with orders of detention under the Special Powers Act.²⁴ On their so-called drive against corruption, within 3 weeks after the Emergency was proclaimed, the Joint Forces arrested under Section 54 of the Code of Criminal Procedure on mere "suspicion," a large number of politicians and former Ministers without any specific case and once they were interrogated and put in jail, orders of detention were passed with repeated extensions for indefinite period till the agencies like the Anti-Corruption Commission or the NBR was able to file a criminal case against them. The blatant misuse of power exercised by the government in breach of basic human rights under the cover of the Emergency continued unabated during the entire period of the interim regime despite the order of the Supreme Court passed in a judgment²⁵ in which an order of detention was debarred in such circumstances.²⁶ As a result, thousands of ordinary citizens were put in jail under

²² See the *Daily Manab Zamin*, 6 January 2008.

²³ See for more detail on the role of the government and the Appellate Division order on granting of leave and staying the release of the detainees by the order dated 3 April 2007 in criminal petitions for Leave to Appeal No. 119-122 of 2007 arising out of the order of release passed by the High Court Division on 26 February 2007 in Criminal Miscellaneous Case Nos. 33, 36, 76 of 2007.

²⁴ See the *Daily Manab Zamin*, 10 January 2008.

²⁵ See 23 BLD HCD 2003 p. 115.

²⁶ See the *Daily Manab Zamin*, 16 January 2008.

orders of detention at the district and upazila levels by the local administration, without any charge or trial.

Consequently, prisons in Bangladesh swelled with people in unpalatable numbers. With a capacity of holding only 27,400 persons, the prisons now had 87,000 prisoners, an all time record, in 11 central and 55 district jails²⁷ causing endless miseries to them living in subhuman conditions. Out of this enormous number of prisoners only about 25500 were convicted and sentenced by courts and the rest 61,500 persons were either under trial or were prisoners without any charge or trial. The legal aid system pursued vigorously by the previous government, having been virtually stalled by the interim regime, a large number of prisoners who could not afford to engage any lawyer remained undefended and continued to live in jail for an indefinite period.

The nature, character and extent of torture, physical assault and inhuman treatment perpetuated by the Joint Forces during the interim regime would put the occupation army of Pakistan in 1971 to shame. The cruelty, venom and the wildness with which they operated sometime raised a suspicion in the mind of the victims whether the members of Forces were citizens of Bangladesh or not. To stretch out such a barbaric behaviour to their own citizens who not only were elder in age but many of them were renowned politicians and established businessmen was not only violation of human rights but was something beyond any human comprehension. The mean, abhoral and filthy language used by them at the interrogation was not worthy of any gentleman of the armed forces. Both immediately after the arrest and before, blind-folded, interrogated and tortured using various instruments and inflicting severe physical assaults on the sensitive parts of the human body was a regular exercise. In the name of police remand, they would be taken to the same place called "blackhole" and at the end of the drill forced under threat of physical assault to sign a typed statement confessing his own guilt and the same recorded in a video camera as well.

In case of one personal staff of a former Minister who had undergone an open-heart surgery was made to strip off excepting the lower undergarment. Laid on the floor, an official jumped on his chest with his boots which made the victim vomit and pass out. The less is said about these unbelievable descriptions of horrendous torture in

²⁷ See the *Daily Manab Zamin*, 16 January 2008.

custody, the better. Some politicians of great standing who suffered and sacrificed throughout their life, from student days upto the time of playing heroic roles in the Liberation War, were blind-folded, scolded, beaten, slapped and mercilessly assaulted demonstrating their cruelty and ruthless vengeance against the politicians.²⁸

In their drive against the businessmen, traders, wholesale and retail markets of essential commodities, street hawkers, vendors, slum dwellers and small shop owners in village bazaars all over the country numerous allegations of torture, beating, harassment and extortion²⁹ caused by the law enforcing agencies were made by all sections of people. The raids of the Joint Forces in various offices and departments of the government terrorised the officials and employees. Even the University teachers and students were not spared from the ruthless torture and assault of the Joint Forces.³⁰

Even the worst of dictatorial regimes in history and tyrants of the highest order tried to maintain in some form or other a human face, a softer approach towards some issues to please its populace. Even the merciless dogmatic doctrinaire regimes followed certain principles and a code of conduct but in Bangladesh because of a threadless, rudderless and irresponsible regime, the cruelty and brutality inflicted upon its own citizens went unabated without any control. Moresoover, when the street hawkers, village vendors, mill workers and slum dwellers were made homeless and jobless by the wild behaviour of the Joint Forces no effort was found necessary to mitigate them. Other than eye-washing relief gestures made more for media coverage and to prepare some bankable papers to seek doles from foreign countries, at least 2 million of the "Sidr" victims had to live without shelter or food for months.³¹ When 11 workers were trapped to face the most

²⁸ Case of Obiadul Quader, a Senior Joint Secretary General of the Awami League. It took him more than one month to recover from the assault. Similarly suffered were Salauddin Ahmed, a former State Minister, Sheikh Fazlul Karim Selim, former Minister and first cousin of Sheikh Hasina, Naser Rahman, son of former Finance Minister and many others who would not like to admit in public that they were physically assaulted. The author himself under threat of physical torture had to sign papers to his own detriment.

²⁹ The inhuman torture and physical assault inflicted upon Giasuddin Mamun, Mosaddek Ali Falu, Lutfuzzaman Babar, Hafez Ibrahim were of horrendous nature.

³⁰ See the *Daily Jugantar*, 16 January 2008. See also the description reported by BBC based on the interview of some parents and students of the kind of torture that was inflicted upon the students following the movement in August 2007 at the Dhaka University.

³¹ See the *Daily Ittefaq*, 17 November, 2007; the *Daily Amar Desh*, 18 November 2007; the *Daily Manab Zamin*, 27 November 2007; the *Daily Ittefaq*, 3, 15 and 16 November, 12 September 2008 and the *Daily Prothom Alo*, 10 October, 2008.

tragic death at the demolition of the Rangs building only 500 yards from the office of the Chief Adviser neither he nor any of his Advisers had a heart to at least pay a visit of sympathy to the site where dead bodies were still hanging in rot and call for a thorough investigation.

Leaving the "Sidr" victims under the open sky and the Rangs victims in the shadows of death, the Chief Adviser and the Chief of Army went to perform Haj at the cost of the state, the former staying 9 days and the latter even longer, where no elected head of the government in the past spent more than 3-4 days. The arrest, detention and humiliation of wives with children including unmarried daughters for the alleged offences committed by the husband or father in a patriarchal society and refusal of their bail before the trial or after conviction as co-accused has never been seen before in this country. The physical torture with merciless brutality inflicted upon the citizens including renowned politicians and businessmen in custody was equally unknown. When Sabera Aman, a cancer patient, was forced to lie on the floor on a stretcher and Sigma Huda on a wheel chair during their respective trials for weeks shown on TV channels as abettors of their husbands, was there not a single person in the government to raise his voice to stop it? Could the virtues of compassion and kindness to women shown by Prophet Mohammad (S) even in those difficult days of history of Arabia not inspire any one in the regime to react to such an irrational behaviour and the atrocities?

There has been a serious demand to constitute an independent high level Judicial Enquiry Commission headed by a retired Chief Justice to investigate into the widespread violation of human rights and corruption carried out by the interim regime. Their activities have also adversely affected the good image of the armed forces. But this demand has not been supported by the Awami League government once they returned to power in collaboration with the illegal regime nor the civil society activists nor the donor countries who were always very vocal on the issues of corruption and violation of human rights. One can only wonder, why?

The Image of the Army and the Role of Moeen U Ahmed

The Traditional Image

The Defence Forces, and particularly the Army, have enjoyed a special image in Bangladesh. Their role in the Liberation War led by former President Ziaur Rahman, then only a Major, in declaring the independence of the country from the radio station in Chittagong and the active participation of the Bengali members of the army stationed in East Pakistan, during the subsequent months, made them the core vanguard of the Liberation War. This nucleus of army worked with the masses of freedom fighters to finally achieve, after a 9-month long war, the independence of the country with the surrender of Pakistan army at the Dhaka Race Course on 16 December 1971.

Once Mujib returned home from the captivity of Pakistan as a national hero, he assumed charge of the government of the new country and abandoned the idea of having a national militia as promised earlier by Tajuddin Ahmed, the Prime Minister of the government in exile during the Liberation War.¹ Although Awami League as a political party in their manifesto did not mention the need to have any regimental army but Sheikh Mujib nonetheless opted to establish the new army in line with the same colonial structure prevailed in Pakistan and other South Asian countries including its organisation, training and method of recruitment. While Sheikh Mujib had established the army with the freedom fighters as the core force but he allowed the induction of the stranded officers and rankers on their return from Pakistan into the mainstream army. Mujib also established a National Defence Academy with three separate

¹ See for detail Moudud Ahmed, *Era of Sheikh Mujibur Rahman*, The University Press Limited, Dhaka, 1983, pp. 46-50.

headquarters for the Army, Navy and Air force and appointed their Chiefs from the officers who were all freedom fighters.² Despite the fact that Sheikh Mujib raised Rakkhi Bahini³ as an alternative force and funded it better than the army but the fact is that his government established a structured defence force from ashes and laid the foundation of a regimental army of a free and independent country.

After the assassination of Sheikh Mujibur Rahman by a small section of the army and the imposition of Martial Law by the successor government headed by the Awami League leader Khandaker Moshtaque Ahmed, in the absence of any unified leadership within the army, the institution fell into a serious hierarchical crisis. In the process the coup led by Khaled Mosharraf, the Chief of General Staff failed, followed by a revolt in the ranks of the army leading to the release of Ziaur Rahman, the Chief of Army Staff, from the house arrest and his installation in the centre of power. Ziaur Rahman made vigorous efforts in restoring the image and prestige of the armed forces. Their budgetary allocation was raised from Tk. 750 million in 1974-75 to Tk. 2194 million in 1976-77, and its strength from 26,500 in 1974-75 to 77,000 in 1980-81. Despite all his success in consolidating the armed forces as an institution he faced great difficulties in containing the political ambition of some of his colleagues who wanted to share power, which he consistently resisted to keep the institution of army away from national politics.⁴ Because of his enormous popularity among the masses and his non-reliance on the army to govern the country Zia had to face disciplinary problems from within his own forces including 17 coup attempts. At the end however, having had done so much for the army Ziaur Rahman finally fell victim at the hands of his own officers when he was killed on 30 May 1981 at the Chittagong Circuit House.

In less than a year after the killing of President Zia and 128 days after the nation had elected a President Lt. General Hussain Muhammad Ershad, the Chief of Army Staff, seized power by a quiet and bloodless coup d'tat on 24 March 1982. Although General Ershad prior to his taking over power by removing an elected government

² See Moudud Ahmed, *Democracy and the Challenge of Development*, The University Press Ltd., Dhaka, 1995, pp.2-12.

³ Detail on Rakkhi Bahini, see Moudud Ahmed, *Era of Sheikh Mujibur Rahman*, The University Press Ltd., Dhaka, 1983, pp. 52-63.

⁴ See for detail Moudud Ahmed, *op.cit.*, 1995 pp. 35-36, 144-159.

mobilised the support of the military to provide a constitutional role for them in the administration of the state, he abandoned that idea once he had consolidated his authority to govern the country. Till the election of the Parliament and his own election as the President he ruled the country for more than 4 years under Martial Law when it was revoked and the Constitution was fully restored.

With the assassination of the two Presidents at the hands of the army personnel and their repeated coup attempts from 1975 to 1981 and the rule of the country under Martial Law Proclamations for a total of nearly 8 years had considerably tarnished the image of the army both at home and abroad. The military was perceived to be a power hungry institution soaking up large sums of public money, more interested in ruling the country against the wishes of the people than to defend the nation. After every incident of killing of such popular leaders questions were raised whether Bangladesh needed any such large regimental army at a cost, which if diverted, could have helped a much higher investment in social sectors like health, education and hygiene to benefit millions of people of the country. If neighbouring India was the only possible aggressor, the army of Bangladesh would not be a match to face them even for two days. It would be left to the people to resist such attack and defend the sovereignty of the country.

With its tarnished image and poor public perception about its necessity, the army of the country restored itself to a position of high esteem by keeping itself away from politics for nearly 20 years, from 1986 to 2006. It made a long stride to attain professionalism of international standard and by being a part of the UN Peace Keeping Mission with the largest participation of nearly 48,000 soldiers in different countries in last two decades, it achieved a world reputation for its contribution to the cause of peace and earned itself a great pride for the nation. At home the army has played an extremely friendly role whenever asked for under the Constitution. At times of floods and other calamities or for even distribution of VGF cards and relief materials, the army has been of great assistance to the civilian governments in conducting elections whenever they were asked to do so.

Aspirations of the General

With General Moeen U Ahmed the situation was different both in terms of time and circumstances. He neither had the charisma of Ziaur

Rahman nor the stature of Hussain Muhammad Ershad. Moeen was appointed Chief of Army Staff superseding some other Generals for his "pay-back" loyalty to Prime Minister Khaleda Zia. Once the Awami League announced its boycott of the general election scheduled for 22 January 2007 it was not easy for him to take a decision to move the army against the wishes of Khaleda Zia. But the inspired and pre-meditated circumstances led him to intervene the democratic process. At that point of time a complete military take-over would not have been difficult to justify. But the General could not do so because (1) there was little international support for imposing Martial Law; (2) he had minimal leadership qualities and scant preparation for such an action; (3) the other Generals were divided on the issue; and (4) he needed time to plan his future.

So the best of the options for him at that stage was to go for an Emergency for which he had a strong international support particularly from the USA, UK and India. Considering that Emergency could operate almost like a civil martial law, an idea found to be more suitable for the Army Chief which allowed him to play an active role in the administration of the country under a civil cover without being in the forefront. In the international context also, a full military take-over was no more considered as an acceptable mechanism to control a state in the face of the growing global commitment for democracy and preservation of human rights, particularly after the collapse of Soviet communism. It also fitted with the new phase of experiments being conducted now in other parts of the world under the patronage of the United States where international or geo-political needs demanded such control over certain areas or countries. Unlike having the full military command over states as prevailed in 1950s and 1960s, a weak civil government backed and run by the military force is a new paradigm thought to be better suited than having the countries run by democratically elected popular nationalist leaders. Iraq, Afghanistan and Pakistan are cited as immediate examples and similar arrangement could also be experimented in countries like Thailand, the Philippines and Indonesia where military had always played an important role in the political system in the past. The common phenomenon has always been in such cases that whenever military walks into the political arena, no matter in what form or in what role, it immediately becomes the dominant partner and seeks to extend its power and authority. It was not unlikely that some Generals and

particularly the Army Chief would be inclined to harness a political ambition to play a more direct role in the affairs of the state.⁵

So, once the Emergency was proclaimed in Bangladesh on 11 January 2007, not by an elected government like the one the country had on 28 December 1974, proclaimed by Sheikh Mujibur Rahman and Hussain Muhammad Ershad in November 1990 but at the instance of the Generals, the military immediately became a major component of the regime. Although the Army Chief claimed that the military forces were functioning in aid of the civil administration, the government was actually comprised of two units, one civil and the other was the military, the former led by Dr. Fakhruddin Ahmed, a docile World Bank retired technocrat more to work as an elevated civil servant to maintain the façade of a civil government, while the latter being the real driving force took the charge of deciding the future course of history, leaving the President, who still enjoyed an enormous power under the Constitution, in an ignominious position to function under the military command.

To the military, like anywhere else in the third world countries, when they emerge to be in a stronger position in the power structure, the most hated are the politicians and the political institutions.⁶ Although they promise a return to democracy for public consumption both at home and abroad, they actually loath it and hang on to power by any means as long as they can. To perpetuate in power, in course of time, they open up political platform with renegade politicians only to have a grand model of their own democracy and elect a Parliament to serve their own purpose.

So, in such a historical context, the holding of a general election could not have been the priority agenda in Bangladesh once the Emergency was proclaimed at the instance of the military, although both the two heads of the regime, the Chief Adviser and the Chief of Army made statements for an early election. The constitutional mandate of the limited tenure of a non-party care-taker government as well as the Emergency itself was not a matter for the military to honour in such a situation when an opportunity opened up for them to stay in power with several potential options. The military took the full advantage of the mistakes committed by the politicians of both the

⁵ See Moudud Ahmed, *op.cit.*, The University Press Ltd., 1995.

⁶ *Ibid.*, p. 254.

major alliances and the public support it enjoyed at the initial months after the Emergency was proclaimed.

General Moeen, however, could not become an effective supreme leader. This was partly because of his dubious personal character and partly because of lack of cohesion within his own Generals. Due to this deficiency he also could not prepare a definite roadmap for himself or for the military, which made him to vacillate on crucial issues of governance and its future pattern. In order to accomplish it he had to depend on others outside the cantonment such as the members of foreign missions, civil society and media men. Due to this indecision or lack of a definite decision, different plans were cultivated from time to time and the promised general election was put in the backyard as a secondary agenda. The "drive against corruption" as a popular slogan was accelerated as a crusade against the politicians, common with every military regime, primarily conducted to divert public attention from the real issues of life and liberty. The campaign for "reforms of political parties" was intensified to split and weaken the major parties to establish their own dominance. The preparation of a fresh voter list with photographs initiated by the military to allow the Election Commission to present a 2-year long roadmap for delaying the process of election were all done to allow the Army Chief sufficient time to decide his options. One of such options led to the idea of promoting a "minus-two" theory by sending the two leaders Sheikh Hasina and Khaleda Zia out of the country to follow a Pakistani model. Once that failed, the military-promoted "political reforms" also received a setback when the hand-picked reformists of the Awami League sought urgent reconciliation with the mainstream once Sheikh Hasina returned home and jailed in July 2007 and the BNP reformists buckled and bent back to seek the support of Khaleda Zia for their own survival, once she took a strong stand against them.

The idea of forming a National Government and a National Security Council with the military to participate more directly in running the affairs of the state were brought to limelight from time to time but disappeared in course of time. While the Election Commission by delaying the election process in the name of the so-called road-map provided a breathing time to the Generals to decide what they really wanted to do, General Moeen continued to make statements raising controversies on some sensitive issues.

The Army Chief became more controversial when he made some policy statements of highly political nature⁷ including a 11-point formula for good governance and on the status of Sheikh Mujibur Rahman and Ziaur Rahman. It was questioned whether he could do so as a public servant in breach of service discipline. On the other hand he could not make it clear what he was heading for and what was his actual plan. Although Moeen made statements from time to time that armed forces would not get involved in politics⁸ nor he would like to be the President of the country, but the fact was that the military unit was already deciding the policy and political issues of the regime. His incessant attack on the politicians and political parties was designed to discredit the politicians to fulfill his own political ambition⁹ after serving the same politicians under the elected governments in the last 15 years.¹⁰ With regard to holding of election, while on the one hand he indicated that the election could be held in July 2008, much ahead of the road-map designed by the Election Commission,¹¹ but on the other hand Moeen asserted that it would be no good holding the election without "rooting out corruption" from the country.¹² He also warned without explaining in any detail that lot of things may happen in the country before the election.¹³

In October 2007, the Army Chief went to the United States primarily to address a seminar on Transition to Democracy in Bangladesh at the Kennedy School at Harvard. It sounded strange to many at home and abroad that a military General still in uniform was going to speak on "democracy" at Harvard, a university traditionally known to be against any form of military dictatorship. At the end, upon his arrival at Harvard, he had found that his formal programme was cancelled, allegedly because of protests by students who did not

⁷ The *Daily Ittefaq*, 3 April, 2007, 20 January and 15 October 2008; the *Amar Desh*, 19 October 2007 and 16 April 2008; the *Daily Naya Diganta*, 3 April 2007; the *Daily Jugantar*, 3 April 2007; the *Daily Prothom Alo*, 21 July 2007; the *Daily Star*, 9 February 2007; the *Daily Manab Zamin*, 21 February 2008. For 11-Point Formula; all daily newspapers on 6 September 2007. See also General Moeen U Ahmed, *Nirbachita Shankalon*, Asia Publications, Dhaka, 2008.

⁸ See *The Daily Star*, 9 February 2007 and the *Daily Prothom Alo*, 24 May 2007.

⁹ The *Daily Ittefaq*, 3 April 2007; the *Daily Prothom Alo*, the *Daily Naya Diganta*, 28 March 2007.

¹⁰ Ibid.

¹¹ See the *Daily Inquilab*, 23 October 2007.

¹² See the *Daily Ittefaq*, 21 July 2008; the *Daily Prothom Alo*, 14 February 2007; the *Daily Naya Diganta*, 28 February 2007.

¹³ See the *Daily Manab Zamin*, 23 October 2007.

want to hear him at the Kennedy School.¹⁴ Anyhow although General Moeen was not able to address the official seminar he however presented his views over a casual lunch to some students and faculty members who were interested to listen to him. During his stay in the United States including Florida and on his way in London as well, he made series of statements. In New York, he addressed a community meeting in a restaurant presided over by the Bangladesh Mission Chief in New York. Although some of his remarks were self-contradictory, inconsistent and in-cohesive but the statements covered all the major policy issues of the interim regime delivered more in the fashion of the head of a government rather than an army commander.¹⁵ His intended visit to Washington DC did not materialise for some reasons unknown.¹⁶ Both at home and abroad when General Moeen made any statement on separation of judiciary, rule of law or the Human Rights Commission as the success of the regime, he did not realise that it did not suit him to speak on those subjects when the country was run under the Emergency Laws suspending all the fundamental rights of citizens and curtailing the independence of judiciary in the justice delivery system upto the level of the Supreme Court.

Soon after the interim government was installed the Army Chief made crusading statements against the corruption of politicians quoting wild figures.¹⁷ He announced that the money in cash amounting to about 1500 crores and the luxury cars and jeeps recovered from corrupt businessmen and politicians will be spent for medical and health centers.¹⁸ He also said that although the two major parties were contenders for political power but in matters of corruption they used to co-operate with each other of which he had lot of information in hand.¹⁹

Allegations of Corruption

While his tirade against corruption was at a high pitch, allegation of corruption against his own appeared in the website at the time when he was making such statements against the politicians in Florida, New

¹⁴ See the *Daily Manab Zamin*, 24 October 2007.

¹⁵ See the *Daily Amar Desh*, 24 October 2007.

¹⁶ This was disclosed by an officer closed to him.

¹⁷ See the *Daily Naya Diganta* and the *Daily Prothom Alo*, 28 March 2007.

¹⁸ *Ibid.*

¹⁹ See the *Daily Amar Desh*, 19 October 2007.

York and London. The allegation was that he borrowed money to build his house in Dhaka from the Trust Bank, an army bank of which he was the ex-officio Chairman and his brother was the CEO and Managing Director, a news shocked and stirred both at home and abroad.²⁰ Besides the question whether under the law he could borrow from a Bank of which he was the Chairman and his brother was the Managing Director, the more pertinent points were what was the exact amount he borrowed, how much the construction of the house had cost and how he was going to return the loan. Since the appearance of the allegations in the website and national and international newspapers, days did not pass well for him in the United States as he had to face numerous questions on this embarrassing subject every place he was visiting. In his interview with the Voice of America, he answered the questions by saying that he borrowed an amount of 25 lakh from the Trust Bank and 10 lakh against his pension fund and besides these 35 lakh he did not borrow a penny more and he was returning the loan from the rent he was receiving for the house. He also outrightly rejected the allegation that he borrowed 1 crore from the Trust Bank in 2004 and by the end of 2006 he had returned 65 lakh as appeared in the internet. At last, General Moeen accused the "corrupt politicians" for spreading such rumour against him and according to him the allegations against him were motivated to humiliate him to stop his crusade against corruption in the country.²¹ In his interview with the Voice of America he explained his position in more detail and rejected the allegations of borrowing Tk. 99 lakh 69 thousand 215 in 2005 and the return of Tk. 66 lakh 43 thousand and 892 in 2006. He admitted that his brother was appointed before he became the Chairman of the Bank and his other source of funds used for the construction of the house came from his foreign earnings while serving abroad at different time. He admitted that he did not submit his statement of wealth and income to any authority but he was willing to do it at any time necessary.²²

But the problem arose when the Trust Bank was listed as a publicly traded company and shares were floated in the stock market. The prospectus published for this purpose, signed by General Moeen as

²⁰ At a later stage in 2009, the former State Minister for Energy had sued the General for defamation claiming Tk. 100 crore as compensation for making such a false statement.

²¹ See the *Daily Amar Desh*, 21 October 2007.

²² *Ibid.*

the Chairman of the Bank, claimed that in house building sector the loan taken by him as on 31 December 2005 was Tk. 99 lakh 69 thousand 215 and on 31 December 2006 the amount stood at Tk. 33 lakh 15 thousand 323 which meant that he had returned or reduced his loan by paying the bank an amount of Tk. 66 lakh 53 thousand and 892 within a year. So this incongruity and gross inconsistency between what he said at different places on his tour to the USA and particularly in the interviews with the BBC and Voice of America that he did not borrow a penny more than Tk. 25 lakh, the highest allowed on house building from the Trust Bank, raised a serious question as to his integrity, authenticity and honesty on his own financial transactions. It was debated at all levels how he could return such a huge amount of loan within a year without any corresponding declared source of income.²³

Besides this, another question was also raised. Was the visit to the United States for any official purpose? Who had paid for traveling, food and lodging expenses? If they were all paid from public exchequer would it not amount to misuse of official position for personal pleasure? The persons who authorised such visit that is, the Chief Adviser and the President would be equally responsible for such an act of corruption. The same question was raised with regard to his visit to Saudi Arabia to perform Haj and the over-stay after the pilgrimage. If these visits were financed privately then his source ought to have been made public along with the huge educational expenses for the studies of his son in Florida. Allegations were also raised about all his brothers making fortunes during the period when the General was in charge of the military wheel of the government.

These questions would normally not have arisen if there was no drive against corruption going on in the country at such a high profile pioneered by the Army Chief himself. At least 220 politicians, public representatives, businessmen and others, were going through the same kind of ordeals in the country. The Army Chief perhaps did not realise that, on the same or similar kind of allegations of having wealth more than one's known sources of income, if he or the Chief Adviser or the Chairman of the Anti-Corruption Commission were locked up in jail for an indefinite period without any right to bail and made to submit their statements of wealth within 72 hours without any access

²³ See Mahmudur Rahman, "Moina Tadanta AK Agaro: Uttaran Parba," *the Daily Naya Diganta*, 21 November 2007.

to papers and documents already seized by the Joint Forces on the day of arrest calling them as “*durnitibaj*,” denying any lawyer for consultation, and the officials of the Anti-Corruption Commission would inflate the value of the construction of the houses they own calculated by the motivated government engineers and try them in Kangaroo Courts, monitored by the agency officials and had given the commanded conviction and sentence only then they would have known what kind of fair trial was being held and what kind of “drive against corruption” he was so boastfully propagating at home and abroad. But luckily, just because the Army Chief or the Chief Adviser or the Chairman of the Anti-Corruption Commission were holding high positions they did not have to go through this ordeal of proving their wealth not to be disproportionate to their known sources of income, otherwise it would not have been difficult at all to prove the same against them as well in the similar circumstances under the emergency laws. But one day the same could happen to them when they would no longer be holding those positions.

Failure of the General

Before the regime could celebrate the first anniversary of their unconstitutional rule, the entire population suffered the worst jolt of highest rise in price of coarse rice sold at Tk. 38-40 per kg along with the same rate of rise in other essential commodities combined with a continued down-syndrome in all the macro-economic indicators, plunging all business sectors into an abyss of a never-ending tunnel. With the utter breakdown in the system of reaching fertilizer to the farmers on time and extreme shortage of food grain countrywide pushing the people into a stage of facing an impending famine finally made the regime admit their failure in governance forcing out 4 of the Advisers to leave office. Since all these factors demolished the little image the regime had at the beginning and the entire blame of mismanagement was passed on to the armed forces perceived so long to be on the driving wheels from behind the scene, General Moeen and his Generals had to rethink about their options and in order to have a breathing time allowed Fakhruddin Ahmed to invite the political parties and politicians to hold discussion at the national level²⁴ which the government had earlier declined, purportedly to hold a general election in the country.

²⁴ See the *Daily Amar Desh*, 13 January 2008.

The terrorisation of the entire country by the Joint Forces led by young army officers reminded the people of the martial law regimes of the past. The random and ruthless crack down on the slum dwellers, hawkers and street vendors from the capital down to the village bazaars, arrest and harassment of over 4 lakh people all over the country of all walks of life, the humiliation of chairman and members of the Union Parishad, local government officials, shop owners and traders by the personnel of the military camps stationed at the upazilas, raids at midnight and forcible entry into the residences, offices, factories, godowns and public offices like WASA, PWD, TITAS, RAJUK and many others and mid-night raids on the businessmen and politicians and their arrest with their spouses and children without any order from any court and seizure of properties and documents, physical assault of politicians, businessmen, public representatives in custody for days extending upto 6 to 7 or even more weeks prior to producing before any court of law and the inhuman treatment and torture inflicted while taking such citizens on remand from the court to unknown places for interrogation in blind-folded condition—all had created a sense of panic and insecurity in the mind of the public at large. The merciless beating of the students and arrest and torture of the Professors of Dhaka and Rajshahi Universities at the hands of the Joint Forces only aroused the public sentiment against the government to its height. Finally as soon as some of the members of Joint and Task Forces, with so much of uncontrolled power in their hand, started indulging themselves in extortion and kickbacks from any wealthy person they could get hold of by blackmailing them, ruined the image of the army as a whole for the misguided, inept, irresponsible and rudderless ambition of Moeen U Ahmed.

So, all the failures of the interim government alienated it from the rest of the population and the blame for such a debacle fell upon the army and their Chief who projected himself as the master running the country. His political ambition had also suffered set-backs one after another starting from the theory of "minus two" to the "political reforms" they talked about by elimination of Sheikh Hasina and Khaleda Zia from the leadership position of the two major parties. Whether it was due to the incohesion within the regime or his lack of leadership to have the entire army behind him, deep mystery behind his rise and the dubious role he played during that period would always be interesting to study.

In the process, the nation at the end lost almost two valuable years. Neither the political agenda of the Army Chief could yield any result nor the interim government could fulfill the expectations of the people. The "drive against corruption" had no effect on the political future of the country. On the contrary it not only proved self-defeating and counter-productive but turned out to cause an incalculable damage to the economy, political stability and the progress of the country, from which it would now cost the nation at least a decade to recover.

The Lost Image

As a result all the image and prestige the army restored to its credit in last 20 years as a professional institution, by keeping itself away from politics, were shattered due to the over-indulgence of a small section of the officers close to the Army Chief. The emergence of the Joint and Task Forces as Frankenstein had ruined the good will the army enjoyed in the last two decades. The growing public sentiment against the army due to its highly controversial role in the interim period marred the reputation of the institution as a whole, which the overwhelming members of the armed forces were not willing to bear. The decision within the army led by powerful Generals, as perceived from outside, was more on the side of keeping itself away from power politics and retain its integrity as an institution. So it became a desperate situation for the Army Chief to survive in his position. It caused more anxiety because it was feared that in a free and fair election it would either be the Awami League or the BNP who would form the next government, and the new administration could immediately hold a high-level enquiry into the misdeeds committed by the members of army not only for committing excesses in inflicting assault or torture on people or the alleged corruption of the Army Chief but also those who delayed the process of election and have them court-martialed and punished under the Army Laws. In order to restore and save the image, integrity and prestige of the army as an institution that would perhaps be the only recourse open for the next elected government.

However, at one stage, those officers who played an active role in all such activities, appeared to be more hawkish. They wanted the Army Chief to take strong measures to stay in power by formally taking over the government either under a martial law or an extended emergency to ensure a safer exit for them in future. This could be

achieved by either postponing the election or hold an election of some sort to have a hand-picked Parliament which would guarantee a validity to their regime in the Constitution by an amendment passed by two-thirds majority. But the adoption of this path could be even more dangerous not only for the army but for the entire nation resulting into a direct confrontation between the people and the army leading to the eventual destruction of the army itself as an institution.

The country faced the same kind of situation in 1988 and 1996 when the elections were held without the participation of the major political parties but the Army Chiefs had remained loyal to the Constitution and performed their functions in the conduct of the election and thereby allowed the continuity of the Constitution and the democratic process. Although the Parliament elected in 1988 survived less than 3 years and the Parliament elected in February 1996 survived less than a month, but the people continued to enjoy their democratic rights and the Constitution took its own course to sustain a democratic order. In 1996, the Parliament passed the Thirteenth Amendment to provide a mechanism to have a non-party care-taker Government for a 90-day period for assisting the Election Commission to hold a free, fair and peaceful election. In 2007 also, the election could be held as in 1988 and 1996 without the participation by the parties led by the Awami League and the new Parliament could be the venue where agreed reforms could be given effect to, if necessary by amending the Constitution to facilitate holding the next election immediately thereafter, as was done in 1996. In such a situation the country could be saved from the disruption of the democratic process by way of an army intervention with such disastrous consequences. While the Chiefs of Army Staff in 1988 and February 1996 remained loyal to the respective governments and the Constitution and allowed the democratic process to continue, in 2007, General Moeen U Ahmed appointed by Begum Khaleda Zia believed to have the same loyalty and allegiance had betrayed and chose to disrupt the democratic process in the country to discredit the army and tarnish the image of the institution.

Chapter 11

End of the Interim Regime

Legality of the Government

The appointment of Dr. Fakhruddin Ahmed as the Chief Adviser by the President forced by the Army Chief was in violation of Article 58 of the Constitution. Although the Chief Adviser took oath under Article 58(C) but the selection process of appointing him under the same Article was not followed as he was neither a retired Chief Justice nor a retired judge of the Appellate Division. The only provision under which he could be appointed by the President was Article 58(C)(5) after consultation “with the major political parties.” As there was no such consultation or any effort made, his appointment was absolutely illegal. It made the Council of Advisers and the interim government instantly unlawful. Moreover, it was alleged that some of the Advisers including the Chief Adviser were disqualified to hold any post of an Adviser under Article 58(C)(7) of the Constitution.¹

Under Article 123(3) of the Constitution the general election must be held within 90 days from the expiry of the last Parliament and that period of 90 days having had expired on 25 January 2007, the continuation of the interim government became ipso facto illegal.

Since the country returned to a complete normalcy within a week or so after the Proclamation of Emergency, the condition of “internal disturbance” for which the Proclamation was necessary, were no more in existence and the President had the power to revoke the Proclamation under Article 141(A)(2)(a) of the Constitution to facilitate an early election to revert to a democratic order but he has not been allowed to do so by the military to enable the illegal interim government to continue.

Under Article 141(A), the Emergency proclaimed on 11 January 2007 could continue for a maximum period of 120 days unless

¹ See the *Daily Amur Desh*, 13 November 2007.

approved by a resolution of Parliament and since no Parliament had approved it, the continuation of the Emergency was illegal and so the interim government continued by force without any kind of accountability.

Under Article 56(D) of the Constitution the terms of the interim government were to carry on with the "routine functions" of the government and "not to" make any "policy decision" and the interim government was only to give the Election Commission "all possible aid and assistance that may be required for holding the general election of the members of Parliament peacefully, fairly and impartially." But the interim government continued to take policy decisions of national importance including those of great security concerns, signing of international treaties and contracts and making about 90 laws touching upon vital areas of governance outside the mandate of the Constitution obligating the future governments which could have serious legal consequences.

Under Article 83 of the Constitution, "No tax shall be levied or collected except by or under the authority of an Act of Parliament." But the interim government on their own had announced two budgets imposing illegal taxes in violation of the Constitution.

Under Chapter II of Part IV of the Constitution the members of the interim government had taken oath not to have anything to do with politics but by arresting and victimising the politicians on the one hand and at the same time promoting new political parties of their own liking, the interim government had already assumed a political role in violation of the Constitution.

The initial public support it had in the backdrop of impending violence and political confrontations disappeared as soon as the regime decided to continue to run the country in violation of the Constitution. The longer the regime continued the more illegalities it committed in the eye of law for which at the end, the regime would have to seek a retrospective validity by way of an amendment of the Constitution same as those of the Fifth, Seventh and Eleventh Amendment by a vote of two thirds majority in the next elected Parliament. It would thus reaffirm that the rule of the regime was illegal and it needed legalisation of all its acts and deeds.

Clichés in Politics

The interim government primarily inspired by the Army Chief and his henchmen to perpetuate power in violation of the Constitution

adopted a list of agenda of clichés used more as slogans rather any conviction to rationalise its continuation in power. Although these were nothing new nor any one would dispute them but they still need to be discussed and analysed. The first cliché used was—

“Honest and qualified persons to run the country”

Soon after the proclamation of Emergency an organised campaign was launched by a section of the civil society inspired by the Chief Adviser and the Chief of Army saying that the nation needed “honest and qualified persons to run the country.” It immediately implied that the country was so long not run by honest and qualified persons and that starting from Sheikh Mujibur Rahman to Begum Khaleda Zia were all dishonest and unqualified. The obvious deeper innuendo was that all the politicians, although popular and elected, were dishonest and not fit to run the country. No one would disagree with a demand that the country or government was run by honest and qualified persons. The people were however confused as how to get such honest and competent persons to run the country. Were the promoters of this very old cliché talking about oligarchy or democracy? Or were they thinking about changing the Constitution to ensure that only “honest and qualified” persons as to be defined by their own yardstick, could be there to run government under a new oligarchic system. But the Constitution of the country maintained a structure based on the fundamentals of democracy under a sovereign Parliament elected by people on the basis of universal adult franchise. Article 66 of the Constitution defines the qualifications and disqualifications for election to Parliament. Article 66(1) says that every person would be qualified to be elected as a Member of Parliament if he was a citizen of Bangladesh and had attained the age of 25 years. Under Article 66(2) a person would be disqualified for election or for being a Member of Parliament if he—(i) was declared by a competent court to be of unsound mind; (ii) was an un-discharged insolvent; (iii) acquired citizenship or affirmed allegiance to a foreign state; (iv) 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 5 years had elapsed since his release; (v) held any office of profit in the service of the Republic; or (vi) was disqualified for such election by or under any law.

Although vague, ambiguous and unsustainable in law, what they really wanted to say, as a part of their campaign against the politicians that those who were elected by “people” in all the Parliaments in last 36 years were neither honest nor qualified. So the same “people” would now have to elect “honest and qualified” persons to the Parliament in the next election. Innumerable statements to this effect had been made in course of the illegitimate period of the rule by the civil-military leaders of the regime including the Chief Election Commissioner and the Chairman of the Anti-Corruption Commission. The Chief Adviser and the Chief of Army made this kind of statements even during their visits abroad without realising that they did not represent any elected government. Interestingly, none of the members of the civil society nor the civil-military leaders who were making these statements had ever contested any election nor had the experience of what an election really meant nor they knew who the voters were and how the people judge the candidates seeking votes nor they belonged to any political party. Most of these statements were made in cool comfortable seminar rooms in the capital being served with sushi or samusa or in organised talk-shows on TV screen paid with cash, in ceremonial functions with wide media coverage having had no connection with the “people” they talk about at the grass-roots level. It is not that they were not aware that neither democracy could sustain nor election to Parliament could be held without a party system as recognised by Article 152 and Article 70 of the Constitution.

Having understood this reality the demand then went on to suggest that political parties ought to nominate only “honest and qualified” people. While the argument that the political parties ought to discard nomination to new entrants into politics in exchange of money as contribution to the party or just-retired bureaucrats with ill-gotten money were acceptable and ought to be followed but the presumptive notion of nominating and electing “honest and qualified” persons needed further scrutiny. It is well known that utmost consideration is given by all major parties while selecting candidates, as to who would be the best among those seeking nomination after taking into account all the aspects of his candidature including his personal character and qualifications. The criteria, almost identical in every democracy including the developed ones, upon which nomination is generally awarded to a person because of—(1) his service and role in the party, his sacrifice and contributions; (2) his

acceptability, image and popularity among the people of his area, his past record of election, performance in his constituency and inside the Parliament; (3) his acceptability to the local party unit; (4) his financial means and finally the most important of all; and (5) whether he would win the election. So, in judging all the criterions a candidate would immediately disqualify himself if he was found to have a reputation of being corrupt in his constituency by cheating people or stealing wheat or rice meant for the poor, by committing extortions on any development work or by demanding commission from the contractors and had lost his fame and popularity. It was no good for some ideologist to demand of the political parties to nominate "honest and qualified" persons having no touch or experience in dealing with the life and miseries of the people they so often talk about. It had to be borne in mind that it is the "people", the "voters" who ultimately decide who would sit in the Parliament and take charge of the government and it is them who would decide as to who would be the person to serve and represent them.

But the person first must be a candidate under the law. On average in most of the constituencies there had been in the past, 6 to 8 candidates or even more of different shades and the voters extremely conscience of their rights, having a choice, would vote whoever they thought would be the best for them. The personal character of the candidate, his behavior, his educational qualifications, his family background, his party affiliation, his past record of service in the area, whether he would be able to solve their problems of roads, culverts, bridges, electricity, gas, health care, irrigation, river erosion, school, madrasah, college, bazaars, orphanages, embankments, jobs for unemployed youth were the criterions upon which the people would decide who they would vote.

As stated in Article 7 of the Constitution, "all powers of the Republic belong to the people," and so the "people" were the real source of power. It is they who decide when they exercise their right of franchise who was the most honest, most qualified and most acceptable leader to represent them in the Parliament. It is they, who decide which party and which leaders ought to govern the country. Only thing they needed a suitable, congenial, peaceful environment where they could cast their vote freely according to their own choice which was the fundamental responsibility of the Election Commission and the government to ensure. It is the same with all the voters in all

the democracies of the world. It ought to be left with the "people" to decide their future. Those who made this kind of statements or raised such demands or slogans or put such conditions were naive or ignorant and had no respect for the "people" and they were actually casting a serious aspersion on the "people" in negation of the concept of democracy as a whole.

A better answer for them would be to join a political party and try to get a nomination under the criterions discussed above or form a new political party with very "honest and qualified" people to be a part of the electoral race or be independent candidates in the election and win to become a Member of Parliament. As long as democracy was to sustain, there was no other short-cut process. There is no medicine or injection available nor there is any academic theory or blissful wishes to refashion a society from this long enduring historically accepted political process. It does not need to be re-emphasised that democracy is and has always been in every country from the USA to India a rule of the average with the best persons available as representatives elected by people. Moreover, if every Parliament of the past was examined, since the election of 1970-71 people had chosen the correct party and the representatives to govern them. The new progenitors of the present slogan or cliché perhaps kept on forgetting that the very democracy the nation cherished and the Constitution framed for future of the country was enacted by the representatives elected by people in 1970-71, sitting in a Constituent Assembly after the independence of the country. Who could be more honest, qualified and competent for the nation than those who had enacted the Constitution of an independent country?

Moreover, despite all the predicaments of a marginal economy with a large number of people living below the poverty line, the quality of Members of Parliament continued to improve and gradually the number of qualified persons taking part in the elections had increased. Instead of having overwhelming number of lawyers and old fashioned politicians, the successive Parliaments increasingly had more educated, articulate and professional representatives. None would however argue on the point that at least the major parties ought to be very strict in following their criterions in selecting candidates and discard totally the intrusion of newly rich businessmen with black money or persons reputed to be corrupt or allow purchase party tickets and ensure that such persons were not awarded nomination. If

any Member or Minister became dishonest or corrupt for stealing public money by using his official position or betrayed the promise he made at the time of election, the party and law would take their own course to punish him.

So this seminar-based pompous sounding cliché that the nation ought to have “honest and qualified” persons were nothing but derogatory statements in content and very much anti-people in substance. Individuals apart, every Parliament elected in a free and fair election had the best of the representatives the nation could have from amongst those who were candidates and since they were all elected by people of their own choice it had to be assumed that they were competent and qualified to be in the Parliament and national politics.

“Unless Corruption was uprooted no election would yield any result”

Another statement frequently made was that no election would yield any result unless corruption was uprooted. Keeping in line with the earlier emphasis laid by the regime against corruption, this kind of statements made to link with the election immediately aroused a great suspicion in the mind of the people about their real intention. A statement in such an absolute term coming from a person not less than the Chief of Army Staff² in a meeting at Florida where his son studies, could not be underestimated or ignored. The Army Chief made this statement half the globe away from Bangladesh, asserting that unless the country was ruled by honest persons democracy could not be consolidated and stabilised and the current drive against the “*durnitibaj*” was launched by the government to achieve that goal. The Chief Adviser and many others including the Chief Election Commissioner and the Chairman of the Anti-Corruption Commission made similar statements from time to time. This kind of statements were not only absurd but derogatory to the constitutional mandate cast upon a non-party care-taker government to assist the Election Commission to hold a peaceful, fair and impartial election within a specified time. It also contradicted their own commitment of holding an early election to allow an elected government to govern the country. A simple and literal meaning of such unrealistic statements would be that since corruption would never be uprooted in

² See the *Daily Manab Zamin*, 22 October 2007.

Bangladesh, so no election should ever be held in this country and the present regime would continue till then under the present state of Emergency. This kind of wild and ridiculous cliché only exposed the bad faith of the regime eroding their own credibility in public eye. Finally since the government reconciled itself to limit their drive against corruption to a list of only 220 persons, one either had to presume that corruption would be uprooted with the 220 persons punished and jailed or corruption would never come to an end.

“Political reforms must take place before any election is held”

One of the most important political statements made by the civil-military leaders soon after the installation of the new interim government was that without political reforms the regime would not hold any election. In other words, political reforms must precede any election. Although it was not defined in any concrete terms what they meant by such reform but all their action made it absolutely clear that by political reforms they meant reforms of political parties by bringing a change in the leadership of the two major political parties. So it was not a broad philosophical agenda but a narrow subjective goal of making the two major parties to be leaderless, by removing Sheikh Hasina and Khaleda Zia from the leadership position of their respective parties. So this turned out to be the most crucial agenda of the regime exposing the fact that being a non-party care-taker government it laid a strong political goal to achieve and that was to depoliticise the society and weaken the political institutions in order to perpetuate their rule in some form or other. It was immediately construed as a conspiracy to weaken Bangladesh as a sovereign state. The two leaders emerged through a long political process, arduous and enormously risky. Their respective party constitutions and traditional practices gave them this omnipotent position.

A thoughtlessly, ill-conceived and unrealistic motivation drove the regime to take some immature measures to achieve that goal without a definite plan as to what would they do even if they were successful. In order to achieve this goal the so-called cliché of “minus-two” theory was boosted up in the front pages of the daily newspapers and some corrupt renegades of each of the two major parties were encouraged to introduce reforms in their respective parties ultimately leading to the splitting of them. But the regime suffered a serious set-back when their

attempt to keep the two leaders out of the country failed.³ Once Sheikh Hasina returned from abroad and jailed, because of the tremendous pressure of the rank and file of the party the renegade “reformist” leaders rolled back and took shelter to survive in the mainstream party, under her leadership. With Begum Zia, also in jail, the renegade “reformists” having had no support of the rank and file of the party, could not make any headway in the face of her unwavering popularity in the party.

Then the ruling clique pursued to discredit the two leaders by instituting some false cases, which the public neither believed nor cared much, and the attempt to isolate them from politics or people also miserably failed. Then the regime even pursued the alternative idea to disqualify them from taking part in the elections by having them convicted by any means but there also it failed in accomplishing their design because of the intervention of the Supreme Court in “staying the proceedings” in all the major cases against the two leaders. So the misconceived calculations engineered by the military agencies only made the two leaders more impregnable and indispensable for any political solution of the crisis the nation faced. It was soon realised that even with the two leaders convicted and held in jail, any free, fair and credible election would be impossible to achieve. To inject force for a political reform of this nature was a thoughtless proposition. That any reform, which by itself is a product of an evolutionary process, had to come in a natural course from within the party and such reforms could not be forced upon the existing established political parties by military prescriptions or interventions.

The BNP renegades, went to the extent of expelling Khaleda Zia from the post of Chairperson. Having done so they were shocked to find that the military agents had lost interest in promoting them any further. In utter desperation they then retracted their claims and tried to crawl back to the mainstream of the party under the leadership of Khaleda Zia. So, this cliché of “political reforms” as a “must” for holding the election originally supported by a section of civil society led by two newspaper editors working as a catalyst “think-tank” for the military, having had no connection with the “people,” had also collapsed, throwing the country into a deeper political crisis.

³ See for detail discussion at Chapter 2. The idea of discarding the dynastic familyocracy was not pursued much further as in politics like in other profession it was not possible to de-link the heredity from the siblings in political families not only in South Asia but the world over.

Having failed on that scheme the regime pursued a third alternative with a theory of “manage-two” to accomplish their goal to perpetuate in power. The scheme envisaged to dissuade the two leaders from contesting in the election in exchange of guaranteeing them a status of “national leaders” with all facilities and privileges. The two parties would then nominate only candidates chosen by the military agencies and would refrain from awarding nomination to those listed by them as undesirable persons whether convicted or not. The next Parliament thus elected would also amend the Constitution to bring a check-and-balance of power between the Prime Minister and the President giving the latter more power than he now enjoys and elect the Army Chief as the President of the Republic. A national government would be formed comprising of all the parties having representatives in the Parliament. This arrangement, a complete change in the existing structure of the Constitution with a formal sharing of political power with the military will “usher in a new chapter of durable peace and stability for the country.”

Finally, if this scheme also failed the government agencies and the Election Commission would create such an unpalatable situation so that the two major parties or at least one of them would be forced to boycott the election. This by itself could lead to a postponement of the election once again and allow the military to control the political power of the state.

“The people would not like to go back to pre-11 January situation”

Finally most abrasive of all the clichés used by the regime was that the people would not like to go back to the culture of political confrontation of the past. The phrase was widely used by all the members of the regime and became a popular slogan backed by media and civil society, particularly by the class who encouraged to have the Emergency imposed in the country. The civil-military leaders also took up this not only as an issue but as a self-created mandate of the Emergency as the slogan gained a wide support at the beginning. The public perception was, and rightly so, that it meant that the people, if given any option, would not like to go back to the culture of extreme political confrontations of violent nature as prevailed in December 2006 to January 2007 which enabled the military to impose Emergency. In other words, to elaborate it further, people would not like to see the culture of not accepting the defeat in the election by the party who had

lost begin instantly a movement to oust the elected government, resort to *hartals*, strikes, road blockades, abstaining from taking part in the proceedings of the Parliament, boycotting not only the sittings but the sessions of Parliament for months and years and finally resort to violent courses to make their "movement a success" so that whoever was in the opposition at that point of time, could return to power. The people at the same time would also not like to see the ruling party be repressive, unaccommodating and intolerance of the opposition and to run the country and the Parliament all by themselves in an unaccountable reckless authoritarian manner. In other words, the people, the voters, would like to see both the winners and the losers in an election, the government and the opposition, to continue to enjoy the confidence of the people by being more responsible, mutually respectful and tolerant, and carry out their respective mandates in a peaceful manner without resorting to repression or violence. The politics of mutual hatred between the two leaders and the style of authoritarian rule they pursued once in power under the umbrella of democracy had to be abandoned.

All these were, no doubt, the wishes and desires of the people at large and the cliché used demanding the change of the political culture enjoyed almost a full support at the initial stage. But as soon as the people discovered that these slogans were used in bad faith to shift the interim regime away from the constitutional mandate of holding the election in "the shortest possible time" as promised by the Chief Adviser in his first address to the nation and all the clichés were only used as a pretext to perpetuate their rule for an indefinite period, the people not only had withdrawn their support but raised deep suspicion about the real motives of the regime. As stated earlier, mechanism of democratic political transition could not be accentuated or determined by military perception. Nowhere in the world, in modern history, military had on their own returned the country to democracy and gone back to the barracks unless they were forced to. They would normally not leave the power they had usurped until they were thrown out in ignominy by a people revolt. This greed of power also worked in the mind of the military in Bangladesh to perpetuate their rule beyond the time set by the Constitution. Although Article 123 was violated for not holding the election by January 25, 2007 but the people would not have objected if the elections were held within 90 days from 11 January 2008, the day the Emergency was proclaimed and the new

interim government was installed. Although technically it was not a full military take-over and the military maintained the position that it was only assisting the civil administration under the normal law of the land but the fact was that the Emergency was proclaimed at the instance of the military as no civil government called upon the defence forces to assist them in running the affairs of the state and the military was the defacto government of the interim regime.⁴ Emergency as a kind of civil martial law was used only as a camouflage to avoid international criticism and to allow the military to govern the country. It was all a part of a new experimental device for a foreign control of another state.⁵

The failure of the interim regime in sustaining the economic momentum achieved upto 2006 was already under severe criticism. The decline in the over-all economy of the country⁶ both at micro and macro levels with a soaring rise in inflation was something the people could no more bear to accept. When before the end of their first year, the rise in prices of essential commodities, particularly food items soared to an incomprehensible spread at Tk. 38 from Tk. 18 in 2006 per kg, of coarse rice affecting the entire masses of people, the slogan that “the people would not like to go back to pre-11 January situation” lost its significance.

Other than the violent confrontations between the two major parties and their intolerant behaviour to each other which the public did not like, the political regimes were still tolerable. The country had a democracy with fundamental rights of citizens guaranteed and enforced by courts of law. The people had rights of equality before law and equal protection of law, an independent judiciary, right to speak and criticise the government, the ministers and the public functionaries for their misdeeds. The country had a vibrant, briskly economy with the rise in opportunities for employment, capital growth, industrial expansion, increased investment portfolios. In general terms the people did not have to live in fear, they were not terrorised by the extra-legal forces, they could sleep in peace at night. There was a government accountable to people.

⁴ See for more discussion at Chapter 1.

⁵ See how Bangladesh was also made a member of this new club when at the World Economic Conference at Davos the country was put in the same panel on the issue of fundamentalism along with countries like Afghanistan, Iraq and Pakistan.

⁶ For detail on economic failure, see Chapter 8.

So the people now started saying that the days were far better off before the 11 January 2007 in all respect other than the political violence and the culture of mutual intolerance between the two major parties. The cliché that none would like to go back to 11 January situation turned out to be futile. The people would very much like to have their democratic rights back with a kg of rice at Tk. 18, flour at Tk. 16, edible oil at Tk. 38 and all other essential items for their daily living at a far less prices than it was now. As far as the common people were concerned, what was perceived to be a blessing on January 11, now turned out to be a curse. Consequently, all the clichés the regime used to perpetuate power illegally and unconstitutionally having had failed, the interim regime had realised that it had to turn back and sit down with the same “*durnitibaj*” politicians, whether they were in jail on charges of corruption or not, to escape from the issues they had created. The loss of two valuable years has been a loss of a decade both in economic as well as social terms and who was going to pay for it?

What would have been prudent on the part of the interim regime was to stick to the mandate of the Constitution and devote itself fully to facilitate an election as early as possible. No political party asked them to prepare any fresh voter list nor they had any mandate to accomplish any political reforms, or go for humiliation and victimisation of the politicians in the name of drive against corruption. To enhance their own good-will the government, at best as a part of their routine work, could have indicted a handful of those individuals who really earned the reputation of being corrupt and looted public money during the last decade.

The unpleasant and unacceptable political culture of mutual hate and intolerance developed by the two major political parties allowed the military to inject reforms in these two parties from outside with the support of the renegades to extricate the two leaders from politics were equally futile and unrealistic and therefore failed.

Corporation and Pourashava Election

Since the interim government continued to function in violation of the Constitution and the regime was not accountable to any elected Parliament it was their own political agenda that dominated the motive of every action they had taken and the Election Commission was used as one of the primary vehicles to carry out their scheme. While proposing the intention of holding the general election

according to their own road map, the Election Commission proceeded to take steps to hold some local elections at the behest of the military in contradiction to the very purpose the Chief Adviser and his Council of Advisers were appointed for and taken oath under Chapter IIA of Part I of the Constitution, i.e., to render “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”; and the Election Commission under Article 123(3) of the Constitution was under a mandate to hold the general election within 90 days after Parliament is dissolved by reason of the expiration of its terms.

So, this ill-conceived diversionary move of the Election Commission contrary to the provisions of the Constitution, was seen by all the political parties as something motivated only to frustrate the process of holding the general election. With the country reeked under the heavy reels of Emergency Laws and restrictions with no fundamental rights in operation including the right to speech and assembly, the design to hold the local elections at this stage was suspected to distract the issue of the general election they had in mind.

But despite the vehement opposition of all the major political parties in violation of the mandate of the interim government under Article 58(D) of the Constitution, the Election Commission on 20 June 2008, announced the schedule for the election of 4 Corporations of Rajshahi, Khulna, Barisal and Sylhet and 9 Pourashavas, Nawabpur, Dupchachia, Chuadanga, Sreepur, Manikganj, Satbaria, Fulbaria, Shariatpur, Gopalganj and Sitakunda to be held on 4 August 2008,⁷ under some newly introduced restrictive provisions incorporated in the relevant Election Rules. While announcing the schedule the Chief Election Commissioner expected that “honest and competent candidates would participate in the election and get elected.”

As soon as the schedule was announced all the major political parties rejected it, calling it a part of a conspiracy of the regime to disrupt the process of the general election. The BNP called the schedule a fraud, motivated and a “blue print” and the Awami League acting President Zillur Rahman called it a farce, a “tamasha,” a deep rooted conspiracy.⁸ All the parties demanded cancellation of the

⁷ See the *Daily Anar Desh*, 21 June 2008.

⁸ *Ibid.*

schedule. Tofail Ahmed, a senior Presidium Member of the Awami League reiterated that it was the decision of the party not to accept any election before the national election and no election would be fair and credible without complete withdrawal of the State of Emergency. Jamaat-e-Islami claimed that the schedule announced by the Commission was only a blue print of the regime to perpetuate in power. In the given circumstances the public opinion was that if the major parties remained united the Election Commission would have been forced to cancel the schedule and the political parties would have won the first battle against the regime.

But, the Awami League shifted its position in less than a week. While BNP not only boycotted the election and threatened to resist the election⁹ the Awami League in a meeting of their Central Executive Committee decided not only to take part in the election but to put up their candidates on the basis of their party and alliance.¹⁰ At the end when the BNP refrained from taking part in the election the Awami League in an uncontested election rather took an aggressive role to occupy the elective positions most of which they could not win in the past. Although officially some of the provisions of Emergency were relaxed for 21 days, but the reality was that candidates required to obtain prior permission of police before holding any campaign meeting, limited to only 6 hours a day, with restrictions on having number of camps and microphones for each candidate. The election on the polling day was held under the full cover of the Emergency Laws and Rules.¹¹

Consequently, in the one-party election held under the rigours of Emergency, the Awami League contrary to their earlier decline to participate, won a landslide victory giving not only a validity to the illegitimacy of the local election held prior to the national election but a license to the regime that elections of upazila and Parliament in future also could be held under the laws of Emergency. In order to get to power by any means, the set back to the democratic process was not important any more for the Awami League to consider.

⁹ The *Daily Manab Zamin*, 20 June 2008, 4 July 2008.

¹⁰ See for the self-contradictory stand of the Awami League. See also the 5 points of the BNP-led alliance put forward as conditions for taking part in the elections. The *Daily Ittefaq*, 30 June 2008; the *Daily Manab Zamin* 28 June 2008; the *Daily Amar Desh*, 30 June 2008; the *Manab Zamin* 1, 14, 20, 27 July 2008 and the *Daily Ittefaq*, 16 July 2008.

¹¹ See the *Daily Amar Desh*, 22 June 2008 and the *Daily Ittefaq*, 23 June 2008.

The Awami League had won in all the 4 City Corporation elections, in which other than Sylhet, the remaining 3 Rajshahi, Khulna and Barisal had traditionally been the seats of BNP. Out of 9 Pourashava seats, the Awami League won 8 and one was won by a supporter of BNP at Dupchachia, Bogra. Although BNP-led 4 party Alliance had boycotted the election nor they lent any support to any of their local leaders who had on their own taken risk to take part in the election, but because of the spontaneous support BNP enjoyed at the grass roots level, the candidates despite all the odds had done miraculously well. In the 4 Corporations and 9 Pourashavas, out of 226 Commissioners BNP leaders won 106 as against 77 of the Awami and in 43 Jamaat and independents had won.¹² In Barisal Corporation, BNP supporters won 21 posts of Commissioners as against 3 for Awami League. Similarly in Rajshahi 7 BNP and 3 Awami League, in Khulna 7 BNP and 3 Awami League and only in Sylhet Awami League had 13 and BNP procured 10 seats. In other words, in the 4 City Corporations the supporters of the BNP secured 51 seats of Commissioners as against 28 of the Awami League.¹³

These elections, despite the fact that they were held under the Emergency and total control of the illegitimate government, had also exposed the incompetency of the Election Commission. In many areas, after the elections, ballot papers were found in shops and markets. In some places counter-foil books of used ballot papers were also found. The Inquiry Committee, which the Election Commission was forced to constitute for the rigging occurred in the Khulna City Corporation election, revealed some sensational information about how a female sweeper of a school collected a large number of sealed ballot papers used by her for cooking food. Six days after the election a large number of counter foil books were found in some other places.¹⁴ In Sylhet 13 days after the election, ballot papers were found in a grocery shop which the owner of the shop claimed to have purchased as waste paper from an employee of a nearby pre-cadet school.¹⁵

The darkest side of these elections was that the results exposed the pretences and hollowness of the sustained campaign and propaganda

¹² See the *Daily Manab Zamin*, 9 August 2008.

¹³ See the *Daily Ittefaq*, 9 August 2008.

¹⁴ The *Daily Manab Zamin*, 14 August 2008; the *Daily Naya Diganta*, 19 August 2008.

¹⁵ See the *Daily Ittefaq*, the *Daily Manab Zamin* and the *Daily Anar Desh*, 28 August 2008.

of the regime continued for 18 months to reject corrupt and dishonest politicians and those engaged in social crimes. They had sermonised the people to vote for "honest and competent" candidates to bring a change in the political culture of the society for which the regime claimed to have launched a "drive against corruption" as a nationwide political slogan. The results of the elections were just the opposite, a flap on the face of those who usurped power committing the greatest crime against the nation.

Out of the 13 elected Mayors, against 9 of them, 28 criminal cases under various charges including corruption were pending of which 3 were City Corporation Mayors,¹⁶ 6 criminal cases against the Mayor of Khulna City Corporation, 4 cases against the Mayor of Sylhet City Corporation and 2 criminal cases against the Mayor of Barisal City Corporation were pending and yet they were elected by people. Out of the 9 new Pourashava Mayors criminal cases were pending against 5 of them. Against the Mayor of Manikganj 4 cases, Mayor of Sitakunda 2 cases, Mayor of Gopalganj 4 cases, Chuadanga 2 cases and Mayor of Dupchachia 8 cases were pending when they were elected,¹⁷ 6 of all elected representatives: one Corporation Mayor, one Pourashava Mayor and 4 Commissioners charged with various crimes including corruption were elected from inside prison.¹⁸

The highlight of all was that of Badruddin Ahmed Kamran, elected as Mayor of the City Corporation of Sylhet, from prison with 4 criminal cases mostly on charges of corruption pending against him for trial in different courts. He won the election by a margin 83000 votes, twice as much as he had in the last election contested as a free citizen.¹⁹ The charges of corruption against him did not affect his election, on the contrary by being in jail he aroused more sympathy amongst the voters which led him to win with a much bigger margin. On the day he was released on bail after 15 months in prison he received a tumultuous reception from the people of Sylhet.²⁰

So if it was considered as a test case, the regime failed from all points of view and in every respect, for which they could be held fully

¹⁶ See the *Daily Ittefaq*, 6 August 2008.

¹⁷ See the *Daily Amar Desh*, 6 August 2008.

¹⁸ See the *Daily Manab Zamin*, 6 August 2008

¹⁹ *Ibid.*

²⁰ See the *Manab Zamin*, 5 September 2008.

responsible and prosecuted for deceiving the country and its people for long 18 months, because—

1. The elections were held under the Emergency laws and so could not be said to be free or fair.
2. It was a one-party election and so had no credibility.
3. The people have elected politicians who were in jail as “*durnitibaj*” and thus rejected the campaign against corruption and the agenda for political reforms launched by the regime.²¹
4. There was rigging and visible irregularities in casting of vote and wide scale violation of election Laws and Rules by the candidates as well as the election officials to prove how incompetent the Election Commission was in conducting the election.²²

The Dialogue

Now after the lapse of more than a year of a failed performance in all the crucial areas, the interim regime, forced by circumstances, had to open a dialogue with the same political parties not for any change in the political culture but to push through a plan of their own to perpetuate the military in power. As the interim government became more alienated from people, its existence became more shaky, fragile and isolated²³ to be sufficiently effective any more in resolving any major crisis. Because of its lack of leadership, indecisions and erratic action plans the dialogue did not yield any positive result. On the contrary it had only led the nation to more chaos and uncertainty. Due to the failure of the interim regime in understanding the realities of statecraft the danger of returning the country back to the old culture would prove to be equally undesirable.

The formal dialogue conducted in three rounds by the Chief Adviser was a smoke-screen. The actual negotiation was being held behind the scene by the military under the direct control of the Army Chief with the two leaders—Sheikh Hasina and Khaleda Zia who were then in the sub-jails charged with corruption. The Generals wanted from the two leaders, an understanding on the sharing of power. The

²¹ See the *Dnily Manab Zamin*, 24 August 2008.

²² *Ibid.*

²³ See the *Dnily Amar Desh*, 4 January 2008.

military leaders wanted a direct role in the administration of the country and they made the following proposals:

1. The two leaders would not contest in the next election in exchange of which they would be guaranteed the position of "national leaders" with a higher rank, status, facilities and privileges although they could continue as the nominal leaders of their respective parties,
2. Each of the two parties would be given list of who to nominate and also a list of those who ought not to be considered for nomination,
3. Once elected, a national government would be formed with all parties having representation in the Parliament,
4. Moeen, the Chief of Army would be elected as the next President of the Republic, and
5. The new Parliament would amend the Constitution so as to validate the illegalities of the interim regime and also make additional amendments to give more power to the President in order to strike a check and balance between the offices of the Prime Minister and the President.²⁴

The reaction of both the leaders to such proposals were almost identical as both rejected them. What these proposals in effect meant that the country would revert back to a kind of a Presidential system with an active presence of the military in the government, discarding the very foundation of democracy and a cherished parliamentary system of government.

It was however argued that if the dialogue had succeeded and even if the two leaders had agreed, the scheme was not going to work in Bangladesh as many such ambitions of the military in the past could not be materialised, even at the initiative of the freedom fighters in the formative years after the independence of the country and again by Hussain Muhammad Ershad in 1982.

If a Parliament was elected in a free and fair election, the Members were not going to pass such an amendment to the Constitution and none of the leaders would be in a position to support such proposals to the detriment of their own interest and bring the doom of democracy. If at the end, the military still pursued the proposals then

²⁴ Khaleda Zia conveyed those to the author while both were in the dock as co-accused in the NIKO Case before the Tribunal at the early stage of hearing. See also the *Daily Naya Dignanta*, 21 October 2008.

they would have to have a hand-picked Parliament by a ripped-off election which would only lead the country into a deeper crisis.

Politicians are not born overnight. Nor there is any drug in medical science which could produce politicians or political institutions. Although no human being is indispensable under the law of nature but leaders are born seldom. As long as they are alive they have a role to play to lead the people and they continue to do so whether they are in exile or in jail at home. A leader like Sheikh Mujibur Rahman who founded this nation would not be born again in perhaps another century. The same would apply in respect of Ziaur Rahman, a young Major, who led the Liberation War by declaring the independence of the new nation. In the present context, whether one liked them or not as individuals, to achieve any peaceful political solution to return the country to a democratic order through a free, fair and credible election without the participation of Sheikh Hasina and Khaleda Zia would just not be possible. Any solution had to come by having both of them inside the political ring and not outside. So the success, if any, of the dialogue with the political parties whether conducted by the Chief Adviser in the daylight or the Army Chief at mid-night would largely depend on what understanding the military could actually arrive at with the two leaders of the country.

Bangladesh now faced the worst political crisis of its history and it had to be solved politically. There were no military solution to it nor any military prescription was going to help. Any attempt to cut a role for the military in the government by constitutional means was not going to work. An unelected government backed by the military could not last long. The longer the lid of Emergency continued the more the interim regime would de-link itself from the people risking a traumatic mass revolt. When a military leader like Moeen U Ahmed became a "guardian-angel" and talked about democracy, rule of law, independence of judiciary, independence of Election Commission, human rights, separation of judiciary for a country run under the Emergency Rules such utterances did not enjoy any credibility because none of it was practiced by his government while he went on preaching them.

Achievements and Failures

The question of legality apart, the regime however claimed certain achievements which deserve to be highlighted and discussed also.

During this period (1) The foreign exchange reserve touched the all-time high of over 5.5 billion US dollars largely due to increased remittances from the Bangladesh citizens working abroad and increased disbursement of fund from the foreign donors. The number of workers travelled abroad on work permit increased from 381,000 in 2006 to over 800,000 in 2007; (2) The Public Service Commission, the University Grants Commission, the Election Commission and the Anti-Corruption Commission were re-constituted; (3) The country had a peaceful time free of hartals, strikes, demonstrations and political confrontations in the streets; (4) drive against corrupt politicians, businessmen, bureaucrats and others was conducted and their speedy punishment was secured under the Emergency Laws; (5) Necessary laws and Rules were enacted to effect the separation of Judiciary from the executive organ of the state which the political governments failed to do; (6) An Ordinance was enacted to establish a national Human Rights Commission; (7) A Regulatory Reforms Commission was established to increase efficiency in administration by reviewing and modernizing the rules and procedures in the working of the public offices; (8) The disastrous calamity of two consecutive floods and the Sidr cyclone, and the post-floods rehabilitation programmes had to be handled; (9) Arrangement was made for import of sufficient food stock for the people estimated at 1.5 million tons; (10) Steps were taken to mobilise 2.8 million tons of urea fertilizer, 3 lakh more than the estimated demand; (11) A voter list with photograph and a national identity card were prepared; (12) The Chittagong Port was turned safe for shipment and clearance of mutual exports and imports; and (13) For the appointment of judges in the Supreme Court in a non-political manner, a law was enacted by an Ordinance called Supreme Judicial Commission.²⁵

Notwithstanding the quality of such achievements or their contents or their value, the question raised was to go back to the basic point of legitimacy of the government. Since it had no sanction of the Constitution to continue as it did, whatever functions it performed beyond the "routine function" did not merit any credit for the regime and any claim of any such achievement ought to be totally ignored. What is said in jurisprudence "whatever is done without jurisdiction has no validity in law" and so everything done or performed by such an illegitimate regime was a nullity. Compared to the colossal damage

²⁵ All the figures and facts collected from government records and newspaper reports.

they have caused to the nation, these achievements were of no significance. Moreover when the Chief Adviser delivered the innocuous statement as a self-defence, addressing the people on its first anniversary on January 12, 2008, the nation was very much aware that he as the chief of the civil unit had no role to play nor he knew what was really happening behind the scene, outside his own secretariat.

In this study the “achievements” discussed need to be analysed also as the situation deteriorated further with the removal of 4 out of 10 Advisers blamed for their failure in the management of food, fertilizer and electricity only a week before marking the completion of the first year, reducing the much publicised celebration to a mere half-hearted speech delivered by the Chief Adviser over the electronic media. The regime had found nothing to celebrate. This only marked the admission of the government of its failure as a whole, from which it could not escape by inducting 5 new Advisers and some newly found Special Assistants.

In economy, the country had the worst set-back which could take at least a decade to recover. The ever gaining momentum of the economy reached by 2006 was broken down by the ill conceived measures taken by the regime primarily accentuated by the loss of faith and trust of the business community in the government, detail of which has already been discussed.²⁶ The down-syndrome in the economy was marked by a decline in every indicator of macro-economy from investment to industry and from export to energy ranging between 3% to 20% compared to the ranking of 2006²⁷ reaffirmed by the World Bank, UNCTAD and the UN Human Development Reports published in 2007-2008. The rise in general inflation to an all-time high of 10.3% and 23% for essential food items and increase in unemployment in the absence of any sustainable production level and closure of factories caused an immeasurable hardship for all sections of people. Banks were sitting with idle money of 100 billion taka with public deposit declined by 51%. The default in payment of Bank loans had increased by 30 billion taka in the first 9 months. The internal borrowing²⁸ rose to a phenomenal level

²⁶ See Chapter 8.

²⁷ See for detail Chapter 8.

²⁸ See the *Daily Manab Zamin*, 3 February 2008.

compared to what was in 2006 exposing the further weakness of the financial management of the government. In the absence of any fresh foreign investment and withdrawal of existing investments by the national entrepreneurs, the possibility of Bangladesh creating an environment for growth in investment could not be in sight for the near future.²⁹ Finally with the decline of more than 1% in the momentous GDP growth rate of 6.6% achieved by the last political government and expected to rise to 7% to 8% for next several years, the potential of Bangladesh as an “emerging tiger” was shattered to the heels during the period of the interim regime. There was no point for the government to criticise the Resident Chief of the Asian Development Bank, Ms. Ho Hua Du when she said “Bangladesh has never faced such an economic crisis in last 36 years.”³⁰

The reconstitution of the two statutory bodies—the Anti-Corruption Commission and the University Grants Commission and the two constitutional bodies—the Election Commission and the Public Service Commission could be considered to have been done as a part of their routine function. Out of them the two most important ones having to deal with public at large, i.e., the Election Commission and the Anti-Corruption Commission, who were to remain independent and neutral, turned themselves controversial by indulging in the political agenda of the military leaders. The Chairman and the other two Commissioners of the Election Commission prepared a unilateral “roadmap” to suit the political design of the regime, which Sheikh Hasina, the former Prime Minister called a “bluff” to delay the election in violation of the mandate of the Constitution. The pretext of preparing a fresh voter list with photograph directly undermining the direction of the Supreme Court and an unsolicited national identity card, was seen as a profitable business to engage the Army in this exercise, whereas preparation of such voter list was the plenary responsibility of the Election Commission under Article 119 of the Constitution,³¹ and preparation of a national identity card was the

²⁹ See the *Daily Amar Desh*, 17 October 2007. The *Daily Manab Zamin*, 1 August 2008; the *Daily Amar Desh*, 3 January 2008. See also the interview of Abdul Awal Mintoo, with the *New York Times*, the *Daily Amader Shomoy*, 29 November 2007. See also the *Daily Amar Desh*, 28 August, 29 October, 1 and 3 November 2007.

See UNCTAD report 2007.

³⁰ See the *Daily Amar Desh*, 15 December 2007.

³¹ See Chapter 13.

responsibility of the executive branch and not of the Election Commission nor of the Army. The controversial and politically biased statements made from time to time by the Commissioners and their late decision for delimitation of constituencies after the elapse of one year led the entire Commission lose its credibility in public eye arousing a great amount of doubts and suspicion whether any free and fair election could be held by such an Election Commission.³² The insistence of the Election Commission to hold the local and upazila election before the national election in direct violation of Article 58(D), which emphasised that functions of the care-taker government would be “to assist the holding of the general election,” tended to confirm that the Commission was functioning more as an agent of the regime.

The Anti-Corruption Commission lost its credibility the day the Army started raiding and arresting the politicians as early as February 2007 on charges of corruption under the Emergency Power Rules 2007. By the time the Commission was reconstituted, a body called the National Co-ordination Committee (NCC) had already prepared and published a list of the “*durnitibaj*” persons.³³ Although once the Chairman had announced that the Commission would not get involved with politics and on another occasion told that he would not stay in the Commission if he was not able to function without being influenced, he failed to pursue those principles at the end.³⁴ The Commission had neither initiated preparation of any list of persons on their own³⁵ nor it could cause release of any person once arrested by the Joint Forces at the instance of the National Co-ordination Committee. Every person listed and arrested had to be charged and convicted—a policy of the regime the Commission had to carry out. The Commission and its over zealous Chairman behaved in the way that once the Emergency would be revoked the drive against corruption would come to an end.

The Chairman asserted on many occasions that there was rule of law in Bangladesh, without realising that under the Proclamation and the rigorous Rules of the Emergency the principles of rule of law were no more in existence. In the process, this new institution created with

³² Ibid.

³³ See for detail discussion at Chapter 4.

³⁴ The *Daily Ittefaq*, 7 September 2007, the *Daily Inquilab*, 4 December 2007; the *Daily Naya Diganta*, 4 December 20, 2007.

³⁵ See the *Daily Amar Desh*, 11 September 2007; 25 September 2007 and 29 September 2007.

so much of hope for curbing corruption has been destroyed as it was used more as an instrument of political repression. If, even during the tenure of a non-party care-taker government, they could not function neutrally and independently, how could one expect the Election Commission or the Anti-Corruption Commission to function otherwise under a political government?

On the question of claiming any credit for completing the legal cover for the separation of judiciary, the fact that the government was an un-elected and unacceptable regime functioning under the Proclamation of Emergency suspending all the fundamental rights and restricting the power and independence of the courts including the Supreme Court outside the sanction of the Constitution, by itself, negated the very essence of any separation of judiciary from the executive. Besides, the amount of administrative interferences in the judicial process during this regime, examples cited and discussed already, made the separation ridiculous. The way the Judiciary has been trampled from the trial courts upto the Appellate Division, the less one talks about the separation practiced during the regime the better. Although in the long run when the country would have a courageous judiciary to assert its role and position given by the Constitution the people at large would benefit from its separation from the executive organ of the state, but this period of the interim regime would remain recorded in history to be responsible for distorting the justice delivery system by interfering with the judiciary. So under an unelected regime backed by guns when any military leader or their civilian cohorts men talk of democracy, rule of law, separation of judiciary or human rights keeping the nation under a lid of Emergency with voices of people throttled, freedom of press gagged, independence of judiciary defaced and repressions conducted with impunity, such loud words had never borne any credibility. The military leaders use these words as clichés to gain time to survive for as long as they can. For this kind of regime having no real commitment to people or any sort of accountability to any one, it was easy for them to speak of rule of law or separation of judiciary as they neither held any conviction nor they believed in them. They were aware that under an Emergency in existence such principles or institutions had no significance.

When the concerned Adviser had to be removed after one year of his appointment for the mismanagement of the energy sector, the

claim for increasing production by few hundred megawatt of electricity did not mean anything, as the people continued to suffer from shortage of electricity more than ever before. Despite the fact that the regime closed down any further extension of rural electrification, stopped power supply to the shops in the capital and elsewhere in the evenings and lesser electricity for the factories during the day time, the people suffered from unbearable load shedding not only in the rural areas but in the capital itself and the height of its mismanagement was reflected in closure of electricity at the Zia International, the prime airport of the country, for nearly two hours.³⁶

Despite the fact that there was no political confrontation in the streets nor any hartal or blockade, the law and order situation did not make any significant improvement. The violation of human rights and torture and death in custody created a new record during this regime³⁷ and the overall failure of the government in the management of food and fertilizer caused an immeasurable suffering not only to the farmers but the entire population.³⁸

On the issue of drive against corruption,³⁹ the end result has been otherwise than expected. Besides the fact that the trials were held under the Emergency Rules and persons convicted and sentenced by Kangaroo courts under duress without sufficient collaborative evidence would perhaps be acquitted by the High Court Division on their Appeals, the level of corruption will continue to be the same, if not more.

On the issue of drive against corruption with the closure of the list at 220, would the rest of the people involved in corruption be absolved or considered to be honest citizens of the country? Out of this list of 220, almost 80 persons were known as political leaders or politicians or public representatives belonging mostly to the two major political parties. Assuming that all of them were convicted and sentenced and remained in jail without bail under the Emergency Rules and debarred from taking part in the election and considered as a success of the regime, what benefit would it bring to the people? Charges of corruption against the politicians are not uncommon and the people,

³⁶ See the *Daily Ittefaq*, 28 January 2008.

³⁷ See for more at Chapter 9.

³⁸ See for detail at Chapter 8.

³⁹ See for detail at Chapter 2.

the voters, in most cases would either not believe that their leaders had done anything wrong or just ignore them.⁴⁰

As far as the common man is concerned whether it was 220 or 2220 were punished or not, corruption would continue for them as usual in the public offices they travel to, like those of Land, Police, Courts, Taxation, Customs, Accounts, Education, Hospitals, Pension, Municipality, City Corporation, Banks, Relief, Electricity, Gas and all others at the upazila, district and central levels. For the ordinary people, although they would like to see that there was no corruption in public offices they go to but they would be very hesitant in believing that such corruption would ever go nor they would care much about it when they would go to cast their votes in the election. The recent elections in Thailand, South Africa, Kenya, South Korea⁴¹ and in many other countries including India and Pakistan, politicians accused of corruption had been voted to power by the people because they thought that their leaders were not corrupt and they were victimised for political reasons. So the high-profile corruption did not affect the daily life of the common people. They would be more interested in the leaders who would take care or had taken care in the past of their immediate problems like roads, electricity, bridges, culverts, schools, madrasahs, water, irrigation, canals, agricultural loans, seeds, fertilizer and prices of essential commodities in their own constituencies. For the extremely poor people, the number of VGF Cards and Food for Work Programme and expenses for daughters' marriage are the common demands put to the leaders. So most of these 80 public representatives in Bangladesh listed as "*durnitibaj*" if given an opportunity in the next election or at any other elections in future to contest would perhaps return to Parliament with a bigger margin of votes.

Assuming that all the 80 public representatives were debarred for life or hanged at the gallows, other politicians would always be there to replace them and it would always be the politicians who would govern the country. Sheikh Mujibur Rahman was once accused of

⁴⁰ See the eye-opening results of the election of the 4 City Corporations and 9 Pourashavas held on 4 August 2008 as to how people had rejected all the efforts of the regime to stigmatise the politicians as corrupt, dishonest and incompetent. On the contrary, the people had cast more votes in favour of those who contested from prison held on charges of corruption and had them elected. Badruddin Kamran of Sylhet City Corporation and Ramjan Ali of Manikganj Pourashava are the examples.

⁴¹ See the issue of *Newsweek*, 29 January 2008; the *Daily Manab Zamin*, 29 January 2008.

corruption by the Pakistan government and faced 11 cases against him but the same person emerged not only as the most popular leader of the people but honoured and respected as the Father of the Nation. Hussain Muhammad Ershad was thrown out of power by a mass upsurge as the most corrupt ruler and even convicted by a competent court, under existing normal laws, but people had repeatedly voted not only him in 5 seats at a time but also the candidates nominated by him to Parliament.

So people are very conscious in making a distinction between the politicians who sacrifice and those who work for their personal gains and between the politicians who practice corruption in their own constituencies. They do not believe that the national politicians they love are corrupt. Whether a Member of Parliament or a Minister is corrupt or not is decided by his constituents. So, as far as the corruption of politicians is concerned people go by the verdict according to their own judgment in their respective constituencies at the time of election. A repressive, bad tempered or corrupt MP would always lose his popularity in the constituency and automatically be debarred by the party for any further nomination or rejected by the people of his constituency in the election if he still gets nominated. The fact however is that there would always be corruption in politics. An independent Commission was to take care of corruption of the politicians while they are holding office in a transparent manner under the due process of existing normal laws. If the government had concentrated on those who were really not politicians but basically businessmen entered into politics to earn social status and at the same time promote their own business or those who had earned a reputation of being corrupt or those who really looted and made quick money patronised by powerful politicians were tried and punished them it would have been more welcome and effective. By mixing them with the reputed national politicians, the interim regime only had elevated those who were really corrupt to an honourable position. At the end it would be found that the "most corrupt persons" would become the best beneficiaries of the "drive against corruption." The government's claim with regard to recovery of about one thousand crores of takas from some businessmen and neo-politicians was also wrong as there was no law of such extortion by the state and one day the same money would have to be returned to those "corrupt businessmen and politicians."

As far as the national leaders were concerned including Sheikh Hasina and Khaleda Zia, having had them locked up in jail for months and having had conducted thorough enquiry and investigation against them, the regime could not bring forward any substantial case against any of them on charges of corruption. Whereas every effort was made to insult, humiliate and undermine them in public eye by publishing wild, imaginary, scandalising and concocted stories for character assassination. On the other hand excepting the frivolous cases of corruption against Sheikh Hasina and Khaleda Zia, not a single case was instituted by the Commission against any of the former Ministers for making personal gains by abuse of power or their official position, which was its principal task under the Anti-Corruption Commission Act 2004.

Control of Media

The media, both print and electronic, had gone through severe constraints during this regime. Besides the restrictions and the telephonic censorships under the Emergency Rules, the worst part was that the print media was widely used and abused by the military agencies of the regime to fill front pages of national dailies with scandals. It accomplished a one-sided media trial of all the national leaders of the country in a systematic manner for months which had no connection with the actual charges filed by the Commission.⁴² Nothing printed was even partly reflected in the FIRs filed. In the course of this role played by the media, whether voluntary or forced upon, the newspapers had to abandon their standard principles and norms of journalism and had to take recourse to unethical means of publishing reports amounting to yellow journalism. It was not so much the Emergency restrictions which harmed the role of media as much as their playing the obnoxious role as a tool of the agencies. When in the course of time the people had seen that these wild stories were only meant for character assassination of respectable popular politicians of the country, who by being already in jail could neither protest nor defend themselves, the otherwise reputed newspapers for playing such an immoral role had lost their credibility and public trust. The damage done to the principles and norms of journalism during this regime had inflicted a permanent injury on the proud tradition of the free press.

⁴² It happened to all the national leaders including the author.

The drive against corruption did not spare the newly emerging media tycoons either. At least 4 owners of widely circulated daily newspapers and 3 electronic channels⁴³ were jailed causing a financial crisis for thousands of journalists and their families in an already overstrained economy of the country. Besides, the owner of the *Naya Diganta* was also a listed person as a "durnitibaj." Another reputed industrialist and a former President of the Metropolitan Chamber having had ordered to submit his wealth statement led the Task Forces enter the two dailies he controlled, *The Daily Star* and the *Daily Prothom Alo*.

Besides the restrictions on the freedom of press under the Emergency Power Rules, the frequent "unofficial" intervention in the form of censorship made the situation worse. The day the Chief Adviser told the BBC world Service at Davos where he went to attend the conference of the World Economic Forum that there was no restriction on the press in Bangladesh and media was free to criticise the government, the same day a telephonic ban was imposed on all the "talk shows" in the private satellite channels as they were considered to be mostly critical of the government.⁴⁴ Because of the hostile attitude of the regime and the fall-out of the "drive against corruption," media as a whole suffered from acute financial crisis. Due to huge reduction of private advertisement caused by the rundown of the economy as a whole, the policy of the government in allotment of undervalued public advertisements and the procedure of bill collections, one daily newspaper had to be closed down, two Bengali and one English daily newspapers were sold out and ownership of several electronic media changed hands⁴⁵ causing a damaging dislocation in the industry. Within a year of the regime about 2500 working journalists and press workers had lost their job in print and electronic media. In one of the oldest popular dailies a large number of journalists and other employees were forced to resign. In many newspapers there was a pay cut and in most of them salaries were not paid regularly.⁴⁶ During this period declaration or license of 160 newspapers were cancelled and one Satellite news channel was shut

⁴³ The newspapers were the *Daily Janakantha*, the *Daily Amar Desh*, the *Daily Jugantor*, the *Daily Shamakal* and the electronic channels were nTV, RTV and Baishakhi.

⁴⁴ See the *Daily Manab Zamin*, 30 January 2008.

⁴⁵ Ibid.

⁴⁶ Ibid.

down along with some TV programmes of other channels. The media as a whole including a section who advanced the cause of imposing Emergency suffered its worst time during this period. It had broken the backbone of the newspaper industry which was thriving even a year ago. The dubious role of some of the media leaders in support of the government made the situation even worse. In the process, like the other democratic institutions, the media known to be its fourth pillar was also destroyed, both in terms of maintaining its ethical courage and its existence as an institution.

Effects of Rise in Prices

The worst of all the failures of the interim regime was marked by the phenomenal rise of prices of all essential commodities including the price of the coarse rice which rose from take 18 to taka 38, more than 115% in course of the first year of the regime.⁴⁷ This rise of prices of all such items including edible oil which rose from 50% to 220% hitting the entire population. The continuous rise in prices not only kept at least 60 million people living below poverty line starving, it also made suffer 90% of the entire population in shrinking their capacity to purchase other items necessary to sustain life forcing many families to withdraw their children from schools to work in the fields to earn money for the family. As a result the retail shops of general merchandise had the worst time as the sales of all items from toiletries to clothings had slumped drastically affecting the earnings of all other traders and businessmen. The rise in prices in the essential commodities took its toll on all self-employed persons from the make-shift fast food shops to the way-side vendors of the remote villages in the country. As food was the most essential item for human survival it was only natural that in facing such a high cost of food items the people at large had eventually lost their basic economic margin, as a result of which the number of people below the poverty line had also increased.⁴⁸

Effect of the Drive Against Corruption: Cost-benefit Ratio

The fall-out of the drive against corruption also had disastrous effect on the economy. Assuming that all the 80 persons hauled up as politicians and businessmen, convicted and sentenced and debarred

⁴⁷ See for more detail discussion at Chapter 8.

⁴⁸ More people became poor and millions went down the poverty line during the rule of the interim regime.

from taking part in the next election were confirmed upto the Appellate Division of the Supreme Court the cost-benefit ratio in terms of economy and freedom affecting the life of the entire population would not exceed even one percent in favour of the drive. The business came to standstill. The drive against corruption soon turned into a drive against the economy of the country. The over actions of the Joint and Task Forces led by the Army and other military agencies terrorised the whole community of businessmen and professionals who were engaged in sustaining the economy of Bangladesh and the fear attached to such actions had made them go hiding or leave the country. The high-pitched repeated publicity of the listed "*durnitibaj*", and the warning that many more lists were coming each time published in the patronised media with strong statements made by the leaders, both civil and military, and government functionaries like the Chairman of the Anti-Corruption Commission or the National Board of Revenue or the Governor of the Bangladesh Bank frightened the community further.

Enlistment or arrest of businessmen widely published in newspapers combined with a threat to crush them on charges of corruption had a devastating psychological impact on the entire business community filtering down to the lowest levels of trade and business. As an immediate consequence hundreds of factories had closed down, the big 10 traders controlling 80% of the total imports seized to do business causing loss of employment in thousands of offices and manufacturing units; investments not only stopped but withdrawn, bank deposits slumped drastically, billions of takas piled up in banks "as idle money," none to borrow or invest, no fresh foreign investment, drastic decline in sale of every item people would normally consume in any shop from the teashop in a village to a toyshop, from jewelries to garments in any shopping mall, from fashion shops to parlours, from watches to electronics in any plaza had hurt the businessmen and traders at every level made them run their enterprises at a huge loss.⁴⁹

The high-rise building industry, employing about 2.5 million workers had virtually collapsed because of shortage of buyers and escalation of prices of building materials causing a loss of business of 1500 crores in one year. Thousands of community halls built all over

⁴⁹ See the *Daily Manab Zamin*, 31 January 2008 and 1 February 2008.

the country to rent for marriage ceremonies went empty for weeks and months. All these had a multidimensional cyclic effect on the money circulation and the overall economy of the country. The vibrancy in the economy seen only a year ago had disappeared, replaced by a static, regressive, sterile and anti-active trends both at the macro and micro levels. The soaring rise in prices of all commodities and particularly of the basic food items with a record high inflation of over 10% made the life of 90% of the people miserable. Consequently the internal borrowing by the government from the local banks rose to a high level of 9195 crores in the first six months upto January 2008.⁵⁰ The implementation of the Annual Development Plan of 2007-2008 achieved a poor performance of only 21% in the first six months,⁵¹ production in the fields and factories declined, export fell short of target. That the over all economy slowed down was more apparent in the decline of all the 12 indicators ranging 3% to 20% compared to 2006 as described before.⁵² Finally, the dream of an “emerging tiger” as predicted by world reports and confirmed by Goldman Sachs reduced itself again into a low grade hopeless poor economy. The diplomats of the countries like USA, UK, European Union along with some local sponsored press who pioneered the disruption of democratic process by imposing an Emergency were now reverting to the popular demand for an early return to democracy and reasserting that foreign investment would only come if there was an elected government.⁵³ By the time the interim regime realised about their suicidal mistakes the damage was already done. The proposed Truth Commission which finally came into existence in August 2008 to exonerate the businessmen and the politicians already languishing in jail not only failed to produce any result but turned out to be a farce.

The tragedy was that during the entire period of the interim regime the newspapers were filled with the reports of cases of corruption of the politicians and businessmen as the most important agenda giving the impression that the government had no other business to perform. In the process the more pressing and urgent national tasks in social sectors continued to be neglected as a result of which the problems of

⁵⁰ See the *Daily Ittefaq*, 21 January 2008.

⁵¹ See the *Daily Manab Zamin*, and the *Daily Amar Desh*, 1 February 2008.

⁵² See the detail at Chapter 8. See also the *Daily Amar Desh*, 1 November 2007.

⁵³ See the *Daily Manab Zamin*, 30 and 31 January 2008.

utmost importance like education, health, hygiene, population control, poverty reduction, unemployment and the diminishing purchasing capacity of the people remained totally unattended.

So the invisible adversities suffered by the nation for the mal-administration and mismanagement of the interim regime was much deeper and far more ruinous than the visible losses and damages the economy of the country had suffered. Not even a tribal state of Africa would behave the way the interim regime and their agents did in respect of the politicians and the economy in the name of corruption during this blackest chapter of Bangladesh history.

So the “drive against corruption” melted down more to a vendetta against some individuals, notwithstanding the number whether 80 or 220, politicians or businessmen, had no bearing in any reform in politics or economy. It was a rudderless exercise, in the process of which the two most fundamental foundations of the state were destroyed, the political institutions and the economic growth machine, the two most essential ingredients to make the people a strong nation.⁵⁴ Whether this was done out of inexperience on the part of some misguided ambitious Generals or done deliberately inspired by external forces to weaken Bangladesh as a sovereign state, the men responsible for it should have to account for it one day in history. The claim made by the Army Chief that the interim regime would leave some good work⁵⁵ done for the future of the country did not know that in no country of the free world the people ever followed any legacy of any autocratic usurpory government, as much as that the “freaks in history never make heroes.” Only redeeming feature is that the people of Bangladesh have always shown an endless resilience in safeguarding and preserving their national sovereign identity in all kinds of adverse circumstances.

Corruption of the Regime

Those who run a government without any legitimacy in contravention of the Constitution commits corruption of the worst kind. Although the period of nearly two years all the irregularities they have committed, all the decisions they have taken, the economic losses the country has suffered, the thousands of workers who have lost their jobs, the hawkers and the vendors thrown out of the city streets and

⁵⁴ See for detail discussions, Chapters 2 and 11.

⁵⁵ See the *Daily Manab Zamin*, 1 February 2008.

village bazaars, all the countless people who have starved to death, the millions who got poorer because of the high rise in inflation, those pushed below the poverty line—led to one common question for the people to ask, who were those people? Who gave them the authority to cause this damage to the nation? If corruption is not only a social but a moral crime, the men who led the regime had committed the greatest form of human corruption. The “drive against corruption” against some individual politicians or businessmen or bureaucrats for making allegedly some financial gains lawfully or unlawfully, is peripheral compared to the corruption of high treason committed by Iajuddin, Moeen Uddin, Fakhruddin, Masud Uddin and others. In the absence of any legal or moral right to govern the country, the corruption they have committed could not be measured in terms of any value of money.

As for the personal offences of corruption, none of them including the Advisers was immune from the crime. None of them had their statements of wealth declared nor they were adjudicated upon by way of any investigation or trial like the politicians and others had to go through, which they should have done on their own on a moral plane, but they did not do so. On the contrary the allegations of corruption against Moeen Uddin and his brothers, Masud Uddin and his family, the Advisers having more wealth than income, spending of millions of takas by Mashhud Chowdhury as the Chairman of the Anti-Corruption Commission on flying helicopters from the state coffer and by bending laws to build his own house were common knowledge. Billions of takas reportedly extorted and hidden by the officers of the Task and Joint Forces, the lands and properties acquired by them during that illegitimate regime were never made accountable.

Need of a Public Trial

The people of this young nation would like to see that those who were responsible for the disasters caused to Bangladesh by an illegitimate government are severely punished through a public trial so that no such occurrence takes place in future. The coterie of the military officers led by General Moeen U Ahmed for such misdemeanors included Major General M.A. Matin (Retd.), Lieutenant General Hasan Mashhud Chowdhury (Retd.), Lieutenant General Masud Uddin Chowdhury, Lieutenant General Mollah Fazle Akbar, Major General A.T.M. Amin (Retd.), Brigadier General Chowdhury Fazlul Bari,

(Retd.), Major General Sheikh Mamun Khaled, Major General Sina Ibn Jamali, Col. Shamsul Alam Khan and Lt. Col. Saif Jamadar. The cohorts in the civil administration like Dr. Fakhruddin Ahmed and his Advisors who collaborated with General Moeen U Ahmed should have the same fate. As Awami League has returned to power with their support they have not taken any action against them. In such a situation, it will be a mandate on the next elected government to take immediate action against these military and civil officers on charges of high treason.

Chapter 12

Military Understanding with Sheikh Hasina

Military Retreat: Hasina the Best Option

The external agencies who helped in engineering the proclamation of Emergency and promoted the Army Chief to take the lead, allowed the General to play his own game. So as a novice and without any plan of his own, Moeen U Ahmed travelled in all directions with ideas of all kinds. At the beginning, he began the process of depoliticisation. The two leaders Sheikh Hasina and Khaleda Zia had to be extricated from politics, the two major parties had to be split and weakened in the name of reforms, the politicians as a class had to be discredited, the business houses had to be brought under control. The General played all these games without any definite alternative plan and therefore he had to fail. This was allowed by his mentors, as a weak and unstable Bangladesh is what suited their own scheme and desire. A strong self-dependent Bangladesh was not a matter of concern for them.

So, as all the efforts of Moeen U Ahmed and his cohorts failed, his utility to his mentors was in question. Only option now left was to allow him to stage a military take-over and rule the country. This option was found not to be palatable anymore, neither in the internal nor in the international context. If subservience and control of a country of 150 million people with all its wealth was possible for his mentors to achieve by having a surrogate and submissive elected Government, it was considered prudent not to go for an unpopular, unelected, military government. It was only a matter of an unmistakable choice of wisdom.

Being the last incumbent government, BNP had all the odds and liabilities on its shoulders. Its morale was already shattered by the bad image it earned in the last years of its rule. The organisation of the

party became almost non-functional with hundreds of its senior leaders including Khaleda Zia and her two sons confined in jail. Moeen U Ahmed having betrayed the trust of Khaleda Zia was the last person to see her regain political power for fear of reprisal. All these factors made BNP stand on the weakest position.

In the circumstances Moeen and his external mentors found a natural ally in the Awami League who would never like to see BNP to return to power again. Because of politics of hate between the two leaders Sheikh Hasina would prefer Moeen to continue, if necessary even under Martial Law government rather than see Khaleda Zia in the helm of affairs. Awami League had in the past openly lent support to General Ershad when he took over power by force from an elected BNP government in 1982 under Martial Law.¹

As a sequence, the proclamation of Emergency on 11 January 2007 was seen by the Awami League as the final fall of BNP and Sheikh Hasina was quick in claiming that the military backed interim government was a product of their movement against the last regime. She happily welcomed the new regime expecting an election within 90 days in which she would win. As a recognition of her total support to the interim government, Hasina before her departure for the United States on 15 March 2007 announced that if returned to power after the election the Awami League government would give validity to any illegality committed by the interim government and ratify all their acts and deeds.² Little did she know that an ambitious General Moeen had developed a different plan by that time and did not want her return to the country.

But Hasina was at the end allowed to return home only to be arrested on 16 July 2007 and face trials on highly publicised charges of extortions. So did it happen to Khaleda, who consistently refused to leave the country. She was arrested from her Cantonment house on 3 September 2007 on charges of receiving kick-backs in a case hurriedly filed the previous night called GATCO Case. Then high-profile dramas of prosecution called "drive against corruption" continued to allow General Moeen to evolve an alternative to political

¹ See the *Daily Banglar Bani* and the *Daily Sangbad*, 25 to 30 March 1982. Also Moudud Ahmed, *Democracy and the Challenge of Development: A Study of Politics and Military Interventions in Bangladesh*, The University Press Limited, Dhaka, 1995, pp. 298-327.

² See the *Daily Ittefaq*, 16 March 2007.

governance which soon failed. Considering the ruined state of BNP, it was decided at this juncture in May 2008 by the mentors of the Emergency—a Military scheme to strike a deal with Sheikh Hasina, who readily responded to the terms laid before her in the dark nights in the sub-jail at Sher-e-Bangla Nagar. The dream of returning to power made her accept the terms of understanding which included a safe exit for General Moeen.³

Hasina on Parole

As soon as the agreement was reached, it was decided to release Sheikh Hasina on an exceptional parole by an executive order to go abroad in the name of medical treatment. The effect of the understanding was reflected in the way her release was processed and in the way Hasina was treated at home and abroad although she was still accused in numerous cases on charges of corruption. Hasina's fortune changed almost over night and the entire situation was turned to her favour by the regime as if she had already won the election to be the next Prime Minister of the country. All the formalities were completed in a great speed with highest priority in the most unusual manner undermining the existing legal norms and provisions.

While in custody for nearly eleven months from 16 July 2007 to till her release on 11 June 2008, Sheikh Hasina was accused in 15 criminal cases on charges of corruption. Of these she was accused of committing extortion for an amount of Tk. 140 million principally from three businessmen in one of which charge was already framed; in the case of purchase of MIG 29 jet fighters from Soviet Union on a charge of receiving kick-back of Tk. 7.5 billion her petitions for quashment having been dismissed by the Supreme Court the trial against her had already commenced. In another case known as the Barge Mounted Power Plant Case deposition of witnesses had already started and the trial was to conclude by August 2008.⁴

³ It is not known what were the exact terms of the understanding as Hasina never disclosed them to anyone. On the contrary her close associates including her son refused to admit that there was any such understanding. See the *Daily Ittefaq*, 14 June 2008, the *Daily Anandabazar Patrika*, Kolkata, 12 June 2008.

See also the statements of Latif Siddiky and M.A. Jalil from time to time confirming that there was an understanding Sheikh Hasina had with the military backed interim regime. The *Daily Ittefaq*, 27 June 2007 and the *Daily Amar Desh*, 25 September 2009.

⁴ See for the details of cases the *Daily Ittefaq*, 10 June 2008; the *Daily Manab Zamin*, 9 June 2008; the *Daily Amar Desh*, 30 September 2009.

Of the 15 cases Sheikh Hasina was on bail in only 3 cases granted by the High Court Division and in one case she was refused bail by the Appellate Division. So in the normal circumstances she could not have left the country without obtaining bail in all the pending cases. She was also debarred from leaving the country as all her 3 passports were seized by police required as evidence in cases pending against her. So release of Hasina had to be accomplished without obtaining bail in the pending cases and the courts had to be by-passed in at least 4 cases in which trial was in progress for which her personal appearance had to be exempted and her passports released. All were facilitated within a flying time under the command of the same regime so abhoral to the politicians and so boastful about their "drive against corruption."

An instant medical report prepared by a government-constituted Board of 5 members was placed within hours before the authorities recommending that Hasina needed treatment abroad and on the same day within hours before the day of her release, on applications made by her lawyers under Section 540(A) of the Criminal Procedure Code in 4 different cases relating to the Barge Mounted Power Plant Project, NIKO contract, purchase of MIG 29 planes and extortion from a businessman Noor Ali in different courts supported by the government lawyers, Hasina was granted exemption from personal appearance in court during the trial. At the same time, the Dhaka Metropolitan Magistrate directed the police to return all her passports along with all the 41 items of documents, accounts and cheque books etc. seized from her residence at Sudha Sadan after her arrest.⁵

So, as Hasina could not be released on bail under due process of law, the government decided to release her on parole by an executive order under a controversial Section 401(4-A) of the Criminal Procedure Code, which many lawyers argued could not be applicable in the case of Hasina. Consequently by a notification issued by the Government, Sheikh Hasina was finally released on 11 June 2008 for 57 days upto 6 August which the government extended till she decided to return home. On the same day she was released, Sheikh Hasina presided over a meeting of the Executive Committee of her party and directed her party men to remain active and hold dialogue with the government for a meaningful election.⁶ The same day at late night the

⁵ See the *Daily Ittefaq*, 10 and 12 June 2008; the *Manab Zamin*, 13 and 23 June 2008.

⁶ See the *Daily Ittefaq*, 12 June 2008; the *Manab Zamin*, 23 June 2008 and all daily newspapers of 12 June 2008.

Chief Adviser phoned Sheikh Hasina to convey his greetings, inquired about her well-being, wished her well and a safe journey. Around the same time at night, 4 of the Advisers called on Hasina at her residence to pay their respect and to assure her that they would work together to hold a meaningful election in the country. Hasina left in the early morning of 12 June and was received at the Logan International Airport at Boston, USA, among others by Humayan Kabir,⁷ the Bangladesh Ambassador to Washington, to show the importance the interim government attached to her as a leader of the country.

The departure of Sheikh Hasina from Bangladesh as a free political leader leaving behind 15 criminal cases on charges of corruption pending in different courts against her and then being greeted by the Chief Adviser and other Advisers at home and the Bangladesh Ambassador abroad and subsequently elected as the Prime Minister to take oath as an accused still on parole was not only a hard slap in the faces of Fakhruddin, General Moeen, General Masud Uddin and General Hasan Mashhud and others of that illegitimate pretentious government but also exposed how the principles of due process of law, rule of law, equality before law, independence of judiciary could be bent and beaten to favour an individual by those who had no mandate to govern the country⁸ and assassinated her character for long eleven months in media controlled by them with all obnoxious accusations.

Negotiation with Khaleda Zia

Khaleda Zia still held her head high with a strong self-confidence. Although she had a critical knee problem, Khaleda refused to leave the country, wanted her medical treatment done at home⁹ and declined any kind of parole. Khaleda had 4 graft cases against her pending in courts namely GATCO, NIKO contract extension, Barapukuria Coal Mining Project and Zia Orphanage Trust. Other than GATCO in none of the cases trial had commenced. So Khaleda was expecting to be released under the due process of law and did not require any concession from the government as Hasina did.

⁷ See the *Daily Ittefaq*, 14 June 2008.

⁸ See the statement of Professor Muzaffar Ahmed, Chairman TIB raising the moral question as to how Sheikh Hasina could contest an election and take oath as the Prime Minister while on parole. The *Daily Amar Desh*, 30 September 2009. See also the *Daily Ittefaq*, 14 June 2008.

⁹ See the *Daily Amar Desh*, 9 June 2008; the *Daily Manab Zamin*, 13 and 17 June 2008.

While in custody, proposals in variable forms were also made to Khaleda for arriving at an understanding and protracted negotiation continued for months on (1) leave the country or otherwise face trial on criminal charges; (2) not to contest in the election but an elevated position like that of a national leader could be given to her with all the facilities; (3) amend the Constitution to introduce a check and balance in the power structure between the Prime Minister and the President. In other words power of the Prime Minister be reduced and that of the President be increased with a sanctioned role for the military to play in policy making forums like that of a National Security Council; and (4) for party nomination in the general election two lists ought to be followed, one for awarding nomination and the other of those who should not be given nomination.¹⁰ The negotiators however always tried to give an impression to Begum Zia that BNP had still the possibility of winning the election, to keep her boosted so that she did not decline to take part in the election.

For Khaleda Zia, the fate of her two sons was paramount. She was not willing to proceed with the military for any dialogue without the release of Tarique, the eldest son holding a senior post in the party, her most trusted hand to lead the party and the government in future and Arafat Rahman Koko, the youngest son engaged more in business than politics. Although extremely popular in the rank and file of the party Tarique was the number one target of the drive against corruption launched by the regime and due to the sustained media expositions for last several years public perception of his financial integrity was very poor. While taken on remand by the Joint Forces, Tarique was subjected to severe physical torture resulting in a broken spine injuring him permanently with a continuous pain syndromes.¹¹ The health of Koko who already had a fragile physique had deteriorated further with the inhuman treatment he had suffered on remand at the hands of the interrogators and it was a pathetic sight seeing him sitting in the court room on a wheel chair with ceaselessly shaking hands and feet.

¹⁰ Begum Zia talked about these proposals with the author when they met at the Divisional Special Judge's Court No. 9 during the preliminary hearings of the NIKO Case in which both were accused. Names of all the senior leaders including that of the author was in the negative list. Begum Zia told the author that she has rejected all the proposals 1, 2, and 4 and asked the negotiators to leave the matter of item 3 with the Parliament.

¹¹ See the *Daily Amar Desh*, 4 September 2008.

So, Khaleda Zia, as a mother than a politician or Chairperson of BNP or a leader of millions of people was more concerned about the release of her sons than her own fate. She wanted them to be released and sent abroad immediately for medical treatment. Knowing her weakness the military negotiators of the regime went for a hard bargain. They were agreeable to release Koko and allow him to go abroad but not Tarique but Khaleda Zia wanted both to be released and let go abroad. As a first step, however, a medical Board was constituted on 5 June 2008 for Koko, the same way one constituted for Hasina to impress Khaleda that the government was keen to meet her demand to release Koko for his medical treatment abroad. But the negotiators did not agree to release Tarique and let him go abroad as they perceived that if it was done their entire "drive against corruption" would become meaningless in public eye, causing a great loss of face for the government.¹²

While the negotiations were going on, Khaleda was not hesitant in making her political stand clear. The process for the release of Koko for medical treatment abroad had to culminate in the release of Tarique and her own release. On the other hand, to keep on putting pressure on Khaleda, the government agencies also continued to proceed aggressively with not only conducting the existing cases but filed new ones as well. In a bitter criticism of the government she demanded the election in October instead of December 2008 and immediate withdrawal of the Emergency. She called the "Dialogue" a stage-managed drama, demanded the resignation of the government and castigated the trials as nothing but farce.¹³ While the Chief Adviser and other Advisers were expressing the intention of the government to release Khaleda in the same way Hasina was released,¹⁴ the agencies filed a new case against Khaleda and Tarique for an illegal misappropriation of Tk. 21 million of Zia Orphanage Trust.¹⁵ While Koko was released after 319 days to go abroad on a parole from 17 July to 16 September 2008, the very next day Shamim Iskandar, younger brother of Khaleda was arrested in front of his house when he was

¹² See the *Daily Ittefaq*, 12 June and 8 July 2008.

¹³ See the *Daily Manab Zamin*, 2, 5 and 19 June 2008; the *Daily Ittefaq*, 24 September 2008.

¹⁴ See the *Daily Ittefaq*, 13 and 18 July 2008.

¹⁵ See the *Daily Ittefaq*, 4 July 2008.

returning after visiting the just-released nephew Koko.¹⁶ In less than a month, the Government filed another case against Tarique Rahman on charges of tax evasion.¹⁷

Although while Hasina was allowed to leave the country for medical treatment in the United States, for a period of 8 weeks, she returned on 5 November 2008, after nearly 5 months ascertaining all the grounds favourable for her to take part in the election. She used this long period for political purposes including meeting with the high officials of the State Department in Washington attended by James Moriarty, US Ambassador to Bangladesh.¹⁸ It was more a vacation, a pleasure trip, staying with her son in USA, daughter in Canada, sister in London stretching to Finland to attend a wedding ceremony of her niece. Other than Boston and Washington, Hasina travelled more than once to New York, Canada and UK having nothing to do with her medical treatment. All her activities during this period gave a clear impression that Hasina had no serious medical problem and the entire episode of her release was a part of the understanding she had with the illegitimate government. Once she returned and became Prime Minister, Hasina never complained about her ears and eyes.

Allegation against Tarique Rahman

In the backdrop of numerous allegations and sustained reports against Tarique Rahman published in a large number of newspapers all over country of stealing billions of takas from the state coffer during the time when his mother was the Prime Minister and he was running the infamous Hawa Bhaban as a parallel power center, the Joint Forces led by the military arrested Tarique in a midnight raid of their home at the cantonment without any specific case. On the next day, a businessman who was awarded nomination by BNP from a constituency in Noakhali to contest in the election scheduled for 22 January 2007, at gun-point filed a case of extortion against him with the Gulshan Police Station alleging that he was forced to pay Tarique Tk. 1 crore in exchange of the nomination he obtained, which however the complainant had retracted at a later stage. During the entire period of

¹⁶ See the *Daily Manab Zamin*, 18 and 19 July 2008.

¹⁷ See the *Daily Ittefaq*, 5 August 2008.

¹⁸ See the *Daily Manab Zamin*, 27 July 2008 and the *Daily Amar Desh*, 23 July 2008.

18 months of his imprisonment, 13 cases were filed against Tarique Rahman out of which 8 were cases of extortion of trivial amounts. In at least 5 of the cases Tarique was not named in the FIR. But the principal accused Mamun, his friend, was forced, after being physically assaulted, to link his name as an associate in the alleged crimes to enable the police to show Tarique under arrest in each of these cases so that he could be detained in jail.¹⁹

Of the remaining 5 cases one relating to Dinkal Publication under the Companies Act was dismissed by the court. Of the other 4 cases, 3 were filed by the Anti-Corruption Commission and one by the National Board of Revenue. The highest amount involved in these cases was the one in which it was alleged that Tarique had Tk. 42,308,500 beyond his known sources of income obtained in collaboration with his wife and mother-in-law Syeda Iqbal Banu, wife of the former Navy Chief Rear Admiral MA Khan, a rich woman by herself. The case of the National Board of Revenue against Tarique was for evasion of tax of an amount of Tk. 26 lakh only. The second highest amount involved in these cases related to an alleged misappropriation of Tk. 2 crore 10 lakh of Zia Orphanage Trust, a public welfare organisation established in memory of his father. And yet, notwithstanding the nature of cases and their weight and his right to defend himself as a citizen, he was taken on remand blind-folded for a total of 13 days in 6 of the cases for interrogation not only subjected to cruel and inhuman treatment in violation of Article 35(5) of the Constitution but was physically tortured in a ruthless manner splitting his spine, injuring him for life. On 9 January 2008, Tarique out of desperation disclosed how much and what kind of torture was inflicted upon him before the Court²⁰ of the Chief Metropolitan Magistrate, Dhaka. On an application submitted by him the High Court Division by an order on 14 January 2008, directed the prosecution not to take him on remand anymore.²¹ While in custody an order of detention under Section 3 of the Special Powers Act was also served upon him which the High Court Division had found illegal by a judgment dated 30 January 2008²² and ordered his release if not required for any other case. On 31 January, Tarique,

¹⁹ See the *Daily Manab Zamin* and the *Daily Amar Desh*, 4 September 2008.

²⁰ *Ibid.*

²¹ See the *Daily Manab Zamin*, 4 September 2008.

²² *Ibid.*

on being found seriously ill, was moved to the the Bangabandhu Sheikh Mujib Medical University (BSMMU) Hospital where he was treated for seven months without any success and all the three Medical Boards constituted at different stages recommended to send him abroad immediately for treatment. On 15 January 2008, in order to save his life Tarique's wife, Dr. Jobaida Rahman herself a physician and their daughter Jaima Rahman made a petition to the President urging upon the government to let him go abroad for treatment.

Release of Tarique and Khaleda Zia

The proceedings of most of the cases initiated against Tarique were stayed by the High Court Division on different dates and appeals against those orders of stay filed by the government were dismissed by the Appellate Division. Out of 12 pending cases Tarique was granted bail in all the cases by the Supreme Court. In the last two cases when the High Court Division granted him bail on 27 and 28 August, the government filed appeal to stay the bails but on 1 September the Appellate Division refused to interfere with these orders of bail thus removed the last hindrance of Tarique's release.²³ He was in jail for 546 days and no trial ever held. On 3 September 2008, Tarique was finally released by the jail authorities but he continued to stay in hospital for his treatment.

So, Khaleda Zia achieved what she wanted – release of her two sons before her own release but the principal predicament still remained unresolved. Permission for Tarique to leave the country for his treatment for which intense discussions continued between her and the negotiators. Khaleda was not ready to compromise on her core condition for any understanding with the government on the issue of election and the government at last agreed to let Tarique go on the condition that he resigned from politics and no retaliatory action would be taken against the perpetrators who had inflicted physical injury on her son. The details are not known as to what were the exact terms of understanding between Begum Zia and the government. Khaleda Zia like Sheikh Hasina never disclosed the details but it could be assumed that Khaleda at best agreed to take part in the election. Although it was a painful sacrifice for Khaleda Zia to let Tarique go

²³ See the *Daily Ittefaq*, 2 September 2008.

away from politics, she was at least able to save the health and life of Tarique and from the ignominy of the court cases. Begum Zia perhaps also realised that it would be good for her son to go out of the limelight of politics for the time being.

Of the 4 cases against Khaleda Zia, other than the preposterous one that she had embezzled money of Zia Orphanage Trust created in the memory of her husband having had nothing to do with any state largesse, the 3 others involved her in the discharge of her duties as the Prime Minister in respect of development schemes in which she had put her final signature of approval after the matters were examined by various responsible high level committees. The proceedings of the GATCO and NIKO Cases were already stayed by the Supreme Court and she was granted bail in the Zia Orphanage and Barapukuria Mine Project Cases on 26 and 28 August 2008. On 9 September 2008, when the High Court Division finally granted her bail in GATCO and NIKO Cases, release of Khaleda Zia, now became imminent.²⁴ Although the government had filed appeal against the orders of bail but before the hearing could take place in the Appellate Division, Khaleda Zia was released on 11 September 2008 from her imprisonment of 1 year 7 days, about a month more than Sheikh Hasina.²⁵

On being released in the midst of thousands of her supporters submerging the streets of Dhaka with petals and flowers showering on her, she went to see her son at the hospital after saying prayers at the shrine of her husband late President Zia. From the hospital, she went to Paltan at the central office of BNP, locked up by the interim government earlier debarring Khandaker Delwar Hossain, the Secretary General of the party to use it as a discriminating measure to favour the renegades of BNP who sided with the regime in the name of reforms. On the same day, Khaleda Zia announced that BNP would join the dialogue with the government, participate in the election and reaffirmed in an emotionally choked voice that Tarique Zia would remain out of politics till he had fully recovered after his treatment abroad.²⁶

On the same night, 11 September 2008, as agreed earlier in the negotiations, Tarique Zia left for London with his family members

²⁴ See the *Daily Ittefaq*, 10 September 2008.

²⁵ See the *Daily Ittefaq*, 12 September 2008.

²⁶ See the *Daily Manab Zamin*, 12 September 2008.

leaving her mother behind, all by herself, to resurrect the BNP shattered into ashes. At the airport, before the plane left, a typed letter of resignation was allegedly handed over to him by the military leaders of the Joint Forces which Tarique signed with reluctance to say that he was relinquishing his position as Senior Joint Secretary General of the BNP.

Earlier, when the atrocities and misrule of the interim regime was at its height, the overwhelming demand of the people were that the two leaders, Khaleda and Hasina, still in jail, be united to retrieve the nation from the existing mess and restore a constitutional order in the country by overthrowing the fragile illegitimate government through a mass movement. In response to such a demand, while the Secretary General of BNP called for a united movement, the Awami League rejected the call outrightly.²⁷ Once Khaleda Zia was released, the demand infused a further momentum highlighted by the call of Rafique-ul Huq, a former Attorney General representing both the leaders in the courts at the most difficult time of history, suggesting that the two leaders ought to sit together for evolving a common strategy to ensure a harmonious political stability in the country.²⁸ While Khaleda Zia welcomed the initiative to build a better and congenial relationship between the two political parties, Hasina was skeptical about the purpose of such a meeting and eventually avoided to respond to such an opportunity.²⁹ Unlike Hasina, who wanted to give validity to the illegitimacy of the interim government, Khaleda was not willing to do so.³⁰

While the country was now gradually moving towards an election and the regime had accepted it as inevitable, the forces who had taken a leading role in crushing the politicians since January 2007 with their own agenda, not being happy with the current developments, did not stay quiet. They still continued to work in their own way so that the election scheme did not succeed to forbid the same politicians to come back to power. They were active in seeing, with the tacit support of General Moeen, that the electoral process was disrupted whenever

²⁷ See the *Daily Manab Zamin*, 6 June 2008.

²⁸ See the *Daily Manab Zamin*, 10 September 2008.

²⁹ See the intention of Begum Khaleda Zia, the *Daily Naya Diganta*, 28 September 2008.

³⁰ *Ibid.*

and wherever possible in such a manner that there was no congenial environment for a meaningful election. Despite the understanding with Sheikh Hasina and subsequent release of Khaleda Zia with Tarique gone out of the country, they did not step aside from their original scheme of minus-two theory. This psychological conflict between these forces within the regime made the nature and quality of the election different from the ones the nation had in 1991, 1996 (June) and 2001. Because of the in-cohesiveness in the administration from within, the behaviour pattern of each of the Jack tops of the regime was different, mostly counter-productive and never complementary. The Election Commission, the Anti-Corruption Commission, the Task Forces, each moved in direction counter to the option adopted by the regime officially for an election. Once it was decided that there was no other option for the regime but to go for election and the nation had to live and survive with the politicians, the acrimonious behaviour of the above three agencies only showed how weak, fragile and commandless the regime was. Despite the decision taken to go for an election the continuity of indecision in withdrawing the Emergency, the tendencies of holding the election under the Emergency, to have and not to have future Members of Parliament according to their own choice, the erratic, inconsistent and discriminatory actions of the Election Commission, filing and pursuing of cases in courts against the politicians including Khaleda and Hasina by the Task Forces and the Anti-Corruption Commission only reflected the bad faith on the part of the regime and its agencies in respect of their intentions of holding a free election. The audacity of one adviser to suggest to hold a dialogue with the politicians about how the country ought to be run after the election reflected only the height of their immature behaviour.³¹

In the previous elections held in the backdrop of any military regime having had to concede to holding an election in the face of any public convulsion, the ground slate was made clear for a considerable period for the people to breathe an air of freedom and the political parties to move onward freely to create public opinion in their favour. The nation had taken a festive mood without any kind of fear or threat from the state agencies in exercising their right of franchise. Notwithstanding the Martial Law Proclamations in operation,

³¹ See the *Daily Ittefaq*, 25, 31 October 2008.

elections held in 1970 and 1979 and other elections without such Proclamations held in 1991, 1996 (June) and 2001 are the examples to cite. In this case, the background, nature and character of the elections held on 29 December 2008 was completely different than those held earlier. It was all designed and managed to install Sheikh Hasina in power pursuant to the understanding, she had with the military and as a sequence she ensured a safe exit for the Army Chief and his supporting officers from the country, without any retaliation.

Chapter 13

Election: December 2008

The Nature and Quality of the Election

The general elections held in February 1991, June 1996 and October 2001 were completely different in nature, content and quality than the one held in December 2008. With distinguished Chief Advisers managing the interim regimes in the first three elections, the governments' actions were one of integrity and neutrality. They carried out the task of conducting the elections well within the 90 days specified in the Constitution and handed over the responsibility to the elected representatives of the people. They had no interest in the election results nor did they have any political ambition of their own. They rendered aid and assistance to the Election Commission for holding the general election peacefully in an impartial manner. The members of the defense forces dutifully helped the civil administration when they were asked to do so and maintained the honor, dignity of their institutions. These interim regimes imposed no Emergency nor put any politician in jail, nor did they file criminal cases against the politicians.

The most important pre-condition for a democratic election is a congenial political environment. It is not the polling day or election on the polling day by itself decides the criterion and the legitimacy of a government for its sustainability in governance. It is the nature of time and the quality of environment subsisting during the months preceding the election is crucial whether the election was to be truly free and fair and whether the people had an unfettered opportunity well ahead of the polling day to exercise their right of franchise anyway they wished without any sense of fear, uncertainty or apprehension. It is not only the social and cultural environment but the kind of government under whose supervision the elections were held is vitally important. If all these points are taken into consideration

and are examined and analysed only then the quality of the election held in 2008 could be finally ascertained and assessed in correct perspective. The two years of the interim regime preceding the election has been a new experience for the people of Bangladesh. Unlike the three previous regimes, the interim government of Fakhruddin was neither legitimate nor neutral nor it enjoyed the sanction of the Constitution. On the contrary, it not only violated the mandate of the Constitution as contained in Article 58(D) but it grossly abused the Proclamation of Emergency to pursue a political agenda of its own. The aimless, self-contradictory, inconsistent behaviour pattern of all the major functionaries and agencies of the interim regime, if analysed, lead one to believe that upto the last day the people were not sure what kind of election they were going to have. Starting from the sustained vicious campaign against the politicians upto the time they surrendered to the same politicians for holding the election, the role of the concerned General, the Anti-Corruption Commission and the office of the Director General of the Field Intelligence Unit, was full of contradictions. Besides the illegitimacy of the government and the hidden and dubious role General Moeen had played, the behaviour of the Election Commission in particular has been most pernicious.

When Hasina was allowed to leave the country by an executive order on some kind of a parole pursuant to a political understanding and the interim regime had commenced dialogue with the political parties, the presumption was that perhaps the government had now decided to hold a free, fair and neutral election in the country and all their actions from then on would reflect an honest intention for implementing the same and the government would create a level-playing environment for all the participating parties. The President would appoint Chief Adviser from amongst the retired Chief Justices, reconstitute the Election Commission, change the Chief of Army Staff and revoke the proclamation of Emergency to make the administration neutral and effective to hold a free and fair election. But, this was not to be so. The election was to take place under the same regime with the same men in power who had made their positions extremely partisan and highly controversial. In order to cover their irregularities and misdeeds they had to ensure that the party willing to accommodate a safe exit for them came to power. But even in doing so they were inconsistent, self-contradicting, fighting between themselves without

any unified cohesive will under any central leadership to hold any meaningful election. The months and events leading to the day of election would show how erratic the behaviour pattern of the functionaries of the regime were and what amount of uncertainties and apprehensions loomed over the nation to vitiate the prospect of any election in a free congenial environment.

Firstly, the state of Emergency by itself was a negation of any free environment of holding a fair election. The continuation of Emergency with the fundamental rights suspended was neither legal nor necessary. It was a sword hanging over the head of the people as a hindrance to free thinking and free movement. Although all the political parties demanded withdrawal of Emergency with the threat to boycott election, the functionaries of the government including the Chief Adviser, the Chief of Army and the Chief of the Election Commission kept on insisting that elections could be held under the Emergency¹ with some sort of assurances that the Emergency provisions would be relaxed at some point or withdrawn just before the election.² In substance, according to the leaders of the regime the Emergency would continue till the election to be held in December.

Another dubious action, opposed by all the political parties, was reflected in their insistence of holding the upazila election before the general election. This was contrary to the mandate given to the interim government under the Constitution. When the regime went on persisting this matter the political parties suspected, it as an attempt to frustrate the general election and the whole democratic process.³ Of all the demands, which varied from time to time, made by the Awami League and BNP, the most common was the immediate withdrawal of the Emergency and no other election to be held before the general election.⁴ The Awami League, like BNP and Jamaat, even went to the extent of declaring that it would not take part in any election unless the Emergency was fully withdrawn.⁵ On the issue of holding upazila

¹ See the *Daily Ittefaq*, 8 October 2008.

² See the *Daily Ittefaq*, 15 October 2008, 26 November 2008.

³ See the *Daily Ittefaq*, 22 July 2008; the *Daily Manab Zamin*, 23 July, 27 August and 10 September 2008.

⁴ See the *Daily Ittefaq*, 4 July; the *Daily Manab Zamin*, 15, 20 and 27 July 2009. The *Daily Amar Desh*, 8 August 2008.

⁵ See the *Daily Naya Diganta*, 20 October 2008. The *Prothom Alo*, 30 December 2008. See the statements made by Tofail Ahmed, Khandaker Delwar Hossain, Rashed Khan Menon on this issue on various dates.

election, the conflict between the Election Commission and the political parties took a serious turn leaving the entire people in confusion for a long time moving the attention of the entire administration to a wrong direction. The insistence of the regime to hold the upazila election was perceived to be a ploy of the military to create a base for their own political goal so that they could rule without holding the general election. In other words, General Moeen was not yet ready to abandon his options to fulfill his own political ambition. Moreover, the effort to promote the idea to hold the upazila election before the national election seemed more perplexing because the Election Commission was neither prepared with a voter list to hold such an election nor the regime could make it clear by showing any cogent reason why they wanted the upazila election before the General election.

Prior to his departure to attend the General Assembly Session Fakhruddin Ahmed on 20 September, addressed the nation and announced that parliamentary election would be held on 18 December and the upazila election immediately thereafter on 24 and 28 December 2008.⁶ This unrealistic and preposterous proposition to hold both the election also clearly demonstrated that the regime wanted to vitiate a free and peaceful environment for the general election to take place. As for the upazila election, the sheer logic of holding it by the regime lost its credibility as the same was now going to be held under a political government to be elected on 18 December 2008. For those who had any experience of any electoral process whether as a contestant or as an election official it would only be a mere nightmare to think that the campaign for the two elections would run together at the ground level and what amount of chaos, anarchy and conflicting interests between the parties and contestants would arise in holding a free, fair and peaceful election.⁷ Although the date of the upazila election was subsequently taken back for about two weeks, but the clouts remained to be even more reinforced as by that time the Supreme Court by a judgment had declared that the upazila elections, could now be done on party basis.⁸

⁶ See the *Daily Prothom Alo*, 21 September 2008.

⁷ See the *Daily Ittefaq*, 21 September 2008.

⁸ See the *Daily Ittefaq*, 30 October 2008.

While announcing the dates of elections, Fakhruddin neither declared the withdrawal of Emergency nor fixed any date of such withdrawal.⁹ With only less than three months to go for the election his assurance that some provisions of the Emergency Law would be relaxed or suspended in course of time only deepened the suspicion of the people about the kind of election the regime was visualising or whether the election would at all be held. In order to create a better environment and confidence Fakhruddin had not declared the withdrawal of cases instituted by the regime against the politicians including those of Sheikh Hasina and Khaleda Zia without whose participation no credible election could be held to create a congenial atmosphere to come to a political solution for a national election. In a similar situation even the iron ruler of Pakistan, General Mohammad Ayub Khan had to withdraw an 11-month long trial of the most sensational case of treason of Pakistan history called the Agartala Conspiracy Case to hold a round table conference with the politicians at Rawalpindi in February 1969. He had to sit with Sheikh Mujibur Rahman, his strongest political adversary whom he called the "enemy of Pakistan," the accused No. 1 of the treason case, to create a congenial political environment. Here in this case, although by an understanding the regime released Sheikh Hasina from prison to leave the country on parole, none of the criminal cases against her and Khaleda Zia was withdrawn. So the speech of Fakhruddin addressing the nation had no political impact. On the contrary, it only reinforced the prevailing uncertainties, as because soon after his statement, a code of conduct was announced to the effect that no political activities or any kind of campaign would be allowed before 27 November 2008 only three weeks away from the announced date of 18 December. Moreover, at this crucial juncture, as to whether a meaningful election could at all be held under Emergency or not, the statement of the High Commissioner of India that elections could be held under Emergency surprised all classes of people and gave rise to all kinds of speculations.¹⁰

The Election Commission on many vital policy issues acted beyond its statutory authority. Notwithstanding whether the Election Commission had any authority to make "registration" of political

⁹ See the *Daily Prothom Alo*, 21 September 2008.

¹⁰ See the *Daily Amar Desh*, 19 October 2008.

parties compulsory by law, but the attempt to control them by putting all kinds of conditions by an Ordinance in July 2008 by repealing the original law called the Representation of Peoples' Order (RPO) 1972 were resented and opposed by all the political parties. Both the Awami League and BNP alleged that the new Ordinance was unconstitutional being derogatory to the fundamental rights nor it reflected the wishes of the people.¹¹ Within less than two weeks, however, the government decided to revert back to the original law with the new provisions of registration, making it compulsory for only those political parties wishing to take part in the election before any schedule was announced.¹²

The controversial issues relating to having frontal organisations of the parties, democratisation of parties at every level and 33% of women participation, needed the political parties to amend their respective constitutions. But the Election Commission made the law without knowing how the political parties function. They were not aware that no political party could amend its constitution without the meeting of the National Council and no National Council could be held without holding Council meetings to elect new Committees from the grass roots level, the process of which could not be completed within such a short period. Moreover, since the political activities were still restricted no such council meeting at any level could be held. Realising their shortcomings, law had to be amended again to enable the political parties to submit their application for registration with provisional amendments of their constitution and the time for final amendment by holding Council Meetings was extended upto June 2009.

The Election Commission by this time had assured that it would declare the election schedule on 2 November 2008, so that election could be held in December. For the large parties like BNP and Awami League as time was not sufficient to complete the procedures to bring the necessary amendments, both the parties made provisional amendments in their constitutions¹³ before submitting application on 20 October 2008. Although 107 political parties had submitted their applications including BNP, Awami League, Jamaat, Workers Party

¹¹ See the *Daily Amar Desh*, 15 July 2008; the *Daily Ittefaq*, 22 and 25 August 2008; the *Daily Amar Desh*, 26 August and 8 September 2008.

¹² See the *Daily Ittefaq*, 25 July 2008 and 7 August 2008; the *Daily Manab Zamin*, 22 August 2008.

¹³ See the Awami League, the *Daily Ittefaq*, 14 and 16 October 2008. See for BNP, the *Daily Naya Diganta*, 20 October 2008 and the *Daily Ittefaq*, 21 October 2008.

and others but the Election Commission took a long time in scrutinizing and processing the registration and failed to grant registrations to all the parties before the schedule for election was announced.¹⁴ Finally after nearly 3 weeks of announcement of the schedule 39 parties were granted registration and 68 applications were rejected.¹⁵ Because of the inefficiency of the Commission and the continuation of Emergency restrictions, the process of registration harmed the election environment and the Commission had to amend the law on several occasions including the one with regard to small utility bill defaulters.¹⁶ Whatever might have been the merit of registration, the fact is that the Commission of an interim government had no authority to undertake such as exercise which was also seen as a part of the design to delay the holding of election beyond the mandate of the Constitution.

On a highly complicated issue of "delimitation" the deliberate delay committed by the Election Commission had kept the entire nation in a suspense as to whether the election would be held on the existing delimited constituencies or on the basis of the new ones proposed by them. The Election Commission had allowed itself almost a whole year to pass before they suddenly came to decide that the country needed fresh delimitation of constituencies based primarily on only population. This was considered to be highly controversial. There would have been no violation of law if the election was held on the basis of the existing constituencies with minor adjustments as was done during the last three general elections. All political parties opposed the fresh delimitation alleging that it was being proposed with ill motive only to delay the process of election and allow the regime to perpetuate its illegal rule.

In April 2008, hardly 8 months before the scheduled month of election, the Election Commission announced a draft delimitation affecting 133 constituencies¹⁷ out of 300 and by July of the same year completed this gigantic task in a great hurry for a final delimitation directly affecting 84 constituencies making all the concerned areas lopsided, creating doldrums among the voters, political parties and

¹⁴ See the *Daily Amar Desh*, 19 November 2008.

¹⁵ See the *Daily Amar Desh*, 25 November 2008.

¹⁶ See the *Daily Ittefaq*, 7 October 2008.

¹⁷ See the *Daily Manab Zamin*, 11 July 2008.

frustrating the candidates concerned. With massive changes in relocation of areas and population, the existing relationship between a candidate and his voters was lost, which would in normal circumstances take a long time to build. They were now forced to adjust with the new circumstances within a very short time.

The situation was further aggravated when a former BNP law maker Abdul Mannan challenged the delimitation of the constituencies in a writ petition alleging that such delimitation was being done in violation of law and Constitution and the High Court Division on 7 August 2008 upon issuing a Rule stayed the delimitation process for a period of 3 months¹⁸ to expire on 6 November, which meant, the election schedule as earlier declared could not be announced on 2 November any more, making the entire prospect of holding an election in any near future most uncertain. The ground taken in the writ petition that delimitation of constituencies had to be done before the process of preparation of voter list was commenced. As soon as the fresh delimitation process was stayed by the Supreme Court, the Election Commission should have immediately proceeded to prepare holding of the election on the basis of the existing constituencies which any Commission would have done in normal time. But the Election Commission did not do so nor took any effective step to have the order of stay vacated. They, instead, sat on such an important matter and waited for the judgment of the High Court Division.

During this crucial period, the elements of uncertainties loomed large for various other reasons and suspicion about the holding of election and design of the military unit of the regime came to the surface through media coverage and led people to believe that election was not going to take place in December. The Election Commission was found utterly unprepared to announce the schedule for other reasons too. These included non-completion of voter list¹⁹ as well as the non-registration of the political parties, besides resolving the issue of delimitation of constituencies. A historical judgment of the High Court Division in another writ petition delivered on 13 July 2008²⁰ that the large number of Ordinances made by the interim regime having no

¹⁸ See the *Daily Manab Zamin*, 8 August 2008.

¹⁹ See the *Daily Amar Desh*, 12 August; the *Daily Ittefaq*, 15 October; the *Daily Manab Zamin* 31 October 2008.

²⁰ See the *Daily Naya Diganta*, 14 July 2008; the *Daily Manab Zamin*, 30 July; the *Daily Anar Desh*, 9 October 2008.

relation to election had no constitutional validity made the political environment more unstable and confusing. Question was then raised whether the registration of political parties and fresh delimitation would be affected by the same judgment.

In the past, standard practice has been that a conflict of this nature where a political solution is sought particularly by an autocratic regime, primary pre-condition followed is to restore confidence of the people in the intention of the regime by creating a completely free political environment. Even in this respect instances are available how Ayub Khan eased the situation by withdrawing unconditionally the Agartala Conspiracy Case and released Sheikh Mujibur Rahman. In 1978 President Ziaur Rahman did the same by releasing the Awami League and JSD leaders, convicted in military courts, to create a better environment for holding his proposed elections. Between 1984 and 1986 General H.M. Ershad also at different stages released all political leaders who were then in jail so that they could take part in the election.

But in this case, the behaviour pattern of the interim regime seemed to have been just the opposite, inconsistent and self-contradictory. When Sheikh Hasina was released by an executive order and official courtesies were extended to her in US by the presence of the Ambassador in Washington receiving her at the Airport, yet the criminal cases instituted by the regime were not withdrawn. On the contrary, all her 15 cases were kept active and alive in all courts. When the High Court Division refused to grant bail to Hasina on 5 October,²¹ the government did not take any effective measure for her full release and left her on parole. When negotiation was going on with Khaleda Zia in June-July to pursue her to go abroad in the way Hasina was allowed²² and the government opened dialogue with the political parties commencing on 12 April 2008 not only were the pending cases not withdrawn but fresh cases were filed against her and her siblings. On 3 July a fresh case was filed against Khaleda and Tarique for embezzlement of fund of Zia Orphanage Trust.²³ But only 4 days earlier the Chief Adviser had told the Bangladesh citizens in Malaysia that Begum Zia could also be released in the same process as Hasina.²⁴ On

²¹ See the *Daily Ittefaq*, 6 and 31 October 2008.

²² See the *Daily Amar Desh*, 12 June 2008; the *Daily Ittefaq*, 13 June and 15 June 2008, 8 July 2008.

²³ See the *Daily Ittefaq*, 4 July 2008.

²⁴ See the *Daily Ittefaq*, 8 July 2008.

15 May 2008, only 3 days after the Chief Adviser had announced that election would be held in the third week of December and Emergency would either be relaxed or suspended, charge sheet was submitted in a case where Khaleda Zia was made an accused and a warrant was issued against 4 senior party leaders including Saifur Rahman and Matiur Rahman Nizami, who were arrested and put in jail.²⁵

During the same time when such negotiation and dialogue was going on, on 7 July the government re-opened the investigation on Barapukuria Coal Mine Project against Khaleda Zia and all her senior leaders.²⁶ On 18 July, Shamim Iskandar, younger brother of Khaleda was arrested²⁷ and a new case against her son Tarique Rahman was filed on charges of tax evasion.²⁸ Finally the regime even went to the extent of submitting a charge sheet against Khaleda Zia and other leaders in the same Coal Mine Case,²⁹ within less than 3 weeks after the Chief Adviser addressed the nation announcing the date of election for 18 December.³⁰

So, during the period from the time, the so-called dialogue which Khaleda called "an arranged stage drama"³¹ commenced in April and the schedule of election announced by the Commission on 2 November, all the cases already pending or newly filed were proceeded with all the vigour, which did not help to create a congenial political environment for a meaningful general election. More ironic and intriguing was when all such high profile widely publicized cases on charges of corruption to assassinate the image and character of Sheikh Hasina and Khaleda Zia were pending in courts, the government decided to provide both of them the highest state protection with the deployment of SSF from the day the election schedule was announced on 2 November 2008.³²

Similarly, on 25 June a charge sheet was submitted against senior BNP leader Hannan Shah and 92 others under the Explosive

²⁵ See the *Daily Manab Zamin*, 17 December 2008.

²⁶ See the *Daily Ittefaq*, 18 July 2007.

²⁷ See the *Daily Manab Zamin*, 19 July 2008.

²⁸ See the *Daily Ittefaq*, 5 August 2008.

²⁹ See the *Daily Ittefaq*, 6 October and 11 November 2008.

³⁰ See the *Daily Ittefaq*, 21 September 2008.

³¹ See the *Daily Ittefaq*, 5 June 2008; the *Daily Naya Diganta*, 27 October 2008.

³² See the *Daily Naya Diganta*, 27 October 2008.

Substances Act.³³ On 10 July, a case was filed against the Awami League senior leader Sajeda Chowdhury under Sections 26 and 27 of the Anti-Corruption Act.³⁴ On the same day for the same kind of offence filing of a case was approved by the Anti-Corruption Commission against another Awami League lawmaker AKM Jahangir.³⁵ On 17 July, an extortion case was filed against Redwan Ahmed, a former State Minister and a case under Sections 26 and 27 of Anti-Corruption Act was filed against Awami League senior leader Tofail Ahmed and his wife and daughter.³⁶ On 31 July 2008, Anti-Corruption Commission submitted a charge sheet against the Awami League leader and Mayor of Sylhet City Corporation for having wealth beyond his known sources of income under Sections 26 and 27 of the Anti-Corruption Act.³⁷ On 3 August 2008, a charge sheet was submitted by Anti-Corruption Commission against Shahidul Islam Tuhin a former law maker and nephew of Khaleda Zia.³⁸

On 4 August 2008, Morshed Khan, the former Foreign Minister was convicted in absentia and sentenced to 13 years of imprisonment by a Kangaroo Court.³⁹ On 29 October, an order of detention was issued against Mosaddeq Ali Falu.⁴⁰ On 2 November, a new case was filed against Hannan Shah and a charge sheet was submitted against a son of the former Finance Minister, Saifur Rahman.

Another interesting face of the regime was that those renegades who took the risk of collaborating with them by betraying their respective parties were not immune from the inconsistent and self-contradictory actions of their beholders. After the initial respite they enjoyed, they were eventually betrayed and abandoned as cases were filed against them also. At the end of the day Abdul Mannan Bhuiyan, Md. Ashraf Hossain, Saifur Rahman, Tofail Ahmed and many others embraced the same fate as the other politicians. It proved that in their political relationship, trust was absent amongst the actors of the

³³ See the *Daily Manab Zamin*, 25 June 2008.

³⁴ See the *Daily Anar Desh*, 11 July 2008.

³⁵ Ibid.

³⁶ See the *Daily Anar Desh*, 18 July 2008 and the *Daily Manab Zamin*, 21 July 2008.

³⁷ See the *Daily Anar Desh*, 1 August 2008.

³⁸ See the *Daily Ittefaq*, 4 August 2008.

³⁹ See the *Daily Anar Desh*, 5 August 2008.

⁴⁰ See the *Daily Anar Desh*, 30 October 2008.

regime. The renegades were only used for a temporary period as the military could not decide in which direction they would like to go.

So, during this time of conflict resolution it was not only the continuation of cases, largely instituted for vilification, harassment and public insult of the politicians but the regime pursued the cases aggressively to the extent of interfering with the process of court by abusing law and the emergency powers. They were least interested in creating a free environment for restoration of confidence for a national election. On the contrary, they indulged in such actions which only retarded the prospect of any healthy electoral process and aroused increased suspicion about the very intention of the regime. Not to speak of releasing the politicians, the efforts of such operatives of the regime were to see that even the applications for bail were vehemently opposed by the Attorney General himself and once the High Court Division granted any bail steps were taken immediately to block them by either stopping them by way of an appeal before the Appellate Division or re-arresting them at the jail gate. On 13 July 2008, within two days after he was released by an order of the Supreme Court, Syed Moazzem Hossain Alal, a former lawmaker and General Secretary of the BNP affiliated youth front Jubo Dal was arrested at the jail gate on suspicion that he could be a threat to peace under Rule 16(2) of the Emergency Rules.⁴¹ The same happened to the Awami League leader and a former State Minister Engineer Mosharraf Hossain who was re-arrested at the jail gate on 1st August 2008 under the same omnibus provision of the Emergency Rules.⁴² On 3 August 2008, Obaidul Muktedir Chowdhury, an Assistant Private Secretary of Sheikh Hasina when she was the Prime Minister, was re-arrested at the jail gate after he was released on a bail granted by the High Court Division.⁴³ The same kind of re-arrest took place in respect of senior leaders like Kazi Zafarullah, a Member of the Awami League Presidium and Dr. Tawfiq-e-Elahi Chowdhury, a former Secretary of Energy. Against this kind of misuse of power when the Supreme Court had passed orders directing the police not to arrest any such person at the jail gate who were released on bail⁴⁴ were mostly not carried out. This kind of extensive misuse of

⁴¹ See the *Daily Manab Zamin*, 14 July 2008.

⁴² See the *Daily Manab Zamin*, 2 August 2008.

⁴³ See the *Daily Ittefaq*, 4 August 2008.

⁴⁴ See the *Daily Manab Zamin*, 27 August 2008.

power became a matter of national concern. Re-arrest at the jail gate was not only contrary to principles of rule of law and human rights but at the same time amounted to contempt of court. The President of the Supreme Court Bar Association held a press conference on 6 August warning the government that a movement would be launched if such kind of illegal actions were continued.⁴⁵

It was not only that trial of the politicians were being held in courts monitored by the military officials, the interference with the courts stretched to the extent of even hampering with the execution and acceptance of bail bond after such bail was granted by the Supreme Court. Only to inflict more humiliation and harassment lower courts were under constant direction not to process the execution of the bail bonds so that the politicians could not go out of prison immediately. Such heinous actions amounting to an obstruction in the administration of justice were also brought to the notice of the Supreme Court⁴⁶ but in vain.

During the same time the inconsistent functioning of the Supreme Court also did not go unnoticed. Not only the bail applications of the politicians were vehemently opposed and once granted appeals were immediately filed to stop their release. The Benches granting bails or any order of relief for the politicians under Criminal or writ jurisdiction, were suddenly reconstituted even in the middle of a week contrary to the recognised principles. On some occasions senior Judges were withdrawn from the Benches dealing with important human rights cases or their jurisdiction taken away suddenly confirming the interferences by the dark hands of the regime in the administration of justice including the highest court of the country.⁴⁷ The Supreme Court Bar Association registered a very strong protest against such actions and made representation to the Chief Justice not to reconstitute Benches in such a manner and demanded to allow the senior judges to preside over courts dealing with important matters of writs in civil and criminal jurisdiction. The Bar Association also demanded of the Chief Justice to follow a defined guideline in allocating jurisdiction to

⁴⁵ See the *Daily Ittefaq*, 7 August 2008.

⁴⁶ See the *Daily Manab Zamin*, 4 September 2008.

⁴⁷ It happened in respect of Justice Shah Abu Nayeem Mominur Rahman, Justice M A Rashid, Justice Abdul Wahhab Miah, Justice Nazrul Islam Chowdhury, Justice Khademul Islam Chowdhury, Justice Syed Md. Dastagir Husain, Justice Sharifuddin Chaklader. At one stage or other jurisdiction exercised by them was withdrawn.

the judges according to seniority.⁴⁸ In a meeting of the Association, Rafique-ul Huq, a former Attorney General alleged that “the cause list of the Supreme Court was being prepared under the supervision of unseen forces to destroy the process of the general election in December.”⁴⁹ While being under an oath to defend and preserve the Constitution, Justice Sharifuddin Chaklader, ignored the restrictive emergency provisions and started granting bail to citizens as a matter of right. Bombs were then thrown at his residence⁵⁰ suspected to have been done by the military agencies to frighten not only him but all the judges against granting bail to the politicians with whom the regime was supposed to be holding negotiations for a political settlement. The public rightly wondered what kind of regime it was who could behave in such a manner and at such a time.

In a similar vindictive vein the regime was putting pressure on the trial courts to delay signing of the judgments for months after its delivery on the conviction and sentence already awarded. This was done only to create a hindrance for the politicians⁵¹ to file their appeal before the High Court Division. In such circumstances no sane person could believe that the regime was eager to have any fair election, let alone free the politicians to play a role to move the country forward for a sustainable stability in society.

On 13 May 2008, after nearly 17 months of total ban on political activities, when in-door politics was allowed, the leaders and workers of all political parties started to activate their organisations by re-opening party offices at all levels with the aim to participate in the election. But again hardly 18 days had expired, to the utter surprise of all and with all the central leaders already in jail, a massive commando style operation of search and arrest was commenced by the Joint Forces led by the military officials all over the country under the code called *Alore Sandhane* (operation in search of light) from 1 June 2008. The people were bewildered at this action of the government. In the name of weeding out social “miscreants” hundreds of leaders and activists of all political parties who had so long escaped imprisonment were

⁴⁸ See the *Daily Manab Zamin*, 24 July 2008, 11 October 2008; the *Daily Jugantar*, 9 October 2008 and the *Daily Ittefaq*, 13 October 2008.

⁴⁹ See the *Daily Shamakal*, 13 October 2008.

⁵⁰ See the *Daily Ittefaq*, 13 October 2008.

⁵¹ See the *Daily Amar Desh*, 12 October 2008.

arrested under Rule 16(2) of the Emergency Rules without any right to bail. In Dhaka alone 140 persons were arrested in the first 12 hours and at the district and upazila levels the Joint Forces stormed into the houses of local leaders, ransacked the party offices and arrested whoever they could lay their hand on, forcing thousands to go into hiding for fear of life.⁵² So when on the one hand in-door politics was allowed and on the other hand the crack-down was continued, this was viewed as an ill-motivated action of the regime to frustrate the electoral process so that the politicians could not return to power.

Role of the Election Commission

On the other hand, because of its erratic behaviour, inconsistent decisions, partisan and political role, the Election Commission upon which the Constitution had bestowed the responsibility of conducting the election made itself highly controversial. Demand was raised repeatedly for the Chief Election Commissioner to resign as he had lost his credibility and the confidence of at least one out of the two largest political parties of the country. It functioned more as an agent of the regime to fulfill their political design rather than work for the country as an independent constitutional quasi-judicial body.⁵³ The Commission lost its neutrality and competency the day the Chief Election Commissioner could not hide his biasness for the Awami League, one of the two major contenders in the election, when on 4 November 2007, he welcomed the Awami League leaders with the glowing tribute saying, "Today's interim government and the Election Commission is your product. You had played the leading role in the movement for independence, you have established Bangladesh."⁵⁴

As opposed to that, on the next day for a similar dialogue, in order to facilitate a split in BNP, the Election Commission invited by a formal letter addressed to Major (Retd.) Hafizuddin Ahmed, propped up by the regime as a part of their political scheme representing the "reformists" as the make-shift Secretary General of BNP and thus openly played a blatant political role against the decision of Khaleda Zia and the mainstream BNP. When asked by the press various questions about the neutrality and legality of his action his reply was

⁵² See the *Daily Manab Zamin*, 9 June 2008.

⁵³ See the *Daily Ittefaq*, 1 November 2008.

⁵⁴ See the *Daily Amar Desh*, 10 November 2008; the *Daily Naya Diganta*, 12 November 2008.

that he applied the “doctrine of necessity.” He also criticised the expulsion of Marwan Bhuiyan and Ashraf Hosssain the progenitors of BNP reform scheme by Begum Zia, as according to him, it was done against the principles of natural justice, an opinion he had no business to render.⁵⁵ Although at a later stage the Chief Election Commissioner regretted his decision to invite Hafizuddin, his weakness for the reformist faction of BNP and hostility towards the mainstream BNP was demonstrated on many other occasions such as the comments, he made on 20 November 2007 in a meeting with the Workers Party and on 26 February 2008 in the second round of dialogue with BNP.⁵⁶ His comments on Jamaat-e-Islami and Islami Oyokka Jote on 22 September and finally by expressing his desire on 28 October 2008, only 5 days before his announcement of the election schedule, that he would like to see an election like that of 1970 in which Awami League had won from East Pakistan 167 seats out of 169 for the Pakistan National Assembly and 293 seats out of 300 for the East Pakistan Provincial Assembly.⁵⁷

Besides its partisan and political role, the Commission made itself subject to some other criticisms of serious motivational nature, such as: (1) While under Article 119(1) of the Constitution it was the plenary responsibility of the Election Commission to prepare the electoral rolls for the election to Parliament, the Commission allowed the army to prepare the electoral rolls with photographs; (2) While preparation of any national Identity Card was not its responsibility under any provision of the Constitution, the Commission allowed the army to do the same along with the preparation of voter rolls; (3) The decision of the Commission to prepare a fresh electoral roll was made in direct violation of the order and judgment passed on 22 May 2006 in Civil Appeal Nos. 54 and 55 of 2006 by the Appellate Division, the highest court in the country.⁵⁸ It was a violation of Article 112 of the Constitution; (4) Although the Election Commission claimed to have completed the preparation of the electoral rolls but the voter list for most of the constituencies did not reach even in ten days after the schedule was announced which created enormous difficulties in filing

⁵⁵ Ibid.

⁵⁶ See the *Daily Amar Desh*, 7 August and 8 August 2008.

⁵⁷ See the *Daily Amar Desh*, 10 November 2008.

⁵⁸ See 26 BLD (AD) 121.

nomination paper with correct voter number required by the proposer and the seconder as well as the candidate himself;⁵⁹ (5) On polling day no candidate or his agents were supplied with any voter list with photographs whereas the Presiding and other Polling officials had them. Hence there was suspicion about the role of the electoral officials played in favour of the Awami League candidates. The Election Commission never explained why this serious irregularity was committed; (6) On October 28, 2008 while addressing the Returning officials of the country completely out of context, the Chief Election Commissioner expressed his hope to oversee an election like the one the country had in 1970 which gave Awami League a sweeping victory. It was a clear signal given to his officials as to what kind of election he would like to have and which party should win the election; (7) The Commission hurriedly announced the election schedule on 2 November before reaching the voter list at the constituency level or even at the district level and without completing the procedure of granting certificate of registration to all the parties who applied for it. It was not only a gross irregularity but it vitiated the entire process of a free and fair election;⁶⁰ (8) The holding of a one-party City and Pourashava election under Emergency laws and the election of the politicians who were accused of being corrupt from inside the prison and wide spread violation of election rules and code of conduct contradicted what the Commission had earlier propagated; (9) Selection of Awami biased NGOs for monitoring of election; (10) The Commission totally failed in creating a level-playing field for the participating parties in the election; (11) The inconsistent statements and decisions regarding the registration procedure, dates for submission of applications, issue of certificate of registration and frequent changes made in the election laws and Rules⁶¹ marred the prospect of a credible election; (12) The Emergency provisions restricting the freedom of press curbed the media's free role in the election;⁶² and (13) Most important of all was the failure of the Election Commission to explain why the ballot papers were already printed in the Army Press instead of the Government Press where such ballot

⁵⁹ See the *Daily Amar Desh*, 14 November 2008 and the *Daily Amader Shomoy*, 1 November 2008.

⁶⁰ See the *Daily Amader Shomoy*, 1 November 2008

⁶¹ See the *Daily Manab Zamin*, 15 October 2008; the *Daily Amar Desh*, 30 October 2008.

⁶² See the *Daily Amar Desh*, 13 November 2008.

papers had always been printed. So largely because of its incompetency and its subservience to the military, the Election Commission was not able to fulfill its own commitment made in the "Road Map" announced on 15 July 2007.

Because of its inconsistent and self-contradictory actions on various issues the Election Commission was frequently subjected to judicial scrutiny which also made the entire environment for an election extremely vulnerable and uncertain. In about 20 months 16 writ petitions were filed and Rules issued by the High Court Division challenging various actions of the Commission. Out of 16, 13 were still pending upto the end of October 2008, less than two months before the proposed polling date, and in one of the writs the High Court Division had already made it clear that Commission had violated the Constitution by not holding the election within 90 days and directed to hold the election on the proposed schedule.⁶³ The other writs involved (1) whether the local elections could be held on party basis as restricted by the Commission upon which the High Court Division now pronounced that there was no constitutional bar if political parties had their candidates in local government elections; (2) whether the Commission was right in inviting the "reformist" faction of BNP to their proposed dialogue which the High Court Division disposed of on the technical ground that the date of the dialogue for which the Commission sent a letter to Major Hafizuddin had already expired.⁶⁴

The most important was the writ whether delimitation of constituencies on population basis after the preparation of voter list was valid or not. As the Commission had already finalised and gazetted the delimitation of 84 constituencies affecting 136 seats of the country and the Commission was not willing in their wisdom to go back and hold the election on the basis of the existing constituencies, the whole matter of holding election hanged in great uncertainty and the Commission was not in a position to announce the election schedule. Because of the awaited verdict of the Supreme Court on the question of delimitation, every section of media predicted that the Commission was not in a position to announce any election schedule on the proposed day of 2 November.⁶⁵ Whether the verdict of the High

⁶³ See the *Daily Manab Zamin*, 30 October, 1 November 2008.

⁶⁴ *Ibid.*

⁶⁵ See the *Daily Ittefaq*, 23, 30 October; the *Daily Amar Desh*, 30, 31 October; the *Daily Manab Zamin*, 15 October; the *Daily Prothom Alo*, 30 October and the *Daily Naya Diganta*, 23 and 26 October 2008.

Court Division was in favour of or against, no schedule could be announced as the Commission needed sufficient preparation before doing so.

In the prevailing circumstances upto the very end of October with the Emergency still on, suspense, tension and uncertainty was all over. Even the Commission did not know what to do nor they were prepared to announce any schedule.⁶⁶ On the one hand, the voter lists had not reached the Returning Officers to distribute to the constituencies and the process of registration had not been completed, on the other hand, neither the Commission nor the people or the political parties could say whether any election would be held at all or when the schedule could be announced and the Emergency would be lifted. So the demand raised by BNP to immediately withdraw the Emergency and postpone the election for 2 to 3 months to enable all the stake holders to have time for appropriate preparation and help creating a free and congenial environment to hold a fair election was vehemently opposed by Awami League.

In less than 8 hours after the verdict of the High Court Division given on 2 November 2008 in favour of the proposed delimitation, in an unusual hurry the Election Commission in the midst of the Emergency announced the schedule for the election of the Parliament on 18 December, and for upazila on 28 December.⁶⁷ It had neither the voter list ready for the constituencies or upazilas nor it had completed the process of registration of the political parties nor it had given any good reason why the upazila election had to be tagged along with the national election. So the announcement of the schedule of election neither eased the tension nor removed the uncertainty.⁶⁸

The issues of withdrawal of Emergency, neutralisation of administration,⁶⁹ non-availability of voter list, the process of upazila elections to run in parallel with the national election, non-completion of the registration of political parties still continued to dominate the political scene, standing in the way for a free and congenial environment for an effective and meaningful election to the Parliament. Moreover not only that the Emergency was not

⁶⁶ See the *Daily Prothom Alo*, 30 October 2008.

⁶⁷ See for the schedule all daily newspapers on 3 November 2008.

⁶⁸ Read Ataus Samad, the *Daily Amar Desh*, 4 November 2008.

⁶⁹ See the *Daily Naya Diganta*, 30 October 2008.

withdrawn, but the government, even after the election schedule was announced issued a press note on 11 November restricting any kind of political activities in public till 27 November⁷⁰ whereas the date of polling was only 3 weeks away on 18 December. This baffling press note only reinforced the fear that the regime instead of holding a free election was going to organise a controlled election, if at all, to suit their own scheme and hand over the power to a party of their liking to save themselves from all the illegalities, atrocities, corruption and damage to the economy they had committed.⁷¹

The schedule which allowed only 11 days for filing nomination papers on 13 November. No political party or candidate was in a position to comply with the frequently amended election Rules as neither the voters nor the potential candidates nor the political parties nor the election officials had sufficient time for orientation or to understand the new requirements of some unrealistic provisions of law framed by the Election Commission. Under Section 90B(4) nomination of a person was to be considered by a party based on a panel to be passed by the committees of the ward, union, upazila and district unit before placing it to the central body of that party which, if at all could be implemented, would take at least 6 months to comply.⁷² Moreover, there were levels where there was no committee at all and there are places where council meeting would need to be called to decide the panel of candidates for each constituency. It was a gigantic task thrust upon the parties without any machinery to monitor either by the Commission or the party itself.

The next one related to the 8-point declaration by way of an affidavit to be attached by a candidate with the nomination paper as its integral part. Besides many other information in connection with bank loans, payment of utility bills, source of income, income tax returns, pending criminal cases and financial liabilities, every candidate was to disclose his educational qualification with a copy of the certificate of the highest degree he held, which not even 10% of the candidates graduated 10-25 years ago would have in their hand readily available.⁷³ More so, it was not only the question of collecting

⁷⁰ See the *Daily Ittefaq*, 12 November 2008.

⁷¹ See the *Daily Naya Diganta*, 23 October 2008.

⁷² See the *Daily Naya Diganta*, 7 November 2008.

⁷³ The author himself did not have in his hand any certificate of any of his degrees.

the information with necessary supporting papers, this declaration had to be notarised by a Notary Public or sworn before a Magistrate, none of which was available in any constituency outside the district headquarters.⁷⁴ The provision relating to securing at least 1% of the voters to sign for the qualification of an independent candidate before he submits his nomination is another preposterous proposition incorporated in law. In a constituency of 300000 voters an independent candidate would require signature of 3000 voters. Firstly there was no voter list available at any constituency at the relevant time and so it was not possible to ascertain who were the registered voters or their serial number and secondly why so many voters would disclose who they would vote in an election which was to be held by secret ballot. Section 91E of the RPO empowering the Commission to cancel the candidature of any candidate for violating any of the Rules or for giving any wrong information in the declaration or nomination paper was not only arbitrary but created a great amount of fear and apprehension in the mind of the candidates. All these took away the sense of freedom one needed to fight an election in a free environment.

These exercises, however, lofty they looked, might have been possible in some of the developed societies achieved more by practice and tradition than by law. To have the same implemented by application of law overnight in a society lacking experience, tradition and culture looked to be a deliberate attempt to make the election extremely difficult and ultimately frustrate the entire process. Ironically, at the end, the election was held in violation of all these provisions along with many others particularly relating to the use of excess money and muscles but the Election Commission appeared to be helpless and failed to take any effective action. In the cases where the Commission had cancelled the candidature of about 20 candidates were mostly rejected by the High Court Division by allowing them to contest in the election, creating further complications. The Election Commission nonetheless proceeded to announce the election schedule without adequate preparation under the pressure of the Awami League.

Soon it became evident that the election would not be held on 18 December because (a) it was found that sufficient time was required for organisation of the election officials; (b) time frame for the defaulters to settle their dues before 15 days of filing nomination, was impossible

⁷⁴ See the *DAILY NAYA DIGANTA*, 13 November 2008.

because time given to file nomination under the schedule was only 11 days;⁷⁵ and (c) the teachers working under the government financed institutions required to be stationed at their respective employment.⁷⁶ The most vital of them all were: (a) no voter list could still be made available even two weeks after the schedule was announced making it impossible to file any nomination; (b) no voter list was still ready for the delimited constituencies where people needed to know their position and the adjustments they needed to make; (c) without any voter list no independent candidate could collect signature of 1% of voters to file his nomination; and (d) as the law made was that no political party could take part in the election as a party or be part of any alliance without registration meant that such certificate of registration was to be issued before the schedule was announced, whereas even after 14 days of announcing the schedule upto 16 November registration of 10 political parties was still under process.⁷⁷

So despite the extension of 7 days, made upto 20 November, for filing of nomination papers, the entire process had already collapsed only because the Election Commission itself⁷⁸ failed to act as an independent body. From the beginning, after the Emergency, it was functioning at the instance of vested interests, not for the people or the political parties for whom the election was meant for. Instead of creating a level-playing field for all the parties involved and a strong stand for the total withdrawal of Emergency at least from the day the schedule was announced, the Election Commission only indulged itself in making some ill-conceived self-defeating rules for creating hindrances in the process of election in order to protect the interest of the Army Chief and the Awami League.

In these circumstances the demand to postpone the election for a few months or at least till January was not inappropriate.⁷⁹ Neither the Commission had the necessary preparation nor the BNP-led alliance representing 235 or about 80% seats in the last Parliament, was in a position to take part in the election in any effective manner. But the Election Commission and the Awami League took almost an identical

⁷⁵ See the *Daily Ittefaq*, 11 November 2008.

⁷⁶ See the *Daily Amader Shomoy*, 12 November 2008.

⁷⁷ See the *Daily Amar Desh*, 17 November 2008.

⁷⁸ See the *Daily Amar Desh*, 16 November 2008.

⁷⁹ See the *Daily Amader Shomoy*, 10, 11 & 15 November 2008; the *Daily Amar Desh*, 17 November 2008.

position. While BNP demanded the Election in January the Awami League alliance vehemently opposed any kind of postponement.⁸⁰ The Advisers of the civilian outfit would also not take any stand that would disoblige the Awami League in the prevailing situation⁸¹ and thereby continued to support the plan of an election already meticulously designed.

Predicaments of BNP and Defeat in the Election

Soon after her release from prison, while expressing the intention of BNP to take part in the election, Khaleda Zia at the same time stated that the interim government and the Election Commission were working in unison to protect the interest of one particular political party.⁸² A free, fair and neutral election could not be held under the present Election Commission as it had lost its neutrality by taking a partisan role. Since it has failed to create a level playing field for all the parties Khaleda demanded resignation of the Chief Election Commissioner and the other two Commissioners and a reconstitution of the Commission with neutral persons. She added that the election could also not be free and fair without the complete withdrawal of Emergency and if it was not done it could only produce a Parliament of selected men, not being the true representatives of the people. She alleged that efforts were being made to hold the election without the participation of the 4-party alliance so that a one-party rule could be established in the country once again.

Whereas the Awami League was fully prepared to take part in the election since the time Hasina left the country in June 2008 following an understanding with the military when she left a directive to all the party activists to organise themselves for an election. While her party moved in that direction, BNP was not sure about its position. Although the 4-point demand of the Awami League was announced but the party, unlike BNP, did not make them a precondition to taking part in the election. Although at different times their leaders had declared that Awami League would not take part in the election without the permanent release of Sheikh Hasina and withdrawal of

⁸⁰ See the *Daily Ittefaq*, 19 November 2008.

⁸¹ See the *Daily Ittefaq*, 16 November 2008.

⁸² See the *Daily Ittefaq*, 1, 2 and 8 November 2008.

Emergency but these statements were meant more for public consumption. By October they had almost prepared their first list of 300 candidates and proceeded for final selection by the formation of their Parliamentary Board.⁸³ They did not wait for any assurance of the government that their demands would be fulfilled. The 4-point demand of the Awami League included— (1) permanent release of Sheikh Hasina; (2) withdrawal of Emergency; (3) amendment of the schedule for upazila election at a suitable time after the national election; and (4) opportunity for those convicted in lower courts to take part in the election while their appeals were pending. The 7-point demand of BNP included— (1) withdrawal of Emergency before the schedule for election was announced; (2) announcement of the schedule for upazila election at a reasonable time after the national election; (3) repeal of the Representation of People's Ordinance (RPO); (4) withdrawal of all cases initiated against Khaleda Zia and other leaders and workers; (5) release of all the leaders still in jail; (6) opportunity for those convicted by lower courts to take part in the election while their appeals were pending; and (7) cancellation of delimitation of constituencies.⁸⁴ So between the two alliances at least 3 demands were identical which could have been easily realised by forcing the government if the Alliances had launched a joint movement. While Khaleda Zia readily agreed to discuss the matter, Hasina wanted a fixed agenda at the initiative of the government on the condition that the election had to be held on 18 December. This in effect amounted a refusal to hold such a dialogue.⁸⁵

In the second round of dialogue with BNP held on 23 October the interim government agreed to 6 out of 7 demands but did nothing to implement them nor made any announcement to that effect. Most astonishing was that when Khaleda demanded that unless appropriate congenial environment was created for the election by accepting the 7-point demand without which the 4-party alliance would not participate in the election,⁸⁶ Sheikh Hasina, contrary to her stand taken prior to the election scheduled for 22 January 2007, which led to the

⁸³ See the *Daily Ittefaq*, 11 November 2008.

⁸⁴ *Ibid.*

⁸⁵ See the *Daily Amar Desh*, 13 November 2008 and the *Daily Manab Zamin*, 15 November 2008.

⁸⁶ See the *Daily Amar Desh*, 8 November 2008; the *Daily Manab Zamin*, 9 November 2008.

proclamation of Emergency, told the British High Commissioner that the nation could not wait if a party did not take part in the election.⁸⁷ The same view was expressed by some leading members of the civil society⁸⁸ including the western diplomats whereas all of them were so much against holding a one-party election in the country in January 2007 and influenced the military to intervene. The impression now given by the government agencies in various ways including arresting senior leaders of the 4-party alliance, even after the announcement of the schedule, that election would take place on 18 December whether the 4-party alliance was able to participate or not in the election.⁸⁹

On 17 November 2008, three days before the extended date of filing nomination papers, Khaleda Zia had issued an ultimatum demanding fulfillment of a revised 4-point demand, reduced from 7, within 48 hours and if it was done the 4-party alliance would participate in the election.⁹⁰ The demands were:

1. complete withdrawal of the state of Emergency;
2. suspension of Section 91E in the RPO by which the Election Commission could cancel any person's candidature;
3. postponement of election for one month; and
4. a fresh announcement of election schedule to facilitate the Haj pilgrims to cast their votes on their return. Khaleda Zia asked the government to respond within 2 days to relieve the nation from the existing suffocating and uncertain situation.

The ultimatum of Khaleda Zia created a desperate situation for the government as well. They now had to decide what to do particularly in view of the stand taken by the Awami League for holding the election on schedule already announced. All the multifarious forces operating within the government made the situation even more difficult for any authority to come to any rational conclusion. Different views were expressed in different directions to achieve different objectives driven by respective vested interests. All the 4 demands

⁸⁷ See the *Daily Amader Shonoy*, 12 November 2008. See also the *Daily Naya Diganta*, 20 November 2008 for what stand the Awami League had taken in December 2006 to stop the election.

⁸⁸ See the *Daily Ittefaq*, 11 October 2008.

⁸⁹ See the *Daily Ittefaq*, 16 November 2008; the *Daily Mannab Zanin*, 16 November 2008 and the *Daily Naya Diganta*, 17 November 2008.

⁹⁰ See the *Daily Ittefaq*, 18 November 2008.

were easy to resolve and yet not accepted. The matter now had to be resolved between General Moeen and the Council of Advisers and the Awami League. The Advisers who took the initiative to negotiate with the parties were soon frustrated. This encouraged those who either wanted to dismantle the election for the army to still dominate the political scene or wanted a one-party election isolating the BNP and the nationalist forces from the mainstream politics. Although newspapers reported various versions of what had happened inside the government on 19 November 2008, but a full reliable account was impossible to assimilate and perhaps would never be available. The public apprehension was that the country was now returning to the pre-Emergency situation.⁹¹

What apparently transpired in public was that the government offered (1) Postponement of the polling day for 10 days to hold it now on 28 December; (2) Complete withdrawal of the Emergency at a reasonable time prior to election depending on the law and order situation; (3) Upazila election on 8 January; and (4) Section 91(E) would be applied with caution in a transparent manner. In other words, the only point the government conceded to allow 10 more days for polling and nothing else. All the election activities were to be controlled and conducted under the Emergency Laws. Moreover these proposals of the government were neither announced officially nor admitted in public to have been made so. The whole matter for some mysterious reasons was kept secret.

The most intriguing of all was that at night on 19 November it was officially announced that the government had out-rightly rejected all the demands of the 4-party alliance. More interesting was the reason given that "since the major alliances could not come to an agreement elections of Parliament and upazila would be held according to the schedule already announced for 18 December for the Parliament and 28 December for the Upazila Parishad,⁹² although in the meantime the Election Commission had indicated that the polling day could be shifted to 28 December. The question was also raised that in the absence of any meeting or dialogue between the Government and the Awami League or BNP or any kind of exchange of views held between the two alliances how could the government come to the conclusion that the parties could not reach to any agreement. Moreover it was

⁹¹ See the *Daily Ittefaq*, 20 November 2008 and the *Daily Amar Desh*, 20 and 21 November 2008.

⁹² Ibid.

never disclosed on what points the alliances agreed or disagreed. The whole matter remained shrouded with mystery. Only one point was clear that none of the parties inside the government did know exactly what was going to happen at the end.

Begum Zia was shocked and surprised at the reaction of the government and she rejected the unilateral announcement as to have been made as a part of a conspiracy to throw the country into a deeper crisis. The statement of the government rejecting the 4-point demand and announcing the dates of elections as before was seen to be a clear indication that the election was now going to be held without the participation of BNP and the interim regime wanted a one-party election.

In this backdrop, after holding a meeting of her Standing Committee and that of the heads of the alliance, on 20 November 2008, Khaleda Zia was compelled by circumstance to announce that the 4-party alliance would take part in the election if it was held on 28 December provided that the Emergency would be completely lifted from the last date of withdrawal of nomination, Section 91(E) of the RPO be repealed and the upazila election shifted for a month. Despite the conditions attached, the announcement invited a positive reaction in all sections of people with a sense of relief that BNP was now going to take part in the election. On the other hand having put BNP into the most disadvantaged position in every respect a major group backed by the external forces now moved to support the new date of election agreed by Khaleda to make the election credible with the participation of BNP. Having been convinced and confident about the victory of the Awami League, an election with the participation of BNP was found to be much more favourable than to have a one-party election endangering unforeseen consequences. Awami League also, as an experienced political party for its own long-term benefit readily agreed to the shifting of date to December 28.

Finally, on 23 November 2008, the Election Commission under the continuing restrictions of Emergency announced a fresh schedule fixing the polling date on 28 December (later changed to 29 December) and 29 January 2009 for upazila election.⁹³ The date of submission of nomination papers for the Parliament was fixed on 30 November and for Upazila Parishad on 3 December, still keeping both the process to continue simultaneously detrimental to a smooth holding of the national election.

⁹³ See the *Daily Ittefaq*, 24 November 2008.

On the next day with only 5 days in hand for filing nominations of 300 candidates, BNP officially declared to join the election subject to the fulfillment of 3 other conditions and invited applications for nomination within next 2 days.⁹⁴ Although the nomination process had thus began with 2063 applications submitted by the date-line, it was still not certain whether BNP alliance would actually participate in the election.⁹⁵ Due to shortage of time, in violation of past tradition, the Parliamentary Board instead of granting interview to each applicant on an individual basis for which each had to deposit a huge amount of Tk. 21,000, had interviewed the candidates in lot, district-wise, creating great amount of disappointment and frustration among the candidates.⁹⁶ As a consequence in selection of candidates actual criterions could not be applied correctly resulting in choosing wrong candidates in many constituencies.

For the Awami League, it was an easy and confident course as they had struck behind-the-scene understanding with the interim regime. They had all the national and international advantages to their side. As a political party, experienced and better organised, it moved fast to make itself ready at all levels to take part in the election whether any of their conditions including lifting of Emergency was fulfilled or not or whether Sheikh Hasina was fully freed or not. After having failed in all their schemes to perpetuate in power, when the question of choice arose between the Awami League and the BNP, the obvious choice for General Moeen with his cohorts and Dr. Fakhruddin and his Council was for the Awami League, who would give them protection and shelter as opposed to BNP, whom they had betrayed and strangulated in collaboration with each other in the last two years of the interim regime. The Election Commission was the instrument for facilitating this scheme.

Although some leaders including Sheikh Hasina had suffered at the crude hands of the regime upto the point where it thought it could go forward with its own agenda without the politicians, but the subsequent hope, potential, assurance and greed of returning to power was sufficient for a much satisfying solace and compensation for Hasina to join hands with the same forces. In the global context the strong position of the Awami League on secularism and joint action

⁹⁴ See the *Daily Amar Desh*, 25 November 2008.

⁹⁵ See the *Daily Ittefaq*, 27 November 2008.

⁹⁶ See the *Daily Ittefaq*, 28 November 2008.

against religious terrorism helped the party in gaining support of India and the United States, the two most vitally important countries for Bangladesh to survive both in terms of economy and geo-politics. For India, the rising Asian power, destined to play a more leading role in the world stage surrounding Bangladesh in all 3 sides, an Awami League government, reared and restored during the Liberation War and after, was always close to their heart.

At the same time, in contrast to the position of the Awami League, BNP was in shambles in all respect. A party battered, dislocated and tortured to ashes in last two years, all the wings of the party had been trimmed by the arrest and conviction of a large number of its leaders. It had shattered its foundation. The sustained propaganda of corruption of the leaders and its affiliation with Islamic ideologues made the party isolated from the mainstream support of the West with the continued hostility of the country's most powerful neighbour India.

Besides the serious organisational drawbacks with a large number of senior leaders locked up in jail and hundreds of criminal cases pending against numerous leaders and workers rigorously pursued by the government agencies hostile to BNP, the party suffered from a dire crisis of formidable candidates in about 100 constituencies. Almost 50 of the potential candidates already convicted and debarred from taking part in the election with an equal number who had joined Mannan Bhuiyan as "reformists" disqualified from within the party for nomination and almost 56 constituencies being dislocated by delimitation to the direct disadvantage of BNP, created an insurmountable vacuum for the party to get candidates for a meaningful contest in the election.⁹⁷

On account of court cases against politicians, a great amount of imbalance persisted between the two major alliances seriously impairing a level-playing field for all the contending parties to enjoy an equal and fair deal in the election. By the end of October 2008 while all the political leaders of the Awami League whether convicted or not were free, at least 21 central leaders of BNP were still in jail. Besides, during the interim regime 92 criminal cases were filed against the central leaders of BNP as against 21 of the Awami League, 65 BNP leaders were arrested as against only 10 of the same level, and 32 leaders of BNP were convicted as against 6 of the Awami League.⁹⁸

⁹⁷ See the *Daily Amader Shomoy*, 4 November and the *Daily Jugantar*, 9 November 2008.

⁹⁸ See the *Daily Amar Desh*, 9 November 2008.

While Sheikh Hasina without any due process of law was released by an executive order as long back on 11 June 2008 and enjoyed her total freedom, Khaleda Zia languished in jail till 11 September 2008 when she was freed on bail granted by the Supreme Court. When there was no Awami League leader in jail and the Election Commission had already announced the schedule for election not only cases against the BNP leaders were pursued to keep them occupied in legal battles, warrants were also issued in Barapukuria Mine Project Case against the most senior leaders of the 4-party alliance including Saifur Rahman, M.K. Anwar, Shamsul Islam, Motiur Rahman Nizami and Muhammad Muzahid to make them surrender before the court, just before 10 days of polling date. Furthermore, the anti-BNP bias of the regime was further demonstrated when a slanderous accusation of money laundering against Koko, youngest son of Begum Zia was highlighted in all the media to influence the voters against BNP all over the country.⁹⁹

The persecution suffered by the Awami League leaders compared to BNP was insignificant, numerically not more than 10%. Out of 12 Standing Committee members of BNP 6 were jailed as against 4 of 14 Presidium Members of the Awami League, 28 office holders of the Central Executive Committee of BNP were jailed as against only 2 of Awami League, 48 former MPs of BNP were jailed as against 18 of Awami League. At the district and upazila level thousands of BNP leaders were put in jail as against an insignificant number of the Awami League.

In respect of fresh delimitation affecting 146 constituencies BNP suffered most. Prior to the delimitation BNP had won in 88 of those constituencies¹⁰⁰ as against 21 by the Awami League. But now under the fresh delimitation of 84 seats BNP has been directly affected in 56 seats causing a probable loss of a huge number of seats in the newly demarcated constituencies.

In that situation Khaleda Zia faced the biggest challenge of her political career. The party had never faced such a crisis since its inception. The crucial question was whether in such circumstances BNP ought to take part in the election or not. By doing that should the

⁹⁹ See the *Daily Ittefaq*, 19 December 2008.

¹⁰⁰ See the *Daily Ittefaq*, 4 November 2008.

party render validity to the accession of the Awami League to power? It was a dilemma of a highly sensitive political dimension. The ground considerations never made Khaleda Zia feel to go for election as she could easily guess what was going to be the fate of the election and at one point took the stand not to participate in the election. Besides the external powers, with the three vitally important internal forces such as the military led by General Moeen, the civil and police administration under Dr. Fakhruddin and the machineries under the Chief Election Commissioner were opposed to BNP and in the total absence of any kind of neutrality and level-playing field the question of Khaleda Zia, despite the mass support, to gain a majority to return to power was incomprehensible.¹⁰¹

Nevertheless in the midst of all these BNP gradually proceeded towards election with a great amount of uncertainty. Although the process of nomination had to begin, but Khaleda Zia was still not sure whether to participate in the election or not. She registered herself as a voter as late as on 29 November without which she could not contest in the election, only one day before the date of filing nomination.¹⁰² In awarding nomination, the intra-party rivalry between the potential candidates in most of the constituencies, the pulls and pushes in sanctioning nomination, the anger and resentment amongst the rank and file in the party alleging wrong selection of candidates, distribution of seats among the components of the Alliance, BNP faced far more serious problems compared to Awami League. Having had faced crisis in at least 100 constituencies where the party had lost formidable candidates because of convictions or otherwise of the leaders and former MPs, delimitation of constituencies and exclusion of the candidates known as "reformists," it was extremely difficult for BNP to reconcile with the situation. Out of 193 seats BNP had won in the election held in 2001, the number of winning candidates came down to only 93 in those constituencies.

Despite the fact that 7 candidates submitted applications for nomination in one constituency in average, the number of suitable and winning candidates were not easy to find. In many constituencies the "reformists" contesting as independent candidates also appeared as a threat to the BNP candidates officially nominated. Because of the

¹⁰¹ See the *Daily Naya Diganta*, 4 November 2008.

¹⁰² See for the *Daily Ittefaq*, 30 November 2008.

deficiency in finding correct candidates frequent changes had to be made in the list of candidates upto the last day. Taking the advantage of the weaker position of BNP, Jamaat-e-Islami pushed a list for 57 seats, finally settled for 34 seats, with 4 other constituencies where they fought with BNP candidates.¹⁰³ Because of the anomalies and dislocations suffered by BNP, in 15 constituencies it could not put any official candidate at all and it had to nominate nearly 100 new candidates.¹⁰⁴ In the midst of such a political melee and chaos prevailing in the country with the terror of Emergency running in parallel, the manifesto presented by the Awami League on 12 December with 23 point commitment and BNP on 13 December with a 36-point commitment, the documents were neither read nor had any impact on the people.¹⁰⁵

Having had only 15 days in hand, while Khaleda Zia was on a whirlwind restless campaign for more than 18 hours a day, Sheikh Hasina took it easy because of the assured confidence of her victory and consequently had not covered the remote areas¹⁰⁶ of even 10% of what Khaleda had done. While Sheikh Hasina during the campaign felt fully secure, in her campaign Khaleda Zia, 4 days before the polling day, was under a serious grenade attack¹⁰⁷ near a public meeting she went to address at Chandina, Comilla.

During the entire period from the day she was released upto the 11 of December the last day of withdrawal of nomination papers, Khaleda Zia was suffering from acute indecision whether to participate in the election or not. The withdrawal letters from those who were awarded nomination were already obtained at the time of granting nomination and she had the option of withdrawing from the election race on the 11 December 2008, as Sheikh Hasina did after having filed nomination for her Alliance in all the 300 seats in December 2006. But Khaleda Zia at the end under a tremendous pressure of Jamaat-e-Islami did not exercise this option and finally decided to take part in the election. What it meant was that the party

¹⁰³ See the *Daily Ittefaq*, 12 November 2008.

¹⁰⁴ See the *Daily Amar Desh*, 1 December and the *Daily Ittefaq*, 6 December 2008.

¹⁰⁵ See the *Daily Prothom Alo*, 13 December; the *Daily Ittefaq*, 13 December and the *Daily Amar Desh*, 14 December 2008.

¹⁰⁶ See the *Daily Ittefaq*, 15 December; the *Daily Amar Desh*, 24 and 27 December 2008.

¹⁰⁷ See the *Daily Amar Desh*, 24 December and the *Daily Manab Zamin*, 25 December 2008.

and the candidates only then became certain that they were going to participate in the election for which they had hardly 15 days in hand in contrast to the massive preparation of the Awami League of more than 6 months, from 10 June 2008, the day Sheikh Hasina was released from prison on parole under an understanding with the interim regime.

What did at the end lead Khaleda Zia to decide to join the election need to be analysed. With all the severe predicaments and disadvantages she and her party had, the only logical conclusion would have been for her not to participate in the election and allow Awami League to return to power in an one-sided election. Such an election would not have any credibility to provide an opportunity to BNP to launch a vigorous movement against the new government to force an early election as it was done in 1986 and 1996 and to return to power in a triumph. This would have been an easier course for Khaleda Zia and the boycott of the election could be justified by her with all the grounds she had in hand to carry the people.

But at this crucial time some other thoughts also dominated her mind:

1. Boycott of election by BNP could lead to further chaos and anarchy in the country to force a repetition of what happened in January 2007 and allow the military backed by India and USA go for direct intervention in the administration and take the country to the direction they had earlier designed for which she could be blamed in history.
2. The situation could have caused further damage to her as the new regime would have gone for a total annihilation of her leaders and workers as a reprisal all over the country by way of further torture, repression and filing cases from which Tarique and Koko would not have been spared.
3. As Jamaat-e-Islami had taken a very strong stand in favour of participating in the election¹⁰⁸ and relentlessly pursued her to do so, Khaleda feared that, Jamaat would at the end proceed to take part in the election to consolidate their own political future and emerge as an alternative force in the country by securing more seats in the absence of BNP in the electoral race. This would not only dismantle the 4-party alliance but fully isolate BNP from the mainstream pro-Islamic politics.

¹⁰⁸ See the *Daily Ittefaq*, 18 November 2008.

4. Even if BNP did not win the election it would at least secure 100 seats to constitute a strong opposition in the Parliament and play a formidable role in the continuation of democracy and a constitutional rule in the country. Considering all these factors, despite all the delays, financial constraints, uncertainties, drawbacks and disadvantages, Khaleda Zia decided to take part in the election.¹⁰⁹

Once the election campaign started rolling particularly after the last date of withdrawal of nomination papers on 11 December 2008, none of the major parties or Alliances was in a position to insist on the fulfillment of their demands and the issues earlier raised became irrelevant. The Awami League were not serious about their demands in any case as they had already decided to take part in the election whether Sheikh Hasina was fully freed or not, as long as she could contest in the election or the Emergency was withdrawn or not. For BNP, although upto a point they were serious about the complete withdrawal of Emergency but eventually since they were no more in a position to turn back, the party accepted the reality and moved forward to take part in the election. With respect to the upazila election, since it was shifted till after the national election to be held after the installation of an elected government and each party expecting a respectable return of seats, none raised any further objection. With regard to Emergency, besides the desire of the regime to continue with it as long as possible all those from within and outside the country who were instrumental to the imposition of Emergency expressed their views that "election could be held under a state of Emergency." Besides, Dr. Kamal Hossain and others, the statements of the Indian High Commissioner and the Resident Co-ordinator of the UN, Ambassadors of the USA, UK and finally of the European Union who not only supported the same views but agreed to send observers even if the election was held under an Emergency which some of them had earlier denied to do.¹¹⁰

¹⁰⁹ The author, released from prison only on 1 December 2008 by which time all the formalities of nomination were completed without realizing the actual situation was in favour of taking part in the election.

¹¹⁰ See Dr. Rezwana Siddiky "Hatao Reneta Lock, Bachao Bangladesh," the *Daily Naya Diganta*, 15 October 2008, Also the *Daily Amar Desh*, 12 October 2008; the *Daily Naya Diganta*, 2 November; the *Daily Ittefaq*, 16 November; the *Daily Amar Desh*, 31 July 2008. See statement of the Indian High Commissioner, the *Daily Amar Desh*, 19 October 2008.

In summary, although the state of Emergency was formally revoked from 17 December, only 11 days before the polling day, for all practical purposes the national election of 2008 was held under the continuing shadow of the Emergency Ordinance and there was no environment congenial for a free, fair and neutral election in the country.

Finally, in the polling held on 28 December 2008, surpassing any past record with more than 86% votes cast, the Awami League and its grand Alliance swept the votes and secured 262 seats and the BNP-led Alliance secured only 30, compared to 216 seats they secured in the election held in October 2001. The Awami League alone secured 230 seats and BNP only 27 compared to BNP securing 193 seats and the Awami League 62 in 2001. While the Awami League secured about 48% of the votes compared to about 40% in 2001, BNP this time had obtained 33% compared to about 41% in 2001, the total swing being around 15% in favour of the Awami League. While Jamaat secured 17 seats in 2001, it had only 2 seats in 2008. While all the central leaders of the Awami League won in the election, all the central leaders of BNP other than Khaleda Zia had lost in the election with a deplorable margin. BNP lost in most of the constituencies so far traditionally being their strongholds and won in the past and in Divisions like Dhaka and Sylhet, BNP failed to secure any seat out of 93 constituencies in Dhaka and 19 in Sylhet. In Chittagong, BNP secured 15 out of 36, in Rajshahi 8 out of 63, in Barisal 2 out of 16 and in Khulna 2 out of 33.¹¹¹

In the election, the big names like Professor Badruddoza Chowdhury and Dr. Kamal Hossain who always maintained a high moral road in their struggle to rehabilitate themselves in mainstream politics had performed even worse with all the candidates failing to save even the deposits. The Bikalpa Dhara Bangladesh led by the former President Badruddoza Chowdhury had 63 candidates securing only 0.21%, not even a quarter of a percentage of the votes cast, and the 45 candidates of Gono Forum of Dr. Kamal Hossain secured even less 0.10 percent of the total votes, 25 other smaller parties put together secured only 2 percent of the votes cast.¹¹²

¹¹¹ See for detail the *Daily Ittefaq*, 31 December 2008.

¹¹² See *The Daily Star*, 2 January 2009.

Table 13.1: Election Results in 2001 and 2008

Election in 2001 (Vote Cast 74%)		Election in 2008 (Vote Cast 86%)			
Awami League-62 BNP-193		Awami League-230 BNP-27			
Jamaat-17		Awami League and Alliance-262 BNP and Alliance- 30			
Awami League-40% BNP-41%		Jamaat-2 Awami League-48% BNP-33%			
<i>(The figures slightly changed in the final result)</i>					
<i>Distribution of Seats: 2001</i>					
Division					
Dhaka	Sylhet	Chittagong	Rajshahi	Barisal	Khulna
Awami League-31 4 Party Alliance-55	Awami League-7 4 Party Alliance-10	Awami League-4 4 Party Alliance-53	Awami League-9 4 Party Alliance-49	Awami League-3 4 Party Alliance-18	Awami League-8 4Party Alliance-29
<i>Distribution of Seats: 2008</i>					
Division					
Dhaka	Sylhet	Chittagong	Rajshahi	Barisal	Khulna
Grand Alliance-93 4 Party Alliance-Nil	Grand Alliance-19 4 Party Alliance-Nil	Grand Alliance-36 4 Party Alliance-20	Grand Alliance-63 4 Party Alliance-8	Grand Alliance-18 4 Party Alliance- 3	Grand Alliance-33 4 Party Alliance-2
<i>Distribution of Seats: 2008</i>					
Division					
Dhaka	Sylhet	Chittagong	Rajshahi	Barisal	Khulna
Awami League-87 BNP-Nil	Awami League-17 BNP-Nil	Awami League-31 BNP-15	Awami League-48 BNP-8	Awami League-18 BNP-3	Awami League-30 BNP-2

Source: ASM Shamsul Arefin, *Bangladesher Nirbachan (Election) 1970–2008*, Bangladesh Research and Publications, Dhaka, 2011.

It was a devastating defeat for the BNP. Even if it had not hoped to win but it never expected such a humiliating defeat securing only a meager number of seats to occupy the position of the smallest opposition in Parliament in last 30 years. Despite all the disadvantages and the odds it had to withstand, such a result was incomprehensible

and looked irrational considering the colossal mass support BNP still enjoyed at the grass roots level. In the midst of all the predicaments and the very late decision to participate in the election, the vociferous campaign of Khaleda Zia with all her charisma attracting millions of people to her 150 public meetings in 15 days gave an impression that BNP was still immensely popular and would secure perhaps more seats than anticipated.¹¹³ It was thought that her uncompromising stand in not agreeing to the persistent pressure of the regime to leave the country, the sympathy expected due to the persecution she and her party leaders had suffered, her strong anti-Indian stand, seeking of forgiveness of people for the mistakes committed by her in the last government at the public meeting at Paltan Maidan¹¹⁴ and finally her call to "save the country, save the people" had aroused sufficient public sentiment and support to give BNP a leading position in the election. Along with the mammoth public meetings, in 4 public opinion polls including one by a foreign organisation conducted by weekly Probe Magazine,¹¹⁵ National Democratic Foundation, Asian Young Democratic Forum and Research & Database Foundation¹¹⁶ showing the 4-party a winning lead in the election had boosted Khaleda's morale and confidence to think that she did not after all make any mistake in deciding to take part in the election.

It was a silent revolution. The day of polling was peaceful with far less violence compared to the past elections. Although the traditional spontaneous festive mood was absent during the entire campaign period but on the election day large number of men and women lined up at the polling centers and voted on the day in presence of the respective agents. There was little evidence of explicit vote rigging or of forcibly capturing polling booths. The polling was endorsed by all the foreign observers and media at home and abroad as free and transparent. Sheikh Hasina's stand on secularism and against the Islamic fundamentalists, her appeal for a change to establish a modern digital Bangladesh seemed to have attracted the newly registered 15 million youth voters and her promise to reduce the price of rice from Tk. 40 to Tk. 10 per kg, free fertilizer for all the farmers and one job for each family seemed to have swept the rural men and women. It gave

113 See the *Daily Amar Desh*, 17 December 2008.

114 See the *Daily Ittefaq*, 28 December 2008.

115 See the *Daily Anader Shomoy*, 24 December 2008.

116 See the *Daily Amar Desh*, 27 November 2008.

her a thunderous victory in the election. If not so much a positive endorsement, the casting of vote had certainly reflected also a negative support for her as a reaction to the—

1. mis-governance of the last BNP-led government;
2. allegation of massive corruption of the leaders of BNP;
3. association with Jamaat blamed as an anti-independence force with allegation against some of their leaders as war criminals;
4. rise of Islamic fundamentalism with the involvement of some ministers of BNP government;
5. power, influence and corruption of “Hawa Bhaban” in the name of the members of the family of the Prime Minister;
6. failure in resolving the issue of formation of the non-party caretaker government by an acceptable Chief Justice and allowing President Iajuddin to assume the office of the Chief Adviser in 2006,¹¹⁷ and
7. besides all, the voters wanted to get rid of the illegitimate government of Moeen Uddin and Fakhruddin at the earliest opportunity.

So the misdemeanors of the Awami League as an opposition committed during the entire period of the last BNP government and its role in organising the “*logi-baitha*” attack and all the political anarchy leading to forcing the Proclamation of Emergency was ignored by the people. The subsequent understanding with the interim regime and the Army Chief helped Sheikh Hasina to consolidate her position and win the election.

The victory with such an astounding margin appeared to be incomprehensible. It had surprised most of the Awami League leaders and Sheikh Hasina herself. It seemed to have been an “over-kill” by those in the Election Commission and the interim regime who designed a victory for Awami League creating a political imbalance endangering the growth of democracy. In the prevailing circumstances, Awami League in any case perhaps would have won with a comfortable margin but the manipulation as suspected had only blackened the quality of the victory.

The political culture of Bangladesh makes it difficult to accept defeat. The astronomically large margin in favour of Awami League

¹¹⁷ See the *Daily Ittefaq*, 31 December 2008.

made it even more difficult to convince the defeated parties whether the election had truly reflected the wishes of the people. It was alleged that although there was nothing found to be wrong on the polling day and it was visibly fair and peaceful but the results of the election were unusual, unnatural and unbelievable. Despite all the faults, disadvantages and predicaments it had, the BNP having been elected two full terms to run the government in the recent past with a vast mass support could not have done so badly as to reduce its support to a meager seats of 27, later added by 3 more, in the Parliament.

So suspicion and assumptions continued to grow to the extent of saying that the entire election was meticulously planned and completed under a "blue print" prepared by a military agency with the allegations that— (1) part of the ballot papers was printed in the Army printing press; (2) a certain number of ballot papers was already stuffed into the ballot boxes given to selected Presiding Officers in each of the marked constituencies kept in a separate room and mixed at the time of counting half an hour after the closing of polls in the presence of only one agent of each candidate who would have no knowledge of how many ballot boxes were used in other booths of the same centre; (3) due to the State of Emergency and lack of free movement, in the absence of general enthusiasm and festivities, in most of the polling centers, booths for males were found without any voter by noon and yet the turnout of more than 87% voters was abnormal; (4) in 85 constituencies votes cast were recorded as between 90 and 95.43% and in 1,77,277 centers in every minute a vote was cast, which was not physically possible.¹¹⁸ Even the Chief Election Commissioner had found them unnatural and "unthinkable—";¹¹⁹ (5) a large number of people were not enlisted in the voter list and another large number of voters could not cast their votes because of the confusion between the ID Card number and the Serial number in the voter list; (6) the agents of the candidates were not given any voter list with photographs for which they could not identify the voters at the time of polling, giving rise to a great amount of irregularity committed by the Polling and Presiding Officers; and (7) in some constituencies local army officers were found openly supporting the Awami League candidates.¹²⁰

¹¹⁸ See the *Daily Amar Desh*, 1 and 2 January 2009.

¹¹⁹ See the *Daily Naya Diganta*, 3 January 2009.

¹²⁰ See the complaint of Col. (Rtd) Oli Ahmad alleging that there might be a conspiracy or a coup in producing such an one-sided result. The *Daily Amar Desh*, 1 January 2009.

Chapter 14

Thirty Days of the New Government

Beginning of the New Government

There were allegations of gross election irregularities which however could not be proved in any court of law or in the Election Tribunal. But a peaceful polling or a high turnout of voters cannot be the only criterion of a good election. The horrendous situation created by the interim regime, the continuation of the restrictions of the State of Emergency till 16 December, the persecution of politicians, a total absence of level-playing field and the partisan interest taken by General Moeen, Dr. Fakhruddin and the Chief Election Commissioner in favour of the Awami League is an "investment" for their post-election protection vitiated the entire environment for a free, fair, neutral and spontaneous election in the country. It was indeed a controlled election designed to ensure an Awami League landslide by means of having a peaceful polling day.

On the other hand, notwithstanding all the allegations and the diabolical imbalances in the margin of seats between the two major contending parties, the fact is that the people had *prima facie* given the Awami League an overwhelming mandate to govern the country and the 4-party alliance under the leadership of Khaleda Zia had been rejected by the people. It would be unrealistic to deny the authority of the Awami League to rule in the light of the votes they have received and the commitments they made for a prosperous future of Bangladesh.

So the victory in the election held on 29 December 2008, was a day of great political triumph for Sheikh Hasina, voted to govern the country with a majority which no other party could gain in a franchise since the election held in 1973 led by her father. With more than three-fourths majority in the Parliament, the emergence of Hasina to power was certainly marked as a spectacular achievement in the political history of Bangladesh. Within 8 days after the election, on 6 January

2009, Sheikh Hasina took oath of office as the Prime Minister¹ for second time with a cabinet of 21 Ministers and 8 State Ministers composed of members relatively young and inexperienced in exclusion of the senior leaders of the party. The important and sensitive portfolios like the Ministries of Foreign and Home Affairs were given to totally inexperienced persons which was widely criticised. But Prime Minister at the same time was commended for presenting a new government with new faces to fulfill the aspirations of the people. The selection of Zillur Rahman, a respectable non-controversial leader of the Awami League by Sheikh Hasina as the President of the Republic was also acclaimed. More so because Zillur Rahman had drawn the sympathy of all sections of people when he lost his wife, Ivey Rahman during the grenade attack on 21 August 2004, which was aimed at Sheikh Hasina while addressing a public meeting in Dhaka.

The massive number of seats in the Parliament had also put on Sheikh Hasina a larger responsibility to fulfill the long awaited expectations of people. In the light of the bitter experience of the past, the public aspirations rose high. Besides the economic progress for a better life in the future they expected from the new government a redefined political culture, examples of tolerance, forbearance and patience towards its critics, honour and respect for the opposition, independence of the Judiciary and rule of law, an effective Parliament as the real center of politics, an administration based on merit and competency without any bias of party affiliation, peace for all by bringing the law and order under control, restraint from using power to any kind of repression against the opposition in violation of human rights and take such constructive measures so that the political parties did not resort to confrontation and violence in future.

On being aware of all these chronic issues, soon after her victory in the election, Sheikh Hasina at her first press conference made among others four announcements of great public importance: (1) in running the Parliament, despite the fact that they had small number of seats, the government will uphold the honour of the opposition and enable them to play an effective role. She invited the opposition to work together for the good of the country by forgetting political differences; (2) politics of violence and confrontation will be abandoned; (3) the nation will be presented with a new political

¹ See the *Daily Ittefaq*, the *Daily Prothom Alo* and the *Daily Amar Desh*, 7 January 2009.

culture; and (4) the Deputy Speaker of the Parliament will be elected from the opposition.²

Unfortunately, within weeks after making such a welcoming statement the performance of the ruling party was most disappointing and in most areas was just the opposite. An account of the first 30 days of the new government would be sufficient to give a profile of what kind of government the people had after such a phenomenal victory as against the much highlighted expectations and what kind of future the nation would have to endure for another 4 years and 11 months, during the rest of its tenure.

It all began with the acts of attrition and reprisals against the political opponents even before the day she made the announcement.³ The day Sheikh Hasina addressed the Press Conference on 31 December saying that she would like to work with the opposition for a better future of the country and she did not believe in political revenge, the workers of the Awami League had launched a crusade all over the country against the BNP leaders, workers and their properties causing death to one person and injury to more than 50 including women. From Borguna to Bandarban, in at least 15 districts, atrocities occurred⁴ gradually spreading all over the country from village to village with only few exceptions. These acts of terror, beating, murder, extortion, abduction, loot, arson, grabbing of land, shops, houses, paddy fields, fish, poultry and dairy farms, and filing of false cases against the political opponents continued with impunity. The local police had no courage to take action against such highly patronised party cadres. On each day including the day the new government had taken oath, such incidents occurred all over which even the pro-government newspapers could not avoid publishing.⁵ In such skirmishes not even the minorities were spared.⁶

By the time Sheikh Hasina passed the first day in her office as the Prime Minister on 7 January 2009, 11 BNP leaders at different levels

² See the *Daily Ittefaq* and the *Daily New Age*, 1 January 2009. The *Daily Amar Desh*, 4 January 2009.

³ See the *Daily Ittefaq*, 31 December 2009.

⁴ See the *Daily Ittefaq*, 1 January 2009.

⁵ Reference to all the sources are not necessary. Only few are cited: The *Daily Prothom Alo*, 2, 5, 6, 25, 26 January 2009 and 6 February 2009. The *Daily Ittefaq*, 3, 10, 11, 13, 16, 24 January 2009 and 4 February 2009. The *Daily Amar Desh*, 2, 3, 4, 6, 8, 10, 16, 18, 19, 27, 29, 31 January and 2, 4, 5, February 2009. The *Daily Naya Diganta*, 3, 30 January 2009 and 8 February 2009.

⁶ See the *Daily Amar Desh*, 4 January 2009.

were killed by the Awami League progenies.⁷ As the situation went out of command of the government the spokesperson of the party had to address a letter to all the Awami League leaders at District and Thana levels asking them not to take up law in their own hand and warned that disciplinary action would be taken against those who would violate the directions of Sheikh Hasina but the letter was not paid any heed to.⁸ By the end of 30 days of the assumption of office by Sheikh Hasina under her government a total of 31 leaders and workers of the political opponents were killed, almost one a day by the ruling party men and thousands lamed, crippled and maimed.⁹

What Chhatra League, a student affiliate of the Awami League did was beyond comprehension. They took over all the educational institutions over night, control of all the 27 public Universities of the country creating a total anarchy in the academic arena. The state of lawlessness had further deteriorated with the frequent fights between the groups within their own front over the issue of leadership and intra-party rivalry.¹⁰ The student leaders and supporters of the opposition were not only attacked and beaten but also driven out of their dens and every dormitory was cleared up to fill in with the supporters of the ruling party. This megalomaniac affair was no more within the control of the party high command. Despite the direction of the Prime Minister to stop such activities the Chhatra League students went on with their rampage as they thought that the Prime Minister did not mean what she said and such orders were uttered only for public consumption. Universities and other educational institutions were closed down on many such occurrences causing postponement of examinations creating further session jams to the detriment of the entire student community. On 10 January, Khulna Medical College was closed down. In the first 15 days after the victory in the election, 93 examinations were postponed in Dhaka University alone.¹¹ In Rajshahi University at one stage the Awami League students attacked the teachers and the journalists in the face of the protest resolutions

⁷ See the *Daily Amar Desh*, 8 January 2009.

⁸ See the *Daily Prothom Alo*, 10 January 2009.

⁹ See the *Daily Amar Desh*, 8 February 2009.

¹⁰ See the *Daily Ittefaq*, 10 and 11 January 2009; *The Daily Star*, 17 and 20 January 2009; the *Daily Shamakal*, 17 January 2009.

¹¹ See the *Daily Ittefaq*, 11, 15 January 2009; the *Daily Amar Desh*, 10, 11 and 14 January and the *Daily Shamakal*, 11 and 15 January 2009.

passed by the University Teachers Association, the Press Club and other civil society organisations.¹² They continued with their vandalism all over the country without any restraint from any quarter. On 17 January, the government students issued an ultimatum and encircled the residence of the Vice-Chancellor of Chittagong University demanding his resignation within 48 hours.¹³ On the next day, the students locked the main gate and the entrance of all the buildings of the University. The situation instantly muzzled the image of the government. The temporary measure of suspending the activities of the League in the Jahangirnagar University had no effect on the ground.¹⁴ On 28 January, at a midnight raid, the Awami League students, forcibly occupied more than one hundred residential rooms of the Shahjalal Science and Technology University at Sylhet.¹⁵

The Awami League students did not keep their activities limited to only occupying seats, rooms or dormitories of the universities or colleges and changing names of residential halls,¹⁶ they involved themselves extensively in making quick money by way of extortion, by manipulating and influencing public tenders, drug trafficking and other crimes as well.¹⁷ As a result, as the police remained silent due to political pressure, with the reappearance of the dons of terrorism—the Awami League godfathers in the scene, the over all law and order situation continued to deteriorate,¹⁸ as admitted by the Home Minister herself.¹⁹ Whatever good the government intended to do was totally demolished by their own students. In the first 30 days of the government incidents of extortion and hijacking only multiplied compared to the earlier months.²⁰ The horrifying acts of atrocities,

¹² See the *Daily Naya Diganta*, 17 January 2009.

¹³ See the *Daily Amar Desh*, 18 January 2009.

¹⁴ Read Matiur Rahman, "Prodhan Mantri Chhatra League Shamlan," the *Daily Prothom Alo*, 18 January 2009. See also the *Daily Ittefaq* and the *Daily Amar Desh*.

¹⁵ See the *Daily Manab Zamin*, 30 January 2009.

¹⁶ See the *Daily New Age*, 19 January 2009.

¹⁷ Mahfuz Anam, "The Prime Minister is being embarrassed by her own party men," *The Daily Star*, 27 January 2009. See also the *Daily Amar Desh*, 18 January 2009; the *Daily Prothom Alo*, 19, 26, 27 January 2009; the *Daily Jugantar*, 27 January 2009

¹⁸ See the *Daily Ittefaq*, 18 January 2009; *The Daily Star*, 19 January 2009; the *Daily Ittefaq*, 20 January 2009; *The Daily Star*, 20 January 2009 and the *Daily Prothom Alo*, 31 January and 14 February 2009.

¹⁹ See the *Daily Amar Desh*, 4 February 2009.

²⁰ See the *Daily Ittefaq*, 7 February 2009.

including loot and plunder perpetrated by the members of the Chhatra League and Jubo League, the two masquerading forces under the patronage of the Awami League, the law and order situation went beyond redemption causing immense suffering to all sections of people.

On the one hand, the upbeat vandalism of the students in the campuses and on the other hand the strong government interference in the management structures of the universities, made the entire environment in the educational sector unpalatable with a stink of a narrowly viewed partisan politics of the ruling party. In all the public universities, it was no more the academic excellence or calibre that was counted to fill-up the top posts of these institutions. In less than a week after, the new government was installed the process started to select persons for top positions based on party affiliation rather than experience or quality. All the sitting Vice-Chancellors were removed or forced to resign followed by changes in the posts of Deans and Hall Provosts. Political allegiance to the government soon turned out to be the only criterion in total disregard to the procedure laid down in law for appointment of Vice-Chancellors. From the University of Dhaka to the Open University, all the posts of Vice-Chancellors, Pro Vice-Chancellors and Treasures were filled-up on the basis of political allegiance. The first was the appointment of Arefin Siddique on 15 January as the Vice-Chancellor of Dhaka University once called the Oxford of the East. He was a Professor of Public Relations and Journalism, a department or subject not considered to be a part of the academic mainstream.²¹ Professor Siddique held a doctorate degree from a little known Mysore University of India but is a strong supporter of the Awami League. In the same way, Principals of 12 major colleges including Dhaka and Eden College were also changed over night based on the same criterion of loyalty to the party.²²

The same happened in the civil and police administration at a much faster speed. As soon as the new government was installed a vigorous screening was conducted to remove any official posted or appointed or promoted during the government of the 4-party Alliance from the posts they were currently holding. It was not only in the Secretariat or Ministries, it was spread all over the administration, in all the departments, directorates, semi-autonomous bodies, corporations,

²¹ See the *Daily Amar Desh*, 4, 16 January 2009; the *Daily Ittefaq*, 12 and 22 January 2009.

²² See the *Daily Ittefaq*, 4 February 2009.

boards, authorities, commissions, banks including the Central Bank, societies and co-operatives or any organisation where the state had any control. From the Thana Nirbahi Officer upto the Divisional Commissioners, from the Officer-in-Charge of a Police Station upto the Inspector General of Police, from the Senior Assistant Secretary upto the post of a Secretary, from a Member or a Director upto the Chairman of any autonomous board, bank or authority were replaced. Only those persons who owed allegiance to the Awami League were appointed or promoted or posted disregarding the age-old principles of merit, seniority or competency, causing a great amount of commotion, fear, panic and insecurity amongst the officials in the entire administration of the country.²³

On 27 January, in one of such exercises 72 Joint Secretaries in a mass was promoted to the posts of Additional Secretaries although the number of vacant post was only 20, by committing all kinds of irregularities²⁴ superseding at least 50 senior officials. The government also took some retrospective actions. It took initiative to review cases of 1500 officials who were allegedly deprived of their promotion during the last periods of BNP rule in 1991-96 and 2001-06 although Awami League ruled in between for 5 years in 1996-2001.²⁵ The purpose was to victimise those they disliked and reward those they liked. In the posting of the Judges in the lower courts and appointment of new Judges in the High Court Division equal importance was given to party allegiance.

In the upazila elections held on 22 January 2009, in less than 3 weeks after the installation of the new government, the ruling party did not care for the ideals of democracy nor they cared for the independence of the Election Commission. No amount of restraint or tolerance or respect for Election Laws, Rules or norms were shown in securing the victory of their candidates. It was turned into an orgy of rigging, false voting, violence, forcible occupation of polling centers and stuffing ballot boxes with uncast ballot papers in open day light all over the country with the members of the law enforcing agencies and election officials either conniving or watching as silent spectators. Even the Chief Election Commissioner who did so much to ensure the return of

²³ See the *Daily Amar Desh*, 22, 27 and 29 January 2009.

²⁴ See the *Daily Ittefaq*, 28 and 29 January 2009; the *Daily Prothom Alo*, 26 and 31 January 2009; the *Daily Naya Diganta*, 30 January and 5 February 2009.

²⁵ See the *Daily Ittefaq*, 30 January 2009.

the Awami League to power was now disheartened and flabbergasted seeing the behaviour of the ruling party men and realised how helpless the Commission was in holding an election under the shadow of a political government.

Despite the deployment of almost half a million members of law enforcing agencies including members of the armed forces and the elite units of RAB²⁶ in the election of 480 Upazila Parishads held after 18 years with over 32,000 polling stations,²⁷ the polls were marred by the ruling party men including Ministers and MPs by misuse of offices, control of administration and high jacking of ballot boxes. The Election Commission having failed to stand up to the occasion on their own strength and courage had put all the blames on the ruling party for rendering the elections to be neither peaceful nor neutral.²⁸ The violence committed by the ruling party men went to the extent of beating up the election officials and destruction of vehicles of the United Nations observer teams resulting in a low turn outs at the polls.²⁹ The violence and rigging led to suspension of the results of entire election in 48 upazilas, partly in 5 upazilas³⁰ and election in 15 upazilas was cancelled.³¹ Although a newly sworn-in Minister was sued³² by the Commission for committing election offences but nothing really happened to him in the end because of the interference of the ruling government. In the election of the upazila parishad, which had already lost all its credibility³³ in the unofficial counting the Awami League had won in 313 as against 93 for BNP and 21 for Jamaat.³⁴ The repression and torture of the political opponents commenced soon after the national election only intensified more all over the country after the election of upazila parishads.³⁵

After 2 years of pretence and public deception of the illegitimate interim regime with all the bogey of getting the society rid of

²⁶ See the *Daily Ittefaq*, 22 January 2009.

²⁷ See *The Daily Star*, 22 January 2009.

²⁸ See *The Daily Star*, the *Daily Prothom Alo*, 23 January 2009.

²⁹ See the *Daily Ittefaq*, 23 January 2009.

³⁰ See the *Daily Prothom Alo*, 5 February 2009.

³¹ See the *Daily Ittefaq*, 27 January 2009.

³² See *The Daily Star*, 23 January 2009, 2 February and 6 February 2009.

³³ See the *Daily Amar Desh*, 24 January 2009; the *Daily Ittefaq*, 24 January and 2 February 2009.

³⁴ See the *Daily Ittefaq*, 24 February 2009.

³⁵ See the *Daily Naya Diganta*, 30 January 2009; the *Daily Amar Desh*, 24 and 30 January 2009.

corruption and to have the political culture changed by a new leadership of honest and competent persons, a Parliament was now elected by people to emerge as the central epitome of the nation. In exclusion of those who had lost the election, Parliament was now back with more or less the same class of people against whom “a drive against corruption” was conducted with all the vengeance to throw them out of politics. Of the two women leaders who were confined in prison for nearly a year or more on charges of corruption and were humiliated, insulted, insinuated, degraded and defaced in public by assassinating their characters through a massively inspired media propaganda, one had become the Prime Minister with three-fourths majority and the other had become the Leader of the Opposition. Out of the first 299 seats, 92 Members elected to Parliament were accused of criminal charges including corruption facing more than 300 cases.³⁶ About 46% of the Members of Parliament had in the past faced criminal charges and at present 31% Members had criminal cases pending against them. Out of the prominent Members elected from Awami League, 16 criminal cases were pending against Mohammad Abdul Jalil, General Secretary of the Party, 13 against Presidium Member Mohiuddin Khan Alamgir, 12 against Presidium Member, Sheikh Fazlul Karim Selim, 14 against Jubo League President, Jahangir Kabir Nanak, 11 against Jubo League Secretary, Mirza Azam and at least 2 cases against the Deputy Leader of the House, Begum Sajeda Chowdhury. Out of the Parliament Members elected from BNP, 9 cases were pending against Joynal Abedin Faruk, 7 against Salahuddin Kader Chowdhury and 6 against Jubo Dal President, Barkatullah Bulu. More interesting was the election of Hussain Muhammad Ershad, a convict who had served his full sentence in Dhaka Central Jail on charges of corruption, debarred from taking part in the last election and accused in 13 cases now pending for trial, elected this time as a Member of Parliament from 3 constituencies—one being in the capital itself voted by relatively more educated and conscious citizens of the country. Even more interesting of all was the election of Sheikh Hasina who took oath as the Prime Minister of the country while still on parole granted earlier by the interim government by an executive order when she was denied bail by the Supreme Court, an instance not

³⁶ Based on the report published by “Shujon”, a highly esteemed research organisation, the *Daily Ittefaq*, 2 January 2009.

to be found anywhere in the world. More so, while the Leader of the Opposition, Khaleda Zia had 4 criminal cases pending for trial, Sheikh Hasina had 15 cases on charges of extortion and corruption against her in different courts at the relevant time.

The crusade launched by the army-backed interim regime to clean politics from corrupt politicians for governing the country not only proved futile but produced a Parliament with a large number of politicians to have been elected with criminal records as below:

Composition of the new Parliament on crime and character

Criminal cases:

92 Members accused in 300 cases

46% of total Members had faced criminal charges

31% of Members have criminal cases presently pending against them

Criminal cases pending against prominent Members of Parliament 2008:

Awami League:

Sheikh Hasina - 15

Md. Abdul Jalil - 16

Muhiuddin Khan Alamgir - 13

Sheikh Fazlul Karim Selim - 12

Jahangir Kabir Nanok - 14

Mirza Azam - 11

Begum Sajeda Chowdhury - 2

Mohiuddin Khan Alamgir already convicted and sentenced to 13 years was elected as a Member of Parliament

BNP:

Begum Khaleda Zia - 4

Moudud Ahmed - 5

Jainul Abedin Faruk - 9

Salahuddin Kader Chowdhury - 7

Barkatullah Bulu - 6

Jatiya Party:

Hussain Muhammad Ershad - 13

Already convicted and served full sentence once

In defiance of the sermons given by the interim regime and the wise men of the civil society not to vote corrupt politicians and elect only "clean and honest" men, money and muscle played a key role in this election. Dedicated politicians and professionals like lawyers,

doctors and engineers were washed away by bad money heaved from ill-gotten sources of rent seekers and traders called “businessmen” more than ever before. Nearly 43% of the Members of Parliament were millionaires, numbering 128, out of which 92 Members belonged to Awami League and 19 to BNP. One Awami League Member elected from Natore 4 constituency was given 80 gold boats as gift at a public reception held for him after his victory in the election.³⁷ Out of 300-member Parliament 169 Members are businessmen of which 121 belonged to Awami League and 20 to BNP and total number of lawyers in the Parliament is reduced to 44.³⁸ One Member of Awami League even contested as a person convicted and sentenced to 13 years on charges of corruption and was elected to Parliament.³⁹

Money and Wealth of the Members of Parliament in 2008

Millionaires 128 43%

92 from Awami League

19 from BNP

Profession

Business - 169

121 from Awami League

20 from BNP

Lawyers - 44

Source: Collected from newspapers.

Despite the devastating defeat with an unbelievable wide margin and a low morale pervading the mindset of the central leadership of BNP, Khaleda Zia took a positive stand announcing that in the interest of democracy and the people, the party law makers would take oath and join the Parliament on the opening day of the session scheduled for 25 January 2009. This was a contrast to the actions of the Awami League who boycotted the sessions of Parliament in the first 8 months in 2001 after they had lost the election. Khaleda Zia as the Leader of the Opposition adopted a constructive role in the Parliament with the

³⁷ See the *Daily Prothom Alo*, 15 January 2009.

³⁸ See the *Daily Ittefaq* and the *Daily Prothom Alo*, 2 January 2009.

³⁹ See the *Daily Ittefaq*, 3 January 2009. It was Dr. Muhiuddin Khan Alamgir, who later lost his seat by an order of the Supreme Court on a different ground.

assurance that the party would extend all co-operation if the government created a congenial environment for the opposition to play such a role. With such a massive victory in the election it was expected that the government would be generous and tolerant towards the opposition than in the past and show examples to improve the quality of political culture in the country, which Sheikh Hasina had assured to do soon after the election results were announced. The Prime Minister also assured the nation that number of seats in the Parliament would not be considered in measuring the position of the opposition and she sought to work together with the opposition for building the nation.⁴⁰

Unfortunately, those encouraging words of Sheikh Hasina were soon forgotten. Her assurance not to resort to any kind of vengeance towards political opponents disappeared from the day she made such promises. Any kind of respect to the opposition turned into an acceleration of further intolerance, disgrace and humiliation of the opposition. The first act of dishonour and humiliation occurred when the state run electronic media BTV did not show live the oath-taking ceremony of the Members of the 4-party alliance which was done in respect to all others including those who had only one Member in the Parliament. This discriminatory behaviour towards the opposition persisted without any kind of respect, remorse, or mortification.

Once the new Parliament was summoned by the President for its first session, the outgoing Speaker, as done in the past, had allocated among others 9 seats for BNP out of total 10 meant for the opposition in the front row on his left side of the House where the Members of the Opposition are traditionally seated. Accordingly on 25 January 2009, when the Parliament presided over by the outgoing Speaker commenced its session, 9 senior members of BNP took the seats allocated to them by name. On the same day pursuant to the Rules of Procedure and the Constitution the new Speaker was elected to take over from his predecessor but to the surprise of all, in total disregard to the commitment the Prime Minister made to the nation, the Deputy Speaker was also elected from amongst the members of her own party Awami League in the Parliament and not from the opposition.⁴¹

Two days after the speech delivered by the President on the inaugural day when the Parliament resumed on 28 January 2009,

⁴⁰ See *The Daily Star*, 1 January 2009.

⁴¹ See the *Daily Ittefaq*, the *Daily Prothom Alo*, and *The Daily Star*, 26 January 2009.

5 seats out of 9 allocated to BNP were withdrawn from the front row on the ground that the former Speaker had over-allocated seats to BNP as front row seats are allocated in proportion to the number of Members a party had in the Parliament and so considering their number BNP could at best get 3 out of total 29 seats in the front row. As against this the former Speaker argued that in the last Parliament of 2001-06, 10 seats in the front row were allotted to the opposition out of which 8 to Awami League although they had only 62 seats in the Parliament which if proportionately given would have been only 6. It was not the number but due to the importance attached to the opposition to enable them to play an effective role that motivated the previous Speakers to allot 10 seats to the opposition in the front row.

The matter was too trivial and insignificant compared to the important task the Parliament had to perform to fulfill the aspirations of the people. While BNP took it as an insult and humiliation forcing 5 of their Members to have been shifted to the rear seats from the front row, the ruling party decided not to compromise on the issue. The seniority of Members had traditionally been determined on the number of terms one had been elected to Parliament and that criteria entitled them to sit in the front row. But the Ministers elected for the first time or were nominated on a quota by the Prime Minister were allotted seats in the front row.

So, it was not the question as to who was right or who was wrong or whether proportionate distribution of seats in the front row of the Parliament was correct or not, once the seats were already allocated and Members of BNP had used them, the matter could be resolved easily by way of maintaining the dignity of the concerned Members. The ruling party with such a massive victory could have a larger heart not to squabble on an issue like this. But it was an exposure of a mindset of the ruling leaders which highlighted their rotten political culture of the past. Later five seats in the front row were given to BNP along with four posts of Chairmen of the Parliamentary Standing Committees. Other highly sensitive issues like the notice to evict Khaleda Zia from her residence at the Cantonment, persecution and repression of the leaders and workers of BNP all over the country, continuation of criminal cases against all the senior leaders, conduct of the treasury bench Members in personally attacking the former president Ziaur Rahman and the present leader of the opposition in most despicable language in violation of the Rules of Procedure and

rejection of all their Adjournment motions placed in the Parliament led the BNP decide to keep away from the sittings of the Parliament. So, the lack of respect for and intolerance to the opposition, as shown in the past was repeated again. The first four days of the new journey of the government indicated the return of the abhorring culture of boycotting not only the sittings but also the sessions of Parliament by the opposition as seen in the last three Parliaments.

Within seven working days of the inauguration of the first session, Parliament started functioning without the opposition, as a result of which the treasury bench Members including the Ministers had lost interest in the proceedings of the Parliament and the Speaker could not start the sittings on time due to lack of quorum which only needed 60 Members although the ruling alliance had more than 260 in the House.⁴² In such a poor parliamentary environment and in the absence of the opposition, as many as 50 out of 122 Ordinances decreed by the illegitimate interim government were considered by way of introducing Bills for their affirmation and new laws initiated by the government were put in motion for the enactment in the House.⁴³ The Speaker also rejected all the 21 motions filed by the opposition for discussion in the House on issues of great public importance, like violation of the Constitution by the interim government, law and order situation, price of essential commodities, crisis of fertilizer etc.⁴⁴

Boycotting the sessions of Parliament has been one of the pernicious, self-defeating democratic culture practiced in the last three Parliaments by the two major parties making the institution dysfunctional. This time it was, however, expected that under no circumstances the Parliament ought to run without the participation of the opposition to play an active role in the proceedings of the Parliament.⁴⁵ More disappointing was that such a loathing practice of the past seemed not to have produced any realisation in the mindset of the new government leaders, to effect any change in this regard.

⁴² See *The Daily Star*, 2 February 2009 and the *Daily Amader Shomoy*, 6 February 2009.

⁴³ See *The Daily Star*, 1 February 2009.

⁴⁴ See *The Daily Star*, 2 February 2009.

⁴⁵ See the *Daily Ittefaq*, 17 January 2009. See also for detail discussion, Moudud Ahmed, *Bangladesh: A Study of the Democratic Regimes*, "Chapter 3," The University Press Limited, Dhaka, 2011.

Legacy of the Interim Regime

After the installation of the new government with such an overwhelming majority, the genuine and legitimate expectations of people were that the country would now move forward. The government would not go back to the old politics of recrimination, reprisals, vendetta, vengeance or hatred and instead it would now move towards establishing a society based on tolerance and mutual respect. Harassment of political opponents would come to an end and all the pending cases initiated by the illegitimate interim government for victimisation of politicians would be withdrawn without discrimination. Rule of law would return. Parliament would be made an effectively functional institution, principles of bipartisanship would be introduced in all cases of national interests and achieving economic goals would be the only principal agenda of the new government. To the dismay of the entire nation the journey of the first 30 days of the new government failed to show any sign of meeting with any of those expectations.

So if it was only the question of an election and have a new Parliament with the same leaders and politicians in power as well as in the opposition, why were the politicians and politics so much despised and ridiculed by the interim government for two long years causing a great disruption in the constitutional process, economic growth and the socio-political equilibrium of the society? As analysed in this study, apart the conspiracy theory of weakening the state of Bangladesh, the theory of good governance had turned to be only a myth as the progenitors of the proclamation of Emergency like the Ambassadors of USA, UK, EU, Canada and the Civil Society intellectuals who were so long the chief advocates of good governance went silent when the country was pushed from democracy to Emergency? It transpired that principles of good governance are made issues and talked about by the World Bank, IMF and the donor countries when a country like Bangladesh has an elected government but not when the same country runs under an Emergency or Martial Law.

How the Awami League Government performs in future years before their tenure ends in January 2014 is a matter for history to judge. In retrospect, it may seem that the entire ploy to proclaim Emergency and finally handing over power to Awami League was to crush and mutilate the nationalist and democratic forces to eliminate them from the political scene of the country once for all.

In the present global and geo-political context where issues like secularism, fundamentalism and rise of Islam, war on terror and climate change dominate the world politics, the Awami League government will continue to have an edge over the BNP-led opposition. India as a strong neighbour supported by the USA, will continue to play the most pivotal role in Bangladesh politics. In the process the economic integration with India will be intensified and completed and with a weak and subservient Awami League government India will have the opportunity of using the territory of Bangladesh to their greatest advantage. On the other hand, it is thought that the Awami League government will not be able to protect the sovereign interests of Bangladesh because of its subservience to India. Issues like river water sharing, maritime boundary, land demarcation, Asian Highway route, transit-corridor, Chittagong and Mongla Port facilities will all be sacrificed by them in order to get their support to stay in power.

In conclusion, the aftermath of the Emergency proclaimed on 11 January 2007, has brought disasters for Bangladesh. Neither the interim regime could punish any corrupt politician nor they could bring reforms in the political culture of the country nor they could improve the economy. The facilitation of installing Awami League to power in favour of India only ensured a continuity of the legacy of the interim regime in terms of rise in prices of essential commodities, deterioration of law and order situation, high-level corruption, human rights violations, interference in the administration of justice and repression of nationalist political forces. There has not been much difference in the misrule and misgovernance between the army-backed interim regime of 2007-08 and the rule of the Awami League commencing in 2009.

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