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Articles

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Different Provisions Relating to Aboriginal People's of the Sub-Continental Constitutional Laws: A Study

Parliamentary Election 1991 under First Caretaker Government: An Evaluation

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বাংলাদেশের সংবিধানে নির্দেশিত ভাষা এবং উচ্চতর আদালতে এর ব্যবহার : একটি আইনগত পর্যালোচনা

বাংলাদেশ সংবিধানের ৫ম সংশোধনী বাতিলের রায় ও প্রভাব : সংবাদপত্রের আলোকে একটি বিশ্লেষণ

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Authors' Name	Article	Page
M Abdul Alim	The Role of Election Commission in Strengthening Democracy: Reforms and Constitutional Obligation	1-12
M Abdul Awal Khan	Justice under Judicial Review Power of the Court: A Comparative Study on Selected Countries	13-24
Dr. M Ahsan Kabir	Different Provisions Relating to Aboriginal People's of the Sub-Continental Constitutional Laws: A Study	25-40
Dr. M Anisur Rahman	Parliamentary Election 1991 under First Caretaker Government: An Evaluation	41-58
M Sahal Uddin	The Unholy Delay of the Last Caretaker Government: Bangladesh is on the Verge of a Constitutional Crisis	59-68
Dr. Mohammad Abdul Hannan	Jurisdiction of the Supreme Court of Bangladesh in Terms of Writ: An Appraisal	69-108
Dr. Sayeeda Anju	Right against Trafficking of Women under the Constitution of Bangladesh	109-126
নাহিদ ফেরদৌসী	বাংলাদেশের সংবিধানে নির্দেশিত ভাষা এবং উচ্চতর আদালতে এর ব্যবহার: একটি আইনগত পর্যালোচনা	127-144
মোঃ আব্দুর রহিম মিয়া	বাংলাদেশ সংবিধানের ৫ম সংশোধনী বাতিলের রায় ও প্রভাব : সংবাদপত্রের আলোকে একটি বিশ্লেষণ	145-178

The Unholy Delay of the Last Caretaker Government: Bangladesh is on the Verge of a Constitutional Crisis

M Sahal Uddin*

Introduction

In politics, a Caretaker Government¹ rules temporarily. A CTG is often set-up following a war until stable democratic rule can be restored or installed in which cases it is often referred to as a provisional government.² The term CTG is used to describe the government that operates in the interim period between the normal dissolution of parliament for the purpose of holding an election and the formation of a new government after the election results are known.³ CTG may also be put in place when the house to which the government in a parliamentary system is defeated in a motion of no confidence, or in the case when the house to which the government is responsible is dissolved, to rule the country for an interim period until an election is held and a new government is formed.⁴ This type of CTG was adopted in Bangladesh where an advisor council led by the former Chief Justice rules the country for three months before an elected government takes over.⁵ The CTG of Bangladesh is a form of government system in which the country is ruled by a selected government for an interim period during transition from one government to another after the completion of tenure of the former.⁶ As the outgoing government handover its power, the CTG comes

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¹ Hereinafter referred to as CTG

² http://en.wikipedia.org/wiki/caretaker_government, accessed on 07-01-2010

³ *Ibid*

⁴ *Ibid*

⁵ Article 58, *The Constitution of Bangladesh*

⁶ http://en.wikipedia.org/wiki/caretaker_government_of_Bangladesh, accessed on 07-01-2010

into place. The main objective of the CTG is to create an environment in which an election can be held in a free and fair manner without any political influence of the outgoing government.⁷ The head of the CTG is called the Chief Adviser and is selected by the President, and the Chief Adviser selects the other advisers.⁸ The administration is generally distributed among the advisers. The Chief Adviser and the other advisers are committed for their activities to the President.⁹

Caretaker Government of 2006-2008

Caretaker Government of 2006-2008 was This CTG had two shapes. One was headed by the then president of Bangladesh Dr. Iajuddin Ahmed. The CTG of Dr. Iajuddin Ahmed had lost its credibility by its own deeds and actions. There was a debate that Dr. Iajuddin Ahmed did not keep up with all the political parties and as such 4 Advisers resigned from their post. Then Dr. Iajuddin Ahmed appointed another 4 Advisers without consultation with all the political parties. Finally, an agitation was brought against the government of Dr. Iajuddin Ahmed by grand alliance under the leadership of Bangladesh Awami League demanding removal of Dr. Iajuddin Ahmed demanding removal of Dr. Iajuddin Ahmed as the Chief Adviser. And in the dire consequences, Iajuddin Ahmed's government full down. Then came the government of Dr. Iajuddin Ahmed, formed after the tenure of the government of Prime Minister Khaleda Zia ended in October 2006.¹⁰ The CTG of Dr. Fakruddin Ahmed functioned without legislative authority as it continued to function after its scheduled tenure of 90 days ended on 12 May 2007. All decisions taken after this date must be ratified by the parliament for the sake of legitimacy.¹¹ The CTG of Dr. Fakruddin Ahmed was military controlled

⁷ *Ibid*

⁸ Article 58, *The Constitution of Bangladesh*

⁹ *Ibid*

¹⁰ http://en.wikipedia.org/wiki/caretaker_government_of_Bangladesh, accessed on 07-01-2010

¹¹ *Ibid*

and had made extensive use of the military to stymie the chaos that preceded the 11th January 2007. From the very outset however, the government made it clear that they were there not only to arrange a free and fair election but also to make sure that all aspects that were connected to it were reviewed properly. This meant major reforms in the election system, but also making sure that corrupt candidates could not take part in the election. The task was however a difficult one since Bangladesh was regarded as one of the most corrupt nations in the world. Therefore, the government had exceeded its mandated term, which according to the constitution allows it to stay only for 90 days.¹²

Deeds and Actions taken by the Last Caretaker Government

The new CTG managed successfully to re-constitute the Election Commission.¹³ The deadlock which was continued from October 29, 2006 was finally resolved on January 31, 2007 when all five Election Commissioners, including acting Chief Election commissioner Justice Mahfuzur Rahman, resigned on the request of the President. Following this the Law Adviser Barrister Moinul Hossain revealed the intention of the CTG to form a three member Election Commission as part of the reform package. Initially, former Secretary ATM Shamsul Huda was appointed as Chief Election Commissioner¹⁴ and another former bureaucrat Mohammad Sohul Hossain was appointed as Election Commissioner. The process of re-constitution of the EC was completed with the appointment of its third member, Brigadier General (retd) M. Sakhwat Hossain as an Election Commissioner. This is the first time an officer with military background has been appointed in the EC.¹⁵ The new EC members after taking over expressed their desire to work honestly and sincerely. The CEC said that his first task would be to devise an action plan for major electoral reforms' in

¹² *Ibid*

¹³ Hereinafter referred to as EC

¹⁴ Hereinafter referred to as CEC

¹⁵ <http://www.southasiananalysis.org>, accessed on 09-01-2010

consultation with the political parties and other stakeholders.¹⁶ He however did not mention any time frame for the task ahead.

The Fakruddin Ahmed based government was widely seen as a front for military of Bangladesh.¹⁷ At least one thing was sure that it had strong backing of military. This military backed CTG launched a crack down on corrupt politicians. It arrested a number of senior politicians belonging to both political alliances. However, the Law Adviser Barrister Moinul Hossain told media that the CTG would take actions not only against the corrupt politicians of the immediate past government but also those of any other government. Most of these leaders have been detained under country's Special Powers Act-1974 (SPA). Under the SPA, any one can be detained for a month while police frame possible charges against them.¹⁸

The CTG had barred corrupt people from participating in any parliamentary or local government election by amending the rules of Emergency Powers Ordinance, 2007 (EPO). Any person convicted of corruption by a trial court, will be disqualified from contesting in any election until adjudication of his or her appeal against the verdict and no convicted person will ever be able to hold any job related to the government according to the amendments to the rules. Tough laws were being prepared to make registration of political parties with the EC mandatory in a bid to ensure financial transparency and accountability of the major parties. Besides, the government was to issue an ordinance to bar civil servants from participating in the parliamentary election within at least three to four years of their retirement. It is being felt that in the absence of such restriction many bureaucrats develop a tendency to run the administration with a political end in view.

The CTG had also managed to reconstitute the Anti Corruption Commission (ACC). It's chairman Justice Sultan Hossain Khan and Commissioner Prof.

¹⁶ *The Daily Amar Desh*, 14 February 2008

¹⁷ <http://www.southasiananalysis.org>, accessed on 09-01-2010

¹⁸ Section 2, *Special Powers Act, 1974*

Moniruzzaman Miah submitted their resignations to the President on February 7, of 2007 while the other commissioner Maniruddin Ahmed said that he would take sometime to submit his own. Though processed through a selection committee their appointments were believed to have been made in political considerations.

The CTG had also indicated that it is going to ratify the United Nations Convention against corruption to bring the country's anti-corruption measures up to the international standard. The convention encourages its signatories to set-up autonomous anti-corruption watch-dogs, merit based and impartial public service recruitment, public service codes of conduct, publication of government expenditure and to ensure transparency in election campaign funding, among others.

Concrete steps had been taken to separate the judiciary from the executive. The council of adviser at a meeting on February 7, 2008 approved the Ordinance on amendments to the Criminal Procedure Code, necessary for separation of the judiciary from the executive.¹⁹ This was promulgated and the long-awaited separation of the judiciary came into effect. After the separation was done, the magistrates who were currently under the control of the executive were placed under the authority of the higher court and renamed as judicial magistrates.

Role of International Community on CTG

International Community too appreciated action against corruption. The United States wanted to see election in Bangladesh as soon as possible in an appropriate way according to the constitution and rule of law. But Washington also wanted "to make sure that there was accountability in government, that corruption and any other illegal activities were *managed*."²⁰ At the same time it was strongly opposed to the military take-over of the government and would like to see the charging and prosecution of the detainees in a manner

¹⁹ *The Daily Prothom Alo*, February 8, 2007

²⁰ *The Daily Jugantor*, March 15, 2007

consistent with Bangladesh's law and international standards of due processes. The United States had also offered its help to Bangladesh in fighting corruption. European Union (EU) Ambassador to Bangladesh Stefan Frowein had stated that the international community supported the government's crackdown on corrupt politicians, terming the arrest as a "right thing" to have been done.

Envoys of the Asian countries had raised the CTG's efforts to establish a role model for the future government in Bangladesh. Similar sentiments had been expressed by the development agencies like Asian Development Bank (ADB), and the United Nations Development Programme (UNDP).

Both India and Pakistan had expressed their interest in providing support for election affairs in Bangladesh and sharing their experiences of electoral process. The US Ambassador in Dhaka Patricia A Butenis had also stressed the need for reforms in political parties to go with the changed political scenario and public demand. Speaking to media, the US envoy encouraged Awami League²¹ and Bangladesh Nationalist Party²² to examine the wrong practices inside the parties and to find out what the people want.

End of the Last Caretaker Government

The Fakruddin government was basically military backed government. In its wake the international money making mafia imported a low-key employee from World Bank to sign deals and contracts under an unelected fascist unconstitutional government. This was exactly what the brutal barbarian regime of *Bush-Chenney-Duo* is doing everywhere in the world to secure energy resources all over the world.²³

Being aware of the policy, the democracy and peace loving people of Bangladesh raised their voice against the Fakruddin government. The ordinary

²¹ Hereinafter refereed to as AL

²² Hereinafter refereed to as BNP

²³ *Ibid*

citizen changed their situation and tried to shift the political situation.²⁴ The expectation of the common people was too high to the CTG after 1/11. There was little to blame the common people. The expectation was actually created by the CTG itself and their sponsors by their projections of their objectives and their initial steps. But the changed scenario exposed the actual inner weakness of the CTG. The CTG was virtually a group of heterogeneous people, who were not bound by the common ideology. There the attitudes and ideas developed differently and their approach to solve a problem also differed in the same tenure of the government. On July 16, 2007 the CTG arrested Awami League (AL) president and former Prime Minister Sheikh Hasina on charges of extortion during her tenure as Prime Minister. To balance the situation on September 03, 2007 the CTG arrested BNP Chairperson and former Prime Minister Begum Khaleda Zia on charges of corruption. This arrest of both the top leaders created influences over the mass people and the CTG lost its cheap popularity. Moreover, high increasing price rate of essential goods and services made ordinary people unhappy of the CTG. Businessmen belonging to both the parties revoked their support from the CTG. The role of the military was more indirect, from distant and was not uniform in this fusion. People could feel the presence of the military but could not hold them responsible for the failure of the CTG. The indirect relation of the military gave government more acceptability but less strength and as the days were coming to the end for the CTG, the shadow of the military was more fading.²⁵ Having no alternative, the CTG, arranged general election. The EC registered over 80 million voters in preparation for parliamentary elections, which was held on December 29, 2008. The AL swept to a victory. The CTG ended on January 6, 2009 when AL President Sheikh Hasina became Prime Minister.

²⁴ <http://bdoza.wordpress.com>, accessed on 02-02-2010

²⁵ *Ibid*

Probable Constitutional Crisis

The Constitution did not give the CTG, the right to review and annul orders and decisions of the outgoing government. The outgoing government was an elected government that enjoyed the confidence of the nation. The Caretaker Council of Advisers had no legal or moral right to sit on judgment over an elected government. Their sole duty was to deal with routine work and oversee the elections.²⁶ Fakruddin Ahmed's government acted, as it was a successor government with the mandate to undo the actions and decisions of the outgoing, elected government. The CTG Council of Advisers suspended the implementation of many on-going projects. These presumptuous decisions caused delay and confusion in project implementation. The last CTG created an impression that it can do whatever it wishes. This was certainly a violation of the caretaker concept. Clearly it went against the letter and spirit of the provisions of the Constitution. The continuity of the government was disturbed. The CTG headed by Fakruddin completely destroyed the stipulations of the CTG which were inserted in the Constitution.

The main problem is what will happen after the completion of the tenure of the present ruling party. Who will take power and how the next caretaker government will be formed? The responsibility belongs to the present government to settle the issue with the consensus of the oppositions. If that does not happen or the political parties fail to reach to a consensus the country may again face a similar constitutional crisis.

Political Debate on Caretaker Government

A political debate on CTG of Bangladesh is on going among the politicians. The ruling party AL General Secretary Syed Ashrafur Islam said on 30th June 2009 that the CTG experiment had failed, and a national debate should decide

²⁶ A keynote paper entitled, *Reforms of the Caretaker Government* presented in a seminar organized by Bangladesh Foundation for Development Research (BFDR) on 31st January 2005 at CIRDAP auditorium, Dhaka.

whether or not to continue with the system.²⁷ Before that the deputy leader of the parliament, Syeda Sajeda Chowdhury had called the parliament members to abolish the CTG system on June 28, during the budget session of parliament.²⁸ Awami League MP Suranjit Sen Gupta also advocated for the repeal of the system.²⁹

Later the main opposition party, Bangladesh Nationalist Party (BNP) reacted to that and said, "Awami League want to capture power again by election manipulation." BNP Secretary General Khondoker Delwar Hossain criticized Syed Ashraf for his comments over CTG. Delwar said the AL- led grand alliance government intended on doing away with the CTG system since it wanted to control the next election.³⁰ On the other hand an Adviser to the Prime Minister said that the government is not considering the cancellation of the CTG system at the moment though some ruling Awami League leaders have been speaking for it. "The government has made no decision on the abolition of the caretaker government system" Alauddin Ahmed, advisor to Prime Minister Sheikh Hasina on education, social development and politics, said in New York on 10th September 2009.³¹

On 12 August 2009 The CEC Dr. ATM Shamsul Huda said it was possible to hold free and fair elections under a political government. He also added that the CTG system was for political parties to decide and the EC's main concern was the security of the voters. The other election commissioners said that the EC was unwilling to discuss the issue of whether the CTG system should remain during the planned upcoming dialogue with political parties. A

²⁷ *The Daily Amar Desh*, 1st July, 2009

²⁸ *The Daily Amar Desh*, 29th June, 2009

²⁹ <http://www.groundreport.com/Business/Debate-on-caretaker-government>, accessed on 02-02-2010

³⁰ *The Daily Amar Desh*, 3rd July, 2009

³¹ *Ibid*

national debate should decide whether or not to continue with the system. But it would not be the Election Commission's agenda they added.³²

Conclusion

The Caretaker Government system is introduced after the political unrest in 1991. The Awami League advocated the system at that time, while a reluctant BNP eventually conceded to the proposal. The two main political parties have reversed their role on the issue. The last Caretaker Government of Bangladesh has acted as a tool in the hands of military, but its prolonged stay created unpalatable consequences. It took two years to hold a general election. Now it is high time to rethink about the caretaker government system. And the responsibility belongs to the ruling party to hold national debate or to take necessary steps for the forthcoming caretaker government so that the country may not enter into a constitutional crisis again. The present government should take it in their mind that the present scenario of the country is fragile because Bangladesh has to face not only the internal problems but also the external pressures triggered by neighbour states. The caretaker issue is an internal issue. And for that it is needed to be resolved with a political consensus.

³² <http://www.groundreport.com/Business/Debate/on- caretaker government>, accessed on 02-02-2010