

Non-Party Caretaker Government in Bangladesh (1991-2001): Dilemma for Democracy?

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Abstract:

The paper attempts to analyze the compatibility of Non-party Caretaker Government (NCG) with democracy in Bangladesh. Bangladesh, since her inception as an independent state from “internal colonialism” of Pakistan through a sanguinary war of liberation in 1971, has been practicing democracy. However, at different junctures of the country’s political history, the practice of democracy was impeded and eventually replaced by the military rule. Since early 1990s, Bangladesh entered to a new phase of democratic governance and opted for parliamentary democracy which still continues. Elections and democracy are intertwined and free and fair elections are quintessential for democratic governance. In Bangladesh, like many other developing countries, holding free and fair elections is a big challenge. With the acrimonious experiences of rigged elections under party governments in the past, Bangladesh in 1990 established a system of non-party caretaker government to ensure the holding of free and fair elections initially on consensus basis and later through an amendment (thirteenth) to the constitution which received many appreciations at the outset. However, after successfully working and conducting few parliamentary elections, the system ran into difficulties, and in the midst of political chaos and unhealthy competition for power among the political parties, the system of non-party caretaker government was scrapped from the constitution (through the fifteenth amendment) which sparked serious debate and both contents and discontents in the political landscape of Bangladesh. Against this backdrop, the paper would analyze the working of three Non-party Caretaker Governments from 1991 to 2001 and argue that NCG seems to have become a dilemma for democracy in Bangladesh.

Keywords: Caretaker government, non-party caretaker government, democracy, political party, Bangladesh.

1. Introduction:

Bangladesh, a small country of about 56,000 square miles and inhabited by almost 160 million people, is one of the poorest countries in the world. Since the independence of the country in 1971 through a bloody war, uncertainty and volatility have been permanent features of its society and politics (Hakim 1993: 1). However, the country, as a political system, started experiencing parliamentary democracy of Westminster variety reflecting the hopes and aspirations of the people nurtured for nearly two decades. But at different phases, the practice of democracy in Bangladesh was impeded and instead civil-military authoritarian order was established. It was the fourth amendment to the constitution, through which democracy in Bangladesh first converted into an authoritarian regime in 1975¹⁶ and continued as a military dictatorship until 1979. The military government sought for political legitimacy through civilianization process and moved to democracy even though still under the banner of a former military leader. However, it did not last long. The military seized political power again in 1982, putting an end to nascent democracy. This regime, similar to the past experience, also sought for legitimacy and tried to practice democracy by wearing a military-authoritarian cap from mid-1980s. The authoritarian regime tried to give a facade of democracy by establishing its own party. Finally, a transition to a

¹⁶ Fourth amendment to the constitution (done on 25 January 1975) attracts the most controversy in the entire constitutional and political history of Bangladesh. Following the amendment, the country transited to presidential democracy which made the President supreme over all executive, legislative and judicial organs of the state. The parliament was turned into a secondary rubber-stamp body in the new political system...the power, status, functions and authority of the Supreme Court was drastically reduced and jurisdiction of the judges in original matters were also curtailed (Ahmed: 1991, 281-82). According to the new arrangement, the President was given absolute power to create a National Party, and after the formation of that Party, all the political parties of the state were supposed to stand dissolved. Each member of the parliament would have to join the Party within a time fixed by the President; otherwise he would lose his membership and his seat would become vacant, the Article of the Constitution stated. The Article also provided that none would have any right to form any political party or be a member or otherwise take part in the activities of any political party other than the National Party [Article 117A (5) ©]. In June 1975, the government promulgated the Newspaper (Annulment of Declaration) Ordinance by which it allowed only 4 daily newspapers (*The Bangladesh Times*, *The Bangladesh Observer*, *Dainik Bangla* and *The Daily Ittefaq*) to continue publication and banned the rest. All these 4 daily newspapers were to be owned and managed by the state bringing the news media completely under the control of the government. Some top-level journalists, such as Enayetullah Khan, the editor of the outspoken political weekly *Holiday* had been jailed (Ahmed 1991: 293; Maniruzzaman 1988: 181).

parliamentary system occurred in 1991 and has continued to the present time (Khan 2002: 90), although this continuity faced some challenges in the recent past emanating from several political changes and developments in the country which will be discussed later.

In December 1990, the former military dictator H. M. Ershad, as a result of a tougher popular movement waged by the opposition political parties, was forced to hand over power to an interim government headed by Chief Justice Shahabuddin Ahmed. The collapse of the Ershad regime marked the beginning of a new pattern of democratic politics in Bangladesh. The interim government of Shahabuddin Ahmed held elections to the fifth parliament in February 1991 which, in effect, provided a means for transition from authoritarianism to democracy in the country. But elections held before 1991 were mostly aimed to seek for a sort of legitimacy to strengthen and sustain the autocratic regimes rather than any democratic aspirations. Most of the elections held in the past were also alleged to have been rigged. However, elections held since the early 1990s are considered to be free, fair and impartial (Ahmed 2004: 2).

In 1996, the 13th amendment to the constitution of Bangladesh took place through which Non-party Caretaker Government system was constitutionally established. At the very outset of the journey of caretaker government, the concept received many appreciations as a unique system in constitutional politics, and as a tool for strengthening democracy. On the contrary, this type of government may plausibly be conducive for electoral democracy; it, in fact, reflects the internal weaknesses of democratic polity. Politicians are entitled to deal with politics. And in democracy, a government is held accountable to its people. Democracy requires several inherent values within the system, such as, consensus, compromise and cooperation, mutual trust and tolerance—a democratic political culture. Politicians and political parties have to nurture these values and culture in them. But, the fact is that Non-party Caretaker Government in Bangladesh was born out of sheer mistrust, intolerance, non-confidence and non-cooperative attitudes between the politicians and the political parties.

2. Caretaker Government: Not a New Concept

The concept of Caretaker Government is nothing new. It is conventional in established parliamentary systems for an outgoing government to act as the caretaker administration between the dissolution of parliament and the election of a new one (Ahmed 2004: 13). There are many instances that the caretaker government was practiced in many democratic countries in the past. This mode of government is also practiced in many democracies of today's world. Perhaps, the first caretaker government was established in Britain in mid-1940s. More specifically to say, on 23 May 1945, a caretaker government was formed under the leadership of outgoing Prime Minister Winston Churchill. Political scientists, such as Sir Ivor Jennings called the then Churchill's government a caretaker government (Jennings 1969: 84; Rahman 1999: 142-43). During World War II and in early 1940s when a general election was due in United Kingdom, the major political parties, such as 'Conservative Party', 'Labor Party' and 'Liberal Party', on consensus, formed a national government under Winston Churchill instead of holding elections in order to achieve victory in the War. England under Churchill and the allied forces won the War, and subsequently in the ahead of next elections, Churchill resigned as the head of all-party national government in the backdrop of oppositions' critique that he could exploit the "War-hero image" in elections (Rahman 1999: 142; Khan 1995: 157). Henry Pelling (1980: 401) informs that "Churchill's Conservative advisers favored an early election in order, if possible, to capitalize upon his reputation as the architect of victory. The Labor leaders, on the other hand, preferred the lapse of a few months, for precisely the same reason." However, when Churchill resigned as leader of the coalition government in May 1945, he at once took office again as Prime Minister of a caretaker government consisting mostly of Conservatives, but with a sprinkling of National Liberals and also non-party men such as the former civil servants Sir John Anderson and Sir James Grigg and the former business-man Lord Woolton (Pelling 1980: 404). The ruling Conservative Party headed by Churchill lost the elections (July 1945) in a big margin, and the Labor Party, under Clement Richard Attlee, earned a marvelous victory and constituted the government.

The practice of caretaker government in the sub-continent is also not new. History reports that both India and Pakistan, two closest neighbors of Bangladesh, also experienced caretaker government in the past. In late-1970s, a caretaker government was formed in India under Prime Minister Chowdhury Charan Singh (See in detail Rahman 1999: 143). India's tenth general elections in 1991 were conducted by Chandra Shekhar's caretaker government. Earlier in the ninth elections held in 1989, Congress (I) headed by Rajiv Gandhi, the son of former Prime Minister Indira Gandhi, won the largest number of seats but well short of majority in the Lok Sabha, the lower house of Indian parliament. However, Congress refused to form a coalition government, and therefore, the next largest party Janata Dal under V. P. Singh took the charge. Ironically, Singh's government collapsed immediately after his forced resignation in December 1990 in the backdrop of the country's appalling racial riots and caste and religious disputes. Then a caretaker government was set up until the new election that was

scheduled for May 1991 (Cerra and Saxena 2002: 403). But the assassination of Rajib Gandhi during his election campaign on 21 May protracted the election; the second half of the polling was held in June 1991. Congress (I), once again, won and formed government with Narasimha Rao as its prime minister (Bajpai 1992). Elections in September-October 1999 (thirteenth elections) in India were held under Vajpayee-led caretaker government. Earlier in March 1999, Bharatiya Janata Party (BJP)-led coalition government fell since two of its coalition partners—AIADMK (All India Anna Dravida Munnetra Kazhagam) led by Jayalalitha Jayaram and BSP (Bahujan Samaj Party) headed by Mayawati—withdrew their support from the ruling coalition. President K. R. Narayanan then invited the BJP-led coalition to continue as a caretaker government until a new election was held and a new government was sworn in (Kapur 2000). Thus, India's thirteenth elections were also held under a caretaker administration in which the BJP-led National Democratic Alliance (NDA) managed to regain power with much more strength.

Pakistan also experienced a number of caretaker governments since her inception in 1947. The country's first constitution which was framed in 1956 incorporated the system of caretaker government. The 1973 constitution newly framed soon after the country's disintegration in 1971, came up with a renewed attention to caretaker government and incorporated the phrase "caretaker cabinet" in it (Rahman 1999: 144). In 1988, after the sad demise of President Zia-ul-Haq, perhaps for the first time, general elections were held under a caretaker government in Pakistan in which Pakistan People's Party (PPP) led by Benazir Bhutto, the daughter of former Prime Minister Zulfikar Ali Bhutto, won and subsequently Benazir Bhutto became the first woman prime minister in the history of Pakistan and also in the Muslim world (Rais 1989; Monshipouri and Samuel 1995)). However, within less than two years in office, Benazir's government became dismissed by President Ghulam Ishaq Khan in August 1990 on charges of corruption, nepotism and deterioration of law and order. The President dissolved the parliament and called on the leader of opposition Ghulam Mustafa Jatoi to form a caretaker government until new elections could be held. In October 1990, Jatoi's caretaker government conducted elections in Pakistan in which the coalition headed by the Islami Jamhoori Ithad (IJI) or Islamic Democratic Alliance bagged victory and Nawaz Sharif, the leader of Pakistan Muslim League (N) and the IJI became Prime Minister (Ziring 1991). Nawaz also had to receive similar fate as his predecessor Benazir did. The same President dismissed again an elected government of Nawaz Sharif in April 1993 on charges of corruption, harassment of opponents and lack of transparency in the privatization process. Earlier Prime Minister Nawaz Sharif, however, developed antagonistic relations and engaged in power struggle with the President. It is noted that by using his powers under Eighth Amendment to the constitution, President Ghulam Ishaq Khan dismissed the prime minister, dissolved the parliament and announced fresh elections under a caretaker prime minister, Mir Balkh Sher Mazari (Amin 1994). However, Mazari's caretaker government did not last long (lasted hardly six weeks) since the Supreme Court, on a writ petition filed by Nawaz Sharif against the dissolution of the parliament, declared the presidential order "illegal" and "unconstitutional" and restored both the prime minister and the Assembly (Amin 1994). Nevertheless, the crisis did not come to an end as both the President and the Prime Minister happened to be intransigent with regard to the politics of power struggle. Finally, under a deal brokered by the then army chief General Abdul Waheed Kakar, both Ghulam Ishaq Khan and Nawaz Sharif stepped down in July 1993, and a new caretaker administration was formed led by Senate Chairman Wasim Sajjad as acting president and Moeen Qureshi, a former World Bank vice-president, as prime minister. Qureshi's caretaker government conducted elections in October 1993 in which PPP captured the win and Benazir Bhutto became prime minister for the second time in Pakistan (Amin 1994). Ironically, this time too Benazir's government could not be able to complete its tenure. Within three years of her second term as prime minister, Benazir once again had been dismissed by the President in November 1996 on charges of corruption, incompetence, and lawlessness. President Farooq Ahmed Leghari, shortly after the dismissal of Benazir's government, appointed Malik Meraj Khalid, a former speaker of the National Assembly, and chief minister of Punjab province, as caretaker prime minister. Khalid's caretaker government held elections in February 1997 in which Pakistan Muslim League (N) won an astounding victory and its leader Nawaz Sharif became prime minister for the second time (LaPorte, Jr. 1997; Syed 1998). But, a seemingly ill-fated Pakistan could not experience a full term of an elected government so far. In October 1999, Pakistan army once again intervened in politics and ousted the elected government of Nawaz Sharif in the wake of civil-military conflicts (Rizvi 2000), a common phenomenon seen throughout the history of Pakistan. Recently, in May 2013, general elections in Pakistan were also held under a caretaker government headed by Justice Mir Hazar Khan Khoso. Pakistan Muslim League (N) won a plurality of seats, and Nawaz Sharif became prime minister for the third time in the turbulent political history of Pakistan. Canada, Australia, New Zealand, Germany, Norway, Sweden, Netherlands and many other democratic countries are used to experiencing caretaker administration mainly during the election period (Boston et. al 1998).

3. Genesis of Non-party Caretaker Government (NCG) in Bangladesh:

Bangladesh held eight parliamentary elections in the first three decades of independence (1971-2001), averaging one election every four year. Of them, five elections (first, second, third, fourth and sixth) were held under party governments and three (fifth, seventh and eighth), under NCGs. Perhaps, the most important reason for the introduction of the system of NCG is the assumption that only under this very system, elections can be held in a free, fair and neutral manner. Elections held under party governments were alleged to have been seriously rigged. Available evidence shows that the ruling parties in the past habitually used force and intimidation to win elections. Even the BAL (Bangladesh Awami League), which led the liberation war in 1971 and first exercised the state power in the early years of independence, did not remain an exception. Although it was widely expected to sweep the first parliamentary elections held in 1973, the BAL allegedly adopted a strategy of what Jahan (1980: 84) has called “over killing the opposition” by using force to win every parliamentary seat (Ahmed 2004: 13-14).

Between 1975 and 1990, the country remained under absolute military rule for eight years. The two military strongmen who dominated Bangladesh politics during the period—General Zia, from 1975 to 1981, and General Ershad, from 1982 to 1990—respectively set up the Bangladesh Nationalist Party (BNP) and the Jatiya Party (JP) as part of their strategy to civilianize their rule and restore the democratic process. BNP and JP, which respectively won the second and third (also fourth) parliamentary elections, were also charged with manipulating the electoral process (Ahmed 2004: 13-14). The scale of rigging, however, surpassed all previous record during the third elections held in 1986. A three-member British election observer team considered the election as “a tragedy for democracy” and a “cynically frustrated exercise” (Hakim 1993: 26; Ahmed 2004: 15). The JP-backed musclemen captured many polling stations in different constituencies and massively terrorized the voters (Hakim 1993: 26; Ahmed 2004: 15).

Against this backdrop, the mainstream opposition parties were convinced that no elections held under Ershad would be free and fair. Therefore, they formed different alliances to generate popular and political movements against the Ershad regime. The three main political alliances—eight party alliance led by BAL, seven party alliance led by BNP and the ‘leftist’ five party alliance—agreed, in principle, not to take part in any elections under Ershad. Then the three alliances came to a consensus that some kind of special arrangement was needed to force Ershad to quit and to subsequently hold elections to have a transition to democracy. In November 1990 the three alliances announced a joint declaration specifying the modalities for the transfer of power. The *modus operandi* of the joint declaration was:

1. opposition parties and alliances would not only boycott but also resist all elections under Ershad;
2. Ershad must resign and hand over power to a caretaker government;
3. the caretaker government would restore the credibility of the electoral system and assure franchise rights to all citizens; and
4. the interim government would hand over power to a ‘sovereign’ parliament elected through free and fair elections (Ahmed 2004: 15-16; Hakim 1993: 32-33).

The three alliances then generated a strong public movement turned mass upsurge against General Ershad which forced him to say good-bye. Finding no other alternative, the General, at last, decided to give in to the strength of people and handed over power to the then Chief Justice Shahabuddin Ahmed (earlier he was appointed vice president and also acting president) on 6 December 1990. It is noted that Justice Ahmed, a consensual candidate nominated by the three alliances earlier agreed to head the caretaker government on the condition that he be allowed to return to the Supreme Court as Chief Justice after the election of a new President. The fifth parliamentary elections under Justice Shahabuddin Ahmed held on 27 February 1991 in a free, fair and neutral manner in which BNP won. The elections were widely acknowledged and appreciated both at home and abroad albeit the main opposition—BAL made an allegation of ‘subtle’ rigging.

4. Institutionalizing the Experiment:

In August 1991, through the 12th amendment of the Constitution, Bangladesh transited to parliamentary democracy from the presidential variety. It is to be mentioned here that there was a general recognition at that period that the NCG provided a better alternative to a party government in holding elections to the parliament. However, there was no serious attempt in the initial years of the fifth parliament to institutionalize the experiment. Neither BNP—the ruling party, nor BAL—the main opposition showed any interest in this respect. The JP had opposed the concept of caretaker government right from its inception. The BJI (Bangladesh Jamaat-e-Islami, formerly Jamaat-e-Islami Bangladesh) was, however, an exception. Its parliamentary leader, Motiur Rahman Nizami, submitted a private member’s bill in December 1991, seeking a permanent arrangement for holding all future parliamentary elections under NCGs. It is noted that the BJI first advanced the proposal for

NCG as early as 1983 (Ahmed 2004: 17). Later BAL and JP however changed their mind at the end of 1993 when they submitted two separate bills for the Non-party Caretaker Government.

5. Movement for Constitutional Status:

The issue of NCG, which mostly remained dormant in the first three years of BNP rule, came into prominence in early 1994. Particularly, the alleged rigging by BNP in the Magura by-election on 20 March 1994 brought the issue of holding elections under an NCG to the forefront; it, in fact, made the opposition extremely hostile to the government (Ahmed 2004: 20). The opposition previously also alleged interference by the ruling party in the Mirpur by-election held in 1993 (Hakim 1994; Ahmed 2004: 20). But the alleged scale of rigging and intimidation in the parliamentary by-election in Magura, a 'safe' BAL seat antagonized the parliamentary opposition parties to such an extent that they decided not to contest any elections under BNP (Mashreque and Rashid 1995; quoted by Ahmed 2004: 20). They immediately raised the demand that the government move a bill providing for holding the future parliamentary elections under the auspices of an NCG, arguing that no elections held under a party government could be free, fair and impartial (Ahmed 2004: 20). The three main stream opposition parties—BAL, JP and BJI initiated movement to realize their demand. The opposition MPs of these parties also started boycotting the sessions of parliament, and at a stage, in order to give the movement a final shape, they resigned *en masse* from the parliament. Despite the fact, the government rejected the demand outright, arguing that the system of NCG was unconstitutional. It also argued that an NCG could not be an alternative to an elected government. However, the BNP government dissolved the fifth parliament on 24 November 1995; four months before its five year term was due to expire. It should be noted that the government dissolved the parliament with four months to spare not in response to the demands of the opposition but to overcome a major dilemma created due to the resignation of the nearly half of the opposition parliament members. The government seemed to have fallen in a critical situation as to hold by-elections to the half of the parliamentary seats just a few months before the next parliamentary elections were due. From the government's viewpoints, any decision to hold by-elections at that time would not only be cost-expensive but also would likely to cause serious cynicism among the public. Nevertheless, the dissolution of the fifth parliament did not bring an end to the opposition's movement. The widespread political crisis appeared in the country as the opposition declared that it would resist further elections at any cost if their demands were not realized. On the contrary, the government decided to hold elections to the sixth parliament, arguing that it was needed to ensure continuity in constitutional rule. Amid tremendous violence, elections to the sixth parliament were held on 15 February 1996 in which none of the main opposition parties took part. In a one-sided election, BNP won a landslide victory. However, in the context of the oppositions' boycott, elections to the sixth parliament caused a serious legitimacy crisis for the BNP government. The opposition considered the sixth parliament as illegitimate and demanded its immediate dissolution (Ahmed 2004: 32-33).

In the midst of the political chaos, the session of the sixth parliament was called on 19 March 1996. This was the first and the last session of the sixth parliament of Bangladesh. BAL responded by staging violent protests. The government deployed the army in order to restore law and order. With the growing economic and political crises, various social groups became very concerned. In a desperate effort to end the crisis, on 11 March 1996 nearly 500 businessmen met under the auspices of the Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) and issued a 48-hour ultimatum to the President to invalidate the February elections. They also demanded to set a date for free and fair elections under a neutral caretaker government. On 16 March, teachers, doctors, journalists, lawyers, trade unions and NGOs joined the business community in public rallies demanding the resignation of the government, the dissolution of parliament and fresh elections under a neutral caretaker government (Islam 2002: 140).

Despite the heavy pressure of the opposition and political parties backed by the support of various social groups, the Prime Minister refused to yield. The crisis, however, reached a climax on 25 March, when the civil servants, including top ranking officers, called for an indefinite strike of all government employees (Islam 2002: 140). Faced by an open revolt of government employees, the BNP government decided to move in the sixth parliament a constitutional amendment bill providing for the holding of parliamentary elections under the non-party caretaker government in the future. On 26 March 1996; the parliament passed the 13th amendment bill which was signed by the President on 28 March 1996. Thus, the non-party caretaker government gained the constitutional status in Bangladesh.¹⁷

¹⁷ Following the thirteenth amendment to the constitution, the President is empowered to appoint a ten-member NCG, with a Chief Adviser as its head, within fifteen days of the dissolution of the parliament. Article 58C of the constitution provides details in regard to the appointment of the Chief Adviser:

6. Working of Non-party Caretaker Government:

Needless to say that non-party caretaker government is a non-political interim government which is supposed to run the routine administration of the country for a limited period of time—between the dissolution of parliament and the appointment of a prime minister after the constitution of a new government. So, the scope of activity of the non-party caretaker government is limited. Its primary responsibility is to ensure a non-partisan administration by which the Election Commission (EC) can conduct the elections in a free, fair, peaceful and neutral manner. As their job is confined just to doing the day-today routine work, it is almost impossible for them to make any policy decision. However, the NCG, to some extent, in the past adopted some policy decisions which were considered extra-jurisdictional. For example, the Shahabuddin NCG's decision to repeal the health policy and the Educational Institutions (Law and Order) Ordinance, 1990 made by Ershad government were the two policy decisions. Again the decision by the Shahabuddin NCG to send General Ershad to jail may also be considered a policy decision. The Latifur NCG also had to make a major policy decision—to allow the U. S. government to use the sky, fueling facility, airports and sea ports of Bangladesh—in the backdrop of 9/11 terrorist attacks on the United States which destroyed the twin-tower in New York (Ahmed 2004: 49-51). Nevertheless, before taking the decision, Latifur Rahman consulted almost everyone who mattered, such as the President, leaders of the main political parties, most of the former foreign ministers and foreign secretaries living in Bangladesh, and chiefs of the three services—the army, the navy and the air (Rahman 2002: 216-17). Basically, the NCG endeavors to carry out the election-related activities in its short period of time. The following works were done by the previous Non-party Caretaker Governments.

6.1 Improving Law and Order:

Restoring law and order is a must for holding free and peaceful elections. Each NCG in the past was in supreme caution about the matter and accordingly paid special attention to improving law and order in the country. In his first address to the nation on radio and television, Habibur Rahman (the chief of second NCG), for example, observed that the restoration of law and order was a *sine qua non* for holding free and fair elections. He firmly asserted that the caretaker government would not hesitate to take stern measures in maintaining law and order (Ahmed 2004: 64). Similarly, the Latifur Rahman's Caretaker Government, in its very first meeting of the advisory council, emphasized on improving the law and order situation in the country and gave supreme priority to the recovery of arms (Rahman 2002: 101).

A common effort made by all the NCGs toward restoring law and order was the reshuffling of the police administration both at central and field levels. Probably, the most substantial changes were made by Latifur Rahman NCG; it transferred all officers-in-charge (OCs) from one police station to another station or to other places although the government had to face unwarranted criticisms.

The Shahabuddin NCG promulgated The Union *Parishad* (UP) and *Paurashava* (Special Responsibilities) Ordinance 1991, requiring these two units of local government (UP and *Paurashava*) to maintain law and order within their respective jurisdiction (Ahmed 2004: 65). To restore law and order, measures like allowing joint operation by police and para-military BDR to nab terrorists and recover illegal arms were also taken by different NCGs. In an aid to civil administration, the army was deployed during different NCGs regime as a step toward maintaining law and order and bringing back confidence in the minds of the people.

3) The President shall appoint as Chief Adviser the person who, among the retired Chief Justices of Bangladesh, retired last and who is qualified to be appointed as an adviser:

Provided that if such retired Chief Justice is not available or is not willing to hold the office of the Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice.

4) If no retired Chief Justice is available or willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired judges of the Appellate Division retired last and who is qualified to be appointed as an adviser under this article:

Provided that if such retired judge is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired judges of the Appellate Division retired next before the last such retired judge.

5) If no retired judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among the citizens of Bangladesh who are qualified to be appointed as advisers under this article.

6) Notwithstanding anything contained in the Chapter, if the provisions of clauses (3), (4), and (5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Caretaker Government in addition to his own functions under this Constitution (GPRB, The Constitution, pp. 42-44; also quoted by Ahmed 2004: 46-47).

6.2 Reconstituting the Election Commission (EC):

Constitutionally the responsibility of conducting elections lies in the Election Commission (EC), a constitutional body composed by several Election Commissioners (ECs) and a Chief Election Commissioner (CEC) as its head. The EC is independent in discharging its duties. However, in Bangladesh, experience shows that the EC, formed under party government, failed to act independently and neutrally, and it often earned defame as an extended agency of the government. Comment from one senior official of the Election Commission does confirm the allegation: “Over the years the constitutional body (EC) has been reduced to a helpless institution. It can be compared with a post office. Our responsibility is only to print ballot papers and deliver them to the election centers. At the end of balloting, we publish whatever results the administration sends us” (Bahar 1990: 17; Ahmed 2004: 66). Therefore, it seems that for holding free, fair and neutral elections, a ‘Caretaker Election Commission’ like non-party caretaker government is needed. But the reconstitution of EC, particularly, the removal of an election commissioner is not an easy task as article 118 (5) of the Constitution provides that an election commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court (GPRB, The Constitution, p. 98). Due to this complexity, Shafiur Rahman, once an Election Commissioner as well as a ‘self-admitted party-man’ (Rahman 2002: 130-33; Ahmed 2004: 67-68) and Mohammad Ali¹⁸ another ex-Election Commissioner could not be removed. Even the President, at that time, asked Shafiur Rahman to take three weeks’ leave aiming at keeping him away from electoral process, but the latter did not comply with the request of the former. Nevertheless, success has been achieved in reorganizing the EC during different NCGs regime. For example, Justice Sultan Hossain Khan who was appointed CEC by General Ershad, resigned from his office on request of Shahabuddin NCG. Later Shahabuddin appointed Justice Abdur Rauf, a judge of the Supreme Court (SC), the new CEC. Similarly Justice Sadeque, who was appointed CEC by the Khaleda Zia government in April 1995 resigned from his office on request of Muhammad Habibur Rahman NCG. Following the resignation of Sadeque, President Abdur Rahman Biswas appointed Abu Hena—a member of the Planning Commission—as the new CEC on the recommendation of the Chief Adviser. (Ahmed 2004: 69).

6.3 Modernizing Election Laws:

For the first time, the Representation of People Order (RPO) of 1972, the fundamental law regulating the conduct of elections, underwent a major change during the first NCG regime. The first NCG under Shahabuddin Ahmed amended the RPO; raising the ceiling of election expenses from Tk. 100,000 to Tk. 300,000 in 1991 (this was further amended in 2001, from Tk. 300,000 to Tk. 500,000). The amendment made in 1991 also required the contesting candidates to submit a statement within seven days of the last date of withdrawal, specifying the probable sources of fund to meet their election expenses; while their election agents were required to submit to the Returning Officer (RO) within 15 days of the publication of results a statement of the actual election expenses incurred. Provisions for stringent punishment were prescribed for those who failed to abide by these new rules (Ahmed 2004: 69-70). The Shahabuddin NCG also promulgated the Election Officials (Special Rules) Ordinance in December 1990, granting the Election Commission greater control over election officials. The Habibur NCG, besides retaining the changes made by the Shahabuddin government, also amended the RPO, disqualifying several categories of people, especially bank loan defaulters, from contesting the elections. Perhaps, the most far-reaching changes in the RPO were made by the Latifur NCG. Soon after the NCG assumed office, the CEC proposed for a number of amendments to the RPO most of which were accepted by the NCG, and accordingly, the President promulgated the Representation of People (Amendment) Ordinance, 2001, making some fundamental changes in the election laws. Most of these changes were intended to strengthen the EC (Election Commission). For example, EC was empowered to frame rules to carry out the purposes of the RPO. Until the amendment was made, the government used to make rules, sometimes in consultation with the EC. The amendment also empowered the EC to cancel the candidatures of those who failed to abide by the rules. The 2001 amendment also empowered the EC to allow election observers to observe any poll by staying near about any polling station or entering into, with the permission of the presiding officer, any polling booth or polling station or by being present at the counting of votes or consolidation of the results of the count (Ahmed 2004: 69-74). The bottom line is that the Election Commission enjoyed a far more independence and played a far more

¹⁸ Mohammad Ali, as an Election Commissioner, in an interview with a national daily, openly criticized some of the activities of the NCG, a few days before the elections were held. He even raised questions about the neutrality of the caretaker government. See: Justice Latifur Rahman, *The Days of Caretaker Government and My Version* (Bengali), Dhaka, 2002, pp. 228-30.

proactive role during the tenure of different NCGs than when elections were held under party governments. Amendments to the RPO by different NCGs, particularly the Latifur NCG, made the Election Commission a powerful constitutional body to conduct elections in a just manner.

6.4 Reorganizing Administration:

The task of reorganizing the administration during NCGs tenure has been a common phenomenon over the years. Needless to mention that a fair and neutral poll largely depends on the fair play of the persons directly involved in the electoral process. During the period of holding elections, the Deputy Commissioner (DC), the head of district administration and the Thana / Upazilla Nirbahi Officer (TNO / UNO), the head of Thana / Upazilla administration, are appointed Returning Officer (RO) and Assistant Returning Officer (ARO) respectively. These officers enjoy a lot of powers and have the ability to influence the election result in a number of ways. It is alleged that an outgoing party-government often posts officers of its own choice to different strategic positions both at national and local level with the objective of influencing the election outcome. For this reason, the successive NCGs had to make changes at different levels of administration in response to their own necessity and also to the demands of different parties. The following chart demonstrates the reorganization of administration in the first three NCGs tenure.

Sl. No.	Name of Post	Caretaker Tenure			Within Three Months
		1991	1996	2001	
1.	Secretary	87	54	22	Transferred
2.	Additional Secretary	34	69	11	Transferred
3.	Joint Secretary	55	43	29	Transferred
4.	Deputy Secretary	132	76	67	Transferred
5.	Divisional Commissioner	02	01	06	Transferred
6.	Additional Divisional Commissioner	-	-	02	Transferred
7.	Deputy Commissioner	41	05	40	New- 30 Reshuffle- 10
8.	Additional Deputy Commissioner	73	22	62	New- 33 Reshuffle- 29
9.	Upazilla Nirbahi Officer	67	90	221	New- 111 Reshuffle- 110
10.	Senior Asst. / Asst. Secretary	-	-	29	Transferred
11.	Cabinet Secretary	-	-	01	Contractual appointment for three months
12.	Principal Secretary	-	-	01	Contractual appointment for three months
	Total	491	360	491	

Source: Justice Latifur Rahman, *The Days of Caretaker Government and My Version*, Dhaka, 2002, p. 124.

7. Non-party Caretaker Government: Some Constraints to Democracy

In Bangladesh, every political leader or party, civil or military, popular or unpopular, big or small, in or out of power talks about democracy incessantly (Ahmed 1995: 364). The reason might be what Lord Bryce observes: "No government demands so much from the citizens as democracy and none gives so much back" (Cited in Karim 1981: 283). And it is the electoral process which keeps democracy alive. Elections and democracy are always interrelated and interdependent. The significance of elections in democracy is explained by MacIver in this way: "Democracy is not a way of governing, whether by the majority or otherwise, but primarily a way of determining who shall govern and, broadly, to what ends. The only way in which the people, all the people, can determine who shall govern is by referring the question to public opinion and accepting on each occasion the verdict of the polls" (MacIver 1965: 148; cited in Hakim 1993: 41; Ahmed 2004: 129).

The system of Non-party Caretaker Government was introduced in Bangladesh to make the electoral process free, fair, neutral and transparent. It is obvious that sound elections precede the sound development of democracy. But the question is—Is it a sound elections where black money dominates the whole electoral process? What can the poor Non-party Caretaker Government do about the mighty intrusion of black money and muscle power in the

electoral process? (Ahamed 2007: 43). Can democracy be really flourished if the political institutions are reluctant to practice it? If democracy remains dead or in coma within the structure of political parties, how can it be bloomed? It sounds good to hold elections under one justice or a neutral person, but what good is democracy where the politicians do not trust one another, where politics is marked by political egoism, non-compromise and non-confidence? Is not Non-party Caretaker Government the product of these evils? It is suggested that democracy is not a thing to be achieved overnight. It needs time to be grown. MacIver very aptly remarks, "Democracy is a form of government that is never completely achieved...democracy grows into its being" (MacIver 1965: 132). Even when universal suffrage is achieved, or when popular election becomes a central part of the political system, democracy is far from being fully realized (Arblaster 1994: 96).

As a non-political and non-elected body, Non-party Caretaker government has to face some serious challenges and disadvantages which naturally pose problems to the strengthening of democracy. Firstly, as a non-elected and non-political organization, the caretaker government lacks popular support resulting in serious organizational fragility. Justice Latifur Rahman's candid statement reveals the weakness and helplessness of this variety of government. On the question of 'University Situation' during his regime, Mr. Rahman observes, "Immediately after the Caretaker Government took over, the University of Dhaka and University of Chittagong got paralyzed due to strike. Gradually, the situation of the University of Rajshahi, Jahangirnagar, Shahjalal and Islamic University deteriorated. The system of education of the country continued to go with a fragile condition. Under these circumstances, the general students became apprehended and the guardians remained in serious tension. In this context, it was very difficult for the caretaker government to keep the universities open resolving the tremendous political problem i.e. the political violence and inter-party conflicts causing shut downs in the universities" (Rahman 2002: 150). Secondly, it is a government having accountability to none. As it is not elected, no question of accountability can be raised. Where there is no accountability of the ruler even for a short while, democracy must remain in danger. Thirdly, bureaucracy gets ample opportunity to be over developed during this time. Over development of bureaucracy does not match with the development of democracy. It is not wise to say that the caretaker government is the government by bureaucracy. As this government is neither elected, nor be it political; it has little political control over bureaucracy. Fourthly, it has been demonstrated that the word 'consensus' in the politics of Bangladesh is almost a far cry. Once the political parties agreed that the justices were the neutral persons and accordingly they were given the supreme priority to head the caretaker administration. [See article 58c (3) (4)] but the later experience shows that no man is above controversy, not even one justice in Bangladesh context. The event came true as soon as BAL-led 14-party combine expressed their strong reservation about Justice K. M. Hasan; the former Chief Justice of Bangladesh Supreme Court, constitutionally entitled to be the head of 3rd Caretaker Government; alleging that he had been an office bearer of BNP in the past. This political alliance also observed a series of hartals, blockade programs, and street agitations leading to a volatile political situation in the country, so that Justice Hasan could not assume the office of Chief Adviser. Finally, Justice Hasan, known as a perfect gentleman, under undue political pressure, expressed his unwillingness to be the chief of caretaker government. Can anybody assure us this sort of practice will not happen further in future? Again, it has been proved impractical, in Bangladesh context, to select an all-party consensus candidate [See article 58c (5)] to head the caretaker administration. If consensus would have remained very instrumental in Bangladesh politics, the question of non-party caretaker government had not been raised. One political expert correctly comments, "Unfortunately when our leaders turn their face away from each other even while being seated on the same sofa, chances of any compromise through consultation between their parties are almost destined to be an exercise in futility" (Karim 2007: 20).

Besides, the last resort of the mechanism which empowers the president to hold concurrently the office of the Chief Adviser, does not match with the spirit of non-party caretaker government, as he or she is nominated by a political party, particularly by the ruling party, and not elected on a bipartisan or consensus basis. That is why, the caretaker government headed by President Iajuddin Ahmed could not get survived in the backdrop of hostile and confrontational politics resulted in serious political unrest in the country. Finally, the President had to resign from the office of Chief Adviser and declare the state of emergency.

8. Cruel Reality in Bangladesh Politics:

Politics in Bangladesh revolves around personalities, not ideas or institutions (Ziring 1992: 216). Personality cult in Bangladesh politics is, indeed, increasingly affecting the political culture resulting in mutual disrespect and hatred formidably in the politics of Bangladesh. Bangladesh is also marked by tremendous factionalism what Archer Blood jokingly said that if three Bengalis were stranded on a desert island, their first action would be to establish four political parties (Blood 2002: 3).

After BAL coming to power in 2008 elections, the system of NCG once again became a debatable issue in the

political landscape of Bangladesh. The debate surrounded with the idea of reformation or annulment or keeping intact of the caretaker scheme. This time while in power, BAL started criticizing the NCG system and became active to scrape it from the constitution. However, the Party, despite having brute majority in Parliament that could easily amend the constitution, did not move for constitutional change at that stage. Meanwhile, in January 2000, a writ petition was filed with the Supreme Court questioning the validity of the 13th amendment to the constitution which introduced the non-party caretaker government system. Later a High Court Division bench, in a verdict, upheld the 13th amendment to the constitution which meant the caretaker system was not inconsistent with the constitution. However, the writ petitioner was not satisfied with the verdict and eventually went to the Appellate Division. The Appellate Division court, due to the seriousness of the case, formed a panel of amici curiae that comprised of eight members¹⁹ to hear the opinions and arguments on the issue. Of the amici curiae, Dr. Kamal Hossain (once he was a frontline AL leader, but currently the chief of a party called Ganoforum), T. H. Khan (a former judge of the Supreme Court of Bangladesh and currently a practicing lawyer who is politically affiliated with BNP), Barrister Amir-ul-Islam and Barrister Rokanuddin Mahmud (both are the former President of the Supreme Court Bar Association of Bangladesh and politically affiliated with AL), Mahmudul Islam and Barrister Rafique-ul-Haque (both are former Attorney General of Bangladesh) gave opinions in favor of the caretaker government system.²⁰ Dr. Kamal and Justice Khan, during the hearing, argue that the system should remain in effect, and the apex court should not question the legality of the system considering “the interest of the people.” Dr. Kamal, the chief architect of the Constitution of Bangladesh, also argued that if there were flaws in the caretaker government system, those could be removed through consultation. He further argued that the non-party caretaker government system had to be introduced because neither the civil society nor the political parties outside the government thought that free, fair and neutral polls could be held under a political government.²¹ However, two jurists—Barrister Rafique-ul-Haque and Dr. M. Zahir—suggested alternatives to the caretaker government system while Ajmalul Hossain and the petitioner’s counsels placed their arguments against the system.²²

The main oppositions in parliament expressed their concern over any change or reforms of caretaker government. They said that they would not accept any alternative of the system. Barrister Moudud Ahmed, one of the stalwarts of the main opposition BNP and former Law Minister, warned the government that the consequence of any attempt to revoke the caretaker government system would not be propitious. He also said that the caretaker government system had been a settled issue to ensure a neutral and sound election and any alternative to it would be simply terrible. He further commented that a constitutional crisis would take place if the system was scrapped.²³ BNP, now in opposition, utterly opposed to the abolishment of caretaker system, though, it initially vehemently opposed the idea while in power. A simple conclusion is that the caretaker government system in Bangladesh, in general, is appreciated by the opposition and opposed by the ruling party. No parties, be it AL or BNP, support caretaker government while in power, and oppose the system while out of power. In other words, NCG seems to have become a useful tool for the opposition, but pernicious to the government as far as electoral politics is concerned.

9. Concluding Remarks and Recommendations:

The Non-party Caretaker Government, since its inception, worked satisfactorily holding two general elections in 1996 and 2001 within the stipulated period of ninety days as Constitution prescribed. Nevertheless, the system ran into difficulties during the relevant period in 2006-07. Following the failure of all the options of the constitution regarding the formation of the Non-party Caretaker Government and consequently the proclamation of emergency by the President made a serious political and constitutional crisis in the history of Bangladesh. Once again Bangladesh experienced military rule; however, in disguise this time i.e. under the banner of civil administration led by Dr. Fakhruddin Ahmed, a former Bangladesh Bank Governor sworn in on 11 January 2007. It was an open-secret that the two-year-Fakhruddin regime, branded as unconstitutional and illegitimate, was basically the rule of the army led by General Moeen U. Ahmed, the then Chief of Staff, Bangladesh Army. What a tragedy! For ensuring free, fair and peaceful elections aiming to consolidate democracy, the mechanism of non-party caretaker government was introduced. Unfortunately, this mechanism too turned into failure, after

¹⁹ Dr. Kamal Hossain, T. H. Khan, Barrister Rafique-ul-Haque, Mahmudul Islam, Barrister Amir-ul-Islam, Barrister Rokanuddin Mahmud, Barrister M. Zahir, and Ajmalul Hossain.

²⁰ *The Daily Star*, Dhaka, 11 May 2011.

²¹ *The Daily Star*, Dhaka, 28 March 2011.

²² *The Daily Star*, Dhaka, 11 May 2011.

²³ Moudud Ahmed outlined his party’s view over the current debate on caretaker government in Bangladesh at a discussion meeting held in National Press Club, Dhaka. See: *The Daily Amardesh*, 26 March 2011.

successfully conducting of two general elections, resulted in so called military-backed unconstitutional and undemocratic regime. It is ironic that the principal political parties, who are committed to the principle of democracy, yielded to the institution of caretaker government, which is basically a non-elective and thereby an undemocratic contraption (Karim 2007: 20). Needless to say that success of democracy does not depend only on holding elections. What is first needed to make Bangladesh's democracy sustainable and vibrant is, of course, to bring about structural and institutional changes and reformations to her political and administrative institutions, such as Political Parties, Election Commission, Anti-Corruption Commission etc. A political commentator correctly observes, "If we really, really want a democratic order in the country, it is the political parties that we have to turn to. In the same token, it is also understood that if the political parties in their present *modus vivendi* are allowed to operate, no meaningful election is possible. With our troubled party system we would simply get back to square one. No clean politics is possible in Bangladesh if the parties themselves do not adhere to democratic norms and practices, and remain unaccountable and non-responsive" (Choudhury 2007). To thwart the evil influence of black money and muscle power, dominant in Bangladesh's electoral politics over the years, the Anti-Corruption Commission has to be revitalized and rejuvenated. In holding free and fair elections, Election Commission's role is of paramount importance. In this case, it is not sufficient to make the Election Commission independent. It must be powerful as well. It must have real power that can take control over any kind of electoral crimes done by anyone of any stature. However, much of what is required in this area depends on democratic culture rather than on the Non-party Caretaker Government. Democratic values such as mutual respect and tolerance emerge from the social norms rather than from any political mechanism (Ahamed 2007). The political leaders, more over, must shift their attention from the rule of persons to rule of law. If the rule of law becomes their overriding concern and if they can build consensus among themselves on the key social issues including electoral issues, political activities are bound to be back on the rail. The political leaders should concentrate more on social conditions to make the society safe for democracy (Ahamed 2007). The political leaders should overcome their 'tunnel vision' and show political maturity, farsightedness and due regard to people's interest by opting for non-violent electoral politics essential for sustaining democratic governance (Rahman 2007: 45).

10. Final Note:

On 10 May 2011, the Appellate Division of the Supreme Court of Bangladesh, in a watershed verdict, announced the 13th amendment to the constitution as unconstitutional and declared the 15-year-old constitutional provision of non-party caretaker government system as illegal. In the same verdict, the court also said that the voided system might be practiced for another two parliamentary terms for the sake of "safety of the state and its people." The court also asked the parliament to amend the constitution to make sure that former chief justices or any other Supreme Court judges are not chosen as heads of caretaker governments in case the system is kept for another two parliamentary elections.²⁴ The ruling party BAL-led grand alliance welcomed the judgments while the oppositions outright rejected the verdict. The main opposition BNP-led 14-party combine (now 18-party alliance) categorically told that it would not participate in the next elections unless it is held under a caretaker government.²⁵ On the other hand, the government, following the verdict, immediately formally moved for the constitutional changes. In the pretext of the execution of the court's order, the 14-party alliance government made the 15th amendment to the constitution that was signed by President on 30 June 2011. The non-party caretaker government system, through the 15th amendment, was thus obliterated from the constitution. The oppositions termed the government's action as "throwing the country into a political confrontation."²⁶ Since then, Bangladesh once again fell into acute political crisis and uncertainty. The oppositions still are pressing their demand for non-party caretaker government, while the ruling alliance is persistently speaking of no-return to the past experience of caretaker system. A severe deadlock in the political landscape of Bangladesh is now continuing in the ahead of the next parliamentary elections scheduled to be held at the end of 2013. The situation is getting worse day by day as the time for elections comes nearer. No meaningful attempt is yet to be made for a political dialogue between the ruling party and the oppositions with regard to the electoral process. If the political parties, particularly the ruling alliance and the opposition alliance fail to come to a consensus on how the next elections will be held, it is obvious that the future of democracy in Bangladesh is quite murky.

²⁴ *The Daily Star*, Dhaka, 11 May 2011.

²⁵ *The Daily Star*, Dhaka, 12 May 2011.

²⁶ *The Daily Star*, Dhaka, 1 July 2011.

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