

# Caretaker govt faced problems in dealing with armed forces

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portfolio is out of the constitutional framework.

The Awami League-led 14-party opposition combine in its reform proposals demanded that the caretaker government should be in charge of the defence ministry, but the prime minister on Monday said the armed forces will be under the president.

As per the 13th amendment to the constitution, the president holds the portfolios of the Ministry of Defence and the Armed Forces Division that remains under the Prime Minister's Office (PMO) when a political government is in power.

Constitution expert Barrister Rafique ul Huq in his article published in The Daily Star in 1996 explained the constitutional provisions and said the president cannot in any way hold the portfolios of the defence ministry and the Armed Forces Division.

Latifur Rahman, a former chief justice who headed the 2001 caretaker government, is also in favour of keeping the division under the caretaker government.

Talking to The Daily Star, a number of former advisers to the caretaker governments have questioned the intention of such amendment to the constitution.

The three-month caretaker government is responsible for holding the

election in a free and fair manner. For this it prepares the civil administration by transferring senior officials. The caretaker government should also have the power to bring changes in the military administration for holding fair polls, a former adviser said.

"The caretaker government cannot bring change in the military administration as the president holds the portfolio of the defence ministry," the former adviser told The Daily Star yesterday, referring to his experience during the last caretaker government.

The reshuffle in administration is needed as political governments make changes in civil and military administrations through promotion and new appointment ahead of elections. The present government is doing the same eyeing the next polls, sources said.

During the last one year, the government has appointed a new army chief and principal staff officer and promoted some officers to the rank of major general.

The government this month promoted a brigadier general to the rank of major general on the day of his retirement while sent a major general to forced retirement two years before his scheduled retirement from service. More changes are likely to take place before expiry of the present government's tenure, sources in army said.

The 2001 caretaker government had suggested transfer of some senior army officers, allegedly promoted and appointed to some vital posts by the previous government on political considerations, but the president did not agree, sources added.

In 1996, the first caretaker government formed under the constitutional provision, had also faced enormous difficulties in conducting election as the then president emerged with the executive power over the defence ministry and the Armed Forces Division.

The then president Abdur Rahman Biswas and the army chief Lt Gen Abu Saleh Mohammad Nasim were locked in a conflict over sending some senior army officers on forced retirement. Gen Nasim protested the president's move to send them on forced retirement. The conflict created division and confusions in the army and troops came out of cantonments and took the streets in different areas.

But the then caretaker government headed by Justice Muhammad Habibur Rahman had nothing to do with the deteriorating situation as it had no jurisdiction to take step to resolve the crisis, though the conflict put the June 1996 election into uncertainty.

The president on May 20 sacked Lt Gen Nasim and Lt Gen Mahbubur

Rahman became the new army chief. Amid the volatile situation, Justice Habibur Rahman in his address to the nation said the president took action against the army chief with his own power.

He urged members of the armed forces to keep quiet. "This is a test for the nation and we will have to overcome it," Justice Habibur Rahman said.

### SUGGESTIONS OF THE EX-ADVISERS

The chief adviser to the 2001 caretaker government Justice Latifur Rahman in his book titled 'Tattabadhayak Sarkarer Dinguli O Amar Kotha (Days of the Caretaker Government and My Words)' said that no allegation of appointment and transfer of army officers was raised to the president during his tenure.

The BNP however complained to the caretaker government that the previous [Awami League] government before leaving the office had promoted army officers and made appointments according to its choice. "We did not take any steps though we found proofs of it [BNP's allegation] from different sources," Justice Latifur said.

Referring to the constitutional provision on the defence portfolio, the former chief adviser said an embarrassing situation would prevail if the president and the chief adviser take different stances. "I think, it is better to keep the armed forces under the caretaker government since it is responsible to hold a free and fair election," he asserted.

Narrating his experiences during the last caretaker government, Justice Latifur said he had faced problem when he felt the necessity to discuss anything with any army officer.

"Permission of the president was required whenever it was needed to call any armed forces member in my office

for discussion in detail. Armed forces officers could not meet me without the president's permission. The permission was necessary as the armed forces is under the president," the former chief adviser said.

Talking to The Daily Star, a former adviser to the caretaker government requesting anonymity said the armed forces are not loyal to the non-party caretaker government, but to the president who is elected by a political party.

"It has been a vital question why the 13th amendment was suddenly made to provide the president with executive power over the defence ministry," he said.

The former adviser explained that a political intention might be behind the amendment. The party government that hands over power to the caretaker government wants a favour from the armed forces in the election through the amendment that keeps the military administration intact during the interim government's tenure.

Three other former advisers Maj Gen (ret.) Moinul Hossain Chowdhury, M Hafizuddin Khan and ASM Shahjahan talking to The Daily Star also suggested that the defence ministry should be kept under the interim government.

"The charge of the defence ministry should be in the hands of the caretaker government," Hafizuddin observed. Former adviser ASM Shahjahan echoed him.

"Why the defence will not be under the caretaker government when it holds all other responsibilities of a government," questioned Maj Gen Moin. "There's no logic in keeping the defence under the president during the caretaker government."

**CONSTITUTION EXPERT'S VIEWS**  
After the government made the 13th amendment to the constitution, constitution expert and former attorney gener-

ally Barrister Rafique ul Huq in an article published in The Daily Star on May 27, 1996 explained why the president cannot hold the portfolios of the defence ministry and Armed Forces Division.

"President in a parliamentary democracy form of government where he is a titular head and is also not a member of the caretaker government, cannot in any way hold the portfolios of the Ministry of Defence and Armed Forces Division," he said.

Referring to Clause 3 of Article 58D of the constitution, he said the executive power of the republic shall be exercised by or on the authority of the chief adviser and shall be exercised by him in accordance with the advice of the non-party caretaker government subject to provision of Article 58D (1).

"So the president has no executive power, constitutional provisions should be interpreted as a whole. By adding/amending a particular Article one cannot change the whole framework of the constitution," Barrister Rafique argued.

He explained that Article 62 of the constitution has not been repealed by the 13th amendment nor it has been suspended. Mere addition of three lines in Article 61 will not make the provisions of Article 62 a nugatory.

By this amendment the functions of the Ministry of Defence and Armed Forces Division cannot be entrusted to the president nor the chief adviser can allocate the said portfolios to the president since he is not an adviser in his caretaker government. "So all actions of the president in this regard prima-facie appear to be illegal," he said.