

The caretaker government needs intensive care

DR KAMAL HOSSAIN

OVER a week has passed since the president in effect appointed himself as his own chief adviser. The caretaker government envisaged in the constitution is a non-party caretaker government. The president's explanation that he had exhausted the steps required by clauses (3), (4) and (5) of Article 58(C) before he acted under clause (6) is difficult, if not impossible to accept.

Constitutional framework

The constitution provides a framework for the formation of a democratic representative government and makes detailed provisions for the interim period between the dissolution of Parliament and the holding of a free and fair election to constitute the next Parliament ("the interim period").

The novel institution of a caretaker government to oversee elections was prompted to prevent the deliberate management and engineering of elections and their results by the party in power. The experience of the 1986 election, in which the incumbent government had grossly misused the state machinery, had prompted demands for holding an election not under the president but under an impartial, caretaker administration in 1991, which was done. The February 1996 election held under the outgoing party government, which was also manipulated, led to a popular demand for a free and fair election under a non-party caretaker government. The Thirteenth Amendment (Article 58C) for a non-party caretaker government was incorporated as a permanent feature of the constitution.

The object of this article was to induce a non-party caretaker government for the interim period to provide all possible assistance to the Election Commission for ensuring "the holding of the general election... peacefully, fairly and impartially." (Article 58D(2))

Impartial umpiring essential

The commitment to hold fair elections "peacefully, fairly and impar-

There is still time to save the country from a constitutional crisis by appointing, without delay, a non-party chief adviser, following the guidelines of Clauses 3 to 5 of Article 58C. This would carry out the basic purpose of assuring the nation that it would be governed in the interim period till the election of the next Parliament by a non-party caretaker government so that it could, together with an independent Election Commission, hold a fair, free, and peaceful election.

tially" is of fundamental importance in order that the citizens are assured that a Parliament is formed by persons whom they choose through a truly free and fair election, not manipulated and managed with the use of black-money, illicit arms and misuse of state machinery.

An election is an electoral contest between competing parties, in which the umpire/referee (caretaker government and Election Commission) must be impartial and neutral. They must effectively enforce the law to prevent: (a) the use of black-money, (b) the use of illicit arms and muscleman, and (c) misuse of government machinery and its functionaries, so as to ensure that the elections are free and fair.

Non-party caretaker government

The non-party caretaker government (together with an independent Election Commission) plays the role of an umpire. The umpire to be effective must be independent and impartial and must be perceived as such by citizens and contesting parties alike. It must be above all controversy to ensure the holding of an election which is free and fair and above controversy.

Role and responsibility of president

The president is required by Article 58C, therefore, to act carefully and conscientiously, so as to comply with the guidelines laid down in this article through an objective evaluation of the person to be appointed chief adviser, duly taking into account all relevant circumstances. The president is required to proceed according to Article 58C(3) to (5).

Article 58C contemplates that the

president shall follow the guidelines contained in clauses 3, 4 and 5 of that article. He is expected to follow a process in which the first name to be considered is that of the person who among the retired Chief Justices of Bangladesh, retired last (and who is qualified to be an Adviser). If such a retired Chief Justice is not available or is unwilling or unable to hold office of Chief Adviser:

Clause 3 directs the president to consider the person who "among the retired Chief Justices, retired next before the last Chief Justice."

Clause 4 provides that if no retired Chief Justice is available or unwilling 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." If no such retired judge of the Appellate Division is available or is unwilling, then

Clause 5 directs the president, after consultation as far as practicable, with the major political parties, to appoint the chief adviser from among the citizens of Bangladesh who are qualified to be appointed as adviser under this article.

Thus, if effect cannot be given to clauses 3 and 4 because no retired chief justice, and failing that no retired Appellate Division judge, below the age of 72 years is available, then the constitutional responsibility devolves upon the president under clause 5 to hold consultations with the major political parties as far as practicable, and then appoint as chief adviser, a person having the qualifications set out in clause (7) of Article 58C as follows:

Qualifications for chief adviser

Article 58C(7):

"(7) The President shall appoint

Advisers (Chief Adviser) from among the persons who are-

- qualified for election as members of Parliament;
- not members of any political party or any organization associated with or affiliated to any political party;
- not, and have agreed in writing not to be, candidates for the ensuring election of members of Parliament;
- not over seventy-two years of age."

These are the only requirements as far as formal qualifications are concerned. When exercising his power, the president is expected to be guided by his best judgment, conforming to the guidelines laid down in clauses 3, 4 and 5 to appoint a person who is widely respected and enjoys confidence of citizens as a whole as a person of integrity and who is competent to discharge his constitutional role impartially and effectively to ensure the holding of a peaceful, free, and impartial election.

The compelling need for a caretaker government with a non-party character is that it must take prompt and effective steps to counter the actions of the outgoing government, which are calculated to give it undue advantage and thus prevent the creation of a level playing field for a free and fair election.

The effectiveness of the caretaker government is to be tested by its actions, in particular, by its capacity to demonstrate that the rule of law stands restored. The actions of the outgoing government which need immediate correction are:

- **Election Commission:** Appointment of CEC and mem-

bers of the commission whose impartiality and competence have been questioned from the very outset, and their own subsequent conduct has confirmed their partisanship and incompetence. This has also been recognized by the Appellate Division. The EC is totally dysfunctional, distrusted, and incapable of conducting a free and fair election.

- **Administrative transfers and postings:** At all levels hand-picked party loyalists were posted in the administration, police, and security agencies by the outgoing government. Public servants who are not regarded as loyalists have had their service terminated arbitrarily or they have been made OSD.

- **Impunity of party armed cadres and terrorists:** The outgoing government has maintained its network of armed cadres who continue to be patronized by political godfathers.

- **Impunity in respect of gross corruption:** Party leaders at the highest level have practiced gross corruption of unprecedented levels generating black money which would be deployed to undermine free and fair elections.

- **Media:** The state owned media has been used by the outgoing government as a party propaganda organization disseminating disinformation or false information. Gross discrimination has been exercised in granting of frequency allocations to several new TV stations, directly or indirectly owned, or patronized by persons close to the outgoing government, while the original independent TV station (Ekushey) has been denied a frequency allocation for over twenty months even after it obtained a license through the intervention of the Supreme Court.

- **Systematic abuse of law and criminal justice:** The law has been used to harass political opponents and to prevent and deny prosecution of party loyalists and allies. Mass arrests are



being carried out indiscriminately while no action is being taken against known party cadres of the outgoing government, who attacked and set fire to houses, cars and work places of former leaders of the outgoing party who resigned to launch a new party.

Citizens of Bangladesh were keenly awaiting the establishment of a non-party caretaker government which would from the very outset be seen to be taking immediate and effective action to correct the above malpractices and misgovernance.

A caretaker government is expected to be a truly non-party government and to be seen as such. Its actions should prove its non-partisan character and capacity to take corrective actions, in order to create a level playing field. Such corrective actions are to be taken without delay. The outgoing government is seen to be actively deploying its armed cadres and illegally

acquired money to vitiate the environment. If not corrected by prompt law-enforcement, this would significantly reduce the prospect for a free and fair election.

The distribution of portfolios has imposed upon the president the burden of administering an impossibly large number of subjects, ranging from defense, home affairs, foreign affairs and establishment, to several others. This, in effect, means that hand-picked and remote-controlled loyalists of the outgoing government will be administering the key sectors as it is humanly impossible for one person to do so. It is, therefore, imperative, if the constitution is to be respected and made operative, that the president should forthwith appoint a chief adviser according to the constitution.

The present "caretaker government" cannot continue to remain an impotent bystander while the administration, the law-enforcing agencies, and the state machinery are manipulated by an "invisible govern-

ment," which has at its core loyalists of the out-going government. To allow them to do so, without accountability and with impunity for corruption and misgovernance, amounts to subversion of the constitution.

There is still time to save the country from a constitutional crisis by appointing, without delay, a non-party chief adviser, following the guidelines of clauses 3 to 5 of Article 58C. This would carry out the basic purpose of assuring the nation that it would be governed in the interim period till the election of the next Parliament by a non-party caretaker government so that it could, together with an independent Election Commission, hold a fair, free, and peaceful election.

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Branding Bangladesh versus bashing Bangladesh

MAMUN RASHID

I am writing this article at a time when Bangladesh has, for the first time, grabbed international headlines in the most positive light possible. Bangladesh is the birthplace of a Nobel laureate, the joy of which is difficult for me to contain. It is beyond just wonderful to see the nation in heady celebration of this joyous moment for a son of our soil.

But what has pained me deeply is seeing that even in this moment of glory, when presidents, royalty, celebrities, et al from all over the world have hailed our professor, a certain quarter within our country itself has tried to negate even this piece of unadulterated good news.

And I wonder to myself, is it beyond us to just think positively for a change, united as one nation? Why are we so obsessed with always looking for the negative, rather than finding the positive? Why does it seem to be our lifelong mission to make things seem irreparable and beyond hope?

It is a situation that we have grown up with, and the media fuelled further debate, maybe with underlying justifications. I typically refrain from sharing any of my organization's work through my writings. But this is an incident that I must share for the greater awareness of the people.

The institution I work for recently

hosted the Global Micro-Entrepreneurship Awards, where a very important foreign delegate was also invited. All arrangements were finalized when, suddenly, 24 hours before the arrival of this person, we were informed that the trip was cancelled. Why, you ask? No, it was not due to sudden illness, other urgent meetings or the like, it was because of some recent reports in the media regarding the politics of violence and hartals in Bangladesh.

After much effort and intervention of high officials, this person agreed to come to our beloved land. The country, its people and their warmth overwhelmed her. She said that this was not the Bangladesh the outside world saw. Bangladesh is what the media, and especially local media, portrays, a country rife with destructive politics and natural calamities. But in her own words, this is a land of hope, of increasing prosperity, and loving people.

I had the opportunity to work in India. There I met a professor who once said to me that in the non-resident Bangladeshi circle, we are happier to be bashing Bangladesh rather than branding Bangladesh. This tends to have a negative ripple effect. When one is constantly hearing only about the bad side of a country, the next generations are affected by it, and there prevails an

overall feel of negativity.

I was recently reading an article by the very popular President of India, Dr APJ Abdul Kalam, also compared to Chacha Nehru by the Indian media, wherein he has shared his three visions for India. While describing those visions he dwelt upon different aspects of society, depicting where he foresaw scope for improvement, and explaining why India was still not a part of the developed nations club. And I was thinking, each word, each sentence of that article is as true (if not more true) for Bangladesh as it is for India. All you need to do is replace the country's name, India, with Bangladesh.

But he asks the biggest question of all, while being critical of the whole system in the country, what are you, as an individual, doing about it? Individuals collectively form a community, a society, so isn't it the responsibility of each individual to act in the right way? Why do we throw etiquette out the window when in the country, but become prim and proper citizens when visiting another nation? A truly strongly recommended reading if you can get your hands on the article.

Look at us. We complain that the government doesn't provide us adequately with utilities, so we are not getting our democratic rights, and justice is not being done to us.

What justice are we doing by taking to the streets and vandalizing an innocent person's car, or taking away a daily wage-earner's source of livelihood by setting fire to his CNG or taxicab. These people are also sufferers because of the lack of electricity in their houses, or water to drink.

We want to be photographed while throwing bricks at windows of expensive buildings, or destroying an object which the owner would have taken so much pain to attain. We are delighted to see our faces splashed across the papers and/or on national television. What a simple way to be in the headline news for a day.

But then what? What are we labelled as? A violent nation, a nation of unruly mobs? We brand ourselves negatively as individuals, and along with that, the whole nation gets dragged in. Do we care? No, we're just happy that we bashed the government, hurt an innocent person, and were seen on national TV.

Besides the negatives, which every country has, there are many good things happening in Bangladesh, but, somehow, we just forget to look or take note. But its high time this culture of negative branding was halted. It's time the world saw Bangladesh for all the glories she possesses. The media are already playing a strong role in

shaping opinions of the people, they may play a stronger role yet, that of ambassadors for public relations for our country.

I dream of positive portrayal of Bangladesh, of showing the land of hope to the world, to convey the story of a small town housewife, Shamima Khatun, receiving an award from Chelsea Clinton, or of Nilufar Yasmin making cricket bats in an unknown, unfamiliar part of the country; real life heroines who are larger than life, who have fought with courage to challenge the clutches of poverty to march towards prosperity. I dream, like Dr Yunus, of micro-credit one day turning the face of the country, when all the children will go to school, instead of a few of the privileged lot.

I often wonder what we gain out of negatively publicizing our own country. Has it ever occurred to us that negative criticism by individuals collectively forms a negative image of the country? We take pride in being proud of other countries and their achievements, but shy away from being proud of our own. Look at the individual who flashes the latest gizmo saying that it is made in Europe, America, or Japan, but that same person will not be so eager to purchase a locally made item, or admit it to you. It's almost as if we are embarrassed to call ourselves Bangladeshis. By degrading your

own country do you gain respect in the eyes of others, does it make you eligible for citizenship of another country? What makes other countries stronger than us? Their patriotism, and their pride in being who they are.

Nation building, if not accompanied by national brand building, can only result in misery for the nation as a whole. Have you ever watched a boxing match where even the first few punches may not amount to much, and you see the injured fighting back. But blow after blow weakens him, and ultimately leads to his defeat.

I feel as though we, the people who make up the nation, are acting as the country's opponent, dealing blow after blow, and the nation is now cracking under the abuse. External forces can have a field day against a nation not united. We have wanted to build this nation since its independence, but wanted others to do the building while we criticize.

Isn't it high time that we looked deep inside our hearts, and questioned our true feelings for this country that feeds us? It's time we left our mark in the march towards true liberalization, and a national identity, to keep in step with the rest of the world, and for the sake of the generations to come.

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Ominous signs

KAZI SM KHASRUL ALAM QUDDUSI

WHAT has happened to a large segment of the people we look to? Have the words such as sanity, sobriety, and propriety lost all meaning to them? Have they decided to epitomize lack of integrity? Have they opted to show utter disregard for people's expectations? Or, have they fallen for controversy? Do they really want democracy to flourish? Whatever it is, the country has, of late, become a land of controversies.

Some are making themselves controversial intentionally while some are being dragged into controversy unnecessarily. Some are becoming victims of circumstances while some are falling prey to vindictiveness, and a sense of minimal propriety is becoming a rarity in the process. Even sober people are now becoming rather intolerant. Maybe, the atmosphere is like that. Even so, knowledgeable people are not supposed to lose their composure because that will only mean consigning the country to the criminals.

No, the country just cannot be allowed to become a land of the foolhardy and their mindless followers. Unfortunately, most of the people belonging to the elite circle seem to be overtly disposed towards interpreting things from their pre-conceived partisan perspectives. Very few of them seem to be interested in calling a spade the spade. This glaring partisanship is really dangerous for the country.

Willful misinterpretation of the constitutional provisions regarding appointment of chief adviser, total disregard for the core issue of good governance, that is, transparency, during appointment of caretaker chief and formation of council of advisers, unending step-motherly attitude to the media people by the concerned secretaries, gratuitous remarks by an adviser of the caretaker government (CTG) about the 14-party alliance and the over-reactive attitude by the eminent lawyers must have disappointed the people beyond measure.

Moreover, unofficial visit of Sheikh Hasina's residence by two advisers of the CTG as envoys of the president-cum-chief adviser and the following ill-motivated commotion created by the 4-party alliance, CEC's expression of resignation on request of the council of advisers and subsequent reversal of previous stance, BNP's defence of the opprobrious CEC, placing of 10 points by BNP coalition in reply to 14 party's 11 points, and shedding crocodile tears for the constitution as long as it serves the vested interests have

added to the apprehension of the

people.

The 14-party alliance has every reason to feel aggrieved by the president's assuming the post of chief adviser and their fears are more or less substantial. Thus, their pressure upon the chief adviser and the CTG is more a necessity than a tactic. The 14-party's anxiety must have been augmented by the ailing president's holding all the crucial portfolios. The allegation of an unseen government behind the CTG is not also altogether unfounded. Given the president's poor state of health, one doesn't need to be a physician to apprehend in those particular fashions.

Meanwhile, it has been widely alleged in the media that the synchronously bureaucratic set-up left behind by the 4-party alliance is still dictating things. The reshuffle in the civil administration that has taken place after assumption of CTG has only added to the fears as it has allegedly been reinforcement of former incumbents. Meanwhile, the police administration is also allegedly busy reining in the 14-party activists thereby intensifying their worries. Lists of previous alliance government's politically motivated lists are also allegedly being employed by the police to intimidate the 14-party activists.

In the name of reshuffle, moderate officials are also allegedly being replaced by hardliners in many respects and the crucial secretaries who are effecting the changes are also alleged to be hardcore 4-party loyalists. The president's press secretary and BTV's key people are also alleged to be 4-party loyalists and the performance of the stated functionaries even after end of BNP coalition's regime only corroborates the allegations. However, the news of alleged pre-arranged administrative reshuffle is being so widely circulated in the state media that people can very well be fooled to believe the reshuffle to be congenial for creating a level playing field.

There is, however, a ray of hope as the council of advisers looks positive in their frame of mind and seems disposed towards guiding and assisting the caretaker chief so as to better the situation. Though the council suffered a few early shocks initially, it now seems to be focused and motivated. The CTG is already under immense pressure from the 14-party alliance. The counter-pressure from the 4-party alliance will only contribute to cloud the picture. However, the success of the current CTG lies in its ability to come out of the clutches of the previous government's phantom sooner rather than later.

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Insulting our troops, and our intelligence

THOMAS L FRIEDMAN

GEORGE Bush, Dick Cheney and Don Rumsfeld think you're stupid. Yes, they do.

They think they can take a mangled quip about President Bush and Iraq by John Kerry -- a man who is not even running for office but who, unlike Mr Bush and Mr Cheney, never ran away from combat service -- and get you to vote against all Democrats in this election.

Every time you hear Mr Bush or Mr Cheney lash out against Mr Kerry, I hope you will say to yourself: "They must think I'm stupid." Because they surely do.

They think that they can get you to overlook all of the Bush team's real and deadly insults to the US military over the past six years by hyping and exaggerating Mr

Kerry's mangled gibe at the president.

What could possibly be more injurious and insulting to the US military than to send it into combat in Iraq without enough men -- to launch an invasion of a foreign country not by the Powell Doctrine of overwhelming force, but by the Rumsfeld Doctrine of just enough troops to lose? What could be a bigger insult than that?

What could possibly be more injurious and insulting to our men and women in uniform than sending them off to war without the proper equipment, so that some soldiers in the field were left to buy their own body armour and to retrofit their own jeeps with scrap metal so that roadside bombs in Iraq would only maim them for life and not kill them?

And what could be more injurious and insulting than Don

Rumsfeld's response to criticism that he sent our troops off in haste and unprepared: Hey, you go to war with the army you've got -- get over it.

What could possibly be more injurious and insulting to our men and women in uniform than to send them off to war in Iraq without any coherent postwar plan for political reconstruction there, so that the US military has had to assume not only security responsibilities for all of Iraq but the political rebuilding as well? The Bush team has created a veritable library of military histories -- from "Cobra II" to "Fiasco" to "State of Denial" -- all of which contain the same damning conclusion offered by the very soldiers and officers who fought this war: This administration never had a plan for the morning after, and we've been making it up -- and paying the price -- ever since.

And what could possibly be more injurious and insulting to our men and women in Iraq than to send them off to war and then go out and finance the very people they're fighting against with our gluttonous consumption of oil? Sure, George Bush told us we're addicted to oil, but he has not done one single significant thing -- demanded higher mileage standards from Detroit, imposed a gasoline tax or even used the bully pulpit of the White House to drive conservation -- to end that addiction. So we continue to finance the US military with our tax dollars, while we finance Iran, Syria, Wahhabi mosques and al Qaeda madrassas with our energy purchases.

Everyone says that Karl Rove is a genius. Yeah, right. So are cigarette companies. They get you to buy cigarettes even though we

know they cause cancer. That is the kind of genius Karl Rove is. He is not a man who has designed a strategy to reunite our country around an agenda of renewal for the 21st century -- to bring out the best in us. His "genius" is taking some irrelevant aside by John Kerry and twisting it to bring out the worst in us, so you will ignore the mess that the Bush team has visited on this country.

And Karl Rove has succeeded at that in the past because he was sure that he could sell just enough Bush cigarettes, even though people knew they caused cancer. Please, please, for our country's health, prove him wrong this time.

Let Karl know that you're not stupid. Let him know that you know that the most patriotic thing to do in this election is to vote against an administration that has -- through sheer incompetence -- brought us

to a point in Iraq that was not inevitable but is now unwinnable.

Let Karl know that you think this is a critical election, because you know as a citizen that if the Bush team can behave with the level of deadly incompetence it has exhibited in Iraq -- and then get away with it by holding on to the House and the Senate -- it means our country has become a banana republic. It means our democracy is in tatters because it is so gerrymandered, so polluted by money, and so divided by professional political hacks that we can no longer hold the ruling party to account.

It means we're as stupid as Karl thinks we are.

I, for one, don't think we're that stupid. Next Tuesday we'll see.

Tom Friedman is a New York Times columnist. Copyright 2006 The New York Times Company.