

Provision for Caretaker Government in the Constitution will Help Us Attain a Semblance of Democratic Perfection

by A K Faezul Huq

Government Finances

Supply of treasury bills, the financial instrument through which the government borrows from the banking system, has dried up. That is what a report carried by us says. The reason is apparently simple. The government does not need to borrow money and it has no occasion to issue new treasury bills. At first glance, this phenomenon could be read as a proof of prudential financial management. But it could also be that the government is unable to spend money the way it had planned. If that be so, then it could also be interpreted as a lack of dynamism in financial management.

Governments spend money not just to meet current needs. They also invest in the future by way of development outlay. Current revenue yields may not always suffice to generate adequate resources to pay for expenditure on development. Governments are then obliged to go for domestic borrowings. This is not to say that governments would embark on domestic borrowings as a matter of course. That again might reflect mismanagement of government finances, bordering on profligacy. What is important is that governments must spend the money earmarked for meeting perceived developmental expenditure needs in full. If resources are in surplus because funds budgeted for developmental outlay remain unspent, then that could be an indication that government finance is in a moribund stage.

The lacklustre performance of public investment programme in our case tends to suggest that the government is failing to spend public revenue earmarked for developmental expenditure. Government's success in reaching, if not exceeding, targets for public investment outlay would have provided a surer test of its real needs for domestic borrowing.

So much for government's short-term domestic borrowings against the usual ninety-day treasury bills. All the same, government had been borrowing on longer terms, through its savings instruments and occasional floatation of bonds, the latter tied to specific purposes. Some time back, government sold T&T bonds. It is said that it would soon be issuing bonds to the commercial banks on account of the debts of the jute mills and the Bangladesh Agricultural Development Corporation (BADC) to be redeemed sometime in the future. Likewise, public borrowings under the savings instruments also would be due for repayment on maturity.

Interestingly enough, the issue of government's borrowings has cropped up now because of the problems in fund placement faced by the banks. As it happens, commercial banks have to maintain a minimum reserve with the central bank in the form of liquid assets to ensure their ability to meet the customers withdrawal of deposits at any time. The smaller portion of the reserves is kept in cash, the balance in approved securities. Treasury bills are the securities banks usually deposit. Banks earn the normal yield on these securities although the papers remain in the central bank's custody. Now that treasury bills are not available, banks have to put up cash instead. However, these additional cash deposits do not earn any return.

It is said that the authorities are considering the proposition of paying the banks an interest on the additional cash deposit. Naturally, such an arrangement will entail extra cost. And the problem arising out of shortage of treasury bills would persist. Instead of issuing specific purpose bonds, government could float long-term bonds for sale through auction. The market would then determine the yields. Bond floatations could be spaced suitably over the year. Specific needs, including bank debts assumed by the government, could be met from the sale proceeds of these general purpose bonds. Such a move would establish a market for government bonds with its attendant benefits for the financial sector as a whole.

The Day of Lipservice?

The nations of the world, including Bangladesh, observed the World Environment Day on Sunday in the usual manner which is to say by taking out supplements and spacious advertisements in the newspapers, statements made to the press and holding seminars on the subject. This, of course, is better than nothing. And yet, specially for Bangladesh, this leaves a trail of things to be done before the day can take on any true significance.

What makes the global approach very hard to materialise works as a double sword. Industrialised nations love to preach environment mania but continue to pollute the whole planet so much in any ordinary year as has not been done in the billions of years prior to the rise of the factory chimney and the invention of the internal combustion machine. Trading nations wouldn't buy the insincere behests come from the rich ones if only because they do not want to trail anymore and are bent on development override no matter how that takes a toll of the environment.

What are now the main challenges to world environment? Heating up of the biosphere, denudation of the rain forests as also the total green wealth of the planet and the widening ozone hole are the three most formidable ones. Soon enough scarcity of sweet water and unmanageability of garbage-dumping would gain in size to join the three. How can we in Bangladesh help generate a global endeavour that can successfully take on these problems? Not in any great measure, we are sure. Nevertheless, we very much have our own and special bit to do, first in ensuring that we do not contribute to the worsening of the global environmental situation and secondly, to go vigorously for positive things like afforestation and corrective measures to curtail our wasteful and ignorant ways about exploiting nature.

It is ironic that while our state sanctifies the Environment Day as a national priority day the track-record on pollution control here has been next to nothing. The Buriganga is already dead, and for six days a week the mornings are suffocated in Dhaka by thick palls of smoke. Smog should have been the last thing to visit this LDC. Thanks to government callousness, lakhs of tons of trees are still fuelling the brick fields.

The worst irony of the day that was yesterday is that till now not one action has been taken against smoking vehicles. And there is no sign yet of any meaningful action in this urgent matter more serious than the entreaties published as expensive advertisements in newspapers and on the television. The government is at best doing lipservice to the cause of environment.

LET us start with that pertinent question: Why are we after all clamouring for a 'Caretaker Government'? Is it merely to pull the legs of the ruling party and thereby cause embarrassment; or is it a newly devised system by virtue of which only the opposition (political) parties will get elected in all future elections or worst even; is it a ploy by which the elected BNP government can be brought down before its term ends, etc etc? To all the above queries the answer is very simple; and it is an emphatic NO. Our intentions, by the grace of Almighty, are absolutely clear, sincere and honest. Thus the demand for a Caretaker Government cannot be outrightly brushed aside and construed as something dubious or sinister; more so because the demand is unequivocal, repeated, fairly universal and without any prejudice whatsoever. A provision for a Caretaker Government in our constitution for say, the next 20-25 years or so, initially, will not only strengthen the existing democratic institutions and the system as such; it will help us attain at least a semblance of democratic perfection — a perfection which the western democracies have attained after over hundreds of years of struggle against the 'Crown' or the colonial masters.

The next important thing which must be borne in mind is that the demand for a 'Caretaker Government' is not being made to undermine in any way whatsoever our esteem Election Commission; question its neutrality or the integrity of those who man it, but in fact to make it even more effective under a neutral government and without the partisan hands of a party government. Administrative neutrality at the time of the national elections is a 'sine-qua-non' for any electoral exercise to be called free and fair. The present election

commission, with all its good intentions, cannot be expected to perform beyond a certain limit in view of the fact that they have to solely depend on the available bureaucracy which forms the local as well as the higher administration. And since the administration has been invariably politicised by almost all the regimes so far, the limitations of a helpless EC are clearly manifested. That is exactly why we need a neutral government to take over charge, and create an atmosphere fondly called conducive, before holding a satisfactory election.

As Mr Suranjit Sen Gupta, MP, has so rightly pointed out: "that the public servants of the country... confuse between the State and the Government; as a result the government officials' service, during the elections, goes definitely in favour of the government headed by a political party" (DS-18-5-94). And this holds true for almost every government so far, with some honourable exceptions here and there. However, our misfortune as I can read is, that the BNP leadership, by and large, from within the core of their hearts, accept the merits of a 'Caretaker Government', but have decided to oppose the opposition only because they feel that the credit for such a marvellous idea will go to their political opponents, and when history is written someday without distortions, their names will be relegated to the background. (Obviously the selfish human instinct takes over reasoning and logic in this case). Contrary to what has been just said, I believe, that the public in general will profusely praise the BNP leadership if they extend their hands of cooperation towards the opposition and unitedly give the nation the gift of a 'Caretaker Government'.

Amongst the points raised so far, 'Accountability' seems to be on the top; followed by the

arithmetic of constitutional vacuumness, etc etc. Well, how does it sound when someone says that the 'Caretaker Government' will not be 'accountable to anyone'? It obviously gives the impression that the honourable gentlemen who will form the 'Caretaker Government' will, in a body, run away from the country just prior to the transfer of power, leaving behind a helpless incoming elected government with the Herculean task of tracking the fugitives with 'Searchlights! Doesn't it sound simply absurd? How can one imagine such a scenario when there are instances to show that a Caretaker Government has been fully accountable within a limited time frame and has performed even better than some of the elected governments themselves? In which field did the 'Caretaker Government' of Justice Shahabuddin over-step in 1991 or acted beyond its jurisdiction, or indulged in any corrupt practice? After all what does 'accountability' mean? Doesn't it mean to be answerable/liable for any deed, action or decision taken, and thereby be capable of explaining one's conduct to the authority which has to popular mandate of the people?

As a matter of fact, the task of the 'Caretaker Government' shall be clearly spelled out and if the incoming, newly-elected government finds any discrepancy or fault with the members of the 'Caretaker Government' or discovers at any stage that they have transgressed the set limits, or have acted beyond their jurisdiction on any count; proceedings as per law of the land shall be initiated. Hence, the argument of Barrister Rafique (the Hon'ble Works Minister) and his colleagues are not only feeble; they are totally devoid of sound reasoning and absolutely untenable.

When the question of a 'Caretaker Government' was first raised in the second half

of 1990 and subsequently accepted by December '90, there was no provision in our constitution to that effect. Or was there any? Constitutional or other related legal points were not allowed to be raised by the mainstream opposition, and no comparisons were made to prove that the formation of a 'Caretaker Government' would be unconstitutional. The broad spectrum of the people wanted it, and so there it was. And certainly the heavens did not fall down nor did the constitution get mutilated. May the scenario has definitely changed — we are not asking an autocrat or a 'Usurper to give us a 'Caretaker Government'; nor are we trying to undermine or by-pass the Constitution and indulge in something which has not been heard of after Adam and Eve fell from the heavens! We are, with all innocuous intentions, demanding from an elected government (which fortunately or unfortunately is itself a product of a Caretaker Government) relevant amendment(s) or incorporation in our constitution of such clauses which will explicitly spell out the details pertaining to the temporary 'Caretaker Government'. In that case, the beneficiaries will include the BNP itself, for who knows when the tables turn and the present government faces the music from the other side? What is quite interesting is the obduracy of the BNP leadership from the very beginning of this demand.

Barrister Moudud Ahmed has very confidently answered most of the controversial questions raised in recent days by the BNP Ministers and I do not wish to repeat those; but when comparisons are made, especially with democratic government, why are we asked to read between the selected lines only? Whatever applies to you, Sir, should also apply to us. And pray, which civilized,

democratic country has ever appointed a full-time politicians, who is a defacto member of the ruling caucus (plus a sitting MP) as the Chairman of Red-Cross or Red-Crescent Society; and in which civilized, democratic country the humanitarian relief of the Red-Cross or Red-Crescent is fully pumped into a particular political constituency for political purposes? Even the Holy Family Hospital and the Rohingya refugee camps have not been spared. Each and every appointee, after April 1991, in those places has been a personal choice of the BDRCS Chairman from his constituency! Do we need more examples of fairness, integrity and trust?

Before I conclude, I have some specific suggestions which are exclusively my own, personal opinion; although I am fully committed to the stand which my party finally takes. a) If the ruling BNP and all other major parties finally sit down to work out a formula for a 'Caretaker Government', the Chief Election Commissioner should also be included in all such deliberations. This will serve a number of purpose, besides instilling a sense of extra confidence in the CEC. Immediately after the dissolution of the parliament and the cabinet, a National Election Council (NEC) shall take over as the 'Caretaker Government'. The incumbent Head of State shall be its Chairman and the Chief Election Commissioner the Vice-Chairman. The NEC should be composed of the following persons for an overall co-ordination and smooth functioning of the day to day government. The Cabinet Secretary, the Principal Secretary to the out-going PM, Chiefs of the three services, the police chief; the Secretaries of Defence, Home and Finance along with a senior Judge of the Supreme Court, to be nominated by the Chief

Justice shall be the other members of NEC. The NEC may also have the Attorney General as a member. However, in case of any controversy regarding the continuation of the Head of the State, the CEC as the Vice-Chairman should assume the office of the President of the Republic and function as the chairman of the NEC. There is absolutely no need for a Prime Minister or an interim Cabinet when the main task of the 'Caretaker Government' will be confined to recovery of unauthorised arms/ammunitions, maintenance of law and order and running of the day to day affairs of the government with the help and assistance of the existing bureaucracy.

The pious idea to bring in the CJ, each and every time, is not at all a healthy sign. Not long ago, Judges were almost invisible, except when they adorned the benches. Today, marriage ceremonies, death anniversaries, seminars, social gatherings and of course 'Sugandha' receptions, are all blessed by eminent personalities from the bench! Further, the choice of a neutral cabinet today will not be as easy a task as it was in 1991. It seems that everyone has a big political tail now.

Before I conclude, I must confess, that the proposed amendment will not be a smooth exercise as it falls under the prohibited list of amendments. (Preamble, Articles 8, 48, and 56) and will need a referendum; yet it is worth a trial — because the referendum itself will put a stamp of national consensus on the above amendment. And as Barrister Moudud has aptly pointed out: "that the concept of a 'Caretaker Government' involves a political issue and not constitutionalism." It also requires a pious will — but do we have that? (The author is a former MP and minister.

Caretaker Government Doesn't Hold Elections; it is the Election Commission which is Responsible for the Purpose

by Abdul Wadud Khandker

THE demand for holding future parliamentary elections under a caretaker government has its root in the allegation that by-elections could not be freely and fairly held as the party in power indulged in unfair acts and abused its power to influence the election results.

Thus, it is imperative to analyse and consider how far these allegations are correct. So far by-elections to 16 seats have been held. The first serious allegation was made about Mirpur by-election. The allegation was announcement of result through media-coup in favour of BNP nominee.

It is on record that EC promptly responded and to clear public mind about fairness of the election, took a bold — indeed very bold — decision and ordered recounting of votes cast in all the polling centres. This was done in presence of leaders of the contesting parties, candidates and their representatives. Recounting confirmed the result earlier announced. Thus, there can remain no misgiving about Mirpur by-election.

Since the present government came to power, elections to union parishes, municipalities, and city corporations have been held. EC took adequate measures to ensure free and fair election. It is on record that there has not been any allegation about governmental influence or interference in these elections.

I would make special mention about the election of Mayors in four City Corporations. Dhaka is the seat of the government. In Dhaka City, admittedly from almost all the constituencies, BNP nominees were elected as members of the Parliament. This being the position how Awami League nominee Mr Mohammad Hanif could defeat the BNP nominee and become Mayor of Dhaka City Corporation had the election not been free and fair? In Chittagong also Awami League nominee defeated BNP nominee and became Mayor.

Regarding Magura by-election, it is difficult to appreciate why the opposition parties did not take recourse to seek redress of their grievance either through filing case before the election tribunal, or by filing application before the EC specifying the grievance/ grievances. The manner in which Magura by-election has been made an issue of and the extreme measure resorted to by boycotting sessions of Parliament, together with the demand for mid-term election under caretaker government, justifiably raise the question as to whether some of opposition parties contributed to create a

situation which would provide ground to allege that free and fair election cannot be held with this government in power. Be that as it may, even if the election and/or election result of a particular constituency has been influenced by the government, this cannot be a ground for demanding future elections under a caretaker government. Such allegations from contesting parties are not unknown in some other countries. But the remedy is sought through 'Election Commission' and tribunals created for the purpose. Nowhere in the world has a demand been raised to ask the elected government to go out of power and make room for an unelected caretaker government to hold election. This is against the very concept of democratic principle.

Admittedly all the political parties are pledge-bound to institutionalise democracy. To achieve this, it is imperative to adhere to the known democratic principles and norms and allow the process of evolution to proceed without let or hindrance. Institutions should be given more importance than individuals. The political parties must show tolerance, minimum sense of trust and confidence in each other. These are the prerequisites for democratic rule.

In the past, time and again democratic process was disrupted because of intolerance, distrust and mistrust basically emanating from placing self and party interest above national interest.

Caretaker government does not hold elections. Under the Constitution, it is the Election Commission which is responsible for holding elections. The parliamentary elections held in February 1991, were conducted by the Election Commission. The painstaking efforts of the EC and its resultant success were highly commended both at home and abroad. Only after defeat in the election, Awami League chief ventured to say that there was subtle rigging. Of course no one took any notice of this. Now, what is necessary is to strengthen the EC with powers to take measures that may be considered necessary for ensuring free and fair election. The opposition parties may put up suggestions which will provide adequate powers to EC. It is an independent institution under the Constitution and the government cannot interfere with the same way as it cannot interfere with the functioning of the Supreme Court.

Frankly I consider it undesirable and unfeasible to hold future elections under care-

taker government.

(a) To entrust the responsibility of governing the country to an unelected person even for an interim period, in preference to the elected government is against the very concept of democracy.

(b) It will involve amendment of a number of Articles of the Constitution including those relating to President. It will be totally undesirable to vest an unelected person with the powers of an elected President. Such a venture may lead to unpredictable consequences in the event of an emergency. This may induce vested quarters, opposed to democracy, to seize state power.

(c) There can be no guarantee that the person selected as head of the caretaker government will not have bias for one or the other contesting political party.

(d) What will happen if the selected person dies before election or becomes incapable of discharging his responsibilities?

(e) In 1990 a caretaker government became imperative as it was very clear that with the fall of Ershad regime their will be total vacuum. Now the situation is entirely and essentially different. The elected government is there.

(f) Another serious disadvantage of a caretaker government will be its non-accountability.

(g) It is totally undesirable to dislocate the process of democratic governance in the country. This will hinder the growth of democracy. There also remains a big question as to how and by whom the head of the caretaker government will be selected. Obviously it has to be by agreement between the party in power and the opposition parties. If consensus can be reached in this respect there can be no reason why consensus cannot be reached in vesting the EC with more power and/or making laws, if considered necessary, to ensure free and fair election.

My specific suggestions are:

a) EC be vested with rule-making power.

b) Identity Cards for voters be introduced.

c) No person should be enrolled as voter in more than one place.

d) Number of polling centres should be sufficiently increased. This will help facilitate greater supervision and vigilance in maintaining law and order.

e) The rules relating to election expenditure should be strictly enforced. To achieve this (i) the maximum number of posters a candidate can print has to be fixed; (ii) there

should be stipulation on number of meetings and processions and the use of mikes. For taking out processions prior permission would need to be sought and received without fail to avoid confrontation between the contesting candidates. Torch processions should be prohibited.

(f) During a period of one month preceding the date of polling, government shall not announce any donation or declare undertaking of any new project in any particular constituency.

(g) During a period of seven days preceding the date of polling, ministers shall not visit any constituency other than their own, if they contest election. This, however, will not include the president/ chairperson, general secretary, organising secretary, of the political parties.

(h) Announcement of election results shall not be made except under the authority of the EC either through radio, television, or publication in newspapers.

(i) Polling agents from outside the area covered by the polling centre should not be allowed.

(j) On the date of polling, movement of vehicles in the areas should be restricted.

Incidentally, some political leaders are claiming that their

demand to hold future elections under a caretaker government has become a national demand. This is apt to mislead people. Just because opposition parties in Parliament make a demand it does not become a national demand. A national demand essentially means demand by all or at least by the overwhelming majority. Admittedly, all the opposition parties put together in Parliament are in a minority.

The claim is also totally untenable. It is also important to consider whether the continued boycott of the sessions of Parliament by opposition parties to force the government to accept their demand is democratic. Under democratic dispensation, minority opinion or decision cannot prevail over the opinion or decision of majority.

The lasting solution to election problems lies in enhancing the role of Election Commission as an independent body, and allowing the process of democratic evolution to go forward uninterrupted. Caretaker government is no solution.

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No End in Means for those who Believe in Political Opportunism

by MA Chowdhury

AWAMI League is now clamouring for elections under caretaker government. But our experience tells us that they will not accept the results of such elections if the same go against them. The people will recall that the Awami League chief did not wholeheartedly accept the results of the election conducted by the caretaker government of Justice Shahabuddin only because it did not go in favour of Awami League.

The results of the by-elections which went in favour of Awami League had nothing wrong in them but those which went against them were 'fraught with irregularities, corruption, terrorism' and what not. Similarly, Mayoral elections of Dhaka and Chittagong were acceptable but others were not. Awami League firmly believes in political opportunism. Their past records will bear it out. When Ershad elbowed out the elected government of Sattar they felt happy and complacent. Since Ershad's action was unconstitutional, outwardly they said they opposed autocracy but hastened to participate in the election held under the autocratic regime of Ershad.

Awami Leaguers have now joined hands with Jatiya Party and Jamaat to embarrass the BNP government on the issue of holding elections under caretaker government. Gone is the outcry against Jamaat and gone is the struggle of "Ghadany". The so-called clamour for holding elections under caretaker government is a hoax and a subterfuge for creation of chaos and anarchy in the country. I am opposed to holding elections under a caretaker government for the following reasons:

a) This issue of caretaker government was not raised or considered at the time of passing the 12th Amendment to the Constitution, though Jamaat and Workers Party raised the point, both Awami League and BNP refused to lend their support to the issue for the simple reason that in the parliamentary system government in power is answerable and accountable to the Parliament and the people. While a caretaker government is not answerable to anybody and as such holding of any election under such an arrangement is anachronistic and uncalled for.

b) Again, if elections to Parliament are held under a caretaker government then elections to all local bodies and subsequent by-elections to Parliament, if any, should also be held likewise for the same

reason that elections to Parliament were held under the caretaker arrangement. Otherwise, it will be treated as a policy of expediency.

c) There will be two parallel government — one elected and the other caretaker.

d) Then again nobody can guarantee hundred per cent neutrality of the caretaker government and none can also ensure that the defeated party will not complain of subtle or flagrant rigging subsequently.

e) Last but not least, the demand has come from Awami League two years before the due date of holding the next general elections with the ulterior objective of holding midterm elections though the present government enjoys comfortable majority in Parliament.

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