

Caretaker Government: Its Genesis, Crisis and Prognosis

A Shared Conviction

We feel happy for the chief adviser. The confidence he expressed during a briefing session with the Overseas Correspondents' Association of Bangladesh about the prospect of holding a fair election in a peaceful atmosphere is indeed reassuring.

The reason behind his optimism about holding a universally acceptable election is grounded in the spade-work done about it. The plan for deployment of 40,000 troops, whose main function will be to assist the law enforcers, certainly gives an idea about the caretaker government's attention to details.

The chief adviser has touched upon a number of delicate issues and at no point did he try to mince words. He is convinced that in no way the election momentum would be impeded.

Now it is our duty to let him know how firmly we all stand by him. In no circumstances should the chief adviser feel alone. We repose our full confidence in his ability to deliver the goods.

Yasmin Cover-up?

It is exactly 351 days today that Yasmin was gangraped by police elements and murdered. The northern districts, indeed the whole of our nation, rose as one man against that atrocity.

There was much in the matter to suspect that the then government was not keen enough to punish the criminals — which was inconceivable. Their open partisan position against Yasmin and all activists protesting the police brutality could well have contributed to the unpardonable delay in the progress of the case.

We thank the Sammilita Nari Samaj for calling attention of the society to the weird and sambambulist way the case has been moving. The organisation, consisting of leading women of our society, has constantly been pursuing the case from its beginning.

Towards Nonsmoking Cities

The World Environment Day passed yesterday with some government functions, a seminar or two and some advertisements in the newspapers. It is turning into dead rituals soon after its birth.

The alarms that went out decades back about the dangers of a degrading earth have shown perceptible result in even an inept Bangladesh going for planned and social forestry with some efficacy.

It is difficult to believe they don't know the hazards. What then? Rivers are dying by their dozens, forests are fast approaching the vanishing point, town skies are heavy with smog from early morning.

Therefore, it is my request to the BTTB authority to release a press information on the subject through any media to make the telephone subscribers conversant on this matter.

Genesis

It is interesting, though not unusual at all, to note the two diametrically opposite views substantiating the claims for establishment of the present caretaker government.

To many others, the caretaker government was a product of the 13th Amendment to the Constitution passed in the 6th Parliament. In the ultimate analysis, its constitutional status and legal sanction were accorded by the BNP government.

In retrospect, the movement for holding parliamentary election under a caretaker government was no doubt initiated by the erstwhile opposition members of the 5th Parliament. The argument advanced for it was that the BNP government had rigged by elections to vacant parliamentary seats and, therefore, cannot be trusted as fair administrator for impartial elections in future.

This general allegation is difficult to justify in logic, according to BNP supporters. Had the BNP been determined to rig votes as a matter of policy, victory of several opposition candidates in some parliamentary by-elections as well as in the two most vital mayoral elections in the cities of Dhaka and Chittagong could not have been possible.

The BNP, as everyone is well aware, did not accept the suggestion for a caretaker government initially. In its view, the proposed institution is unprecedented and negates the very principles of democracy. It is interesting to note that some agreements or understanding reached among major political parties before the fall of the Ershad in 1991 evolving consensus on some future policies and actions also did not include the devise of a caretaker government.

Subsequently, with the onset of a violent movement by

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the opposition parties causing severe distress and enormous loss to the general people as well as grievous harm to the national economy, the BNP agreed to the formation of a caretaker government. It was virtually a measure to arrest further degradation of the nation. To this end, it suggested various measures for return of the opposition MPs who had walked out of the Parliament, though on a minor ground, and finally boycotted the parliament. The return of the boycottee MPs would have enabled the necessary constitutional measure for establishing a caretaker government. The suggestions were rejected by the opposition.

The opposition's real intention then became clear. They did not want to follow the legal path of establishing a caretaker government and rejected the overtures of the BNP to participate in the enabling legislation to constitute a caretaker government. Instead, they chose the tools of hartals, seize and other methods, unfortunately in their nefarious and violent forms. The purpose appeared to create nation-wide turmoil designed to forcefully and disgracefully bring down the party in power by resorting to a movement in the name of creation of a caretaker government.

Numerous efforts were made by various quarters for a compromise, but failed. The most important was Sir Ninian's mission sponsored by the Commonwealth. The veteran and internationally respected Australian leader spent almost two months in Bangladesh and through painstaking efforts and continuous dialogue with leaders formulated a solution. The BNP accepted, but the opposition rejected.

The opposition's destructive movement accelerated. In order to avoid further misery of the common people and thwart the heavy peril of the economy, BNP leaders, along with principal opposition leaders, agreed to make a reference to the Appellate Division of the Supreme Court, seeking their advice on the possibility of formation of a caretaker government through political consensus.

They even proposed to draft the text of the reference jointly with others. All these activities, and clandestine meetings took place at the residence of a skilful and popular Ambassador behind the scene and outside public knowledge and media glare. Minutes before they were to meet to finalise the arrangement, the Awami League cancelled the meeting without assigning valid reasons.

The BNP subsequently went through the February election, boycotted by the opposition, and unilaterally passed the 13th Amendment enabling the formation of a caretaker government, the only agenda publicly declared as such, before the dissolution of the sixth parliament. As normally expected, the BNP government transferred power constitutionally to the caretaker government.

After having completed the legitimate tenure of five years, the opposition's movement by now reached the highest pitch following the prolonged non-cooperation movement, including the unprecedented and most damaging closure of the Chittagong port. What characterised this movement and made it different from the spontaneous, voluntary and universal support generated by the Clarion call for peaceful non-cooperation by Bangabandhu Sheikh Mujibur Rahman in March, 1971, was unfortunately use of violent methods of intimidation, prevention, destruction and arson for realisation of its goal.

The establishment of the present caretaker government is an important milestone in the march for democracy in Bangladesh. It came into being through a consensus of major political parties, committed to the accomplishment of the

principal task of the caretaker government, that is to say to hold a free, fair and impartial election. In its limited mandate and short span of life, it is creditably making all possible endeavour with the cooperation of all political parties. In the process, it stumbled but never fell flat on the ground. If it did, hopefully it will not, all should come forward, help and make it stand.

Where did it stumble? Let us take the first case. Immediately after taking over power, the Chief Adviser declared to the effect that public expression of solidarity with a political party or movement by a public servant was an offence, must be shunned and would not be tolerated. Only a couple of days ago, a small number of senior public

may have been the motivation. It is evident that principles and justice were sacrificed at the altar of expediency and undue caution.

Then, the government took a bold decision to televise, for the first time ever, a programme commemorating the founding of the Mujibnagar government on the 17th April. The BNP viewed it as a policy decision, which does not normally fall within the purview of a caretaker government, resulting in bolstering the image of the Awami League only a few weeks before election. To add salt to the injury, the BNP found, to its consternation, abrupt cancellation of a pre-arranged television programme commemorating the death anniversary of Shaheed Ziaur Rahman on the 30th May. The BNP was aggrieved twice and failed to get redress.

As for the achievements, the Chief Adviser's address to the nation shortly following the address of the President on the 20th May is perhaps most noteworthy. His laudable and timely intervention saved the nation from a veritable catastrophe. But for his astute direction and vindication of the legality of the Presidential actions in respect of some army officers, our valiant army could have been involved in a fratricidal bloodbath with perhaps no less severe repercussions among the civilians.

Another commendable and farsighted action taken by him was the categorical statement he made most recently that there is only one government and dismissed any suggestion about existence of diarchy of power. He asserted maintaining happy relations with the President. This resolved doubts expressed by some and frustrated attempts by some others to vitiate pre-election atmosphere.

The drive for recovery of unauthorised arms as well as prevention and control of terrorist activities is a principal domain of activities of the government. This is an important pre-requisite for holding a free, fair and impartial election. The government has done a lot, but a lot more needs to be done to reach the minimum goal. This poses the biggest

challenge not merely to the government but to the nation as a whole.

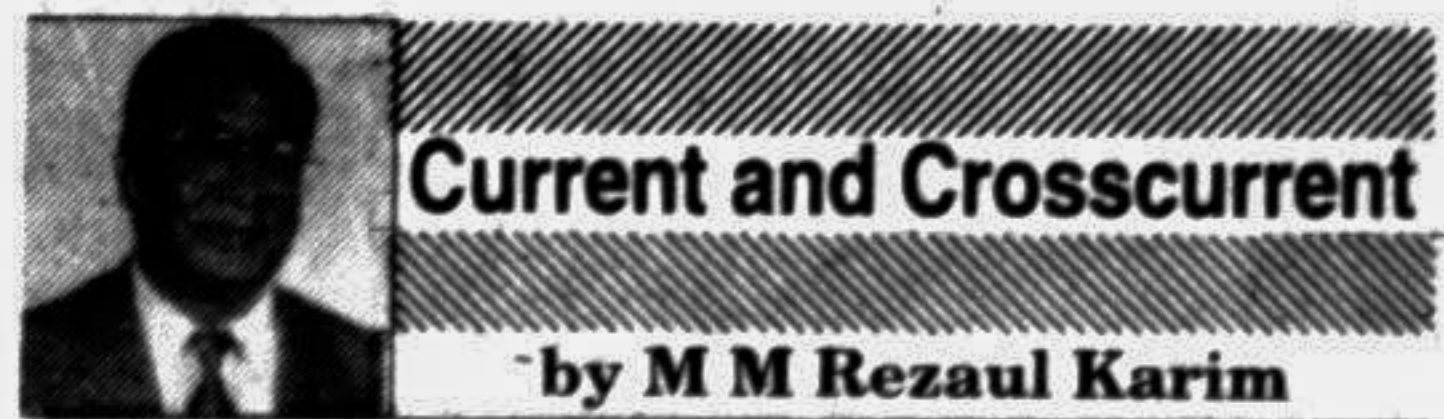
Prognosis

It is difficult to foretell events. Notwithstanding tough election campaigns unleashed by all the parties, violations of the code of conduct devised by the Election Commission (EC) have not been too many, at least less than apprehended. The election atmosphere, except in some isolated cases, by and large have remained peaceful, though understandably marked with loud enthusiasm. It augurs well for the future.

The EC, unlike its predecessors, is better organised, equipped and funded. The members appear to be more active and dedicated to the cause for establishing a democratic tradition for a democracy loving people. Let all extend a helping hand to them and to the government towards fulfilling their noble mission.

The recent events in the army, no doubt, cast an ominous shadow on the present situation. The apprehensions voiced in some quarters about causing some undue effect. In the event of publication of the report of the court of enquiry, appear understandable to many. One is given to understand that such reports are not generally made public, unless grave reasons exist to do so. We are sure the authorities will take due cognizance in this matter. We would, on the other hand, render a great service to the army, to maintain its unity, integrity and discipline, if we refrain from drawing it in the focus of a public debate. Let the armed forces order their own houses in accordance with their own rules, regulations and laws. We, the civilians, may not cast a probing glance, as we never had done before in similar cases.

Finally, it is the people and our leaders on whom devolves the major responsibility as well as credit for being able to hold a fair election in a peaceful atmosphere. If the leaders can come out before election with a declaration of some common programmes for the future, it would serve the national interest enormously. Let them rise to the occasion. Nothing will make the people happier.



Current and Crosscurrent

by M M Rezaul Karim

servants had been seen to have been involved in a political movement but, contrary to his preachings, in practice he did not take any action. Ordinarily, such actions even of lesser magnitude would have called for disciplinary action initiated by the government.

Being a former civil servant, I personally think that our senior civil servants would not ordinarily allow themselves to be dragged into a situation of this nature, except under duress or unless they were obliged to go along for fear of being manhandled. Evidently, the government glossed over the episode altogether and failed to take even taken action for violation of civil service conduct rules against at least one or two ring leaders. As a result, a dangerous precedent is being created, destroying a long-standing tradition of our glorious civil service. The failure of the government under a former Chief Justice to take appropriate action is difficult to justify for many. Whatever

Crisis

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The Corrupt have Inherited this Good Earth

We have surpassed the Marcos example in Pakistan. In fact the Marcos syndrome (as we may like to call corruption among third world leaders) would seem to be kindergarten stuff compared to the advanced techniques developed by us in this country.

THE most potent symbol of government corruption in our time are the Marcoses. This family looted the Philippines and stashed money by the hundreds of millions in secret bank accounts, real-estate holdings, blue-chip investments, etc all over the world, particularly in the US and Europe. The spectacle of peasants roaming around in the Malacanang Palace after the Marcos downfall, gawking among other luxuries at the 3,000 pairs of shoes owned by Imelda Marcos, still remains vivid as an example of their outrageous excess.

Engaged in a drawn-out legal battle with the Philippines Government which is trying to recover the money (almost \$1 billion) in Swiss banks, Imelda is shamelessly holding out to retain a percentage of the illegally acquired wealth as the price for returning it without further legal contest, airing a likely story that this accumulation of wealth is because of the 'fabulous treasure hidden by the Japanese during World War II and purportedly found by late President Ferdinand Marcos.

Under trial in New York a few years ago, the Steel Butcher (as Imelda Marcos is known) literally collapsed in open court, playing on the sympathy of the Jury (and the public) and successfully being acquitted of alleged wrongdoings. The 'bad health' of this wonderful actress persisted till it was clear that many Filipinos, forgetting that blatant corruption was the reason for the Marcos ouster, voter her into office as Senator. She has since made a miraculous recovery to her boisterous self again. Throughout the last decade, we are hearing well-deserved reputation for corruption. Madam Marcos and her family kept on denying any wrongdoing, safe in the knowledge that if you keep lying confidently, people will begin to believe your lies.

She remained in good social graces in the world's exclusive elite social circles, no one among the rich and beautiful really giving a damn that this woman and her family were directly responsible for the poverty and present misery being endured by millions of Filipinos. Madam Marcos sends a very clear green signal to third world leaders having

qualms about looting the public till, it is socially acceptable to be corrupt, you just have to keep on denying any accusations poker-faced. We have surpassed the Marcos example in Pakistan. In fact the Marcos syndrome (as we may like to call corruption among third world leaders) would seem to be kindergarten stuff compared to the advanced techniques developed by us in this country.

The standard practice of making millions illegally is to get kickbacks in civil and military projects because of one's official position. This was endemic in the number of authoritarian regimes opposed to communism in the region who were the recipients of vast amounts of direct economic and military aid from the World Bank, Asian Development Bank (ADB), etc. as well as country-to-country aids and grants, involving huge deals for projects in energy, telecommunications, transportation, health, arms, equipment, etc. The sales agents of the various companies, among them many multinational companies (MNCs), were extremely active in getting their products and services sold. Since they were also particularly interested to keep on selling their products for years they also campaigned against the goods being manufactured in-country, thus serving to keep commission recurring.

Countries like Pakistan have taken four decades to develop heavy industries but even then do not produce automobiles but simply assemble them (we are on a deletion programme that never sees anything deleted). The biggest known case of kickbacks in the Philippines was the Westinghouse deal for a nuclear power station when Westinghouse was taken to task by the US government for running amok of US Corrupt Practices Act, i.e. laws strictly eliminating bribery. Companies know how to circumvent such laws, the normal modus operandi now is to give very heavy retainers as monthly service charges to 'consultants'.

The Marcoses stole away a lot of 'commissions' on various projects in which others acted as frontmen. On their part the companies padded the prices so as not to let into their profits. Populist Third World leaders vow their adorning and gullible masses about their commitment to the masses while bilking their countries of billions of US dol-

lars. Developed countries have very good intelligence agencies looking after their strategic and commercial interests but in the larger interest of their own commercial gains, these countries, normally very high on moral issues, deliberately chose to look the other way. However, siphoning commissions is now old hat, new and advanced techniques are employed by the unscrupulous in the obtaining of commissions is peanuts compared to what can be got through these other means mainly money acquired through rendering 'services'.

The most known example of making money by 'services' is that attributed to ex-Senator Zahid Sarfaraz with respect to re-conditioned and old cars during his tenure as Commerce Minister. The Government of Pakistan (GoP) first banned the import of such vehicles, then allowed their entry, the instructions were changed a number of times. A huge amount of money was being made in speculation as the car prices increased/decreased, whether the good Senator pocketed the money himself is a matter of conjecture. Nowhere has this precedent of amassing wealth by changing the rules been put to more profitable use than in Pakistan. This modus operandi being blessed to perfection in the last several years. The rules of the game are constantly changed to force a vendor/supplier/contractor to pay ransom, viz. 1) import of sugar is banned, then relaxed, export is banned then relaxed. Whoever is affected by the banning pays money to get the ban relieved, whoever is affected by the relaxation pays money to again get the ban imposed. Since money is in cash, no documents exist to expose the misdemeanour. In fact, if the person who can pull the strings is not a government servant, then no crime has been committed since he is not misusing his office. 2) a common method of rendering 'services' is to suspend a contractor, whose suspension will cause huge losses to the contractor, who will only be too happy to pay money to get this suspended revoked. Can anyone unravel the mystery behind the reason why the Mian Nawaz Sharif sponsored Lahore-Islamabad motor-way was

first reduced by the successor government from six lanes to four and then increased to six again?

Not that Daewoo will be any poorer for any money paid as ransom, they will get back the extra money spent (and more) through escalation clauses. In the end it is our poor country that will end up with more debts to pass onto the future

generation. What happens in urban areas to permit illegal high rise buildings in contravention to urban laws is another scandal in Sindh where nearly all the Chief Ministers have been involved in changing the rules. So many examples exist of the providing of 'services' in every sphere of government that it defies enumeration within the confines of an article. The only way out of this rot is to have an independent Ombudsman oversee the working of the ministry to determine why the

rules may have been changed. There is a school of thought that thinks that by providing of such 'services' nothing illegal is really being done, that is a most naive assumption. Providing of such 'services' where rules and regulations are changed for personal profit is both a scam and blackmail.

The proceeds of the blackmail is translated into inordinate wealth, which is then flouted for all to see. Unfortunately, our social elite fall over themselves to ingratiate themselves with such criminals. Providing 'services' leads to price increases, after all those who pay the bribes are hardly going to have the payments cut into their profits, they will pad the price further. With the price increases, inflation sets in. Because most of the money is transferred out of the country it puts pressure on the money supply situation with respect to foreign currency, resulting in creeping devaluation. The net outflow of capital from the country, in one conservative estimate more the \$ 5 billion, has contributed to the price spiral affecting the common man. While the rich are affected to some degree, the effect on the masses is devastating.

By winning and dining those who are directly responsible for the miseries of our masses, our elite are as much guilty as accessories as those who are the actual criminals.

Would our social elite sit down to dinner with masked dacoits? The answer is no, but then why are those who loot the public till many times over in broad daylight accepted with such enthusiasm in social circles? This is a glaring contradiction that must be resolved. The military hierarchy pride themselves on their sense of propriety and integrity, but they know very well through their sources as to what is going on, how can they compromise on moral issues? We are only fooling ourselves that we are doing our constitutional duty by ignoring or being indifferent to what's going on under our noses. While this by itself is a ridiculous situation let us at least have the decency of socially boycotting those who are engaged in looting the public till. At the very least, this will act as disincentive for others who may emulate them.

Unfortunately society has been so infiltrated by such corrupt practices that we are in danger of being taken over by the corrupt, they have inherited this 'good earth' and except for one or two messiahs now making their presence felt there is nothing much we can do about it. Or can we?

OPINION

Defer Publication of Report Relating to May 18-20 Events

The President's action in the removal of a former army chief of staff and some top ranking officers of the armed forces caused considerable concern and anxiety among the citizens. Questions have been raised by experts on constitutional law regarding legal validity of the President's action taken without prior consent of the Chief Adviser and other members of the Cabinet. Moreover, the manner in which the President acted in taking these actions appears to have violated certain provisions of the army law and the rules of natural justice. The discrepancies between the allegations against the accused officers made at the time of their arrest and the subsequent period, the PRP press release of 26th May regarding the matter without the authority of the government in power, the undue haste at which the Court of Enquiry proposes to conclude the proceedings and publish its report have created in the minds of considerable section of the community a doubt regarding the bona fide nature of the President's action and holding of a fair election to which the entire nation is looking forward.

It was the political will of the entire people of Bangladesh to adopt a constitutional frame work of a parliamentary form of government. Having experimented with var-

ious shades of political order such as presidential form of government, military rule, guided democracies under various facets, the people of this country realised that parliamentary form of government, in an unadulterated fashion, was most suitable for the governance of the country and adopted a constitution where the executive power of the Republic is vested in the Prime Minister. The constitution also provided for collective responsibility of the cabinet to the parliament. 13th Amendment (1996) of the constitution, which is in the nature of a special law, made a provision for vesting the executive power relating to administration of the Defense Department in the President for a limited period of the Caretaker Government. This, no doubt, is an unique experiment within the frame work of a parliamentary form of government. However, the President, while exercising such power in administering the Defense Department is required to follow the collective responsibility of the Cabinet as enshrined in the constitution. If, therefore, one obligate on the part of the President to obtain consensus of the Cabinet before taking the actions during the events of May 18-20 pertaining to certain vital decisions regarding the Defense Ministry. In the premises, the President's ac-

tions made without consensus of the Cabinet would have doubtful legal validity. The application of the doctrine of collective responsibility of the Cabinet, enshrined in our Constitution imposes responsibility of the President's action in the executive field on all members of the Cabinet. The Amendment Act (1996) has vested the power and responsibility of governance during the interim period on the Caretaker Government. Although the law has vested the executive authority relating to the Defense on the President, the overall responsibility of such actions of the President will remain with the Cabinet. In the circumstances, the President's action without consensus of the Cabinet was manifestly unjust and inequitable.

In the context of the doubtful legal validity of the President's action relating to arrest and confinement of the accused army officers and likely incredulous response of a significant part of the citizens to any report which may be published by the Committee of Enquiry, it will be prudent if the Committee not to publish the proposed report until the election is over and a new government takes over the office.

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