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# Caretaker government system: A critique

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**T**HE prospect of ushering in a process of consensual politics under the reintroduced parliamentary democracy beginning in 1991 was to subsequently face a great peril due to a long and protracted impasse over the then opposition's demand for holding elections under a neutral caretaker government. The issue came to the fore in the context of the alleged rigging in Mirpur and Magura bye-elections in 1994 by the then ruling party, Bangladesh Nationalist Party (BNP), which had come to power after the February (1991) election under the leadership of its chairperson Begum Khaleda Zia. Political developments following such controversial by-elections seriously hampered the functioning of parliament as well as undermined the credibility of holding free and fair elections by a party government.

Initially, the BNP government (1991-1996) did not pay heed to the opposition's demand for holding election under a caretaker government. But the prolonged boycott of and subsequent en masse resignations of the Awami League (AL) led opposition members from parliament compelled the BNP government to dissolve the Fifth Parliament and then hold elections for Sixth Parliament in February 1996. Although all the major opposition parties had boycotted the elections, the results of the election in effect enabled the BNP to enact the Constitution (Thirteenth Amendment) Act on 28 March 1996 in line with much of the opposition's demands. The BNP had secured more

than two-thirds of seats in the so-called newly elected Sixth Parliament.

The 13th amendment included provisions for holding all future general elections under a non-political caretaker government. It also has conferred certain additional but real powers on the presidency. This amendment purports to serve the cause of free and fair elections by combating vote rigging, proxy votes, election fraud and corruption which

Shahabuddin Ahmed was widely regarded as free and fair. In fact, the success story of this election provided the rationale for the opposition's demand for holding all future general elections under neutral caretaker government.

The 13th amendment inserted a new article (i.e. Article 58A) on the application of Chapter II as well as a new chapter (i.e. Chapter IIA) containing a number of new provisions specified in Article 58B, C, D & E in

advisers drawn from amongst non-political persons of high social and professional standing.

The idea of the non-party caretaker government seemed exemplary for many Third World countries in quest of credible means to restore public confidence in their election results. But the 13th amendment seems to have unduly put the president in charge of the caretaker government with the sole authority to appoint and remove the chief adviser

president to gain absolute control over the defence forces during the tenure of the caretaker government. This power of the president over the armed forces seems to have undermined the ability of the caretaker government in maintaining law and order at the time of elections. In Bangladesh, where force, not ballots, have often been the preferred mode of changing government, the vesting of such power in the president has had a wider ramification.

The 13th amendment has conferred some real and absolute powers on the president to which the latter is not entitled during the term of a party government. In other words, while exercising powers stipulated in the 13th amendment, the president seems truly beyond the reach of the caretaker government and being not directly elected, not accountable to the people either. The 13th amendment thus transforms the 'titular' president to a 'real' president, effectively introducing an interim presidential form of government during the tenure of the caretaker government. It has created two separate but potentially conflicting entities of governmental authority: the president and the caretaker government.

It is not always necessary that the means of holding free and fair elections under a caretaker government be contrary to the constitution. The means could well be based on a foundation of strict respect for the basic constitutional spirit as well as of long tradition and established practice, as in Britain and its older Dominions (Canada, Australia & New Zealand) and also in India - that the party in power

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were rampant in Bangladesh, especially during the period from 1975 to 1990. As a matter of fact, the idea of free and fair elections under a neutral caretaker government received its greatest momentum from the incidents of fraudulent elections held during the Ershad era (1982-1990). Following the overthrow of General Ershad in December 1990, the February (1991) election held under a non-party caretaker government headed by Acting President Justice

Part IV of the constitution. These fresh constitutional provisions deal with the formation of a non-party caretaker government to govern the country and conduct the general elections during the interim period extending up to the date on which the new prime minister is sworn in after the general elections. This caretaker government is to be composed of a chief adviser who among the retired Chief Justices of the Supreme Court retired last, including ten

and his advisers. Both the chief adviser and the ten advisers have been made collectively responsible to the president. Articles 48(3) and 61 of the constitution have made the president as the ceremonial commander-in-chief of the defence forces a power to be exercised on the advice of the prime minister pursuant to the practice of the Westminster system of parliamentary government. The 13th amendment amended Article 61 enabling the

