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Caretaker govt in democratic polity

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room for improvement on the eve of passing the bill. Two elections were held under such a dispensation. Losers in the election had resented the election results, but they did not criticize the framework or the concept of caretaker government. It was acclaimed to be a novel and effective instrument for holding a fair general election. Some people even thought that the model could be gainfully replicated in other countries as well.

According to the constitutional provision, the last retired Chief Justice would be the Chief Adviser, the head of the non-party caretaker government. This system went on

smoothly up to 2001. In 2004 the ruling party introduced an amendment in the constitution thereby increasing the age for superannuation of the supreme court judges much to the exclusion of civil servants or judges in the lower courts. The opposition considered this as a sinister move on the part of the government to install as chief adviser a particular person who was an office bearer of the ruling party about two decades ago. They started mobilizing people against the would be chief and other strategic officials. Their burden of argument was that the caretaker government had to be non-partisan and as such there was no room for a past office

bearer of the ruling party to be the head of the non-party government. The impugned amendment of the constitution along with the partisan whisker of the potential incumbent gave the opposition a big handle to assert their point and enlist public support to their demand. As soon as the tenure of the parliament was over, opposition activists thronged the streets and created a volatile situation which reached such a magnitude that the person waiting in the wing to head the caretaker government declined to assume the office of the Chief Adviser. This triggered a high pitched drama serial with the President in the lead role. He became the Chief Adviser of the caretaker government in addition to his own job. Despite all the adverse criticism that poured in, the President continued in this untenable position for about ten weeks. When the situation became too hot he resigned the post of the chief adviser and a new Chief Adviser was sworn in to fill in the gap. The happenings for the last one and a half year centering the caretaker government has led to intense debate about the rationale and efficacy of the system itself.

One school holds that the caretaker government is not compatible with the democratic polity. It is not an elected body and therefore does not have people's mandate. Proponents of this school argue that the ruling (elected) government can itself act as the caretaker government doing only the routine work and refraining from framing any new policy or taking any serious decision. An independent and powerful election commission will perform all administrative and organizational activities pertaining to national election. The commission will also be responsible for all transfers, appointments and personnel management relating to election affairs. The ruling government will not interfere with the activities of the election commission; their job will be to assist the commission the way they want it. In that sense the ruling government will be reduced to a mute entity silently observing the proceeding of the elections and carrying out the instructions of the election commission as its loyal agent. It looks like that the election commission is the defacto government during this period.

The other school contends that since the concept of caretaker government is incorporated in the con-

stitution it is compatible with the democratic polity. Law makers have consciously brought this institution into existence. There are highly strategic institutions in the democratic dispensation which are not headed by or staffed by elected persons. The election commission which virtually takes over many crucial functions of the government during the election period is not also headed by or staffed by elected persons. Heads of the constitutional bodies including the Chief Justice are not elected. Their importance in the democratic governance cannot be overemphasised. If these institutions with unelected heads and personnel at the higher echelon are considered compatible with the democratic polity the caretaker government as an ad hoc institution formed for a specific purpose resides very much within the ambit of the democratic polity.

What is the other alternative of the caretaker government for running the affairs of the state during the national elections? The first alternative is the ruling party government. The other alternative is some sort of national government or all party government. The first alternative is not acceptable in the Bangladesh context. Party government will manipulate the election process beyond admissible limit such that it will not be acceptable at national and international level. People of Bangladesh have seen how atrocious the manipulation of election can be in the hands of the ruling parties. They cannot trust the ruling party for organizing a fair and acceptable election. The second alternative may create a deadlock in the working of the government because of inter party rivalry.

The compelling need for the non party government after 15th February's one party voterless elections produced the present vintage of caretaker government in a pell-mell rush. It had been a workable arrangement for one decade. It now appears that the system needs fine tuning. For example the 5th alternative of selecting the Chief Adviser may be placed as the first alternative. Some people argue that it is impossible to find a suitable person for appointment as Chief Adviser in consultation with the political parties. This is not a sound argument. There are scientific algorithms to make a consensus choice. For that an elaborate exercise has to be carried out. The exercise may be

tiring in nature but it will ultimately produce result. The 6th alternative for selecting the President as the non party caretaker chief should be dropped because it is against the spirit of the caretaker government and it also creates a messy untenable situation. In fact if the proposed 1st alternative (now the 5th) is assiduously followed, there is no need for keeping the other alternatives in the constitution.

No nascent social or political system can be made perfect at one go. Perfection comes through iterative fine tuning that may continue on a regular basis. A newly innovated system cannot be discarded just because it is not in vogue in other countries, particularly in developed countries. The test of the innovated system is whether it is based on sound logic and whether it is effective in practice. On both counts the caretaker government stands on a sound footing. We have seen that in order to address the real life problem a country had two Prime Ministers serving concurrently. We have known about group governance and we have also seen time sharing of executive tenure by the major power groups. The caretaker government is much less radical than these systems. In the context of Bangladesh it is based on a robust framework for maintaining the integrity of the electoral process and it has so far delivered in practice. There had been some unfortunate experience because the system was deliberately distorted with an ulterior motive. People resisted such move tooth and nail, at times at the cost of their lives. They struggled to protect the spirit and the basic framework of the system. They succeeded. There is no gainsaying the fact that the system should be improved to make it more effective, transparent and practical. Caretaker government is not only compatible with the democratic system, it bolsters the democratic institutions through ensuring the peaceful exit of the ruling party which might have developed a vested interest in the government machinery and destroyed the evenness of the playing field essential for a free, fair and impartial election. This innovative system merits replication in many other democratic countries including the developed ones.

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STAR ARCHIVE

Where is the alternative?

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one may revert back to the old system under which the outgoing government would conduct election. This was precisely the system to change which the Awami League had led the countrywide movement for introduction of the caretaker government and, therefore, will be more severely opposed by the Awami League itself. The second possibility would be selection of impartial and highly respected personalities to constitute a neutral caretaker government by way of consultation and mutual agreement of the major political parties.

Alternatively, any other formula acceptable to them would serve the purpose. But this is also most unlikely to hold good. If there were scope for a compromise, there would have been no need to demand for the caretaker government system originally. After all efforts through inter-party talks failed since 1992, the Commonwealth facilitator Sir Ninian Stevens came to Bangladesh in 1994.

But all his month-long hard work to effect a compromise between the two major political parties came to naught. Earlier, along with a friend of mine from the opposite camp we came out with a formula for solution, on the Kurmitola Golf Course, only to be rebuffed later by our respective leaders. Both the Ninian Mission and the Golf diplomacy suggested various formulas and lists of personalities to the two parties, but to no avail. It was in stark contrast to the success of the ping-pong diplomacy. Also much later, during Shaikh Hasina's tenure as Prime Minister an attempt was made to secure acceptance of a compromise formula on some fundamental issues by President Justice Shahabuddin Ahmed, and I was to take the same to the then Leader of the Opposition. But the Prime Minister thereafter publicly advised the President not to meddle in politics.

Unfortunately, when our leaders turn their face away from each other even while being seated on the same

sofa, chances of any compromise through consultation between their parties are almost destined to be an exercise in futility. The third possibility may be that the Chief Advisor may appoint an equal number of advisors suggested by the two major political parties. Such an arrangement, one apprehends, would curb authority of the Chief Advisor, entail chaos in the Advisory Council and hinder its smooth functioning. Again, any or all such measures to modify the existing system of the caretaker government would call for constitutional amendment, which again presupposes agreement among the major political parties.

Of course, one can empower the Election Commission and make it truly independent by way of providing it with sufficient funds to be used at its discretion and with the authority of appointing its own personnel. However, as all governments showed definite reluctance to implement their pledge on this issue while in

office, it may be worthwhile to seek their agreement now and enact necessary legislation, which would, however, be effective only after the next election. So, it is difficult to suggest any new method of reform that would make the existing system of the caretaker government more neutral and effective.

One may recall that Justice Shahabuddin Ahmed and Mr. Abu Sayeed who had been appointed and adored by the Awami League as President and Chief Election Commissioner respectively, later fell from grace and were severely criticised by the Awami League. So, since a favourite may lose his charm and become unacceptable, by the same logic a non-favourite may likewise be a favourite and acceptable to the same political party later.

Furthermore, the nation should expect to get justice, which contains the inherent attribute of neutrality, from a Chief Justice, even though he had retired. His political background

should not be held against him in which case all students with political affiliation would smack of partisanship and become suspects when they join state services. His real test would lie in his record as a judge and I am not aware of any of his judgments or actions which can substantiate claims of unfairness or partisanship. However, one is free to appeal to him not to accept the post of Chief Adviser, but it would depend upon him entirely to reject the offer of the prestigious position or not. Finally, in the absence of a suitable alternative acceptable to the two major political parties, it would be in the national interest to expect that the caretaker system, which conducted two general elections in the past, both fairly and impartially, should be allowed the opportunity to prove its mettle again in future.

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