

CREDIBLE ELECTIONS AND 'CARETAKER' GOVERNMENT

MD. ABDUL ALIM

On July 26, BNP Chairperson Khaleda Zia said 'a caretaker government is not a must for holding national election, but it has to be held under a neutral government, no matter what its name is'. In response to this, AL Secretary General Syed Ashraful Islam reiterated AL's position saying that 'the next polls will be held as per Constitution'. Such positions by AL and BNP are not new. Before the 10th parliamentary elections, on July 5, 2013, the Prime Minister, during her visit in UK, said that the next (10th) general elections of Bangladesh would be held in a manner followed by the United Kingdom and other democratic nations across the world. After the election, Sheikh Hasina, again in a press conference held on July 26, 2014, 'categorically said the next (11th) parliamentary polls would be held in light of the democratic process and as per constitutional provisions' (The Daily Star, July 27, 2014).

The issue of election-time government has become the major confrontational issue in Bangladeshi politics. Hence, this article tries to describe how elections are conducted in established democracies. What types of governments are there in those countries during elections? Is there a caretaker government? I have tried to analyse election-time governments in a few countries both from established and developing democracies including the UK. Legal and administrative provisions along with recent practice and evidence of those countries have also been discussed.

According to Carl J. Fredrick, 'Mr. Churchill, the ex-prime minister of UK, had formed the non-party caretaker government, for the first time, in the world and conducted a general election in 1945 in Britain to manage an unprecedented emergency, which occurred as a result of the collapse of France and danger of imminent invasion.' The 'caretaker' government still existed in the UK. As per Fixed Term Parliament Act 2011, the parliament automatically dissolves at 00.01 on 30 March, 25 working days before any general election. This pre-election period is known as 'purdah' which is in use across central and local governments to describe the period of time immediately before elections or referendums. Earlier, this period was not clear; hence, the House of Commons Justice Committee published a report on the constitutional process following a general election on March 16, 2010. The committee recommended the use of the term 'caretaker' in formal guidance over 'purdah' as it found that 'purdah' traditionally refers to restrictions on



government announcements, as opposed to more general restrictions as per caretaker conventions in other jurisdictions. During this period, the incumbent government's decision-making capacity is significantly curtailed by what is known as the 'caretaker convention'. The convention is an unwritten rule of political behaviour which holds that in such circumstances a government should restrict decision-making to routine, non-controversial matters.

In Australia, during elections, the outgoing government becomes a 'caretaker' one. In Australian political and constitutional terminology, a caretaker government is a government during a period that starts when the parliament is dissolved. During the 1975 Australian constitutional crisis, the Governor-General, Sir John Kerr, appointed a new government headed by Malcolm Fraser, subject to Fraser's agreement that he would immediately advise a general election, and his government would operate on a caretaker basis in the meantime. Under the current provisions, Australia has the practice of 'caretaker' government during elections. The country has

official guidelines entitled "Guidance on Caretaker Conventions" which is administered by the Department of the Prime Minister and Cabinet. Section 1.1 of this guide states that, "during the period preceding an election for the House of Representatives, the government assumes a 'caretaker role'. Section 1.2 defines that the caretaker period begins at the time the House of Representatives is dissolved and continues until the election result is clear or, if there is a change of government, until the new government is appointed."

Similar to the UK and Australia, there is the practice of 'caretaker' government in New Zealand. Its Cabinet Manual suggests that governments choose to restrict their actions to some extent in the period approximately three months before an election is due or from the date an election is announced, if this is within three months of the election date. Examples of forms of restraint given are the deferral of significant appointments and limitations on government advertising. When Parliament is dissolved prior to an election a Government (even one with a majority in the

House) is no longer meeting Parliament and accounting to it for the exercise of executive power. There would therefore appear to be a strong case for saying that a caretaker convention ought to apply from that point on to constrain the making of important decisions by the Government until the outcome of the election is clear.

In the Netherlands, there is a provision of 'demissionary cabinet' during elections which is a type of 'caretaker' government. As per constitutional convention the incumbent government continues as demissionary cabinet after the conventional cabinet is ended. The demissionary cabinet has fewer powers than a conventional cabinet. The main purpose of a demissionary cabinet is to organise elections and take care of ongoing business until the new cabinet comes to power. Besides organising elections, it can only take care of urgent and pressing matters and not initiate controversial legislation.

In India, the government at the time of dissolution of Lok Sabha usually continues until the election process is completed and the new government is ready to take over.

Article 75 of the Constitution of India permits the Ministers, including the Prime Minister, to continue for six months without being the member of either house. The President can, therefore, without any breach of law or convention, constitute a Council of Ministers from other than legislators for a short period only for conducting the General Elections. Although the Indian Constitution does not have any mention about 'caretaker' government, there are huge numbers of judgments on this. On August 23, 1974, the Indian Supreme Court stated that "apart from the technical difficulty of carrying out the many details of a general election in such a situation the President might have to dismiss the Ministry and install a caretaker government to co-operate with him in ordering a general election". In 1997, Allahabad High Court, in a different verdict, directed "Shri Charan Singh and his ministers to continue office as a caretaker government" before the 7th Lok Sabha election.

Thus, in the Westminster system, the incumbent government always becomes a 'caretaker' one between the normal dissolution of parliament for the purpose of holding an election and the formation of a new government after the election results are known.

Now, what are the elections like in these countries? Are there any questions of credibility of elections in the UK, Australia, the Netherlands and New Zealand? Research and evidence shows that elections in these countries are conducted in line with 'international standards' and are 'free of bribery, intimidation and other abuses'. The 2014 elections in New Zealand were one of the best elections as per Perceptions of Electoral Index (PEI) with a score of 80.4 out of 100; while the Netherlands, Australia and India scored 82.6, 75.9 and 67.0 respectively.

On the other hand, the countries which do not have the provision of 'caretaker' government, during elections, failed to meet the international standards of elections as per PEI. Equatorial Guinea (Score 38.4), Djibouti (40.1), Afghanistan (46.0), Mozambique (47.8), Bangladesh (49.5) are a few of those countries.

One of the most important ways in which elections can be regarded as legitimate is through the development of credible election administration institutions and 'caretaker' government is the most critical. Such a government may be (i) incumbent partisan (UK, New Zealand, Australia) or (ii) non-partisan (Bangladesh in 1996, 2001, 2008).

The writer is Director, Election Working Group. E-mail: aalim@ewgb.org

Does our constitution need reform?

SHAKHAWAT LITON

THE Concerned Citizen's Group, in the view of Prime Minister Sheikh Hasina, has invited another attack on democracy by calling for forming a Constitution Reform Commission to bring necessary changes to the charter for an effective democratic system.

The accusation she made on Wednesday is serious in nature. To conclude whether the civil society's recommendation or the PM's accusation is justified, we need to look at the necessities and the nature of the previous amendments to the constitution.

A total of 16 amendments have been brought to our constitution over the past four decades. But it is difficult to find any amendment which was actually aimed at improving the constitution's quality, enhancing people's rights and paving the way for flourishing democracy.

Rather, a close look will tell us how the successive governments have brought the changes in the constitution only for their partisan purposes and even by abusing the parliament's jurisdiction in some cases.

Due to the abuse of parliament's authority, the Supreme Court has scrapped the 5th, 7th and 13th amendments fully and the 8th amendment partially. In views of the apex court those amendments were illegal and void as they either destroyed or were against the basic

structure of the constitution.

The 5th and 7th amendments passed in 1979 and 1986 respectively had ratified all orders and actions of the first and second martial law regimes.

The 13th amendment passed in 1996 introduced the election-time caretaker government system amid growing distrust and confrontational culture of politics over the polls.

The apex court declared the 8th amendment partly illegal and void as it destroyed one of the basic structures of the constitution by introducing a provision for setting up permanent benches of the High Court in six other places outside the capital.

There are some other significant amendments that did not fortify the constitution, rather contributed much to subvert it.

Soon after the constitution became effective in December 1972, the second amendment was brought in 1973, introducing a provision for declaring a state of emergency by the president, which was not included in the original constitution. The amendment also empowered the president to suspend people's fundamental rights during emergencies.

Passage of the 4th amendment in 1975 was an attack on the constitution through which one-party rule was introduced burying multi-party democracy. A presidential form of government was introduced discarding the parliamentary form.

Interestingly, the 6th amendment

was brought to the constitution in 1981, allowing the then vice-president Justice Abdus Sattar to contest the presidential election without resigning from the post of vice-president.

In 1991, the 11th amendment was brought to ratify Justice Shahabuddin Ahmed's extra-constitutional appointment as the vice-president, and the powers exercised and laws and ordinances made during the

ary form of government, which had been transformed into the presidential form by the 4th amendment. But it has made the prime minister all-powerful.

The 14th amendment was made in 2004. It generated a huge controversy as it increased the service age of Supreme Court judges by two years. The consequence was a political turmoil by the end of 2006 and a

A total of 16 amendments have been brought to our constitution over the past four decades. But it is difficult to find any amendment which was actually aimed at improving the constitution's quality, enhancing people's rights and paving the way for flourishing democracy.

tenure that began after the fall of Ershad's regime in 1990. The 11th amendment made in 1991 wrongly ratified Justice Shahabuddin's regime.

Therefore, the 15th amendment in 2011 deleted the 11th amendment completely.

Only the 12th amendment made in 1991 brought some positive changes by restoring the parliament-

state of emergency in January 2007.

The 15th amendment brought in 2011 is not free from the long legacy of making the constitution subject to the whimsical will of those in power. This amendment inserted an absurd provision by imposing a ban on amending the constitution's preamble, including unspecified basic structure and a large number of specific

provisions.

Introduction of the 15th amendment is being blamed for blocking the future parliament's authority to bring amendments to those specified provisions. This means even if a future parliament wants to fortify the constitution and strengthen people's fundamental rights, it cannot do so as the 15th amendment made unamendable all the provisions stated in the fundamental rights and fundamental state principles.

And the last 16th amendment empowered the parliament to impeach a Supreme Court judge on the grounds of misconduct or incapacity for discharging duties. This amendment was brought amid a huge controversy in 2014.

Under such a state of constitution, is the PM's accusation or the call for forming a constitutional commission justified?

On Wednesday, Sheikh Hasina slammed the civil society personalities who are seeking fresh constitutional changes saying "they were either advisers to military dictators or worked under dictators in various capacities."

The way premier has reacted to the call made by the Concerned Citizen's Group, a platform of distinguished personalities, has made it clear that her government will never support the idea for setting up a constitutional commission.

But the way she blasted the civil society personalities gave an impres-

sion as if they brought bad news for her government. So the only way is: shoot the messengers.

But will only shooting the messengers change the reality?

Moreover, her critics may find her stance against military dictators contradictory because of the present status of Gen Ershad, one of the two military rulers, and his Jatiya Party. Hasina has made Gen Ershad, who grabbed the state power in 1982 unconstitutionally and put the country under martial law, her special envoy with the status of a minister. Three of his party's MPs have been inducted into her council of ministers. Of the three, two were ministers in the cabinet of the Ershad-led government. And Jatiya Party has been made the main opposition in parliament.

This shows the premier finds nothing wrong with keeping ties with the former military dictator Ershad and his party as they are with her government.

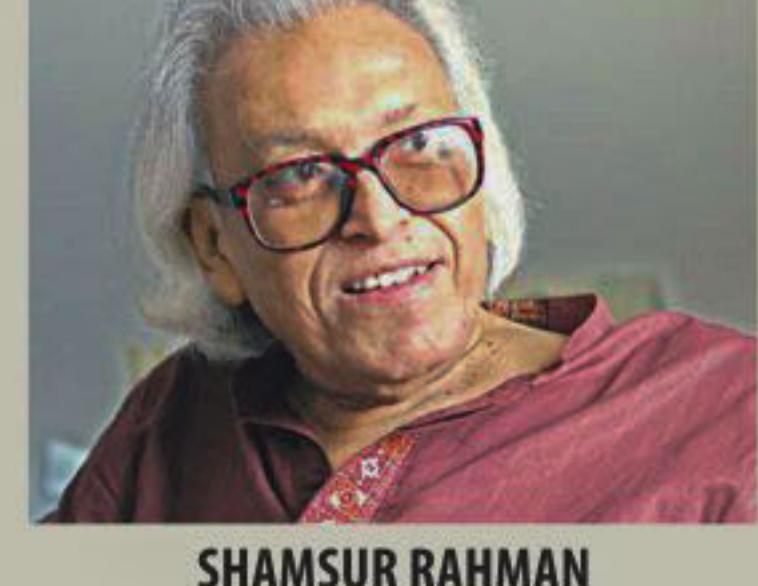
The other former military dictator Gen Ziaur Rahman was brutally murdered in 1981. But the party he founded has become the main opposition of the Hasina-led Awami League.

Under such a situation, one may conclude that the premier's attacks against the military dictators are in fact targeted at Gen Zia and the BNP.

Is this called politics?

The writer is Senior Reporter, The Daily Star.

QUOTEABLE Quote



SHAMSUR RAHMAN

(1929 – 2015)

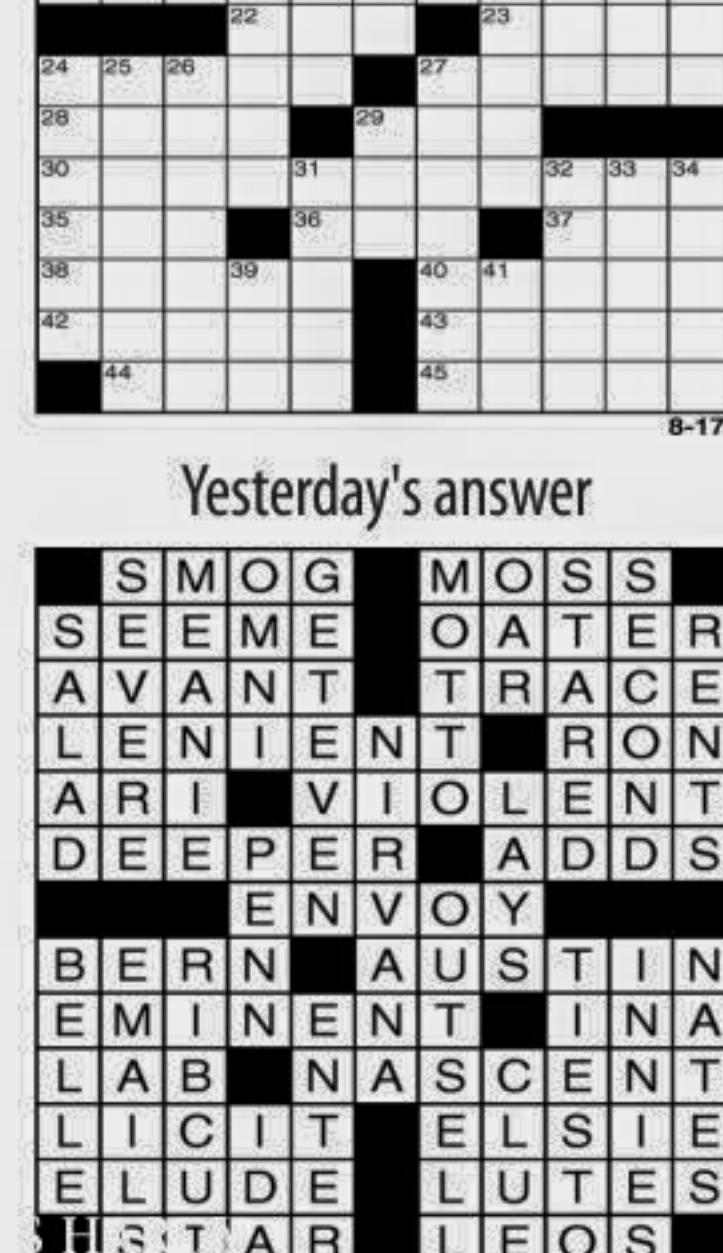
Freedom, raise your head like Titan, give a sky shattering shout, tear off the chain around your wrists.

Roar, Freedom, roar mighty!!

CROSSWORD BY THOMAS JOSEPH

ACROSS

- 1 Not even a little drunk
- 6 Gator's cousin
- 10 Doorbell sound
- 11 Flings
- 13 Accumulated, as debt
- 14 Enjoyed avidly
- 15 Energy measure
- 16 "I don't need the details," for short
- 18 Earth: Prefix
- 19 Camp cookout
- 22 Under the weather
- 23 Foot or furlong
- 24 Overhead
- 27 Unfeeling
- 28 Road division
- 29 Gear tooth
- 30 Popular coffee choice
- 35 Scarlet
- 36 Sold-out show
- 37 Apr. 15 adviser
- 38 Banish
- 40 Western
- 42 Titled women
- 43 Tip over
- 44 Citi Field team
- 45 Lingerie buy
- DOWN
- 1 Threaded fastener
- 2 Chicago airport
- 3 Bender
- 4 Outback bird
- 5 Gator, for one
- 6 Seat
- 7 Tire track
- 8 Pizza herb
- 9 Makes aware
- 12 Uneven
- 17 Director Brooks
- 20 David of "Separate Tables"
- 21 Expenditures
- 24 Bruce Wayne's butler
- 25 Lawyer's hurdle
- 26 Phrase on a coin
- 27 Make sense of
- 29 Greek's X
- 31 Mating game
- 32 Played a role
- 33 Use money
- 34 Late
- 39 Permit
- 41 Gorilla, for one



Yesterday's answer

S	M	O	G	M	O	S	S
S	E	E	M	O	A	T	E
A	V	A	N	T	R	C	A
L	E	N	I	E	R	O	N
A	R	I	V	O	E	N	T
D	E	E	P	R	A	D	D
E	N	V	O	Y			
B	E	R	N	A	U	S	T
E	M	I	N	T	A	S	T
L	A	B	N	A	S	C	E
I	C	I	T	E	L	S	I
E	L	U	D	E	L	U	E
H	S	T	A	R	L	E	O

BEETLE BAILEY



by Mort Walker

BABY BLUES



by Kirkman & Scott