

Non-Party Care -Taker Fakhruddin Government: Its Role

by Barrister Harun ur Rashid

Former Bangladesh Ambassador to the UN, Geneva.

Election under a Non-party Care-taker government in Bangladesh is unique. It is an innovative concept. Most democracies in the developing world watch and await the performance of such government in Bangladesh.

Many countries near and distant are saddened to see that in Bangladesh the novel concept fell into deep trouble before the President resigned from the position of the Chief Adviser.

The rationale of the non-party care-taker government is that in most developing countries, the ruling party in power does not remain neutral during the process of the general election and often posts district officers of its own choice to influence the voters in favour of party in power. Empirical evidence suggests that the ruling government does not differentiate between official and party work of public servants.

Against the above background, in 1996, a Non-Party Care-taker government has been entrusted to aid and assist the Election Commission to hold the general election of members of parliament "peacefully, fairly and impartially" (quoting the words of Article 58D (2) of the Constitution).

Until now three general elections have been held under the Non-party Care Taker government (1991, 1996 and 2001). Each election had been free, fair and impartial, according to most internal and outside election observers, although losing political parties accepted the outcome with great reservations.

Scope and role of the Non-Party Care-Taker Government:

Let us examine the powers and scope of the Non-party Care-taker government in promoting and creating conducive environment in holding fair, free and impartial general election.

Under Chapter IIA of the Constitution, the provisions of the Non-Party Care Taker Government are enumerated in Articles, such as 58B, 58C, 58D and 58E.

58B provides the nature and scope of the Non-Party Care-taker government, 58C deals with the composition of the interim care- taker government and its Advisers, 58D describes the functions of the government and 58E enumerates the ineffectiveness of certain provisions of the Constitution.

One significant element, I wish to mention, is that it is a Non-Party Care-Taker government. I emphasise the word "Non-Party". It is certainly not an all- party government and strictly speaking, no political party should have any say in the composition of the government. However, practice showed that different political parties suggest discreetly names of people to the Chief Adviser.

The relationship between the President & the Chief Advisor:

The President enjoys greater say during the care-taker government. He looks after the Ministry of Defence. During this period of Care-taker government, the President is not the figurehead as he is under the elected government.

The President appoints the Chief Adviser under the options enumerated in the Constitution (Article 58C). Under this Article, the President is empowered to appoint the Chief Adviser from among citizens. The current Chief Adviser (the executive head of the government) has met the criteria of Article 58C (5) of the Constitution.

The President appoints Advisers on the advice of the Chief Adviser. Although the President appoints the Advisers, the Chief Adviser has theoretically the responsibility in selecting Advisers and he allocates the portfolio among the Advisers.

Under the care-taker government both the President and the Chief Adviser are required to closely work with each other. During the Latifur government in 2001, he acknowledged the support and cooperation he received from President Justice Shahabuddin (*The Caretaker Days:2002*).

Functions of the Council of Advisers:

The Chief Adviser cannot exercise the executive authority like the Prime Minister. Furthermore the Chief Adviser cannot remove an Adviser, while the Prime Minister can dismiss or remove any cabinet minister. The scope of power of the Chief Adviser is limited. The Chief Adviser shall act in accordance with the advice of the Non-Party Care-taker government. The word "shall" has been used in Article 58B (3).

The Non-Party Care Taker government, as referred to in Article 58B, means in reality the Council of Advisers. The Council of Advisers is collectively responsible to the President. This means that all Advisers including the Chief Adviser would ordinarily take decision collectively. It is a collegial function and no Adviser can claim that he is not responsible for a decision made by the Council of Advisers. Advisers are of course responsible individually when they decide within their portfolio.

The Constitutional provisions make the primary responsibility of the Non-Party government to ensure an impartial administration in which the Election Commission can discharge its duty to hold an impartial, free, fair and credible general election.

Many writers have suggested that to create a congenial environment, the Non-Party Care taker government may address, among others, the following:

- (a) reorganising administration & election commission
- (b) law and order situation, including elimination of black money, godfathers and muscle men from society
- (c) collection of unauthorised arms and weapons,
- (d) updating election laws including RPO 1972
- (e) educating the voters, and
- (f) free media and easy access of all political parties to the state controlled media (radio and TV).
- (g) separation of lower judiciary from the government's control

While the Fakruddin government addresses the above issues, the first and foremost task for the re-constituted Election Commission is to prepare and publish a correct voter's list with voter's ID cards (some say national ID cards). Thereafter declare the election schedule with a view to free and fair election.

The Election Commission should also educate voters and provide information to which office voters may call and check the voter's list. Everything related to election must be fully transparent.

Duration of the Non-Party Care-Taker government:

Many constitutional experts hold the view that the current Fakruddin government will have 90 days to hold the general election from January 12 to keep the spirit of the Constitution as the earlier care-taker government led by President Iajuddin Ahmed is argued to be an unconstitutional one.

The Fakruddin government may continue more than 90 days, depending what kind of reforms political parties want, prior to a fair and acceptable election. Some legal experts believe that if the tasks of the government take more than three months, its character from the care-taker may change to an interim government

The Non-Party Care-taker government continues until the new Parliament is constituted and a new elected Prime Minister enters upon his/her office (Article 58B.1).