

## **Expectations from the Fakhruddin Non-Party Care-Taker Government**

*by Barrister Harun ur Rashid*

*Former Bangladesh Ambassador to the UN, Geneva.*

The background and necessity of the installation of the Fakhruddin Non-Party Care Taker Government on 12<sup>th</sup> January does not need to be recounted here. The people of Bangladesh welcomed the current Non-Party Care-taker government (CTG).

The two speeches of the Chief Adviser have made it clear what its intentions are. Some political parties are disappointed that a firm time- table for holding the general election has not yet been declared by the CTG.

People on the streets have confidence and trust in the CTG and the actions, taken so far, have been appreciated by people. It is like a new broom clearing the old debris.

Ordinary people expect that the CTG would clean some of the mess left by elected governments. But the question is whether it is possible for the CTG to remove all the ills embedded in society and within the state's institutions during its tenure.

Many political observers hope that the CTG may demonstrate and set examples in certain core areas that it can remove bottle necks and establish checks and balances in public institutions, necessary for good governance so as to create congenial environment for a fair and credible general election.

### ***CTG capable of taking policy decisions, not merely routine:***

There is a debate in the country whether the CTG can take policy decision or not. Simple answer is it can.

Let us examine as to whether the CTG can take policy decisions.. Article 58D describes the functions of the CTG in its two sub-clauses.

For ready reference Article 58D is quoted below:

*"(1) The Non-Party Care Taker Government shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid of and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions it shall not make any policy decision (underline mine)*

*(2) The Non-Party Care-Taker Government shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of Parliament peacefully, fairly and impartially."*

If we attempt to analyse the above first sub-clause, it is clear that it does not prohibit the CTG to take policy decisions in the case of necessity. The definition "necessity" has been left open-ended and is subjective. No objective ground is described in the Constitution as to what constitutes "necessity". It is up to the CTG to decide what circumstances warrant necessity and policy decision.

In the light of the above, it has been argued that the CTG is empowered to take both routine and policy decisions in the discharge of its functions. To support this argument, two examples are cited here.

In 1996, during the tenure of the Habibur Rahman government, the reduction of the score marks of the course of Islamic studies from 100 to 50 at the secondary level and celebration of April 17<sup>th</sup>, the day the provisional government of Bangladesh was formed in 1971, constituted policy decisions.

In 2001, the Latifur government allowed the US to use sky, fuelling facility, airports and seaports of Bangladesh in the backdrop of 9/11. This was also a policy decision.

People will feel relieved if the current CTG adopt policy decisions in matters that it deems fit and necessary in the national interest of the country. For example, the steps taken by the CTG to separate judiciary from the executive in terms of Article 21 of the Constitution are deemed to be a policy decision and have been welcomed by all.

Sub-Clause two of the Article 58D makes it clear that all conditions must exist so that the general election may be held peacefully, fairly and impartially.

Peaceful means that it must be held in an atmosphere where there would not be any violence. This implies that unauthorised weapons must be collected from persons who may likely to use them during the election time. Fairly means without dishonesty. Impartially connotes neutrality or unbiased. It also means that whatever is done must be transparent and should conform to standards and rules.

***Unique opportunity for the CTG to create and strengthen public institutions:***

Many hold the view that the CTG has the unique opportunity to recast both the Election Commission and Anti-Corruption Commission (ACC). Furthermore, it is desirable that a law by ordinance may be in place prescribing the qualifications required for Election Commissioners and Chairman and members of ACC.

In connection with holding general election, the Representation of the People Order (RPO 1972) needs amendments so that not only loan defaulters but also persons who are directly or indirectly involved in accumulating black money and with criminal gangs must be prevented from contesting the general election for MPs. In this connection, several amendments have been publicly proposed from the civil society.

A national Human Rights Commission, a demand of Bangladesh Human Rights group for many years, has not been in existence. The Commission needs to be constituted with persons of high moral character and competence in the field of human rights. The Commission will have promotional, advisory, consultative and protective functions. It will receive individual communications of violation of human rights by agencies of the government, investigate and suggest remedies. Its annual report would be submitted to the Parliament.

The Right of Information is to be enshrined under a law. Under this law, any citizen can ask for information as to how a decision on any particular subject matter has been made and what factors or elements that were considered in the decision-making of the

government (in India there exists such law). It is an essential mechanism to curb abuse of power and corruption.

### ***Local Self-Government:***

It is common knowledge that the present system of administration is too much centralised. There is hardly any scope for local participation in the decision-making and implementing process relating to countryside projects and infrastructure.

Article 11 read with Article 59 of the Constitution provides the decentralisation of administration through elected local governments. The Constitution envisages that local governments are empowered to prepare, finalise and implement all local projects with active inputs of grassroots people.

Had these provisions were implemented, many political analysts say that attraction of persons of becoming members of Parliament would have much reduced because most of MPs will have little role in local projects funded by governments. A law is desirable to empower the local governments to discharge their responsibilities in terms of the Constitution.

### ***Certain situations faced by the CTG:***

Many legal experts say that unlike the past CTGs, the existing CTG has to take into account the following situations.

*First*, during the operation of emergency (that runs for 120 days under Article 141A), certain fundamental rights such as, freedom of assembly, freedom of association, and freedom of speech and press are suspended.

Against this background, one may reasonably argue that prior to election, political parties require rally and meetings to present their manifestoes to public and such activities cannot be held during the operation of emergency. This implies that there cannot be general election during the 120 days from 11<sup>th</sup> January, the day on which the President issued a proclamation of emergency.

*Second*, the immediate past elected government expired its term on 28<sup>th</sup> October and during the period, two CTGs have been installed--one headed by the President on 29<sup>th</sup> October and the current one headed by Dr. Fakhruddin Ahmed on 12 January.

*Finally*, the tenure of the President expires in September this year.

### ***Tenure of CTG:***

There are three Articles of the Constitution that need to be considered here. One is Article 58D that provides for peaceful, fair and impartial election for MPs. The next Article is 123 which states that a general election shall be held within 90 days after Parliament is dissolved. The other Article is 58B that provides the tenure of the CTG.

One may strongly argue Article 123 (ninety days) is to be read with Article 58D (characteristics or qualities of election). One cannot pick and interpret only Article

123 without Article 58D. That means that if the Election Commission cannot hold peaceful, fair and impartial election within 90 days, the election shall be held later. It is argued that an unfair election within the stipulated days will not be an election within the meaning of Article 58D.

Article 58B provides that the tenure of the CTG will last until the new Parliament is constituted and a new Prime Minister enters his/her office.

***Conclusion:***

It appears different political parties want different things to be done by the CTG and there is no consensus among them as to what kind of reforms they desire to be undertaken by the CTG.

However, the CTG may demonstrate that if there is a will, reforms can be done within a short time with a view to creating new public institutions and strengthening existing public institutions that are conditions-precedent to sustainable democratic norms in the country.

There seems to be a consensus among all political parties that the next general election must be fair and acceptable to inside and outside the country. It is noted that congenial environment must be created to hold the election "peacefully, fairly and impartially" as contemplated by the Constitution (Article 58D.2).

If statements of Advisers in media are any guide, the CTG wants to hold election soon, not a day less or not a day more, when it is satisfied that such ground conditions exist. It is noted that the Adviser for Foreign Affairs reportedly said on 26<sup>th</sup> January that polls would be held soon after "creating level playing field" so that the election must produce results that would stabilise the society.