

CARE-TAKER GOVERNMENT, ELECTION COMMISSION AND PARLIAMENTARY ELECTION: IT'S INTERNATIONAL IMPLICATIONS

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1. Introduction

The purpose of this article is to open a debate on the constitutional and legal roles of the Non-Party Care-taker Government and the Election Commission in Parliamentary Election.

At the very outset, it must be acknowledged that we, in Bangladesh, devised an unprecedented form of government, hitherto unknown in any democracy the world over, simply for holding election in our Parliament after the Parliament is dissolved by the President by exercising his powers under Article 57(2) of the Constitution or stands dissolved by reason of the expiry of its term. The provisions relating to the establishment of the Care-taker Government will at once come into operation as soon as the Parliament stands dissolved in either of the above two ways. These provisions were not enacted in the original Constitution adopted immediately after independence, on 4 November, 1972 giving effect to it on 16 December, 1972. This novel device was adopted by constitutional amendment by the Constitution (Thirteenth Amendment) Act, 1996 (Act I of 1996) on the demand of the then leading opposition parties, which could not be resisted by the party in power. The irony of the entire episode is that although after the above amendment the then opposition parties accepted it as their greatest political victory, even before the lapse of less than two decades, the same parties have been demanding “reforms” of the system of the Care-taker Government realizing the pinch of it. This is the novelty in Bangladesh politics. Our leaders do not think “thousand times before taking a decision and stand by it as one man once it has been taken”, as Mr. Mohammad Ali Jinnah had once advised his followers to obey this principle. On the contrary, our leaders apply their minds to their decision after taking and implementing it and then they themselves start a movement to alter their own decision when they find that their decision has put them in a quagmire from where they cannot reclaim themselves, and cause immense sufferings to the common people and that is what is happening today.

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2. The Constitutional and Legal Position: Article 58B to Article 58C of the Constitution

Article 58B to Article 58C relate to the formation, powers, and functions of the Non-Party Care-taker Government after dissolution of the Parliament. Of these, all the Articles need not be dealt with for our present purpose. As such, we will confine ourselves only to the relevant Articles of the Constitution in this respect.

Article 58B provides for establishment of a Non-Party Care-taker Government. Clause (1) of this Article provides, in addition to its formation, for the tenure of this Government which is from the date on which the Chief Adviser enters upon his office after the Parliament is dissolved till the date on which the new Prime Minister enters upon his/her office after the constitution of the Parliament, after the new general election under the Non-Party Care-taker Government. But, what is the function and power of this Government during this period and particularly, in respect of the general election? Clause (3) of Article 58B is relevant in this regard and it runs as follows: "The executive power of the Republic shall, during the period mentioned in clause (1), be exercised, subject to the provisions of Article 58D(1), in accordance with this Constitution, by or on the authority of the Chief Adviser and shall be exercised by him in accordance with the advice of the Non-Party Care-taker Government". So, the above Clause of Article 58B vests the executive power of the Republic in this interim Government. This "executive power" regarding the general election is laid down in unambiguous and clear term in Clause (2) of Article 58D which runs as follows: "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".

Along with the above, Clause (1) of the same Article must also be read, because it defines in clear terms what functions the Non-Party Care-taker Government is empowered to perform during the interim period it remains in power. This Clause is very important and runs as follows: "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 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".

So, these two Articles read together leave absolutely no room for any doubt that the main function of the Non-Party Care-taker Government is mainly to aid and assist the Election Commission for holding a free, fair and peaceful election. Regarding election, this Government has nothing more to do other than aiding and assisting the Election Commission whenever the Election Commission asks it for aid and assistance before, during and after the election. It is also clear that it cannot dictate terms to the Election Commission regarding election matters. Except rendering aid and assistance whenever the Election Commission seeks such aid and assistance, it cannot meddle with election matters. This is the clear mandate of the Constitution. This Government cannot take any initiative of its own so far as election is concerned unless and until such initiative is called for from it by the Election Commission.

Along with the above, Article 119 laying down the powers and functions to be performed by the Election Commission for holding the general election to the Parliament and the duties of the Government in this respect must be referred to. Article 119 runs as follows: “The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law-

- (a) hold elections to the office of President;
- (b) hold elections of members of Parliament”.

It is absolutely clear without the least ambiguity that it is the Election Commission and the Election Commission alone which is responsible for conducting the election to the Parliament. After the interim Non-Party Care-taker Government takes over and until the elected Government assumes power, the Election Commission is the final authority in all matters of election from announcement of the election schedule until the names of the elected members of the Parliament are notified in the official Gazette. Except providing reasonable aid and assistance to the Election Commission in holding the election, the Government or any other authority has no other function to discharge. This constitutional position and its power granted to it by the Constitution must be clearly understood by the Election Commission.

The constitutional position and the power of the Election Commission in respect of an election to elect the members of the