

THE NON-PARTY CARETAKER GOVERNMENT IN BANGLADESH: THE NEED FOR REASSESSMENT

Ph.D. Thesis Submitted

By

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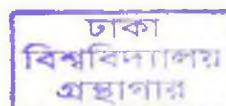
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Thesis submitted to the University of Dhaka in fulfillment of
the requirement for the degree of Doctor of Philosophy (Ph.D.)

December 2011
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BANGLADESH: THE NEED FOR REASSESSMENT**

Ph.D Dissertation
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Certificate of the Supervisor

This is hereby certified that the thesis entitled 'The Non-Pary Caretaker Government in Bangladesh: The Need for Reassessment' has been written by Shahed Iqbal Md. Mahbub-ur-Rahman, Ph.D. researcher, Department of Political Science, University of Dhaka, under my supervision.

I further certify that this thesis contains no material previously published or written by another person except by the way of quotations duly acknowledged. The thesis is based on Shahed Iqbal Md. Mahbub-ur-Rahman's own research work and has not been previously submitted for a degree or diploma in any other university or institution home and abroad.

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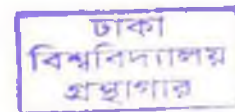
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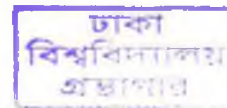


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Dedication
To my parents

Table of Contents

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Content	Pages
Abstract	viii-ix
Acknowledgements	x-xi
List of Maps, Graphs and Charts	xii-xiii
List of Tables and Appendices	xiv-xvi
List of abbreviations	xvii-xviii
Chapter One: INTRODUCTION	1-61
1.1 Introduction	
1.2 Statement of the Problem	
1.3 Purpose of the Study	
1.4 Study Rationale	
1.5 Research Gap	
1.6 Research Questions	
1.7 Study Objectives	
1.8 Hypotheses	
1.9 Exploration from the Existing Literature	
1.10 Perspective of the Research	
1.11 Study Methodology	
1.12 Feasibility of the Study	
1.13 Scope and Limitations of the Study	
1.14 Projected Thesis Structure	
Chapter Two: HISTORICAL BACKGROUND AND PROMISES	62-95
2.1 Evolution of Caretaker Government in Bangladesh	
2.2 Initial Promises of Caretaker Government	
2.3 Government Promises in the Changing Scenario	
Chapter Three: CARETAKER GOVERNMENT AND DEMOCRATIC VALUES	96-110
3.1 Conceptual Mapping	
3.2 Theories of Government	
3.3 Purposes of Caretaker Government	
3.4 Values of Caretaker Government	
3.5 Values of Democracy	
Chapter Four: PROVISIONS OF CARETAKER GOVERNMENT	111-128
4.1 Constitutional Framework	
4.2 Existing Structure of Caretaker Government	
4.3 Providing Facilities in Caretaker Government System in Bangladesh	
4.4 Policy Context of Caretaker Government	
Chapter Five: PRESENT STATUS OF CARETAKER GOVERNMENT	129-174
5.1 Reality Check between Goals of Caretaker Government and Present Status	
5.2 Standard of Caretaker Government in Bangladesh	
5.3 Functioning of Caretaker Government	
5.4 Challenges faced by the Caretaker Government System in Bangladesh	
5.5 Juxtaposing the Promises, Provisions and Challenges of Caretaker Government	
Chapter Six: Analysis and findings	175-242
6.1 Analysis and findings	
6.2 Identified areas	
6.3 Identified problems	
Chapter Seven: CONCLUSION AND POLICY IMPLICATIONS	243-262
6.1 Summary of Key Findings	
6.2 Policy Implications for Improving and Reforming the Caretaker Government System	
6.3 Conclusion	
<i>Appendices</i>	
<i>List of Persons Interviewed</i>	
<i>Bibliography</i>	

Abstract

The thesis inquires and examines the Non-party Caretaker Government in Bangladesh: The Need for Reassessment. It specifically focusses on the Non-party Caretaker Government system in Bangladesh (1996-2008). This is primarily a qualitative research, conducted on the basis of primary and secondary sources. This study concentrates on the Non-party Caretaker Government system in Bangladesh through the reality check between goals of Caretaker Government and present status Juxtaposing the Promises, Provisions and Challenges in Regarding the existing system. It has also taken into cognizance of the existing models of Caretaker Government in other countries. The 13th Amendment of the Constitution introduced the Non-party Caretaker government with a view to ensuring free and fair election to the Parliament. Three elections have since been held under the Caretaker principle in 1996, 2001 and 2008. The term Non-party was used to connote composition of Advisors who are not connected or affiliated or associated with a political party. The new arrangement also envisaged a scenario where the caretaker government would not initiate new policies or legislation or make commitment for new or large expenditures because it lacked the people's mandate. It was also connoted that conventionally, a caretaker government, despite having legal power, would not only desist from exploiting its position by implementing any controversial new policy, but also refrain from new and ad hoc appointment, redefining the character of the services and the duties of posts, changing the status and rank of Officials or deploying of Officials in a manner that might be construed as political patronage. This research fills out the gap existing in the literature on this particular area of study.

The issue of caretaker government has assumed particular importance given the serious misunderstanding and polarization that exists today between the leading political parties in this country. Articles 7 (1) and 11 of our Constitution sets forth the ideal situation, which will guarantee

effective participation of the people in a free and fair democratic political process. There is almost an inspirational element in the idealistic nature of their wording. Elections have always been considered as important in Bangladesh. The ordinary citizen, might sometimes be functionally illiterate, but does not hesitate to examine various factors related to the democratic process. Most attach special significance to the various elements associated with elections. In this, they are consistent with conscious democracy.

While explaining and analyzing the issues under study it is observed that a single theory is not sufficient. Apart from any possible theoretical baseline, the study on caretaker government system also needs to be viewed and examined from multi-disciplinary approaches, i.e., sociology, economics, history, anthropology, social-psychology and also from philosophy. The study is supposed to be partaken a messy shape. Thus the study on the 'Non-party Caretaker Government in Bangladesh: The Need for Reassessment' has essentially become a comprehensive one.

However, to meet up the requirements of the study, we have defined the concept of key issues. The Non-party Caretaker Government means, to institutionalize democracy and thus to establish it as a part of the socio-cultural and political system or organization. Institutionalization of democracy brings value and stability in the nexus between state and society.

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I am immensely indebted to the libraries, officers and staffs of the Dhaka University Library, BPATC Library, the Election Commission Library, Dhaka, Bangladesh Bureau of Statistics Library, Dhaka, Bangladesh Public Library, Dhaka, Bangladesh Institute of Development Studies (BIDS), Dhaka, Asiatic Society Library, Dhaka, British Council Library, Dhaka, United Nations Development Program (UNDP) Library, Dhaka, Centre for Development Studies (CDS), Indian High Commission Cultural

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The word may not have `eagerly awaited' the emergence of the thesis, but my wife, daughters and other family members of my family and friends certainly did. However, for their interest in my studies and for cheerfully putting up with my absence for four long years, I wish to express my heartiest gratitude to all of them for their unfailing support, encouragement and understanding that enabled me to complete my Ph.D. work.

Shahed Iqbal Md. Mahbub-ur-Rahman

List of Maps, Graphs and Charts

Map 1 : Bangladesh Political Map

Map 2 : Bangladesh (*Jatiya Sangsad*) Constituency Map

Graph 1.1: Confidence in the BEC and political parties

Graph 1.2 : People's Confidence in the Caretaker Government

Chart 2.1 Category of the Respondents by Profession

Chart 2.2 Category of the respondents by academic qualification

Chart 2.3 Category of the Respondents by District

Chart 2.4 Category of the Respondents by Religion

Chart 2.5 Category of the Respondents by Age

Chart 2.6 Category of the Respondents by Gender

Chart 2.7 Category of the Respondents by Income

Chart 2.8 Category of the Respondents by Marital Status

Chart 2.9 Key Challenges Faced by the NCG System in Bangladesh

Chart 2.10 Elections have been involved by the Respondents

Chart 2.11 Role of Respondents in the Concerned Election

Chart 2.12 Whether the Elections under NCG were much more neutral than the others under Political Government

Chart 2.13 Whether the Elections under NCG were much more credible than the others under Political Government

Chart 2.14 Whether the Elections under NCG were much more acceptable to the people and observers than the others under Political Government

Chart 2.15 What Election among the three under the NCG was much more neutral, credible and acceptable?

Chart 2.16 What limitation is to be overcome first regarding to the NCG system in the present constitution?

Chart 2.17 What contrast/contradiction should be fixed first regarding to the NCG system in the present constitution?

Chart 2.18 What is the key barrier for the Government to conduct a free and fair National Parliament Election?

Chart 2.19 Whether the NCG in Bangladesh is much more neutral than the Political Government

Chart 2.20 The Institutionalization Constraints of Democracy in Bangladesh

Chart 2.21 The first step of the future policy initiatives for reforming of the NCG system

Chart 2.22 The major economic constraints to institutionalizing democracy in Bangladesh

Chart 2.23 Whether the present system of the NCG should be reformed

Chart 2.24 Main socio-cultural constraints to institutionalizing democracy in Bangladesh

Chart 2.25 Political constraints to institutionalizing democracy in Bangladesh

Chart 2.26 The global constraints to institutionalizing democracy in Bangladesh

Chart 2.27 The main constraints of political parties for conducting democratically

Chart 2.28 The main constraints of parliament to be the centre for all political activities of the country

Chart 2.29 Whether the present NCG system is not sufficient to face the challenges

Chart 2.30 Whether the present leadership in the political parties is not sufficient to face the challenges

List of Tables and Appendices

Tables: General

- 1.1 Past Parliamentary Elections in Bangladesh
- 1.2 Results of Parliamentary Elections, 1991
- 1.3 Results of Parliamentary Elections, June, 1996
- 1.4 Results of Parliamentary Elections, 2001
- 1.5 Parliamentary Elections, 2001: Results Summary by Party
- 1.6 Parliamentary Elections, 2001: Results Summary by Divisions
- 1.7 Party-wise results of Parliament Election 2008
- 1.8 Past Parliamentary Elections in Bangladesh: Facts at a glance
- 1.9 District-level performance across elections
- 1.10 Distribution of votes and number of districts
- 1.11 Violence and Elections
- 1.12 Nature of Parliamentary seats
- 1.13 Performance of Parties
- 1.14 Seats and Votes won by different Parties

Tables: Survey

- 2.1 Category of the Respondents by Profession
- 2.2 Category of the respondents by academic qualification
- 2.3 Category of the Respondents by District
- 2.4 Category of the Respondents by Religion
- 2.5 Category of the Respondents by Age
- 2.6 Category of the Respondents by Gender
- 2.7 Category of the Respondents by Income
- 2.8 Category of the Respondents by Marital Status
- 2.9 Key Challenges Faced by the NCG System in Bangladesh
- 2.10 Elections have been involved by the Respondents
- 2.11 Role of Respondents in the Concerned Election
- 2.12 Whether the Elections under NCG were much more neutral than the others under Political Government
- 2.13 Whether the Elections under NCG were much more credible than the others under Political Government
- 2.14 Whether the Elections under NCG were much more acceptable to the people and observers than the others under Political Government

- 2.15 What Election among the three under the NCG was much more neutral, credible and acceptable?
- 2.16 What limitation is to be overcome first regarding to the NCG system in the present constitution?
- 2.17 What contrast/contradiction should be fixed first regarding to the NCG system in the present constitution?
- 2.18 What is the key barrier for the Government to conduct a free and fair National Parliament Election?
- 2.19 Whether the NCG in Bangladesh is much more neutral than the Political Government
- 2.20 The Institutionalization Constraints of Democracy in Bangladesh
- 2.21 The first step of the future policy initiatives for reforming of the NCG system
- 2.22 The major economic constraints to institutionalizing democracy in Bangladesh
- 2.23 Whether the present system of the NCG should be reformed
- 2.24 Main socio-cultural constraints to institutionalizing democracy in Bangladesh
- 2.25 Political constraints to institutionalizing democracy in Bangladesh
- 2.26 The global constraints to institutionalizing democracy in Bangladesh
- 2.27 The main constraints of political parties for conducting democratically
- 2.28 The main constraints of parliament to be the centre for all political activities of the country
- 2.29 Whether the present NCG system is not sufficient to face the challenges
- 2.30 Whether the present leadership in the political parties is not sufficient to face the challenges

Appendices

Appendix 1 Questionnaire

Appendix 2 Preliminary Survey Sheet

Appendix 3 The Constitution (Thirteenth Amendment) Act, 1996

Appendix 4 The Constitution (Fifteenth Amendment) Act, 2011

Appendix 5 Bangladesh Constitution: Emergency Provision

Appendix 6 Emergency Power Ordinance, 2007

Appendix 7 Emergency Power Rules, 2007

List of abbreviations

AD	Appellate Division
ADAB	Association of Development Agencies in Bangladesh
ALCWC	Awami League Central Working Committee
APSU	All-Party Students Unity
ARO	Assistant Returning Officer
BAC	Bureau of Anti Corruption
BAL	Bangladesh Awami League
BEC	Bangladesh Election Commission
BJP	Bangladesh Jatiya Party
BMA	Bangladesh Medical Association
BNP	Bangladesh Nationalist Party
BNPPP	Bangladesh Nationalist Party Parliamentary Party
CA	Chief Adviser
C&AG	Comptroller and Auditor General
CEC	Chief Election Commissioner
CJ	Chief Justice
CPB	Communist Party of Bangladesh
CRI	Centre for Research and Information
CTG	Caretaker Government
DC	Deputy Commissioner
DIG	Deputy Inspector General (of Police)
EEC	Electoral Enquiry Committee
EEO	Election Expenses Observer
ETV	Ekushey Television
EU	European Union
FEMA	Fair Election Monitoring Alliance
GDP	Gross Domestic Product
GOB	Government of Bangladesh
GOC	General Officer Commanding
HCD	High Court Division
ICM	Islamic Constitution Movement
IOJ	Islami Oikkya Jote
EMWG	Election Monitoring Working Group
JAGPA	Jatiyo Ganatantrik Party
JIB	Jamaat-e-Islami Bangladesh
JP	Jatiyo Party
JP(E)	Jatiyo Party (Ershad)
JP(M)	Jatiyo Party (Manju)

JP(N-F)	Jatiyo Party (Nazim Feroze)
JSD	Jatiyo Samajtantrik Dal
JSD(R)	Jatiyo Samajtantrik Dal (Rab)
JSD(S)	Jatiyo Samajtantrik Dal (Siraj)
JUI	Jamiat-e-Ulama-e-Islami
KSJL	Krishak Sramik Janata League
LDF	Left Democraic Front
LDP	Liberal Democratic Party
MP	Member of Parliament
MSS	Manabik Sahajya Sangstha
N/A	Not Applicable
NAP	National Awami Party
NBC	National Broadcasting Commission
NCG	Non-Party Caretaker Government
NDP	National Democratic Party
NDI	National Democratic Institute
NIP	New Industrial Policy
OC	Officer-in-Charge
OSD	Officer on Special Duty
PM	Prime Minister
PO	Presiding Officer
PROGOSH	Progotishil Ganatantrik Shakti
RO	Returning Officer
RPO	Representation of People's Order
RSF	Reporters Sans Frontiers
SAARC	South Asian Association for Regional Cooperation
SC	Supreme Court
SJC	Supreme Judicial Council
SP	Superintendent of Police
SRG	Study and Research Group
Sq Km	Square Kilometer
SSP	Sammilito Sangram Parishad
Tk.	Taka (Bangladesh Currency)
TNO	Thana Nirbahi Officer
TSC	Teachers' Students' Centre
UK	United Kingdom
UP	Union Parishad
US	United States
USA	United States of America

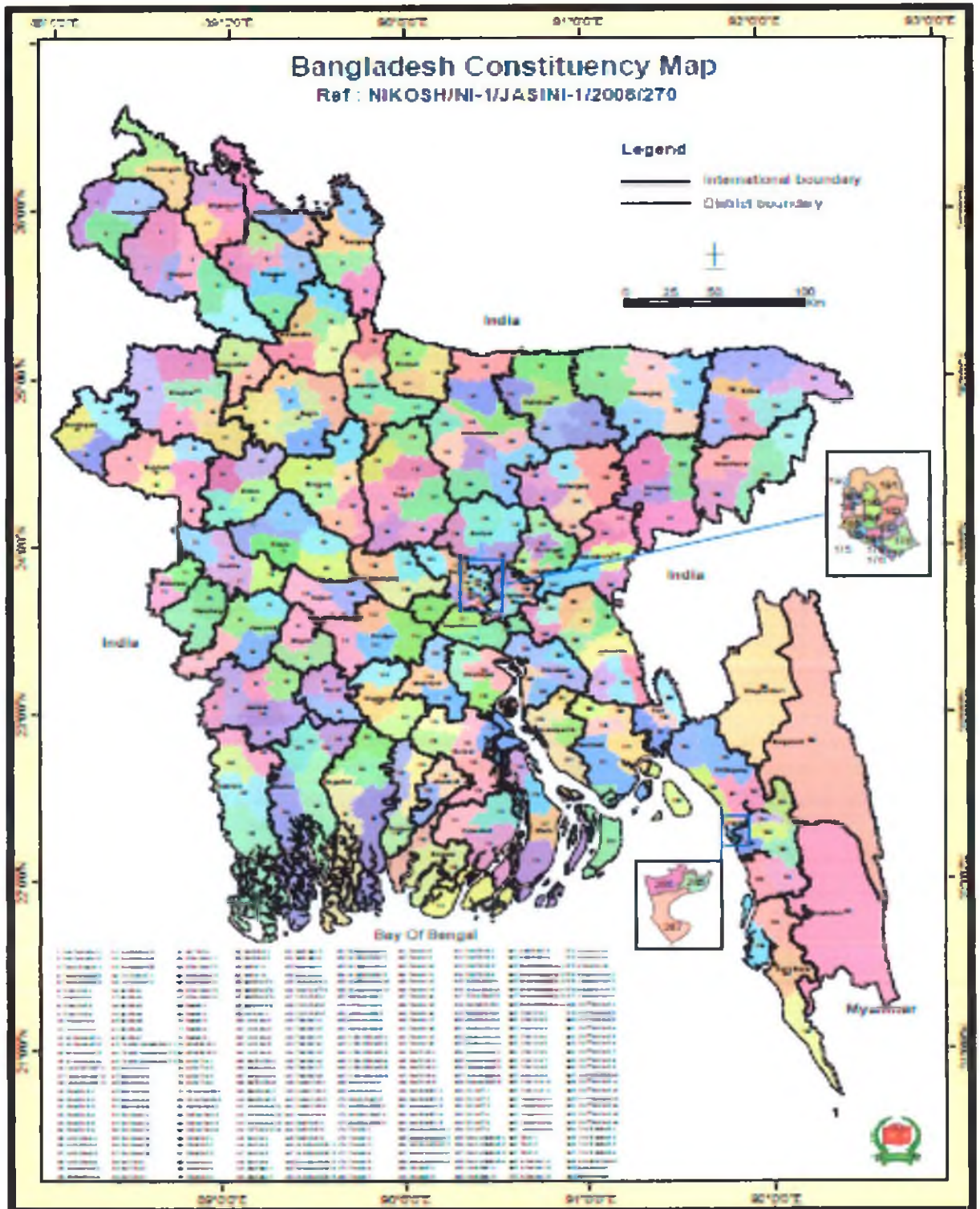
Map-1: Bangladesh Political Map



Map No. 5711 (Rev. 2) (S-1970) April 1964
January 2004

Department of Geography, Dhaka University
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Map-2: Bangladesh Constituency Map



Chapter One

INTRODUCTION

Chapter One

1.1 INTRODUCTION

Bangladesh became independent from Pakistan in 1971, following a bloody war. The indefinite postponement of the summoning of the National Assembly and the refusal of the Pakistani military government to hand over power to the elected representatives following the general election of 1970 resulted in mass protests. The use of military might in dealing with political problems led to the bloody war that cost the lives of millions of people and also resulted in the surrender of Pakistani forces on 16 December 1971, and the creation of Bangladesh. One of the reasons for the creation of Bangladesh was the aspiration of the people to establish a democratic society. Conversely, it may be said that Bangladesh became an independent country as a protest against military rule. Ironically, between 1975 and 1991, the country was either under direct or indirect military rule. Since independence, two presidents have been killed in military coups, martial law has been imposed three times and thrice a state of emergency has been declared.

Like many developing countries,¹ in Bangladesh the holding of free, fair and credible elections remains a big legal and political challenge despite the existence of all formal institutions including an apparent independent Election Commission. Those in power have always manipulated the rules and institutions concerned with the election process. Consequently, the innovative idea of holding the election under a Non-party Caretaker Government was conceived as a solution. It was perceived that the Non-Party Neutral Caretaker Government would have no motivation to manipulate the electoral process as the members of this government are barred from contesting the election.² Thus, the *Constitution (Thirteenth Amendment) Act 1996* was passed (Appendix-3), requiring all future general elections in Bangladesh to be held in accordance with this amendment.³ Under this arrangement, the government, at the end of its tenure, rather than going into a caretaker mode should hand over power to a Non-party Caretaker Government.

The amendment provided that after the resignation of the government, before a scheduled general election, the president shall invite the immediate past Chief Justice of the country to become the Chief Advisor (CA), or head of the Caretaker Government.⁴ These changes provided for the formation of a non-political Caretaker Government headed by the CA with the status and privileges of the Prime Minister.⁵ Article 58C (1) says that, the 'Non-party Caretaker Government shall consist of the Chief Advisor at its head and not more than ten other Advisors.' The Advisors are to be appointed by the president on the advice of the Chief Advisor.⁶ The CA would exercise the executive power of the republic during the tenure of the Caretaker Government. The tenure of the CA commences from the moment of taking the oath of office and ends when a new Prime Minister is sworn in after the general elections.⁷ The amendment, in clear terms, made it mandatory to hold the general election within 90 days.⁸

Three general elections were held under the *Constitution (Thirteenth Amendment) Act 1996*. All these elections were widely accepted as reasonably free and fair, and resulted in a change of government in a peaceful manner.⁹ The four-party coalition headed by the Bangladesh Nationalist Party (BNP) including two other ultra-rightist religious parties (Jamat-e-Islami and Islami Oikko Joute), and a faction of the Jatiyo Party was elected in 2001 with more than a 75% majority,¹⁰ defeating the immediate past Awami League (AL) government. In the first general election held in 1996 under this amendment, the AL won by defeating the BNP led government of 1991-96. Thus, it appeared that democracy in Bangladesh was on the path to consolidation.

During its term of office (2001-06), the government continually manipulated the constitutional process by appointing people loyal to it and by designing institutions and laws to perpetuate its rule.¹¹ From day one in office, it started reorganizing the Election Commission,¹² the police, the civil service, the army, Public Service Commission, university administrations, etc. Hundreds of Police and Defense Officers lost their jobs.¹³ The party faithful were recruited into the police force and the public service. In short, all branches of the administration were filled up with supporters of the party. The loyal Election Commission also manipulated the electoral roll.¹⁴ The government then created a new elite security force, Rapid Action Battalion (RAB), in the name of

combating the deteriorating law and order situation. Hundreds of people died in the custody of this force. The official explanation for each death in custody was the same; namely, friends of the detainee attacked to snatch the accused and in the course of a gunfight that followed, the accused died in the crossfire.

The newly elected four-party coalition government appointed Mr Justice K M Hasan as the Chief Justice, ignoring the long-held tradition of appointing the most senior judge of the Appellate Division of the Supreme Court as Chief Justice.¹⁵ Mr Justice K M Hasan, before becoming a judge of the High Court Division, was the International Secretary of BNP¹⁶. The Judges in Bangladesh can remain in office till they are 65 years of age. At the end of his tenure of office at the age of 65, the government appointed another judge of the Appellate Division, once again, overlooking two other senior Judges. The government then amended the constitution¹⁷ by extending the retirement age of Judges from 65 to 67 so that the newly appointed Chief Justice would retire after the formation of the Caretaker Government. Thus, the amendment made sure that Mr Justice K.M Hasan remains as the immediate past Chief Justice so that he can assume the office of the Chief Advisor of the Caretaker Government.¹⁸

Free and fair election is the crucial pre-condition for democratic system. In the Universal Declaration of Human Rights adopted by the United Nations Organizations (UNO) in 1948 the necessity for free and fair election has been emphasized. The joint declaration of the framework for restoration of democracy of three alliances in 1990 demanded a free and fair election under an interim government and stipulated total neutrality of this Caretaker Government, carrying this concept to its logical conclusion a constitutional arrangement for a Non-party Neutral Caretaker Government between two parliaments to ensure free and fair election turned into a national demand. At the same time it was also demanded that the electoral system should be reformed to free it from the influences of black money, terrorism and communalism. Sidetracking this national demand the BNP government of that time held a voter less one-party election on 15th February 1996. The parliament so elected could not pass the test of legitimacy both nationally and internationally. Mass upsurge forced the parliament of 12 days to dissolve itself after passing a constitutional amendment on Non-Party

Neutral Caretaker Government. The Caretaker Government that assumed power in the wake of the uprising was successful in holding a free and fair election. But the enhancement of powers of the president for the interim period made by that amendment demonstrated the possibility of crisis in governance. In our parliamentary practice the President makes only two discretionary choices and acts on the advice of the Prime Minister in every other matter. But the thirteenth amendment gave such powers to the President that strikes at the foundation of the parliamentary system. This amendment created a kind of dyarchy that can engender undesirable and unintended conflict. The vesting of the control of the defense ministry in the hands of the President is one such source of possible conflict. With the control of the armed forces in the hands of the President and not with the Caretaker Government further established the notion that the President could discharge executive functions without necessarily having to agree with the Chief Advisor. 'The system was one of dyarchy and this certainly was not conducive to holding free and fair election'.¹⁹ The amendment also vests all state powers in the President for the interim period by making the non-party government accountable to him. In addition, the President has a number of extraordinary constitutional means of wielding power and influence. In the case of a constitutionally defined "grave emergency" threatening "the security or economic life of Bangladesh," the President, under article 141A of the constitution²⁰ may issue a proclamation of emergency, which eliminates all restrictions on state power and the protection of fundamental rights. A state of emergency may last 120 days, or longer with Parliament's approval. If the president determines that "immediate action" is necessary, he may promulgate any ordinance he wants, as long as it is laid before Parliament for approval at its next session--that is, if it has not already been repealed. Added to the considerable power of being able to place persons in preventive detention, these are a potent array of powers controlled directly, and without means for external control, by the president. This has been remarkably observed that there was no clarification in any corner of the constitution (neither in article 58 nor in 141A) how long the Caretaker Government will continue during the period of State of Emergency.

1.2 STATEMENT OF THE PROBLEM

1.2.1 History and Characteristics of Transformation

Bangladesh became an independent state in December 1971, following a nine-month civil war which began after the Pakistani military waged a genocidal war against the Bengali population of what was then East Pakistan. The Bengali resistance movement received moral and material support from India throughout the war. India's military involvement against the Pakistani forces expedited the conclusion of the war. In the past 37 years, Bangladeshi politics have undergone significant transformation, as the country has experienced a variety of systems of governance, including prolonged military rule. These transformations can be divided into four broad phases: the era of elected civilian regime (1972–1975), the era of military and military-dominated rule (1975–1990), the era of democratic civilian governance (1991–2006), and the era of military-backed Caretaker Government (2007–2008). The general election held in December 2008 brought the country back to the democratic path.

Between 1972 and 1975, Prime Minister Sheikh Mujibur Rahman and the ruling Awami League (AL) adopted a parliamentary form of government, but pursued a command economy. Domestically, Bangladesh relied on a strong public sector and promoted a policy of nationalization to rebuild itself after the destruction of the war. The AL, which had been the main advocate of independence, became the dominant party. The foreign policy of the new state focused on close political and economic relations with India and the Soviet Union. The regime advocated a secular nationalist ideology and promoted a Bengali nationalism that emphasized the common historical and cultural background of all Bengalis, including those in the neighboring Indian state of West Bengal.

The military coup of August 1975 and the assassination of Mujibur Rahman resulted in a radical shift at both the domestic and international levels. The military government under General Ziaur Rahman (1975–1981) promoted Bangladesh's relations with the industrialized nations of the West, with the People's Republic of China and with the oil-rich Gulf countries.

Table 1.1: Past Parliamentary Elections in Bangladesh

Election date	Number of registered voters	Per cent turnout	Per cent invalid votes	Number of polling centers	Number of polling officials	Party with most seats won	Party with second most seats won
7 Mar 1973	35 million	55.6 %	1.36 %	15,084	192,423	Awami League, 293 seats	Independents, 7 seats
28 Feb 1979	38 million	51.3 %	1.05 %	21,905	223,355	N/A	N/A
7 May 1986	48 million	66.3 %	0.79 %	23,279	292,727	Jatiya Party, 153 seats	Awami League, 73 seats
3 Mar 1988	50 million	51.8 %	N/A	N/A	283,237	N/A	N/A
27 Feb 1991	62 million	55.5 %	0.60 %	24,154	360,985	Bangladesh Nationalist Party, 169 seats	Awami League, 92 seats
15 Feb 1996	56 million	26.5 %	0.22 %	21,106	314,480	N/A	N/A
12 Jun 1996	57 million	75.0 %	0.82 %	25,957	370,204	Awami League, 146 seats	Bangladesh Nationalist Party, 116 seats
1 Oct 2001	75 million	75.6 %	0.80 %	29,978	477,842	Bangladesh Nationalist Party, 193 seats	Awami League, 62 seats
29 Dec 2008	81 million	86.3 %	0.90 %	35,263	567,196	Awami League, 230 seats	Bangladesh Nationalist Party, 30 seats

Source: Bangladesh Election Commission at www.ecs.gov.bd.

The new regime opened up the economy to foreign investment and announced an export-oriented policy in the 1980s. General Ziaur Rahman founded his own political platform in 1978 called the Bangladesh Nationalist Party (BNP). The BNP became the main competitor to the AL. The BNP emphasized a separate Bangladeshi identity and promoted a religious concept of nationalism that emphasized differences with the Bengali speaking community in India. In 1977, Islam was incorporated into the previously secular constitution for the first time. In May 1981, Ziaur Rahman was killed in Chittagong. An attempted transition to civilian rule failed, and in March 1982, General Ershad took power. With the creation of the Jatiya Party (JP) in January 1986, Ershad founded a vehicle for his own political ambitions. In 1988, a new constitutional amendment made Islam the state religion of Bangladesh. Ershad was benefited from the personal rivalries between Sheikh Hasina (AL) and Khaleda Zia (BNP). During his rule, the role of the military in public institutions was strengthened. The era of military governance ended in December 1990, after a popular uprising. Three major Political Alliances engaged in a pro-democracy movement in the late 1990s jointly pressed for resignation of General Ershad and pledged to support formation of Non-party Caretaker Government to follow the General's resignation. The idea at that time was that once General Ershad announces his intention to resign the post of presidency, his Vice-President would resign first and a nominee of the opposition parties and alliances would be appointed Vice-President. Once the Vice-President takes oath of office, the President would offer his resignation and the Vice-President would take over the presidency as Acting President and administer the parliamentary election. According to this idea the then Vice-President resigned and Justice Shahabuddin Ahmed has been appointed as Vice-President to led a Non-party Caretaker Government for conducting the next National Parliament Election.

Bangladesh's political system features universal suffrage and the right to campaign for elected office. The general elections of 1991, June 1996, 2001 and 2008 were assessed as free and fair. The Bangladesh Election Commission (BEC) ensures that elections are run correctly. Voter registration, the presence of ghost voters on voter rolls, the influence of political parties on local administration during the election and the lack of independence of the Election Commission have been the

electoral system's key problems. The political crisis of 2006 centered on many of these issues. Reconstituted in 2007, the Election Commission took steps to address some of these outstanding issues, including the voter registration process. The new voters' list with pictures, compiled by the commission with the help of the army, has been commended as a significant step towards ensuring fair elections. The caretaker administration remained neutral during the 2008 election, as it was a non-partisan government.

Elected governments have the power to govern, in principle. However, between January 2007 and January 2009 the country was governed by a non-elected technocratic regime, under a constitutional provision that allows a Caretaker administration to hold power between two elected governments. Interpretation of this provision, particularly in regard to the length of the caretaker administration, varies. Many insist that the clause only allowed the interim administration to hold power for 90 days. The armed forces were confined to barracks after the transition to democracy in 1990, but emerged as the country's most powerful institution in 2007. In the view of many in the international media, the army intervened sensibly, faced with a failing democracy. In the past two years the armed forces have played key roles in administration and in public life. Many analysts have speculated that the army might seek to remain in politics by forming its own party. Despite a peaceful transition from the Caretaker administration to the elected government, the armed forces remain a significant force in the political process.

There are no significant *de jure* constraints on the freedoms of association or assembly. But the state of emergency, effective until the end of 2008, limited such rights. Various draconian rules were added to extant legal provisions, particularly in the form of the Emergency Power Rules of 2007 (with several amendments between 2007 and 2008). These rules provided far-reaching powers to law enforcement agencies. Political activities were completely banned until May 2008. The right to assembly was restored in late 2008. Violation of fundamental rights was rampant during the Caretaker administration. But the Caretaker Government also established the Human Rights Commission.

Freedom of the press and freedom of opinion are guaranteed under the constitution. The media, both print and electronic, is diverse and

vibrant. Newspapers tend to demonstrate a tilt toward a particular political party. Despite significant restrictions under the military-backed Caretaker Government, the media played a pivotal role in keeping the government in check, and contributed to raising awareness about democratic norms. The Caretaker Government also enacted, for the first time in the history of the country, the Right to Information Act. The number of journalists physically attacked or receiving death threats from political militants and criminals sharply decreased. But the number of arrests increased markedly. A television channel was forced to close.

1.2.2 Caretaker Government and Constitutional Arrangement

What did necessitate the constitutional arrangement of an interim government to hold parliamentary election in Bangladesh? Customarily the incumbent government holds the election and the power is transferred accordingly. In Bangladesh the government since 1973 'managed' all elections in favour of their own parties. Even the Khaleda Zia government which germinated from the free and fair election that 1991 Caretaker Government conducted—the offspring of 1990 mass movement (Khaleda Zia, in unison of other opposition political parties led the mass movement) to restore transparency in the electoral process of the country—molested the parliamentary election of February 15, 1996 in favour of its own party BNP. The subsequent Sheikh Hasina government that came to power through the 1996 elections conducted by constitutional Caretaker Interim Government has so far set up a fair trend in the electoral process of the country by helping the Election Commission to conduct freely and fairly by-elections of legislative seats in different times as well as elections at local levels. Notwithstanding the tiny shortcomings, the adhoc institution of Caretaker Government has taken shape and has attained constitutional sanction as a new concept as well as a new model.

The hard task of building democratic institutions in Bangladesh started with the Bangladesh Nationalist Party (BNP) as the ruling party while the Awami League, Jatiya Party, Jamat-e-Islam and other minor parties remained in the opposition. The fragile democracy in Bangladesh struggled from the very onset and was under pressure because of the uncompromising behaviour of the major political parties in and outside

the parliament: Neither the ruling party nor the opposition could inculcate parliamentary values in their political maneuvering to make the parliament an effective institution. Within one year of the elections, the Awami League and six other opposition parties moved a no-confidence motion in parliament against the ruling BNP. On the other hand, the leader of the house would frequently remain absent from attending parliamentary sessions. This encouraged the leader of the opposition too to ignore parliament. As a result, parliament failed to be an appropriate forum for discussion of national issues as well as a training platform of democratic norms. The ruling party made the parliament more a place for pushing through ordinances rather than making it a legislative house for the nation. Thus within span of two years intent of establishing an accountable and responsible parliament lost to the whims of 'Prime Ministerial System'.²¹ Amid mounting suspicions on ruling party's sagacity to strengthen democratic institutions through parliamentary practice, accusation of malpractice and rigging of votes by the ruling party in Mirpur by-elections held on February 3, 1993 kindled and compounded the anger of the opposition parties. BNP resorted to 'media coup' in Mirpur by-elections to declare its candidate elected before the election result was announced by the Election Commission. BNP thus lost confidence in establishing transparency of election. Surprisingly BNP along with other political parties in 1990 resorted to mass movement and unseated the military dictator to establish electoral transparency. The wrath of the opposition heightened when BNP resorted to massive terrorism, wide-scale rigging and manipulation of votes in Magura by-elections held on March 20, 1994. BNP adopted same method of polluting electoral process of the country as the military dictators did in the recent past. The government under BNP failed to maintain neutrality and to attain trustworthiness for restoring vote rigging in the by-elections in Mirpur and Magura.

The accusations were perhaps true and it is accurate to say that the Election Commission could not maintain its independence during these by-elections. After the result of the last by-election was published, the major opposition party -the Awami League-backed by other opposition parties, resorted to demonstrations and sieges of the Secretariat (the official seat of administration) to protest electoral piracy of the ruling

party. They apprehended that since the ruling party had rigged the results of by-elections, future elections under BNP could never be impartial. They demanded the resignation of the ruling party and the formation of a Neutral Caretaker Interim Government to hold the next parliamentary elections. The demand was backed by the widespread belief that it was not possible to hold free and fair election under a partisan government. The political parties, therefore, insisted on the formation of an Interim Caretaker Government to conduct next election without any interference or intimidation from any quarters.

The process, they argue, would not only strengthen foundation of democratic institutions but would also enable them to take root in Bangladesh.

Table 1.2: Results of Parliamentary Elections, 1991

Party	percent of Votes	Number of Seats
Bangladesh Nationalist Party	31	140
Bangladesh Awami League	31	88
Jatiya Party	12	35
Jamaat-e-Islami Bangladesh	6	18
Communist Party of Bangladesh	-	5
National Awami Party (Muzaffar)	-	5
Workers Party	-	1
Jatiyo Samajtantrik Party [Siraj]	-	1
Ganotantri Party	-	1
Islami Oikya Jote	-	1
National Democratic Party	-	1
Independents	-	3

Source: Bangladesh Election Commission

The opposition parties pressured the government by calling nation-wide strikes and organizing mass rallies and street agitations. The ruling party dismissed the opposition's demand of a Caretaker Government as undemocratic and unconstitutional. The uncompromising stands of both the ruling party and the opposition resulted in the boycott of parliament by the oppositions. Since the first quarter of 1994, the oppositions kept themselves out of parliament, throwing the country into a deep political

crisis. As such the parliament became dysfunctional because of the absence of opposition participation.

The opposition parties- Awami league, Jatiya Party and Jamat-e-Islam- submitted in the meantime three separate bills to incorporate the provisions of care-taker government in the constitution through amendment and demanded discussions on these bills. The government did not respond. The opposition parties, therefore, called upon the government to introduce a constitution amendment bill providing for a care-taker government by June 26, 1994. The call went unheeded. Ultimately all opposition parties in and outside the parliament announced an identical framework for holding general elections to the parliament under a Non-partisan Neutral Caretaker Government. The framework delineated: as soon as the President dissolves Parliament with a view to holding general elections to Parliament under a Non-partisan Neutral Caretaker Government:

- i. The Prime Minister shall resign,
- ii. The President, in consultation with the political parties engaged in movement and having representation in parliament, shall appoint a non-partisan person enjoying acceptability as Prime Minister and this Prime Minister shall discharge his/her functions as the chief executive of the government in accordance with Article 55 of the constitution.
- iii. The Prime Minister of the interim government shall not be candidate in the parliamentary election and he/she shall form a cabinet consisting of persons who are not members of any political party and will not be candidates in the election.
- iv. The main task of the interim government shall be to ensure a free, fair and impartial election, and to discharge only the usual duties and responsibilities as provided for in the constitution as well as any urgent state business.
- v. Elections shall be held within 90 days of the dissolution of Parliament by the President. After elections to parliament when the President appoints a new Prime Minister under Clause (iii.) of Article 56 of the constitution, the interim government shall immediately stand dissolved²².

The opposition parties successfully articulated public support toward the indispensability and appropriateness of the concept of Caretaker

Government for holding general elections in Bangladesh. The concept gained acceptability as the only way to ensure free and fair voting to institutionalize democracy in Bangladesh.²³ Besides opposition parties' framework, different cross-section of people came up with suggestions to work out a constitutional arrangement to hold free and fair elections in future. Representatives of diplomatic missions in Bangladesh too took initiatives to find out a compromise formula between the ruling party and the opposition parties to bring an end to the political impasse of the country. The Commonwealth Secretary General Emeka Anyaoku sent a former Governor-General of Australia, Sir Ninian Stephen, as his emissary to help mediate a compromise between the contending sides. Sir Ninian tried in vain for one and a half month to reconcile the two sides, whose leaders had a fierce animosity toward each other. Ultimately 'the Ninian mission' failed and the opposition resigned en masse from parliament on December 28, 1994 in the latest move in their campaign to force the government to quit.

The ceremonial vacancy of the 147 seats held by the opposition parties out of the total 330 seats of the parliament (including 30 reserved seats for women) took place in mid-1995 following a verdict passed by the Supreme Court. In effect, Parliament, became a one-party house since February 1994. The political crisis that gripped Bangladesh because of the intransigence of the ruling party and the opposition threw the country into a constitutional crisis. The process of democratic institution building that started in Bangladesh with the fall of dictatorial regime of Ershad in 1990 thus stagnated.

The government, after opposition parties "no" to participate in the proposed by-elections dissolved parliament on November 2, 1995 to seek a way to come out of the political crisis. Khaleda Zia's Prime Ministership of five years thus ended with progressive erosion of a fragile democratic process and gradual deinstitutionalization of the same'. Alternatively February 15, 1996 was fixed to elect a new parliament. The opposition parties, in pursuit of their earlier decision not to participate in any election under a partisan government, categorically rejected the proposal and resorted to mass movement, demonstration, sit down strike and continuous 'hartal' (complete closure of normal activities) in the first quarter of 1996 to make the government agreeable to the demand of Caretaker Government.

The ruling BNP played, without the participation of major opposition parties, the 'hara-kiri' of parliamentary election in mid-February 1996. Responding to the call of the opposition parties, the voters registered mass protest by their absence in BNP's stage-managed one-party election. The voter turn out, nowhere in the country, was more than 5 to 10 percent. Observers-local and international—all turned it a 'voterless' election. The government, to everybody's utter surprise, claimed 70 to 90 percent voter turn out. BNP's stalwarts resorted to massive vote-rigging, stuffing of ballot boxes with fake votes to get their almost all candidates elected, and thus number of votes cast surpassed the number of registered voters in many polling centers. The Election Commission itself was surprised, and expressed its suspicion over the election results. The international community bewildered with the misdeeds the BNP government wrought in February election. Any semblance of doubt about the ruling party BNP's credentials to hold proper elections were convincingly shattered in 1996 February election where BNP was the only major actor²⁴ along with other 40 insignificant political groups. BNP failed to dispel accusation that elections under partisan government are sure to be fraudulent and as such the demand of opposition parties for a Caretaker Government to ensure free and fair election attained mass support. The February election reinforced opposition's demand of Caretaker Government. With mounting pressure from all quarters of society, the government in the first session of the new parliament²⁵

passed the 13th amendment bill (Appendix 3) to the constitution on March 26, 1996 incorporating the provisions of Caretaker Government, resigned on March 30, 1996 and the President formed a Caretaker Government with former Chief Justice Muhammed Habibur Rahman as Chief Advisor on the same day to hold the next general election.

1.2.3 1996 Elections: Democratic Institutions rejuvenated

The Caretaker Government of 1991 was the outcome of political consensus. On the other hand, the Caretaker Government in 1996 became a constitutional reality, which conducted parliamentary elections on June 12, 1996 to accomplish a constitutional as well as a historic necessity. The Election Commission was reconstituted and reinforced with adequate powers to make the election a 'free, fair and clear' one.

The election was observed by near about 300 foreign observers. About 35 thousand local observers were also vigilant to observe June 12, 1996 election. The Caretaker Government adopted rigorous measures to make the election a fair one.

The election was contested -including all major political parties - by 81 political parties and alliances. The voters participated enthusiastically, peacefully and fearlessly in the elections. The voter turnout registered a new record of 73.61 percent including 40 percent female votes. The Caretaker Government successfully conducted a free and fair election with unanimous appreciation from international observers. Bangladesh Awami League popularly known as AL reaped the fruits in the election bagging 146 seats while Bangladesh Nationalist Party-BNP-appeared as strong opposition with 116 seats. Awami League, in understanding with Jatiya Party, gained more 27 of reserved women seats while 3 went for Jatiya Party. The 1996 parliamentary election left an indication that Bangladesh was drifting toward bipartisan politics.²⁶

The new government with Sheikh Hasina as the Prime Minister took over on June 23, 1996 in an orderly manner from the Caretaker Government. The new government in the first instance showed its eagerness to share power with other parties accommodating their representatives in the cabinet. The Awami League was driven with the idea of having consensus on national issues to run state administration. Jatiya Party (JP) and Jatiya Samajtantric Dal (JSD), other than BNP and Jamat-e-Islami (JI), in response to the call of the leader of the house Sheikh Hasina, joined in the cabinet with one representative from each party to establish a sort of consensus on national issues. The ruling party also set the tone of neutrality and eagerness to uphold parliamentary tradition of electing head of the state i.e. President on consensus to symbolize national unity. All the parties in Parliament agreed to elect former Chief Justice Shahabuddin Ahmed (who also headed the Caretaker Government in 1991) as the President of the country.

Since the assumption of power by Awami League, Election Commission conducted by-elections of legislative seats in different times without any interference from the incumbent government. So was the case with local level elections too. Thus a sort of fair trend has so far been set up

in the electoral process. Parliamentary Standing Committees are being chaired, instead of concerned minister, by Members of Parliament. Along with this, question-hours of the Prime Minister to answer the queries of the members of the parliament on fixed days during parliament session have tended to ensure transparency and accountability of the government to the parliament.

However, the AL was elected to power following a further poll in June 1996. The election of October 2001 brought another change of government, turning power over to the BNP and coalition partners that included religio-political parties such as the Jamaat-i-Islami (JI). Parties which favor an admixture of religion and politics have gained strength and influence since 1978. Islamist militant groups proliferated in the late 1990s and the early 2000s. In late 2006, the country plunged into chaos as the outgoing government and the opposition parties failed to reach agreement on various issues, including who should lead the interim government an election was held.

Table 1.3: Results of Parliamentary Elections, June, 1996

Party	Percent of Votes	Number of Seats
Bangladesh Awami League	37.44	146
Bangladesh Nationalist Party	33.60	116
Jatiya Party	16.40	32
Jamat-E-Islami Bangladesh	8.61	3
Islami Oikya Jote	1.09	1
Jatiya Samaj Tantrik Dal (RAB)	0.23	1
Independent	1.06	1
Other Parties	1.67	0

Source: Bangladesh Election Commission

Street agitation, violence and months of uncertainty led to the appointment of a military-backed technocratic Caretaker regime in January 2007, under a constitutional provision enacted in 1996. The government attempted to reform institutions and a political culture which had caused uncertainty, corruption and acrimony during the 15 years of democracy. In the election held in December 2008, the AL emerged victorious with an unprecedented majority in parliament.

1.2.4 Historical Development of NCG in Bangladesh

The concept of a Caretaker Government is not new in political science. In most democracies, the outgoing governments act as Caretaker Government in the United States; the outgoing President acts as President for a period of about 10 weeks even after the President designate to be elected. The Caretaker heads of governments are neither expected nor suspected of using the state power to unduly influence the conduct of the election.

In the parlance of institutional government, a Caretaker Government is one which normally takes care of state administration for an interim period until the regular new government is formed. In established parliamentary system, there is a convention of transformation of the outgoing government into a Caretaker Government for the time being before the holding of general election. Such temporary government exists only to perform day to day administrative jobs, and is not supposed to deal with policy initiating functions which may influence the election results. During the period the Caretaker Government maintains neutral status for ensuring free and fair general elections. In the parliamentary framework, after the dissolution of one ministry, the practice of establishing Caretaker Government for organizing general polls has been observed in all democratic countries.²⁷

‘Unfortunately this is not the case in most developing countries. Developing countries are characterized with ‘incumbents never lose’ phenomenon, whereby the parties in power are found to do anything in an election-lawful or otherwise, to remain in power’.²⁸ ‘The political history of independent Bangladesh is the history of authoritarianism, argument of force, seizure of power, rigged elections, and legitimacy crisis’.²⁹ ‘Due to dearth of democratic values, our politicians have tended to and continue to deviate from healthy practices of democracy. The catchword of democracy is ‘tolerance’ of others’ views. Mutual jealousy, hatred and conflict among the political parties have increased manifold due to this absence of tolerance’.³⁰ The degree of misuse of elections in the third world (in Bangladesh context in this case) is well-known. The contribution of successive military regimes in destroying the faith of the people in party government’s ability to administer free and fair elections led to the demand for conducting general elections under

neutral Caretaker Governments since mid-Eighties. Different forms of Caretaker Governments have been proposed by different political parties on different occasions, the most common one being under proposed leadership of the Chief Justice of the Supreme Court. However, the demand did not turn into a national demand and look distinctly achievable until the three major alliances engaged in pro-democracy movement in the late 1990s jointly pressed for resignation of General Ershad and pledged to support formation of Non-party Caretaker Government by a joint declaration (*Ruprekha*) to follow the General's resignation. The idea at that time was that once General Ershad announces his intention to resign the post of presidency, his Vice-President would resign first and a nominee of the opposition parties and alliances would be appointed Vice-President. Once the Vice-President takes oath of office, the President (General Ershad) would offer his resignation and the Vice-President would take over the presidency as Acting President and administer the parliamentary election³¹.

The issue of longer-term arrangements of Caretaker Government arose when the opposition accused the ruling party with rigging a parliamentary by-election (in Magura constituency) in early 1994.³² The opposition demanded cancellation of the results of the by-election or threatened boycott and resignation from parliament. Having boycotted the parliament for few months, the opposition members resigned from parliament in December 1994. They demanded that a bill be introduced before the parliament providing for parliamentary elections under Caretaker Governments for at least 3 consecutive terms. The government did not meet the demand but rather dissolved the parliament and called an early election to avoid by-elections in Constituencies represented by the resigning members of the opposition. All but the ruling party boycotted the election of 15th February 1996. Amidst record low turnout and high tension the election was announced over. The opposition movement intensified after the 15th February elections forcing the government to amend the constitution making permanent arrangement of Caretaker Governments to conduct future parliamentary election. Having passed the bill, the government immediately asked the President to dissolve parliament and call for fresh elections under a constitutional Caretaker Government.

The 13th Amendment of the Constitution (Appendix 3) introduced the Non-party Caretaker Government with a view to ensuring free and fair election to the Parliament. Three elections have since been held under the Caretaker principle in 1996, 2001 and 2008. The term Non-party was used to connote composition of Advisors who are not connected or affiliated or associated with a political party. The new arrangement also envisaged a scenario where the Caretaker Government would not initiate new policies or legislation or make commitment for new or large expenditures because it lacked the people's mandate. It was also connoted that conventionally, a Caretaker Government, despite having legal power, would not only desist from exploiting its position by implementing any controversial new policy, but also refrain from new and ad hoc appointment, redefining the character of the services and the duties of posts, changing the status and rank of Officials or deploying of Officials in a manner that might be construed as political patronage.

Flaws in the system however surfaced quite soon. President Abdur Rahman Biswas underlined the role of the Presidency and his control over the Armed Forces through the sacking of the Chief of Army Staff. This was done despite the presence of a Chief Advisor and a Council of Advisors belonging to a Caretaker Government. 'This sharply highlighted the dual system of government that had been introduced by the 13th amendment of the constitution'.³³ The evolving crisis was fortunately contained through the patience and maturity of the Chief Advisor.

The whole approach towards neutrality was however greatly affected in 2001 with the undertaking of controversial administrative decisions by the Caretaker Administration. These were policy decisions and have been identified by some analysts as being beyond their mandate.

The election in 2001 also raised another significant issue-the role of the armed forces representatives employed on electoral duties. We have already seen the allegations from the defeated parties that their associates and workers were targeted as potential troublemakers and consequently restrained from active participation and campaign on behalf of their political party. They feel that this affected election results. Election observers also noted that in some cases

representatives of the Armed Forces having been empowered with police and magisterial powers also entered election centers.

Table 1.4: Results of Parliamentary Elections, 2001

Party	Percent of Votes	Number of Seats
Bangladesh Nationalist Party (BNP)	193	40.97
Bangladesh Awami League	62	40.13
Islami Jatiya Oikya Front	14	7.25
Jamaat-e-Islami Bangladesh	17	4.28
Independent	6	4.06
Bangladesh Jatiya Party (N-F)	4	1.12
Islami Oikya Jote	2	0.68
Krisak Sramik Janata League	1	0.47
Jatiya Party (Manju)	1	0.44

Source: Bangladesh Election Commission

This imbroglio has assumed further complications through the extension of the age limit of the Judges of the Appellate Division in 2006. This had been interpreted by the Opposition as part of the Ruling Party's agenda to ensure that a particular person heads the next Caretaker Government. Such a measure had been perceived not only as negative and predicated on presumptive neutrality but also as a source of erosion of confidence. The opposition members demanded that the Chief Advisor of the Caretaker Government and other Advisors be appointed as per consensus of both the Rulers and the Opposition. The government did not meet the demand but rather dissolved the parliament and the then President Professor Dr. Iajuddin Ahmed appointed himself as the Chief Advisor of the new Caretaker Government. The Chief Election Commissioner (CEC) announced 22 January as the date of the 9th Parliament Election. The opposition led movement intensified and four Advisors resigned following some controversial measures taken by the Caretaker Government. Situation forced the President to appoint a new Chief Advisor and other Advisors on 11 January 2007. This military-backed Caretaker Government headed by Fakhruddin Ahmed, enjoyed significant initial popularity among the Bangladeshi population. A survey conducted by the Election Working Group (EWG), a donor-supported coalition of 32 domestic NGOs, observed that there was "a broad consensus that the State of

**Table 1.5: Parliamentary Elections, 2001
Results Summary by Party**

Party	Seats
BNP and 4 Party Alliance	196
Bangladesh Awami League	63
Islami Jatiya Oikya Front	14
Jamaat-E-Islami Bangladesh	17
Others	8
Total Announced Seats	298 of 300

Source: Bangladesh Election Commission

**Table 1.6: Parliamentary Elections, 2001
Results Summary by Divisions**

	Bangladesh Nationalist Party	Bangladesh Awami League	Jamaat-E-Islami Bangladesh	Bangladesh Jatiya Party (Ershad)	Others	Total
Dhaka	56	30	0	0	3	89 of 90
Chittagong	49	6	2	0	1	58 of 59
Rajshahi	44	9	5	14	0	72 of 72
Khulna	22	8	7	0	0	37 of 37
Barisal	16	3	2	0	2	23 of 23
Sylhet	9	7	1	0	2	19 of 19
Total	196	63	17	14	8	298 of 300

Source: Bangladesh Election Commission

Emergency was necessary [...] for the country in view of the political crisis and lawlessness prevailing at the time of the previous Caretaker Government."³⁴ Despite the constitutional provision that the Caretaker Government will conduct the election of the parliament within 90 days of the dissolution of parliament, the new Caretaker Government took merely two years to ensure and conduct the election of the 9th Parliament.

Both the Awami League and BNP have said they consider the State of Emergency and the Caretaker Government illegal.³⁵ The next parliament is likely to take a piecemeal approach to validating CTG ordinances. "By virtue of declaring all CTG acts illegal, it would in effect declare the election illegal.... the parliament would technically invalidate itself", a former parliamentarian said.³⁶ Constitutionally there is nothing that would prevent the next parliament from declaring the state of emergency and the elections invalid and mandating a fresh vote. However it would be financially and politically expensive and likely deeply unpopular with the public.

Table 1.7: Party-wise results of Parliament Election 2008

Party	Coalition member ⁵³⁰	Constituencies contested ⁵³¹	Per cent vote	Seats won	Per cent seats in Parliament
Awami League	Grand Alliance	264	48.04%	230	76.67%
Jatiya Party	Grand Alliance	49	7.04%	27	9%
Jatiya Samajtantrik Dal	Grand Alliance	7	0.72%	3	0.72%
Bangladesh Workers Party	Grand Alliance	5	0.37%	2	0.67%
Bangladesh Nationalist Party	4 Party Alliance	260	32.50%	30	10%
Jamaat-e-Islami	4 Party Alliance	39	4.70%	2	0.67%
Bangladesh Jatiya Party	4 Party Alliance	12	0.26%	1	0.33%
Liberal Democratic Party	None	18	0.27%	1	0.33%
Independents	None	151	2.94%	4	1.33%

Source: Bangladesh Election Commission

The government considered bypassing the next parliament altogether and seeking approval for its reforms from the public through a referendum. Article 142 of the constitution allows the Election Commission to conduct a referendum on an amendment from "amongst the persons enrolled on the electoral roll prepared for the purpose of election to Parliament".³⁷ A simple majority of votes is required to approve an amendment.³⁸ The referendum being discussed would

**Table 1.8: Past Parliamentary Elections in Bangladesh
Facts at a glance**

Organization								
Date of Poll	No. of Voters			% Votes Cast	% invalid votes	No. of Polling Stations	No. of Polling Booths	No. of Polling Officials
	Male	Female	Total					
7 Mar 1973	N/A	N/A	3,52,05,642	55.61	1.36	15,084	59,113	1,92,423
28 Feb 1979	2,00,34,717	1,83,29,141	3,83,638,58	51.29	1.05	21,905	67,150	2,23,355
7 May 1986	2,52,24,385	2,26,52,594	4,78,76,979	66.31	0.79	23,279	89,816	2,92,727
3 Mar 1988	2,63,79,944	2,34,83,885	4,98,63,829	51.81	-	-	-	2,83,237
27 Feb 1991	3,30,40,757	2,91,40,986	6,21,81,743	55.45	0.60	24,154	11,277	3,60,985
15 Feb 1996	2,37,65,752	2,32,38,204	5,61,49,182	26.54	0.22	21,106	98,710	3,14,480
12 Jun 1996	2,87,59,994	2,79,56,941	5,67,16,935	74.96	0.82	25,957	1,14,749	3,70,204
01 Oct 2001	3,86,84,972	3,63,15,684	7,50,00,656	75.59	0.80	29,978	1,49,288	4,77,842
Participants								
Year of election	No. of Parties/Alliances Contested	No. of Candidates Contested	Candidates with Party Affiliation	No. of Independent Candidates	% Vote Polled by the Parties	% of Votes polled by the Independent		
1973	14	1,209	1,089	120	50.74	2.81		
1979	29	2,547	2,125	442	45.12	5.12		
1986	28	1,980	1,527	453	49.93	9.65		
1988	8	1,192	978	214	N/A	N/A		
1991	75	2,787	2,363	2,363	52.44	2.41		
1996	41	1,450	993	457	23.05	3.27		
1996	81	2,574	2,293	281	74.00	0.79		
2001	54	1,935	1,451	484	74.82	0.67		
Source: Bangladesh Election Commission								

include an amendment to the constitution endorsing the dissolution of Iajuddin Ahmed's Caretaker Administration and the formation of Fakhruddin Ahmed's CTG and validating all the acts of the latter.³⁹ The CTG had enough public support to pass the referendum, even against party opposition. However, a constitutional amendment could itself be changed or repealed subsequently by a two-thirds majority in parliament.⁴⁰ Thus it was in the CTG's interest to gain party support before any referendum.

The military, however, was likely to see a constitutional amendment also as a necessary protection against prosecutions by the next party government. While a constitutional amendment might be appropriate to endorse the CTG's ordinances, it should not be used to grant immunity to the security services and others from prosecution for human rights abuses committed during the emergency. There should be no impunity for human rights violations that carry criminal responsibility.

1.2.5 Current Situation of Caretaker Government in Bangladesh

The Supreme Court has declared illegal a 15-year-old constitutional provision that mandates an elected government to transfer power to an unelected Non-partisan Caretaker Administration to oversee a new parliamentary election on completion of its term. In the same verdict on 10 May 2011, the highest court said the voided system may be practiced for another two parliamentary terms for the sake of "safety of the state and its people".

The court also asked the parliament to amend the constitution to make sure that former Chief Justices or any other Supreme Court Judges are not chosen as heads of Caretaker Governments in case the system is kept for another two parliamentary elections. A seven-member SC panel, headed by Chief Justice ABM Khairul Haque, reached the verdict on majority vote.

It thus also rejected a 2004 High Court ruling that upheld the 13th amendment to the constitution which provides for a 10-member Non-partisan Caretaker Government to take over following the dissolution of a parliament and resignation of an elected government on completion of

its term. The High Court ruled the system legal after a Supreme Court lawyer M Salimullah challenged the 13th amendment in January 2000 in a writ petition saying the change distorts the principle that the republic will be governed by an elected government. After Salimullah's death, another Supreme Court lawyer Abdul Mannan Khan filed an appeal in June 2005 against the High Court ruling in the Supreme Court.

In its brief verdict the Supreme Court said, "The Constitution (Thirteenth Amendment) Act, 1996 (Act 1 of 1996) is prospectively declared void and ultra vires the Constitution." But "the election to the Tenth and the Eleventh Parliament may be held under the provisions of the above mentioned Thirteenth Amendment," it said. "The parliament, however, in the meantime, is at liberty to bring necessary amendments excluding, the provisions of making the former Chief Justices of Bangladesh or the Judges of the Appellate Division as the head of the Non-party Caretaker Government," the verdict added.

As per the current constitutional provisions before this verdict, if the parliament is dissolved for any reason before expiry of its term or if it stands dissolved upon expiry of its 5-year term, the President will appoint the last retiring Chief Justice of the Supreme Court as the Chief Advisor of the Caretaker Government within 15 days of dissolution of the parliament. The President will also appoint not more than 10 advisors upon the advice of the Chief Advisor. The President, the Chief Advisor and up to 10 Advisors will form the apex of the Non-party Caretaker Government. The Caretaker Government will conduct the election of the parliament within 90 days of the dissolution of parliament. The Chief Advisors and Advisors will enjoy the status and the privileges of the Prime Minister and Cabinet Ministers respectively. Two former Chief Justices, Justice Habibur Rahman and Justice Latifur Rahman served as Chief Advisors respectively in 1996 and 2001.

Fakhruddin Ahmed, a former governor of Bangladesh Bank, held the office to oversee the 2008 parliamentary voting after street protests, led by Awami League and its allies, forced the then-president Iajuddin Ahmed to quit the post of the Chief Advisor.

The Caretaker System was also hailed as appropriate for Bangladesh which has a history of bitter political hostilities and mistrust. Awami

League, led by the then opposition leader Sheikh Hasina, pioneered the movement for introducing the Non-Partisan Caretaker System. Her bitter rival Khaleda Zia, then the Prime Minister, vehemently opposed it.

The verdict triggered mixed response among lawyers with some calling it contradictory and Attorney General Mahbubey Alam hailing it. Mahbubey Alam said the verdict is "right in principle". The next two parliamentary elections will be held under Caretaker Governments if the constitutional provisions are not amended, he said. If the next two elections are not held under Caretaker Governments, chaos and unrest will take place in the country, he added.⁴¹

Senior lawyers Barrister Rafique-ul Huq and Khandker Mahbub Hossain, president of the Supreme Court Bar Association, termed the SC verdict self contradictory, saying the SC declared the 13th amendment illegal, but suggested holding next two parliamentary elections under this law. Barrister M Amir-ul Islam said the parliament has to play a responsible role in finding an alternative to the Caretaker Government system. Barrister MI Farooqui, who stood for the petitioner, expressed satisfaction over the SC verdict, saying it is good for the nation and the constitution. Of the amicus curiae, Dr Kamal Hossain, TH Khan, Mahmudul Islam, M Amir-Ul Islam, and Rokanuddin Mahmud gave opinions in favour of the Caretaker Government system. However, two jurists–Rafique-ul Huq and Dr M Zahir suggested alternatives to the system. Amicus curiae Ajmalul Hossain and the appellant's counsels MI Farooqui and Mohsen Rashid placed arguments against the Caretaker Government system.⁴²

Instrumental behind the introduction of Caretaker Government in 1996, the Awami League now welcomes the Supreme Court verdict that declared the system illegal. Then in power, the BNP was dead against the concept. Now in opposition, the same party appears concerned.

1.2.6 Emergency Powers and Caretaker Government in Bangladesh

Under the Caretaker Government (CTG) mechanism introduced by constitutional amendment in 1996, upon resignation of the government and the announcement of elections, the president is to appoint the most

recently retired Chief Justice of the Supreme Court to head the CTG as the chief advisor (CA) and oversee the polls. However, in 2005 the BNP-led government had amended the constitution⁴³ to raise the mandatory retirement age for justices from 65 to 67. This move came despite strenuous objections from the opposition that suspected the BNP of raising the age limit in order to allow Justice K.M. Hasan, a former BNP politically-appointed ambassador, to qualify as the last-retired Chief Justice. When President Iajuddin Ahmed invited retired justice Hasan to head the CTG in October 2006, the Awami League-led opposition launched street protests that resulted in more than 25 deaths. To defuse the crisis, Hasan declined to take the post.

If the most recently retired Chief Justice is unable or unwilling to head the CTG, the constitution specifies an ordered list of officeholders whom the president shall invite. If none of these people is available, the last resort is for the president to assume the post. However, following Hasan's demurral, President Ahmed disregarded the constitution and appointed himself as chief advisor. Ahmed, having been elected by the BNP government in 2002, was viewed as even more clearly partisan than Hasan. Again, the opposition objected and threatened to boycott the polls.

Inter-party violence mounted through December 2006 and into the new year. On January 3, 2007, the opposition announced that it would not participate in the elections and began a series of street actions to prevent them from taking place at all. NDI, the International Republican Institute (IRI), and the European Union (EU) suspended their election observation missions on security grounds, and the UN suspended technical support to the Election Commission.

On the morning of January 11, 2007, beginning what the *Economist* would dub "the coup that dare not speak its name," the chief of staff of the Bangladesh military met with President Ahmed. That afternoon, Ahmed announced a dusk-to-dawn curfew in the major cities. It was unclear whether the military was poised to suppress the opposition protests or to meet the major opposition demand and postpone the polls. Late in the evening, in a televised speech, President Ahmed declared a state of emergency, indefinitely postponed the elections, and announced his resignation from the post of chief advisor. The other advisors—who are appointed by the chief advisor to form the cabinet for

the Caretaker Government—followed suit, and the following day the president appointed Fakhruddin Ahmed, a well-respected former governor of the Bangladesh Central Bank, as the new CA.

1.2.7 A Military-backed Civilian Government, 2007-2008

On January 12, 2007, President Ahmed, backed by the military, promulgated the Emergency Power Ordinance, 2007 (EPO), which granted the Caretaker Government extensive powers of rulemaking and detention, and granted indemnity to the government and its agents working in “good faith” under the powers of the EPO (Appendix 6). On January 25, 2007, the President issued the Emergency Powers Rules, 2007 (EPR), which specified offenses and punishments under the EPO (Appendix 7). The EPR banned political rallies, restricted indoor political meetings, restricted news broadcasts and print journalism, and defined the government’s powers to investigate alleged corruption.

On 11 January 2007 Bangladesh’s military installed a Caretaker Government (CTG), which used emergency powers to clamp down on violence in the run-up to bitterly contested elections.⁴⁴ Prime Minister Khaleda Zia’s Bangladesh Nationalist Party (BNP) had attempted to rig the polls, prompting the opposition Awami League to launch street protests, which led to some 50 deaths. BNP rule had continued the worst trends of the post-1990 multiparty democratic period, with corruption and cronyism debilitating state institutions and undermining the economy. Faced with the prospect of more street violence—and having to choose sides—the army stepped in.

The new government promised to conduct elections by the end of 2008 but also embarked on a major reform agenda beginning with a massive anti-corruption drive against top political figures and business leaders. Thousands have been arrested in the clamp-down on crime, including two former Prime Ministers, Sheikh Hasina and Khaleda Zia, on corruption charges. The government has also put political parties under heavy pressure to reform before elections, declaring it is not interested in holding “an election for election’s sake but rather to restore democracy”.

The state of emergency has complicated the political terrain. There are now more actors with more at stake, but the two main parties, the

Awami League and the BNP, continue to occupy the largest share of the political space. The BNP is in disarray following the arrest of its chairperson, Khaleda Zia. The Awami League has remained united, even though its leader, Sheikh Hasina, is in jail as well. The Jamaat-e Islami, the largest Islamist party and a BNP ally, remains relatively untouched, arousing suspicions of a mullah-military nexus.⁴⁵

This report examines developments since the military's "quiet coup".⁴⁶ It assesses the CTG's progress towards its stated goal of holding credible elections and examines the major political actors' agendas. It looks at the impact of the extended period of emergency rule and highlights the need for a restoration of democracy. The report is based on interviews in both Bangladesh and concerned capitals. Many interviewees requested anonymity.

1.2.8 The question of constitutionality

Fakhruddin Ahmed described the government as a "Caretaker" administration in his January 2007 speech, but it was clear from its reform agenda that it meant to do more than routinely administer the country between elections as mandated by the constitution. Normally, Caretaker Governments are non-party administrations formed to run the state "from the date on which Parliament is dissolved or stands dissolved"⁴⁷ until "a new Prime Minister enters office after the constitution of Parliament".⁴⁸ Their primary function is to create an environment in which a general election can be held "peacefully, fairly and impartially".⁴⁹ They are also responsible for exercising the "routine functions of government with the aid and assistance of persons in the services of the Republic",⁵⁰ and "except in the case of necessity ... shall not make any policy decision".⁵¹

This CTG rests on a "maximalist definition of the constitution in relation to elections preparations".⁵² Supporters, like constitutional expert Kamal Hossain, argue that it has a legal mandate: "The first Caretaker Government was not a legal Caretaker Government. It had failed to meet constitutional standards of non-partisanship and had to be reconstituted".⁵³ However, most parties argue the CTG's extended tenure is illegitimate and its reforms are policy decisions it should not take.⁵⁴ A BNP Advisor said, "the government's swelling reformist

objectives are unconstitutional".⁵⁵ "This kind of government is not anywhere in the constitution", a legal expert claimed. "The military likes to call Fakhruddin's show a Caretaker because it gives their takeover a flavour of constitutionality. The method by which [the CTG] came to power and its goals singularly and together put its legality in doubt".⁵⁶

The parties also contend that the postponement of elections is unconstitutional. They insist that the document is clear on this: elections must take place within three months of the expiration of the last parliamentary term.⁵⁷ But the CTG's position is that free and fair elections cannot happen unless its reform agenda is fully implemented. A Bangladeshi human rights activist said that:

The Caretaker will have to suspend democracy for nearly two years to get its job done. It is an unelected government acting undemocratically. Just because its stated intentions are good should not be a diversion from the fact that it is acting without a popular mandate. The Advisors' plans may have more support than any Awami League or BNP programs, but that doesn't make their government legal or constitutional.⁵⁸

A February 2008 ruling by the High Court division of the Supreme Court⁵⁹ has already challenged the constitutionality of the emergency. The justices ruled that Sheikh Hassina could not be tried under the Emergency Power Act (discussed below) for an offense committed prior to 11 January 2007. Although the CTG has appealed the decision to the Supreme Court's Appellate division, the ruling opens the door for further legal challenges to emergency rule. These constitutional issues will have to be dealt with before any election. The next parliament's first session will be required to pass on ordinances issued by the CTG.⁶⁰ If it refuses to endorse them on the grounds that they were produced by an "unconstitutional" interim government, there could be a new constitutional impasse.⁶¹

1.2.9 The Emergency Power Rules (EPR)

The constitution authorizes the president to declare an emergency if the country faces a grave external threat or internal disturbance.⁶² Such an emergency suspends the rights to freedom of movement (Article 36); freedom of assembly (Article 37); freedom of association (Article 38); freedom of thought, conscience and speech (Article 39); freedom of profession and occupation (Article 40); to property (Article 42);

safeguards from arrest and detention (Article 33); and protection of home and correspondence (Article 43).⁶³

On 12 January 2007, the CTG issued an Emergency Power Ordinance (Appendix 6) granting itself authority to promulgate further ordinances to "restrict all activities subversive to the state".⁶⁴ Two weeks after the takeover, the government issued the more extensive Emergency Power Rules (EPR) as legal cover for its reforms (Appendix 7).⁶⁵ It forbids any kind of association, procession, demonstration or rally without authorization from the government and imposes severe restrictions on press freedom by prohibiting any criticism of government deemed "provocative".⁶⁶

The EPR initially stopped short of banning "indoor" political activities (party members meeting in small groups at home), but a home ministry statement claimed that the CTG had "observed that some political parties have been misusing this flexibility".⁶⁷ On 8 March 2007, the government plugged the hole by imposing a nationwide ban on all forms of public and private political activity. Parties were forced to shut their offices; small private meetings in homes were banned, as were trade union activities.⁶⁸ The ban was only partially eased on 10 September, when "indoor" political activity was again allowed in Dhaka. It remains in effect for the rest of the country.

The EPR authorizes any member of the "law and order maintaining force"⁶⁹ under Section 16(2) to arrest any person on suspicion without a warrant. Section 20 authorizes the use of force to execute any order and grants immunity to the government for "any action, or any action done in good faith under the authority of this Ordinance".⁷⁰ These broad powers for the security forces have facilitated mass arrests and arbitrary detentions, resulting in numerous claims of mistreatment and torture. A Bangladeshi legal scholar said that:

The emergency has suspended fundamental rights, but not the right to seek remedy for them, so one could seek remedy for torture. These rights are technically still active under customary law. When the emergency is lifted, the next government may seek to prosecute military government people on these grounds. That is why the military and Advisors are scared and clinging to power, or dusting off their British and American passports.⁷¹

1.2.10 Present Status of the Caretaker Government System

The National Parliament of Bangladesh on 30 June 2011 abolished the Caretaker Government system allowing general elections under elected partisan governments with the passage of the 15th constitutional amendment bill (Appendix 4). Before the current amendment Prime Minister Sheikh Hasina insisted that the repeal had been necessary after the Supreme Court struck down the 13th amendment to the constitution as illegal.

According to the latest amendment, the next parliamentary election will be held within 90 days prior to the current parliament's dissolution. During these 90 days, the parliament will remain, but it will not have any activity as the latest amendment limited its power and functions for that period. But the amendment did not limit the power of the outgoing cabinet during the election. This means the 10th parliamentary elections will be held at the end of 2013 or at the beginning of 2014 as the tenure of the current parliament will expire on January 24, 2014. After the election is held, the lawmakers-elect will not assume office until the five-year tenure of the outgoing parliament expires. The amendment also introduced new provisions to make the Election Commission stronger to hold parliamentary polls. In case of any election dispute, courts must hear the EC's view before issuing any order.

Lawmakers belonging to ruling Awami League and its alliance partners – Jatiya Party, Workers Party, and JSD–voted for passing the bill. The lone independent lawmaker Fazlul Azim opposed the passage of the bill and staged walkouts three times. He termed the cancellation of the Caretaker Government system as a "suicidal" step of the current government, and said the nation will have to pay a high price for "this mistake".⁷²

Immediately after passage of the bill, Prime Minister Sheikh Hasina took the floor and said through this amendment her government ensured empowerment of the people. But the cancellation of the Caretaker Government system, introduced in 1996 by the then BNP-led government, triggered stiff protests from the BNP-led opposition. They have been reiterating that they will never participate in a parliamentary

election under the AL-led government, fearing that the incumbent will manipulate the poll in its favour.

But ironically it was Hasina, the opposition leader in 1994, spearheaded the campaign for installing a non-partisan Caretaker Government to oversee free and fair polls. The then ruling BNP vehemently opposed the idea until it was forced to bow to the opposition pressure in 1996 in the face of a tumultuous movement.

1.3 PURPOSE OF THE STUDY

Modernization means mass mobilization, mass mobilization means increased participation, increased participation is the key element of political development. Elections are the keys to ensure increased people's participation. But these elections should be held free and fair. Therefore, in this study we must review the relevance and importance of the Caretaker Government and evaluate the debate of different parties and groups about this new institution and finally reach to a new framework or structure of the Caretaker Government to ensure a free and fair election in Bangladesh.

1.4 STUDY RATIONALE

Many are concerned with regard to the constitutional arrangement that guided the electoral process in Bangladesh in the last two years of the last political Government (2001-2005). The issue of Caretaker Government has assumed particular importance given the serious misunderstanding and polarization that exists today between the leading political parties in this country. Articles 7 (1) and 11 of our Constitution sets forth the ideal situation, which will guarantee effective participation of the people in a free and fair democratic political process. There is almost an inspirational element in the idealistic nature of their wording. Elections have always been considered as important in Bangladesh. The ordinary citizen, might sometimes be functionally illiterate, but does not hesitate to examine various factors related to the democratic process. Most attach special significance to the various elements associated with elections. In this, they are consistent with conscious democracy.

Though election is not the only pre-condition for democracy, it has to be accepted that it is undoubtedly the most important condition. The people can exercise their power only through free and fair election. Article 7 (1) of our Constitution says, "All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution." Article 11 of the Constitution says, "The republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured." The Constitution reflects the ideals and values nurtured by the nation over a long period of time. Admittedly, these ideals of democracy came to us from the Western societies. It is from the British that we got the idea of representative government. Today, people in Bangladesh know that free and fair election is a *sine qua non* for ensuring a democratic form of government. This was evident during the movement against the military autocracies of the past.⁷³

Elections have always been crucial determinants in our history. In 1954 and 1970, they not only served to identify unacceptable factors in our national life, but also contributed towards an entirely new approach in the political horizon. The electoral arrangement, over time, has also served as a means for legitimizing informal usurpation of power. Various coups have been followed by so called multi party elections to bring about a representation of legitimacy. The administrative machinery, on such occasions was shamelessly used to manufacture the desired result. In 1986 during the Fifth Parliament, a general consensus had surfaced on the need for putting together a format whereby free and fair elections might be ensured. The eventual articulation of this concept had to wait however, for another ten years. The post Magura scenario and the February 1996 election laid bare the inability of the political party and the Election Commission in being able to ensure impartiality. The concept of the Caretaker Government, which had been derided as being suitable only in the minds of innocent children and lunatics, was born.

The 13th Amendment of the Constitution (Appendix 3) introduced the Non-party Caretaker Government with a view to ensuring free and fair

election to the Parliament. Three elections have since been held under the Caretaker principle in 1996, 2001 and 2008. The term Non-party was used to connote composition of Advisors who are not connected or affiliated or associated with a political party. The new arrangement also envisaged a scenario where the Caretaker Government would not initiate new policies or legislation or make commitment for new or large expenditures because it lacked the people's mandate. It was also connoted that conventionally, a Caretaker Government, despite having legal power, would not only desist from exploiting its position by implementing any controversial new policy, but also refrain from new and ad hoc appointment, redefining the character of the services and the duties of posts, changing the status and rank of Officials or deploying of Officials in a manner that might be construed as political patronage.

The Bangladesh practice of a Caretaker Government is the result of deep distrust of the outgoing elected government. It is an admission of failure, on the part of the elected governments, to conduct the elections fairly and honestly. Unlike other countries that have practiced the parliamentary system successfully, in Bangladesh the outgoing government manipulates the levers of power to rig the election in order to ensure its own victory. The history of Bangladesh is unfortunately replete with these examples. The military rulers who assumed power after the coup of August 15, 1975 routinely rigged the election to legitimize their power. The formalities of election procedures were observed without the substance. People did not get the opportunity to freely exercise their choice. Ballot boxes were stuffed with ballot papers in favour of the dictator's chosen candidate. The district level officials of the administration (DCs, UNOs and Police Superintendents) were blatantly used for this purpose. With the fall of Ershad in 1990 and the installation of an elected government, it was expected that the practice of rigged election would come to an end. It was a matter of profound disappointment that the ruling party headed by Begum Khaleda Zia was unable to live up to the expectations of the nation. She was not willing to accept defeat. Instead, her government resorted to the same practice of rigging that was followed by the military rulers. In fact, the Magura by-election in 1994 convinced the Opposition Parties that they did not stand the ghost of a chance to win if the ruling party remained in office.

The one-party election held on 15 February 1996 further convinced the common people that unless the government resigns a free and fair election could not be held. Public agitation assumed a serious turn. Begum Khaleda Zia had to bow to public opinion and resign. However, before resigning she quickly enacted a law on Caretaker Government. Though the law followed the basic formula advocated by the Awami League, none of the Opposition Parties was consulted on the actual text of the draft law. In order to stem the rising tide of public anger she hurriedly passed the law. We lived with this law until the 15th Amendment of the constitution took place and already three elections had been held under it.⁷⁴

Flaws in the system surfaced repeatedly during the terms of previous Caretaker Governments in 1996, 2001 and 2006, that has been discussed earlier in sub-section 1.2 (Statement of the Problem). These problems sharply highlighted the dual system of government introduced by the 13th amendment of the constitution (Appendix 3). This amendment created a kind of dyarchy that can engender undesirable and unintended conflict. The vesting of the control of the Defense Ministry in the hands of the President is one such source of possible conflict. With the control of the armed forces in the hands of the President and not with the Caretaker Government further established the notion that the President could discharge executive functions without necessarily having to agree with the Chief Advisor. The system was one of dyarchy and this certainly was not conducive to holding free and fair election. The amendment also vests all state powers in the President for the interim period by making the Non-party Government accountable to him.

The question had also been raised as to whether the constitution gives the Caretaker Government authority to overturn, review or annul orders and decisions of an outgoing elected government. Some jurists have claimed that the Caretaker principle permits such overhaul, if they feel that this will facilitate a fairer election. Others have pointed out such a decision contains potential for subjectivity, which might in turn raise questions about objective neutrality.

This imbroglio had assumed further complications through the extension of the age limit of the Judges of the Appellate Division⁷⁵. This had been

interpreted by the Opposition as part of the Ruling Party's agenda to ensure that a particular person heads the next Caretaker Government. Such a measure is being perceived not only as negative and predicated on presumptive neutrality but also as a source of erosion of confidence.

Recognizing the neutrality of the judiciary the Chief Justice was made the head of the interim government in order to make the transition from autocracy to democracy in 1990. The amendment for Caretaker Government provided for the latest retired Chief Justice to be the Chief Advisor. In case he would not be available the previous retired Chief Justices followed by retired Justices of the Appellate Division of the Supreme Court were made eligible for this position. This unfortunately has politicized the judiciary. The sudden extension of retirement age of only the Judges of the Supreme Court from 65 to 67 concerns testimony to intrusion of partisan politics in judicial appointment. The willful delays in the separation of judiciary from the executive and partisan considerations in the appointment of Judges of the Supreme Court have raised questions about the integrity of the judiciary. Above all, appointment of a public servant holding a specific post as the Chief Advisor is also not very logical. With a view to make the process more transparent, more efficient and more effective the field of choice for the Chief Advisor should be widened beyond the small circle of judiciary only.

Now we entered in a new horizon of political and electoral aspects in Bangladesh as the Supreme Court on 10 May 2011 declared the Caretaker Government system illegal and held it ultra vires the Constitution. Declaring void the 13th amendment, the court kept option open for holding next two general elections under the Caretaker System on the age-old three recognized principles - (i) necessity makes that lawful which otherwise is unlawful, (ii) let the welfare of the people be the supreme law, and (iii) the safety of the State is the supreme law-to evade disorder.

The court apparently took a subtle course to keep the judiciary above controversy. It suggested for excluding the former Chief Justice and Judges of the Appellate Division from the Caretaker Government. "In the meantime, parliament is at liberty to bring necessary amendments in this regard," said the order.

This is clear from the verdict that if we desire to go with the Non-party Caretaker Government system for the next two terms, we should now exclude the former Chief Justice and Judges of the Appellate Division from the Caretaker Government. We should also follow the spirit of the verdict that any alternative government system, which we suppose to incorporate in the constitution, must be elective or people's representative in nature. Otherwise, it will, again ultra vires the Constitution.

‘To ensure the Constitution continues to reflect the aspirations of the people-economic, political, social and cultural-it requires periodic reviews. Therefore, if the government intends to bring changes to what has become essentially a non-secular and undemocratic document, we welcome this and the decision to assign a committee to review and examine the country's constitution is a first step in the right direction.’¹⁷⁶

We must accordingly find necessary steps to ensure that the Caretaker process meets the above requirements and does not suffer from unnecessary debate. We must also remember that the Chief Advisor has to enjoy the confidence of both the Treasury Bench as well as the principal Opposition Party in the Parliament.

Besides, we must also examine how to ensure that the President remains above controversy as envisaged in Article 58E. There is also still time to consider whether some of the laws promulgated as Ordinances during the last Caretaker Government needs to continue.

Therefore, today, it is highly important to study the electoral system in Bangladesh and identify problems of this system and to provide solutions to protect the nation from political confrontation. So, today I think the reassessment of the system is essential.

1.5 RESEARCH GAP

The existing literature contains overall scenario of the Non-party Caretaker Government system in Bangladesh along with its historical evolution and challenges properly. But no major work is available regarding the initial goals of this system, subsequent provisions and the hazards of this system in contemporary Bangladesh on the basis of credibility, acceptability and accountability.

1.6 RESEARCH QUESTIONS

In the light of the discussion made above the present research poses a number of questions:

- a) What are the linkages between the Non-party Caretaker Government system and democracy?
- b) What are the existing provisions in the constitution?
- c) What are the challenges faced by the Non-party Caretaker Government system in Bangladesh?
- d) What should be the future policy initiatives for reforming of the Non-party Caretaker Government system?

1.7 STUDY OBJECTIVES

The overall objective of the envisaged Study is to explore the state of affairs in the Non-party Caretaker Government system in Bangladesh, make a reality check between the promises and provisions of this system at the tertiary level. The specific objectives of the study are to:

- a) explore the inter-linkages between Non-party Caretaker Government system and democracy by identifying the promises made for realizing the goals of this system;
- b) map out existing provisions of Non-party Caretaker Government in Bangladesh;
- c) analyze the challenges faced by the Non-party Caretaker Government system in Bangladesh; and
- d) juxtapose the promises, provisions and challenges, and explore possible action agenda for reform of the Non-party Caretaker Government system.

1.8 HYPOTHESES

The following hypotheses will be justified in this research paper:

- a. Caretaker Government has failed to be a complete neutral one to make elections a free and fair.
- b. Caretaker Government created a kind of dyarchy that can engender undesirable and unintended conflict.
- c. There is a tendency to politicize the judiciary to make Chief Advisor partial to an especial group.

- d. The criticism of some political parties is relevant.
- e. This institution should be reformed and restructured to a new one to make election a free and fair.

1.9 EXPLORATION FROM THE EXISTING LITERATURE

A number of books, journals, documents and research reports have been reviewed. I have developed a statement of the problem that includes, among others, historical background of Non-party Caretaker Government, current situation of Non-party Caretaker Government system, inter-linkages between Non-party Caretaker Government system and need for reassessment and existing challenges being faced by Non-party Caretaker Government system in Bangladesh. Moreover, key concepts and perspective of the research have also been derived from the reviewed literature. In addition to this, the review has helped me find out the research gap, which has been reflected in the research questions. In corresponded with the research gap the study objectives have been set.

There are rather fewer Publications in relevant fields. Among them the more important ones are reviewed here:

- (a) **Waresul Karim**, in his book ***Election under a Caretaker Government : An Empirical Analysis of the October 2001 Parliamentary Election in Bangladesh, The University Press Limited, Dhaka, 2004***, gave an historical background of the Caretaker Government in Bangladesh and analyzed the management, outcome and impacts of the Parliamentary Election of October 2001, but he neither criticized the Caretaker Government nor proposed any reassessment to present a model of sound system of Caretaker Government in Bangladesh as a whole.
- (b) **Muhammad A. Hakim**, analyzed the Caretaker Government under the then acting president Justice Shahabuddin Ahmad (1990-1991) in his work ***Bangladesh Politics: The Shahabuddin Interregnum, The University Press Limited, Dhaka, 1993***, but he also found reluctant to discuss the question of reassessment of the Caretaker Government system in his work.

- (c) **Justice Latifur Rahman**, briefed his experience during his regime (2001) as the Chief Advisor in his book ***The Caretaker Days and My Story***, **Mullick Brothers, Dhaka, 2002**. But since he felt the Caretaker Government system useful in the perspective of political culture in Bangladesh, the need for reassessment of this system did not find place in his autobiographical work.
- (d) **Fakhruddin Ahmed**, narrated the current constitutional structure of the Caretaker Government in Bangladesh in ***The Caretakers: A First Hand Account of the Interim Government of Bangladesh (1990-1991)***, **The University Press Limited, Dhaka, 1998**. But he also did not emphasize to reassess the system to present a model of sound system of Caretaker Government in his work.
- (e) **Nizam Ahmed**, in his book ***Non-party Caretaker Government in Bangladesh: Experience and Prospect***, **The University Press Limited, Dhaka, 2004**, argued that the Non-party Caretaker Government may be a necessary but not a sufficient condition to ensure optimal electoral outcome to help consolidate the nascent democratic system. He also agreed that some other reforms are necessary to this system. But he did not propose any reassessment to present a model of sound system of Caretaker Government in Bangladesh as a whole.
- (f) **A. T. Rafiqur Rahman**, in his work ***Bangladesh Election 2008 and Beyond: Reforming Institutions and Political Culture for a Sustainable Democracy***, **The University Press Limited, Dhaka, 2008**, narrated the roles and activities of the Caretaker Government since 11 January 2007 and briefly reviewed the reforms in political institutions and culture undertaken by that Government to ensure the free and fare election in 2008. But he also found reluctant to discuss the question of reassessment of the Caretaker Government system to present a model of sound system of Caretaker Government in his work.
- (g) **Zillur R. Khan**, in his article '***Aspirations and Realities: Parliaments and the Democratic Culture***' published in the book ***Political Culture in Bangladesh: Perspectives and Analyses***, **The University Press Limited, Dhaka, 2007**, edited by **Syed Saad Andaleeb** briefly reviewed the roles and elections conducted

by the Caretaker Governments in 1991, 1996 and 2001. But he neither criticized the Caretaker Government nor proposed any replacement as a model of sound system of Caretaker Government in Bangladesh.

- (h) **Muhammad Habibur Rahman**, briefed his experience during his regime (1996) as the Chief Advisor in his book ***Tattabadhayak Sarkarer Daibhar, Prothoma Prokashan, Dhaka, 2010***. He also expressed his anxieties regarding to the future of the Caretaker Government system in Bangladesh with the hope that the political government will replace the existing caretaker system in conducting the elections during the interim period. But he also found reluctant to discuss the question of reassessment of the Caretaker Government system to present a model of sound system of this Government in his work.
- (i) **Mizanur Rahman Khan**, in his work ***Tatyabadayak Sarkar Babostha: Aak Ashani Sanket, Agamee Prakashani, Dhaka, 2010***, criticized the role and activities of the Caretaker Government in Bangladesh since 1996. He expressed his deep concern regarding to the future of the Caretaker Government system in Bangladesh. But he, too, could not propose any replacement or alternative to present a model of sound system of Caretaker Government in Bangladesh as a whole.

All these literature reviewed above had been found remarkably confined in detailing the background, history and constitutional structure of the Non-party Caretaker Government of Bangladesh in the perspective of some particular elections held thereupon. But these literatures are not sufficient to raise the question of reassessment to present a model of sound system of Caretaker Government in Bangladesh.

1.10 PERSPECTIVE OF THE RESEARCH

1.10.1 Definition of Key Concepts

Demystifying the key concepts and framing an analytical framework it is badly needed to understand the key terms of the envisaged study. The key concepts of the present study are the Non-party Caretaker Government, Preconditions of Democracy, Provisions and Reassessment. These are clarified in following ways:

1.10.2 Non-party Caretaker Government

The Caretaker Government of Bangladesh is a form of government system in which the country is ruled by a selected government for an interim period during transition from one government to another, after the completion tenure of the former. As the outgoing government hands over their power, the Caretaker Government comes into place. The main objective of the Caretaker Government is to create an environment in which an election can be held in a free and fair manner without any political influence of the outgoing government. The head of the Caretaker Government is called the Chief Advisor and is selected by the President, and the Chief Advisor selects the other Advisors. The administration is generally distributed between the Advisors. The Chief Advisor and the other Advisors are committed for their activities to the President.

1.10.3 Preconditions of Democracy

Free and fair election is the crucial pre-condition for democratic system. In the Universal Declaration of Human Rights adopted by the UN in 1948 the necessity for free and fair election has been emphasized. The joint declaration of the framework for restoration of democracy of three alliances in 1990 demanded a free and fair election under an interim government and stipulated total neutrality of this Caretaker Government, carrying this concept to its logical conclusion a constitutional arrangement for a Non-party Neutral Caretaker Government between two parliaments to ensure free and fair election turned into a national demand. At the same time it was also demanded that the electoral system should be reformed to free it from the influences of black money, terrorism and communalism.

1.10.4 Provision

To state in simple term, provision refers to legal structure affiliated by the constitution. In the present study, provision will mean the existing government structure, system, process and legal aspects of a Non-party Caretaker Government in Bangladesh. Here, the government structure means the organizational structure of the Caretaker Government. Legal aspect includes legal framework, constitutional formation, Ordinance

and Laws. Finally, system means the comprehensive feature of these mentioned issues within which Caretaker Government is formed and operated.

1.10.5 Reassessment

The term 'reassessment' means reviewing the relevance and importance of the Caretaker Government and evaluating the debate of different parties and groups about this new institution and finally reaching to a new frame-work or structure of the Caretaker Government to ensure a free and fair election in Bangladesh. It also means modification of provisions regarding Caretaker Government to reflect public aspirations in this regard. Finally, it means the reformation of the electoral system in Bangladesh and identify problems of this system and to provide solutions to protect the nation from political confrontation.

1.10.6 Analytical Framework

The present study will make a check on the promises and realities of Non-party Caretaker Government in Bangladesh on the basis of three indicators such as credibility, acceptability and accountability.

1.10.7 Credibility

Credibility of any government depends on the outputs derived from the functions of the government in a particular regime. Whether a government is credible or not, that largely depends on utility in terms of perception and use of the system for stakeholders. The 13th Amendment of the Constitution (Appendix 3) introduced the Non-party Caretaker Government in Bangladesh with a view to ensuring free, fair and credible election to the Parliament.

1.10.8 Neutrality

The term 'neutrality' means fairness, impartiality and lack of prejudice. Neutrality of a government depends on the impartial status of the organs of the government. The 13th Amendment of the Constitution introduced the Non-party Caretaker Government in Bangladesh with a view to ensuring free and fair election to the Parliament. The term Non-party was used to connote composition of Advisors who are neutral, not

connected or affiliated or associated with a political party. It was also connoted that conventionally, a Caretaker Government, despite having legal power, would not only desist from exploiting its neutral position by implementing any controversial new policy, but also refrain from new and ad-hoc appointment, redefining the character of the services and the duties of posts, changing the status and rank of Officials or deploying of Officials in a manner that might be construed as political patronage. Such measures would have been perceived not only as negative and predicated on presumptive neutrality but also as a source of erosion of confidence.

1.10.9 Accountability

Accountability ensures by the proper participation. In development discourse 'participation' means real and meaningful involvement of persons or groups in different stages of development initiatives including decision-making, planning, implementation, benefit sharing and evaluation of the program activities. Here, the participation reveals the involvement of mass people, different legal and administrative bodies in the Non-party Caretaker Government system.

Larry Diamond and Leonardo Morlino define accountability as "the obligation of elected political leaders to answer for their political decisions when asked by voters or constitutional bodies."⁷⁷ They distinguish between two types of accountability: vertical and horizontal. Vertical accountability runs "upward" from citizens to leaders. Andreas Schedler identifies three main features of vertical accountability: information, justification, and punishment (or compensation).⁷⁸ These roughly describe the stages in which citizens learn of public actions presented by leaders, and decide whether to punish the leaders or reward them (most often by either turning them out of or continuing them in office).⁷⁹ Political competition and participation are critical conditions for vertical accountability. Competition and power distribution needs to be fair enough for genuine electoral alternatives at various levels. The ongoing process of monitoring, questioning, and demanding justification is equally important for consolidating democracy. Civil society and media play an important role in this process of ongoing monitoring.

Horizontal accountability, in contrast, refers to “one arm of the government...answering to another in a roughly lateral way rather than as part of a regular command-and-obedience relationship.”⁸⁰ Horizontal accountability institutions include the political opposition in the legislature, investigative institutions set up by the legislature, the courts, audit agencies, independent election administration, central bank, anti-corruption commission, human rights commission, state ombudsman, and other such bodies “whose mission is to scrutinize and limit the power of those who govern.”⁸¹

1.10.9.1 Vertical Accountability

During the 15 years of democratic rule, vertical accountability institutions worked better than their horizontal counterparts. The electoral system, despite its many shortcomings, did provide the space for competition and participation. Though the citizens were not provided with many alternative choices during elections, they did have a choice between two major parties and they exercised their right to reward and punish the leaders. Voter turnout was extremely high, nearly 75 percent, in the 1996 and 2001 elections, and in both the voters punished the incumbent governments by voting them out.

Civil society and media also played a very positive role, always keeping the pressure on the government of the day, monitoring and questioning government decisions. In Bangladesh, there is a very large and proactive civil society and NGOs which have gained international reputation both in delivering services and in advocacy. Though the various governments did exert some control over the NGOs through the requirements of NGO registration and approval for donor funding, on the whole the NGOs were able to access donor funding and operate relatively freely in service delivery operations. Under democratic rule, even the advocacy NGOs were able to operate relatively freely and openly, often criticizing government’s policies and actions. For example, civil society, particularly human rights organizations, were in the forefront of protests against extra-judicial killings by the RAB, banning of the publications of the Ahmadiyya community, attacks on the Hindu community and the indigenous groups in the CHT, political repression against opposition political parties and so on. Several rights groups filed

a public interest litigation in the High Court challenging the government's mass arrests in April 2004.⁸²

Since 1991, the media has emerged as another effective vertical accountability institution. Print media has done an outstanding job in investigating and reporting on government and political corruption, rise of extremists, particularly Islamist fundamentalist groups, the role of *mastaans* in party and electoral politics, partisanship of civil bureaucracy and judiciary and other such democracy deficits. The growth of a privately-owned media—newspapers and television channels – has boosted a healthy competition amongst the different media though concerns have been raised that some of these privately owned media may propagate a partisan viewpoint.

Though during the 15 years of democratic rule, media was relatively free from state control, journalists did face pressures from state and non-state actors. In 2004 alone, five journalists were killed, and 111 injured in the line of duty. Cases were lodged against 63 journalists and 263 received death threats. Journalists faced attacks by both political party activists and police. Editors of four leading newspapers faced libel cases; indeed, libel cases were frequently used to harass newspaper editors as well as civil society leaders.

Despite these limitations, vertical accountability institutions, particularly civil society organizations and the media, did scrutinize government actions, mobilize public opinion and create pressures on the government to be answerable. Indeed of all the democracy indicators, Bangladesh has consistently scored the highest in civic engagement and monitoring and media independence. Since the imposition of Emergency Rules on 11 January 2007 (Appendix 7), both media and civil society organizations are under stricter government control. The government has issued repeated warnings to the media that it cannot publish reports criticizing the Emergency. During August 2007, when protests broke out in the capital city Dhaka and later all over the country, the media was ordered not to provide live coverage of the protests. Many newspapers and TV channels have adopted a severe policy of self-censorship. Civil society has similarly been somewhat muted after the Emergency.

1.10.9.2 Horizontal Accountability

In comparison to vertical accountability, horizontal accountability institutions fared poorly under the democratic rule. Parliament, the most significant horizontal accountability mechanism, hardly functioned as the political opposition mostly boycotted the parliamentary sessions, alleging government suppression of their voices. As noted earlier in Section 3, the opposition, AL started boycotting the parliamentary sessions from early 1994 and resigned in December 1994, thus missing nearly half of the tenure of the Parliament elected in 1991.

After the June 1996 election, the BNP, which, then, became the opposition, started behaving in the same way, walking out and boycotting the parliamentary sessions. Unlike the AL, the BNP members did not resign from the parliament, but they too missed half of the parliamentary sessions, registering their nominal presence occasionally in order to avoid losing their parliamentary seats.

During 1996-2001, the parliamentary committees, however, functioned better and the political opposition participated regularly in the committee meetings. But after the 2001 elections, the BNP-led government did not constitute the Parliamentary committees owing to differences of opinion with the political opposition. The opposition, citing the Indian example, demanded chairmanship of the committees, but the BNP alliance was unwilling to accede to this demand. The AL did not resign from Parliament this time, but it refrained from participating in Parliament for prolonged periods. Since the opposition was mostly absent, members of the governing parties also frequently missed parliamentary sessions resulting in a lack of quorum.

Severe restrictions were put on Members of Parliament, limiting their freedom to criticize the actions of their own party. In the absence of scrutiny and oversight by the legislative branch, the executive branch of the government started to function as a "vice-regal" system inherited from the British and Pakistani colonial days with few checks on its actions.⁸³

Other horizontal accountability institutions also did not perform well. As discussed in Section 4, the judiciary, particularly the lower judiciary was under the control of the executive branch of the government. Instead of

working as a check on the government, it was often used to further the partisan interests of the party/parties in power. The EC was never given independence. The EC could not prevent the rigging of by-elections, nor could it challenge the government's electoral malpractices. Several CECs publicly expressed their frustrations in not being able to hold the ruling party accountable for vote fraud.

After much foot-dragging, the BNP-led coalition government finally established an ACC in 2004. But the ACC was staffed poorly and it soon became a contested body with members of the ACC in contention with each other and with the government over rules of appointment and staffing. Only under the Fakhruddin CTG some steps have been taken to make the ACC independent from the control of the executive branch of the government. As noted earlier, the new ACC chief, Lt. General Hasan Mashud Chowdhry, a former Chief of Staff of the Army has moved vigorously against high-level corruption in politics, civil administration, and the bureaucracy.

In sum: During democratic rule, vertical accountability worked relatively well. The three national elections were relatively free and fair. Voter turnout was exceptionally high in the last two national elections, which were also marked by voter rejection of incumbent governments. The media and civil society organizations worked in a relatively free environment and played an important proactive role in monitoring the government's actions/inactions.

In contrast, horizontal accountability institutions did not function well. Parliament became a rubber stamp as the opposition members were mostly absent. They were denied full participation when they attended the sessions but nearly half the time the opposition members boycotted the sessions alleging government repression. Other horizontal accountability institutions, such as the judiciary, the EC, and the Anti-Corruption Commission were not given authority and resources to check the misbehaviour of the government. The weakness of the horizontal accountability institutions was a major challenge in institutionalizing democracy in Bangladesh. As Larry Diamond and Leonardo Morlino note: "The agencies of horizontal accountability constitute a system of their own, and if this system is to work it must have institutional capacity, training, and leadership that are at once capable, vigorous,

and responsible. Like the law itself, the agencies of horizontal accountability can be used as a weapon against political opponents, but only at the possible cost of undermining the credibility enjoyed by the entire institutional network."⁸⁴

1.11 STUDY METHODOLOGY

1.11.1 Data Sources

Both primary and secondary data had been used for this study. Secondary sources of information had been collected from published and unpublished research works relevant to the theme of the study. These included books, journals, research reports, documents from relevant Ministries and Divisions, Election Commission Reports etc. On the other hand, primary data included the views and comments of the Electoral People, Politicians and Government Officials on last three-Caretaker Government.

1.11.2 Research Methods

By using purposive sampling method three general elections (held on 1996, 2001 and 2008) had been selected out of nine post-independence parliamentary elections in Bangladesh. In order to collect different types of experiences and challenges five professional groups involved in these elections (Teachers, Students, Politicians, Government Employee and Businessmen) had been selected out of all professions. Two sets of structured questionnaire (Appendix 1-2) had been used for conducting the study. As a sample of the study 20 persons had been selected from each profession. That means the total number of respondents was 300 (20X5X3). Interviewing along with observation methods had been used for collecting data.

1.11.3 Analysis

Both qualitative and quantitative methods and techniques had been used to analyze data. The various techniques and methods of statistics had been used for data analysis. Computer tools as MS Word, MS Access, MS Excel and SPSS had also been used in this respect. The methodological guidelines of the research procedures were as follows:

Research Coordination Matrix

Perspectives	Key Issues	Methods	Sources
Credibility	Promises	Key Interview	Politicians: 20 Government Employee: 20 Businessmen: 20 Teachers: 20 Students: 20
		Theoretical Framework	
		Document Study	
Neutrality	Provisions	Document Analysis	Parliament Ministry of Law & Parliamentary Affairs Election Commission Bangladesh Gazette Election Commission Reports Parliament Proceedings
		Interview	
Accountability	Challenges	Observation	
		Document Analysis	

1.12 FEASIBILITY OF THE STUDY

The proposed study is a development issue that demands appropriate policy intervention. The researcher is optimistic about the success of this study by exploring the under said feasibility:

- a) Related information of the said research is available in published, unpublished and electronic forms, which are accessible to the researcher.
- b) The researcher has around ten years of professional experiences in policy level. He carries some experiences and knowledge on the proposed study. Moreover, for the sake of collecting information, the researcher will be able to travel anywhere in Bangladesh. Primary data of this research work

will be collected from various constitutional and government organizations, which are very much available to the researcher.

- c) Close monitoring and supervision of the supervisor, logistic support from the research organization and other scholars to the concerned fields will make the research possible.

1.13 SCOPE AND LIMITATIONS OF THE STUDY

The focus of the study had been restricted with the promises, provisions and reassessment of Non-party Caretaker Government in Bangladesh. The study examined the values or goals of the Caretaker Government, providing facilities for ensuring free and fare national elections and the existing challenges including the last Supreme Court verdict faced by the present Caretaker Government system. Three general elections and five professional groups of people had been selected out of many more to examine the promises, provisions and challenges of Caretaker Government. Sample size of the research had been small, so the non-representative sample of the population cannot give overall generalization. Moreover, the study looked the Caretaker Government system within only the three core terms like promises, provisions and reassessment. However, the study sample would present the representative scenario of Caretaker Government system in Bangladesh.

1.14 PROJECTED THESIS STRUCTURE

Chapter One: INTRODUCTION

- 1.1 Introduction
- 1.2 Statement of the Problem
- 1.3 Study Objectives
- 1.4 Study Rationale
- 1.5 Study Methodology
- 1.6 Scope and Limitations of the Study

Chapter Two: HISTORICAL BACKGROUND AND PROMISES OF CARETAKER GOVERNMENT IN BANGLADESH

- 2.1 Evolution of Caretaker Government in Bangladesh
- 2.2 Initial Promises of Caretaker Government
- 2.3 Government Promises in the Changing Scenario

Chapter Three: CARETAKER GOVERNMENT AND DEMOCRATIC VALUES

- 3.1 Conceptual Mapping
 - 3.1.1 Caretaker Government in Bangladesh
 - 3.1.2 Promise
 - 3.1.3 Provision
 - 3.1.4 Reassessment
- 3.2 Theories of Government
- 3.3 Purposes of Caretaker Government
- 3.4 Values of Caretaker Government
- 3.5 Values of Democracy

Chapter Four: PROVISIONS OF CARETAKER GOVERNMENT

- 4.1 Existing Structure of Caretaker Government
- 4.2 Providing Facilities in Caretaker Government System in Bangladesh
- 4.3 Policy Context of Caretaker Government

Chapter Five: PRESENT STATUS OF CARETAKER GOVERNMENT

- 5.1 Reality Check between Goals of Caretaker Government and Present Status
- 5.2 Standard of Caretaker Government in Bangladesh
- 5.3 Functioning of Caretaker Government
- 5.4 Challenges faced by the Caretaker Government System in Bangladesh
- 5.5 Juxtaposing the Promises, Provisions and Challenges in Regarding the Caretaker Government

Chapter Six: ANALYSIS AND FINDINGS

- 6.1 Analysis and findings
- 6.2 Identified areas
- 6.3 Identified problems

Chapter Seven: CONCLUSION

- 7.1 General Discussion
- 7.2 Policy Implications for Improving and Reforming the Caretaker Government System
- 7.3 Conclusion

Appendices

List of Persons Interviewed

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- ² Article 58C(7) of the Bangladesh Constitution requires that the members of the Caretaker Government not be 'members of any political party or of any organization associated with or affiliated to any political party' and not permitted to be a candidate for the ensuing election'.
- ³ For a critical analysis of various provisions of the Thirteenth Amendment, see M Rafiqul Islam, 'Free and Fair General Elections in Bangladesh under the Thirteenth Amendment: A Political-Legal Post-Mortem' (July-December 1996), *Politics, Administration and Change*.
- ⁴ Bangladesh Constitution, art 58C(3).
- ⁵ 'The Chief Advisor shall have the status ... and privileges, of a Prime Minister and an Advisor shall have the status ... and privileges, of a Minister.' Bangladesh Constitution, art 58C(11)
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- ⁷ Ibid.
- ⁸ 'A general election of Members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration.' See *Bangladesh Constitution*, art 123(3). This clause was substituted for the former clause (3) by the Constitution (Thirteenth Amendment) Act 1996, (Act 1 of 1996), s 6.
- ⁹ An international election observer team comprising the representatives of the United States and the European Union, headed by former US President Jimmy Carter, monitored the poll and expressed their satisfaction over the holding of the election in 2001. For detailed comments of the international observer team see the 'Bangladesh Observer' (Dhaka) 23 June 2001.
- ¹⁰ This majority was enough to amend the constitution.

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- ¹¹ For details of election manipulations in Bangladesh see A K M Masudul Haque, 'Free and Fair Elections in Bangladesh and the Illusion of a Neutral Caretaker Government' (Paper presented at ALTA 62nd Annual Conference, University of Western Australia, 22-23 September, 2007)
http://www.alta.edu.au/2007_published_conference_papers.html
- ¹² The Election Commission was filled with hardcore government supporters. The Election Commission appointed 345 new sub-district (*upazila*) election officers from amongst the cadres of the governing parties. Administratively, Bangladesh is divided into 6 divisions, 64 districts and 464 upazila (sub-districts).
- ¹³ Officials perceived to be supporters of opposition parties were removed from their jobs or given less important assignments, while the supporters of the party were promoted. Officers who were perceived to be non-political were either denied promotion or were not given any responsibility and made an 'officer-on-special duty'. Over 300 deputy secretaries were made 'officers on special duty on political grounds'. See 'Posts do not exist, still 332 more promoted', Daily Star (Dhaka), 16 October 2006
<http://www.thedailystar.net/2006/10/16/d6101601149.htm>
- ¹⁴ 'A study by the U.S. National Democratic Institute had apparently found 13 million more names on the voter's list than would be eligible according to Bangladesh's population; election officials had, in spite of repeated urging, failed to correct the list. There had also been allegations that many eligible voters from minority religious communities had been left out of the registration process'. Quoted from UK Home Office RDS-IND, Country of Origin Information Service, Country of origin information bulletin: Bangladesh, Bulletin No: Bangladesh 1:2007 cited from US Commission on International Religious Freedom; 'Bangladesh: Decision to Postpone Election Offers a Second Chance', 12 January 2007, <http://www.uscirf.gov>.
- ¹⁵ In Bangladesh, the Supreme Court is the apex court of the country. The Supreme Court is divided into two divisions, High Court Division and the Appellate Division. The Appellate Division is comprised of seven Judges. The Judges of the High Court Division are appointed by the president on recommendation by the Chief Justice. However,

between 2001 and 2006, there were many instances when Judges were appointed by the President on advice from the government without the recommendation of the Chief Justice. If any vacancy arises in the Appellate Division then the most senior judge (in terms of seniority of service as a judge) of the High Court is elevated to the position. Again, this norm has been violated by appointing junior Judges, superseding the seniors. The Chief Justice is generally the senior most judge of the Appellate Division.

- 16 A K M Masudul Haque, 'Free and Fair Elections in Bangladesh and the Illusion of a Neutral Caretaker Government' (Paper presented at Australasian Law Teachers Association (ALTA) 62nd Annual Conference, University of Western Australia, 22-23 September, 2007)
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- 20 The president may proclaim a state of emergency in accordance with article 141A of the Bangladesh Constitution. The article says that when 'a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency.'
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74 Ibid.

75 The Bangladesh Constitution (Fourteenth Amendment) Act, 2005.

76 Bangladesh Observer, January 17, 2009, Popular Sovereignty and the Constitution, (Editorial).

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81 Ibid.

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Chapter Two

HISTORICAL BACKGROUND AND PROMISES

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2. HISTORICAL BACKGROUND AND PROMISES

2.1 Evolution of Caretaker Government in Bangladesh

The idea of Caretaker Government did not have its sudden emergence in the political arena of Bangladesh. The idea gained momentum, significance and acceptability with ups and downs of political movements in Bangladesh. Military rulers in Bangladesh resorted to deliberate and planned machinations of registering electoral verdict through rigging and manipulation of elections time and again to attain a facade of legitimacy and to perpetuate their control over state power. This became a regular feature of Bangladesh politics during the regime of military rulers since the fall of Sheikh Mujib in August 1975. The authoritarian character of Bangladesh political system was later modified, revised and extended to the convenience of military rulers. Ziaur Rahman attempted to give his military regime a semblance of civilian rule, what the political analysts called 'civilianization'¹ through the development of civilian institutions particularly a political party— Bangladesh Nationalist Party (BNP) in late 1978—to articulate people's support for his policies.

As noted earlier, the military rulers used to rig and manipulate elections to attain legitimacy to their regimes. Election as a method of expressing people's mandate lost its virginity to the machinations of military rulers. The results of referendum that was arranged in May 1977 to seek public support for Zia's regime reflected first a military ruler's underlying tendency of manipulating electoral verdict. The inflated percentage of voter turnout (88.5) and affirmative votes (98.88) in the referendum that was shown in the official announcement backfired as the figures were absurd. After two successive electoral exercises (referendum in 1977 and presidential election in 1978) Zia attempted, as further step to resolve the legitimacy crisis and civilianize his military rule, a parliamentary election in February 1979. The reason d'être of parliamentary election 1979 was, inter alia, seeking legislative approval for Zia's military actions so far undertaken for state governance. The 1979 parliamentary election was also intended to give a legal cover and constitutional confirmation to the dictatorship through parliamentary ornament. Zia's self-made political platform—Bangladesh Nationalist

Party (BNP)—was instrumental to gather his strength in the legislative house. Apart from offering substantive concessions to other political parties to bring them into the legislative race, Zia committed to the nation² to ensure free, fair, impartial and peaceful elections. The chief Election Commissioner made similar pledges too.³

Zia's BNP won in the election more than two-thirds of the seats (207 out of the 300 seats) of Bangladesh's unicameral legislature. One wondered how a political party could sweep an election within less than six months of its formation. In fact the election, it is believed, was rigged in favour of BNP candidates: Corrupt and irregular practices had been perpetrated by BNP candidates, their supporters and polling agents and assigned government officials when things turned difficult for the ruling party candidates.⁴ Electoral voice was turned by manipulation in favour of BNP candidates. Opposition leaders alleged that the rigging of the elections was a pre-planned affair and the ruling party had already decided much ahead of the polls as to the number of opposition members it wanted to have in the parliament⁵. The rigging charges came true when government party resorted to all-out efforts to get its candidates returned in the by-elections. Vivid eyewitness accounts revealed highhanded irregularities by BNP leaders including ministers and other government functionaries⁶. The 1979 parliamentary elections thus became an embodiment of ulterior motives of the ruler and the ruling party to manipulate electoral verdict to make secure their hegemony in state administration.

The process through which Zia endeavoured to obtain his personal as well as institutional legitimacy suffered a setback when second martial law was promulgated and General Ershad took over on March 24, 1982. There was a short civilian government of ten months, after the assassination of Ziaur Rahman on May 30, 1981, headed by President Sattar who was forced to "hand over power at gunpoint"

Having been had complete and absolute control over the reigns of administration; Ershad resorted to tune identical music, as his military predecessor Ziaur Rahman did, in his political orchestra to return to civilian rule. He started his orchestration of returning to electoral politics through seeking referendum which proved 'meaningless' as observers claimed. The voter turnout was not more than 15-20 percent⁷ against 72

percent as claimed by the government controlled election commission. The regime's claim of 94 percent voters' support to Ershad's regime in the plebiscite testified how ridiculously Ershad started to manipulate electoral verdict to complete the ritual of political legitimization. Ershad's repeated attempt of electoral practices-Upazilla elections in 1985 (local government district), Parliamentary and Presidential elections in 1986 and another Parliamentary elections in 1988 - proved instrumental in destroying the acceptability of election to obtain people's mandate. In every stage Ershad implemented the blueprint of farcical election. The Upazilla election was featured by considerable reported violence, stabbing, bombings, ballot box snatching and the like-resulting in several deaths and uncountable injuries thus frightening the people from exercising their right of franchise as well as diminishing people's faith in the process of election. The practice of rigging and tampering of votes, and hijacking of ballot boxes which featured in the Upazilla elections recurred in massive and wide scale in the parliamentary polls of May 7, 1986. The turnouts, contrary to official reports, have been estimated by the local press varying between 10 and 30 percent⁸, the lowest in the political history of the country. Ershad's party men coerced the voters to vote for their candidates, captured polling booths or conveniently lost entire ballot boxes in hostile centers. People's verdict was marred by 'intimidation and electoral fraud'⁹. A British team of observers termed the election results again as 'fraudulent'. Parliamentary poll as a "tragedy for democracy", a "cynically frustrated exercise"¹⁰. The opposition, in the country, accused the government of 'vote piracy' through 'media coup'. Thus right of people to vote freely, fairly, fearlessly and judiciously was undermined by the coercion and terrorism perpetuated by the ruling party. The exemplary demonstration of people's apathy in the process of election was visible in Ershad's next attempt of seeking vote in the presidential poll on October 15, 1986. The mainstream oppositions boycotted the election en mass. They criticized the election as a farce and claimed that the voter turn out was less than 3 percent.¹¹

Election in Bangladesh failed to enlist people's participation in the political process but it was used to serve the purpose of military rulers. The overt practice of 'managing' votes in support of the regime as well as to elect facade legislature devoid of electoral support proved futile

when Ershad had to dissolve the parliament on December 6, 1987 and to try for another electoral attempt to elect a new parliament. The major opposition parties and alliances did not participate in the elections on March 3, 1988 to elect a new legislative body, as they were convinced that fair elections were impossible under the regime. The ruling Jatiya Party (JP) won almost all the seats (251 of 300 seats and 68.44 percent of votes) with the claim of the Election Commission that the voter turnout was 52.48 percent while the oppositions were reluctant to believe that more than 1 percent of the voters exercised their rights¹². People neither participated nor accepted the electoral process under the military regime. The electoral process lost confidence of the voters. The opposition parties accused the government of various electoral irregularities and misdeeds, and thus, the military regime relegated electoral practices to shamble to elect a 'tame parliament'¹³ Through out his nine years of military rule Ershad proved his best ability to manipulate the democratic process through rigged elections by stuffing ballot boxes, intimidation of voters, casting of false votes and lastly to 'vote piracy' by 'media coup'.

2.1.1 1990 Mass Movement and the Caretaker Government

Amid awful crises—political, economic and institutional—the country was facing; a spontaneous movement against Ershad regime fomented by students gathered momentum in early November 1990¹⁴. The movement reached its peak on November 19, 1990 when the mainstream opposition alliances and parties issued a joint declaration that Ershad should resign and hand over power to a Caretaker Government for holding a free and fair parliamentary elections within three months. The joint declaration stated: The three alliances resolved not to participate in any election under the present government of President Ershad. They have decided not only to boycott the elections under the present regime but also to resist all elections under President Ershad. The three alliances reiterated that they would participate in the polls for electing a sovereign parliament under the Caretaker Government. The agreed formula of the Caretaker Government stipulated that President Ershad would dissolve his government, the present parliament and he shall have to appoint a neutral and non-partisan person as Vice-President acceptable to the three alliances and parties under article 51(A) clause 3, article 55(A) clause 1 and article 51 clause 3 of the constitution. After his resignation

President Ershad shall have to hand over power to the Vice-President who will be head of the Caretaker Government as the acting President. The interim Caretaker Government shall hold a free and fair election for a sovereign parliament within three months' time of its installation". The declaration also stated "the head of the interim Caretaker Government must be a non-partisan and neutral person who will not be associated with any political party directly or indirectly, and he will not contest the elections of President, Vice- President or parliament. No minister of his Caretaker Government will participate in any election".

Ershad government could not stand against the streams of forceful and continuous mass movement, knelt down, appointed Shahabuddin Ahmed, the Chief Justice of the Supreme Court as the Vice-President (a consensus candidate of all political parties), resigned and handed over power to him as the Acting President. Soon Chief Justice Shahabuddin Ahmed formed a Caretaker Government with a set of advisers to hold the election of Jatiya Sangsad (Parliament) on February 27, 1991. The election was generally hailed as 'the most free and fair' not only by local observers but foreign observers too were unanimous about it¹⁵. As the election under a Caretaker Government was first of its kind in Bangladesh it generated unexpected enthusiasm among the voters. The Caretaker Government was not a party to the election; as such by fairness and neutrality the government could create trust among the voters. The voters exercised their voting rights in the election, unlike the all past elections, in an unfettered way to sense a 'revival of democracy'.

The election was contested and participated fully and freely by all political parties and alliances. Notwithstanding prediction of political observers that Awami league (AL) would sweep the elections, Bangladesh Nationalist Party (BNP) emerged victorious with single majority (140 seats of 300) in the parliament. AL was relegated to the second position with a tally of 88. BNP with the support of Jamat-e-Islami (18 seats)—best known for anti-liberation plank—formed the government to establish 'sovereign parliament'. The political parties in the Jatiya Sangsad (Parliament) in their post-election stratagem rose to the occasion unanimously¹⁶ to honour their pledge made in the joint declaration which though did not "bear any constitutional validity" but had to establish 'sovereign parliament'. They passed the "sufficient political significance"¹⁷ to establish 'sovereign parliament'. They also

passed the 12th amendment to the constitution of Bangladesh to switch over from presidential to parliamentary form of government¹⁸ which was ratified by a nation-wide referendum on September 15, 1991.

As system of government-presidential or parliamentary-both are democratic. Everything depends on the way of making a system workable and how far a system is suited to the genius of the people of the land. Since British period, as has been shown in previous pages, people of Bangladesh were more linked with the experiences of parliamentary democracy. Moreover geographic compactness and homogeneous character of Bangladesh society is much more favourable for a parliamentary system. Since the period (1972-1991) of Bangladesh's independence Bangladeshi society has undergone through manifold qualitative and quantitative changes to arrest discomforts that made parliamentary system unworkable in the immediate post independence (1972-1974) period.

Presidential system in a society like Bangladesh is more fertile to breed institutional authoritarianism—the thesis proved itself more glaringly in Bangladesh since 1974. Under the extant constitution presidency was turned to a repository of all state power. The President became an all-powerful executive without no accountability and responsibility to the people¹⁹. In absence of checks and balances, President and his cabinet was in no way accountable to the parliament. Parliamentary supremacy became subordinated to presidential whims. Bangladesh constitution, under the nomenclature of Presidential system, was designed to ensure 'constitutional autocracy'²⁰ which inspired elected Presidents to become autocrat. A presidential system of constitutional autocracy is not qualified to be called democratic. Concentration of absolute state power in the hands of President in Bangladesh lured the rival politico-military forces to resort to change of government through extra-constitutional ways by killing or by military coups. Moreover, election expenses for both presidency and parliament are sheer extravagancy for a poor Bangladesh. Besides, there is assured proclivity for single party's domination in both presidency and parliament. Bangladesh, to establish an accountable and responsive government as well as to ensure peaceful succession, turned to a parliamentary system in the last quarter of 1991.

This political mayhem has its roots in the compromises sometimes required in Asia's more fragile democracies. After Bangladesh returned to civilian leadership in 1991 following 15 years of mostly military rule, the two main political parties—the secular, nationalist Awami League led by Sheikh Hasina and the more Islamic-leaning and pro-business Bangladesh Nationalist Party (BNP) led by outgoing Prime Minister Khaleda Zia—agreed that the incumbent party would step down a couple of months before every election. A neutral Caretaker Government would briefly run the country and the election commission until a new government was elected. The system is an admission of the coddling Bangladesh's democracy needs to survive. But, despite some hiccups, it has worked ever since, with the two parties alternating in power after elections that, if not always peaceful, at least took place.

2.1.2 Caretaker Government and Constitutional Arrangement

Before the recent fifteenth amendment of the constitution, the Caretaker Government of Bangladesh was a form of government system in which the country would be ruled during an interim period between the removal of an old government and the takeover of a newly elected government. As the outgoing government hands over their power, the Caretaker Government comes into place. The main objective of the Caretaker Government was to create an environment in which an election could be held in a free and fair manner bypassing partisan politicians and to enable smoother democratic transition. The head of the government, who would be called the Chief Adviser, would be selected by the President, and the Chief Adviser would select the other advisers, not exceeding 10. The administration would be generally distributed between the advisers. The Chief Adviser and the other advisers would be committed for their activities to the President.

The system was first introduced in 1990 when three party alliances jointly made a demand to appeal for it. The demand for neutral Caretaker Government largely originated from a lack of general agreement among the competing parties to maintain legitimate means of changing government and uphold unbiased election system.

Unity of the parties fractured soon after the first parliamentary elections held in 1991. The disagreements on major national issues, mutual

intolerance and lack of trust among the competing parties confirmed that the issue of Caretaker Government became the central theme of Bangladesh politics. The parliament was dissolved in 1994 following continuous agitation of the combined opposition and preparations were underway for forming new parliament to enact constitutional amendment for Caretaker Government. Having failed to convince the mainstream opposition, the ruling BNP moved unilaterally to legalize the Caretaker Government after the new parliament was constituted. The Thirteenth Amendment bill had been raised in the National Parliament on 21 March 1996 and on 26 March 1996 it was passed by 268-0 vote. Subsequently a Caretaker Government was formed under the Thirteenth Amendment (Appendix 3).

2.1.3 Key Points of the Thirteenth Amendment of the Constitution

Articles 58(B) (C) (D) (E) have following major provisions regarding Caretaker Government:

- a. After the dissolution of the parliament there will be an 11-member Non-party Caretaker Government headed by the Chief Adviser;
- b. The Caretaker Government will be collectively responsible to the President;
- c. The Chief Adviser will be appointed by the head of the state while other 10 Advisers will be selected as per advice of the Chief Adviser;
- d. The President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired last and who is qualified to be appointed as an Adviser;
- e. The Chief Adviser will hold the status of Prime Minister while an Adviser will enjoy the status of a Minister;
- f. The Non-party Caretaker Government will discharge its functions as an interim government and will carry on routine jobs, except in the case of necessity it will not make any policy decisions;
- g. The Caretaker Government will assist the Election Commission to hold general polls impartially, fairly and peacefully;
- h. This Caretaker Government will be dissolved on the date a new Prime Minister assumes his office.

Following the provision for Caretaker Government through Thirteen Amendment of the Constitution the third Caretaker Government was

formed on 15 July 2001. In 2006, the system was activated for the fourth time. It was again activated on 11 January 2007.

A Caretaker Government was first introduced in 1990 when three party alliances jointly made a demand for it. It was constitutionalized in 1996 by the Parliament dominated by Bangladesh Nationalist Party. A Caretaker Government is headed by a Chief Adviser who enjoys the same power as the regular Prime Minister of the country except Defence matters. The Advisors function as Ministers. Since 1996, the Caretaker Government has held the elections of 1996, 2001 and 2008.

2.1.4 Caretaker Government of 2006-2008

The Ninth National Election of Bangladesh was held on 29 December 2008 under the Caretaker Government formed with Dr. Fakhruddin Ahmed as the Chief Adviser on 13 January 2007. This was the third Caretaker Government formed after the tenure of the government of Prime Minister Khaleda Zia ended in October 2006. In defiance of the Constitutional provision the Caretaker Government of Dr. Fakhruddin Ahmed postponed the pre-scheduled National Election of 22 January, 2007. They also functioned without legislative authority as it continued to function after its scheduled tenure of 90 days as per the provision of article 123(3) of Bangladesh Constitution. All decisions taken after this date had to be ratified by the parliament for the sake of legitimacy.

The Caretaker Government of Dr. Fakhruddin Ahmed was a military controlled and had made extensive use of the military to stymie the chaos prior to 11th of January, 2007. From the very outset however, the government made it clear that they were there not only to arrange a free and fair election, but also to make sure that all aspects that were connected to it be reviewed properly. This meant major reforms in the election system, but also making sure that corrupt candidates were not likely to take part in the election. The task was however an enormous one, since Bangladesh had been regarded as one of the most corrupt nations in the world. Therefore, the Government had exceeded its mandated term, which according to the constitution allowed it to stay only for 90 days.

People welcomed the CTG when they started the anti-corruption drive but it could not bring this to conclusion and made compromises with the political parties. The NCC (National Coordination Council) and the task forces played a significant role to yield quick results within a short time in the massive anti-corruption drive. Many corrupt suspects were arrested but later they were freed. The intention of the CTG looked good but they could not implement many of their ideas. Something went wrong against them like the worldwide food crisis and the natural disaster. The election commission made some good provisions so that loan defaulters and bill defaulters could not contest elections. This had been an encouragement for good people to participate in election.

The main objective of the CTG was to hold the general election with participation of all parties. For this, the CTG had to make concession in accordance with the demands of political parties. When political parties began bargaining over imprisoned and convicted leaders, the government had no option but to be soft to ensure participation of all parties in the polls.

There had been a major change in the election system as the Caretaker Government of 2007 had introduced Voter ID cards (with photograph) for the first time. The Bangladesh Army including members of other military forces were deployed throughout the nation including the remotest areas. They were equipped with laptops, and small digital cameras in an effort that would result in the most orderly voter's list in Bangladesh's history.²¹

While visiting Bangladesh on December 12, 2008, US Senator John McCain thanked the CTG. and the army for strengthening the foundation of democracy and urged all political parties to accept the result of forthcoming elections and work together for the sake of the country. He, however, said that the work had not been yet done and the elected successor should continue the reform process already started and to build democracy and enhance prosperity for the people of Bangladesh.

2.4 Initial Promises of Caretaker Government

2.2.1 Background Scenario

The Caretaker Government came into office in the midst of a political chaos. One has to admit that the situation obtaining in the country at

that time was not at all helpful for the growth of democracy and the economy. So the Caretaker Government took office with the promise of restoring the congenial atmosphere for holding a fair and credible election with the participation of all political parties. This interim government promised to revamp the compromised election commission, fix dodgy electoral rolls and root out corruption. At the same time, they tried to carry out important reforms for streamlining the functioning of the government and building a political system that will ensure stronger and more accountable democratic politics. This backdrop is to be kept in view while evaluating the performance of this interim government.

It was said that the Caretaker Government (CTG) had been existed with a bad report card. It had tried to do so many good things at the beginning and overstretched itself. The CTG had not had political mandate for dealing with far-reaching issues. It was alleged that the Caretaker Government could not do anything in the education sector and handling of the market situation was far from satisfactory. On the other hand the introduction and implementation of the so called 'Minus Two Theory' relating to the Heads of two major parties and the strategy of setting up alternative political party did not work. The initial aim of the anti-corruption drive was catching the corrupt people but later the drive was conducted with a political perspective. Arrested people have been freed just before election. This was because the CTG needed a safe exit mechanism to hand over power to the elected government.

2.2.2 Minus Two Theory

In January, 2007 when the CTG took power and imposed a national emergency, the government initially applied the so called infamous 'Minus Two Theory' to remove the "battling begums" Khaleda Zia and Sheikh Hasina from domestic politics. Through a series of corruption investigations, arrests and exiles, the government could manage to do so for the time being. But as the government's self-imposed deadline of elections started coming closer, this strategy started going awry. The CTG could neither split the parties, nor could it tarnish the popularity that the 'Begums' commanded in Bangladesh. Ultimately the 'Minus Two' strategy had been proved to be the "Manage Two" strategy.²²

As part of the 'Minus Two Theory', the CTG headed by Dr. Fakhruddin Ahmed had pursued BNP Chairperson and immediate past Prime Minister Khaleda Zia and Awami League Chief and immediate past Leader of the Opposition Sheikh Hasina to leave the country. But the all out operation of Fakhruddin's CTG to 'get rid of the two ladies, which they claimed was necessary to clean the country's politics from pollution and to break the cycle of dynastic politics, had been hardly in a mood to listen to logic.²³ So pressure tactics had been started. As part of pressure tactics, two sons of Khaleda Zia and late President Ziaur Rahman, had been arrested against two different criminal cases. This time the BNP Chairperson could not hold on to her earlier determination not to go into exile. She succumbed to the pressure and started negotiations with the concerned authorities as how she would leave the country.

The process also got an initial breakthrough when the AL Chief Sheikh Hasina agreed to undertake a visit to the USA to meet son, daughter and grandchildren. But later on the AL Chief cut short her visit and decided to come back on April 14 instead of planned return of April 27, 2007. The proponents of the 'Minus Two Theory' considered the AL Chief's move with trepidation. They felt that with Hasina inside the country, it would be difficult on their part to send the BNP chairperson to exile. Therefore, they pursued the AL Chief and AL leadership to prevent Sheikh Hasina's return. But the AL Chief got determined to come back despite the filing of the Paltan murder case accusing her as the mastermind of the October 28 killings.

At this stage the State of Emergency showed its clout. A press note was issued from the Ministry of Home Affairs describing Hasina's bid to return to the country as dangerous to the country's peace and security. The press release blamed Hasina for the current development in the political arena. It said due to the irresponsible movement of some political parties under the leadership of the Sheikh Hasina the State of Emergency had to be proclaimed.

Climax in 'Minus Two Theory' staged when the authorities concerned in negotiation with the Saudi Kingdom to arrange the exile for the immediate past Prime Minister had been informed by the Saudi authorities that they would have to be confirmed whether the incumbent wanted to go to the Saudi Kingdom on her own will or not. Finally the

Saudi authorities had refused to accept Khaleda Zia's signature on the visa form as her consent to visit to their country. They firmly believed that the immediate past Prime Minister had been forced to leave the country.

The decision of the Saudi authorities had puzzled the upholders of the 'Minus Two Theory'. They searched for alternative places but so far no tangible result could be achieved as all of them had taken similar position like Saudi Arabia. It had been told that countries belonging to the Gulf Cooperation Council (GCC) did not endorse the army-backed regime to send Begum Zia in exile. It was also learnt a South Asian country had been on a diplomatic mission to foil the interim government's decision to send Begum Zia to exile. Thus the move failed to receive support both home and abroad.

The people inside the country also had been confused about the intention of the army-backed regime. They started thinking as to whether the main purpose of all popular moves was to forcefully exile the two ladies. Initially the people's perception about the army-backed regime had been high, but later on people got frustrated to a large extent. They suspected that the regime had a definite political goal and the regime wanted to free the country's politics from the influence of two ladies only to pave the way to develop a political party of their own to regularize their rule.

On the other hand, the international lobbies which worked in favour of the army-backed regime in the initial stage were found not supportive of the "Minus Two" regime. They were not also in favour of the rule of a non-elected body lingering on. US Assistant Secretary for the South Asian and the Central Asian Affairs Nicholas Burns made it clear that the US government wanted elections in Bangladesh at the end of this year. Accordingly the head of the army-backed regime Dr. Fakhruddin Ahmed had to express his optimism to hold the election at the end of 2008. British Ambassador Anwar Chowdhury avoided media queries about Khaleda Zia's forced exile move by saying it was the internal affairs of Bangladesh, but did not keep mum when the government blocked the return of Sheikh Hasina and wanted a clarification from the government on this issue.

2.2.3 Other promises

The CTG also promised to encourage the political parties to introduce reforms in the conduct of their business but met with little success. It was argued that political parties would bring reforms themselves but an impulse should come from the civil society. Some of the political parties had made cosmetic changes to comply with the requirements of the Election Commission. It had been an irony that Bangladesh never had a properly constituted civil society to create an impact on the masses. The civil society had always been tied to political parties and never represented a neutral force. The middle class had also been not very strong. Therefore, the common people could not put pressure on the politicians to introduce reforms. Many believed that there would not be any qualitative change in the conduct of affairs of the state after election because more or less similar set of people from either party will be at the helm of affairs. But it would be a positive outcome if the changes introduced by CTG would be retained by the next elected government.

The CTG promised and introduced many other reforms. They reorganized the Public Service Commission, the Anti-corruption Commission and the Election Commission, constituted the Bangladesh Better Business Forum and the Regulatory Reforms Commission, separated the Judiciary from the Executive and set up the Judicial Reforms Commission. Preparation of voter list and ID card with the help of the army was a singular achievement of the CTG.²⁴ Their performance during floods and Sidr was commendable. Phenomenal progress was made in Chittagong port. The BDR made a positive impact on price level.

2.3 Constitutional crisis

The Supreme Court on May 10, 2011 declared illegal the 13th amendment to the constitution, which introduced the interim Caretaker Government system, but said the next two general elections can be held under such governments. "Parliament...in the meantime, is at liberty to bring necessary amendments excluding, [sic] the provisions of making former chief justices or other former apex court judges head of the Caretaker Government," the court said in its short order.²⁵

"The court asked not for involving the judiciary in the process," Attorney General Mahbubey Alam told reporters after the verdict. The court has suggested taking any decision on electing the Chief advisor of Caretaker Government "on consensus in parliament", he said.

"The Constitution (Thirteenth amendment) Act 1996 is prospectively declared void and ultra vires to the constitution," reads the verdict agreed upon by majority of the seven-member SC bench headed by Chief Justice ABM Khairul Haque. But the court allowed holding of the 10th and 11th parliament keeping the doctrine of necessity in mind.

The High Court in a verdict in 2004 rejected a writ petition filed by advocate Salim Ullah and several other lawyers, who challenged introduction of the Caretaker system in 1996. The Appellate Division pronounced Tuesday's crucial verdict on an appeal for overturning the HC judgment as the case was pursued by late Salim's colleague Abdul Mannan as its new petitioner after his death.

The 13th amendment act introduced the provision of installing a Non-party Caretaker Government for 90 days to oversee general elections at the end of the tenure of an elected government. The immediate past Chief Justice was the first choice to head this interim government.

The SC heard opinions of eight leading jurists—Justice TH Khan, Dr Kamal Hossain, former attorney general Mahmudul Islam, barrister Rafiq-ul-Haque, Dr M Zahir, barrister M Amirul Islam, barrister Rokon Uddin Mahmood, barrister Ajmalul Hossain QC—as amicus curiae (friends of the court) for 10 days before delivering the verdict. Five of them stood strongly in favour of keeping the constitutional provision of Caretaker Government. Only barrister Ajmalul Hossain QC strongly stood against it on grounds that it creates scopes for undemocratic forces to step in. Barrister Rafiq-ul-Haque and Dr M Zahir proposed a recast of the Caretaker Government and presented separate formulas for its formation with proportional number of members of the outgoing parliament.

The petitioner's lawyer advocate MI Faruki, in his reaction, said, "The judgment bodes well for the constitution and the people. We have been able to preserve the constitution. "Election should ideally be held under the Election Commission, which is the case with our neighbour India," he

added. "The Caretaker Government's provision in reality is another form of military rule. A number of sections of the constitution get suspended under military rule which we witnessed during Ziaur Rahman's tenure and also in Pakistani rule," he said.

Barrister Rafiqul Haque and Dr M Zahir also hailed the SC verdict.

2.3.1 Mixed reaction to SC verdict

Excepting the main opposition BNP, different political organizations have welcomed the Supreme Court judgment that declared the Caretaker Government system unconstitutional. Law Minister Shafique Ahmed said the Caretaker Government system will not be required any more in future if the Election Commission is made independent and stronger. He made the observation while talking to reporters at the secretariat following the Supreme Court verdict. Election Commission (EC) can hold free, fair and neutral election as it had already set an instance by holding elections to Upazila and Municipality in fair and neutral manner, he said giving his personal opinion. The parliament will judiciously take the decision on the opinions of the court verdict as it is also mentioned in the verdict, the Law Minister said.²⁶

Jatiya Party Chairman H M Ershad accepted the verdict saying it echoed his political stance on Caretaker Government. Ershad for the first time in the country's history handed over power to a Non-party Caretaker Government headed by the then Chief Justice Shahabuddin Ahmed, on Dec 6, 1990 following a mass upsurge against his government. He said the judgment may result in political turmoil in the country.²⁷

Suranjit Sengupta, Co-Chair of the Special Parliamentary Committee, said the judgment is "extra ordinary and important" and commented that the verdict will bring the big political parties together. He also said, "The court is also right that the judiciary should be separated from political process. But given our political realities, the Caretaker Government system should be continued for two more terms,"²⁸

Jatiya Samajtantrik Dal President Hasanul Haq Inu termed the same "timely", but he supported that the former chief justices should be made

Caretaker chief for the next two terms considering Bangladesh's political realities. Rashed Khan Menon, Workers' Party President, said the judgment has opened up an opportunity to consider an alternative to the Caretaker System. "The judgment is a timely decision," he said adding that his party would hold a meeting soon to give its formal reaction on it.²⁹

Rafiqul Islam Mia, a Standing Committee member of the BNP, however, said: "The verdict would create unrest in the country's political arena. It has been given only to make the incumbent chief justice the head of the next Caretaker Government."

European Union and Germany representatives said the government and opposition should discuss the best ways for development of Bangladesh as it has all chances to become a middle income economy by 2021. This view was expressed by visiting German Federal Minister for Economic Cooperation and Development Dirk Niebel and EU Commissioner for Development Andris Piebalgs, during a press conference at a local hotel recently.³⁰

None of them gave any direct answer when asked about the current political controversy over the caretaker government system, but said it is better for the politicians to work together for the people. "You can't stay at home and say no," said Niebel in an oblique reference to the main opposition, which is now boycotting parliament session.

Niebel added, "Bangladesh is a very dynamic country and I am deeply impressed by the successes it achieved in the past years." The EU Commissioner said "The EU has been a longstanding supporter for Bangladesh as it has been achieving remarkable economic growth, a good track record for achieving the MDGs, and a reputation as a vibrant democracy."

Visiting German and EU leaders also said, the government and the opposition in Bangladesh should work out a solution over the caretaker government dispute and avoid politics of blockade. "Today's opposition could be tomorrow's government and vice versa. The parties have the obligation to find a solution through constructive dialogue,"

2.3.2 Bangladesh Constitution (Fifteenth Amendment) Act, 2011

In a twist and turn of the country's evasive political history, National Parliament on June 30, 2011 railroaded the 15th Constitution Amendment Bill, 2011 annulling the provision of non-party Caretaker Government that supervised three general elections since 1996. Introduced on June 25 in Parliament the Bill was returned to the House on June 30 after scrutiny by the standing committee. It was hurriedly adopted in division vote 291-1. Lone independent member Fazlul Azim voted against the bill. Main opposition BNP and its allies continued to abstain from the House.³¹

Earlier, as many as 51 amendments moved by Rashed Khan Menon of Workers Party, Fazle Hossain Badsha, Hasanul Huq Inu and Shah Zikrul Ahmed of JSD, Amena Ahmed of NAP and Fazlul Azim, Independent, were rejected by voice vote.

The bill provided certain radical changes in the Constitution in the light of the Supreme Court verdict last month holding the 5th and the 13th amendments illegal and void.

Hence the provision of Caretaker Government inserted in the Constitution through the 13th Amendment (Appendix 3) during the rule of the Khaleda Zia in 1996 has been deleted by this amendment.

The bill inserted articles 7A and 7B in the Constitution after Article 7 in a bid to desist anyone attempting to takeover power through extra-constitutional means.

2.3.3 Key Points of the 15th Constitutional amendment

Salient features of the 15th amendment of the Constitution (Appendix 4) are:

1. Caretaker system abolished
2. Elections to be held under incumbent cabinet
3. Islam as State religion and 'Bismillahir Rahmanir Rahim' retained

4. Revival of Article 12 to restore Secularism and freedom of religion
5. The people of Bangladesh shall be known as Bangalees as a nation and citizens of Bangladesh shall be known as Bangladeshis.
6. Inserted articles 7A and 7B in the Constitution after Article 7 in a bid to end takeover of power through extra-constitutional means.
7. Basic provisions of the constitution are not amendable.
8. In the case of a dissolution Parliament by any reason election should be held within 90 days of such dissolution.
9. Increasing the number of women reserve seats to 50 from existing 45.
10. The Supreme Command of the defense services shall vest in the President and the exercise thereof shall be regulated by law.
11. The Chief Justice shall be appointed by the President, and the other judges shall be appointed by the President in consultation with the Chief Justice.
12. The portrait of the Father of the nation Bangabandhu Sheikh Mujibur Rahman shall be preserved and display at the offices of the President, the Prime Minister, the Speaker, and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad.
13. Incorporation of historic speech of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman on March 7, 1971, declaration of independence by Bangabandhu after midnight of March 25, 1971 and the proclamation of Independence declared at Mujibnagar on April 10, 1971.

2.4 Government Promises in the Changing Scenario

2.4.1 Role of the Government

Bangladesh's development as a democracy has been interlaced with military rule and undermined by political polarization, ineffective institutions of governance, and rampant corruption. Partisan deadlock over electoral issues led to the cancellation of the January 2007 Parliamentary Election and the establishment of a military-backed Caretaker Government, which managed the country under a state of emergency until December 2008. The successful Parliamentary Election in December 2008 and the emergence of Bangladesh's 9th Parliament have brought about new opportunities for democratic development and a new sense of urgency among Bangladeshi stakeholders to reform political practices and institutions. This should be a golden time for Bangladesh, with its GDP surging by almost 7% last year, fueled by strong foreign investment, buoyant exports and a resurgent agricultural sector.

In part due to a series of reforms initiated by the last Caretaker administration and adopted by the newly-elected government, Bangladesh has now entered a seminal period in its democratic history and faces both the promise and challenge of consolidating democratic reforms. New laws, for example, to prevent terrorism and money laundering, protect rights to information, and reform political and electoral processes will require commitment and capacity to be reinforced. Similarly, key institutions, especially the Parliament and the new commissions on human rights and corruption, need to develop as credible bodies of democratic governance. The capacity and effectiveness of local government in Bangladesh will also determine the country's progress as a democratic and prosperous nation.

Unlike many Third World countries, Bangladesh has remained relatively stable and peaceful and escaped from major internal upheavals. While the democratic transition in 1991 was slow and painful, democratic change of governments has become the norm. Leaders are changed through ballots and not bullets and power oscillates between the two principal parties.

Despite these developments, Bangladesh is in the midst of a host of

internal crises which could potentially undermine long-term national stability. The polity, is dominated by changing national identities, growing communal militancy in the society, personalized politics, weak institution building, absence of political accountability, lack of responsible opposition and worsening law and order situation leading to the induction of the military in civic duties. Individually these factors are neither unique to Bangladesh nor a serious challenge to its stability. As this research would argue, Bangladesh belied the promise of democracy it held out at the time of its foundation.

Pre-occupied with personal animosities and rivalries, the government of the day is unable to address the basic issues such as protection of lives and properties of ordinary citizens. The introduction of Special Courts, tough legislations and military assistance can partly remedy the situation. The consolidation of democracy along with checks and balances, greater accommodation and tolerance of political differences, are essential if Bangladesh were to avoid the return of military rule.

The Government, after the passage of Fifteenth Constitutional Amendment, urged the opposition to come up with their formula about interim government not ultra vires to the constitution.

The Prime Minister said the 15th amendment has well ensured people's power, voting rights and democracy. In her brief statement, she repeatedly requested her political adversaries not to create trouble and inflict sufferings to the people. With the 15th constitutional amendment, people's power has been secured. "We have been able to uphold the spirit of 1971 liberation war with the passing of the bill," she said.³²

The Prime Minister also rejected Independent MP Fazlul Azim's allegation that the amendment has been placed and passed hurriedly. She said the special committee on constitutional amendment was formed on July 21, 2010. The committee has worked for 11 months and held 27 meetings to make recommendations for amending the constitution in the light of Supreme Court verdict. The Prime Minister said that BNP had been requested several times to send their representation to the special committee for their suggestion. But they did not respond to it. She said a vested quarter got involved in propagating against the government by using religious sentiment of the people. But the present government

does not have the intention to hurt religious sentiment of people of any religion. The Prime Minister thanked the people for voting Awami League-led Grand Alliance to power and thus gave the government a chance to amend the constitution to preserve their voting right.

2.4.2 Role of the opposition

Opposition leader Khaleda Zia on June 30 2011 said the 15th amendment to the Constitution has shut doors for free and fair elections and peaceful transfer of power. "This makes the confrontation inevitable. It amounts to waging a war against the people by dint of sheer power," she said responding to the passage of the Constitution's 15th amendment by the National Parliament.³³ Addressing a crowded press conference at her Gulshan office in the afternoon the BNP Chairperson said the constitutional arrangement to hold the future elections keeping the parliament and the cabinet in operation were made with ill-intention.

Khaleda said the future election will be nothing but a farce under a party government. The consequence of this amendment will not be good the way it has been changed defying the people's protest. "Like the introduction of the autocratic BAKSAL rule in 1974 this time round you (PM) by dint of sheer power announced the war against people. You have made all arrangements to snatch voting rights of the people. You have to bear total responsibility of it," Khaleda said pointing her gun to the Prime Minister. She called upon each democratic political party, organization, social force and individual to participate in the future movement to protect the people's interest. Khaleda also made a clarion call to people to face conspiracy and repression through the tough street movement and once again snatch away the final victory. "There is nothing to fear. The autocratic ruler will be bound to concede defeat to the united force of the people. Our victory is certain and imminent," she said.³⁴

Khaleda said June 30 will remain as a day of disgrace (Kolonkomoy) in the nation's history. She said Awami League had killed democracy in parliament by introducing one party BAKSAL rule and this party today again unfurled another black chapter. Their undemocratic, fascist, and BAKSAL character again has been exposed to the people, she said,

adding that the ruling party's hasty completion of 'gojamil and joratali' process seems their time is very short.

Responding to the Prime Minister's recent remarks that the Constitution will be again amended if opposition comes up with just suggestions, Khaleda said if the ruling party had any intention to listen to the opposition why it was so hurry to amend the Constitution. "You (PM) have brute majority in parliament. By dint of that power you can cancel the 15th amendment. Withdraw the condition that Caretaker Government will not exist and election will be held under party government," Khaleda told Hasina. She said no discussion can take place under any condition. As per verdict of the court there were scopes to hold next two general elections under the Caretaker Government, she added.

2.4.3 Government Promises

Earlier on 11 January 2007, the Government promised in the changing scenario emanates directly from two concepts in its title—'caretaker' and 'emergency'. As a Caretaker Government its promise was to hold a free and fair election, and as an emergency government its role was to deal with conditions that had generated the emergency. The government leaders—both civil and military—agreed that the pre-emergency unstable and crisis conditions were created by politicians in their violent disagreements while neglecting democratic norms and practices as well as their pursuit of corrupt practices with single-minded devotion. They noted that such actions and behaviour have derailed the country's forward movement towards democracy and development. The promises of this government were to bring the country on the rails by punishing corrupt individuals and preventing future corruption and introducing reforms to put democracy on solid footings so that honest and competent politicians can compete in elections. In his first address to the nation, the Chief Advisor declared, 'the main task is to hold a free and fair, peaceful and neutral election with participation of all political parties in accordance with the Constitution and people's aspirations...(Government needs) to create a congenial atmosphere for holding transparent, peaceful and truly democratic elections... . The nation does not want to backslide once again and fall back into political instability and intolerable situation.... We want banishment of muscle power and illegal money from the elections.'³⁵

Speaking to the nation about eight months later, the Chief Advisor announced, 'our endeavour will continue to set up a solid foundation for democracy and good governance and create condition free from corruption and muscle power so our future journey along the path of building a progressive and democratic society is not impeded.' He declared, 'our final goal is to make democracy sustainable forever as democracy is the best way for people's emancipation and progress.'³⁶ Echoing a similar sentiment, the Army Chief maintained that the country has been destroyed in the last 35 years. It was like a derailed train and 'we need a heavy crane to put the train back on the track-and the strength of the people is the crane. Once you put the train on the track, it will move smoothly.' He cautioned that such an opportunity will not come time and again and urged all 'to co-operate with this government so we can steer the nation forward.'³⁷

That time the government admitted that as a CTG, its only promise was to hold free and fair election within a 90-day period. As noted above, it also claimed that the fulfillment of the mandate would require comprehensive electoral preparations including voter registrations with photo ID card and other necessary reforms to deal with massive corruption, widespread politicization and severe breakdown of law and order that precipitated the proclamation of emergency in early January. The government acknowledged that these preparations and reforms could not be completed within 90 days and announced that it would hold elections to the Parliament before the end of 2008.

From the above announcements, the government promises in the changing scenario could be defined in three broad but interrelated areas, namely:

- (i) Holding free and fair election;
- (ii) Building democracy on more solid foundations; and
- (iii) Providing a model of good governance.

The activities under free and fair election would include strengthening the Election Commission, preparing fresh voters list with photo ID, legislating a framework for registration, internal organization, finance and transparency of operations of political parties and establishing an electoral framework and rules and regulations governing the participation

of candidates and political parties in the election and subsequent resolution of election disputes.

Activities under democracy building would include separation of judiciary from the executive, strengthening Anti-Corruption Commission (ACC), organizing and pursuing cases of high level corruption among politicians, bureaucrats and businessmen, and practicing rule of law.

Activities under model governance would include all reforms and improvement in the delivery of public service, regulating government activities and pursuing development work with efficiency and equity. Some specific measures and activities followed by the government include reforming and improving police service, efficient delivery of services by reducing time and cost in areas like passport issuance, car registration, retirement processing and modest improvement of electricity supply by simply reducing all sources of wastage, improvement in securing information, record and receipt of land transactions in a timely and ordered fashion without interference from powerful individuals organized criminal gangs and corrupt officials.

But the measures of that Government raised so many questions as-

- (1) Was the long two years necessary to hold an election 'participated by all' ?
- (2) Who will ensure the continuity of the reforms government had done in different sector ?
- (3) What will happen to much discussed issue of corruption and leaders of corruption?

If the objectives of the government trimmed down to holding a mere election, then it will not justify its continuation for two years. In that case, the people might reject them and they would also have to suffer the wrath of the people and parties.

The last Caretaker Government took over in January 2007 with the promises of creating an atmosphere in the country for a free, fair and credible election, which ultimately took place on 29 December 2008. Finally we got a new elected government. We realized that our country needed an "emergency situation" at that time under the circumstances of extreme corruption and misuse of power by the previous political parties.

But we also believe the consequences of a long lasting 'Emergency Rule' can neither be a solvent nor a strategic solution for the future of our country.

2.4.4 Analysts' Proposal

Political parties must reach a consensus on whether Caretaker Government system will continue or not, otherwise the country will plunge into serious political unrest, analysts said. If the government unilaterally takes any decision on sensitive issues like Caretaker Government system or constitutional amendment, it will only create political unrest in the country, they warned.

The amended constitution still leaves some room for extra-constitutional interventions, said constitution experts and political thinkers, referring to the political confrontation over annulment of the Caretaker Government system. The scope for declaration of "state of emergency" and "doctrine of necessity"—two key prerogatives of the president that still remain unchanged—may pave the way for formation of an interim administration with unelected people, they pointed out.

"But there is still scope for extra-constitutional intervention through declaration of the state of emergency by the president. The main actors will play their role from behind the scenes," said Supreme Court lawyer Manzill Murshid, referring to the constitutional provision of making martial law illegal.³⁸

The grounds for declaring state of emergency by the president—as per article 48—should be more specific to stop its misuse, he said. The president is the supreme commander of the army, navy and air force and is also in a position to declare the state of emergency being forced by others, said barrister Abdullah Al Mamoon. He cited the example of former president Iajuddin Ahmed's declaration on 11 January 2007 following political turmoil.³⁹

"If the two major political parties—ruling Awami League and opposition BNP— fail to reach a consensus on the issue, the next elections will be uncertain," educationist Professor Serajul Islam Chowdhury told on 10 May 2011.⁴⁰ He observed that it is a common phenomenon of the country

the political party in power wants to arrange elections by itself. "On the other hand, the opposition believes that elections can not be held in a free and fair manner under the incumbent government and the Election Commission will not function independently," he added.⁴¹ He also observed that the next two national elections can be held under the existing Caretaker System.

Political analysts Talukader Moniruzzaman, Syed Abul Maksud and many more echoing the same views on the same day said that there was no alternative but to reach a political consensus on the crucial issue. They stressed the need for a political consensus among the two political parties on Caretaker System to avoid any untoward situation in the country.⁴²

They also urged the main opposition BNP to place their demand to the parliament or sit with the ruling party to avoid confrontational politics. Columnist and political analyst Syed Abul Maksud said that it is a political matter and it should be solved politically. He hoped the two main political parties will take necessary measures to hold next national polls neutrally and peacefully. There is no alternative to dialogue on political issues, he said and urged the opposition to place their opinion and play responsible role to avoid confrontational politics. Professor Talukder Moniruzzaman of Dhaka University said that it is a political issue and should be settled through talks among the political parties.

However, former advisor to Caretaker Government M Hafizuddin Khan said it would not be possible to hold free, fair and credible elections under a political government. "As the ruling party influenced the local body government elections, it will do the same in next general elections. So, it would not be possible to hold a peaceful and acceptable election under a political government," he pointed out.

Earlier On May 10, the Supreme Court declared illegal Caretaker Government system and also said that the system might be continued for two terms for the safety of the state and its people. In a view-exchange meeting on Monday with the Special Parliamentary Committee on constitution amendment Prime Minister Sheikh Hasina asked the Special Committee to drop the constitutional provision of Non-party Caretaker Government system for holding general elections. She, however, said that the provision for Caretaker Government could be kept for specific period, should there be a political consensus.

Sheikh Hasina in a press briefing on 10 May 2011 reiterated her position saying that there was no chance to keep the Caretaker Government as the apex court declared the system illegal. On the other hand, BNP said that they would not participate in the next polls if the polls are not held under the Caretaker Government system.

The BNP is demanding restoration of the caretaker government system for holding the next parliamentary polls.

“If the ruling and opposition parties agree on a formula to administer an interim government for holding the next parliament elections, it is still possible. It can help resolve the current political crisis,” said Dr M Zahir, a senior SC lawyer and constitution expert. Dwelling on the issue of usurpation of power, he expressed his conviction that the recent amendments banning martial law and providing for capital punishment for such takeover does not in any way guarantee an end to the extra-constitutional takeover. “When the army comes to power by promulgating martial law, it does not abide by the constitution. So, it matters little if such takeover is banned or not,” Dr Zahir said.

Prof. Dilara Chowdhury of government and politics department at Jahangirnagar University expressed fear that a third force may take advantage of the situation if the two main political parties fail to resolve the dispute over the caretaker government issue. “A military takeover was punishable with death sentence as per the constitution of Pakistan. But ignoring the risk of punishment, General Ziaul Haque abrogated that constitution in 1977. He even hanged Zulfikar Ali Bhutto,” she said.

Dhaka University’s political science Professor Ferdous Hossain also said as the country falls short of strong democracy and a political consensus, the present political crisis over the caretaker government issue may make inroads for a third force.

2.4.5 Things to be highlighted for Government Promises

After introduction of the Non-party Caretaker Government system, so far three general elections of Members of Parliament have been held under this system. In the first two elections the last retired chief justices were made chief advisors of the Caretaker Governments. In these two

elections the Caretaker Governments were constituted having due regard to the provisions of the constitution. Although the main object of formulation of a Caretaker Government was to hold general election of Members of Parliament impartially but when in the seventh general election of Members of Parliament the Awami League got majority to form government then the defeated party BNP instead of felicitating the winning party leader condemned the role of Chief Advisor of the Non-party Caretaker Government. The same thing happened when in the eighth general election of Members of Parliament the BNP won the election defeating the Awami League then the leader of the defeating party instead of welcoming the winning party leader severely criticized the role of Non-party Caretaker Government. This has given rise to question if the defeating party does not want to accept the result of election held under Non-party Caretaker Government then what is the necessity to keep this system alive in the constitution?

The people of the country had bitter experience about Caretaker Government when after dissolution of the eighth parliament by reason of expiration of the term suddenly for certain ulterior motive the then President assumed the functions of the Chief Advisor without exhausting the procedures for appointing Chief Advisor. This resulted in taking over of power by a military-backed government with the name and style of a Caretaker Government. This Caretaker Government ruled the country for about two years and arranged ninth general election of Members of Parliament participated by almost all the major political parties of the country. Likewise incidents of the eighth general election of Members of Parliament in this election also the defeating party in a very strong word blamed the Caretaker Government for unduly favouring the winning party to secure victory in the election. This military-backed Caretaker Government lacked constitutional sanction and the people of the country are eagerly waiting to see how the present government is going to validate the rule of army-backed Caretaker Government in the backdrop of a judicial pronouncement from the Appellate Division of the Supreme Court in connection with review of the fifth amendment judgment that transitional period would not include any period falling beyond March 26, 1971 to December 16, 1972.

Meanwhile, a decision came from the Appellate Division of the Supreme Court declaring Caretaker Government unconstitutional leaving option to parliament which may make provision for arrangement of next two general elections of Members of Parliament under the Caretaker Government system. Many legal experts of the country consider this decision of the Supreme Court contradictory as when it declared the system unconstitutional then how it could ask for arranging two elections under this system?

As to the authority of the Supreme Court to declare a law unconstitutional or void although the constitution in Article 7(2) says if any other law is inconsistent with this constitution that other law shall to the extent of inconsistency be void while in Article 26 says all existing law inconsistent with the provisions of this part shall, to the extent to such inconsistency, become void on the commencement of this constitution but nowhere in the constitution or any other law it is specifically said who would exercise this power.

Now constitutionality of different laws are challenged under Article 102(2) (a)(II) of the constitution which authorizes High Court Division, in absence of equally efficacious remedy, to make an order declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the republic or of a local authority has been done or taken without lawful authority and is of no legal effect. Evidently when any act is passed by parliament it is act of several persons but Article 102(2)(a) (II) says about the act of a person. So naturally one could raise question where is the authority of the High Court Division or the Appellate Division of the Supreme Court to declare a law unconstitutional when it is the act of several persons. However, one may say that it is protected under section 13(2) of the General Clauses Act, 1897 which says words in the singular shall include the plural, and vice versa.

It is the absolute authority of parliament to legislate laws for the republic. In this respect the provision of Article 65(1) is pertinent which says, 'There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution shall be vested the legislative powers of the Republic.' Thus, declaration of any law unconstitutional by the Supreme Court does not

have any bearing on the authority of Parliament in respect of legislation of laws as while enacting law as representative of the people the Members of Parliament exercise their power on behalf of the people as the solemn expression of the will of the people.

Obviously, the Caretaker Government system does not match with democratic norms and practices. But we should not forget that in our country for implementing the Caretaker Government system people had to make a lot of sacrifices. Thus, the issue is more political than constitutional and as such its political solution is desirable for peace and prosperity of the country.

However, both on the issue of the Caretaker Government system and the Election Commission there is need for reaching a consensus and without such consensus if next election is held that will not be sustainable which in turn will make the country as well as government instable and obviously at this stage of our democracy such instability is undesirable.

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Chapter Three

CARETAKER GOVERNMENT AND DEMOCRATIC VALUES

Chapter Three

3. CARETAKER GOVERNMENT AND DEMOCRATIC VALUES

3.1 Conceptual Mapping

In 1990 when people were convinced that the traditional practice of entrusting the incumbent government to hold elections would not work and might not be the best way to ensure free and fair elections, the pro-democracy peoples' power movement produced the most innovative concept of Non-party Non-political Caretaker Government (NCG) to hold elections under free and politically unbiased conditions. The last three elections are a good testimony that as a concept it works, though in recent times there have been debates on how to make the concept operationally even more failsafe.

Fair Elections not a Sufficient Condition to Produce Fair and Competent Law Makers While the CTG initiative has made commendable contributions to improve conditions of elections, its current mandate do not allow it (and rightly so) to influence in any way either the candidate nomination process—a process that has ramifications for what happens afterwards or the quality of the candidates that get party nominations. In other words, a Caretaker Government can at best guarantee fair competition among the candidates that get nominations from their respective parties. Yet, history of the last three elections suggests that it is the quality of the nominated candidates some of whom eventually get elected and participate in the governance of the country affect the quality of operational aspects of democracy in a most significant manner.

3.1.1 Caretaker Government in Bangladesh

In politics, a Caretaker Government rules temporarily. A Caretaker Government is often set up following a war until stable democratic rule can be restored, or installed, in which case it is often referred to as a provisional government. In some countries (including Australia and New Zealand) the term is used to describe the government that operates in the interim period 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.

Caretaker Governments may also be put in place when a government in a parliamentary system is defeated in a motion of no confidence or in the case when the house to which the government is responsible is dissolved, to rule the country for an interim period until an election is held and a new government is formed. This type of Caretaker Government had been adopted in Bangladesh where an Advisory Council led by the former Chief Justice rules the country for three months before an elected government takes over. In systems where coalition governments are frequent a Caretaker Government may be installed temporarily while negotiations to form a new coalition take place. This usually occurs either immediately after an election in which there is no clear victor or if one coalition government collapses and a new one must be negotiated.¹

In fact, one of the most interesting constitutional innovations of recent times was the Bangladeshi Non-party Caretaker Government. This had been covered in chapter IIA of the Bangladesh Constitution as per the 13th Amendment Act (Appendix 3). The Caretaker Government in Bangladesh was a form of government system in which the country was supposed to be ruled by a selected government for an interim period during transition from one government to another, after the completion tenure of the former. As the outgoing government hands over their power, the Caretaker Government comes into place. The main objective of the Caretaker Government was to create an environment in which an election can be held in a free and fair manner without any political influence of the outgoing government. The head of the Caretaker Government had to be called the Chief Advisor who would be selected by the President, and the Chief Advisor would select the other advisors. The administration would be generally distributed between the advisors. The Chief Advisor and the other advisors were supposed to be committed for their activities to the President.²

Bangladesh is a parliamentary system with a largely ceremonial President who is appointed by the Parliament. The Executive is embedded in the Legislative, similar to the Australian Westminster style systems.

In Australia the Caretaker Convention is that the Government does not do anything odd, unusual, or out of the ordinary during an election period in relation to governance. In most of these convention instances they remain valid only as long as someone doesn't break them. For instance the convention prior to 1975 in Australian Federal parliament was that the States would appoint a Senator of the same party as an outgoing one. This did not happen twice in the run up to the Dismissal and so on after a constitutional amendment came down forcing this behaviour.

Presumably, a Bangladeshi government did not honour the caretaker convention, and the Bangladeshis, unwilling to trust any party machine with the caretaker convention, took over the running of government themselves during this period.

The Non-party Caretaker Government in Bangladesh is headed by a Chief Advisor who adopts the role of Prime Minister and advises the President as head of the Executive. The Chief Advisor and up to ten other non-party advisors comprise a citizens executive cabinet and are appointed by the President.

The Chief Advisor would be the last retired Chief Justice. The other advisors should not be Members of Parliament, should not be running for election, should not be members of a party and must be under seventy-two years of age. This mixes community specialists with a judicial specialist. The constitution grants the Chief Advisor and Advisors the remuneration and status of the Prime Minister and Ministers respectively during this period.

Like the Caretaker Conventions in Australia which implies no policy decisions will be made by an interim government, the Bangladesh constitution entrenches this requirement and the Non-party Caretaker Government is excluded from making policy.

3.1.2 Climax in the System

The Supreme Court on 10 May 2011 declared void the Caretaker Government system and held it ultra vires the Constitution, after the nation had three governments elected under the system since 1996. A decade earlier the 13th amendment to the Constitution (Appendix 3) gave birth to the Caretaker Government for holding general elections as the political parties had no confidence in the incumbent government for holding free and fair election.

Chief Justice ABM Khairul Haque, presiding over the seven-member bench of the Appellate Division, pronounced the operative part of the judgment. The appeal against the High Court ruling that declared valid the Constitution (Thirteenth amendment) Act 1996 was allowed by majority, not unanimous.

Declaring void the 13th amendment, the court kept option open for holding next two general elections under the Caretaker system on the age-old three recognized principles—

- (i) Necessity makes that lawful which otherwise is unlawful,
- (ii) Let the welfare of the people be the supreme law, and
- (iii) The safety of the State is the supreme law-to evade disorder.

The court apparently took a subtle course to keep the judiciary above controversy. It suggested for excluding the former Chief Justice and Judges of the Appellate Division from the Caretaker Government. "In the meantime, parliament is at liberty to bring necessary amendments in this regard," said the order. In 2004, the High Court upon a Public Interest Litigation (PIL) writ petition declared valid the 13th amendment that provides for general elections under a Non-Party Caretaker Government.

Three-member HC bench had maintained that the amendment is not inconsistent with the basic structure of the Constitution. Rather, it helped institutionalize and strengthen democracy, which is the basic feature of the Constitution. Free and fair elections are the heartbeat of democracy, which the Caretaker Government ensures.

The PIL writ petition was filed eleven years ago in 2000, challenging the

validity of 13th amendment of the Constitution. It said that a democratic structure of the government is a basic principle of the Constitution and people's elected representatives have to run the administration of every tier of the republic, according to the preamble and articles 8 and 69 of the Constitution.

With the appellate division of the Supreme Court (SC) declaring the system of Caretaker Government illegal, a long-drawn legal battle has come to an end. However the SC verdict does not necessarily end the controversy surrounding the issue. Quite a good number of legal experts and political leaders have been critical of the verdict that pronounces "... the Constitution (Thirteenth Amendment) Act 1996 (Act 1 of 1996) prospectively void and ultra vires of the Constitution". They point to the inherent contradiction in the ruling and question how can two more elections, as suggested in the verdict, be held under the Caretaker System of Government? However, the SC has made it clear that the approval to the 13th Amendment was granted according to the law of necessity and rule of safety for the people and the state. The word 'prospectively' in the ruling suggests that within ten years time needed for having two Caretaker Governments in the future, the necessity and safety issues will become a thing of the past. But how can we be so sure about this, given the deep division in our national politics?

Admittedly, the Caretaker System of government does not quite go with a highly developed system of democratic dispensation, because of its inherent flaw of governing the country by people who are not elected representatives. In an ideal situation elections ought to be held under the ruling party with a strong and independent Election Commission overseeing the event. In such cases, the elected government runs the country for three months or so and during this period it will not be entitled to take any major policy decisions and carry on routine functions. So at some point or other the country will be required to make the difficult choice—one that will pave the way for transition of power through peacefully and fairly held elections with the party in power playing a much needed neutral role.

Whether our politics has attained the required maturity yet to hand over the responsibility to a very strong and unbiased Election Commission is open to question. If the present confrontational politics is any indication of the next few decades, when that maturity will be attained is doubted and uncertain. Hence the honourable Judges seem to have been guided by an assumption in giving a verdict which is at best tentative. Also the responsibility delegated to parliament for exempting the judiciary from the onerous duty of heading the Caretaker Government needs to be examined closely. The parliamentary discretion on this issue, hopefully, will not give rise to fresh controversy.

Articles 7 (1) and 11 of our Constitution sets forth the ideal situation which will guarantee effective participation of the people in a free and fair democratic political process. There is almost an inspirational element in the idealistic nature of their wording.

This is widely urged for the interest of national unity and compromise, the President or the Speaker should initiate a process where discussion can take place with regard to all possible alternatives as stated in the Constitution. This should be the first step to overcome any possible deadlock.

Lastly, measures must be adopted to strengthen the Election Commission As has been done in South Africa and India. The primary task of conducting election rests with them. The situation becomes that much more sensitive given the fact that a new Chief Election Commissioner will be appointed (on the retirement of the incumbent) within a few months. It is essential the person chosen is not identified with any special interest group. The independence of the Commission also needs to be strengthened by placing the services of all Officials in the Election Commission Secretariat directly under the Chief Election Commissioner. They must understand that they will report to him and that he is their administrative head, responsible for their future promotion or disciplinary action. Similarly, the Election Commission must enjoy budgetary independence.

3.2 Theories of Government

A government is the body that has the power to make and enforce laws within an organization or group. In its broadest sense, "govern" means the power to administrate, whether over an area of land, a set group of people, or a collection of assets. The word *government* is derived the Greek κυβερνήτης (*kubernites*), which means "steersman", "governor", "pilot" or "rudder".

There are a wide range of theories about the reasons for establishing governments. The four major ones are briefly described below. Note that they do not always fully oppose each other - it is possible for a person to subscribe to a combination of ideas from two or more of these theories.

3.2.1 Greed and oppression

Many political philosophies that are opposed to the existence of a government (such as 'Anarchism', and to a lesser extent 'Marxism'), as well as others, emphasize the historical roots of governments - the fact that governments, along with private property, originated from the authority of warlords and petty despots who took, by force, certain patches of land as their own (and began exercising authority over the people living on that land). Thus, it is argued that governments exist to enforce the will of the strong and oppress the weak.

3.2.2 Order and tradition

The various forms of conservatism, by contrast, generally see the government as a positive force that brings order out of chaos, establishes laws to end the "war of all against all", encourages moral virtue while punishing vice, and respects tradition. Sometimes, in this view, the government is seen as something ordained by a higher power, as in the divine right of kings, which human beings have a duty to obey.

3.2.3 Natural rights

Natural rights are the basis for the theory of government shared by most branches of liberalism (including libertarianism). In this view, human beings are born with certain *natural rights*, and *governments are established strictly for the purpose of protecting those rights*. What the *natural rights* actually are is a matter of dispute among liberals; indeed, each branch of liberalism has its own set of rights that it considers to be *natural*, and these rights are sometimes mutually exclusive with the rights supported by other liberals.

3.2.4 Social contract

Last but certainly not least, one of the most influential theories of government in the past two hundred years has been the social contract, on which modern democracy and most forms of socialism are founded. The social contract theory holds that governments are created by the people in order to provide for collective needs (such as safety from crime) that cannot be properly satisfied using purely individual means. Governments thus exist for the purpose of serving the needs and wishes of the people, and their relationship with the people is clearly stipulated in a "social contract" (a constitution and a set of laws) which both the government and the people must abide by. If a majority is unhappy, it may change the social contract. If a minority is unhappy, it may persuade the majority to change the contract, or it may opt out of it by emigration or secession.

3.3 Purposes of Caretaker Government

The Caretaker Government, by definition, must be short-lived, as its sole purpose would be to attend to the country's day-to-day administration until a democratically elected government could be put in place, he said. The Caretaker Government needed to be mindful of the fact that it had not been democratically elected, and should, therefore, refrain from entering into long-term commitments. It should also seek the advice of representatives of all parts of Iraqi society. To that end, a consultative assembly or council should be established.

3.4 Values of Caretaker Government

The concept of a Caretaker Government during the interim period, when the term of an elected government ends and elections are held for installing a new government, is not new. Those who follow the Westminster style of parliamentary system are familiar with it. When a new general election is scheduled and a date is fixed, the outgoing government remains in office but in effect it becomes a Caretaker Government. According to long established practice and tradition, the outgoing government is not expected to make any new law or take major policy decisions. They are expected to simply carry on the day-to-day routine work of the government. Not only have the British, all the countries with parliamentary system followed this practice. Bangladesh is unique in the sense that the outgoing elected government, under the law passed in 1996, actually steps down and an interim government is installed as a Caretaker Government.³

Article 58 D (1) of this Thirteenth Amendment (Appendix 3) clearly says that the Caretaker Government will perform only the routine duties of the government and that it will not take any policy decision. The Constitution does not give the Caretaker Government the right to review and annul the orders and decisions of the outgoing government. After all, the outgoing government was an elected government that enjoyed the confidence of the nation. The Caretaker Council of Advisors had no legal or moral right to sit on judgment over an elected government. Their sole duty is to deal with routine work and oversee the elections.

Secondly, the present law leaves the selection of the Advisors entirely to the Chief Advisor. The principle of neutrality should be a governing factor in the selection. Besides, both the ruling party and the main opposition party should have the scope to suggest such neutral persons. During the interim government after the fall of Ershad, Justice Shahabuddin used these lists provided by the different political parties. If the Advisors are chosen from amongst persons listed by the major parties, the Council will enjoy their confidence and there would not be complaints of partiality.

Thirdly, members of the Advisory Council including the Chief Advisor have to give written undertaking to the effect that they would neither seek election in the forthcoming election nor accept any office of profit under the government that will be elected. While one may consider this redundant as this is a basic requirement of the caretaker concept, the law as it is drafted does not clearly state the point. Quite clearly, the Advisors must not expect to be appointed to any high office in the next five years during the term of the Parliament.

Fourthly, article 58E of the present law confers extraordinary powers to the President. In a parliamentary system this is contrary to the underlying principle. Our jurists and political parties must consider the issue in order to prevent division of the executive powers of the government. The President must remain above all controversies.

Fifthly, if the Government manipulates the administration to influence the election to its advantage, the Caretaker Government has to take such steps as are necessary to neutralize these measures.

As pointed out earlier, the primary task of conducting election rests with the election commission. It would be the duty of the Caretaker Government to ensure that the election commission is able to function without fear or favour and without interference from any quarter.

3.5 Values of Democracy

What is involved in the value of democracy? Why is this an important social value? And why should we think that democracy is a good thing for the people? We are to consider first the fundamentals. Why is there a role for democracy in any circumstances? Democracy is a type of political institution—a form of group decision-making. Political institutions are needed in circumstances in which decisions are needed that affect all members of a group. Each member of a group has his or her own set of preferences about choices that affect the group; so there needs to be a process for arriving at a set of social preferences—a social choice function. Democracy requires designing a set of arrangements through which each person's preferences will have equal weight in determining the ultimate

decision. Otherwise we would have a system in which one person decides (dictatorship) or a minority decides (oligarchy). So democracy represents a set of decision-making institutions that embody respect for the equal worth of all citizens. And the fact that otherwise powerless people can express their preferences through democratic means is a substantial form of potential influence for non-privileged groups.⁴

In addition to the aggregation of individual preferences, democratic values consider as well the circumstances under which the members of a group form their beliefs and preferences. Narrow democratic theory takes individual preferences as exogenous. But broader versions of democratic theory attempt to bring democratic values into the social processes through which beliefs and preferences are formed. The theory of *deliberative democracy* emphasizes in particular the features of civility, mutual respect, and open-mindedness through which debate and critical examination of issues leads to a fuller understanding of issues and a more reflective set of preferences. This aspect of democracy is valuable because it corresponds to a society in which open and uncensored debate leads to the formation of individual and collective preferences and embodies the ideas of democratic equality among citizens. And less-privileged groups can exercise their voices in these forums to attempt to influence other citizens to support more just policies and choices.⁵

There is a final reason for cheering democracy: it is possible that democracy is more likely to protect the rights of the relatively powerless in society; democratic institutions can function as a bulwark against the arbitrary power of elites of all kinds. If the powerless have political voice, they then have an ability to advocate for, and democratically support, the policies that favor their perspectives and interests. (This political power is offset, of course, by the political power and influence wielded by elite minorities in most societies.)⁶

The most fundamental reasons, then, to value democracy are its correspondence to the value of the moral equality of all persons and the capacity it creates for non-elite groups' struggles for justice. Democratic institutions honor the equality of all persons in the fact that each person

has an equal voice in deliberating upon and deciding collective policies. A democracy is morally preferable because it best embodies the more basic moral value of fundamental human equality and dignity and it provides a feasible mechanism for pursuing social justice.⁷ By following on Amartya Sen's theory that democracies are the best anti-dotes against famines,⁸ one could draw some satisfaction from the fact all post-1990 governments in Bangladesh, regardless of their party affiliations, successfully prevented or at least minimized the spread of famine during the incidence of several natural disasters they encountered in the past sixteen years.

The principal value that governs the quality of democracy is trust. There are seven other values that must be in place before people will trust each other and their government. Each value is dependent on the adoption and practice of the previous value. The sequence of values that dictate the quality of democracy are as follows: freedom, equality, accountability, justice, fairness, openness and transparency. Once all these values are in place then trust can be found. Trust is the value that enables nations to become internally cohesive.⁹

Equality: The second fundamental value on which democracy is based is equality—the recognition that, if you have the right to freedom and everything that comes with that right, then all others who live in the same community should have the same rights as well. No individual or group should be marginalized or treated differently from all other groups.

Accountability: This naturally leads to the value of accountability—the practice of responsible freedom. If everyone agrees that freedom and equality are important, then everyone must take responsibility and accountability for making sure that all their actions are in support of these values. This includes those who are elected as representatives of the people, those in position of public authority and the population themselves. Furthermore those who serve at the pleasure of the people must be fully accountable to the people who elected them for how they discharge their public responsibilities.

Justice: This naturally leads to the value of justice—the process that assures that people take accountability for their actions. No one should be above the law. An independent judiciary guarantees that those in power will be held to account if they commit any wrongdoings. In authoritarian regimes leaders are not held accountable for their actions and dispel justice as they see fit. In a democracy everyone is equal before the law.

Fairness: This naturally leads to the value of fairness—the practice of being accountable before the law for living the value of equality. Justice is one of the ways of guaranteeing fairness. Unfairness arises when people are not held accountable for ensuring that their actions support the value of equality. Fairness requires that there is no discrimination in any community against persons of different races, religions, political affiliations, ages, genders and sexual preferences.

Openness: This naturally leads to the value of openness—the process by which fairness can be guaranteed. Openness requires that those in authority fully disclose their motivations in making decisions. Motivations must be disclosed for openness to be lived. Decisions cannot be made behind closed doors in an open society.

Transparency: This naturally leads to the value of transparency—the demonstration of openness and the disclosure of all documents and materials that indicate how decisions have been made. The best way to ensure transparency is to make sure that every aspect of the process by which decisions are made is open to public view. Nothing must be hidden for transparency to be lived.

Only when the values of freedom, equality, accountability, justice, fairness, openness and transparency are collectively embodied in the systems processes and policies of governance and individually embodied in the elected representatives and those in authority can trust be established and democracy be regarded as mature.

Successful democracies are said to require at least four optimally maintained conditions in society: high ideals, good institutions, citizens

who believe in the ideals and participate actively in the institutions, and excellent leadership.¹⁰

The challenge of turning democratic values into democratic practices is becoming both more important and more difficult in an increasingly complex world. Building and sustaining trust in the public institutions of business, government and civil society are key components of this challenge.¹¹

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Chapter Four

PROVISIONS OF CARETAKER GOVERNMENT

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4. PROVISIONS OF CARETAKER GOVERNMENT

4.1 Constitutional Framework

Bangladesh reverted to parliamentary democracy (as was stipulated in the country's original Constitution of 1972) following a constitutional amendment in 1991. The president, while Chief of State, holds a largely ceremonial post; the real power is held by the Prime Minister, who is head of government. The President is elected by the legislature (Parliament) every five years. The President's circumscribed powers are substantially expanded during the tenure of a Caretaker Government. Under the 13th Amendment (Appendix 3), ratified by Parliament in March 1996, a Caretaker Government temporarily assumes power to oversee general elections after the dissolution of the Parliament. This was done because of political distrust among parties. In the Caretaker Government, the President has control over the Ministry of Defense, the authority to declare a state of emergency, and the power to dismiss the Chief Advisor and other members of the Caretaker Government. Once elections have been held and a new government and Parliament are in place, the Caretaker Government's powers and position revert to their largely ceremonial role. The Chief Advisor and other advisors to the Caretaker Government must be appointed within 15 days from the day the current Parliament expires. The Prime Minister is appointed by the President and must be a Member of Parliament (MP) whom the President feels commands the confidence of the majority of other MPs. The cabinet is composed of Ministers selected by the Prime Minister and appointed by the President. At least 90% of the Ministers must be MPs. The other 10% may be non-MP experts or "technocrats" who are not otherwise disqualified from being elected MPs. According to the Constitution, the President can dissolve the Parliament upon the written request of the Prime Minister.

The legislature is a unicameral, 300-seat body. All of its members are elected by universal suffrage at least every five years. Parliament amended the Constitution in May 2004, making a provision for the addition of 45

seats to be reserved for women and to be distributed among political parties in proportion to their representation in Parliament.

Bangladesh's judiciary is a civil court system based on the British model; the highest court of appeal is the Appellate Division of the Supreme Court. At the local government level, the country is divided into divisions, districts, sub-districts, unions, and villages. Local officials are elected at the union level and selected at the village level. All larger administrative units are run by members of the civil service.

4.2 Introduction of Caretaker Government

Bangladesh introduced an innovative system of Caretaker Government (CTG) to ensure organization of free and fair elections. The first CTG in 1991 was an ad-hoc arrangement when, after the overthrow of the military rule by a mass movement, a civilian non-party government headed by the then Chief Justice, was installed to organize a free and fair election.¹ The CTG system was later institutionalized in the wake of another mass mobilization led by the AL, following widespread allegation of vote rigging by the incumbent BNP government in a parliamentary by-election held in 1994. After a fraudulent national election in February 1996, boycotted by the major opposition parties, the loss of legitimacy by the BNP regime invoked a mass mobilization led by the opposition parties which drew in elements of civil society and eventually led to non-cooperation from the civilian bureaucracy which brought the machinery of state to a stand still. The BNP regime, then, had no option but to resign after legitimating a constitutional amendment which stipulated that National Parliamentary Elections would be organized by a non-partisan Caretaker Government (CTG) to be headed by the most recently retired Chief Justice.² The organization of elections was to be the main responsibility of the CTG and elections were to be held within 90 days.

With the passage of Thirteenth Amendment (Appendix 3), Articles 58(B) (C) (D) (E) were included in the constitution, which keep the following major provisions regarding Caretaker Government: (a) after the dissolution of the parliament there will be an 11-member Non-party Caretaker Government headed by the Chief Advisor; (b) the Caretaker

Government will be collectively responsible to the President; (c) the Chief Advisor will be appointed by the Head of the State while other ten Advisors will be selected as per advice of the Chief Advisor; (d) the Chief Advisor will hold the status of Prime Minister while an Advisor will enjoy the status of a minister; (e) the Non-party Caretaker Government will discharge its functions as an interim government and will carry on routine jobs, except in the case of necessity it will not make any policy decisions; (f) the Caretaker Government will assist the Election Commission to hold general polls impartially, fairly and peacefully; (g) this Caretaker Government will be dissolved on the date a new Prime Minister assumes his office.

4.3 Providing Facilities in Caretaker Government System in Bangladesh

4.3.1 Election Commission and machinery for election

Article 118 of the Constitution provides for the establishment of an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time direct. The appointment of the Chief Election Commissioner and other Election Commissioners (if any) is made by the President. When the Election Commission consists of more than one person, the Chief Election Commissioner is to act as its Chairman. Under the Constitution the term of office of any Election Commissioner is five years from the date on which he enters upon office. A person who has held office as Chief Election Commissioner is not eligible for appointment in the service of the Republic. Any other Election Commissioner is, on ceasing to hold such office, eligible for appointment as Chief Election Commissioner, but is not eligible for appointment in the service of the Republic. Powers of Election Commission (Article 118(4) and 126 of the Constitution, read with Article 4 of the Representation of the People Order, 1972): The Election Commission is an independent constitutional body in the exercise of its functions and subject only to the Constitution and any other law. The Commission may authorize its Chairman or any of its members or any of its officers to exercise and perform all or any of its powers and functions under the law. Article 126 of the Constitution and Articles 4 and 5 of the Representation of the People Order, 1972 provide that it shall be the duty

of all executive authorities to assist the Election Commission in the discharge of its functions. The Commission has the power to require any person or authority to perform such functions or render such assistance for the purpose of election as it may direct.

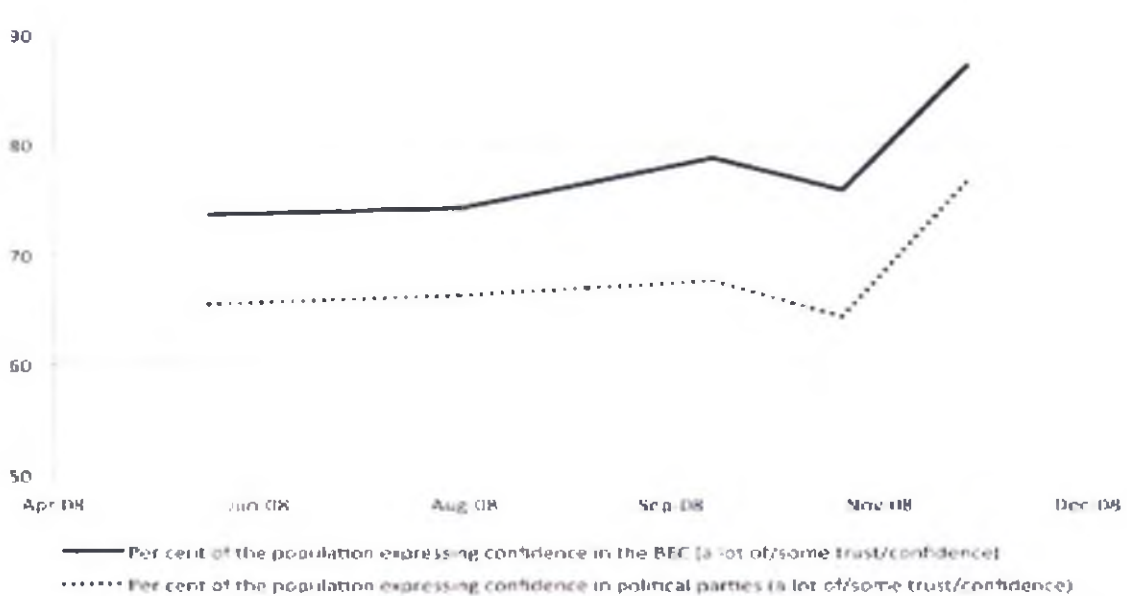
The Bangladesh Election Commission (BEC) consists of the Chief Election Commissioner and such other Election Commissioners as the President may appoint—currently two additional commissioners—for five-year terms. The BEC is responsible for all election preparations including establishing the election schedule, delimiting constituencies, registering political parties and maintaining voter rolls. The commission is designated as an independent body in the constitution, but the appointment of key personnel is controlled by the prime minister or, in the case of the recent caretaker government, the chief advisor. Under the constitution, commissioners can be removed only due to mental or physical incapacity or gross misconduct. The BEC also has wide-ranging powers to call upon other citizens and government agencies for assistance. For example, polling staff have traditionally been selected from the Bangladesh civil service and, in previous elections, voter registration workers have usually been government schoolteachers.

The Bangladesh Election Commission (BEC) is a permanent body charged with the duty to hold Presidential and Parliamentary Elections. Though in some countries the power to delimit the constituencies was vested in some other authority, in Bangladesh that power was also conferred upon the BEC. In addition, the voters list was also prepared by the BEC. For the smooth functioning of the BEC during election periods it has at its disposal the manpower and material resources of government departments. Also, the Caretaker Government is required to 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. In addition to the permanent BEC offices and staff, local government officials become responsible for administering the election and tabulating the votes.

The BEC has extensive responsibilities and wide powers. In addition to managing polling and the results process, it is mandated to conduct voter

education, voter registration and candidate registration. It is also responsible for managing election-related complaints, including those related to campaign and media regulations. The BEC had undertaken a fresh delimitation, which affects 133 out of 300 constituencies, finished in July 2008. The BEC had adopted an average figure of approximately 267,000 voters per constituency and had thus re-allocated parliamentary seats to districts and divisions. The new allocation of seats had affected 16 of the 64 districts and four of the six divisions.

Graph 1.1: Confidence in the BEC and political parties



Source: Survey data made available by courtesy of the International Republican Institute.

The BEC has a permanent secretariat. Up to January 2007, the Election Commission Secretariat was staffed and financed by the Prime Minister’s Office, which caused serious concerns about its independence. At present it is linked to the Ministry of Law and Parliamentary Affairs, and its financial and administrative autonomy appears better catered-for. The Secretariat has machinery across Bangladesh. The country’s administrative organization is used as a basis, but there is some variation: the BEC has nine regional offices, each headed by a Deputy Election Commissioner. It also has 83 District Offices, headed by District Election Officers. In 2006

permanent sub-district election offices were established. In metropolitan areas these are called "Thana Election Offices" (26) and in rural areas, they are called "Upazila Election Offices" (481). As there are 300 constituencies, many will have more than one Upazila or Thana Election Office.

During the election period other local government structures become responsible for administering the election and aggregating the results. In particular, Deputy Commissioners (DCs) become Returning Officers (ROs) and therefore responsible for candidate nomination, election administration and the results process. During this period, they also retain responsibility for their other duties, including control of magistrates and therefore law enforcing agencies. There are 68 DCs/ROs (one for each district with some additions). Under the ROs, there are Upazila Nirbahi Officers in rural areas, and Thana Nirbahi Officers in metropolitan locations, who serve as Assistant Returning Officers having full control over the election process.

4.3.2 Pre-election Preparations

Preparation of the electoral roll on the basis of principle of universal adult franchise is a condition precedent for ensuring free and fair elections. Eligibility for registration is Bangladeshi citizenship, being 18 years old or more, not having been legally declared of unsound mind, and to be deemed by law to be a resident of that constituency. A resident is simply defined as someone who "ordinarily" resides in that electoral area. Quite often political parties in power may exclude eligible persons who are hostile to them from the electoral roll.

Article 119 of the Bangladesh Constitution empowers the Election Commission to review and/or compile the voters list for the Presidential and Parliamentary elections. The Caretaker Government of 2007 introduced and designed a fresh voter registration process, based on a door-to-door enumeration campaign from August 2007 to early July 2008. It had been a largely successful exercise, leading to the production of a high-quality 81-million voter list with photographs. The voter registration exercise ended in October 2008, with the delivery of the last ID. On 14th October 2008, a final electoral roll containing the names of 81,130,973

voters had been published by the Election Commission. This new digitized voters list included photographs, finger prints and signatures of almost 95 percent of all eligible voters and, above all, enjoyed the confidence of the political parties, citizens' organizations and the international community that observed the electoral process. The International Foundation for Electoral Systems (IFES), a US-based organization, had been commissioned by the UNDP to undertake a survey to check the accuracy and completeness of the list, and reported a "high degree of accuracy."

The IFES reported that more than 99 percent of respondents had confidence in the accuracy of the list. The list contains about 81 million voters' data and took 11 months to complete. The previous voters' list was not digitized and was rejected by almost all political parties as inaccurate, containing around 13 million ineligible votes. The new list was compiled by the BEC with the active assistance of the army and a consortium of international donors.³ A significant by-product of the voters list is a National Identification Card for 95 percent of the adult population of Bangladesh. The pictures of all adults, including women, were mandatory both for the voters' list and the Identification Card. By integrating the picture of each voter (including purdah-observing women) into the list, the BEC has satisfactorily solved the problem of voter identification at the time of voting. Voters' pictures in the Bangladesh Electoral Rolls have precluded the need of carrying any identification document by the voters. Voter registration and issuance of the National Identification Card is an integrated process in Bangladesh, eliminating time-consuming duplication of effort on. One can hope that this action prevents impersonation and illegal practice of casting of votes more than once.

4.3.3 Administrative Framework for Elections

The BEC is the highest ranking electoral body in Bangladesh. Article 118 of the Constitution of Bangladesh provides for the establishment of the BEC and for the appointment of the Chief Election Commissioner and other Election Commissioners (if any) to terms of five years by the President of the Republic. Commissioners, along with all other electoral officers, must demonstrate a record of political neutrality; unlike many other countries,

Bangladesh does not rely on the method of political checks and balances to ensure evenhandedness in its election administration system at any level.

Under Article 119 of the Constitution, the BEC is responsible for preparing the national voter list, and for “direction, control and conduct of all national elections and presidential elections,” which it does in accordance with the Representation of the People Order of 1972 (RPO), the country’s election law.⁴ A Secretariat, led by a Secretary, implements the decisions of the BEC, but traditionally the Prime Minister during the political government period appoints the secretary of the BEC Secretariat.

Below the level of the BEC, Bangladesh is divided into several administrative layers for electoral purposes. Most important are the nation’s 64 districts and 481 upazilas (sub-districts). Districts are typically composed of three to 10 upazilas. A typical electoral constituency, of which there are 300 in Bangladesh, is composed of one to three upazilas. The BEC permanently employs approximately 84 Election Officers assigned to district level Election Offices. These officers maintain the voter list in their districts and oversee the election process at the district level.

In advance of an election, the BEC typically appoints career civil servants presumed to be politically neutral, to act as the Returning Officer (RO) and Assistant Returning Officers (ARO) within each district. Typically, the BEC appoints the Deputy Commissioner—the appointed head of district-level government—as RO and several upazila chief executives—the appointed heads of upazila-level government—as AROs.

In each district, the RO and AROs are responsible for all aspects of election administration once the BEC announces the election schedule. Responsibilities include recruitment and vetting of more than 565,000 (this number varies from election to election) Presiding Officers, Assistant Presiding Officers and Polling Officers who staff individual polling centers. These officers, the vast majority of whom work for the public school system, administer the voting and ballot counting processes.

The RO consolidates the vote count at the district level, makes an unofficial announcement of district's winning candidates and forwards the data to the BEC in Dhaka, which pronounces the official election results.

4.4 Policy Context of Caretaker Government

4.4.1 Historical Context

The democratic process in the South Asian countries is in an evolutionary stage as most of the countries in this region gained their independence not more than sixty years ago. The countries like India, Pakistan and Bangladesh are still strengthening their democratic systems by making changes in their election processes and incorporating new constitutional provisions as they feel the need during their journey towards stable democratic societies.⁵

In the past, some of these countries have gone through the experiences of rigged and fraud elections. Such malpractices were usually committed by the governments in power by misusing their authority. These countries are trying to tackle this problem by taking different steps and strengthening the election rules which include making the Election Commission more independent, inviting independent observers, computerizing the system etc.

Since most of the election malpractices are attributed to the partisanship of the government under which election is held, the idea of a neutral Caretaker Government during the election has been discussed and adopted in some countries.

4.4.1.1 Provisions in the Constitution of Pakistan

According to the constitution of Pakistan, as it stands following the Legal Framework Order (LFO) 2002, article 224 stipulates the provisions of a Caretaker Government. The proviso added to article 224 (1) under the LFO reads as follows:

“Provided that on dissolution of an Assembly on completion of its term, the President, in his discretion, or, as the case may be, the Governor, in his

discretion but with the previous approval of the President, shall appoint a Caretaker Cabinet.”

Article 224 (7), which was also added as a part of the LOF, reads as follows:

“When a Caretaker Cabinet is appointed, on dissolution of the National Assembly under Article 58 or a Provincial Assembly under Article 112, or on dissolution of any such Assembly on completion of its term, the Prime Minister or, as the case may be, the Chief Minister of the Caretaker Cabinet shall not be eligible to contest the immediately following election of such Assembly.”

These two clauses of Article 224 of the Constitution of Pakistan do not expressly call for a non-partisan or neutral Caretaker Governments but the fact that the Prime Minister and Chief Minister will not be eligible to contest the election introduces a certain degree of neutrality to the provision of a Caretaker Government. It is however significant that this ineligibility does not expressly extend to other members (Ministers) of the Caretaker Government.

Another important thing to note is that the Caretaker Government will be appointed in the sole discretion of the President. No qualifications or limits have been placed on this discretion.

It is also important to note that a continuity to the office of the President has been provided. The President continues in his or her office during the election for the National and Provincial Assemblies. In case the President is perceived to be partisan or biased, the Caretaker Government alone will not be able to address the issue of providing a neutral government during the election phase. This also implies that the spirit of the Constitution does not envisage a partisan President.

4.4.1.2 Pakistani experience of Caretaker Governments

There have been numerous Caretaker Governments since the 8th amendment under which President was given the power to dissolve the National Assembly and thus dismiss a cabinet. President General Zia ul

Haq was the first to use the powers under Article 58(2)b of the constitution when he dissolved the National Assembly and dismissed the government of Prime Minister Muhammad Khan Junejo on May 29, 1988. He appointed a Caretaker Cabinet directly under him without appointing a Caretaker Prime Minister. President Zia-ul-Haq died in an air crash before the elections could be held. Ghulam Ishaq Khan, who was the Chairman of the senate, became the acting President according to the constitution but retained the same Caretaker Cabinet as was appointed by his predecessor. The military and more specifically the Inter-Services Intelligence (ISI) played an important role in creating a coalition of political parties opposing Benazir Bhutto's Pakistan Peoples Party. The Caretaker Government generally consisted of persons who were opposed to Pakistan Peoples Party. Despite these moves, Pakistan Peoples Party emerged as the single largest party in the National Assembly and its leader Benazir Bhutto was, after some initial reluctance and securing some assurances from her, invited to form the next government. The Caretaker Government hardly enhanced the perception of neutrality or even-handedness during the election.

The next Caretaker Government was appointed by President Ghulam Ishaq Khan after he dissolved the 8th National Assembly on 6th August 1990 using the eighth amendment and dismissed the government of Prime Minister Benazir Bhutto on the charges of corruption. He appointed Ghulam Mustafa Jatoi as the Caretaker Prime Minister who was the Leader of the Opposition in the dissolved Assembly. Elections were scheduled for October, 1990. This Caretaker Government was obviously and clearly partisan and Pakistan Peoples Party (PPP) charged that the elections were rigged in favour of the parties opposing PPP. Islami Jamhuri Ittihad (IJI) led by Pakistan Muslim League emerged as the single largest party in the National assembly as a result of the election.

In April, 1993, President Ghulam Ishaq Khan dissolved the 9th National Assembly and dismissed the government of Prime Minister Muhammad Nawaz Sharif. Mr. Balakh Sher Mazari was appointed as the new Caretaker Prime Minister by the President. Elections were scheduled to be held in July but Mr. Mazari's tenure ended on May 26, 1993, when the Supreme Court

revoked the Presidential Order and reinstated Muhammad Nawaz Sharif as the Prime Minister.

However, because of the serious differences between the President Ghulam Ishaq Khan and the Prime Minister Muhammad Nawaz Sharif, both resigned from their offices on July 18, 1993, along with the dissolution of the National and Provincial Assemblies.

Moin Qureshi, a retired World Bank official, was appointed as the Caretaker Prime Minister as per the agreement reached between Ghulam Ishaq Khan and Muhammad Nawaz Sharif through the Chief of Army Staff, General Waheed Kakar. Waseem Sajjad, the Senate Chairman took over as the acting President. At the time of his appointment, Moin Qureshi was residing in the US for the last many years and people of Pakistan hardly knew him. It was, however, felt that as he was a political outsider, he would remain neutral. Despite the fact, Moin Qureshi was appointed Caretaker Prime Minister with the consent of Muhammad Nawaz Sharif, he was not satisfied with the neutrality of Qureshi Government and expressed dissatisfaction after he lost the election. In general, the election was perceived as relatively free and fair.

President Farooq Leghari dissolved the National Assembly on November 5, 1996 and dismissed the government of Prime Minister Benazir Bhutto of PPP on the charges of corruption. Malik Meraj Khalid, Rector of the International Islamic University, was appointed as the Caretaker Prime Minister. The next elections were scheduled for February 3, 1997. Malik Meraj Khalid held the office of Caretaker Prime Minister from November 5, 1996, to February 17, 1997. PPP perceived the Caretaker Government a group of Anti-PPP persons and accused them of rigging the election after PPP lost the election.

In conclusion, the experience of Pakistani Caretaker Governments has not been very satisfactory, primarily because the Caretaker Governments were mostly appointed by the Presidents in their own discretion. These Caretaker Governments with the possible exception of Mr. Moin Qureshi's government were not perceived as neutral.

4.4.1.3 The System of Caretaker Government in Bangladesh

In Bangladesh the demand for neutral Caretaker Government largely originated from a lack of trust in the political government under which the election was held. To understand the background of this demand, one has to at least briefly look at the political history of Bangladesh very after its independence in 1971.

The first parliamentary elections were held on 7th March 1973. These were by and large considered free and fair elections, although there were some alleged cases of rigging, ballot snatching and ballot box stuffing in some constituencies. It is generally believed that the practice of rigging was started when General Zia-ur-Rehman held a referendum in 1977. A voter turnout of 88.5% was recorded and the affirmative votes in favour of the incumbent General were recorded as 98.88% of the total votes cast. He held two more elections and it is alleged that he used civil and military intelligence agencies as well as the civil administration to rig the elections.

General Hussein Muhammad Ershad followed General Zia's footsteps and held a referendum on 21st March, 1985. A more realistic-looking voter turnout of 72.2% and affirmative votes of 84.1% were announced. General Ershad went on to hold three elections. The first Parliamentary elections were held by him on 7th May, 1986. The next two elections were a Presidential and a Parliamentary one. Those elections, held on 15th October 1986 and 3rd March, 1988 respectively were boycotted by all the opposition political parties of Bangladesh including two main parties i.e Awami League and BNP, leaving only his own Jatio Party in the arena.

On December 6, 1990, people's uprising got rid of the military Government of General Ershad and a Caretaker Government agreed-upon by all political parties headed by the sitting Chief Justice was installed to conduct a free and fair election. As a result, the BNP Government led by Begum Khaleda Zia came into power on 20th March 1991. The BNP government held the general election on 15th February 1996 which was widely boycotted by other political parties as they did not expect a fair election under BNP. Only 21% voter turn-out was registered which was the lowest in the history of the country.

4.4.1.4 The passage of 13th Constitutional amendment

All political parties demanded a fair election under a neutral government. In the face of mounting agitation and a clear demonstration of lack of trust by the people through the lowest voter turn-out in the history of Bangladesh, Begum Khalida Zia resigned after making the 13th amendment in the constitution of Bangladesh on 26th March 1996. This amendment called for a Non-party Caretaker Government headed by the immediate past Chief Justice to conduct the General Elections. Chief Justice Habibur Rehman became the head of the Caretaker Government. As a result of the elections held on 12th June 1996, Awami League came into power and Sheikh Hasina was sworn in as the new Prime Minister on 23rd June 1996.

Despite the unrest and protests in the later part of the Awami League tenure, it completed the 5 years term. The new elections were held on October 1, 2001 under the Caretaker Government as per the constitution. These elections were won by the BNP coalition and Begum Khaleda Zia came into power but Awami League still alleged rigging in the elections.

The opposition parties had developed serious reservations about the Caretaker system. In brief, they alleged that the Government was manipulating judiciary in a way that its favourite judge should be the immediate retired chief justice and thus the head of the Caretaker Government. A 14-party alliance called for electoral reforms and agitated for the acceptance of its demands.

In late 2006, the country plunged into chaos as the outgoing government and the opposition parties failed to reach agreement on various issues, including who should lead the Caretaker Government to arrange the next Parliament Election. Street agitation, violence and months of uncertainty led to the appointment of a military-backed technocratic Caretaker regime in January 2007, under a constitutional provision enacted in 1996. The government attempted to reform institutions and a political culture which had caused uncertainty, corruption and acrimony during the 15 years of

democracy. In the election held in December 2008, the AL emerged victorious with an unprecedented majority in parliament.

4.4.1.5 Alleged manipulation of the system of Caretaker Government and calls for further reforms

After the general election in Bangladesh in 2001, the opposition parties' alliance demanded some changes and improvements in the Caretaker Government system. A major issue has arisen because of the particular provision in the constitution relating to the appointment of the head of the Caretaker Government, which specifies that the immediate past Chief Justice would be the person first called upon by the President to head the caretaker government and if he is unable or unwilling then his predecessor and so on. Any action by the incumbent government, which conveys the impression that it is seeking to ensure that a particular person is chosen by adopting such means as altering the retirement date of the existing chief justice raises doubts about the impartiality of the person. The fourteenth amendment (2004) passed by the BNP government raised the retiring age of the Chief Justice. This had the effect of ensuring that the person who was then the immediate past chief justice would continue to government. The opposition strongly objected to his being designated as head of the Caretaker Government on account of his past association with the present ruling party.

The other issue relating to the Caretaker Government is that the thirteenth amendment provides that during the period when there is a non-party Caretaker Government, the law regulating the supreme command of the Defense Services shall be administered by the President. The opposition urges that the defense services should be administered during the Caretaker Government period in exactly the same way as all other subjects that is, on the advice of the Chief Advisor.

These and various other concerns have led the 14 political parties of Bangladesh to demand reforms in the Caretaker form of government. The ruling BNP government was reluctant to accept the demands of the

opposition on the plea that the thirteenth amendment had been passed with the consensus of all parties and therefore the system should continue as provided for in the thirteenth amendment.

On the series of circumstances, the nation realized that flaws in the Caretaker Government system surfaced since the very outset of the system. It started with the diarchy of administration between the President and the Chief Advisor. Then the whole approach towards neutrality had been greatly affected in 2001 with the undertaking of some controversial administrative decisions by the Caretaker Administration. The election in 2001 also raised another significant issue-the role of the armed forces representatives employed on electoral duties. This imbroglio had assumed further complications through the extension of the age limit of the judges of the Appellate Division in 2006. This had been interpreted by the Opposition as part of the Ruling Party's agenda to ensure that a particular person heads the next Caretaker Government. Such a measure had been perceived not only as negative and predicated on presumptive neutrality but also as a source of erosion of confidence.

4.4.1.6 Caretaker Government in India

India, unlike Bangladesh and Pakistan does not have a neutral Caretaker Government system for elections. The government at the time of dissolution of Lok Sabha (House of the People) 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.

4.5 Conclusions

In mature democracies, an elected government continues as the Caretaker Government during elections without anybody suspecting any wrongdoing at the hand of the Caretaker Government. In such democracies, election management bodies have sufficient independence and powers to ensure

free and fair election without any fear of interference by the government. In such cases, it does not matter who is running the Caretaker Government as the established norms and institutions guard against any possibility of interference by the government or for that matter anyone. India is one good example of such democracies where Election Commission becomes a virtual Caretaker Government during the election time and no neutral Caretaker Government is inducted for the election.

In some democratizing countries, like Bangladesh and Pakistan, integrity of the election process is generally a question. There is a deficit of trust between the ruling and opposition parties. Ruling party is generally suspected of manipulating the election results to its own advantage. Election management bodies are not strong or assertive enough to ensure the integrity of elections. In such countries, a neutral Caretaker Government is considered essential to ensure free and fair election. The problem, however, arises, when the Head of the state is also perceived to be partisan and potentially someone who can manipulate the election process to the advantage of his or her favourite party. In such cases, constitutional provisions, if any, about the neutral Caretaker Governments appointed in the discretion of the President fail to inspire confidence in the electoral process and the crisis therefore continues. Pakistan is a typical case in point. Some countries, like Bangladesh, have come up with constitutional innovation by taking the appointment of a Caretaker Government out of the discretionary jurisdiction of President and by providing detailed guidelines on the composition and powers of the Caretaker Government. But, as the basic problem of weak democratic culture and lack of trust persists, even such comprehensive constitutional provisions also fail to ensure integrity of election and acceptance of the result by all parties. The current crisis in Bangladesh where the people from all sectors demanding further electoral reforms despite a comprehensive constitutional provision of a neutral Caretaker Government illustrates this problem.

Although Bangladesh model of a Caretaker Government is worth consideration by countries like Pakistan, it fails to provide sufficient

safeguards against electoral manipulation by a strong and partisan Head of the State determined to favour a particular party.

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Chapter Five

PRESENT STATUS OF CARETAKER GOVERNMENT

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5. PRESENT STATUS OF CARETAKER GOVERNMENT

5.1 Reality Check between Goals of Caretaker Government and Present Status

5.1.1 Goals of Caretaker Government

Bangladesh is going to observe its 41st independence anniversary in the next 2012. It has already exceeded 4 decades of its independence but in many segments it has not yet achieved its expected standard i. e. Political, social, economic, technological, or any other aspects, especially in Political arena it is still facing chronic instability. On the eve of its 40th independence anniversary the question is raised that how much it has achieved political stability and how much is developed its political culture. The answer is obviously dissatisfactory. In its long age it has already experienced thousand types of political violence, instability, political conflicts, mistrust and misunderstanding among the political parties and groups which are still on. This is called the parochial political culture. The Non-party Caretaker Government (NCG) is the outcome of this hidebound and parochial political culture.¹

The Non-party Caretaker Government is a constitutional innovation in Bangladesh. This mechanism was first introduced in 1991 election, but became a part of constitution in 1996. After the end of General Ershad's military regime, the governing power of the country handed over to a Non-party Caretaker Government headed by Ex-Chief Justice Mr. Shabuddin Ahmed. They arranged the election of 1991. After that the elections of 1996, 2001, and 2008 was conducted under three different Non-party Caretaker Governments. The goals of Caretaker Government were:

- (a) To create a congenial atmosphere for all Political Parties;
- (b) To provide a neutral administration;
- (c) To arrange free and fair elections.

5.1.2 Present Status

Non-party Caretaker Government in Bangladesh had been introduced in 1996 to achieve some goals. Nobody has doubt that this government system has a little achievement with ample miseries and questions. The main objective of the Caretaker Government was to create an environment in which an election can be held in a free and fair manner without any political influence of the outgoing government. When it was given permanent shape it was considered as a unique system in the history of the world but later some questions were raised regarding this system. Before and after each elections so many occurrences happened which were full of violence and conflict. After the election of 1991, Awami League rejected the result and accused corruption in the election. In 1996 BNP in power conducted an election under their supervision sidetracking the demand for Caretaker Government². Mass upsurge compelled them to conduct the election once again under Caretaker Government and BNP got defeated in the election. Then they also rejected the result. Same situation happened at 2001.³ But the situation in 2006 was really violent. Two different Caretaker Governments ruled the county for almost two years and three months. So there has raised a big question on the effectiveness of Caretaker Government. The future of Caretaker Government is also a big question.

The debate on Caretaker Government is not a recent phenomenon; it started in 2006 when the erstwhile President Prof. Dr. Iazuddin Ahmed took the charge of the Chief of the Caretaker Government without taking other options of the constitution. The constitution provides several alternatives before the president assumes this charge.

The debate on Caretaker Government was heightened when military backed NCG of Dr. Fakhruddin Ahmed assumed power unconstitutionally for two years. During the tenure of this unconstitutional regime many politicians and intellectuals expressed their views on it. Some demanded its abolition and other demanded its reformation. After the 9th parliamentary election, the debate on Caretaker Government rose up.

When the NCG had been established by the constitution most of the intellectuals were not in favor of it, they argued that it would hinder the institutionalization of democracy; it would threaten the development of Political Culture in Bangladesh and it could be used as the way of dictatorship. Their panic was not unanticipated; the previous NCG has proved it. But now the scenario has been changed. These intellectuals are criticizing the demand of the Ruling Party (Awami League). Ataus Samad, one of the Prominent Journalists and Columnists in Bangladesh, wrote in a column "although I were against the NCG system but now the demand of the ruling leaders is illogical because the mistrust among the parties is still continuing".⁴ Despite the previous elections were held under the NCG in a free and fair manner but the defeated party always accused the NCG of facilitating the other party's victory. The Awami League and the BNP won the elections in 1996 and 2001, respectively, and each time the losing party accused the NCG of facilitating the other party's victory. The system was introduced after the political unrest in 1991. The AL strongly advocated the system at that time, while a reluctant BNP eventually conceded to the proposal. Now the two main political parties have reversed their role on the issue.

In fact the NCG system is not a symbol of a well established democracy; It is rather a hindrance for institutionalization of democracy in our beloved country. This system should be replaced by a representative form of interim government system. But before the replacement the political culture should be developed to a certain level where all political parties would go through a trustful atmosphere. A free, powerful and neutral Election Commission would be a very essential pre-condition for this atmosphere. The politicians, also have to change their narrow mentality of refusing people's mandate. They should admire the popular consent and acknowledge the victory of their opponents. When it would be possible then the congenial circumstance would be created to think about the replacement of this system.

This system can continue for a critical and temporary moment but not forever. Now reformation can be done in the present system. Gradually this system can be knocked down. The time has come to rethink the

interim government system, and all those involved in the electoral process should debate the issue and therefore reach a national consensus.⁵

5.2 Functioning of Caretaker Government

As per the provision in the Bangladesh Constitution (thirteenth amendment), Article-58D describes the functions of Non-party Caretaker Government as follows:

58D. Functions of Non-party Caretaker Government

- (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 and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions its shall not make any policy decision.
- (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.

5.3 Operations of the NCG

Let us examine the operations of the Non-party Caretaker 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 Advisors, 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 emphasize 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 Advisor.

5.3.1 The relationship between the President & the Chief Advisor

The President enjoys greater say during the Caretaker Government. He looks after the Ministry of Defense. During this period of Caretaker Government, the President is not the figurehead as he is under the elected government.

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

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

Under the Caretaker Government both the President and the Chief Advisor are required to closely work with each other. During the Justice Latifur Rahman's government in 2001, he acknowledged the support and cooperation he received from President Justice Shahabuddin (The Caretaker Days:2002).

5.3.2 Functions of the Council of Advisors:

The Chief Advisor cannot exercise the executive authority like the Prime Minister. Furthermore the Chief Advisor cannot remove an Advisor, while the Prime Minister can dismiss or remove any cabinet minister. The scope of power of the Chief Advisor is limited. The Chief Advisor 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 Caretaker Government, as referred to in Article 58B, means in reality the Council of Advisors. The Council of Advisors is collectively responsible to the President. This means that all Advisors including the Chief Advisor would ordinarily take decision collectively. It is a collegial function and no Advisor can claim that he is not responsible for a decision of made by the Council of Advisors. Advisors 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 Caretaker Government may address, among others, the following:

- (a) Reorganizing administration & election commission
- (b) Law and order situation, including elimination of black money, godfathers and muscle men from society
- (c) Collection of unauthorized 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.

5.3.3 Cabinet and Executive Council

The functions of Cabinet and the Executive Council will generally cease during the caretaker period and do not resume until the incoming Government is formed. Should it be necessary for Cabinet to convene, any deliberations and decisions should be made in the context of the caretaker conventions.

In exceptional circumstances, and with the consent of the Administrator, the Executive Council may convene during the caretaker period to handle urgent non-controversial matters.

Cabinet records held in Ministerial Offices should be clearly identified and promptly returned to the Cabinet Office before the expiry of the caretaker period, in accordance with any instructions issued by the Cabinet Office.

5.3.4 Appointments

The Government should avoid making appointments of significance during the caretaker period. Factors to consider when deciding whether a particular appointment is significant include the inherent importance of the position and the degree to which the appointment may be a matter of disagreement between the major parties contesting the election.

If deferring the appointment is impracticable, usually for reasons associated with the proper functioning of an Agency or Government body, there are several options:

- a. Make an acting appointment;
- b. Make a substantive, but short term appointment to extend until shortly after the end of the caretaker period; or
- c. If those options are not practicable, the Minister could consult the relevant Parliamentary Opposition spokesperson regarding a full term appointment.

5.3.5 Major New Policies

Governments avoid making major policy decisions during the caretaker period that are likely to commit or limit the freedom of an incoming government. Whether a particular policy decision qualifies as 'major' is a matter for judgement. Relevant considerations include not only the significance of the decision in terms of policy and resources, but also whether the decision is a matter of contention between the Government and Opposition in the election campaign.

The conventions apply to the making of decisions, not to their announcement. Accordingly, the conventions are not infringed where decisions made before prorogation of the Legislative Assembly are announced during the caretaker period. However, it is preferable that decisions be announced prior to the commencement of the caretaker period, especially if their announcement is likely to cause controversy.

If circumstances require the Government to make a major policy decision during the caretaker period that would potentially bind an incoming government, consultation between the Caretaker Government and the Parliamentary Opposition should occur.

The above restrictions do not apply to the implementation of major policy decisions taken and announced before the caretaker arrangements came into effect.

During an election period, Ministers may not request the development of new policy initiatives but may request factual material from Agencies.

5.3.6 Major New Contracts or Undertakings

The Caretaker Government should avoid entering into major contracts or undertakings which could potentially commit an incoming Government to a particular course of action. When considering whether a contract or undertaking qualifies as 'major', agencies should consider the monetary value of the commitment, and also whether the commitment involves a

routine matter of administration or rather implements or entrenches a policy, program or administrative structure which is politically contentious.

If a contract or undertaking cannot be deferred until after the caretaker period for commercial or legal reasons, or for essential continuity of government reasons, there are a number of options. The Minister could consult the relevant Parliamentary Opposition spokesperson regarding the commitment. Agencies could, where applicable, explain the implications of the election to the contractor and ensure that contracts include provision for the termination of the contract or undertaking should the incoming Government not wish to proceed. In the case of tenders, it may be appropriate to warn potential tenderers about the implications of the election and the possibility that the tender might not be completed.

5.3.7 Intergovernmental Meetings

During the caretaker period, Ministers would not normally represent the Northern Territory at intergovernmental meetings. Where it is not convenient to postpone such a meeting, a senior Agency officer should attend as an observer to ensure the Northern Territory is informed of the deliberations, and brief the Minister afterwards as necessary. The Agency officer should make it known that he/she is constrained by caretaker conventions and is not authorised to commit the incoming Government to proposed actions that may be discussed at the meeting.

The Chief Executive of the Department of the Chief Minister will write to jurisdictional counterparts to advise of the timing of the election and the application of caretaker arrangements.

5.3.8 Hosting Dignitaries

It is preferable that visits to the Northern Territory by dignitaries be deferred by the Chief Minister until after the caretaker period, particularly where there is an expectation that agreements are to be made or negotiations undertaken.

In those cases where it is agreed that a visit will still proceed during the caretaker period, dignitaries are to be advised of the election announcement and any changes in arrangements for the visit, including the reduced availability of Ministers.

5.3.9 Departmental Liaison Officers

Where Departmental Liaison Officers (DLOs) have been provided by Agencies to assist Ministers' offices with necessary liaison work with Agencies, the need for that work should be reviewed at the commencement of the caretaker period.

If there is ongoing work of a liaison nature during the caretaker period, DLOs may remain with Ministers' offices. However, DLOs are NT Public Sector staff and therefore are to avoid assisting Ministers in ways that could create a perception that they are being used for party political purposes.

5.3.10 Ministerial Websites

Ministerial websites can continue to retain information held on them prior to the commencement of the caretaker period. Additional materials should not be added during the caretaker period.

5.4 Challenges faced by the Caretaker Government System in Bangladesh

5.4.1 The Challenge of Organizing Free and Fair Elections

After the overthrow of 15 years of military rule, the first challenge Bangladesh faced in its transition to democracy was to organize a free and fair election. After all, the country witnessed many elections during the military rule but none was deemed to be free and fair. This eroded citizens' trust in the institutions overseeing the elections. Regaining citizens' trust and creating a level playing field for all contestants to participate freely in the elections, thus, became a major challenge for the country. The organization of a free and fair election required removing any undue

advantage to any contestant, creating a peaceful atmosphere to eliminate voter intimidation and exclusion, and ensuring a correct vote count. While in many countries an independent EC is regarded as enough of a safeguard for conducting a free and fair election, in Bangladesh the pro-democracy movement that ousted the military dictator Ershad opted for an additional safeguard: institution of a neutral, non-partisan Caretaker Government.

In fact, in early November 1990, prior to the fall of General Ershad the three political alliances involved in the pro-democracy movement came to an agreement that following Ershad's ouster, a free and fair election would be organized within ninety days under a neutral, non-partisan Caretaker Government and the Caretaker Government will handover executive power to the party which will command a majority in the parliament elected freely by the citizens.⁶

The pro-democracy movement demanded institution of a non-partisan, neutral Caretaker Government to oversee elections because there were widespread allegations that the military rulers have misused state power to engineer election outcomes. The two military rulers, Major General Ziaur Rahman (1975-1981) and Lt. General Hussain Muhammad Ershad (1982-1990) organized several referendums, and parliamentary and local elections to "civilianize" and legitimize their rules. All these elections were perceived as rigged. The EC was not independent. It remained under the control of the incumbent government. It was alleged that the civil administration and the military intelligence services were used to manipulate the election results.⁷ Even fake opposition parties were created to project the illusion of a fair election. After the fall of Ershad in December 1990, the pro-democracy movement endorsed the institution of a Non-party Caretaker Government (CTG) headed by the then Chief Justice Shahabuddin Ahmed with the primary responsibility of organizing a free and fair elections within 90 days.

5.4.2 The 1991 Election under the CTG of Justice Shahabuddin Ahmed

The Caretaker Government of Justice Shahabuddin Ahmed took some immediate steps to create conditions for a free and fair election.⁸ The EC

was reconstituted. Three Supreme Court judges were made election commissioners and the EC was given independence and authority to conduct a free and fair parliamentary election. To ensure impartiality of the election administration at the district level, heads of civil and police administration in most of the districts were transferred. And all the restrictions on freedom of press, imposed by the military rulers, were withdrawn. A large number of international observer groups, most notably from the SAARC, Commonwealth, Britain and Japan were invited to observe the national parliamentary election. Elections were held on 27 February 1991 and they were on the whole peaceful. Fifty five percent of the voters cast their ballots, of which 53 percent were men and 47 percent were women.⁹ All observer groups expressed satisfaction with the conduct of the elections and deemed the process to be free and fair.

The results of the 1991 parliamentary elections (Table 1.2 in Chapter One) established several trends in the country's politics (see Table 1 in the Appendix). First, it showed that the two major political parties, the AL and the BNP enjoy near equal popular support. Both parties polled 31 percent of the popular vote (BNP 31.4 percent and AL 31.1 percent). Second, the results demonstrated a wide gap between the popular vote and winning of seats in parliament. For example, with a near equal popular vote, the BNP won 138 seats while the AL won only 86 seats. Third, two other smaller parties emerged. The Jatiya Party (JP), founded by the military dictator Ershad, won 35 seats and 12 percent of vote share. It may be noted that during the course of the election Ershad was under detention on charges of corruption and could play no part in the election campaign. The Islamist Party, Jamaat-e-Islami (JI), won 18 seats with a 12 percent vote share. The left leaning National Awami Party (Muzaffar) and the Communist Party, Bangladesh, both of whom were part of an electoral alliance with the Awami League each own 5 seats. In all, small parties together with independents won 19 seats in Parliament.¹⁰

Since the AL and the BNP could not form the government on their own as neither commanded an absolute majority, JP and JI were in a position to exercise leverage over the two major parties. Alliances with smaller parties, thus, became an important strategy for the two main parties. The

BNP succeeded in getting the support of the Jamaat which enabled the party to secure a majority vote of confidence in the parliament. The Caretaker Government of Justice Shahbuddin Ahmed, then, handed over power to the BNP. Sheikh Hasina, leader of the AL, was initially reluctant to accept the election results arguing that there were "subtle" riggings but since all election observer groups agreed that the elections were on the whole free and fair, she accepted the results.

5.4.3 Elections under the BNP Rule (1991-1996)

In the first two years of the BNP rule, there was fierce competition between the AL and the BNP in fifteen by-elections to the parliament. But serious disagreement about the fairness of the electoral process began from 1993 onwards when the AL alleged that the by-election in Mirpur was rigged by the BNP government. In the following year, the AL won the mayoral elections in the capital city, Dhaka, and the port city, Chittagong, but the elections were marred by bloody clashes between the parties, resulting in the killing of several AL supporters.

In 1994, the opposition political parties, including even the JI who helped the BNP form the government in 1991, started a nation-wide agitation demanding the institution of a non-partisan Caretaker Government to organise the next parliamentary election. The immediate cause of the agitation was the victory of a BNP candidate in a by-election in Magura which was an AL stronghold for over 40 years and even in 1991, the AL candidate won the seat with an overwhelming majority. The chaos and confusion over that election was compounded by the hasty departure of the Chief Election Commissioner (CEC), Justice Rauf from the scene, in apprehension of his inability to ensure a free election which lent credence to the opposition's charges of vote-rigging by the government. The failure to conduct a fair and transparent election in Magura was a blow to the image of the EC which appeared to have demonstrated its weakness in coping with the intimidating behaviour of the ruling party and the partisan conduct of the administration.¹¹

Instead of opening a dialogue with the opposition, the BNP outright rejected the demand for a neutral, non-partisan Caretaker Government. In

protest at the non-responsiveness of the regime, the opposition parties initiated a boycott of the parliament backed by a series of protest activities including *hartals* (strikes), rallies and public meetings. In December 1994, the opposition comprising nearly half of the members, 147 in total, resigned from Parliament. The country was, thereby, plunged into a full blown crisis. Several efforts were made by international organisations including the Commonwealth Secretary General, and a national citizens' group known as G-5 to mediate the crisis and bring the two sides to a negotiated settlement.¹²

The *en masse* resignation created a dilemma: whether to call for fresh elections or to hold by-elections in the vacated seats. The Supreme Court ruled in favour of by-elections to be held in September 1995. In the meantime, the opposition parties intensified their agitational program and the EC used floods as an excuse to invoke the "act of God" clause to postpone the by-elections further till December 1995. On 24 November 1995, the BNP government then dissolved the parliament thus avoiding the necessity of holding by-elections in half the seats of parliament whose five year term was anyway coming to an end by February 1996. The dissolution of parliament in November 1995 made it mandatory for the EC to organise elections within 90 days, that is, by 21 February 1996.¹³

After changing the dates a few times, the EC settled on 15 February 1996 as the final date for the elections. The BNP and the opposition parties, however, could not resolve their differences over the need for a neutral, non-partisan Caretaker Government to oversee the elections. The two main protagonists, Khaleda Zia and Sheikh Hasina, refused to meet face to face and were adamant in their respective stands. The opposition eventually decided to boycott the February 1996 elections but the BNP pushed ahead with a one sided election.

The voterless February 1996 elections strengthened the opposition's claims that the election results, held under a party government, could not be trusted. More seriously, it severely compromised the legitimacy of the BNP government which was reelected to power from such a flawed election. The opposition then started a nonstop, non-cooperation movement and *hartal* starting from 1 March 1996 demanding the resignation of Khaleda Zia as

Prime Minister and fresh elections under a neutral, non-partisan Caretaker Government. The non-cooperation movement now drew in a cross section of civil society spreading across the country, and paralyzing both the administration and arteries of communication. Government officials, concerned about the loss of legitimacy by government, refused to cooperate with the newly "elected" BNP government. Faced with a complete breakdown of the authority of the regime, the BNP government finally acceded to the demands of the opposition. It convened the Sixth parliament "elected" on 15 February 1996 which met only once to pass the 13th amendment of the constitution introducing a system of Non-party Caretaker Government to oversee future national elections.¹⁴ The opposition, was initially reluctant to cede legitimacy to the 6th Parliament by recognizing its right to amend the constitution. However, the opposition leaders finally accepted this arrangement as the most practical way out of the impasse.

5.4.4 The 13th Amendment: The Non-Partisan Caretaker Government System

The 13th amendment stipulated that after a five year term, Parliament will be dissolved and the incumbent government will step down. A Non-party Caretaker Government (CTG) will then be sworn in whose main responsibility will be to organize a free and fair election within a ninety day period.¹⁵ The CTG will not get involved in any long term policy making decision. The CTG will consist of ten advisors with the status of ministers and will be headed by a Chief Advisor (CA) who will have the status of the Prime Minister. The CA and the advisors cannot be members of any political party and they will not contest the election. The amendment laid down the criteria for the selection of the CA. The President will appoint the last retired Chief Justice of the Appellate Division of the Supreme Court or the one before; and if they are unavailable from retired judges of the High Court and failing availability of judges, an eminent person following consultation with the political parties. If all these possibilities are exhausted, then the President can act as the CA. The key feature of the CTG system is, the neutrality and non-partisanship of the government. The CTG will be accountable to the President but all executive powers will be

vested in the CTG. However, one critical exception was made which later created controversies. The Ministry of Defense was kept under the control of the President and not the CA.

5.4.5 June 1996 Elections under the CTG of Justice Habibur Rahman

The CTG of Justice Muhammad Habibur Rahman emulated many of the steps of the 1991 CTG headed by Justice Shahabuddin Ahmed. The EC was reconstituted after consultation with all major parties and was given independence, and powers to demonstrate its neutrality and effectiveness. For example, the EC was given power to withdraw any officer on election duty or stop voting at any polling station. On the advice of the EC, again, large scale transfer of officials took place to ensure neutrality of the civil and police administration. The EC barred bank defaulters from contesting the elections.

However, in May 1996, barely a month before the scheduled 12 June election, a crisis developed due to a dispute between the President and the Army Chief which underscored one major weakness of the 13th amendment: that is, keeping the Ministry of Defense under the control of the President and not the CA. Normally, under a parliamentary system, the defense ministry stays under the control of the Prime Minister. Therefore, under the 13th amendment, the defense ministry should have been placed under the control of the CA who acts as the Prime Minister in a CTG. The placement of the defense ministry under the control of the President created a dual administration and opened up possibilities for partisan interference via the office of the President. This was particularly problematic since President Abdur Rahman Biswas was not non-partisan; rather he was selected for the post because of his partisan loyalty to the BNP.

On 20 May 1996, President Biswas, without consulting the CA suddenly dismissed the Chief of the Army staff, Lt. General A.S.M Nasim, and appointed a new army chief, Major General Mahbubur Rahman (who after retirement joined the BNP). This led to a near confrontation between troops loyal to the opposing sides. However, a bloodbath was avoided and

the crisis was diffused when the CA, Justice Habibur Rahman, went on T.V. and radio and appealed for peace and discipline. The AL leader, Sheikh Hasina, charged that the dismissals in the army were motivated by "BNP's conspiracy to sabotage the polls." The opponents of the AL, on the other, accused General Nasim and other dismissed officers of being AL sympathizers and planning a coup.¹⁶ This charge was questionable since General Nasim had been appointed to the post of Chief of Staff, by Prime Minister Khaleda Zia, superseding several officers senior to him in the army hierarchy.

The 12 June 1996 election organized by the Habibur Rahman CTG saw large scale involvement of Bangladeshi non-governmental organizations (NGOs) in voter education and election monitoring activities. A group of civil society organizations joined together to form a Fair Election Monitoring Alliance (FEMA). In addition, a total of 200 foreign observers from 35 countries came to observe the polls.¹⁷ Voting turn out was exceptionally high: 75 percent of eligible voters cast their ballots, of which 51 percent were men and 49 percent were women. Polling was generally peaceful. Again all observer groups, domestic as well as international, certified the elections to be free and fair.¹⁸

The results of the June 1996 elections (Table 1.3 in Chapter One) again showed that the two main parties, the AL and the BNP, have near equal popular support. The AL secured 37.4 percent and the BNP secured 33.6 percent of the popular vote. This time, however, the AL won more seats than the BNP. AL's seat strength was 146 and the BNP's 116. JP's strength remained roughly the same as in 1991. It secured 32 seats with 16.4 percent of popular vote. JI, however, suffered a setback with only 3 seats and 8.6 percent of popular support. The other smaller parties who won in 1991 lost out winning only 3 seats and 4 percent of the vote. Particularly striking was the loss of seats by all left leaning parties. Several popular leaders won from multiple seats; 24 seats were thus won. The election results indicated that in 45 seats out of the 300 member parliament electoral victory was won with a very small margin of less than 3000 votes difference.¹⁹ These marginal seats became the subjects of much controversy and influenced coalition politics in the next election. Again as

in 1991, no party was able to get an absolute majority in parliament and both the AL and the BNP started wooing the smaller parties for support.

Khaleda Zia initially refused to accept the AL as the winner and the BNP offered various deals to the JP to secure its support including a pledge to release its President, Ershad, from jail. But the JP threw in its lot with the AL which then gave the AL a clear majority in parliament. On 23 June 1996, eleven days after the election, Sheikh Hasina was finally sworn in as the Prime Minister and the AL returned to power after 21 years. One of Sheikh Hasina's first acts was to appoint a non-partisan, well-respected person, Justice Shahabuddin Ahmed, as President. Justice Shahabuddin had already served as President and head of the first Caretaker Government set up after the fall of the Ershad regime at the end of 1990 and had earned universal respect for presiding over a free and fair election.

5.4.6 Elections under the AL Government (1996-2001)

Though during its tenure in government, the BNP was opposed to the notion of a nonpartisan CTG, once the AL came to power, the BNP started agitating for a more extensive system of CTG. It began to demand that all elections, including local elections, be held under a CTG system. After initially participating in several by-elections, the BNP also started to boycott the by-elections alleging vote-rigging by the AL. Within a year, from 1997 onwards, the party resorted to walking out of and boycotting parliamentary sessions, mounting street agitations and *hartals*, and repeatedly calling for the AL government's resignation. The AL and the BNP supporters continued to confront each other in violent street clashes all through the five years of the AL rule.

As the 2001 elections approached, to increase its vote share, the BNP entered into an alliance with two Islamist parties – JI and Islami Oikya Jote (IOJ) and a faction of JP. Since 45 out of 300 Parliamentary seats were won with a narrow margin in 1996, the BNP's election strategy was to pull together all the anti-AL votes to ensure victory in these marginal seats.²⁰ The AL, on the other hand, could not keep the JP as its ally as the JP was

divided into three factions with one faction joining the BNP, and the other two contesting on their own.

5.4.7 The 2001 Election under the CTG of Justice Latifur Rahman

The AL government resigned after completing its five year term and a Caretaker Government was sworn in with the last Chief Justice, Latifur Rahman, as Chief Advisor. Immediately after his inauguration, Latifur Rahman reshuffled many of the top bureaucrats. He also transferred the officials in the districts. These steps were taken to ensure the neutrality of the administration in the electoral process as the BNP had complained that the AL had posted partisan officials. Again, a large number of national NGOs and international observer groups monitored the election process. Nearly 300,000 domestic observers and 250 international observers monitored the polls. Several multi-organization civil society networks including FEMA, a new group called Election Monitoring Working Group (EMWG) and others tried to achieve national coverage of domestic observers.²¹ Elections were held on 1 October 2001. Voter turn out was high – 75.5 percent with 51.6 percent men and 48.4 percent women.

The election results again showed the AL and the BNP to be near equal in the popular vote. (see Table 3 in the Appendix).²² The AL received 40.1 percent and the BNP received 40.9 percent of the popular vote. This time, however, the seat difference between the two parties was huge. The BNP won 193 seats whilst the AL retained only 62 seats. The BNP's electoral ally, Jamaat, received 17 seats with 4 percent of the vote. Islami Oikya Jote, another partner of the BNP's electoral alliance secured 2 seats with less than 1 percent of votes. As noted earlier, the JP, divided in three factions, suffered significant loss of support. The faction headed by Ershad, which contested the election as an alliance termed the Islami Jatiya Oikya Front, secured 14 seats with 7 percent of the vote. The faction that joined the BNP alliance won 4 seats with 1 percent of the vote and the third faction headed by Anwar Hossain Manju got 1 seat with less than 1 percent of the vote. Again the left parties could not win a single seat. Independents won 6 seats with 4 percent of the vote. Unlike the 1991 and 1996

elections, the 2001 elections produced a victor with an absolute majority in Parliament. Indeed the BNP alliance won a massive victory, a two-thirds majority in Parliament, sufficient to not only form the government but also to amend the constitution.

Unlike the 1991 and 1996 elections, the 2001 elections were preceded and followed by widespread violence and clashes between the rival parties.²³ For example, according to EMWG report between August and September 2001, 127 people were killed, 7729 were injured and 540 incidents of violence took place, all related to the elections. The aftermath of the elections saw even more violence. For 10 days, the supporters of the victorious BNP-led coalition unleashed unprecedented violence, killing opponents, looting property and raping women.²⁴ The supporters of the BNP led coalition ousted the AL supporters from control of various key institutions to exert control over major constituencies and to extract money. The minority Hindu community, who was alleged to be AL supporters, was particularly targeted.²⁵ The CTG could not immediately control the situation. After initial denial the government moved slowly to stop the atrocities.

The AL again charged that the polls had been "crudely" rigged, accusing the President, CTG and the EC of mismanagement and partisanship.²⁶ However since the President, the EC, and the CTG had been installed by the AL government, it was difficult to convince the poll observers that all three institutions had conspired to work against the AL. Initially the AL refused to accept the results and demanded fresh polls in all 300 constituencies. However, under pressure from domestic and international observer groups, who certified the elections to be fair, the AL finally accepted the results.

The controversies surrounding the 2001 election results, and the government's inability to control the massive post-election violence tarred the image of the Latifur Rahman's CTG. While before the 2001 elections the demand was to institutionalise a non-partisan CTG, after the elections ensuring the neutrality of a non partisan CTG became the opposition's main demand.

5.4.8 Elections under the BNP-Led Alliance Government (2001-2006)

The EC, particularly the CEC, who was appointed by the AL government and oversaw the 2001 elections which resulted in the BNP-led alliance's victory, became repeatedly embroiled in contestations with the government over the conduct of elections. In 2003, the CEC requested deployment of the army to oversee peaceful conduct of Union Parishad (lowest tier of local government) elections but the government steadfastly refused arguing that the law and order situation had improved. Failing to get government support for his request the CEC remarked that the elections would be a futile exercise.²⁷ This drew much flack from the government, and in parliament some BNP lawmakers demanded that the CEC be sacked. Over a period of 51 days elections were held in 4,243 union parishads (total numbers of UPs are 4,488) which saw 80 people killed and 7500 injured.²⁸

Similar contestations developed between the government and the EC over the conduct of by-elections. The most noteworthy was the by-election in the Dhaka 10 constituency in 2004, won by a candidate from the BNP alliance, where there were widespread allegations of vote rigging by the political opposition, media and civil society groups. The EC admitted that the election was unsatisfactory but argued that it was legally powerless to cancel the elections or challenge the results.²⁹ The relationship between the government and the EC deteriorated to such an extent that for several months the government stopped paying the salary due to the EC to penalize it and bring it under government control.

From 2004 onwards, a major confrontation started between the AL-led political opposition and the BNP-led alliance government over the issue of the neutrality of the next CTG overseeing the 2007 parliamentary elections. In 2004, the BNP-led government which held a two-thirds majority in Parliament passed the 14th amendment of the constitution increasing the retirement age of the Supreme Court justices from 65 to 67 years. The AL charged that this was done to ensure that the current Chief Justice will not retire before 2006 which will then allow Justice K. M. Hasan, the last retired Chief Justice, to assume the leadership of the next

CTG. As Justice Hasan had previously served as the International Secretary of the BNP and was then appointed an ambassador under a previous BNP government, the AL claimed that he was a BNP sympathizer and hence not acceptable to the AL to serve as the head of the next CTG. The AL demanded the selection of a neutral non-partisan former justice as the next CA. The BNP-led alliance government, however, refused to enter into any dialogue with the opposition over the issue of the neutrality of the next CTG.

The BNP-led government also selected a new CEC, Justice M. A. Aziz, without consulting the opposition parties. Again, the opposition objected to this selection. The new CEC soon became controversial as the EC's methods of preparing the voter's list were faulted by the political opposition as well as civil society groups. Even an independent study commissioned by the US-based National Democratic Institute (NDI) found the voter's list to be faulty. It claimed that one out of twelve names in the voters list were erroneous.³⁰

In 2005, the AL formed an electoral alliance with 14 opposition parties in an effort to increase its vote share as well as strengthen its anti-government mobilization on the issue of the CTG system. The 14 party alliance drew up a 23-point common program demanding reforms of the CTG system, the EC, and the electoral processes.³¹ The 23-point program demanded that the President select the CA and the members of the advisory council of the next CTG on the basis of consultation and consensus with all political parties. It also demanded that the Ministry of Defense be placed under the control of the CA and not the President. The 23-point program put forward several proposals for reforms of the EC, which included appointment of the Election Commissioners on the basis of a consensus agreement among all parties and the institutionalization of the independence of the EC from the control of the government. It further pledged political party reforms, including the elimination of influence of black money and muscle power from the election process.

The sweeping measures, endorsed by the 23 points attempted to include some of the demands voiced by civil society groups and the media who have been agitating for several years for clean politics and clean

candidates. While the two main parties were locked in a deadly game of confrontational politics blaming each other for undemocratic behaviour, media and civil society groups emphasized the democracy deficits of both parties.³² They voiced demands for governance and political reforms. Governance reforms included eradicating corruption, reversing the politicization of the government machinery, restoring the rule of law, and establishing transparency and accountability. Political reforms included democratizing decision-making within political parties, removing the influence of black money and *mastaans* (muscle men) in party and election politics, establishing transparency in campaign finance and so on. Many of these demands for reforms found their place in the *Report of the Nagorik Committee 2006*, a citizens' forum established to mobilize public opinion in support of a vision and policy agenda to move the country forward.³³

However, civil society's campaign for clean politics had little impact on the actual behaviour of the political parties. The two contesting political alliances continued to "sell" their nominations to prospective candidates who could capture votes through money and muscle power. At the same time, while the AL-led 14-party opposition was preparing to participate in the 2007 elections, it threatened that it would boycott the elections if the government did not accede to its two demands: appoint the next CTG head and a new CEC on the basis of a consensus between the government and the opposition.

Civil society initiatives as well as moves by the international community failed to broker a peaceful negotiated settlement between the two contending political forces to resolve the impasse over the CTG and the EC. The government pushed ahead with its plans which the opposition branded as "election-engineering."

5.4.9 The [First] Caretaker Government under President Iajuddin Ahmed

As noted earlier on 27 October 2006, when the BNP-led alliance government stepped down, the government's designated CTG head, Justice K. M. Hasan, refused to take the office of the CA in the face of mounting violence. Instead of choosing another former Chief Justice or a

former judge of the High Court or an eminent citizen acceptable to all parties, President Iajuddin Ahmed installed himself as the CA and the CTG head. The legality of his eligibility to be the head of the CTG was challenged in a court of law but this legal challenge was frustrated when some BNP stalwarts pressured the Chief Justice to order the High Court to suspend the hearing of the challenge to the right of the President to head the CTG. The President and CA, Iajuddin further compromised the neutrality of his government by repeatedly taking unilateral actions without consulting his colleagues in the Advisory Council. This led to the resignation of four advisors on 11 December 2006.

It soon became apparent to all of Bangladesh and even the international community that the head of the CTG was not his own person but was discharging his mandate on the instructions of the BNP leadership. Under such circumstances, the scope of holding a free and fair election under Iajuddin Ahmed as CTG became untenable.³⁴

In January, 2007, the opposition political parties finally decided to boycott the parliamentary elections scheduled for 22 January 2007, and also threatened to thwart them. The opposition launched a nationwide blockade on 7-8 January 2007. But Iajuddin, acting under pressure from the BNP alliance, pushed ahead to hold a one-sided election. The BNP and its allies also threatened to confront the opposition on the streets. The country seemed to be on the verge of a civil war.³⁵

The international community, the diplomats, as well as the UN started publicly voicing their opposition to a one-side election. The US government, European Commission and the UN urged Iajuddin to take steps to ensure that all parties could participate in the upcoming elections.³⁶ Finally, the international election observers refused to come to Bangladesh to monitor the scheduled polls. The military, which since the ouster of the Ershad regime, had kept aloof from political involvement, then decided to intervene as it did not wish to take sides and use force to protect the BNP-backed Iajuddin CTG and push through a one-sided election. On 11 January 2007, the military forced Iajuddin to declare a state of emergency, resign as CA, postpone the scheduled 22 January 2007 elections, and promise a new and more acceptable CTG capable of

organizing credible elections within "the shortest possible time."³⁷ Failing to get their first choice, Nobel Laureate Professor Muhammad Yunus to agree to be the next CTG head, the military installed Dr Fakhruddin Ahmed as the CA of a new "caretaker" government.

5.4.10 Election Preparations under the (second) CTG of Dr Fakhruddin Ahmed

The CTG of Dr Fakhruddin Ahmed moved slowly with the preparations of the next elections. In his first broadcast to the nation on 21 January 2007, Dr Fakhruddin Ahmed pledged to organize a free and fair election but at the same time he and his colleagues underscored the commitment of the government to create a congenial environment for "truly democratic" elections. The Law Minister asserted that the government is not interested in "holding an election for election's sake; rather it wants to hold an election for restoring democracy."³⁸

The government reconstituted the EC with three new commissioners who had been perceived as non-partisan. The EC started to correct the disputed voters list and undertake other measures such as the introduction of tamper-proof voter ID cards and transparent ballot boxes. It sought independence from the executive branch of the government. After a long delay, the EC announced that it would take 18 months to complete all the preparations for a credible election and promised to hold the next parliamentary elections by December 2008. The EC had already proposed several measures which had for some time been on the agenda of civil society reformists, including registration of political parties, democratization of party decision-making, reservation of 33 percent of seats for women in all party decision-making bodies, ban on front organizations of parties, scrutiny of income and asset statements of the candidates and so on.³⁹ Civil society groups had on the whole been positive to these proposed measures while political parties have expressed reservations about some of them.

However, the prospects of the next elections would appear to hinge largely on the outcomes of the government's agenda of political reforms. The reforms agenda included, several items, the most prominent being (1)

democratization of political parties; (2) cleaning politics from the corrupt influence of black money and muscle power; and (3) undoing "doliokoron" (partisanship) of all major institutions of governance. All these issues had been widely discussed by civil society as well as political parties for many years. But, apart from public discussion and debate very little concrete action was forthcoming from the democratically elected governments and political parties to address these problems. In the last thirteen months, the Fakhruddin government has unveiled several reform proposals and has undertaken a number of concrete measures to push these proposals.

First, the government as well as the EC had repeatedly asked the political parties to introduce reforms which will facilitate democratic decision making within the parties. For a longtime, there had been persistent complaint that there is no democracy within the political parties that all major parties had been run by dynastic leaders who had centralized and personalized all power. To address this problem, the EC and the government proposed that parties should hold regular elections through secret ballot to elect different office bearers at various levels of party organizations, that election to party presidency should be limited to two term and that ministers should be barred from holding positions in party organizations.

Second, the government and the EC proposed several reforms to limit the influence of black money and muscle power. The measures included banning the front organizations of political parties which were supposed to include a large number of musclemen, limiting election expenses, transparency in election and party funding and so on. The government also initiated a massive anti-corruption drive against top political figures and prominent members of the business community. Many had been arrested and held without bail pending investigation and trial; some had been charged with various corruption and extortion cases, and sentenced to prison under the emergency provisions.

Third, the government started a process of undoing the "doliokoron" (partisanship) of major public institutions. For example, the partisan appointees of the EC, Anti-Corruption Commission (ACC), Public Service Commission (PSC) and the University Grant Commission were all asked to

resign and new and credible appointments were made in all these institutions.

However, the government had not succeeded in getting the support of credible political leaders for its reforms agenda. The prospects of a new political party committed to reforms and clean politics died prematurely when Nobel Laureate Professor Muhammad Yunus announced his withdrawal from the political arena on 3 May 2007, barely two months after he announced his decision to launch a new party.⁴⁰ Attempts by a relatively unknown political figure, Ferdous Ahmed Qureshi to float a new party, which had been popularly believed to be sponsored by some elements in the military backed CTG generated much criticism and controversy, particularly since the country had been ruled under emergency laws, which prohibited political activities.

The failure of new parties to emerge as a third political force led to the realization that the reforms agenda could not be implemented by the government on its own without the active support of existing mainstream political parties themselves. This realization, then, led to the search for "reformists" within the mainstream political parties who would support the government's reforms agenda. Individuals within the two main parties, the AL and the BNP were found who started talking publicly about the reform agenda, including democratizing decision-making within their parties. But these reformists were proved ineffective in challenging the existing leadership in their parties as well as appeared to lack the support of rank and file members who remain loyal to both Sheikh Hasina and Khaleda Zia.⁴¹

The difficulties the government had been facing in implementing its strategy underscored the uncertainties about the prospects of political reforms as desired by the Fakhruddin government or at least by its military backers. If the parties were not willing to change their leadership to accommodate the concerns of the military leadership who might thereby pressure the CTG to delay the holding of the elections within the schedule promised by the EC, the country might again face an impasse between the military and the political parties. This would not bode well either for a smooth transition to democracy or social stability in the country. These

prospects will be analyzed more comprehensively in the concluding section.

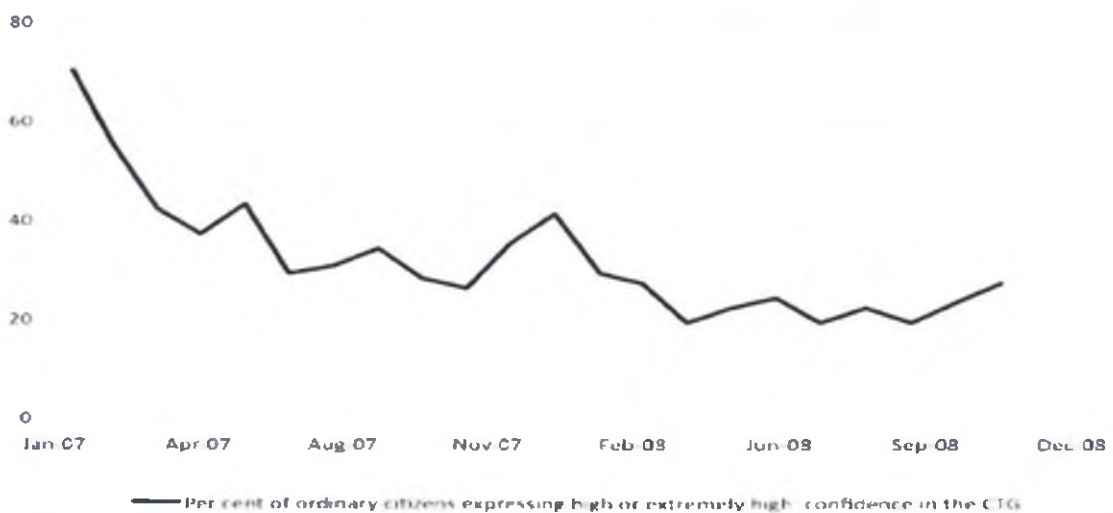
What lessons can we draw from Bangladesh's experiences with organizing free and fair elections? Bangladesh did succeed in organizing three successive elections, resulting in rotation of power between the two main political parties, but the country finally faltered in scheduling elections as the political players did not abide by the rules of democratic competition. A democratic competition assumes existence of agreed rules, an environment of tolerance, a referee whose arbitration is binding, accountability for violating the rules, and ultimately a rule of law enforcing the rules. But in Bangladesh, the contestants routinely violated agreed-upon rules which put the competition in jeopardy. For example, the BNP was initially opposed to the idea of a neutral, non-partisan CTG, but after accepting the notion in 1996, the party still violated the principle of neutrality of the CTG after it assumed power in 2001. The BNP's refusal to come to an agreement with the AL on the 2006 CTG and its imposition of a partisan President as the CTG head finally derailed the elections.

Additionally, the contestants in Bangladesh never satisfactorily institutionalized the EC as an independent referee. The losing party always claimed that the polls had been rigged, even when independent election monitors confirmed them to be free and fair. On the other hand, when independent observers claimed vote-rigging, as happened in the February 1996 elections and the by-election in Dhaka 10 constituency in 2004, the ruling BNP government pressured the EC to legitimize such fraudulent elections. This could be done because the EC remained under the control of the government and dependent on government funds for budgetary support. Successive governments either appointed their supporters in the EC or put undue pressure on independent minded election commissioners which made the EC ineffective.

In addition, to the weakness of the electoral institutions and its governance the culture of electioneering was far from being democratic. Election contests became what were popularly known as "showdowns," which often resulted in violent clashes between supporters of rival political parties. Disagreements could never be resolved through negotiations and

dialogues. The political players could continue to disregard rules and norms of democratic competition because there was no rule of law. The violators of laws and rules were not punished if they happened to be in state power. The Bangladesh experiences thus underscore the critical importance of the rule of law as one of the requirements of even a minimalist democracy. In the next section we shall briefly analyze the performance of the Caretaker Governments since 1991 in establishing the rule of law in the country.

Graph 1.2: People’s Confidence in the Caretaker Government (2007-2008)



Source: “National Public Perception Study Report,” Election Working Group, January 2008 and January 2009

5.5 The Caretaker Government Initiative and its limitations

In 1990 when people were convinced that the traditional practice of entrusting the incumbent government to hold elections would not work and might not be the best way to ensure free and fair elections, the pro-democracy peoples’ power movement produced the most innovative concept of non-party non-political Care-Taker government (CTG) to hold elections under free and politically unbiased conditions. The last three elections are a good testimony that as a concept it works, though in recent times there have been debates on how to make the concept operationally even more failsafe.

Fair Elections not a Sufficient Condition to Produce Fair and Competent Law Makers While the CTG initiative has made commendable contributions to improve conditions of elections, its current mandate do not allow it (and rightly so) to influence in any way either the candidate nomination process - a process that has ramifications for what happens afterwards or the quality of the candidates that get party nominations. In other words, a Care Taker Government can at best guarantee fair competition among the candidates that get nominations from their respective parties. Yet, history of the last three elections suggests that it is the quality of the nominated candidates some of whom eventually get elected and participate in the governance of the country affect the quality of operational aspects of democracy in a most significant manner.⁴²

5.5.1 Corrupt Nomination Process Produces Corrupt Leaders

It has been alleged that in Bangladesh the nomination process followed by the political parties in selecting/nominating candidates to contest elections not only lacks professionalism but is fraught with a range of pitfalls including corruption. As a result, what comes out of the process often falls far below the expectations of the citizenry, leaving them with no choice but to choose from what is given.

Thus over time it is becoming somewhat obvious that bequeathing control of the nomination process entirely to the machinations of the political parties not only limits socially desirable choices and results, but leaves the citizens with the option of either not voting at all or electing law makers from what is given. The results of the last three elections and the eventual broken promises and poor governance by the rotating elected law makers, clearly demonstrate gross weakness that surround the current nomination process. This is because the candidates, albeit some exceptions, who after going through a corrupt system receive nominations and then get elected possess neither the moral incentive nor the professional competence to promote good democratic practices in the country. It has been argued that one of the main reasons why competent and honest candidates fail to participate in the party based nominations process is due to the high transaction costs that accompany such a process. The existing

arrangements favour the wealthy (and sometime a combination of wealth and "muscle power") over quality. Also under the existing arrangements, the aspiring candidates who seek party nominations expect that by investing (heavily) in the nomination as well as the election processes (initially, to get party nomination and later, on election campaign to attract votes) and winning the elections, some sort of patronage usually of financial , will be made available to them to recover their election-related investments, perhaps few times over, in future.

This is a veritable road map for corruption, abuse of power and weakening of the rule of law. In countries where money, (and indications are that Bangladesh may be part of this scenario) and not merit plays a much bigger role in securing party nominations, where the citizens have no choice but to vote for one or the other candidates nominated by the political parties and where the candidates once elected through this arrangement have no option but to behave in a self-seeking manner, the citizenry ends up getting, what someone has recently said, "the government that you vote for and not the government that you want". The challenge, therefore, is how to get the citizens to secure the candidates they want to vote for and get the government they want and not the other way around.

5.5.2 Civic Engagement in candidate selection process

If the quality of the politicians-especially that of the elected representatives—is regarded as critical to ensure institutional integrity of democracy, something that ultimately affects the lives of all citizens including the socio-economic development of the country should the citizenry entrust the political parties to remain as the sole agency of candidates selection for election? Instead of the supply side (political parties) telling the demand side (the citizens) the commodities they ought to choose from should it not be the other way around - the demand side telling the supply side what their needs are? If we do opt for the latter, the challenge is how do we go about it Formation of Citizens' Accountability Groups (CAG) Is it possible for the citizens to form non-party citizens group, such as Citizens' Accountability Groups, CAGs, in each and every

constituencies and based upon a certain criteria, identify and pre-select candidates well before the parties start their nomination process? The CAGs then make their lists public and also make these available to the political parties giving them the opportunity to choose from with the understanding that among these, those who decide not to stand on any party ticket will have the option to contest as independent candidates, if possible with the support of the CAGs, if not financially at least, morally.

Furthermore, after the nomination process has been completed and in the period between final nomination/authentication by the Election Commission and the actual end of campaign date, the CAGs could also do couple of things. First, regardless of the sources of nominations (CAG or a political party) they could bring out a one-page dossier of all the nominated candidates giving details of their background and character (past record on community development, loan default history, treatment of the minority community, position on women etc. etc.) and second, bring them together under one platform at citizens' forums in each of the 300 constituencies to participate in debates. In these debates each of the candidates will be asked about the specific activities they would initiate - both in their respective constituencies as well as at the national level- to improve the developmental as well as the institutional aspects of democracy. This will be a very useful way to assess, in an open and transparent manner, the professional caliber of the aspiring candidates, and at the same time, establish for each of the candidates a benchmark for future accountability. Furthermore, once the candidates have been elected, regardless of whether the winning candidates are party-nominated or CAG nominated, it is suggested that the CAGs remain engaged throughout their parliamentary tenure and continue to gather them together, on a periodic basis and assess their performance on the basis of their pre-election commitments. This will be a useful way to complement the parliamentary governance through direct citizen engagement and contribute to a bottomup accountability process.

Undoubtedly, the proposals presented above are extremely radical, if not somewhat controversial. Furthermore, though noble in intentions, innovations are never without their challenges. The first challenge will be

to ensure that the proposed CAGs are competent and truly independent. Secondly, CAGs must develop suitable mechanisms for identification and selection of candidates that are based purely on professional considerations. Thirdly, the preparation of dossiers of nominated candidates must be objectively based and be as accurate as possible. A rigorous process must also be followed to achieve this. Finally, CAGs must also formulate a plan to facilitate electoral participation of selected candidates who do not receive party ticket, but are willing to stand as independents. To strategize and to guide the entire process, it is desirable that a National level CAG (NCAG) is also formed.

5.6 JUXTAPOSING THE PROMISES, PROVISIONS AND CHALLENGES OF CARETAKER GOVERNMENT

5.6.1 Initial Promises and Provisions

Election under a Non-party Caretaker Government in Bangladesh was unique. It was an innovative concept. Most democracies in the developing world watched and awaited the performance of such government in Bangladesh. Many countries near and distant were saddened to see that in Bangladesh the novel concept fell into deep trouble before the President resigned from the position of the Chief Advisor.

The rationale of the Non-party Caretaker 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 had 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 Caretaker 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.

5.6.2 The failure of the Caretaker Government system

Bangladesh's non-party CTG system, provided for under the Constitution, may be unique in its scope as a mechanism to create confidence and ensure impartial administration during election periods. By removing the reins of power from the incumbent government 90 days before a national election, the system is intended to prevent abuses of power and ensure that steps are taken to create a reasonably level playing field for elections. In a country as politically divided as Bangladesh, the CTG could have a key role in easing political tensions and reassuring parties that elections would be conducted impartially.

The CTG system was introduced for the national elections of 1991 at the demand of the major political parties. It was institutionalized through the 13th amendment to the Constitution in 1996, following political turmoil and a deeply flawed election. Although the losing sides in each election since 1996 criticized aspects of the CTG's performance, none had seriously questioned the legitimacy of the institution.⁴³ The successes of CTGs were based to a large extent on their ability to retain the confidence of the political parties and the general public through their essentially non-partisan composition and actions.

The system was given a body blow by the adoption of the 14th amendment to the Constitution, which resulted in the impression that a system designed to ensure neutrality was being manipulated for political advantage. It was this action, and the subsequent refusal by the opposition to accept its results, that set in motion the chain of events that resulted in the collapse of the planned election.

The apparent politicization of the CTG was reinforced when the President named himself Chief Advisor. This self-appointment, although not immediately rejected by the opposition, resulted for the first time in a Chief Advisor with a long-standing affiliation with a particular political party as the head of a nominally non-party institution.⁴⁴ The situation was exacerbated by the Chief Advisor's frequent practice of not consulting with

or informing the Council of Advisors of his actions,⁴⁵ thus circumventing one of the safeguards built into the system. The CTG's problem was more than one of just negative perceptions, however. It was clear to both impartial observers and to members of the Council of Advisors that the government had not fulfilled its critical task of providing a level playing field for the elections.⁴⁶

Even with this shortcoming, the election process might have gone forward reasonably satisfactorily, except that other institutions—in particular the BEC and the civil service—were also seen as politicized and had lost the general public's confidence. In the end, events showed that under adverse conditions, even a well-conceived and tested system such as the CTG was unable to engender sufficient impartiality or public confidence for elections to proceed smoothly.

5.6.3 What is a Caretaker Government supposed to do?

In the parlance of institutional government of Bangladesh, a Caretaker Government is one, which is supposed to take care of state administration for an interim period until the regular new government is formed. In an established parliamentary system, there is a convention of transformation of the outgoing government into a Caretaker Government for the time being before the holding of the general election. Such temporary government is supposed to only perform day-to-day administrative jobs, and not with policy initiating functions which may influence the election results. During this period the Caretaker Government is supposed to maintain a neutral status for ensuring free and fair general elections. Of course, this is what it is "supposed" to do. In reality the real balance of forces between the contending parties leads to a different situation.⁴⁷

Proving neutrality and depoliticizing the bureaucracy and law enforcement agencies are very difficult tasks for the Caretaker Government in view of the politically charged environment. The greatest challenges are to make the Election Commission effective and credible, ensure participation of all major political parties in the electoral process, and hold the next parliamentary election in a free and fair manner. To make the administration neutral, the Caretaker Government canceled contractual

appointments of many top officials, transferred a number of senior officials, and made major changes in the police administration.⁴⁸

The reason why such a set up was established in Bangladesh is clear. The demand for neutral Caretaker Government largely originated from a lack of trust in the political government under which the election was held. The past tradition of Bangladesh was one of rigged and fraudulent elections, and such malpractices were usually carried out by the outgoing government in power misusing their authority. The idea was that an interim authority would be acceptable to both the ruling as well as opposition parties. Its role was to complete the election process within three months, after which the elected government was expected to take charge. The 2001 elections were in fact held under the Caretaker Government as per the constitution. Those elections were won by the BNP coalition and Begum Khalida Zia came to power.

But this time the Awami League led opposition coalition declared that the ruling coalition would manipulate the present Caretaker Government system of conducting elections in Bangladesh in the future, thus making it more difficult for the opposition to win an election. Hence it has been demanding electoral reforms since July 2005 through street protests. It wants certain changes in the Caretaker Government system and the Election Commission. Though some attempts were made to resolve the controversy, the deep-rooted hostility between the two political parties kept them poles apart. On the eve of the transfer of power to the interim authority a last ditch attempt was made to resolve the controversy. But both sides failed to agree on any of 31 electoral reforms that the Awami League had proposed to ensure fair voting in polls due in January 2007.

The main problem was the choice of the head of the caretaker authority to supervise the election. Khaleda's Bangladesh Nationalist Party (BNP) wanted former Chief Justice K.M. Hasan in the post of caretaker chief, but the opposition Awami League led by Sheikh Hasina opposed him on the ground of his earlier associations with the ruling party. The other main dispute was over the opposition's demand for the removal of the chief

election commissioner M.A. Aziz and his deputies, who are accused of having a pro-BNP bias.

A significant development took place on the eve of transfer of power to the interim authority in Bangladesh. The earlier Chief Advisor designate, former Chief Justice KM Hasan refused to accept the responsibility in view of the widespread violence in the country. The president of Bangladesh received the letter from Justice KM Hasan declining the job offer on October 27, 2006. After this the president held a meeting with BNP Secretary General Abdul Mannan Bhuiyan and Awami League General Secretary Abdul Jalil and offered himself as the Chief Advisor.

Following this, President Iajuddin Ahmed on October 29 assumed the office of Chief Advisor to the Non-party Caretaker Government in addition to his presidential responsibilities. However in November 2006, after an emergency meeting with the 14-party leaders at her residence in the capital, Awami League (AL) President Sheikh Hasina said that "there is certainly a question about the neutrality of the president" and wanted him removed from the post of Chief Advisor of the Caretaker Government.

As the political crisis deepened, the Bangladeshi President Iajuddin Ahmed declared a state of emergency on January 11, 2007 and resigned as head of the interim Caretaker Government that was to serve in the period leading up to the elections. He will however, remain as President. He has also delayed the elections from 22 January to an unspecified date.

The new head of the Caretaker Government will be Fakhruddin Ahmed, a former governor of the nation's central bank. This little fact shows what the "impartiality" of the caretakers government really means. He is a direct representative of finance capital and therefore belongs to the ruling elite, the ruling class. His "impartiality" cannot bridge the gap between the classes! His nomination is based on a consensus between the two major political coalitions - both bourgeois coalitions - and his task will be to begin the reconstitution of the interim government. The president will now appoint ten Advisors within a day or two, consulting with the newly appointed Chief Advisor to complete the reconstitution of the council of

Advisors to the Caretaker Government that will initiate a fresh move for holding the next parliamentary election.

The underlying conflict between the contending parties can be seen in their farcical behaviour over recent months. Interestingly, the BNP-led four-party alliance which had welcomed Iajuddin's assumption of the office of Chief Advisor and who had attended his oath taking ceremony on October 29, 2006 in Bangabhaban, boycotted the oath taking ceremony of the new Chief Advisor. But the Awami League (AL)-led 14-party coalition and Liberal Democratic Party (LDP) that had boycotted the oath taking ceremony of Iajuddin as the Chief Advisor, protesting his 'unconstitutional takeover of the post', attended the function in Bangabhaban. Flanked by senior leaders of the party and its allies the BNP chairperson on October 29 2006 attended the function of Iajuddin taking over as the Chief Advisor, but none of them turned up at the ceremony of Dr Fakhruddin taking over as the Chief Advisor.

Nevertheless, the experience the people of Bangladesh are gaining in recent years is also of immense value to realizing directly the illusions of elections and representations without fundamentally addressing the task of installing the grounding act of democratic transformation and constituting themselves as a political community. The experience is also opening up the possibility of a democratic transformation within the predatory practices of global economy and the consequent war and violence in global politics. People are aware that their task is not easy, but it is challenging since any local transformation has a direct implication for regional and global politics as well. Being a geo-strategically significant country due to geographic location, population, religion and homogenous culture, all Bangladesh needs is to realize her destiny in the global system of states and world history.

While the question to ground the state on a democratic constitution is still looming, there is ample evidence that people at large want to be ruled by elected government. Since 1991, regular elections, high turnouts, a visible media, and advocacy of non-governmental organizations for elected government have reinforced people's positive political aspirations. Whether

such positive indications could succeed in being translated into a democratic polity is yet to be seen. This is more so under a peripheral economy like Bangladesh where primitive accumulation is impossible without the blatant use of political power.

Two political parties, the Awami League (AL) and Bangladesh National Party (BNP), dominated this centralized, 'winner takes all' system. Uncertainty in politics has further increased because of various economic, political and cultural factors. Among these, the determining factors are (a) the devastating socioeconomic impact of neo-liberal economic policy, (b) the global war against terrorism and counter-terrorist measures undertaken by the State, and (c) contesting claims on the cultural identity of the people of Bangladesh. Global extremism in politics and economic policy has precipitated extremist political trends and responses that could hardly be absorbed within a liberal democratic milieu. Bangladesh is not an island. Global instability ripples more violently in the periphery. What is astonishing is the resilience of the people and their determination to have a polity enshrined with democratic principles and founded on human rights and dignity. In 1996, Bangladesh introduced a constitutional amendment⁴⁹ under which, for a period 90 days preceding a national election, a Caretaker Government would be installed in order to level the electoral playing field and limit the powers of the incumbent government to manipulate elections. This worked relatively well for the 1996 and 2001 elections.

However, in 2005, the then BNP government sought to extend its influence over who would lead a Caretaker Government by raising the age of retirement for Supreme Court Judges. According to the Constitution, the oldest serving Judge heads the Caretaker Government. This fuelled tensions in an already unstable political environment, which was later compounded by the publication of the National Democratic Institute's survey which showed that the electoral roll was inflated by over 12 million entries. While NDI attributed the list's inflation mainly to migration, the Bangladeshi media and the AL used terms like 'fake' and 'false' to describe the additional names. This further inflamed an already tense stand-off and further polarized the debate surrounding the election.

Convinced that the AL would not be able to compete with BNP on a level playing field, the AL stepped up its strike and began a city blockade programme. This paralyzed economic and social life in Bangladesh, and led to as many as 50 deaths. When the AL finally stated that it would not contest the election, international and domestic observer groups decided not to monitor it, and the President of Bangladesh declared a State of Emergency on January 11, 2007, and cancelled the election. It appeared that the donor community also preferred a 'depoliticized' Bangladesh to advance the economic interest of powerful companies contesting to have a hold on energy, mineral and biological resources.

The military-backed Caretaker Government headed by Fakhruddin Ahmed, enjoyed significant initial popularity among the Bangladeshi population. A survey conducted by the Election Working Group (EWG), a donor-supported coalition of 32 domestic NGOs, found that there was "a broad consensus that the State of Emergency was necessary [...] for the country in view of the political crisis and lawlessness prevailing at the time of the previous Caretaker Government."⁵⁰

It is now evident, especially from the discussion above, that the dominant attitude of the main parties has not changed even after the introduction of the system of NCG. They have tried to influence the working of the NCG, failing which they have charged it with biases aimed at helping one and disadvantaging the other(s). Therefore, the problem probably lies more with the main political parties, than with the NCG. This is not to argue that the NCGs, which have so far helped organize the parliamentary elections in an impartial manner, did not have any lapses/failures. In fact, some of the activities of different NCGs caused suspicion among the politicians; these could have easily been avoided. For example, the alleged comment by one of the advisors in Latifur NCG that the next parliament would be a hung parliament as no party would get a single majority, and the (alleged) urging by another advisor to vote for those parties which would bring development in the northern region,⁵¹ could be considered as unwarranted. Similarly, as observed earlier, the decision of the Habibur NCG to celebrate 17 April, the day the government in exile was formed in 1971, caused some kind of controversy.

Moreover, there are some constraints built into the system of NCG which may limit its effectiveness. Firstly, members of the NCG, particularly the CA, who are not expected to have previous links with any political party, are paradoxically entrusted with the responsibility of organizing elections that have strong party political overtones. Elections, as Palmer observes, bring politics within the sphere of the citizen, and the citizen, into the political arena. There is thus a risk that a lack of experience of the NCG in handling party political matters may make it insensitive to politicians' problems and priorities. Politics, often considered as the 'art of the possible', involves bargaining and compromise, a process with which the NCG, particularly the CA, is unlikely to have much familiarity.

Secondly, as Supreme Court judges have been given priority over others in heading the NCG, there is a serious risk that party politics may intrude into the domain of the higher judiciary. In other words, it is not unlikely that political considerations may dictate the selection/appointment of judges to the highest seat of the judiciary. The constitution does not require the government of the day to consult the Chief Justice while making appointments to the HCD and the AD. On the other hand, the President, who can appoint the Chief Justice without any consultation with the PM, may in effect, be influenced in his decision by the party in power as he himself is elected by (party) MPs. In other words, by exercising control over the appointment and promotion of the judges of the SC, the government of the day might hope to influence the formation of the NCG in the long run and, ultimately, the election process. As Zafarullah and Akhter observe:

In a country where the courts are inherently politicized, finding a former Chief Justice, supportive or sympathetic towards a particular party, would not be hard. Hypothetically, the scheme might also be used by party government to plan in advance the appointment of politically motivated judges to the Supreme Court and have them prematurely retired before an election. Thus such a party could have one of its own allies chosen as head of an NCG. In such an event, the entire edifice of neutrality would fall apart.⁵²

Thirdly, the recurrent use of the NCG as a constitutional mechanism to safeguard electoral integrity and ensure a violence-free election, as Zafarullah and Akhter argue,⁵³ might inhibit the growth of a democratic electoral culture. Politicians are likely to be discouraged from learning by making mistakes. In fact, the institution of NCG is deemed to be a slur on the efficiency and capability of the politicians to be the trustees of the nation; it diminishes people's confidence in them.⁵⁴ There is thus a risk that party governments might be denied the opportunity to take responsibility for conducting fair elections and contesting parties might be disinclined to enforce strict electoral discipline in their own initiative by mutually agreeing to abide by code of electoral conduct.⁵⁵

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- ³⁷ Ibid.
- ³⁸ "Reforms, Polls, Within Next Year: Mainul", *The Daily Star*, 11 June 2007.
- ³⁹ "Provision for No Vote, 33 percent Women Office Bearers in Parties", *The Daily Star*, 20 May 2007.
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- ⁴¹ Rehman Sobhan, "Exit Strategies – the Way Forward," *Forum*, 2(10), 2007.
- ⁴² M. Adil Khan, Chief, Socio-Economic Governance and Management Branch, Department of Economic and Social Affairs. United Nations, New York. USA. E-mail: khan4@un.org
- ⁴³ Sobhan, Rehman, "The twilight of caretaker governance?" *Forum*, January 2007.
<http://www.thedailystar.net/forum/2007/january/caretaker.htm>
- ⁴⁴ Ibid.
- ⁴⁵ Interview with former CTG Advisors, 26 November 2006 and 30 November 2006.
- ⁴⁶ Interview with former CTG Advisors, 26 November 2006. See also M. Abdul Hafiz, "Election 2007: The Question of Level Playing Field," the *Daily Star*, 18 December 2006, and "Concerned Secretary-General urges level playing field in Bangladesh polls," United Nations Department of Public Information, press release, SG/SM10802, 15 December 2006.
- ⁴⁷ Jamil M. Iqbal, Bangladesh and the crisis over the Caretaker Government, International Marxist Tendency, Wednesday, 17 January 2007 See also [Revolutionary Wave engulfs Bangladesh](#) by Lal Khan and Adam Pal (January 15, 2007) and [Bangladesh and the World Bank saga](#) by Jamil M. Iqbal (May 23, 2005)
- ⁴⁸ This note is an update on the political situation in Bangladesh provided in the country operations and business plan circulated to the Asian Development Bank Board of Directors on 2 November 2006.
- ⁴⁹ The 13th Amendment to the Constitution of the People's Republic of Bangladesh, 28 March 1996
- ⁵⁰ February 2007 Election Working Group (EWG) National Perception Survey, p. 2.

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- ⁵¹ S. Ahmad, 'The Polis Rancour', *The Dhaka Courier* 18(9), 21 September 2001, p. 10
- ⁵² H. Zafarullah and M. Y. Akhter, 'Non-Political Caretaker Administrations and Democratic Elections in Bangladesh: An Assessment', *Government and Opposition*, 35 (3, 2000), p. 364
- ⁵³ *Ibid.*, p. 369
- ⁵⁴ 'Democratic Institution Building Process in Bangladesh', p. 107.
- ⁵⁵ H. Zafarullah and M. Y. Akhter, 'Non-Political Caretaker Administrations and Democratic Elections in Bangladesh: An Assessment', *Government and Opposition*, 35 (3, 2000), p. 369

Chapter Six

ANALYSIS AND FINDINGS

Chapter Six

6.0 ANALYSIS AND FINDINGS

Now we are going to show a picture in the form of table and analysis gathered from the sample survey conducted on 300 persons residing at different districts of Bangladesh. The respondents were of different profession, age, academic qualification and social status. The data collected thereby reflects various dimensions and reasons behind the declining performance of NCG as a whole. The data also reflects their thinking about the nature of the problem and its remedy.

Table-2.1

Category of the Respondents by Profession

SL NO	Professional	Total No
1	Teaching	74
2	Student	79
3	Private Service	30
4	Politician	1
5	Journalism	1
6	Housewife	11
7	Government Employee (Retd.)	2
8	Government Employee	51
9	Business	51

TOTAL

300

Table-2.2
Category of the respondents by academic qualification

SL NO	Academic Qualification	Total No
1	B.A.	60
2	B.A. (Hons)	8
3	B.A. B.Ed.	7
4	B.A. LL.B	1
5	B.A. M.Ed.	1
6	B.B.A.	6
7	B.Com.	10
8	B.Com. (Pass)	1
9	B.Com. B.Ed	2
10	B.Com. B.Ed.	1
11	B.Sc.	21
12	B.Sc. B.Ed.	7
13	B.Sc. M.Ed.	1
14	BBA	4
15	Below S.S.C.	5
16	H.S.C.	67
17	LL.B.	2
18	M. Com.	2
19	M.A.	24
20	M.A. B.Ed.	3
21	M.A. LL.B.	1
22	M.Com.	8
23	M.S.S.	8
24	M.Sc.	15
25	MBA	10
26	MBBS	1
27	MSC	1
28	S.S.C.	22
29	Self-educated	1

TOTAL

300

Table-2.3
Category of the Respondents by District

Sl. No.	District	Number
1	Bagerhat	1
2	Bandarban	6
3	Bogra	7
4	Chandpur	9
5	Chapainababganj	7
6	Chittagong	2
7	Comilla	4
8	Cox'sbazar	22
9	Dhaka	32
10	Faridpur	2
11	Gaibandha	48
12	Gazipur	3
13	Jamalpur	2
14	Jessore	2
15	Jhenaidah	1
16	Joypurhat	2
17	Khulna	5
18	Kishoreganj	18
19	Kushtia	3
20	Lakshmipur	3
21	Madaripur	6
22	Manikganj	2
23	Meherpur	3
24	Munshiganj	3
25	Mymensing	6
26	Naogaon	10
27	Narayanganj	1
28	Natore	9
29	Nilfamari	1
30	Noakhali	3
31	Pabna	3
32	Rajbari	1
33	Rajshahi	9
34	Rangamati	1
35	Rangpur	1
36	Shariatpur	1
37	Shirajganj	3
38	Tangail	58
	Total	300

Table-2.4
Category of the Respondents by Religion

SL NO	Religion	Total No
1	Islam	271
2	Hindu	25
3	Christian	2
4	Buddhism	2
TOTAL		300

Table-2.5
Category of the Respondents by Age

SL NO	Age Below or Equal 40	Age Above 40	Total No
1	197	103	300

Table-2.6
Category of the Respondents by Gender

SL NO	Gender	Total No
1	Male	239
2	Female	61
TOTAL		300

Table-2.7
Category of Respondents by Income

SL NO	Yearly Income Below or Equal 20000/-	Yearly Income Above 20000/-
1	97	203

Table-2.8
Category of the Respondents by Marital Status

SL NO	Marital Status	Total No
1	Married	192
2	Unmarried	108
TOTAL		300

Table-2.9**Key challenges faced by the Non-party Caretaker Govt system in Bangladesh**

1	Anomalies in the constitution	255 out of 300
2	Diarchy of administration	228 out of 300
3	Lack of adequate skill among the polling personnel	130 out of 300
4	Lack of trust between the political parties	273 out of 300
5	None of them	4 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.9 appears before us with the information regarding the key challenges faced by the Non-party Caretaker Government in Bangladesh. It shows that highest number (273 out of 300) of respondents believe that lack of trust between the political parties is the key challenge faced by that system, when 255 out of 300 believe in anomalies in the constitution and 228 believe in the diarchy of administration as the key challenge for that system. Only 4 respondents agreed to the none of the options.

Table-2.10**Elections have been involved or participated by the respondents**

SL NO	Election have been involved or participated	Total No
1	Parliamentary Election 1996	96 out of 300
2	Parliamentary Election 2001	125 out of 300
3	Parliamentary Election 2008	265 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.10 reveals that highest numbers of respondents (265 out of 300) got involved or participated in the Parliament Election 2008 while 125 were involved in the Parliament Election 2001 and 96 in the Parliament Election 1996. This picture highlights the fact that the number of persons getting involved or participated in the elections under Caretaker Government is increasing.

Table-2.11**Role of respondents in the concerned election**

SL NO	Role in the concerned election	Total No
1	Candidate	6
2	Magistrate	7
3	Observer	14
4	Polling personnel	87
5	Voter	186
TOTAL		300

Table-2.12**Whether the elections under Non-Party Caretaker Government were much more neutral than the others under political Govt.**

SL NO	Election was much more neutral than the others under political Govt.	Total No
1	Yes	261
2	No	39
TOTAL		300

Table-2.13**Whether the elections under Non-Party Caretaker Government were much more credible than the others under political Govt.**

SL NO	Election was much more credible than the others under political Govt.	Total No
1	Yes	261
2	No	39
TOTAL		300

Table-2.14

Whether the elections under Non-Party Caretaker Govt. were much more acceptable to the people and observers than the others under political Govt.

SL NO	Election was much more acceptable to the people and observers than others	Total No
1	Yes	267
2	No	33
TOTAL		300

Table-2.15

What election among the three under the caretaker Govt. was much more neutral, credible and acceptable?

SL NO	Election among the three was much more neutral, credible and acceptable	No of Ans
1	Parliamentary Election 2008	235
2	Parliamentary Election 2001	34
3	Parliamentary Election 1996	31
TOTAL		300

Table-2.15 indicates according to most of the respondents (235 out of 300) the Parliamentary Election 2008 was most neutral, credible and acceptable in comparison with the others.

Table-2.16

What limitation is to be overcome first regarding to the Non-party Caretaker Govt. System in the present constitution?

SL NO	Limitation is to be overcome to the Non-party Caretaker Govt. System constitution	Total No
1	Duties and functions of the President and Chief Advisor are not specific	137 out of 300
2	Lack of conceptual skill among the electoral people regarding to the new	76 out of 300
3	None of them	2 out of 300
4	Polling personnel are not properly trained	25 out of 300
5	Role of Army is not clarified	70 out of 300
TOTAL		300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.17

What contrast/contradiction should be fixed first regarding to the Non-party Caretaker Govt. system in the present constitution?

SL NO	contrast/contradiction in the Non-party Caretaker Govt. system in present constitution	Total No
1	Conflict between the Government and the Election Commission	74 out of 300
2	Dual authority of the President and the Chief Advisor	123 out of 300
3	Jurisdiction of the Army Personnel and the Magistrates	27 out of 300
4	None of them	2 out of 300
5	Terms of the Caretaker Government	80 out of 300
TOTAL		300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.18

What is the key barrier for the Govt. to conduct a free and fair National Parliament Election?

SL NO	Key barrier for the Govt. to conduct a free and fare National Parliament Election	Total No
1	Lack of conceptual skill among the mass people	49 out of 300
2	Lack of coordination between the Caretaker Government and the Election	13 out of 300
3	Non-cooperation of the politicians	200 out of 300
4	Provision of dual administration between the President and the Chief Adv	37 out of 300
5	Unskilled polling personnel	17 out of 300
TOTAL		300

1. Total respondents were 300
2. There was a scope of multiple choices for each

Table-2.19

Whether the Non-Party Caretaker Government in Bangladesh is much more neutral than the political Government

SL NO	Non-Party Caretaker Govt. in Bangladesh is much more neutral than the political Govt.	No of Ans
1	Yes	254
2	No	46
TOTAL		300

Table-2.20

The Institutionalization Constraints of Democracy in Bangladesh

SL NO	Institutionalization constraints of democracy in Bangladesh	Total No
1	Absence of adequate laws and rules	122 out of 300
2	Colonial electoral process	62 out of 300
3	Colonial organizational structure of the political parties	141 out of 300
4	Colonial structure of the democratic institutions	124 out of 300
5	Lack of conceptual skill among the mass people regarding to the values of democracy	206 out of 300
6	Mass illiteracy	205 out of 300
TOTAL		300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.21

The first step of the future policy initiatives for reforming of the Non-party Caretaker Government system.

SL NO	Future policy initiatives for reforming of the Non-party Caretaker Govt. system	Total No
1	Arrangement of a referendum	41 out of 300
2	Arrangement of dialogues between the Government and the Politicians, Constitution Experts, Polling personnel, prof	83 out of 300
3	Conducting a nation-wide survey to find out the opinion of the mass people/professional groups	133 out of 300
4	Consultation with the national and international Constitution Experts	35 out of 300
5	Gathering experience from other countries	19 out of 300
6	None of them	2 out of 300
TOTAL		300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.22**The major economic constraints to institutionalizing democracy in Bangladesh**

SL NO	The major economic constraints to institutionalizing democracy in Bangladesh	Total No
1	Dependency on donor agencies	236 out of 300
2	High disparity among the society	241 out of 300
3	Influence of money on election	201 out of 300
4	Insufficient National Budget allocation	137 out of 300
5	Semi-feudal structure of the society	82 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.23**Whether the present system of the Non-Party Caretaker Government should be reformed**

SL NO	Present system of the Non-Party Caretaker Government should be reformed	Total No
1	Yes	245
2	No	55
TOTAL		300

Table-2.24**Main socio-cultural constraints to institutionalizing democracy in Bangladesh**

SL NO	Main socio-cultural constraints to institutionalizing democracy in Bangladesh	Total No
1	Inferiority complex	176 out of 300
2	Lack of consciousness among the mass people	223 out of 300
3	Presence of authoritarian culture in the society	184 out of 300
4	Presence of colonial values among the society	171 out of 300
5	Presence of feudal values among the society	142 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.25
Political constraints to institutionalizing democracy in Bangladesh

SL NO	Political constraints to institutionalizing democracy in Bangladesh	Total No
1	Absence of vision and/or foresight among the leadership	101 out of 300
2	Heritage of the long colonial rule	113 out of 300
3	Influence of inheritance in the leadership	174 out of 300
4	Poor quality among the leadership	202 out of 300
5	Too many political parties	132 out of 300
6	Unconsciousness among the electoral people	177 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.26
The Global Constraints to Institutionalizing Democracy in Bangladesh

SL NO	The global constraints to institutionalizing democracy in Bangladesh	Total No
1	Influence of global fundamental militancy	188 out of 300
2	Influence of global terrorism	155 out of 300
3	Influence of World Bank/IMF	192 out of 300
4	Negative influence of globalization	164 out of 300
5	New Polarization of power in the global politics	202 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.27
The main constraints of Political Parties for conducting democratically

SL NO	The main constraints of political parties for being conducted democratically	Total No
1	Absence of foresight	136 out of 300
2	Absence of statesmanship	198 out of 300
3	Colonial heritage of inter-behavioral relationship	93 out of 300
4	Lack of democratic values	242 out of 300
5	Mistrust, disbelief and herted among the political parties	227 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.28

The main constraints of parliament to be the centre for all political activities of the country

SL NO	The main constraints of parliament to be the centre for political activities of the country	Total No
1	Absence of foresight	136 out of 300
2	Absence of statesmanship	198 out of 300
3	Colonial heritage of inter-behavioral relationship	93 out of 300
4	Lack of democratic values	242 out of 300
5	Mistrust, disbelief and hatred among the political parties	227 out of 300
TOTAL		= 300

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Table-2.29

Whether the present Caretaker government system is not sufficient to face the challenges

SL NO	The present government system is not sufficient to face the challenges	Total No
1	Yes	165
2	No	135
TOTAL		300

Table-2.30

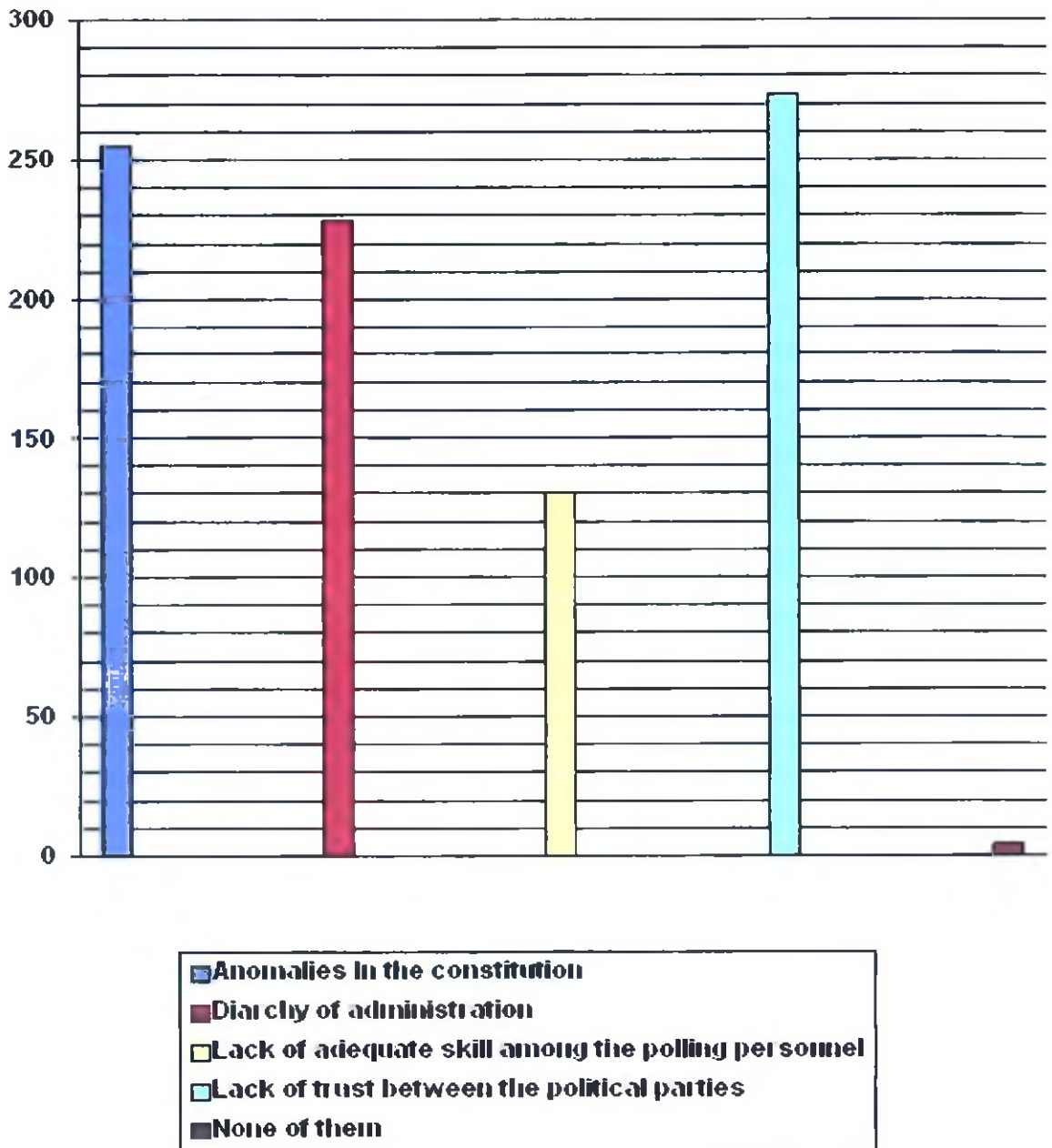
Whether the present leadership in the political parties is not sufficient to face the challenges

SL NO	The present leadership in the political parties is not sufficient to face the challenges	Total No
1	Yes	169
2	No	131
TOTAL		300

Table-2.29 and 2.30 portray the picture of frustration from the end of the respondents about present system of CTG as well as the present leadership in the political parties. Only 135 and 131 respectively out of 300 expressed their hope in favour of the present system of CTG and political leadership. Most of the respondents (165 and 169 out of 300) evaluated the both as not up to the mark.

Chart-1

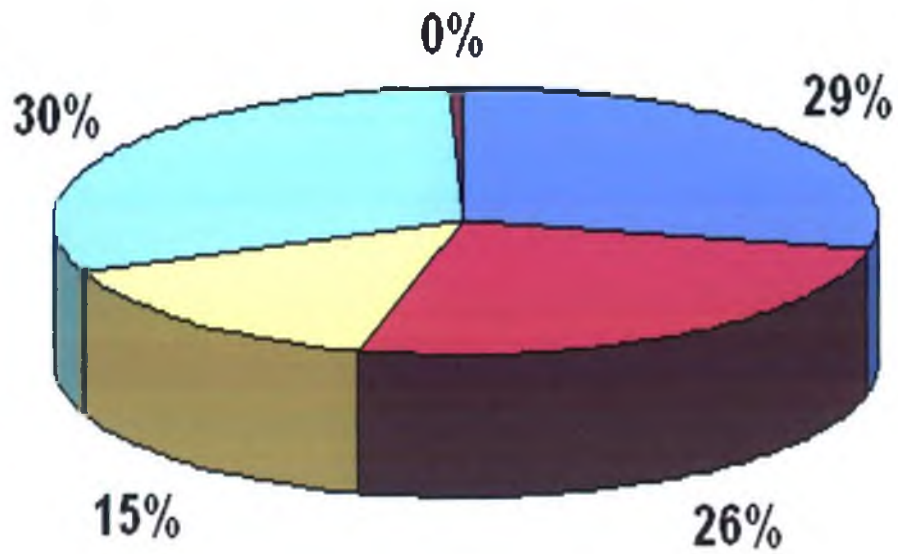
Key Challenges faced by the Non-Party Caretaker Govt. System in Bangladesh



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-2

Key Challenges faced by the Non-Party Caretaker Govt. System in Bangladesh

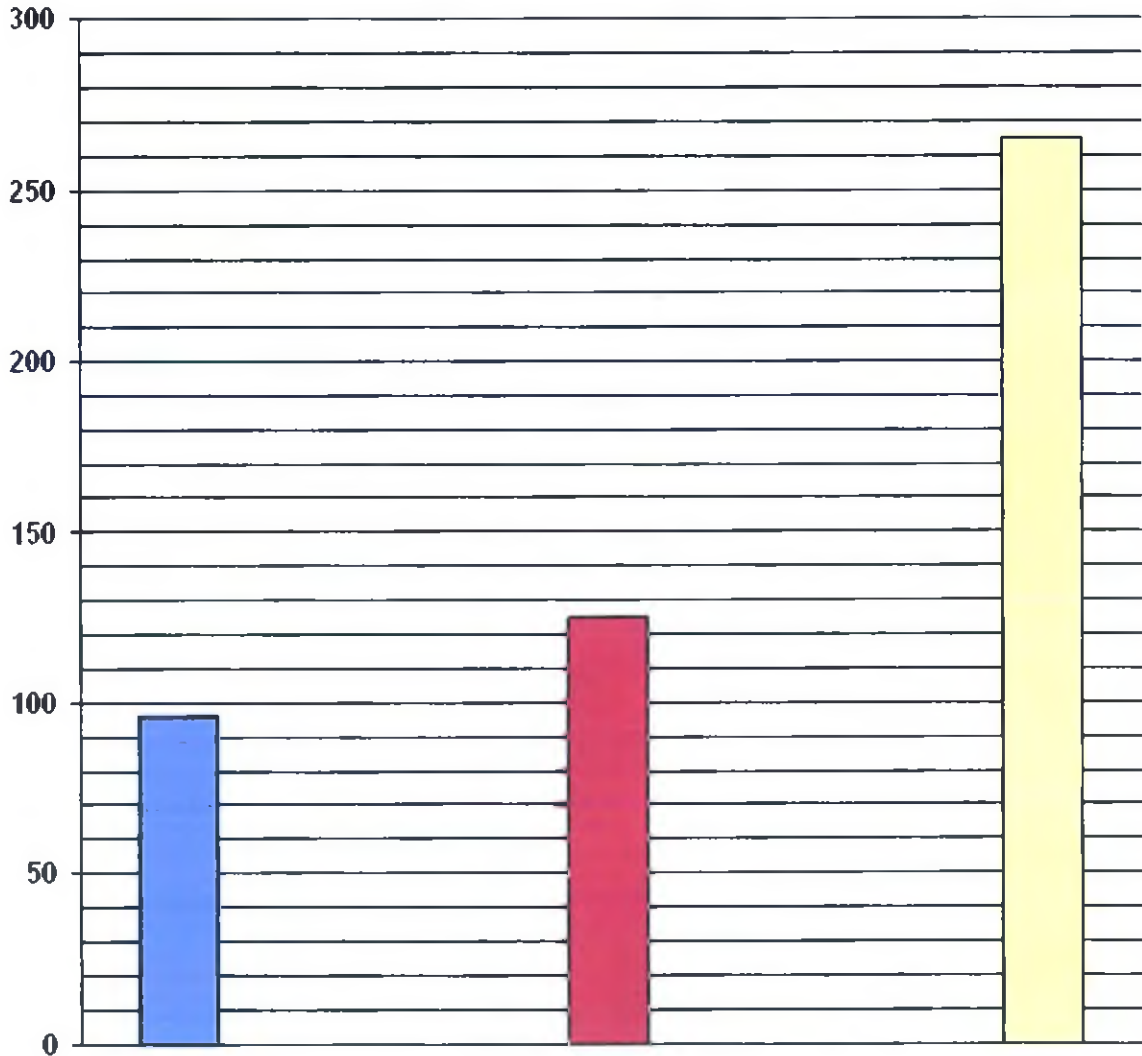


- Anomalies in the constitution
- Diarchy of administration
- Lack of adequate skill among the poiiing personnel
- Lack of trust between the political parties
- None of them

-
1. Total respondents were 300
 2. There was a scope of multiple choices for each individual

Chart-3

Elections have been involved or participated by the respondents



■ Parliamentary Election 1996

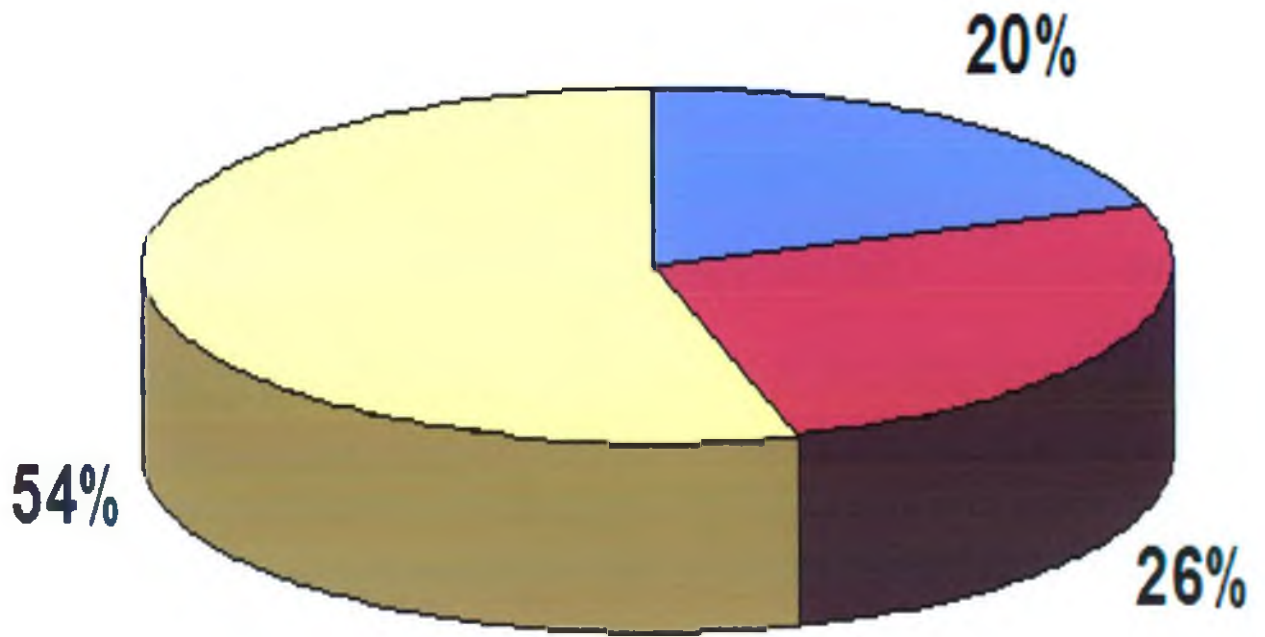
■ Parliamentary Election 2001

■ Parliamentary Election 2008

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-4

Elections have been involved or participated by the respondents



■ Parliamentary Election 1996

■ Parliamentary Election 2001

■ Parliamentary Election 2008

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-5

Role of Respondents in the Concerned Election

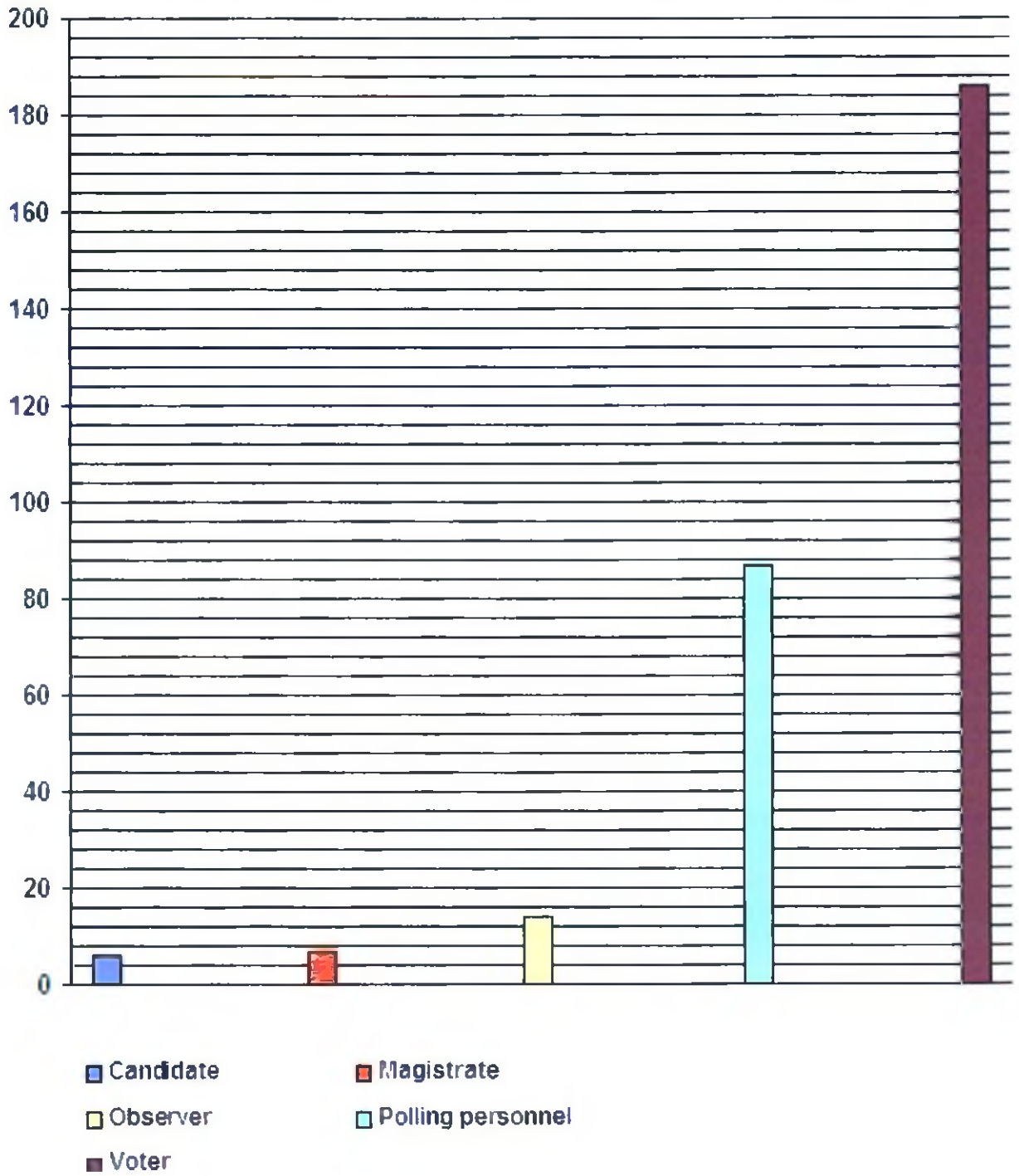
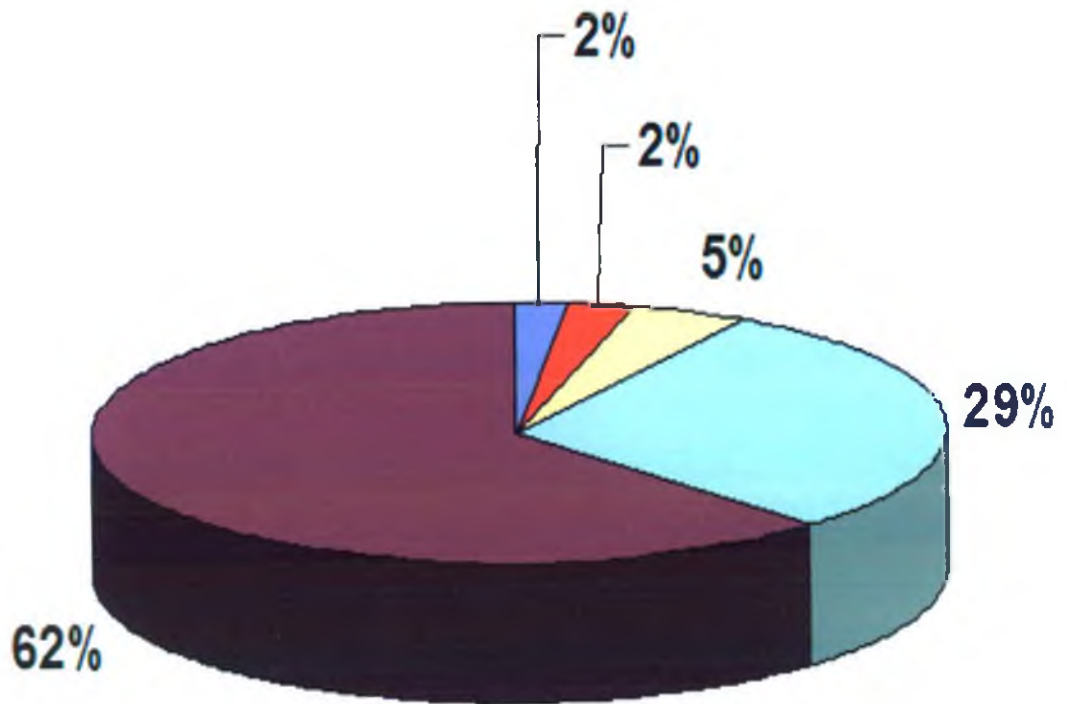


Chart-6

Role of Respondents in the Concerned Election



■ Candidate

■ Magistrate

■ Observer

■ Polling personnel

■ Voter

Chart-7

Whether the Elections under Non-Party Caretaker Government were much more neutral than the others under Political Government

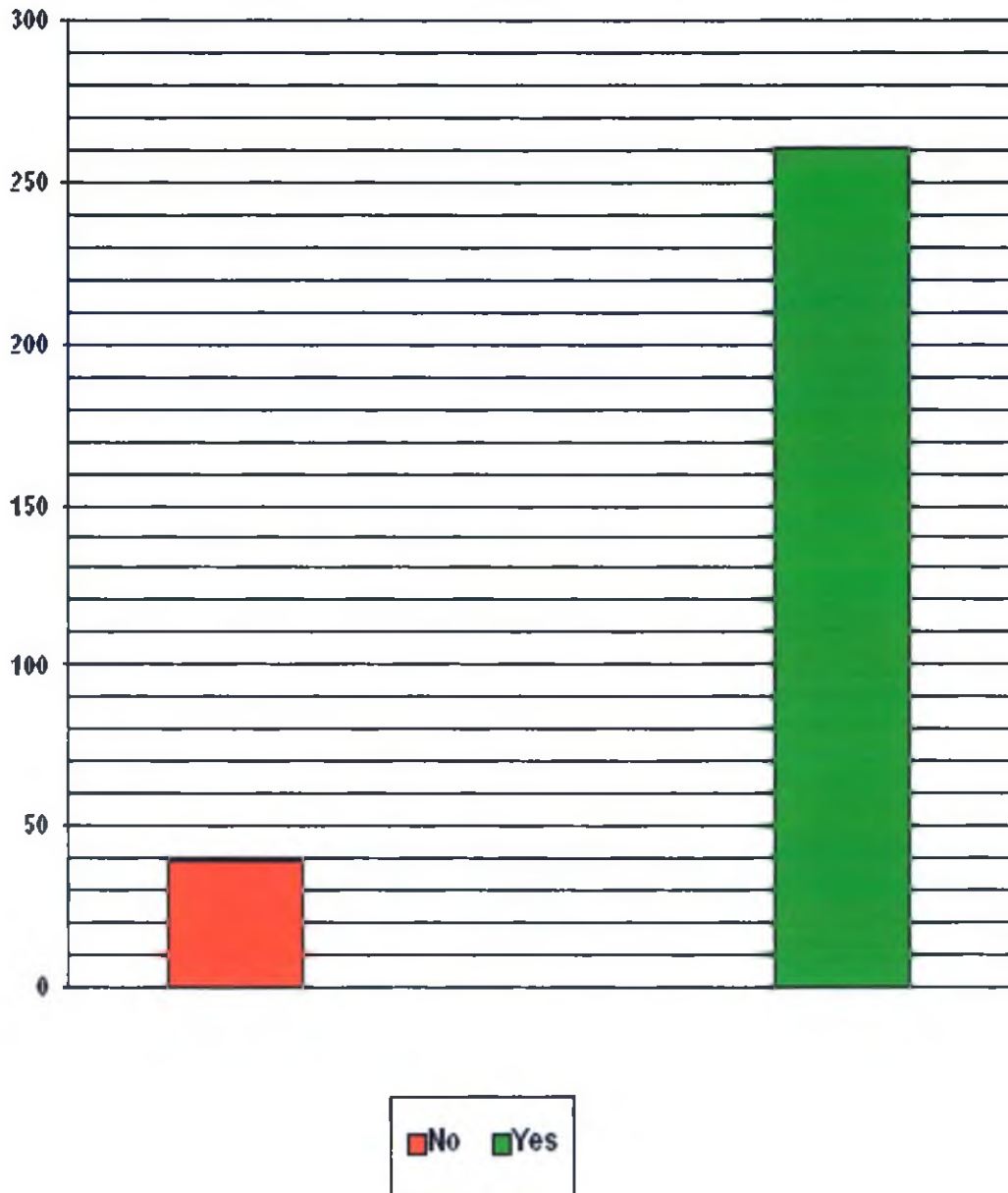


Chart-8

Whether the Elections under Non-Party Caretaker Government were much more neutral than the others under Political Government

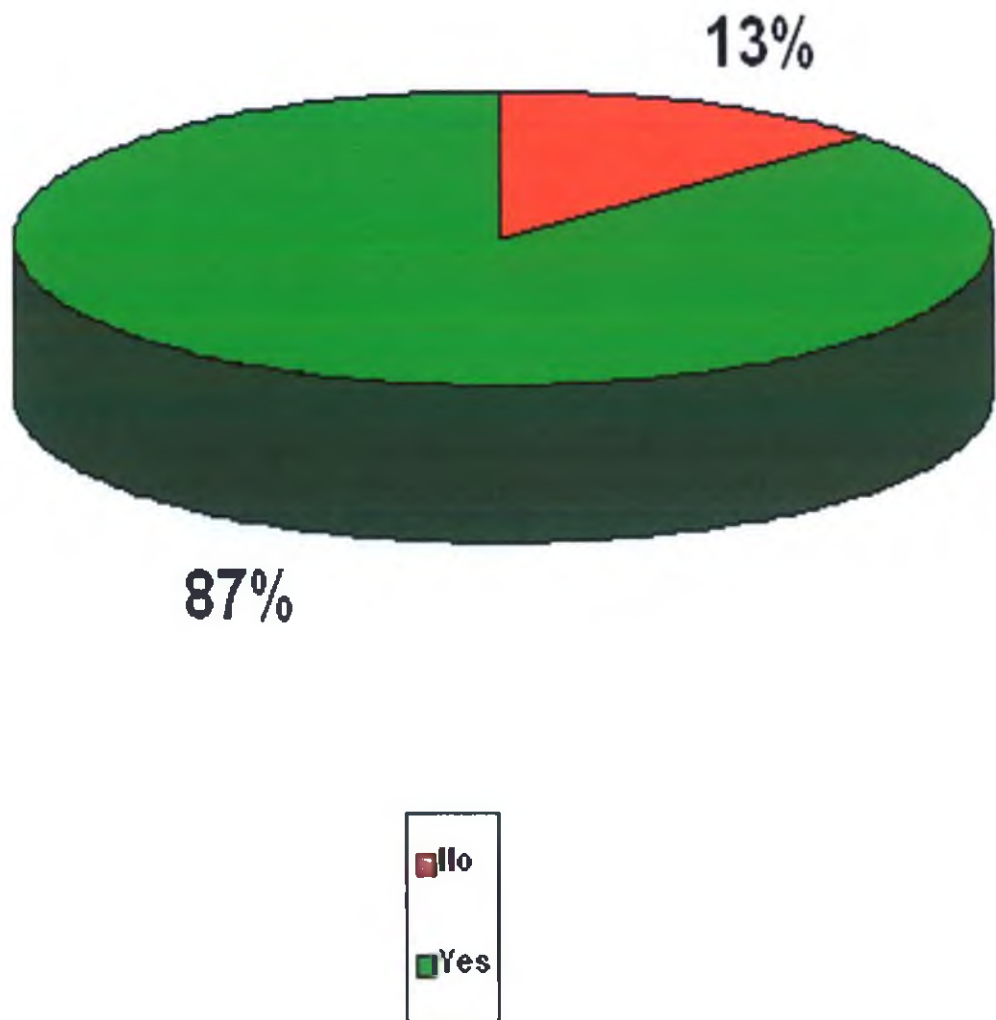


Chart-9

Whether the Elections under Non-Party Caretaker Government were much more credible than the others under Political Government

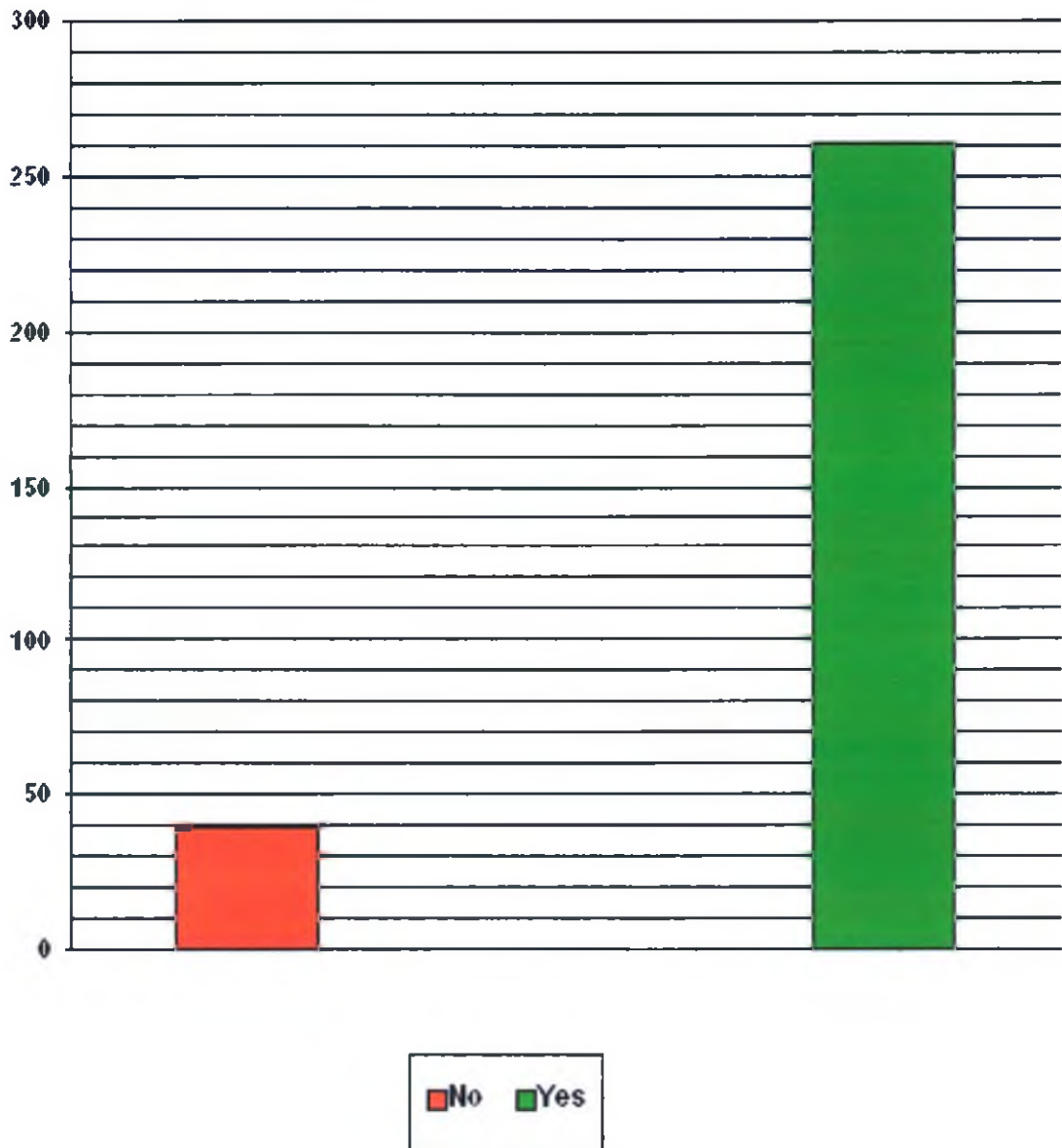


Chart-11

Whether the Elections under Non-Party Caretaker Government were much more acceptable to the people and observers than the others under Political Government

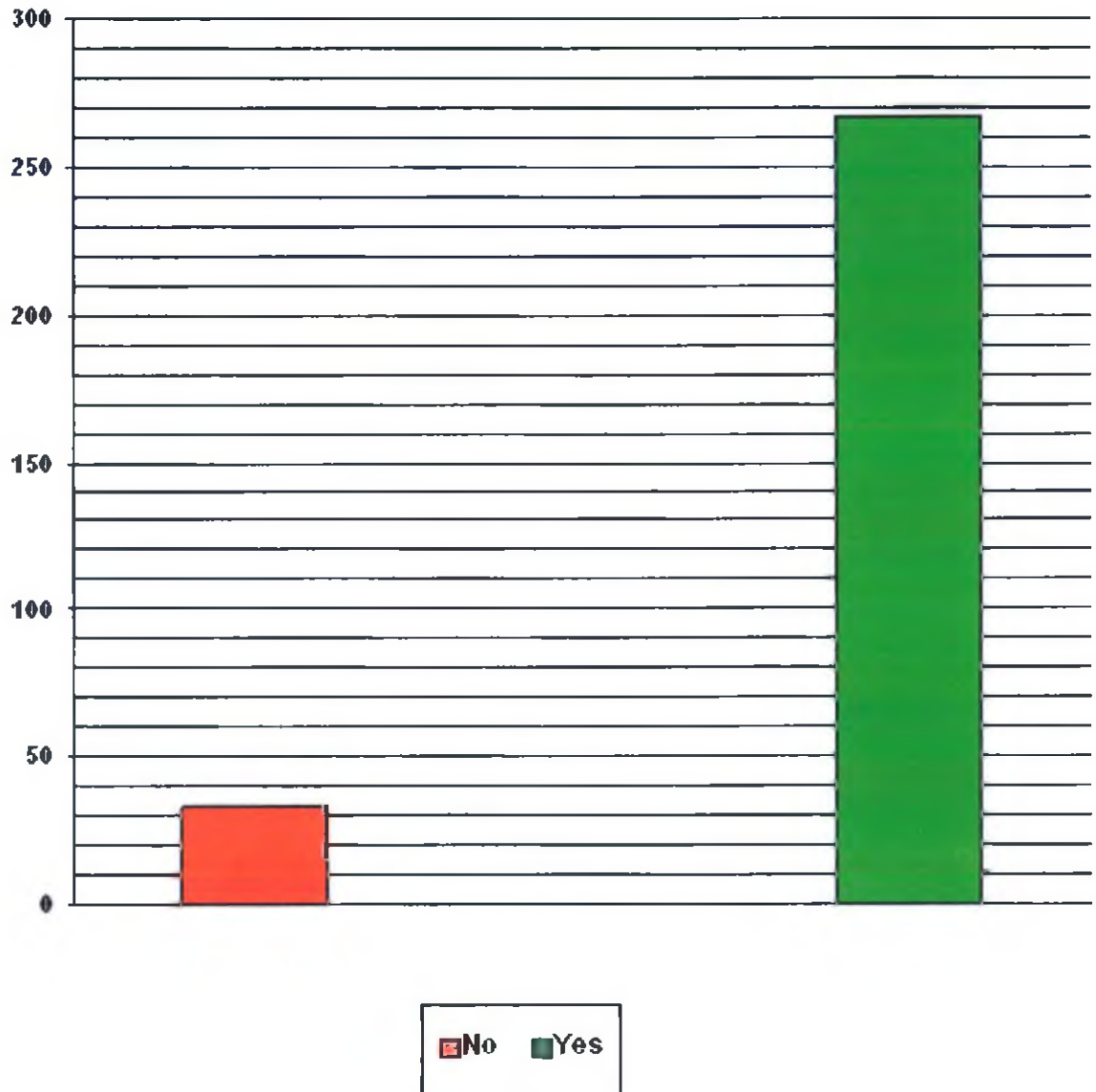


Chart-12

Whether the Elections under Non-Party Caretaker Government were much more acceptable to the people and observers than the others under Political Government

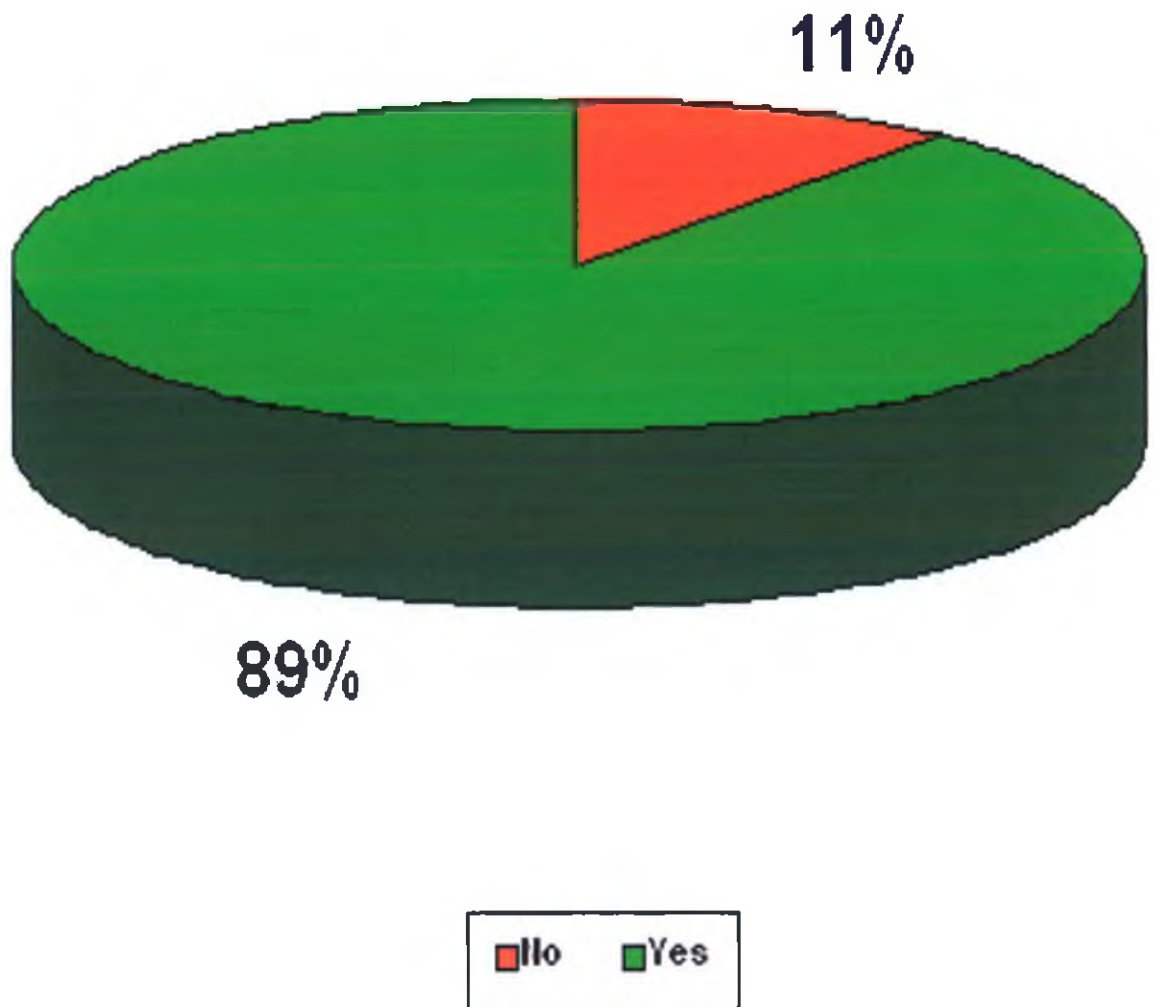


Chart-13

Whether the Non-Party Caretaker Government in Bangladesh is much more neutral than the Political Government

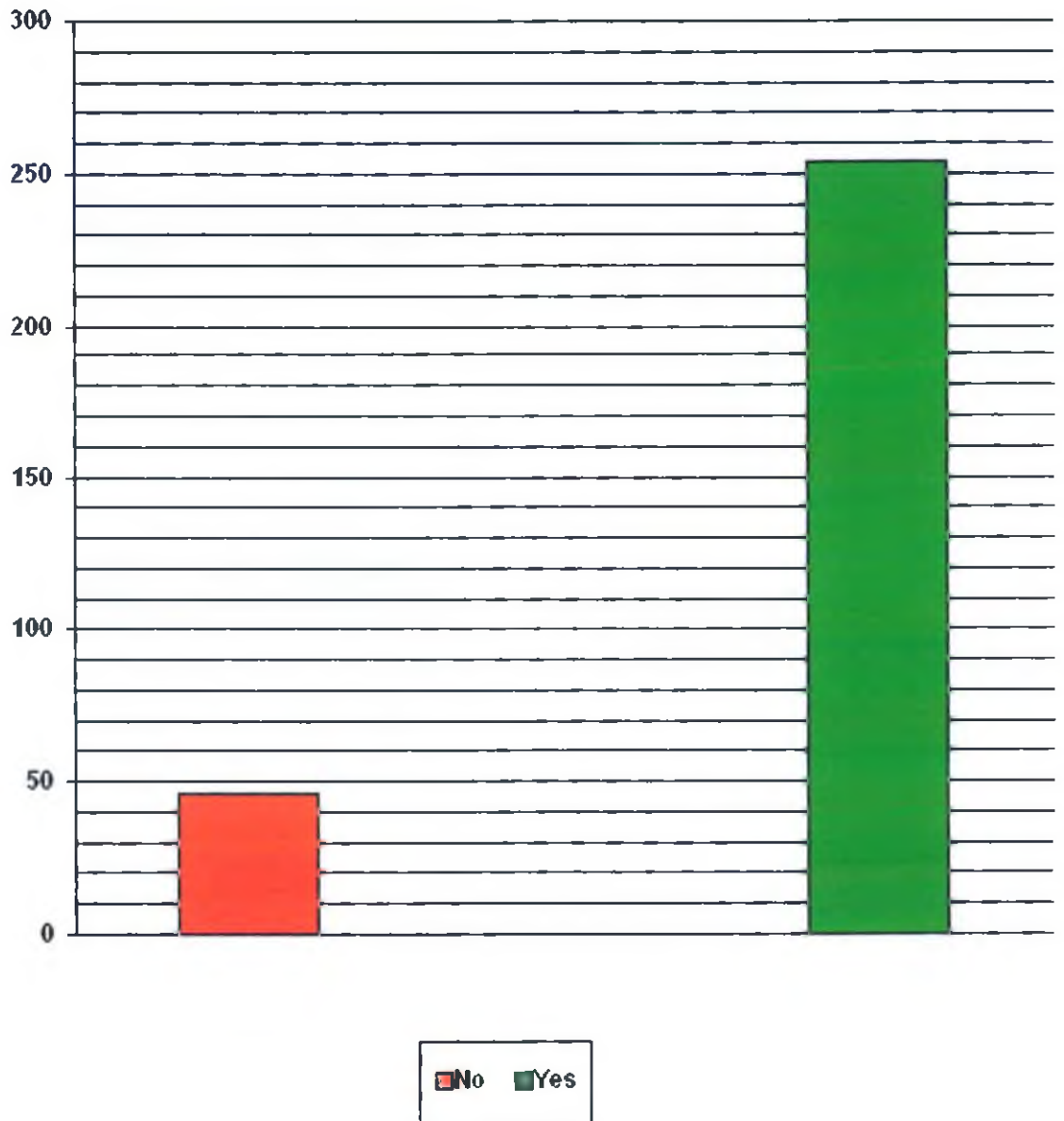


Chart-14

Whether the Non-Party Caretaker Government in Bangladesh is much more neutral than the Political Government

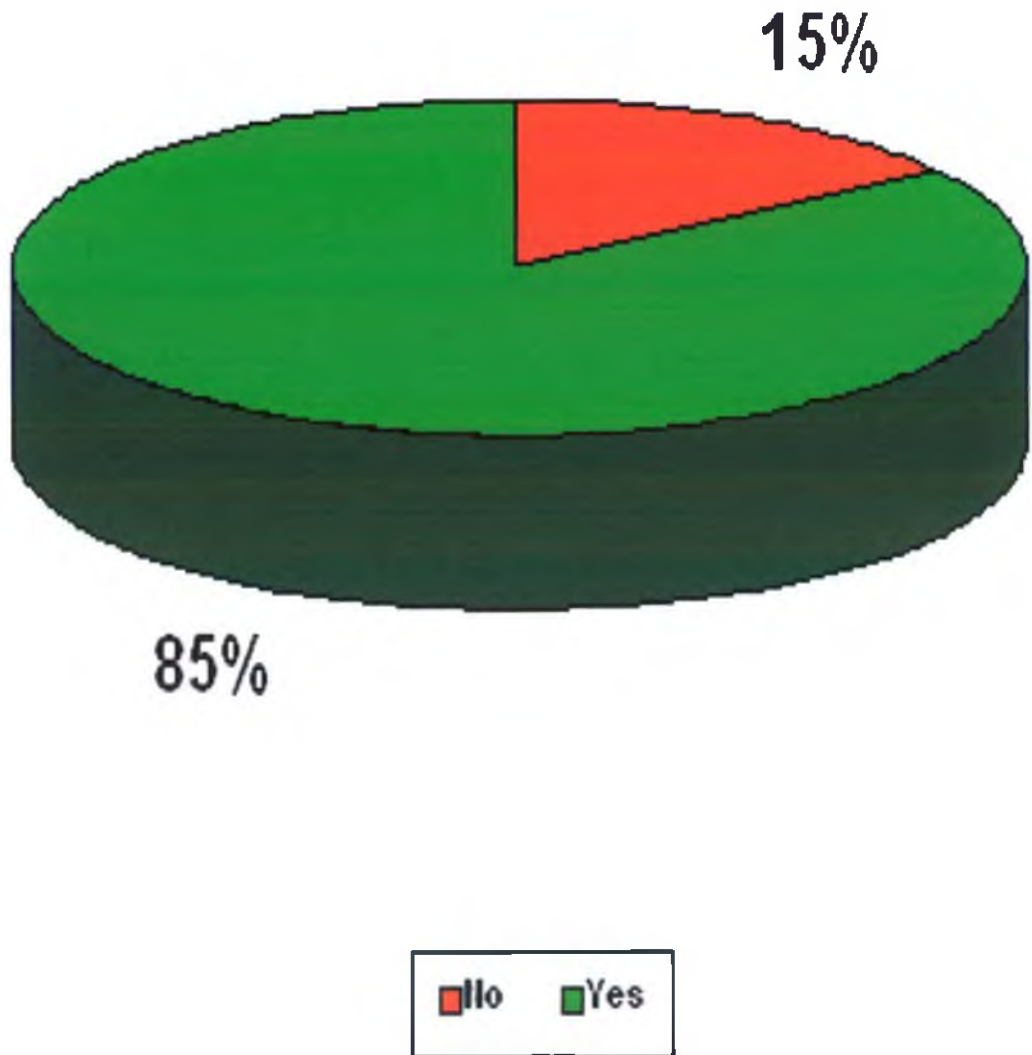


Chart-15

What Election among the three under the Caretaker Government was much more neutral, credible and acceptable?

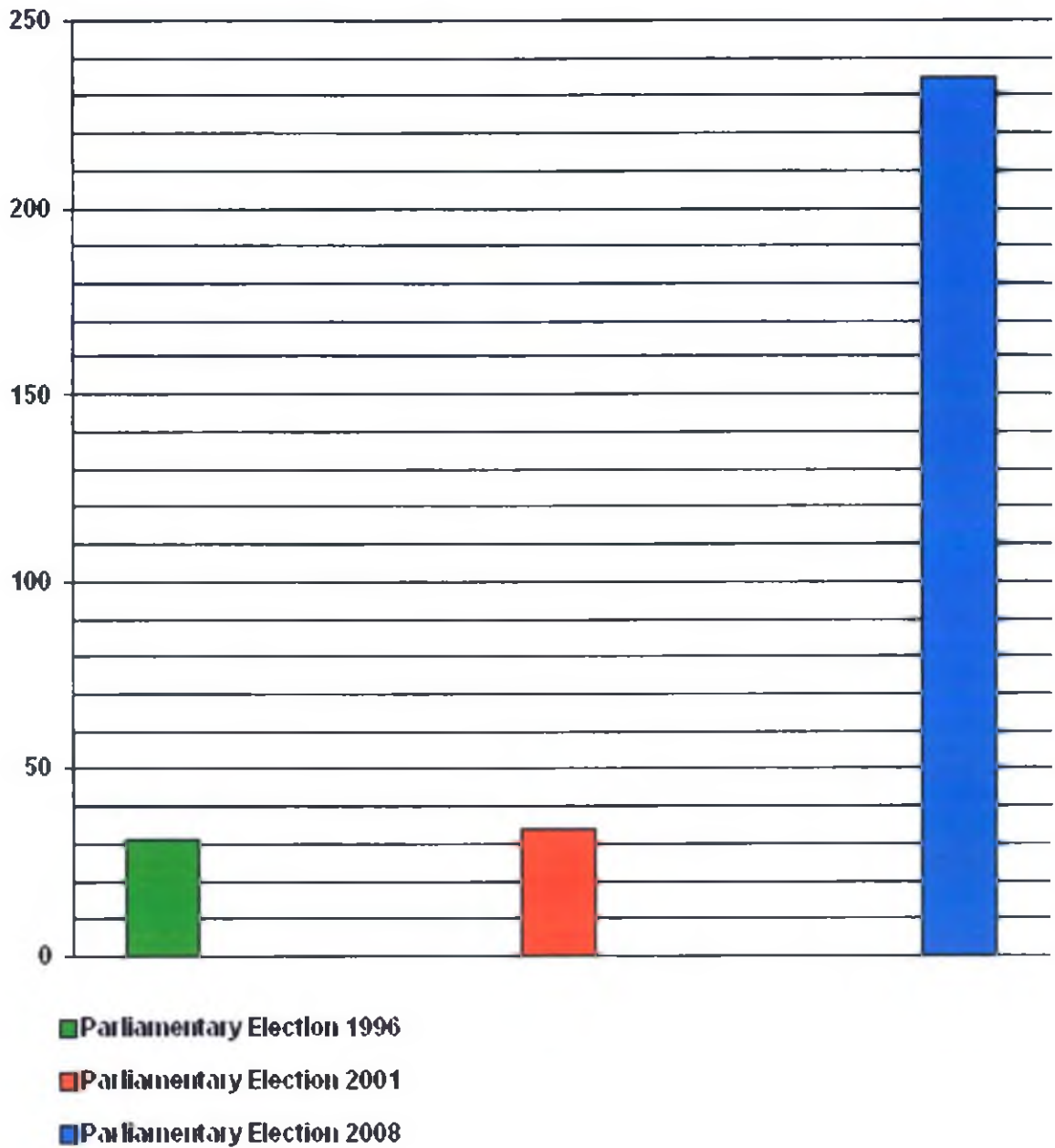


Chart-16

What Election among the three under the Caretaker Government was much more neutral, credible and acceptable?

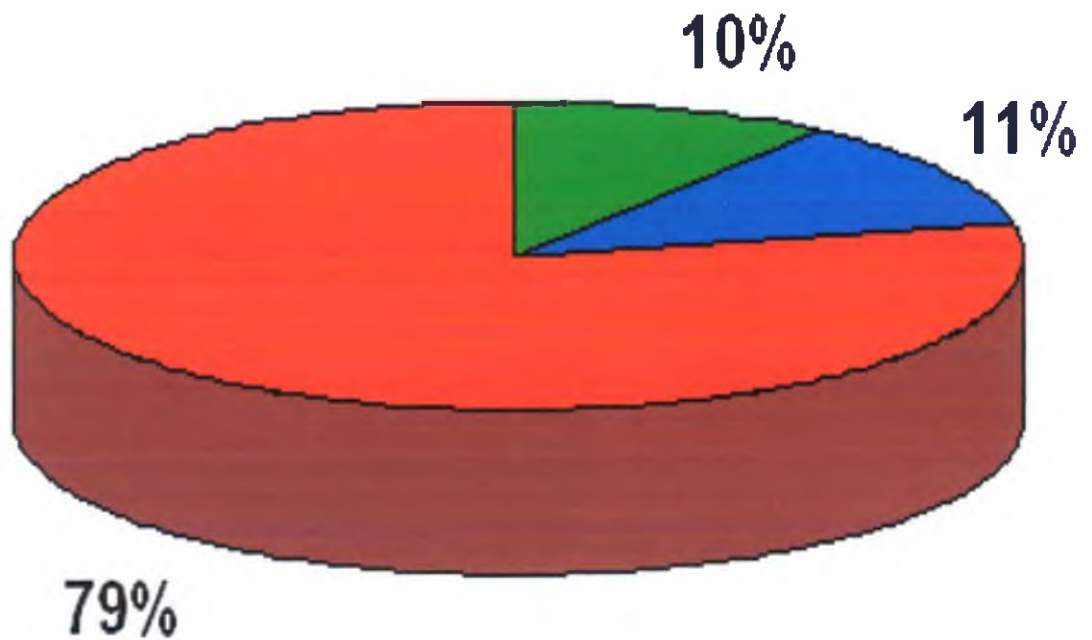


Chart-17

What limitation is to be overcome first regarding to the Non-party Caretaker Govt. System in the present constitution?

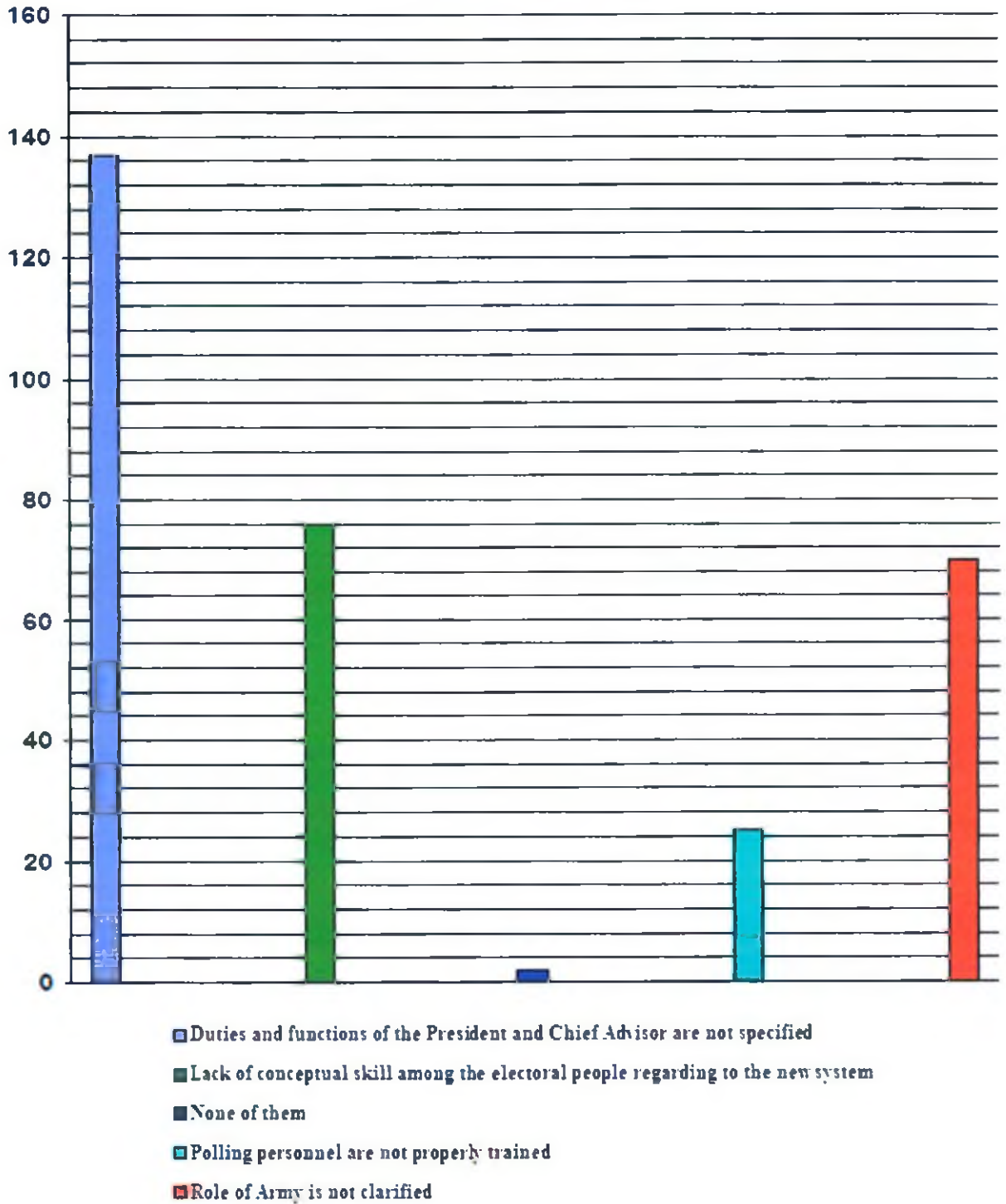
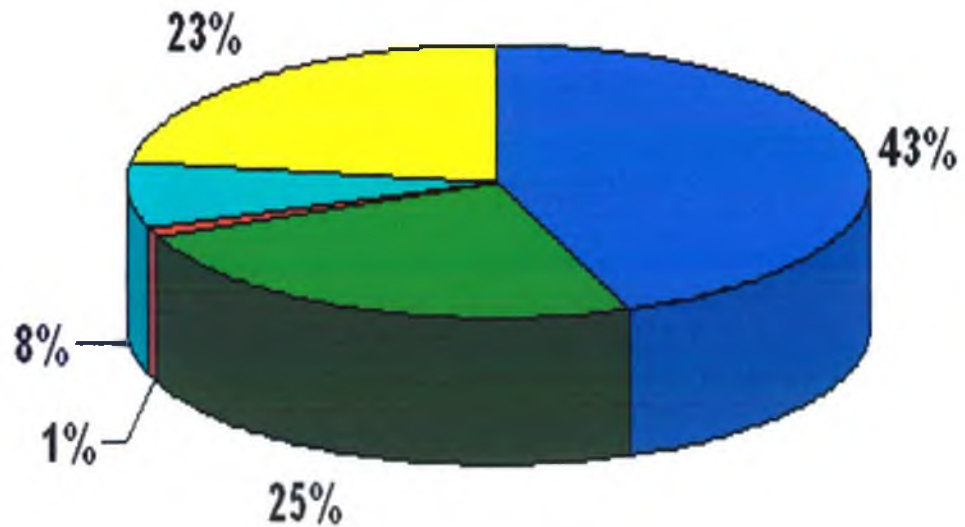


Chart-18

What limitation is to be overcome first regarding to the Non-party Caretaker Government System in the present Constitution?

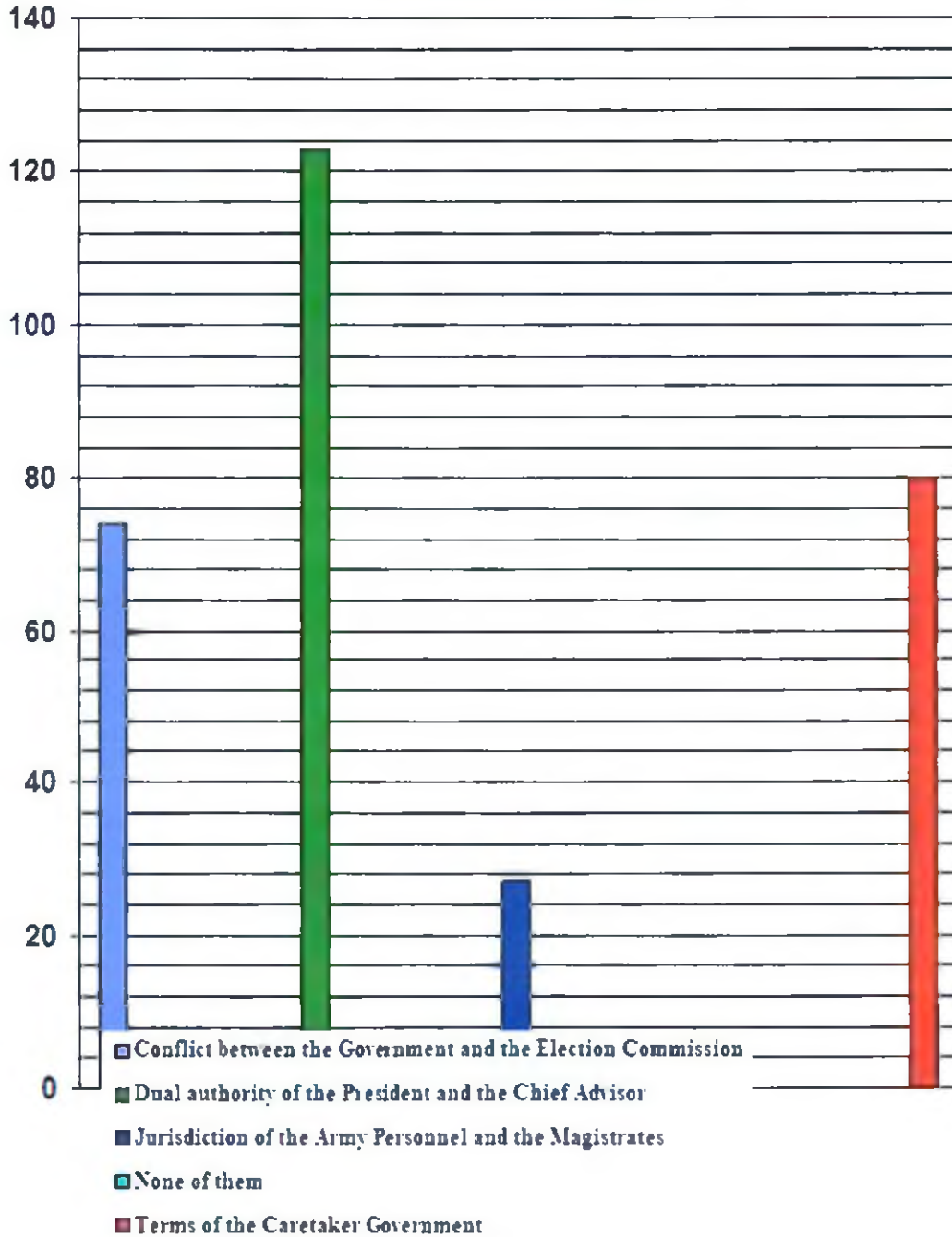


- Duties and functions of the President and Chief Advisor are not specified
- Lack of conceptual skill among the electoral people regarding to the new system
- None of them
- Polling personnel are not properly trained
- Role of Army is not clarified

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-19

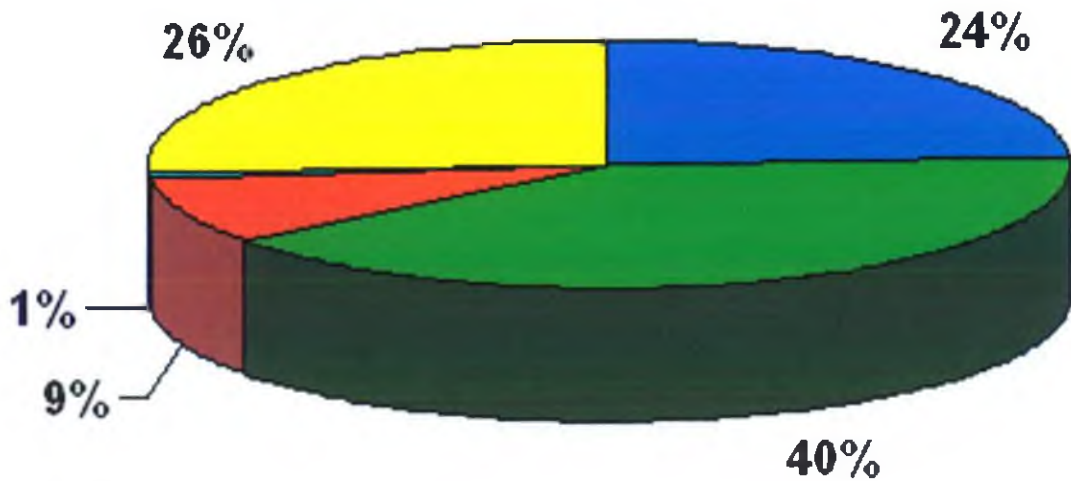
What contrast/contradiction should be fixed first regarding to the Non-party Caretaker Government System in the present Constitution?



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-20

What contrast/contradiction should be fixed first regarding to the Non-party Caretaker Government System in the present Constitution?



- Conflict between the Government and the Election Commission
- Dual authority of the President and the Chief Advisor
- Jurisdiction of the Army Personnel and the Magistrates
- None of them
- Terms of the Caretaker Government

-
1. Total respondents were 300
 2. There was a scope of multiple choices for each individual

Chart-21

What is the key barrier for the Govt. to conduct a free and fair National Parliament Election?

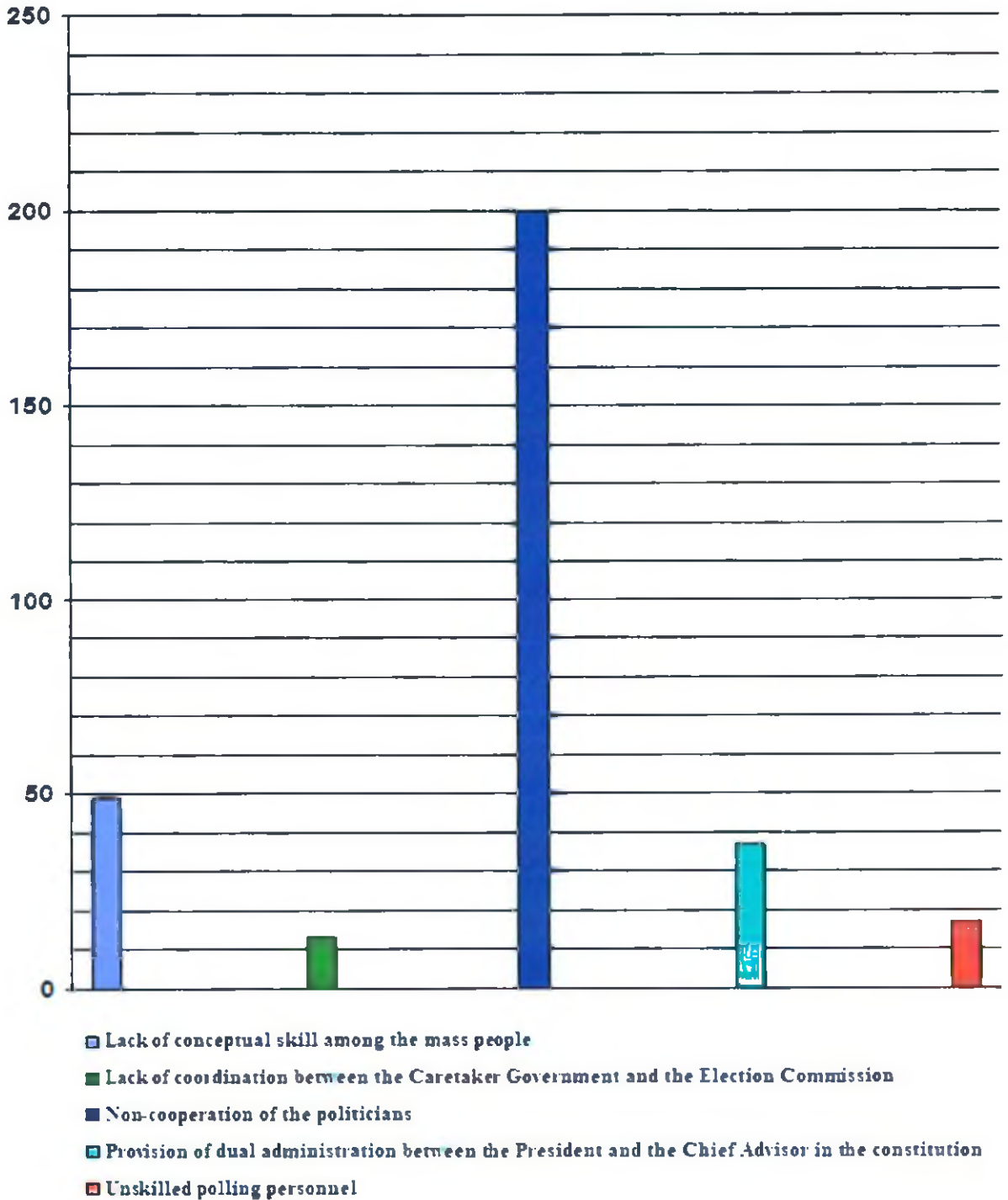
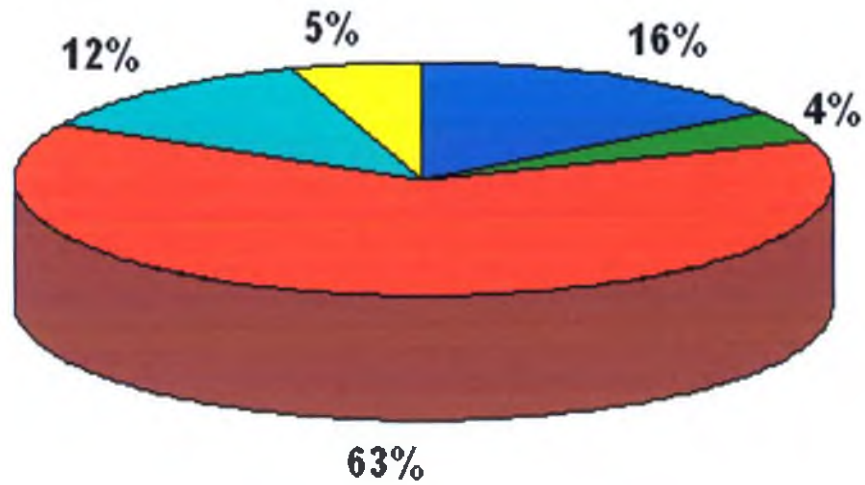


Chart-22

What is the Key Barrier for the Govt. to conduct a free and fair National Parliament Election?



- Lack of conceptual skill among the mass people
- Lack of coordination between the Caretaker Government and the Election Commission
- Non-cooperation of the politicians
- Provision of dual administration between the President and the Chief Advisor in the constitution
- Unskilled polling personnel

-
1. Total respondents were 300
 2. There was a scope of multiple choices for each individual

Chart-23

Whether the present system of the Non-Party Caretaker Government should be reformed

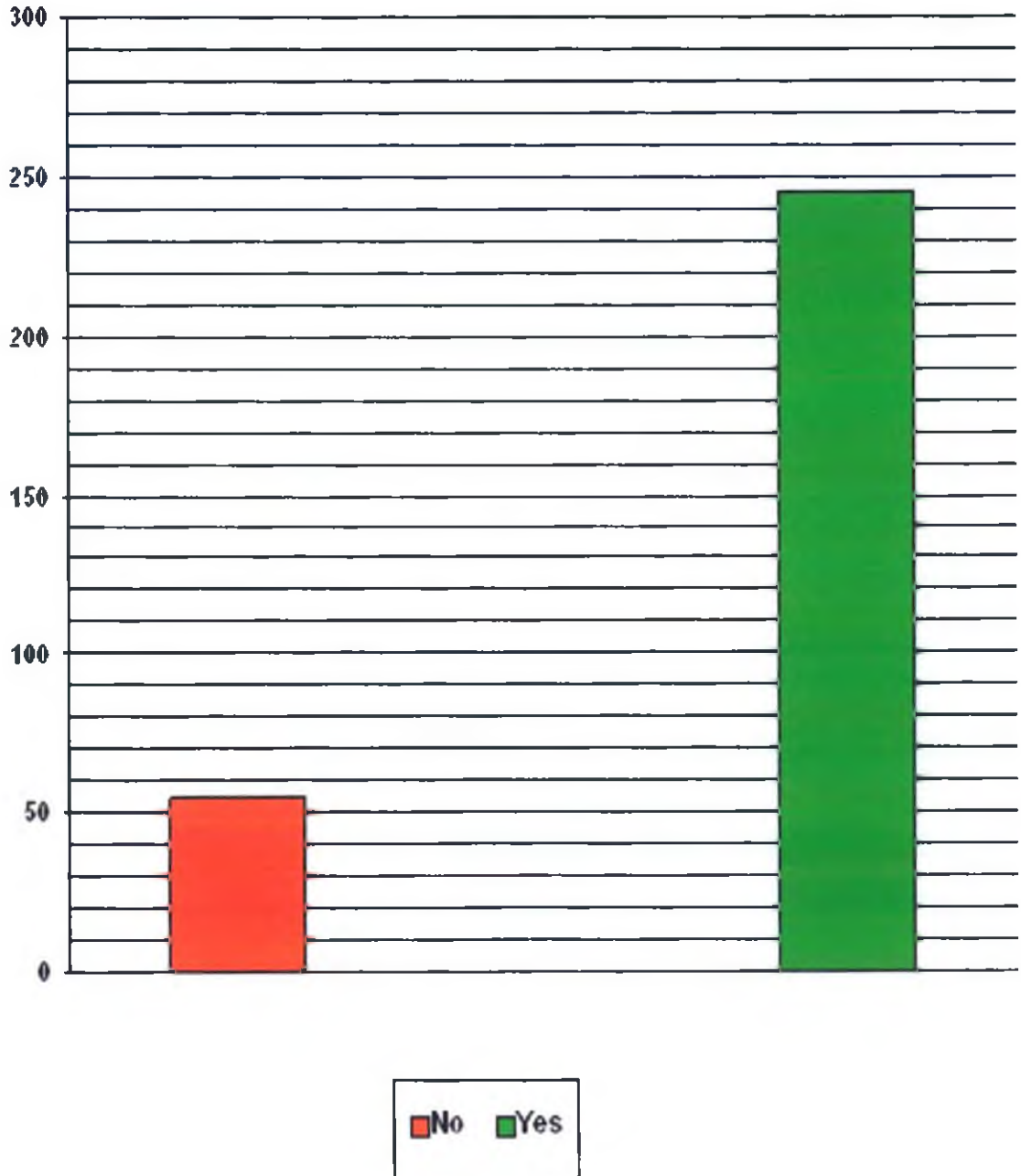


Chart-24

Whether the present system of the Non-party Caretaker Government should be reformed?

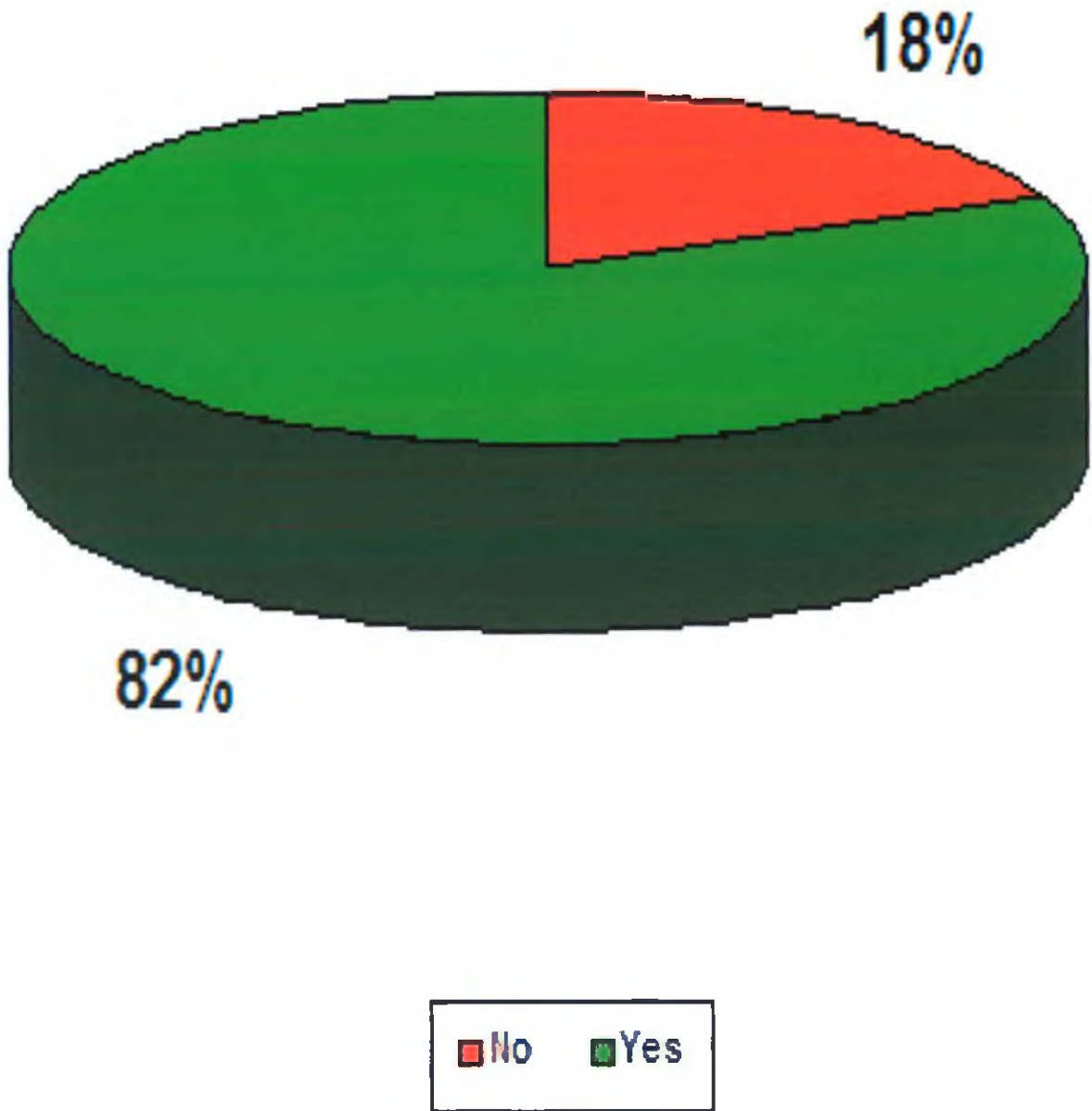
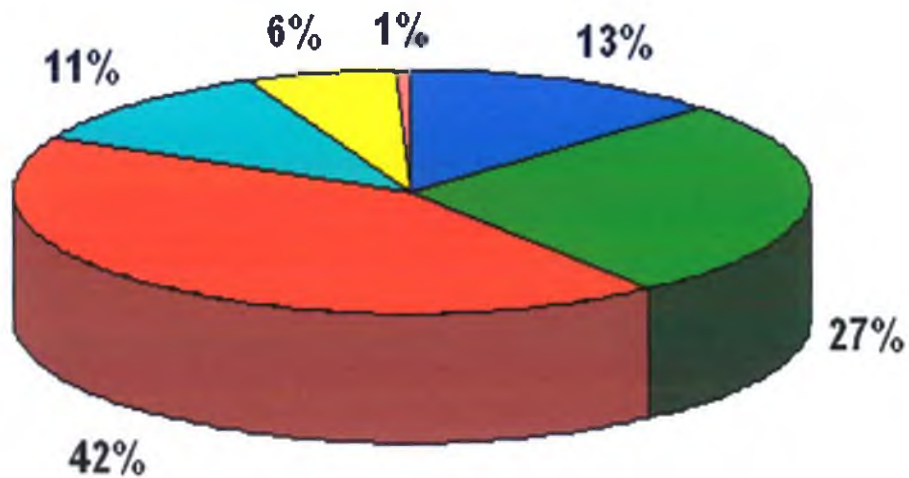


Chart-25

The first step of the future policy initiatives for reforming of the Non-party Caretaker Government system.



■ Arrangement of a referendum

■ Arrangement of dialogues between the Government and the Politicians, Constitution Experts, Polling personnel, professional etc

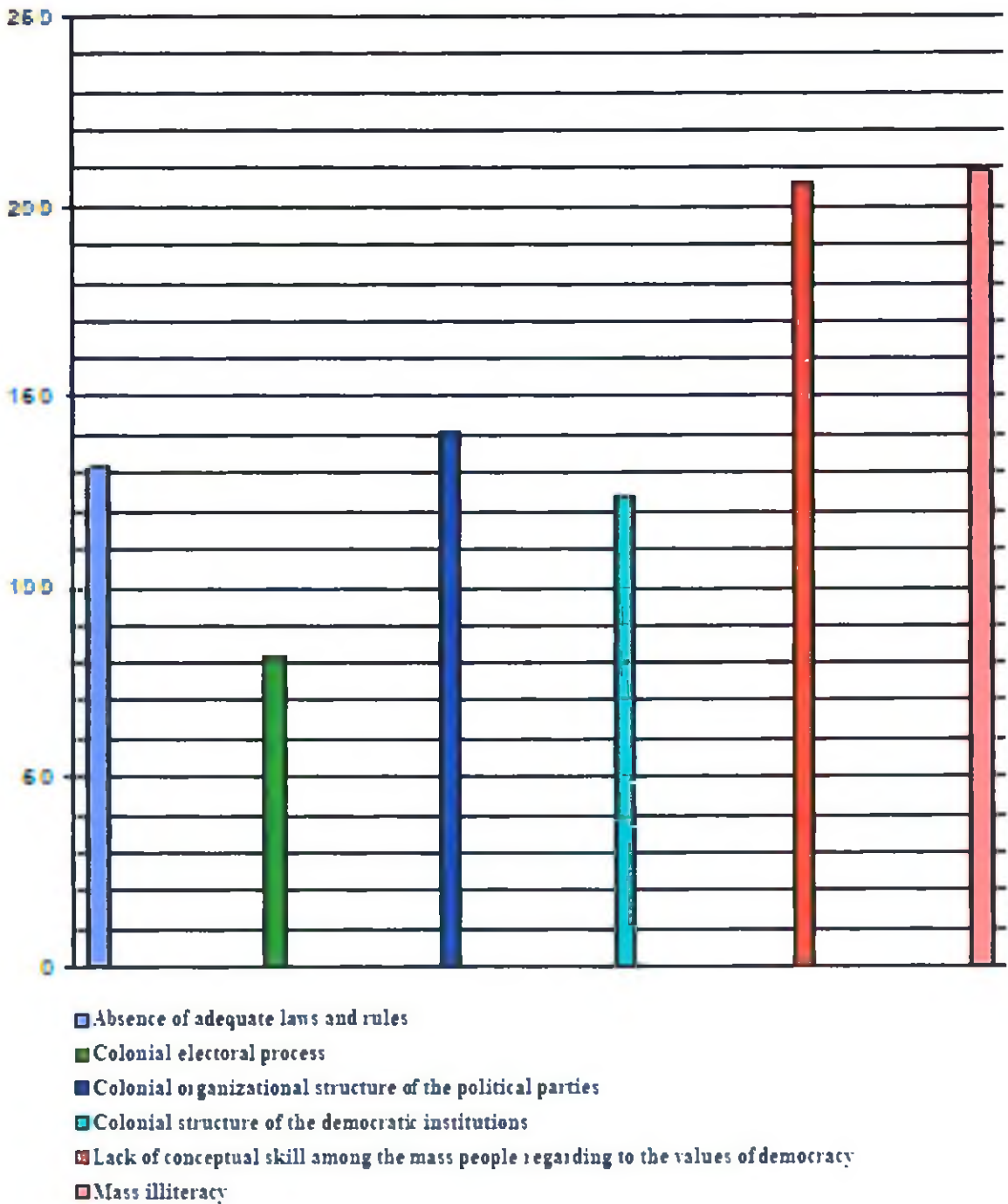
■ Conducting a nation-wide survey to find out the opinion of the mass people professional groups

■ Consultation with the national and international Constitution Experts

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-26

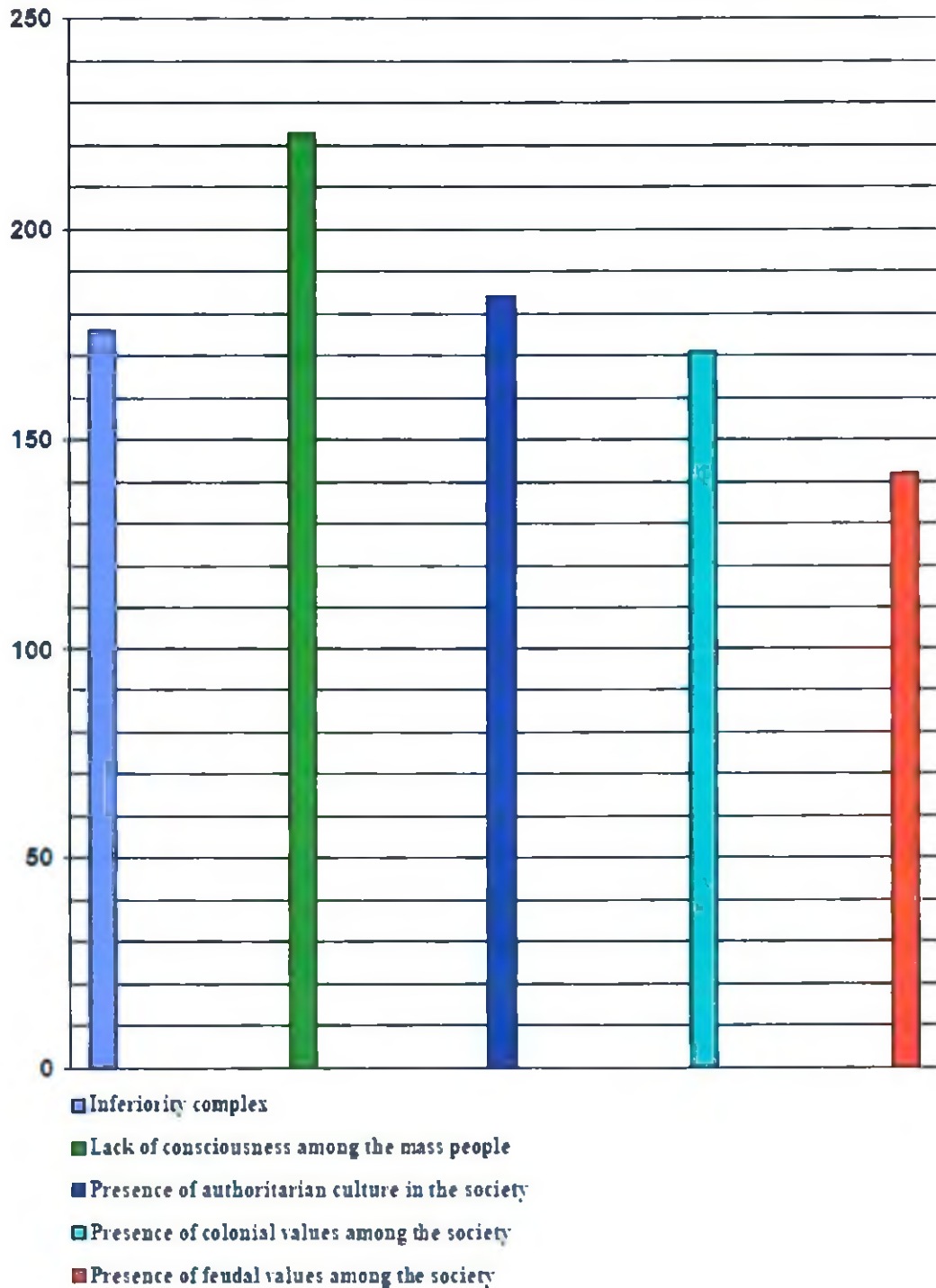
The institutionalization constraints of democracy in Bangladesh



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-27

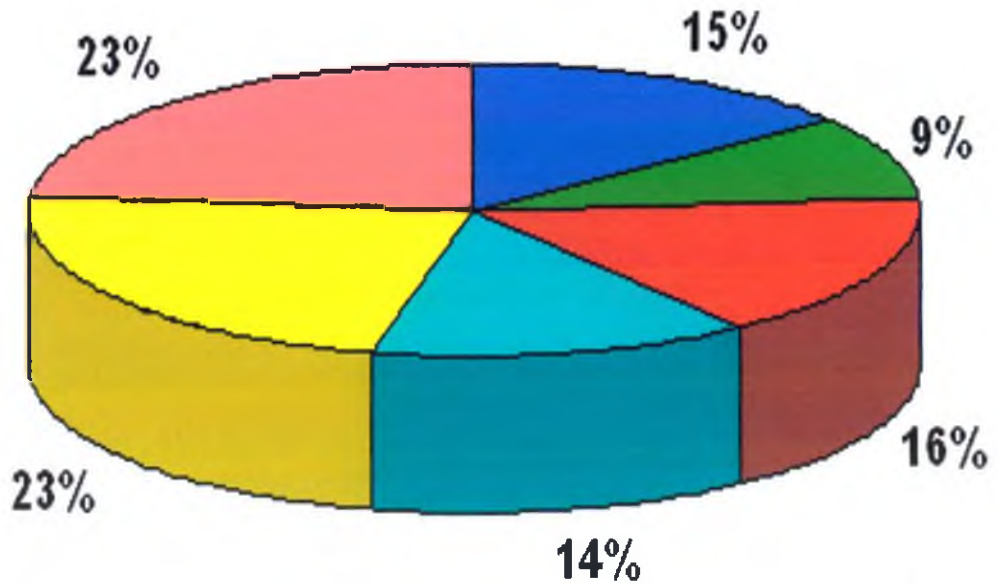
Main Socio-Cultural Constraints to Institutionalizing Democracy in Bangladesh



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-28

The Institutionalization Constraints of Democracy in Bangladesh

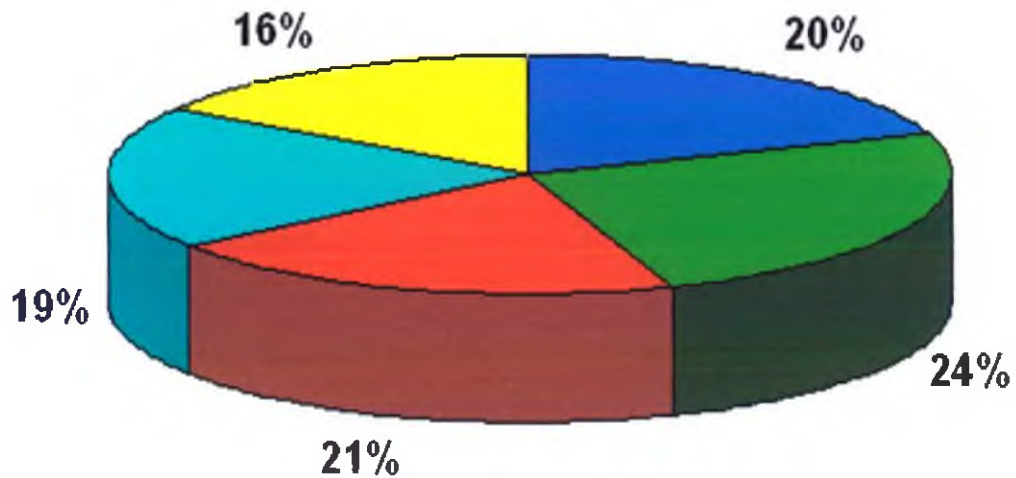


- Absence of adequate laws and rules
- Colonial electoral process
- Colonial organizational structure of the political parties
- Colonial structure of the democratic institutions
- Lack of conceptual skill among the mass people regarding to the values of democracy
- Mass illiteracy

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-29

Main Socio-Cultural Constraints to Institutionalizing Democracy in Bangladesh



■ Inferiority complex

■ Lack of consciousness among the mass people

■ Presence of authoritarian culture in the society

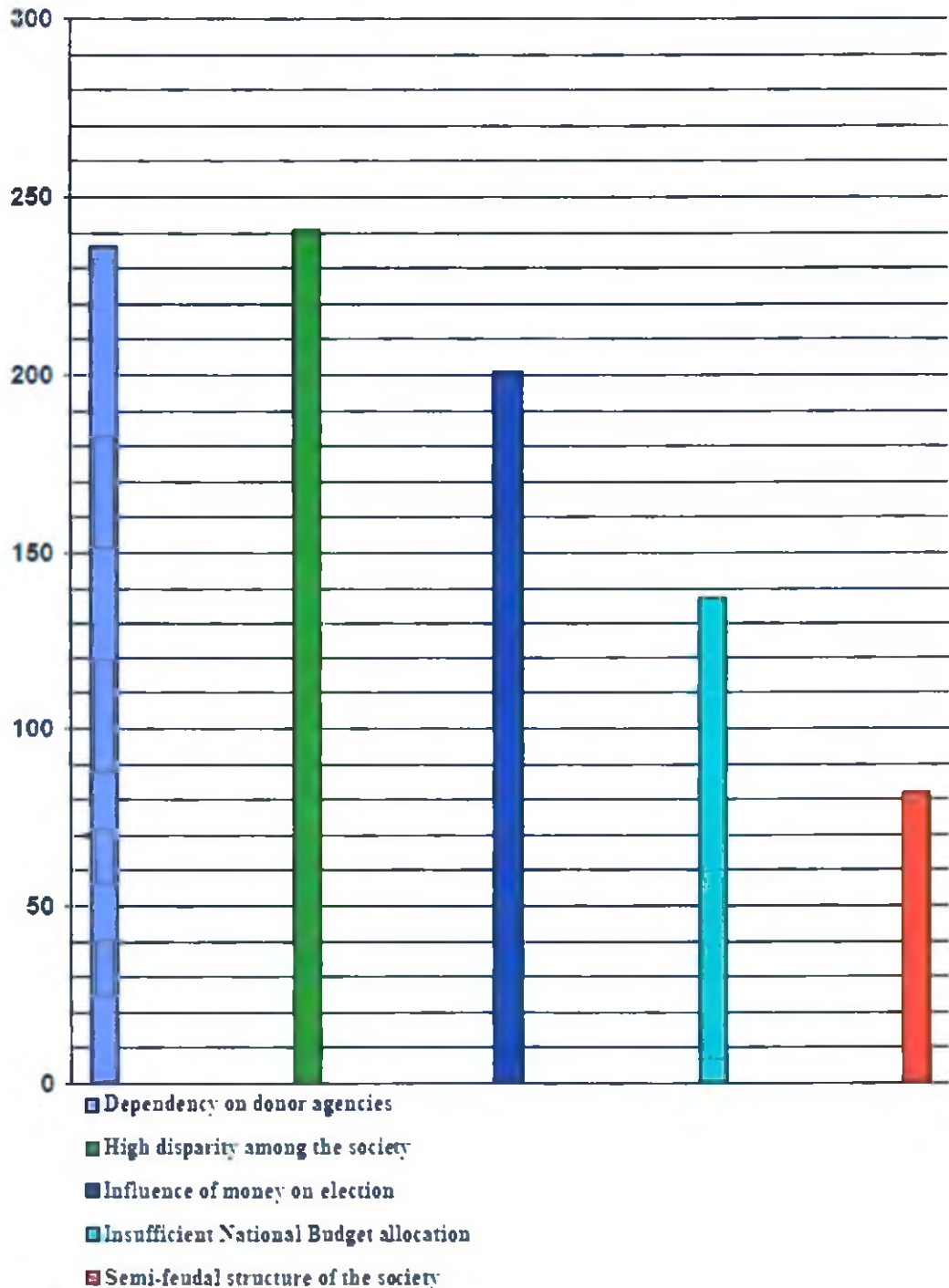
■ Presence of colonial values among the society

■ Presence of feudal values among the society

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-30

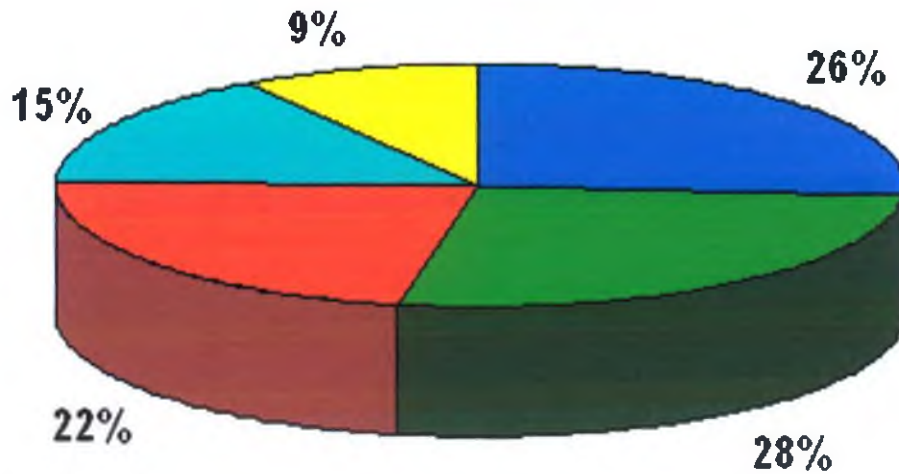
The Major Economic Constraints to Institutionalizing Democracy in Bangladesh



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-31

The Major Economic Constraints to Institutionalizing Democracy in Bangladesh



■ Dependency on donor agencies

■ High disparity among the society

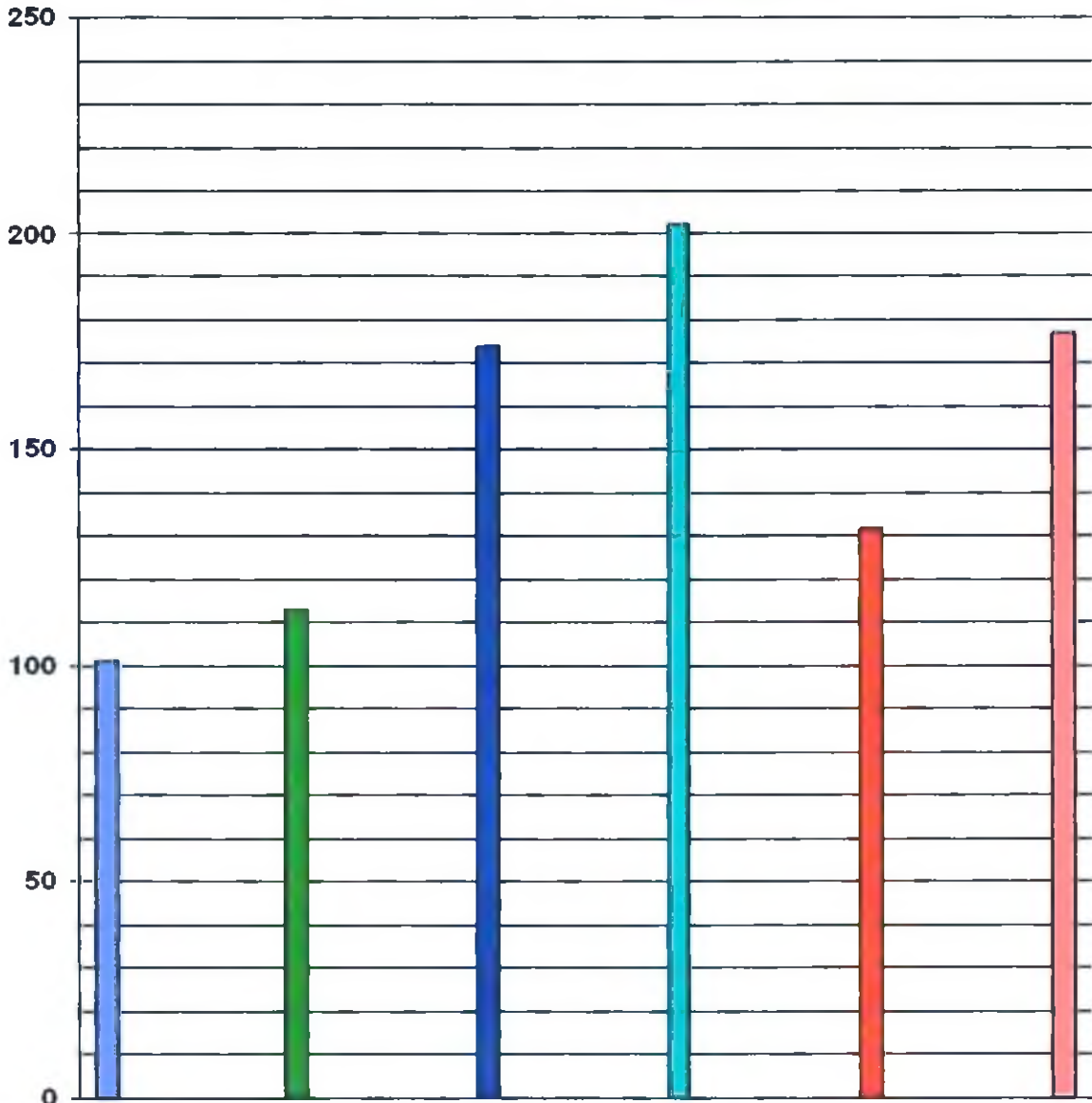
■ Influence of money on election

■ Insufficient National Budget allocation

■ Semi-feudal structure of the society

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-32
The Political Constraints to Institutionalizing Democracy in Bangladesh

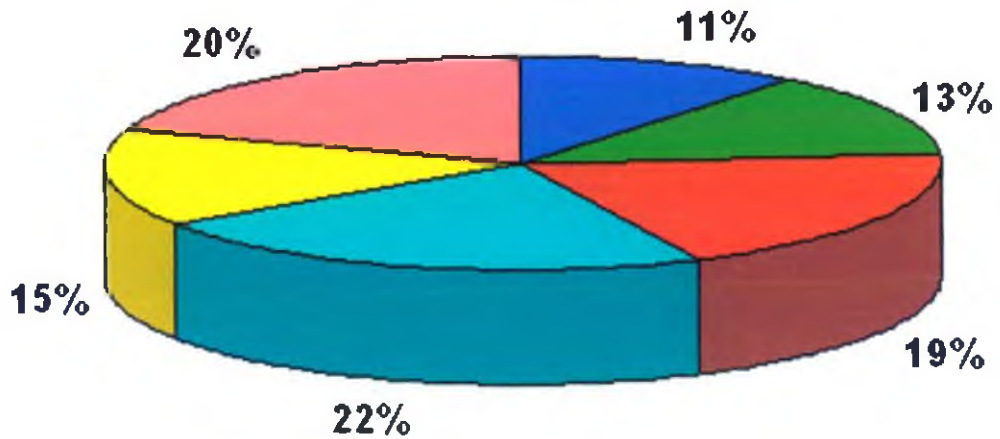


- Absence of vision and/or foresight among the leadership
- Heritage of the long colonial rule
- Influence of inheritance in the leadership
- Poor quality among the leadership
- Too many political parties
- Unconsciousness among the electoral people

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-33

The Political Constraints to Institutionalizing Democracy in Bangladesh

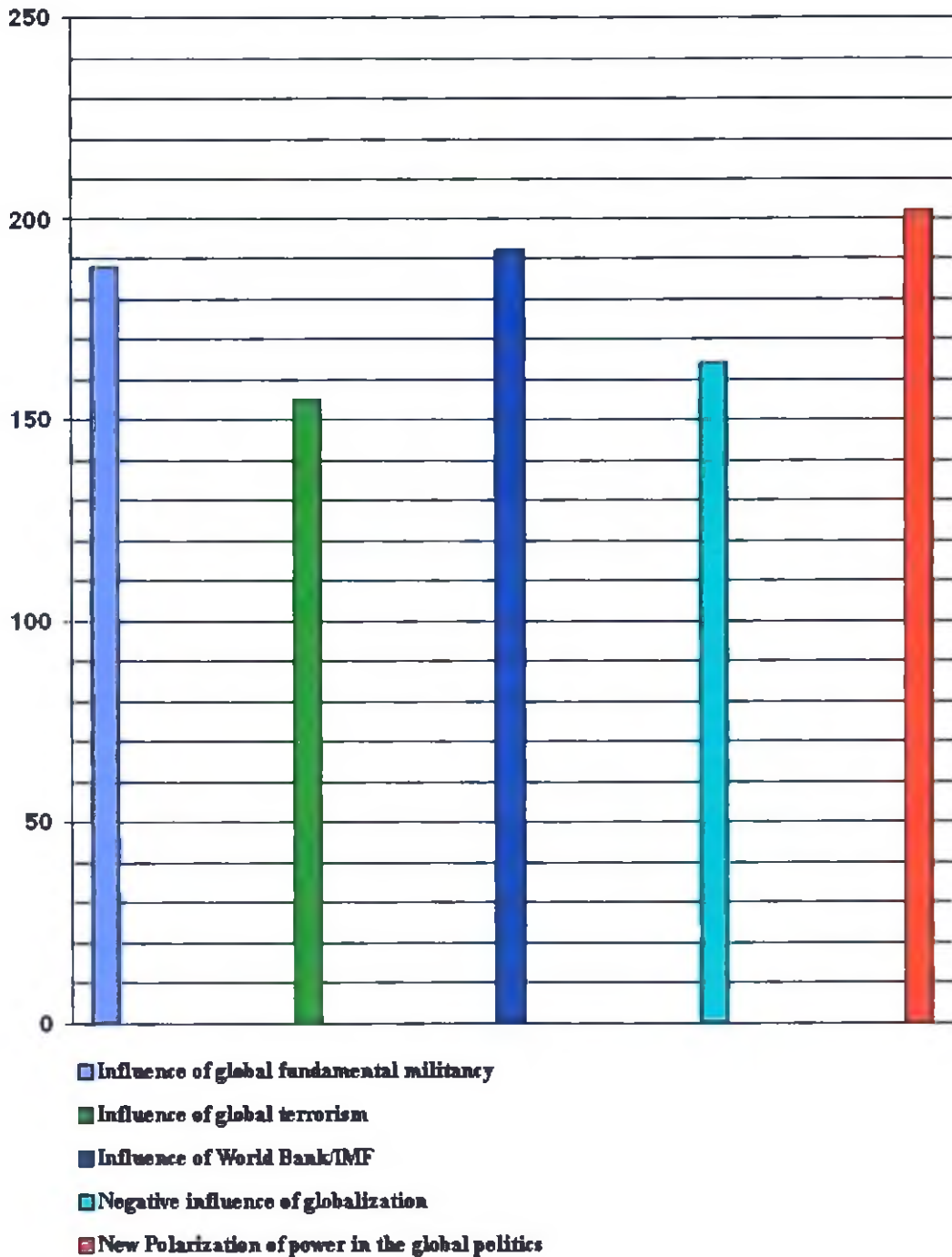


- Absence of vision and/or foresight among the leadership
- Heritage of the long colonial rule
- Influence of inheritance in the leadership
- Poor quality among the leadership
- Too many political parties
- Unconsciousness among the electoral people

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-34

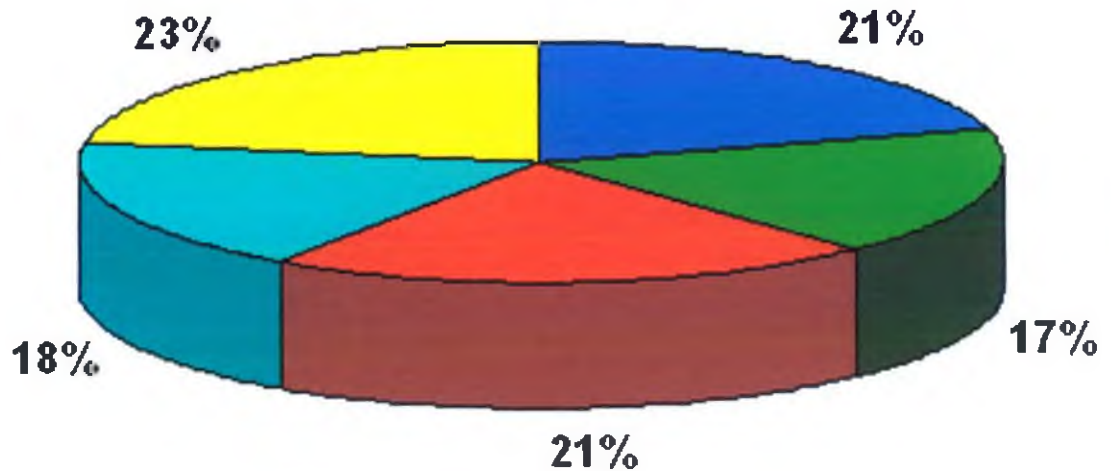
The Global Constraints to Institutionalizing Democracy in Bangladesh



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-35

The Global Constraints to Institutionalizing Democracy in Bangladesh



■ Influence of global fundamental militancy

■ Influence of global terrorism

■ Influence of World Bank/IMF

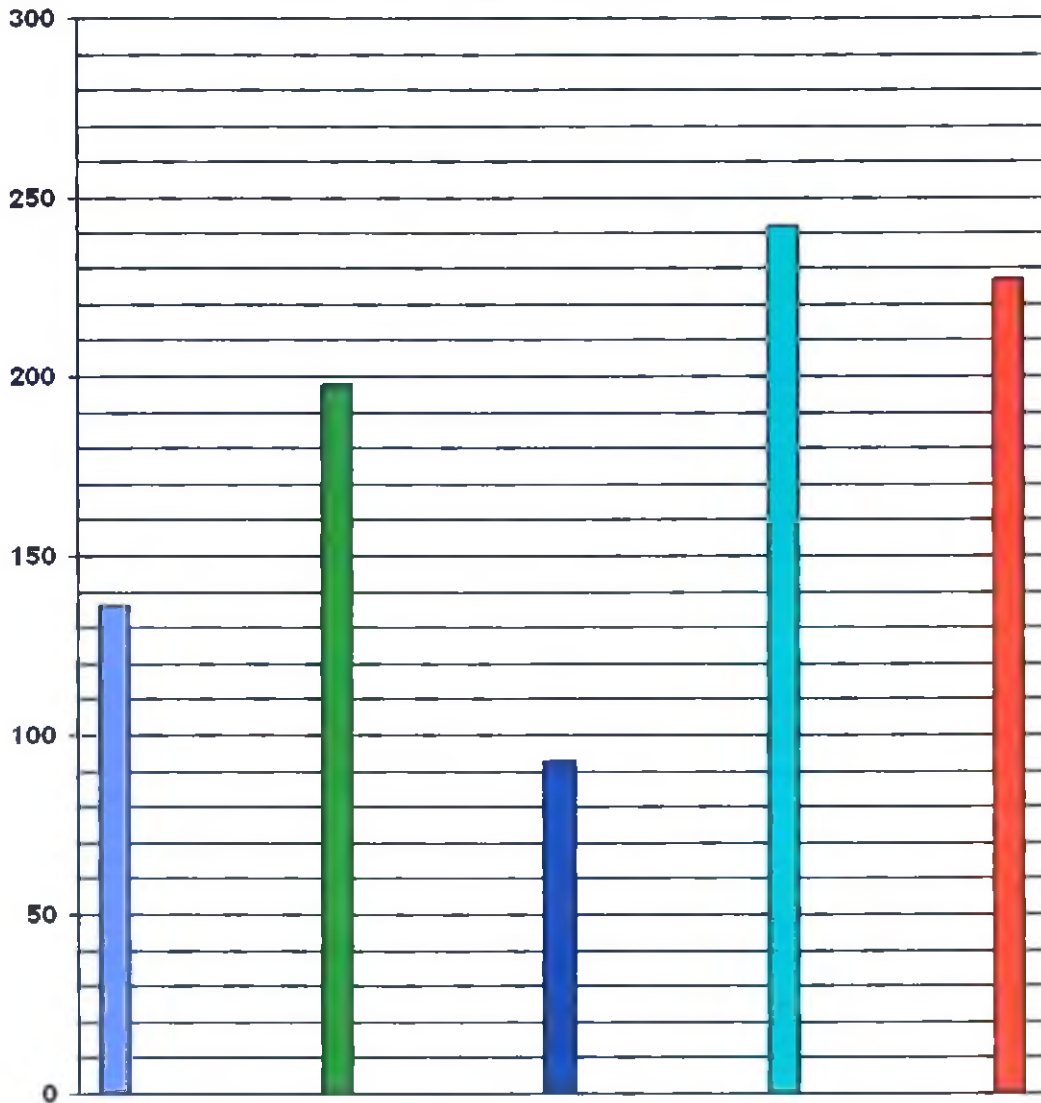
■ Negative influence of globalization

■ New Polarization of power in the global politics

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-36

The main constraints of Political Parties for conducting democratically

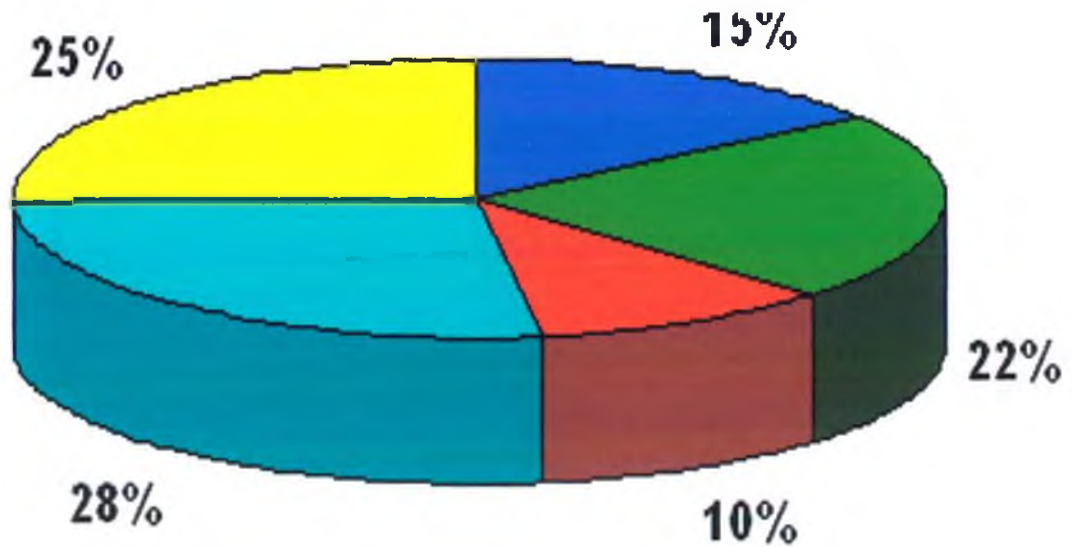


- Absence of foresight
- Absence of statesmanship
- Colonial heritage of inter-behavioral relationship
- Lack of democratic values
- Mistrust, disbelief and harted among the political

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-37

The main constraints of Political Parties for conducting democratically

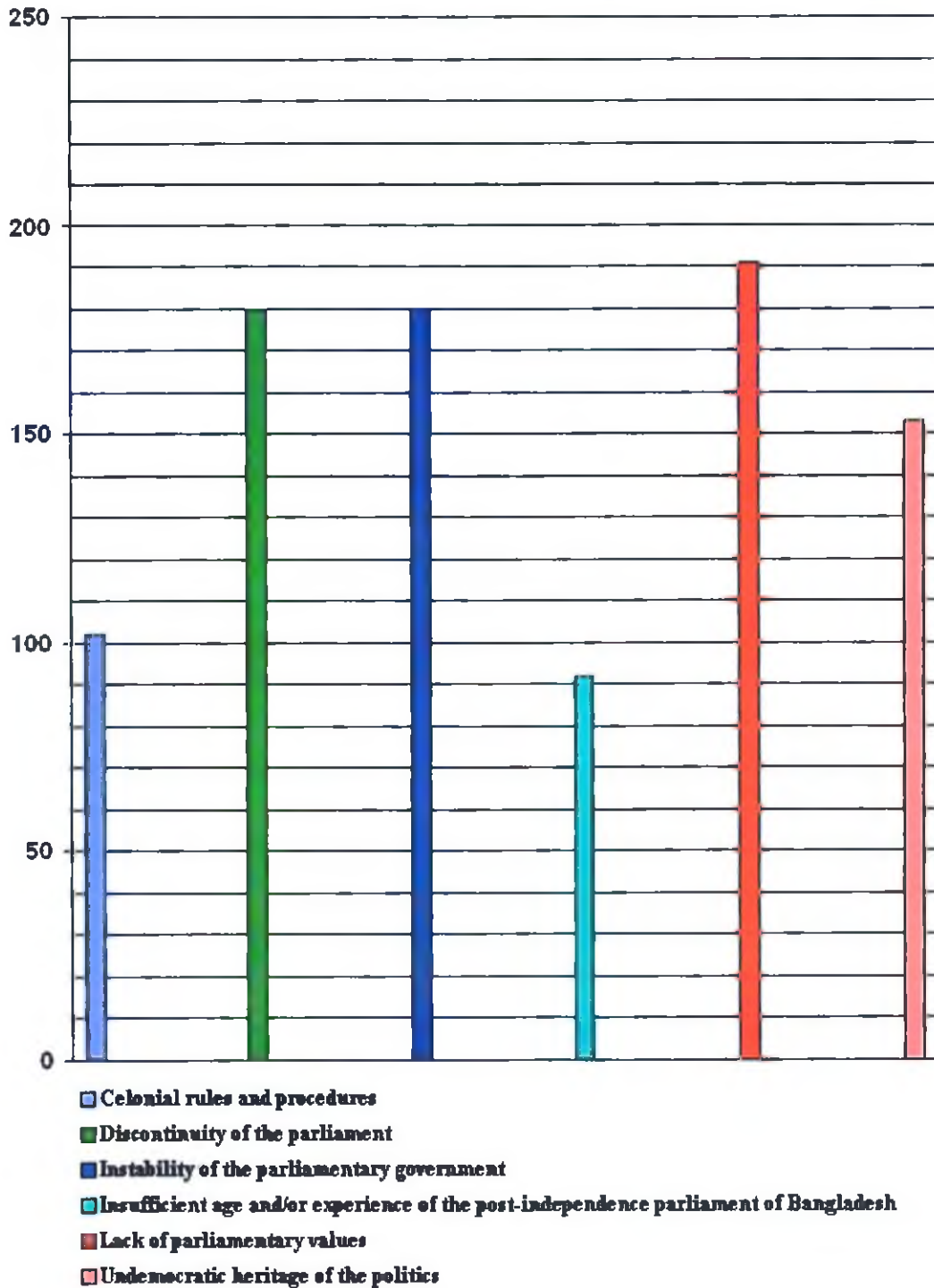


- **Absence of foresight**
- **Absence of statesmanship**
- **Colonial heritage of inter-behavioral relationship**
- **Lack of democratic values**
- **Mistrust, disbelief and hatred among the political parties**

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-38

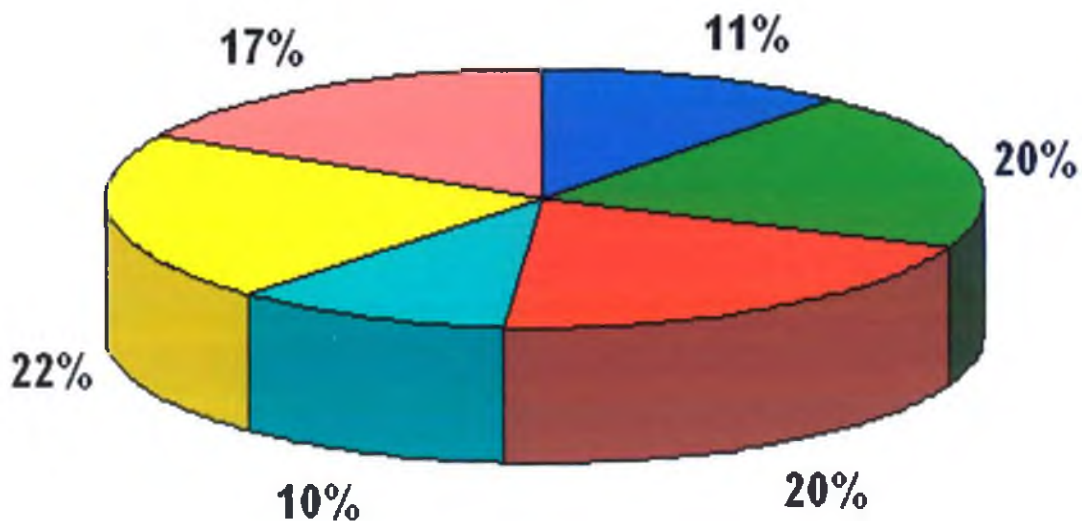
The main constraints of parliament to be the centre for all political activities of the country



1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-39

The main constraints of parliament to be the centre for all political activities of the country



- Colonial rules and procedures
- Discontinuity of the parliament
- Instability of the parliamentary government
- Insufficient age and/or experience of the post-independence parliament of Bangladesh
- Lack of parliamentary values
- Undemocratic heritage of the politics

1. Total respondents were 300
2. There was a scope of multiple choices for each individual

Chart-40

Whether the present Caretaker government system is not sufficient to face the challenges

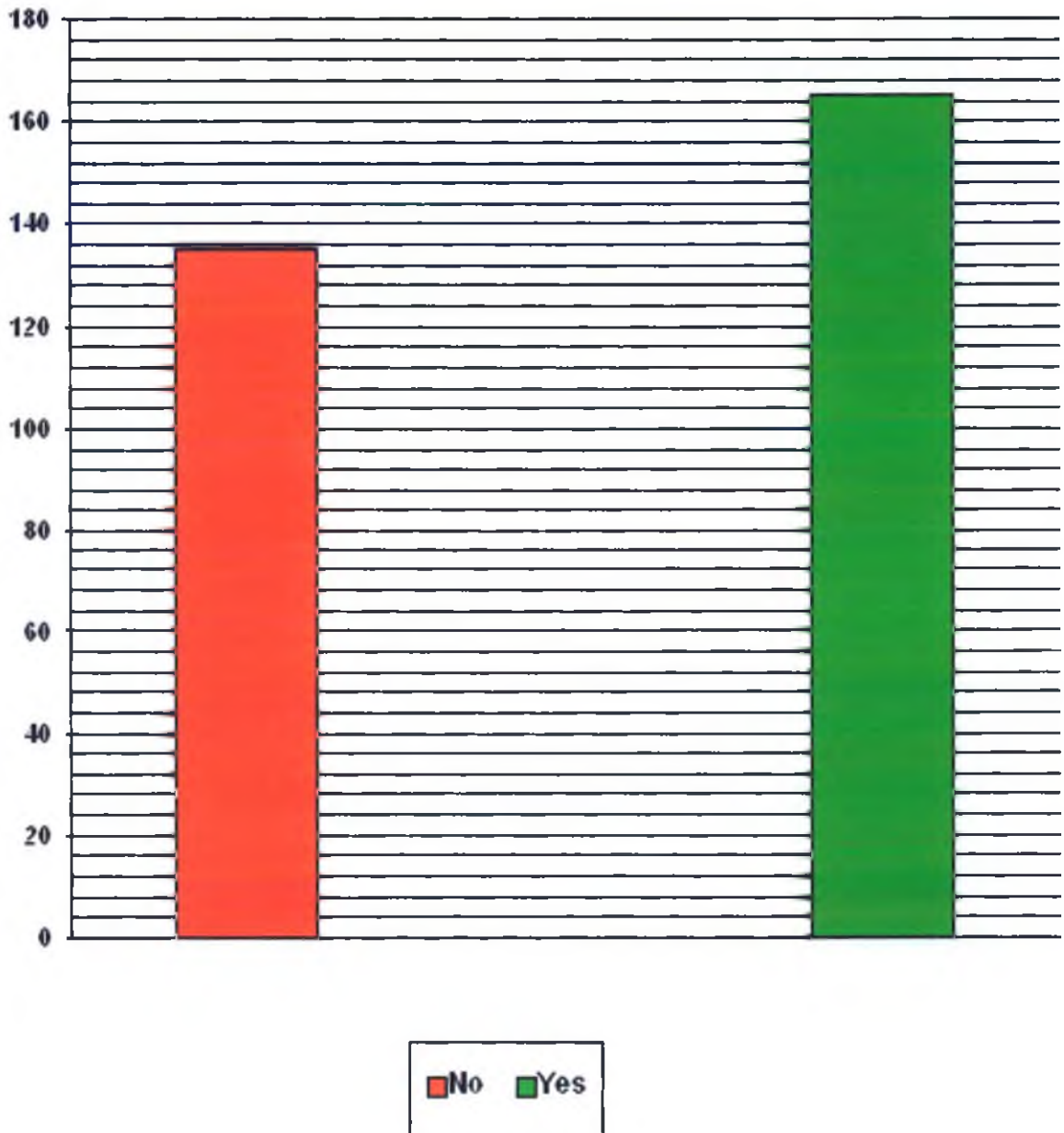


Chart-41

Whether the present Caretaker Government System is sufficient to face the challenges

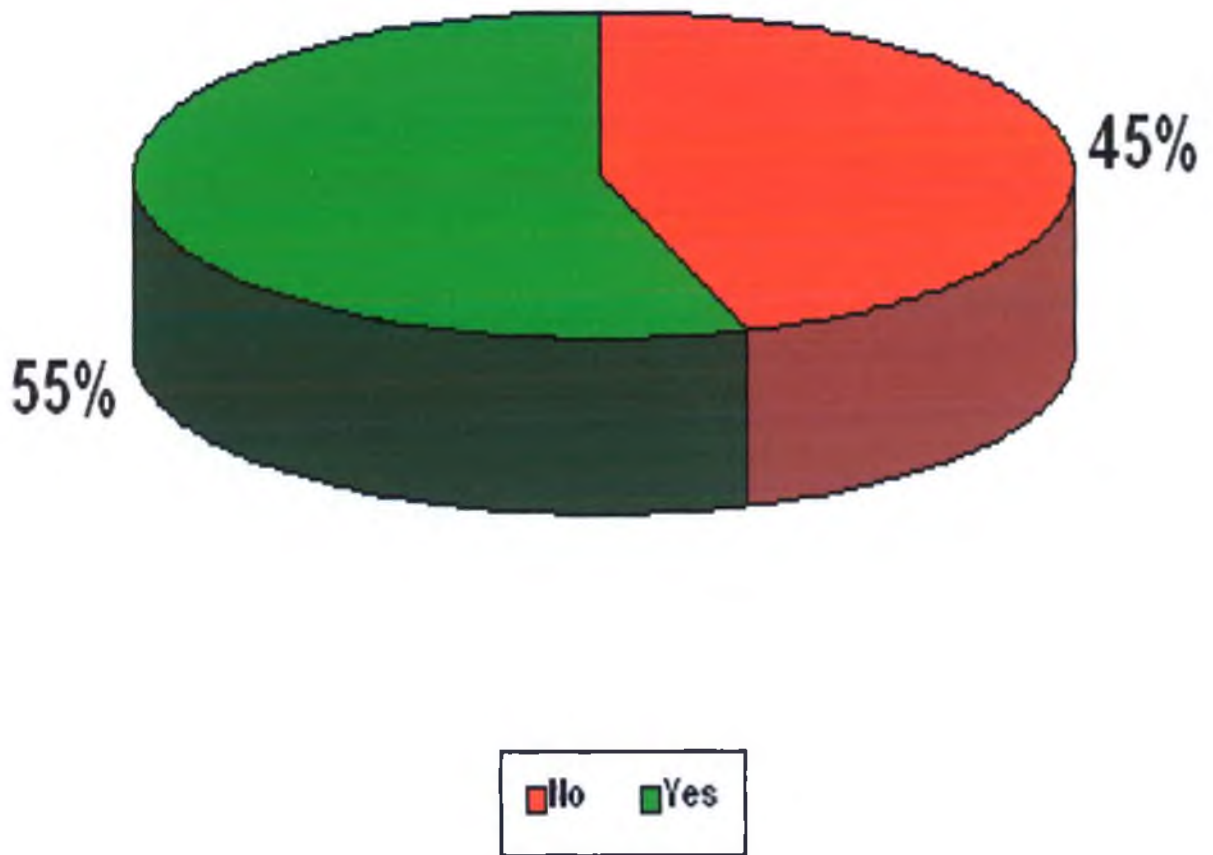


Chart-42

Whether the present leadership in the political parties is not sufficient to face the challenges

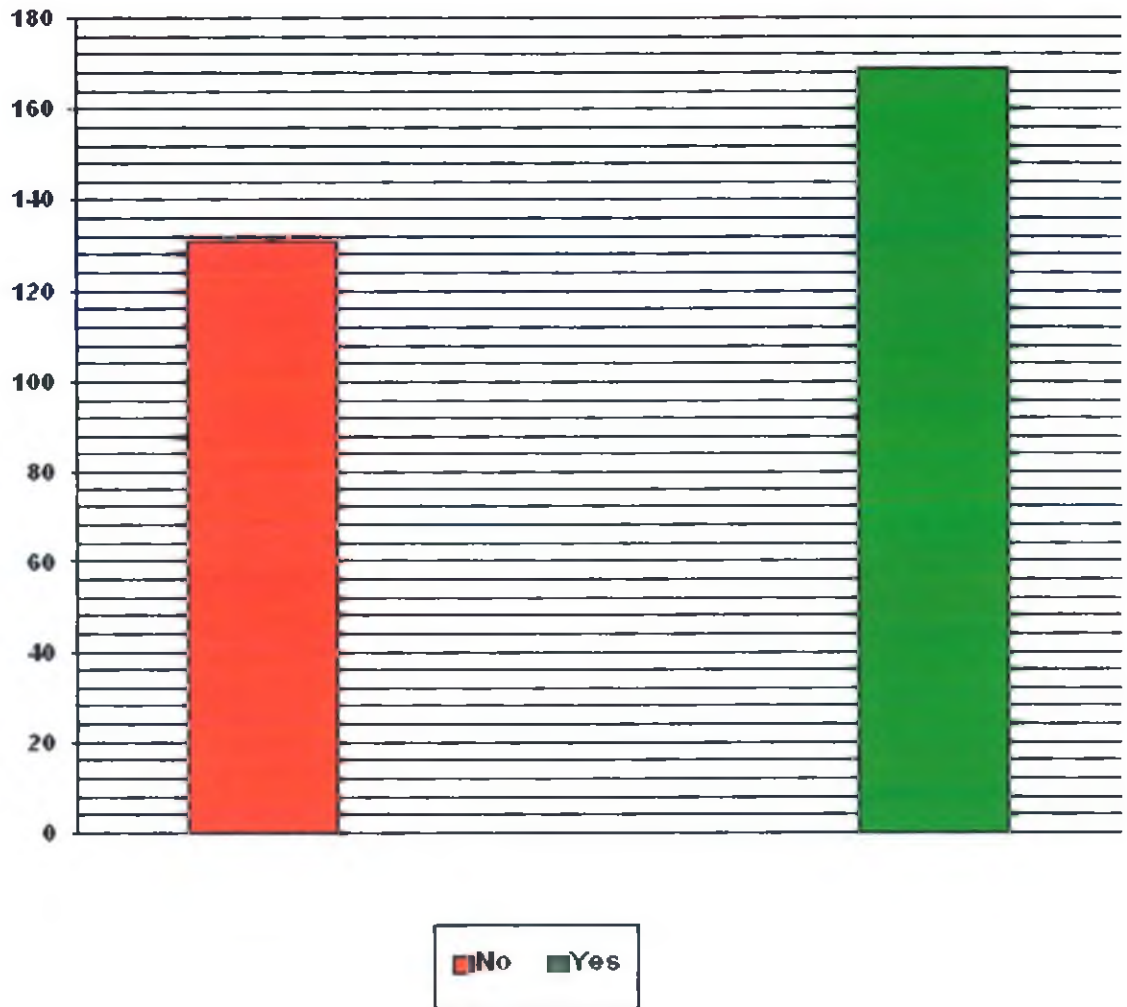
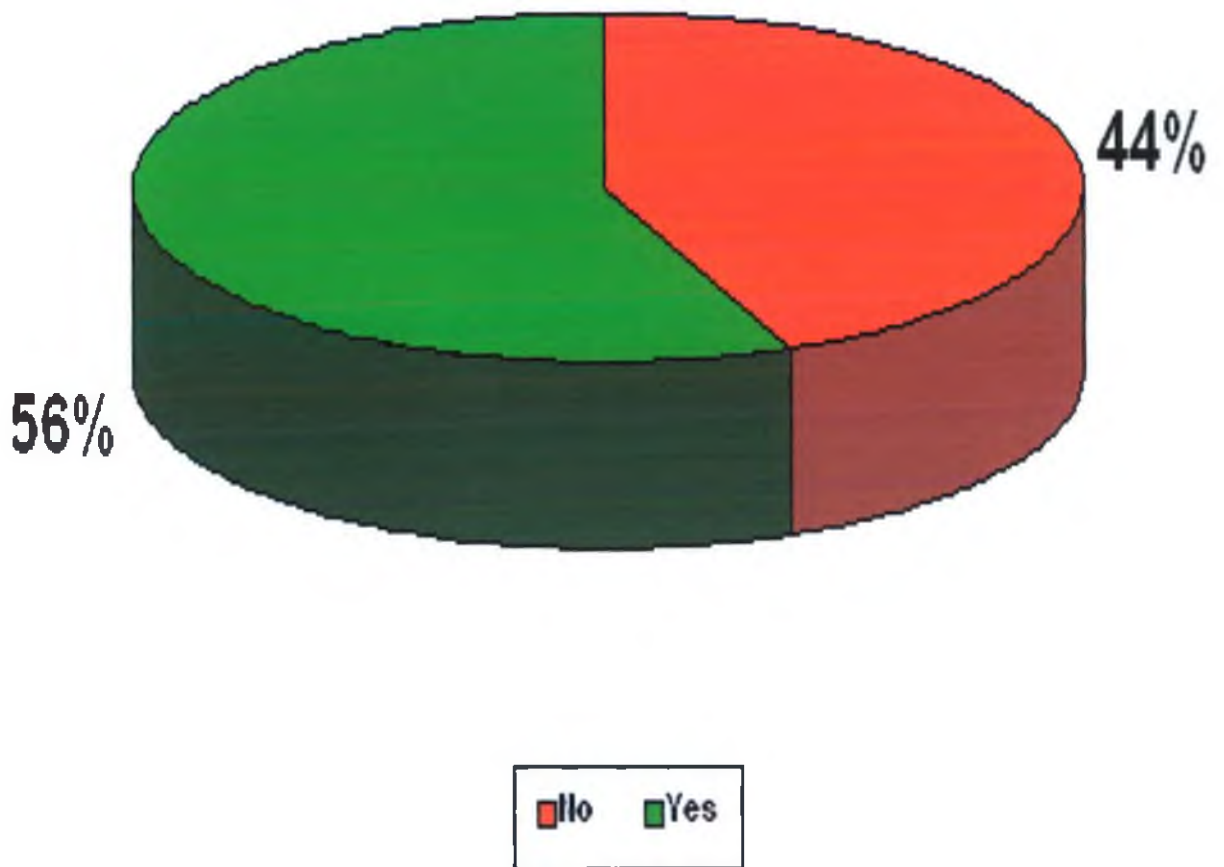


Chart-43

Whether the present leadership in the political parties is sufficient to face the challenges



6.1 Identified areas:

The Caretaker Government concept in Bangladesh represents a few unique stands,

1. Diarchy of administration exists in the provision of the Non-party Caretaker Government system in Bangladesh.
2. There are anomalies in the constitution of Bangladesh regarding to the Non-party Caretaker Government system.
3. There is lack of trust between the political parties of our country.
4. Lack of adequate skill among the polling personnel is one of the key challenges faced by the Non-party Caretaker Government system in Bangladesh.
5. The elections conducted by the Non-party Caretakers were much more neutral, credible and acceptable to the people and observers (both home and abroad) than the others under political government.
6. The Non-Party Caretaker Government in Bangladesh is much more neutral than the political government.
7. The 9th Parliamentary Election held in 2008 is the most neutral, credible and acceptable so far according to the people and observers (both home and abroad) than the others under Caretaker Government.
8. Duties and functions of the President and the Chief Advisor are not specified in the constitution regarding to the Non-party Caretaker Government system in Bangladesh.
9. Role of Army is not clarified in the constitution regarding to the Non-party Caretaker Government system in Bangladesh.
10. There is lack of conceptual skill among the electoral people regarding to the new system of Non-party Caretaker Government.
11. The period and nature of the Caretaker Government is not specified in the constitution during the state of emergency.
12. The nature and characteristics of the state of emergency are not specified in the constitution during the period of Non-party Caretaker Government.

13. There is a scope of conflict between the Government and the Election Commission in the provision of Non-party Caretaker Government.
14. Jurisdiction of the Army Personnel and the Magistrates is not clarified in the constitution during the period of Non-party Caretaker Government.
15. Non-cooperation of the politicians is one of the key barriers for the NCG to conduct a free and fare National Parliament Election.
16. There is a lack of conceptual skill among the mass people regarding to the new system of the Non-party Caretaker Government in Bangladesh.
17. There is a lack of coordination between the Caretaker Government and the Election Commission in Bangladesh.
18. According to the mass opinion the present system of the Non-party Caretaker Government should be reformed.
19. Conducting a nation-wide survey is affordable to find out the opinion of the mass people/professional groups as one of the future policy initiatives for reforming of the Non-party Caretaker Government system.
20. There might be an arrangement of a referendum as the first step of the future policy initiatives for reforming of the Non-party Caretaker Government system.
21. A consultation with the national and international Constitution Experts may be held to find out the future policy initiatives for reforming of the Non-party Caretaker Government system.
22. There might be an arrangement of dialogues between the Government and the Politicians, Constitution Experts, Polling personnel, professional groups etc. to find out the future policy initiatives for reforming of the Non-party Caretaker Government system.
23. Experiences can be shared with other countries for reforming of the Non-party Caretaker Government system.
24. Colonial structure of the democratic institutions, colonial electoral process, colonial organizational structure of the political parties

and mass illiteracy are the institutionalization constraints of democracy in Bangladesh.

25. There is a lack of conceptual skill among the mass people regarding to the values of democracy.
26. There is an absence of adequate laws and rules for conducting a free and fair National Parliament Election under the Non-party Caretaker Government system.
27. There is a presence of feudal and colonial values among the society, which is one of the main socio-cultural constraints to institutionalizing democracy in Bangladesh.
28. Presence of authoritarian culture in the society and inferiority complex is one of the main socio-cultural constraints to institutionalizing democracy in Bangladesh.
29. Dependency on donor agencies, insufficient National Budget allocation, high disparity among the society and semi-feudal structure of the society are the main socio-cultural constraints to institutionalizing democracy in Bangladesh.
30. Influence of money on election is a major economic constraint to institutionalizing democracy in Bangladesh.
31. There is a heritage of the long colonial rule, which is one of the major political constraints to institutionalizing democracy in Bangladesh.
32. Too many political parties, influence of inheritance in the leadership, poor quality among the leadership and absence of vision and/or foresight among the leadership in Bangladesh are the major political constraints to institutionalizing democracy in Bangladesh.
33. New polarization of power in the global politics, influence of World Bank/IMF, influence of global fundamental militancy, influence of global terrorism and negative influence of globalization are the global constraints to institutionalizing democracy in Bangladesh.
34. Lack of democratic values, mistrust, disbelief and hatred among the political parties, absence of statesmanship, absence of foresight and colonial heritage of inter-behavioral relationship are

the main constraints of political parties for being conducted democratically in Bangladesh.

35. There are colonial rules and procedures in the Parliamentary system of Bangladesh.
36. Discontinuity of the parliament, instability of the parliamentary government and insufficient age/experience of the post-independence parliament of Bangladesh are the main constraints of parliament to be the centre for all political activities of the country.
37. There is a lack of parliamentary values and undemocratic heritage of the politics in Bangladesh.
38. The present CTG system is not sufficient enough to face the challenges as a whole.
39. The present leadership in the political parties is not sufficient enough to face the challenges as a whole.
40. Bangladesh is a democratic country, where democracy had been failing for a long time.
41. Bangladesh is the only democratic country in the world to have the option of Non-partial Caretaker Government system.
42. The emergency situation under the regime of a Non-elected Government for more than the allocated time and responsibility of the Caretaker Government.
43. The new venture of democratic reforms and conditional freedom of press.

6.2 Identified problems:

The major problems identified during this research which are existing with the system of Non-party Caretaker Government in Bangladesh are:

6.2.1 Absence of democratic political culture:

Bangladesh is lacking a democratic political culture. Democratic orientations and practices are not seen in our polity and society. People's competence to cope with the democratic norms and values is not adequate. Even opportunities for democratic learning are not available in our

educational as well as political institutions. Thus, democratic norms and values could not strike root in our society and polity.

6.2.2 Absence of the rule of law:

In our country, rule of law became merely a frace instead of making up the sun that shines on democracy. Today it has become the part of our political culture that police took action against oppositions and turned a blind eye to the real perpetrators. In case of bails to the political activists, the judge simply to the wishes of political masters.

6.2.3 Lack of political morality:

Our politicians lack political morality which is marked by special provision for Caretaker Government instead of political government to arrange national election. It is a sign of popular distrust on our politicians. However, the provision for Caretaker Government is positive for democracy enough to each our politicians about the lack of their political morality and trust on themselves.

6.2.4 Absence of strong civil society:

Bangladesh has failed to establish a strong civil society, which could ground the liberalism and put flesh on the skeleton of democracy. Even we are lacking a civil culture which structure the social space of civil society in public regarding ways, anchoring individual identify and conscience in shared norms of solidarity trust and reciprocity. Our intellectuals are merely the prop of ruling classes.

6.2.5 Absence of strong political leadership:

Bangladesh is lacking of strong patriotic political leadership essential for leading the nation toward progress and stability. Our leaders do not hold image to unite the nation in a platform. Because they consider themselves as leader of there party not the nation as a whole.

6.2.6 Confrontational politics:

Politics in our country is confrontational in nature where there is no cooperation, trust and solidarity among political parties and groups. There

is no census among political parties on issues of national interest. They oppose each other only for the sake of opposition.

6.2.7 Ineffective political institutions:

Our political institutions are not strong and developed enough to render required services on way of democratization and political development. Our parliament does not work effectively due to continuous boycott by opposition and its role as a ground for deliberation proved to be ineffective. Our political parties are safe shelter of vested interests. Thus their role to institutionalize democracy is not only inadequate but also unacceptable.

6.2.8 Corruption and terrorism:

Corruption and terrorism are two terrible barriers to democratic development in our country. Al though the then govt. refused the claim, Transparency International has ranked 4th times Bangladesh as most corrupt nation of the world. Terrorism is not unconcerned to none of our citizens. thus, greatest challenge. Before the nation is to uproot corruption and terrorism from our society.

6.2.9 Negativity/Double standard:

Double standard attitude is a great barrier to democratic development as it discourages to accept others. Everything is just if it favors one's own interest, otherwise it is wrong. A election is fair if the result is favorable otherwise it is unfair. Such kind of attitude forces our politicians to stereotyped enmity and distrust.

6.2.10 Lack of tolerance and reciprocity:

There is a lack of tolerance, mutual respect, trust and reciprocity among our politicians and political parties. Compromise and consensus is absent from our polity, which inflames enmity among politician and endangers the growth of democracy in the country.

6.3 Other Major Problems & Impediments

Beside the above trends and impediments of parliamentary democracy in Bangladesh there are some other institutions of democracy, which are

beset with hazardous problems hampering the development of democracy in Bangladesh.

6.3.1 Parliamentary Committee System:

It is through the functioning of the committee system that bureaucracy comes under the direct scrutiny of the parliament since the committee concerning a particular ministry along with its associated bodies can send for any official or bureaucrat to appear before it to justify his action or send for any paper or document. The rules of Procedure of Parliament of Bangladesh were adopted in 1974 and it provided for almost 25 committees in parliament of these 11 are departmental standing committees. But though in thinking and insecting provisions for committees Bangladesh was well ahead of all other parliamentary system in the commonwealth, the effective working of the committee system has not yet been developed. The cruse of the problem lies with the provision in Rules 247 of the procedure which provided that Minister of State in charge of a subject relating to particular committee shall e ex-offico provided for almost 25 committees in parliament Chairman of every such standing committees. These undemocratic provisions were made by the same government, which piloted the constitution making. Of course, recently a change has been made to the provision providing that a minister shall not be the chairman of the committee but he may be a member of the committee which still remains as an undemocratic provision Again there is no provision in Bangladesh allowing taking evidence in public by committees which need to be remedied in order to make the administration accountable to the people through the committee hearings. This will help bringing transparency in government, which is a *sin qua non*-for growth of parliamentary accountability.

6.3.2 Problems of Bureaucracy and Public Administration

The Bangladesh bureaucracy is well known as hot bed of corruption. Corruption in the administration of Bangladesh worse than anywhere in the world. According to Transparency International, Bangladesh has already been 4th times identified as a number one corrupted nation of the World. Interestingly the politicians blame the bureaucrats for corruption and inefficiently in the public administration. On the other hand, bureaucrats

blame politicians for corruption and inefficiency. Who are then really responsible? I would say that our politicians are responsible for the problems in bureaucracy. Because bureaucracy is like a cage of pet and trained animals to obey the orders of their masters, but to keep these animals always loyal and obedient masters must not forget to apply, some controlling devices. Our master-like politicians have not applied and sometimes have applied improperly those controlling devices to keep bureaucrats within their bounds. There are some universally recognized methods of ensuring accountability of bureaucrats. But Bangladesh administrative system lacks those methods from very inception of course, it is the fact the war of independence that created Bangladesh was actively participated by Bengalis civil and military personnel and the result was that the new Bangladesh government inherited a politicized administration. It was also the fact that the leaders of the newborn country had little administrative experience. Recently it has been observed by the Bangladesh Aid consultative group at Parish that 'Bangladesh Public Administration has not been able to deliver on some of the most important targets the government has set for it. Decisive action is now required at the highest level of government to being to break the bottleneck. The problem which beset our public administration today are (i) corrupted by bureaucrats; (ii) inadequate accountability; (iii) inefficiency; (iv) centralization of decision-making power and bureaucrats master-like interference in it; (v) politicization of bureaucracy and administration etc.

6.3.3 Problems of Political Parties

Political parties are backbone of democracy without democracy within the party unit it is quite impossible to expect democracy at the governmental level. But in Bangladesh political parties are mostly fragile and fragmented. (Halim, 1998). There are more than 100 political parties in Bangladesh but very few of them have definite ideology or programmes to be followed by supporters and future generation. Though one or two parties have ideologies and programmes, the leaders often defy them for their selfish end. Almost all political parties are based around individuals and most of them do not have any grassroots organization or sufficient support to claim public representation. Mostly political parties are characterized by the

politics of conspiracy, self-interest, greed and power-expectation. The nature and composition of major parties reveal a disappointing state of affairs. The constitutions of the most of the parties are absolutely monolithic in nature. The party chairman can make and dissolve any committee from the highest to the lowest level. The party structure and committees are filled by nomination not by election. Political parties in Bangladesh are considered as safe abode for criminals, terrorists and extortionists, for these types of people are always given shelter in parties. Another great impediment to the growth of democracy is the hereditary to dynastic element in the party leadership. Khaleda Zia became leader because she is the wife of late President Zia who founded the BNP and Sheikh Hasina because of her father who founded Bangladesh. The leaders of these two political parties are permanently settled in their respective positions canceling all the possibilities of emergence of any new leadership in their respective parties. This anti-democratic dynastic feature in the party leadership has been the greatest impediment to the development of constitutionalism in Bangladesh. This is on the one hand, destroying our political institutions and on the other hand, preventing and discouraging honest and dedicated people to come into politics. All these are the factors in party politics in Bangladesh, which are discouraging as well as preventing educated and honest people to come into politics.

6.3.4 Problems of Press and Media

Transparency and openness in government transaction is a necessary part of effective democracy. And press and media fulfill these two necessary elements of government. 'A popular government without popular information or means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both'. So there should be unhindered flow of information of government transactions (Halim, 1998). Since independence both radio and TV have been used as mouthpiece of the government. This is why there appears to be a fairly large audience for non-Bangladeshi radio-sources, including All India Radio, BBC and VOA. Both BNP and AI had avowed commitment to the people that they would give autonomy to the state-controlled radio and TV. But nothing positive has yet been done.

6.3.5 Problems of Local Government

Local government is one of the most vital institutions of democracy. Modern state administration is almost unthinkable without devolution of power to the local governments. Due to increase of population as well as to huge expansion of governmental activities certain matter of policy and administration concerning national and international interests are reserved for central administration and the rest wide range of governmental functions are vested in local authorities (Jones, 1989). The system of local government helps in different ways to bring transparency and efficiency within the state administration. First, it helps to solve local problems locally and relieves the central government much of its responsibility to deal with trifles and local matters. Second, it relieves MPs much of their burden of local responsibilities, which people usually expects from MPs. If local government are institutionalized, they will help develop leadership from the grassroots level giving gradually a strong base in democracy. Article 59 of the Bangladesh constitution provides that local government of every administrative unit 'shall be entrusted to bodies composed of persons elected in accordance with the law' and they will perform functions relating to:

- a. Administration and work of public officers;
- b. The maintenance of public order;
- c. The preparation and implementation of plans relating to public services and economic development.

Article 60 also empowers the local government to exercise 'the power to impose taxes for local purposes', to prepare their budgets and to maintain funds. But no government so far has taken proper initiative to fulfill the aspirations expressed in the constitution with regard to institutionalization of local government. Elected local government should be autonomous and independent of the executive and the local administration should be under the control of the local government. But in Bangladesh every government has kept colonial mentality in respect of nourishing this institution.

6.3.6 Problems of Unconstitutional Laws and the Control Over Delegated Law

The comptroller and Auditor-General, Election Commission. Public Service Commission, Local Government etc. are constitutionally created essential institutions of democracy. Institutionalization of democracy depends on the full independence and proper functioning of these institutions. The constitution has given these institutions full independence but statutory laws, which deal with their composition and functions, are vitiating all aspirations of the constitution. In most cases these Laws have been made violating the provisions of the constitution. To give democracy a positive turn these unconstitutional laws should immediately be repealed and democratic laws in accordance with the provisions of the constitution should be made (Halim, 1998). The largest portion of laws in the country is covered by delegated legislation. Now over country is run almost by S.R. O.s and these are often contradictory and they sometimes violate even constitutional provisions. This is the area where the executive is abusing its power almost rampantly. A statutory instrument Act should, therefore, immediately be made and a standing committee should be established to scrutinize these delegated laws before they are applied.

6.3.7 The Leadership Problem

The problem of democracy in Bangladesh as discussed above is politico-legal in nature. From socio-economic point of view Bangladesh is an underdeveloped country. There is plethora of problems like over-population and its rapid growth, illiteracy, poverty, disease, malnutrition, unemployment etc. But our leaders have created almost all these problems. On the other hand, there are huge possibilities and factors in favour of industrialization and economic growth in the country. Many third World countries started their journey towards constitutionalism and economic development with fragile institutions as was in the case of Bangladesh still lags behind. The basic reason behind such a position is leadership crisis, which these nations have been suffering since its independence. The Malaysian Prime Minister Mahathere is a classic example of a prudent and intelligent leader; He transformed his country from rudimentary stage of this 'tiger' status. Malaysia was beset with many

problems earlier. South Korea's economy was no better than ours in the 60s. Its per capita income was lower than that of Bangladesh in 1953. But by virtue of solid leadership skill, it has surpassed us long back (Ahmed, 1997). The age of our Independence is 34 years, which is a pretty long time. Unfortunately, we still talk about food, cloths, and shelter-three basic needs of the people. This 34 years period was enough for any civilized and hard working nation to change its luck and rise to glory. Ironically we failed even to meet our minimum needs over this long period. Our people are no less hard working than those on industrial nations. They do not know the way to do it. The leaders in our country only 'aggravate the crisis of democracy by trying to shape events to suit their own exigency while disregarding the urgent need for economic growth. Their commitments were limited to speeches and the ritual of annual plans are drawn up and implemented by bureaucracy ... No political effort was made to inspire the people towards sacrifice and growth and no serious national plan was envisaged to deal with these problems. The leaders remained too busy with small, peripheral, petty personal politics and ignored the fundamental issues of development and democracy (Ahmed, Moudud, 1995). It is the fact that democracy cannot be established overnight. Those who have firmly established democracy have developed their traditions of social and political justice over the period of many ages. Although 40 years has been passed after independence, Bangladesh was under military and presidential rule near about 20 years. Parliamentary form of government has been started since 1991 but till now no viable dedicated leader nor any viable constitutional government has yet evolved. Still politicization in the administration goes on. Mainstream Political Leadership has adopted the policy of creating a support-base within the bureaucracy and administration. Though they are struggling, as their activities show, not for the cause of democracy; rather for finding them in power any how (Halim, 1998). They are showing their narrow outlook and are adopting the policy of provoking each other. They have also stopped the way to emerge any viable leadership in democratic way. The nation is still ardently looking forward to a dedicated leader who would take responsibilities to liberalize all-important institutions of democracy.

6.4 Conclusion:

The non-party Caretaker Government was delegated to assist and help the Election Commission to hold the Parliament Election "peacefully, fairly and impartially" within 90 days since 1996. In the Constitution of Bangladesh under Chapter IIA, the provisions of the Non-party Caretaker Government were specified in Articles, such as 58B, 58C, 58D, and 58E. So far three general elections in Bangladesh (1996, 2001 and 2008) were held under the provision of Non-party Caretaker Government. All the elections had been termed free, fair, and impartial by the both national and international election monitors and observers, even though the losing oppositions in all cases had great difficulties in accepting the results (Source: Democracy Watch election observation report 1991, 1996, 2001 and Daily Prothom Alo January issue).

In our quest for electoral excellence and efficiency, we should remove the existing anomalies. With the above realistic policy intervention, action plan, required change of laws and rules and with the introduction of changed management the present unhappy state of affairs prevailing in the CTG system will likely to improve. Transparency and accountability will also be imposed strictly at all levels. Only then, the democratic values will get preference and confidence of the mass people will be restored on the status of an ideal CTG system in Bangladesh more than ever before.

Chapter Seven

CONCLUSION AND POLICY IMPLICATIONS

Chapter Seven

7. CONCLUSION AND POLICY IMPLICATIONS

7.1 General discussion

Bangladesh became independent from Pakistan in 1971, following a bloody war. The indefinite postponement of the summoning of the National Assembly and the refusal of the Pakistani military government to hand over power to the elected representatives following the general election resulted in mass protests. The use of military might in dealing with political problems led to the bloody war that cost the lives of millions of people and also resulted in the surrender of Pakistani forces on 16 December 1971, and the creation of Bangladesh. One of the reasons for the creation of Bangladesh was the aspiration of the people to establish a democratic society. Conversely, it may be said that Bangladesh became an independent country as a protest against military rule. Ironically, between 1975 and 1991, the country was either under direct or indirect military rule. Since independence, two Presidents have been killed in military coups, martial law has been imposed three times and thrice a state of emergency has been declared.

Like many developing countries, in Bangladesh the holding of free, fair and credible elections remains a big legal and political challenge despite the existence of all formal institutions including an apparent independent Election Commission. Those in power have always manipulated the rules and institutions concerned with the election process. Consequently, the innovative idea of holding the election under a Non-party Caretaker Government was conceived as a solution. It was perceived that the non-party neutral Caretaker Government would have no motivation to manipulate the electoral process as the members of this government are barred from contesting the election.¹ Thus, the *Constitution (Thirteenth Amendment) Act 1996* was passed (Appendix-3), requiring all future general elections in Bangladesh to be held in accordance with this amendment.² Under this arrangement, the government, at the end of its

tenure, rather than going into a caretaker mode should hand over power to a Non-party Caretaker Government.

We must not be oblivious of the fact that prior to formal incorporation of Non-party Caretaker Government system in the constitution, the first election under an interim government, in other words a Caretaker Government, was held in 1991 after ouster of the then President of military background through mass upsurge. The said interim government was headed by the seating Chief Justice who later came back to the office of Chief Justice after discharging the job of acting President.

The issue of longer-term arrangements of Caretaker Government arose when the opposition accused the ruling party with rigging a parliamentary by-election (in Magura constituency) in early 1994.³ The opposition demanded cancellation of the results of the by-election or threatened boycott and resignation from parliament. Having boycotted the parliament for few months, the opposition members resigned from parliament in December 1994. They demanded that a bill to be introduced before the parliament providing for parliamentary elections under Caretaker Governments for at least 3 consecutive terms. The government did not meet the demand but rather dissolved the parliament and called an early election to avoid by-elections in constituencies represented by the resigning members of the opposition. All but the ruling party boycotted the election of 15th February 1996. Amidst record low turnout and high tension the election was announced over. The opposition movement intensified after the 15th February elections forcing the government to amend the constitution making permanent arrangement of Caretaker Governments to conduct future parliamentary elections. In the face of nationwide agitation and non-cooperation movement the sixth parliament had to be dissolved after passing of the Constitution (Thirteenth Amendment) Act, 1996. That paved the way for holding the seventh general election of Members of Parliament under a Non-party Caretaker Government system.

The amendment provided that after the resignation of the government, before a scheduled general election, the President shall invite the immediate past Chief Justice of the country to become the Chief Advisor (CA), or head of the Caretaker Government.⁴ These changes provided for

the formation of a non-political Caretaker Government headed by the CA with the status and privileges of the Prime Minister.⁵ Article 58C (1) says that, the 'Non-party Caretaker Government shall consist of the Chief Advisor at its head and not more than ten other Advisors.' The Advisors are to be appointed by the President on the advice of the Chief Advisor.⁶ The CA would exercise the executive power of the republic during the tenure of the Caretaker Government. The tenure of the CA commences from the moment of taking the oath of office and ends when a new Prime Minister is sworn in after the general elections.⁷ The amendment, in clear terms, made it mandatory to hold the general election within 90 days.⁸

The 13th Amendment of the Constitution introduced the Non-party Caretaker Government with a view to ensuring free and fair election to the Parliament. The term Non-party was used to connote composition of Advisors who are not connected or affiliated or associated with a political party. The new arrangement also envisaged a scenario where the Caretaker Government would not initiate new policies or legislation or make commitment for new or large expenditures because it lacked the people's mandate. It was also connoted that conventionally, a Caretaker Government, despite having legal power, would not only desist from exploiting its position by implementing any controversial new policy, but also refrain from new and ad hoc appointment, redefining the character of the services and the duties of posts, changing the status and rank of Officials or deploying of Officials in a manner that might be construed as political patronage.

Three general elections were held under the *Constitution (Thirteenth Amendment) Act 1996*. All these elections were widely accepted as reasonably free and fair, and resulted in a change of government in a peaceful manner.⁹ In the first general election held in 1996 under this amendment, the AL won by defeating the BNP led government of 1991-96. In the second general election held in 2001 the four-party coalition headed by the Bangladesh Nationalist Party (BNP) won by defeating the immediate past ruling party Awami League (AL) with more than a 75% majority,¹⁰. Thus, it appeared that democracy in Bangladesh was on the path to

consolidation. But later on the innovative system of Non-party Caretaker Government faced a number of challenges, debates and questions as well.

The debate on Caretaker Government is not a recent phenomenon. It started in 1996 when the erstwhile President Abdur Rahman Biswas underlined the role of the Presidency and his control over the Armed Forces through the sacking of the Chief of Army Staff. This was done despite the presence of a Chief Advisor and a Council of Advisors belonging to a Caretaker Government. 'This sharply highlighted the dual system of government that had been introduced by the 13th amendment of the constitution'.¹¹ The evolving crisis was fortunately contained through the patience and maturity of the Chief Advisor.

The debate had been refueled in 2001 with the undertaking of controversial administrative decisions by the Caretaker Administration. These were policy decisions and have been identified by some analysts as being beyond their mandate. The election in 2001 also raised another significant issue-the role of the armed forces representatives employed on electoral duties. We have already seen the allegations from the defeated parties that their associates and workers were targeted as potential troublemakers and consequently restrained from active participation and campaign on behalf of their political party. They feel that this affected election results. Election observers also noted that in some cases representatives of the Armed Forces having been empowered with police and magisterial powers also entered election centers.

The debate had been revived once again in 2006 when the erstwhile President Prof. Dr. Iazuddin Ahmed took the charge of the Chief of the Caretaker Government sidetracking other options of the constitution. The constitution provides several alternatives before the President assumes this charge.

The debate on Caretaker Government was heightened when military backed under the leadership of Dr. Fakhruddin Ahmed NCG assumed power unconstitutionally for two years. During the tenure of this unconstitutional Caretaker Government many politicians and intellectuals expressed their views on it. Some demanded its abolition and other

demanded its reformation. After the 9th parliamentary election, the debate on Caretaker Government rose up again.

Free and fair election is the crucial pre-condition for democratic system. In the Universal Declaration of Human Rights adopted by the United Nations Organizations (UNO) in 1948 the necessity for free and fair election has been emphasized. The Caretaker Government in Bangladesh had been introduced for holding free and fair elections. But the enhancement of powers of the President for the interim period made by that amendment demonstrated the possibility of crisis in governance. In our parliamentary practice the President makes only two discretionary choices and acts on the advice of the Prime Minister in every other matter. But the thirteenth amendment gave such powers to the President that strikes at the foundation of the parliamentary system. This amendment created a kind of dyarchy that can engender undesirable and unintended conflict. The vesting of the control of the Defense Ministry in the hands of the President is one such source of possible conflict. With the control of the armed forces in the hands of the President and not with the Caretaker Government further established the notion that the President can discharge executive functions without necessarily having to agree with the Chief Advisor. 'The system was one of dyarchy and this certainly was not conducive to holding free and fair election'.¹² The amendment also vests all state powers in the President for the interim period by making the Non-party Government accountable to him. In addition, the President has a number of extraordinary constitutional means of wielding power and influence. In the case of a constitutionally defined "grave emergency" threatening "the security or economic life of Bangladesh," the President, under article 141A of the constitution may issue a proclamation of emergency, which eliminates all restrictions on state power and the protection of fundamental rights (Emergency Provisions: Appendix 5). A state of emergency may last 120 days or longer with Parliament's approval. If the President determines that "immediate action" is necessary, he may promulgate any ordinance he wants, as long as it is laid before Parliament for approval at its next session—that is, if it has not already been repealed. Added to the considerable power of being able to place persons in preventive detention, these are a potent array of powers controlled directly, and without means

for external control, by the President. This has been remarkably observed that there was no clarification in any corner of the constitution (neither in article 58 nor in 141A) how long the Caretaker Government will continue during the period of State of Emergency.

The experiences of last three Caretaker Governments highlighted on the fact that though the CTG system temporarily resolved the long-term impasse over the organization of free and fair National Elections and was later projected as a model for other developing countries facing similar problems, the system is still not full-proof against manipulation by an incumbent government. As the discussions that follow will illustrate, two specific problems emerged in Bangladesh, First, the designation of the last retired Chief Justice as the head of the CTG opened up opportunities for the incumbent government to involve the Judiciary in partisan contestations. The appointment and the tenure of the Judges became highly contested and controversial as all major parties started to identify Judges who would be acceptable to them as the CTG head. Second, the allocation of the Ministry of Defense to the President rather than the CA created opportunities for the incumbent government to control the military via the President, who was after all an appointee of the incumbent government.

Our political governments also tried to corrupt the CG system. As the immediate past Chief Justice becomes the Chief Advisor of the Caretaker Government, the different political governments tried to promote the Judges in such a way as to make the Judge of their choice as the Chief Advisor of the CG. It was not only weakening the system but also polluting the Judiciary by politicization of the bureaucracy.

What has gone awry with such an ingeniously crafted system? Perhaps a simple answer to these two poignant questions is that expectation and experience over the years emerged mismatched.¹³ The Caretaker Government is accused to be a grotesque system with no parallel in history. It implies distrust of elected representatives and even renders election meaningless. The system exposes the bankruptcy of the country's politics. It not only goes against the representative spirit but also against continuance of government.¹⁴

Now we entered in a new horizon of political and electoral aspects in Bangladesh as the Supreme Court on 10 May 2011 declared the Caretaker Government system illegal and held it ultra vires the Constitution. Declaring void the 13th amendment, the court kept option open for holding next two general elections under the caretaker system on the age-old three recognized principles—(1) Necessity makes that lawful which otherwise is unlawful, (2) Let the welfare of the people be the supreme law, and (3) The safety of the State is the supreme law-to evade disorder.

The court apparently took a subtle course to keep the Judiciary above controversy. It suggested for excluding the former Chief Justice and Judges of the Appellate Division from the Caretaker Government. "In the meantime, parliament is at liberty to bring necessary amendments in this regard," said the order.

The National Parliament of Bangladesh on 30 June 2011 abolished the Caretaker Government system to enforce the verdict of the Supreme Court, allowing general elections under elected partisan governments with the passage of the Constitution (15th amendment) act (Appendix 4). According to the latest amendment, the next parliamentary election will be held within 90 days prior to the current parliament's dissolution. During these 90 days, the parliament will remain, but it will not have any activity as the latest amendment limited its power and functions for that period. But the amendment did not limit the power of the outgoing cabinet during the election.

The passage of the Constitution (15th Amendment) Act ensures the banning of the CTG, but the hurdles and uncertainties that darkened the sky of Electoral System as well as the democracy and politics in Bangladesh are still persistent.

The amended constitution still leaves some room for extra-constitutional interventions, said constitution experts and political thinkers, referring to the political confrontation over annulment of the Caretaker Government system. The scope for declaration of "state of emergency" and "doctrine of necessity"—two key prerogatives of the president that still remain

unchanged—may pave the way for formation of an interim administration with unelected people, they pointed out.¹⁵

The Non-party Caretaker Government of Bangladesh was the outcome of decades-long hidebound and parochial political culture consisting violence, instability, conflicts, mistrust, disbelief, hatred, disrespect and misunderstanding among the different political parties and groups. The nationwide survey conducted among the people from different ages, professions and backgrounds under this research shows that this state of disorder and uncertainty is still on (Chapter 6: Charts 2.1–2.30 and Tables 2.1–2.30). This is the bitter reality of political arena in Bangladesh.

By making a choice to not stay within the bounds of the parameters set for politicians, at the time when it was introduced a very dangerous situation had emerged that called for such a system. In other words, the caretaker system was the manifestation of the distrust that guides the relationship between the two major political parties since long, which is still continuing unabated. Though we may have hoped that our politicians would mature over time and learn to conduct their affairs with dignity and prowess, this has not happened.

The passage of the 15th amendment Act could not provide us the assurance of avoiding uncertainty from the future political arena of our country. That's why the responsibility of making our political environment "cloud free" goes to the political parties, especially to the party in power to hold political dialogue with political parties especially with main opposition parties. In reverse, the main opposition party should respond to the invitation of the government party to determine the peaceful political future of our country and to resolve the present crisis that emerged from the 15th amendment. The Non-party Caretaker Government system had been established on the basis of a national consensus. So abolition of this system on a flimsy ground can stop the way to peaceful transfer of power. This can make the way of development of democratic process, transfer or change of power problem-ridden.

It indicates that even though we are not allowed anymore after Supreme Court verdict to incorporate the NCG system in our constitution as before, but still we are in need of an alternative model of Caretaker Government system in future for interim period as doctrine of necessity for the sake of "safety of the state and its people".

This is also clear that even if we desire to go with the Caretaker Government system for the next two terms, we should now exclude the former Chief Justice and Judges of the Appellate Division from the Caretaker Government. We should also follow the spirit of the verdict that any alternative government system, which we suppose to incorporate in the constitution, must be elective or people's representative in nature. Otherwise, it will, again ultra vires the Constitution.

We believe that time is of the essence. We must all approach this question without prejudice or pre-conceived notions. The Government should also refrain from making provocative statements that if necessary, through brute parliamentary force, they will rescind the Caretaker system and force the holding of the next election under the present Government's supervision. That is no solution.

We believe in the interest of national unity and consensus, the President can initiate a process where discussion can take place with regard to all possible alternatives as stated in the Constitution. This should be the first step to overcome any possible deadlock. We can recollect that the temporary Caretaker Government was eventually formed in 1991 headed by Chief Justice Mr. Shahabuddin Ahmed, around whom a consensus had evolved. The neutral, efficient and free and fair manner in which the 1991 elections were conducted was a watershed in Bangladesh after years of military rule. The President can again build the consensus among both the Treasury Bench as well as the principal Opposition Party in the Parliament regarding the formation of next interim government.

7.2 Summary of Key Findings

This research will enable us to explore the history and characteristics of transformation of power in Bangladesh as well as the background,

development, significance and the state of affairs in the Caretaker Government system making a reality check between the promises and provisions of this system at the tertiary level. It will also enable us to assume the future of this system in both national and global perspective.

Chapter One introduces the history and characteristics of transformation of power in Bangladesh along with the introduction, development, significance and the state of affairs in the Caretaker Government system. It also describes the study objectives, study rationale, study methodology as well as the scope and limitations of the Study.

Chapter Two refers the historical background and promises of Caretaker Government in Bangladesh. It illustrates the evolution and initial promises of this system with a notion on the Government promises in the changing scenario.

Chapter Three discusses the Caretaker Government and democratic values with a detailed overview of the Theories of Government as in the Political Science. This chapter also deals with conceptual mapping, purposes, values, promises, provisions and reassessment of the Caretaker Government system in Bangladesh.

Chapter Four provides us in details the provisions of Caretaker Government with Existing Structure, logistic supports and Policy Context as a whole.

Chapter Five enables us to get familiar with the present status of the Caretaker Government in Bangladesh with a reality check between goals and present status, present standard and functioning. This chapter also discusses the Challenges faced by the Caretaker Government System in Bangladesh juxtaposing the promises, provisions and challenges in regarding this system.

Chapter Six incorporates the analysis and findings of the research, i.e., the primary sources collected from field survey with an overview on identified areas and identified problems.

Chapter Seven provides the conclusion, which derives from general discussion as well as the policy implications for improving and reforming the Caretaker Government System in Bangladesh.

7.3 Recommendations on Policy Implication

7.3.1 Suggested Policy Measures for Overcoming the Problems of NCG in Bangladesh

7.3.1.1 Short-run measures

This research suggests the following measures to overcome the present unpleasant scenario and reach the solution through national consensus to present a model of sound system of Caretaker Government in Bangladesh:

- (1) The Supreme Court declared illegal the Caretaker Government system, but the court kept option open for holding next two general elections (for the 10th and 11th parliament) under such governments keeping the doctrine of necessity in mind. So, we can run with the NCG system for the next two terms. The constitution can be amended in this regard.
- (2) If the major political parties (specially the Treasury Bench and the Principal Opposition Party in the Parliament) are not on consensus on the 1st, 2nd, 3rd, 4th and 6th options with regard to the appointment of the Chief Advisor of the NCG, then the 5th option (selecting a person from amongst citizens of Bangladesh who is qualified to be appointed as Advisor) can be explored. The process of selecting Chief Advisor and other Advisors may be given to the Parliamentary Business Advisory Committee of which the Speaker is the Chairman and both leader of the Treasury Bench and Opposition along with other important Members of Parliament are members. If selection process is given to any other functionary it would not be that much effective as of the Business Advisory Committee.

- (3) Article 65(3) of the constitution provides the provision for reservation of 45 seats for women to be elected Members of Parliament on a comparative demonstration basis for the next 10 years. Hence, the constitution can be amended providing the provision for reservation of 11 seats of Chief Advisor and other Advisors to be elected by the National Parliament from among the members to form the Caretaker Government for interim period. The National Parliament can elect the Chief Advisor and other Advisors against the reserved seats in the last session of the Parliament.
- (4) Article 76(1) and 76(2) of the constitution provides the provision of Standing Committees to be appointed by the National Parliament from among the members to examine, review and investigate the draft bills and other legislative proposals. Consequently Article 77(1) of the constitution provides the provision of the Office of Ombudsman to be established by the National Parliament. As derived from these instances, there may be a provision for the Office of Caretakers to be established by the National Parliament each time in the last session of the tenure. The members of this office should be elected from among the Members of Parliament.
- (5) There should be unambiguous clarification in the constitution on how long the Caretaker Government will continue during the period of State of Emergency (if declared). Article 58 on Caretaker Government and article 141 on Emergency Provision should be properly amended or recast in this regard. The period of Caretaker Government should be 90 days in all respects.
- (6) Measures should be adopted to strengthen the Election Commission as has been done in South Africa and India. It is essential the person chosen is not identified with any special interest group. The independence of the Commission also needs to be strengthened by placing the services of all Officials in the Election Commission

Secretariat directly under the Chief Election Commissioner. Similarly, the Election Commission must enjoy budgetary independence. The selection process of the Chief Election Commissioner and Election Commissioners not more than two like that of Chief Advisor and Advisors may be given to the Parliamentary Business Advisory Committee. The powers given to the Election Commission under the constitution and the Representation of People Order, 1972 are sufficient enough to hold any general election freely, fairly and impartially.

7.3.1.2 Long-run measures

- (1) The present law leaves the selection of the Advisors entirely to the Chief Advisor. The principle of neutrality should be a governing factor in the selection. Besides, both the ruling party and the main opposition party should have the scope to suggest such neutral persons. During the interim government after the fall of Ershad, Justice Shahabuddin used these lists provided by the different political parties. If the Advisors are chosen from amongst persons listed by the major parties, the council will enjoy their confidence and there would not be complaints of partiality.
- (2) Members of the Advisory Council including the Chief Advisor have to give written undertaking to the effect that they would neither seek election in the forthcoming election nor accept any office of profit under the government that will be elected. While one may consider this redundant as this is a basic requirement of the caretaker concept, the law as it is drafted does not clearly state the point. Quite clearly, the Advisors must not expect to be appointed to any high office in the next five years during the term of the Parliament.
- (3) Article 58E of the present law confers extraordinary powers to the President. In a parliamentary system this is contrary to the underlying principle. Our jurists and political parties must consider the issue in order to prevent division of the executive powers of the government. The President must remain above all controversies.

- (4) To avoid desperation and cause of confrontation we may need to rethink the maximum tenure of an elected government and the five-year term could be reduced to four years. A four-year term will help make the system stable by obliterating the demand for mid-term elections. Even the dates of elections could be preset. This would allow parties to plan their campaign and would also prevent political manipulation of election dates.
- (5) Political parties should have a list of their subscribing members preferably showing a minimum membership from all the 300 political districts or even from 64 administrative districts. That list must be submitted to the Election Commission and be available as public document. Parties must have annual general meetings and the proceedings must be submitted to the Election Commission together with their annual audited balance sheet duly approved in the party council. They require a periodical, secret ballot vote for party leadership, such votes to be overseen by the independent electoral commission. There must be a minimum of two candidates for every party executive position at the election. Greater genuine public participation at the grass roots level could encourage the development of a bottom-up nomination process within the political parties. Party leadership should not be allowed for more than two terms. Parties should prepare accounts of its receipts and expenditures, and those must be available for public scrutiny, and public accounting firms must audit these accounts. Parties should have election manifestoes and they should not be utilized as devices to deceive and hoodwink the electorate. Such manifestoes should include a clear commitment to fulfill their promises. Political parties wishing to participate in elections at any level will have to follow the above.
- (6) Hereditary nature of leadership should be abolished and the party constitution should be amended to allow change in the leadership after each specified term. The party structure and committees should be filled only by election and this will encourage as well as develop leadership from grass-root level.

- (7) The election system prevailing in Bangladesh is that of "first past the post" (highest vote-getter wins). To remedy some of the defects and promote inclusion of various political opinions and encourage dispersed interest groups to be represented in the legislature the proportional representation system may be considered. Even emerging democracies have adopted some form of PR system.
- (8) For the transparency within the government fabrics Radio and TV should immediately be given autonomy. Independent broadcasting authorities (example: BBC) should be set up to run state owned Radio and TV. Both private electronic and print media should be given proper liberty of collecting information and covering all stages of National Elections during the interim period. All restrictive Laws concerning press and media should be allowed to be self regulated by them through a code of ethical practice.
- (9) Provisions should be made for direct elections against reserved seats for women, and the present inadequate number of seats to be increased to 64 seats representing 64 districts. In addition, the political parties should nominate at least 30% women candidates to participate in general elections.
- (10) Directly elected local governments should be established according to Articles 59 and 60 of the constitution with proper powers and independence and the respective local administration with its officials and staff must be vested in the direct control of the local governments. This will on the one hand, decentralize administrative power, functions and responsibilities and as a result channel-based corruption, conspiracy and red-tapism by the bureaucracy would be reduced and on the other hand it will relieve MPs much of the burden of local responsibilities and they will therefore, be able to concentrate more in committee functioning whereby the central bureaucracy will come under the direct control of parliament.

7.3.2 Expert opinion on Policy Implications

With a view to enhancing its operational effectiveness and political accountability, which could conceivably improve the framework of future Caretaker Governments and as well the process of transfer of power, Justice Habibur Rahman and his Caretaker Cabinet sought to apply the following interactive decision making/implementing strategies:

- (1) Maintain an unobstructed two-way communication with the leaders of major political parties.
- (2) Hold frequent brainstorming meetings with the Advisors of the 1991 Caretaker Government.
- (3) Establish liaison with leaders of professional/occupational associations and labour unions.
- (4) Conduct periodic sessions with student leaders from all political parties.
- (5) Carefully organize public hearings on selected national issues.
- (6) Engage interested intellectuals in probing the possible structural and procedural reforms needed for political stability.
- (7) Accelerate the on-going training of EC personnel in development and application of the Computerized Voters Identity and Registration System.
- (8) Initiate a national debate in order to build a consensus for reform of the legal system, which still carries the anti-people baggage of the colonial rule.
- (9) Negotiate with all political leaders, particularly of the four major political parties, for the continuation of a strong, autonomous Election Commission, as established under the Caretaker Government framework, during the tenure of an elected government. This certainly would alleviate problems of violation of electoral rules routinely faced in mayoral and by-elections.¹⁶

Unfortunately, Habibur Rahman's Caretaker Government lacked the time and political support-base to pursue vigorously its agenda for consensus building.

7.4 Conclusion

It is the absolute authority of parliament to legislate laws for the republic. In this respect the provision of Article 65(1) is pertinent which says, 'There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution shall be vested the legislative powers of the Republic.' Thus, declaration of any law unconstitutional by the Supreme Court does not have any bearing on the authority of Parliament in respect of legislation of laws as while enacting law as representative of the people the Members of Parliament exercise their power on behalf of the people as the solemn expression of the will of the people.

Even argument on US constitutional amendment says–

"Its power derives from the people; it was adopted by the people; it functions at the behest of and for the benefit of the people. Given all this, if the people, as a whole, somehow demanded a change to the Constitution, should not the people be allowed to make such a change? As Wilson noted in 1787, "... the people may change the constitutions whenever and however they please. This is a right of which no positive institution can ever deprive them."¹⁷

'To ensure the Constitution continues to reflect the aspirations of the people-economic, political, social and cultural-it requires periodic reviews. Therefore, if the government intends to bring changes to what has become essentially a non-secular and undemocratic document, we welcome this and the decision to assign a committee to review and examine the country's constitution is a first step in the right direction.'¹⁸

However, both on the issue of the Caretaker Government system and the Election Commission there is need for reaching a consensus and without such consensus if next election is held that will not be sustainable which in turn will make the country as well as government instable and obviously at this stage of our democracy such instability is undesirable.

The nation has been immensely hopeful to see the President of Bangladesh, who already called the political parties for dialogue on the formation of next Election Commission. The nation also got highly optimistic to see the principal Opposition Party in the Parliament to be agreed to attend the dialogue with the President.

What this research intends to stress is that since the problem of the currently evolved electoral governance is far from ordinary, its solution also necessitates a level of vision and innovation that goes beyond the realm of the ordinary. The citizens of Bangladesh have proven in the past, through the introduction of the Caretaker Government concept, that they are no stranger to radical initiatives. Can they do it again? Can they create structures and initiate processes that lead to competent and empathetic political leaders emerge from genuine citizens' choices who would regard rule of law as a rule and not an exception, corruption a crime and not an accepted method of granting services and human rights not just a rhetoric but the main underpinning of all things that guide our societies?

This system can continue for a critical and temporary moment but not forever. Now reformation can be occurred in the present system. Gradually this system can be knocked down. The time has come to rethink the interim government system, and all those involved in the electoral process should debate the issue.

This research attempted at recounting the journey of democracy in Bangladesh since its inception touching upon its successes and failures and the challenges that it has faced so far. Despite the many obstacles and hindrances, it would be unfair to write off Bangladesh as undemocratic because there is scope to improve and develop the state of democracy through political will and other remedial measures suggested so far in this paper.

References

- 1 Article 58C(7) of the *Bangladesh Constitution* requires that the members of the Caretaker Government not be 'members of any political party or of any organization associated with or affiliated to any political party' and not permitted to be a candidate for the ensuing election'.
- 2 For a critical analysis of various provisions of the Thirteenth Amendment, see M Rafiqul Islam, 'Free and Fair General Elections in Bangladesh under the Thirteenth Amendment: A Political-Legal Post-Mortem' (July-December 1996) 26 *Politics, Administration and Change* 18.
- 3 Ibid, p-5.
- 4 Bangladesh Constitution, art 58C(3).
- 5 'The Chief Advisor shall have the status ... and privileges, of a Prime Minister and an Adviser shall have the status ... and privileges, of a Minister.' Bangladesh Constitution, art 58C(11)
- 6 Bangladesh Constitution, article 58C(8).
- 7 Ibid.
- 8 'A general election of members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration.' See *Bangladesh Constitution*, art 123(3). This clause was substituted for the former clause (3) by the Constitution (Thirteenth Amendment) Act 1996, (Act 1 of 1996), s 6.
- 9 An international election observer team comprising the representatives of the United States and the European Union, headed by former US President Jimmy Carter, monitored the poll and expressed their satisfaction over the holding of the election in 2001.

For detailed comments of the international observer team see the *Bangladesh Observer* (Dhaka) 23 June 2001.

- 10 This majority was enough to amend the constitution.
- 11 Fakhruddin Ahmed, *The Caretakers: A First Hand Account of the Interim Government of Bangladesh (1990-1991)*, The University Press Limited, Dhaka, 1998, p-134.
- 12 Fakhruddin Ahmed, *The Caretakers: A First Hand Account of the Interim Government of Bangladesh (1990-1991)*, The University Press Limited, Dhaka, 1998, p-136.
- 13 Prof. Dr Syed Anwar Husain, CG going...gone, what next?, Daily Sun 01 June 2011
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- 16 Zillur R. Khan, *Aspirations and Realities: Parliaments and the Democratic Culture*, an article published in *Political Culture in Bangladesh: Perspective and Analyses* edited by Syed Saad Andaleeb, p.162-163
- 17 G.W. Choudhury (1974) *The last days of United Pakistan* p128-129
- 18 *Bangladesh Observer*, January 17, 2009, *Popular Sovereignty and the Constitution*, (Editorial).

APPENDICES

Appendix 1

Questionnaire

(This questionnaire has been prepared only for Ph.D research, which aims to inquire into the Non-party Caretaker Government system in Bangladesh with a view to reassess the system to workout a model of sound and better alternative thereby. A sample survey has been planned to be conducted among the cross section of multi-professional people in the capital city of Dhaka and in some other rural areas of Bangladesh. The interviewees are requested to answer the following set of questions. The total sample size is 300.)

Tick (✓) the appropriate box or write the correct answer:

1. Name:
2. Date of Birth:
3. Place of birth (home district):
4. Age as on date of interview:
5. Marital status: Married Unmarried;
6. Educational qualifications:
7. Profession:
8. Religion: Islam Hindu Buddhism Christian Other
9. Gender/Sex: Male, Female
10. Income: Monthly_____Yearly_____
11. What are the key challenges faced by the Non-party Caretaker Government system in Bangladesh? (Please select any three).
 - Diarchy of administration;
 - Anomalies in the constitution;
 - Lack of trust between the political parties;

- Lack of adequate skill among the polling personnel;
 - None of them (please write your opinion).
12. What election have you been involved or participated? (Please select from the following list).
- Parliamentary Election 1996;
 - Parliamentary Election 2001;
 - Parliamentary Election 2008.
13. What was your role in the concerned election?
- Candidate Magistrate Polling Personnel
 - Observer Voter.
14. Do you think that the election you have been involved or participated was much more neutral than the others under political government? Yes No
15. Do you think that the election you have been involved or participated was much more credible than the others under political government?
- Yes No
16. Do you think that the election you have been involved or participated was much more acceptable to the people and observers than the others under political government?
- Yes No
17. Do you think that the Non-Party Caretaker Government in Bangladesh is much more neutral than the political government?
- Yes No
18. What election among the three was much more neutral, credible and acceptable according to you? (Please select one from the list)
- Parliamentary Election 1996;
 - Parliamentary Election 2001;
 - Parliamentary Election 2008.

19. What limitation is to be overcome first regarding to the Non-party Caretaker Government system in the present constitution?
- Duties and functions of the President and the Chief Advisor are not specified;
 - Role of Army is not clarified;
 - Polling personnel are not properly trained;
 - Lack of conceptual skill among the electoral people regarding to the new system;
 - None of them (Please write your opinion).
20. What contrast/contradiction should be fixed first regarding to the Non-party Caretaker Government system in the present constitution?
- Dual authority of the President and the Chief Advisor;
 - Term of the Caretaker Government;
 - Conflict between the Government and the Election Commission;
 - Jurisdiction of the Army Personnel and the Magistrates.
 - None of them (Please write your opinion).
21. What is the key barrier for the government to conduct a free and fair National Parliament Election?
- Non-cooperation of the politicians;
 - Unskilled polling personnel;
 - Lack of conceptual skill among the mass people;
 - Provision of dual administration between the President and the Chief Advisor in the constitution
 - Lack of coordination between the Caretaker Government and the Election Commission.
 - None of them (Please write your opinion).

22. Do you think that the present system of the Non-party Caretaker Government should be reformed?
Yes No
23. What should be the first step of the future policy initiatives for reforming of the Non-party Caretaker Government system?
- Conducting a nation-wide survey to find out the opinion of the mass people/professional groups;
 - Arrangement of a referendum;
 - Consultation with the national and international Constitution Experts;
 - Arrangement of dialogues between the Government and the Politicians, Constitution Experts, Polling personnel, professional groups etc.
 - Gathering experience from other countries;
 - None of them (Please write your opinion).
24. What are the institutionalization constraints of democracy in Bangladesh? (Please select any three).
- Colonial structure of the democratic institutions;
 - Colonial electoral process;
 - Mass illiteracy;
 - Lack of conceptual skill among the mass people regarding to the values of democracy;
 - Colonial organizational structure of the political parties;
 - Absence of adequate laws and rules;
25. What are the main socio-cultural constraints to institutionalizing democracy in Bangladesh? (Please select any three).
- Presence of feudal values among the society;
 - Lack of consciousness among the mass people;
 - Presence of colonial values among the society;

- Presence of authoritarian culture in the society.
 - Inferiority complex.
26. What are the major economic constraints to institutionalizing democracy in Bangladesh? (Please select any three)
- Dependency on donor agencies;
 - Insufficient National Budget allocation;
 - High disparity among the society;
 - Semi-feudal structure of the society;
 - Influence of money on election.
27. What are the political constraints to institutionalizing democracy in Bangladesh? (Please select any three)
- Heritage of the long colonial rule;
 - Too many political parties;
 - Unconsciousness among the electoral people;
 - Influence of inheritance in the leadership;
 - Poor quality among the leadership;
 - Absence of vision and/or foresight among the leadership.
28. What are the global constraints to institutionalizing democracy in Bangladesh? (Please select any three)
- New polarization of power in the global politics;
 - Influence of World Bank/IMF;
 - Influence of global fundamental militancy;
 - Influence of global terrorism;
 - Negative influence of globalization.
29. What are the main constraints of political parties for being conducted democratically? (Please select any three)
- Lack of democratic values;
 - Mistrust, disbelief and hatred among the political parties;

- Absence of statesmanship;
- Absence of foresight;
- Colonial heritage of inter-behavioral relationship.

30. What are the main constraints of parliament to be the centre for all political activities of the country?
(Please select any three)

- Colonial rules and procedures;
- Discontinuity of the parliament;
- Instability of the parliamentary government;
- Insufficient age and/or experience of the post-independence parliament of Bangladesh;
- Lack of parliamentary values;
- Undemocratic heritage of the politics.

31. Do you think that the present government system is not sufficient to face the challenges?

- Yes No

32. Do you think that the present leadership in the political parties is not sufficient to face the challenges?

- Yes No

Appendix 3

THE CONSTITUTION (THIRTEEN AMENDMENT) ACT, 1996

Act 1 of 1996
[28 March, 1996)

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purpose hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title.**—This act may be called the Constitution (Thirteenth Amendment) Act, 1996.
2. **Insertion of new article 58A in the Constitution.**—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 58, the following new article shall be inserted, namely :—

58A. Application of Chapter.—Nothing in this Chapter, except the provision of article 55 (4), (5) and (6), shall apply during the period in which Parliament is dissolved or stands dissolved:

Provided that, notwithstanding anything contained in Chapter IIA, where the President summons Parliament that has been dissolved to meet under article 72(4), this Chapter shall apply.”

3. **Insertion of new Chapter IIA in the Constitution.**—In the Constitution, in Part IV, after Chapter II, the following new Chapter shall be inserted, namely :—

“CHAPTER IIA—NON-PARTY CARE-TAKER GOVERNMENT

58B. The Non-Party Care-taker Government.—(1) There shall be a Non-Party Care-taker Government during the period from the date

on which the Chief Adviser of such government enters upon office after Parliament is dissolved or stands dissolved by reason of expiration of its term till the date on which a new Prime Minister enters upon his office after the constitution of Parliament.

(2) The Non-Party Care-taker Government shall be collectively responsible to the President.

(3) 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.

(4) The provisions of article 55(4), (5) and (6) shall (with the necessary adaptations) apply to similar matters during the period mentioned in clause (1).

58C. Composition of the Non-Party Caretaker Government, appointment of Advisers, etc. :-(1) Non-Party Care-taker Government shall consist of the Chief Adviser at its head and not more than ten other Advisers, all of whom shall be appointed by the President.

(2) The Chief Adviser and other Advisers shall be appointed within fifteen days after Parliament is dissolved or stands dissolved, and during the period between the date on which Parliament is dissolved or stands dissolved and the date on which the Chief Adviser is appointed, the Prime Minister and his cabinet who were in office immediately before Parliament was dissolved or stood dissolved shall continue to hold office as such.

(3) The President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired last and who is qualified to be appointed as an Adviser under this article:

Provided that if such retired Chief Justice is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice.

(4) If no retired Chief Justice is available or willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired last and who is qualified to be appointed as an Adviser under this article:

Provided that if such retired Judge is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge.

(5) If no retired judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this article.

(6) Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and (5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Care-taker Government in addition to his own functions under this Constitution.

(7) The President shall appoint Advisers from among the persons who are-

(a) qualified for election as members of parliament;

(b) not members of any political party or of any organisation associated with or affiliated to any political party;

(c) not, and have agreed in writing not to be, candidates for the ensuing election of members of parliament;

(d) not over seventy-two years of age.

(8) The Advisers shall be appointed by the President on the advice of the Chief Adviser.

(9) The Chief Adviser or an Adviser may resign his office by writing under his hand addressed to the President.

(10) The Chief Adviser or an Adviser shall cease to be Chief Adviser or Adviser if he is disqualified to be appointed as such under this article.

(11) The Chief Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Prime Minister and an Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Minister.

(12) The Non-Party Care-taker Government shall stand dissolved on the date on which the prime Minister enters upon his office after the constitution of new parliament.

58D. Functions of Non-Party Care-taker Government.—(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 and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions its shall not make any policy decision.

(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.

58E. Certain provisions of the Constitution to remain ineffective.—Notwithstanding anything contained in articles 48(3), 141A(1) and 141C(1) of the Constitution, during the period the Non-Party Care-taker government is functioning, provisions in the

constitution requiring the President to act on the advice of the Prime Minister or upon his prior counter-signature shall be ineffective.”.

4. **Amendment of article 61 of the Constitution.**—In the Constitution, in article 61, after the word “law” at the end, the commas, words and figure “and such law shall, during the period in which there is a Non-Party Care-taker Government under article 58B, be administered by the President.”.

5. **Amendment of article 99 of the Constitution.**—In the Constitution, in article 99, after the words “quasi-judicial office”, the words “or the office of Chief Adviser or Adviser” shall be inserted.

6. **Amendment of article 123 of the Constitution.**—In the Constitution, in article 123, for clause (3) the following shall be substituted, namely :—

“(3) A general election of members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration.”.

7. **Amendment of article 147 of the Constitution.**—In the Constitution, in article 147, in clause (4),—

(a) for sub-clause (b) the following sub-clause shall be substituted, namely :—

“(b) Prime Minister of Chief Adviser,” and

(b) for sub-clause (d) the following sub-clause shall be substituted, namely :—

"(d) Minister, Adviser, Minister of State or Deputy Minister;"

8. Amendment of article 152 of the Constitution.—In the Constitution, in article 152, in clause (1)–

(a) after the definition of the expression "administrative unit", the following definition shall be inserted namely :–

"Adviser" means a person appointed to that office under article 58C;" and

(b) after the definition of the expression "the capital", the following definition shall be inserted namely :–

"Chief Adviser" means a person appointed to that office under article 58C."

9. Amendment of the Third Schedule to the Constitution.—(1) In the Constitution, in the Third Schedule, after form 1, the following new form IA shall be inserted, namely :–

"IA. The President in the case of performing the functions of the Chief Adviser.—Oaths (or affirmations) in the following forms shall be administered by the Chief Justice–

(a) Oath (or affirmation) of office:

"I,....." do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of Chief Adviser of the Non-Party Care-taker Government according to law :

That I will bear true faith and allegiance to Bangladesh;

That I will preserve, protect and defend the Constitution;

And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will;

(b) Oath (or Affirmation) of secrecy;

"I,.....do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Chief Adviser of the Non-Party Care-taker Government except as may be required for the due discharge of my duty as Chief Adviser."

(2) In the Constitution, in the Third Schedule, after form 2, the following new form shall be inserted, namely :-

"2A. The Chief Adviser.....

.....and Advisers.—Oaths (or affirmations) in the following forms shall be administered by the President—

(a) **Oath (or affirmation) of office:**

"I,do solemnly swear (or affirm) that I will faithfully, discharge the duties of the office of the Chief Adviser (or Adviser) of the Non-Party Care-taker Government, according to law;

That I will bear true faith and allegiance to Bangladesh;

That I will preserve, protect and defend the Constitution;

That I will do right to all manner of people according to law, without fear or favour, affection or ill-will."

(b) Oath (or Affirmation) of secrecy:

"I,.....do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Chief Adviser (or Adviser) of the Non-Party Care-taker Government except as may be required for the due discharge of my duty as Chief Adviser (or Adviser)."

THE CONSTITUTION (FIFTEEN AMENDMENT) ACT, 2011

Act 14 of 2011

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient and necessary further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. **Short title and commencement.** (1) This Act may be called the Constitution (Fifteenth Amendment) Act, 2011.

(2) It shall come into force at once.

2. **Amendment in the beginning of the Constitution, above the Preamble.** In the beginning of the Constitution of the People's Republic of Bangladesh (hereinafter referred to as the Constitution), above the preamble, for the words, commas, signs and brackets "BISMILLAH-AR-RAHMAN-AR-RAHIM (In the name of Allah, the Beneficent, the Merciful)", the following words, commas, signs and brackets shall be substituted, namely:

"BISMILLAH-AR-RAHMAN-AR-RAHIM
(In the name of Allah, the Beneficent, the Merciful)/
In the name of the Creator, the Merciful."

3. **Amendment of the Preamble of the Constitution.** In the Preamble of the Constitution

(a) in the first paragraph, for the words "a historic war for national independence" the words "a historic struggle for national liberation" shall be substituted; and

(b) for the second paragraph, the following paragraph shall be substituted, namely:

"Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution;"

4. **Substitution of article 2A of the Constitution.** In the Constitution, for article 2A, the following article 2A shall be substituted, namely:

"2A. **The State religion.** The State religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions."

5. **Substitution of article 4A of the Constitution.**—In the Constitution, for article 4A, the following article 4A shall be substituted, namely:—

“4A. **Portrait of the Father of the Nation.**—The portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman shall be preserved and displayed at the offices of the President, the Prime Minister, the Speaker and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad.”

6. **Substitution of article 6 of the Constitution.**—In the Constitution, for article 6, the following article 6 shall be substituted, namely:—

“6. **Citizenship.**—(1) The citizenship of Bangladesh shall be determined and regulated by law.

(2) The People of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshies.”

7. **Insertion of new articles 7A and 7B in the Constitution.**—In the Constitution, after article 7 the following two new articles 7A and 7B shall be inserted, namely:—

“7A. **Offence of abrogation, suspension, etc. of the Constitution.**—

(1) If any person, by show of force or use of force or by any other un-constitutional means

(a) abrogates, repeals or suspends or attempts or conspires to abrogate, repeal or suspend this Constitution or any of its article; or

(b) subverts or attempts or conspires to subvert the confidence, belief or reliance of the citizens to this Constitution or any of its article,

his such act shall be sedition and such person shall be guilty of sedition.

(2) If any person—

(a) abets or instigates any act mentioned in clause (1); or

(b) approves, condones, supports or ratifies such act,

his such act shall also be the same offence.

(3) Any person alleged to have committed the offence mentioned in this article shall be sentenced with the highest punishment prescribed for other offences by the existing laws.

7B. **Basic provisions of the Constitution are not amendable.**—

Notwithstanding anything contained in article 142 of the Constitution, the preamble, all articles of part I, all articles of

Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means.”

8. Amendment of article 8 of the Constitution.—In the Constitution, in article 8, for clauses (1) and (1A), the following clause (1) shall be substituted, namely:—

“(1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.”

9. Substitution of article 9 of the Constitution.—In the Constitution, for article 9, the following article 9 shall be substituted, namely:—

“9. **Nationalism.**—The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism.”

10. Substitution of article 10 of the Constitution.—In the Constitution, for article 10, the following article 10 shall be substituted, namely:—

“10. **Socialism and freedom from exploitation.**—A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man.”

11. Substitution of article 12 of the Constitution.—In the Constitution for article 12, the following article 12 shall be substituted, namely:—

“12. **Secularism and freedom of religion.**—The principle of secularism shall be realised by the elimination of—

- (a) communalism in all its forms;
- (b) the granting by the State of political status in favour of any religion;
- (c) the abuse of religion for political purposes;
- (d) any discrimination against, or persecution of, persons practicing a particular religion.”

12. Insertion of new article 18A.—In the Constitution, after article 18, the following new article 18A shall be inserted, namely:—

“18A. **Protection and improvement of environment and biodiversity.**—The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens.”

13. Amendment of article 19 of the Constitution.—In the Constitution, in article 19, after clause (2), the following new clause (3) shall be added, namely:—

“(3) The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.”.

14. Insertion of new article 23A in the Constitution.—In the Constitution, after article 23, the following new article 23A shall be inserted, namely:—

“23A. **The culture of tribes, minor races, ethnic sects and communities.**—The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.”.

15. Amendment of article 25 of the Constitution.—In the Constitution, in article 25,—

- (i) in clause (1), the figure and brackets “(1)” shall be omitted; and
- (ii) clause (2) shall be omitted.

16. Substitution of article 38 of the Constitution.—In the Constitution, for article 38, the following article 38 shall be substituted, namely:—

“38. **Freedom of association.** Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order:

Provided that no person shall have the right to form, or be a member of the said association or union, if—

- (a) it is formed for the purposes of destroying the religious, social and communal harmony among the citizens;
- (b) it is formed for the purposes of creating discrimination among the citizens, on the ground of religion, race, caste, sex, place of birth or language;
- (c) it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country;
- (d) its formation and objects are inconsistent with the Constitution.”.

17. Amendment of article 42 of the Constitution.—In the Constitution, for clauses (2) and (3) of article 42, the following clause (2) shall be substituted, namely:—

“(2) A law made under clause (1) of this article shall provide for the acquisition, nationalisation or requisition with compensation and shall fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision of the law in respect of such compensation is not adequate.”.

18. **Substitution of article 44 of the Constitution.**—In the Constitution, for article 44, the following article 44 shall be substituted, namely:—

“44. **Enforcement of fundamental rights.**—(1) The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.”.

19. **Amendment of article 47 of the Constitution.**—In the Constitution, in article 47,—

- (i) in clause (2), for the proviso, the following proviso shall be substituted, namely:—

“Provided that nothing in this article shall prevent amendment, modification or repeal of any such law.”; and

- (ii) in clause (3), after the words “auxiliary forces” the words and comma and any individual, group of individuals or organisation” shall be inserted.

20. **Omission of article 58A of the Constitution.**—In the Constitution, article 58A shall be omitted.

21. **Omission of CHAPTER IIA - NON-PARTY CARE-TAKER GOVERNMENT of the Constitution.**—In the Constitution, “CHAPTER IIA-NON-PARTY CARE-TAKER GOVERNMENT” shall be omitted.

22. **Substitution of article 61 of the Constitution.**—In the Constitution, for article 61, the following article 61 shall be substituted, namely:—

“61. **Supreme command.**—The supreme command of the defence services of Bangladesh shall vest in the President and the exercise thereof shall be regulated by law.”.

23. **Amendment of article 65 of the Constitution.**—In the Constitution in article 65,—

- (i) in clause (3), for the words “forty five seats” the words “fifty seats” shall be substituted; and

- (ii) after clause (3), the following new clause (3A) shall be inserted, namely:—

“(3A) For the remaining period of the Parliament in existence at the time of the commencement of the Constitution (Fifteenth Amendment) Act, 2011, Parliament shall consist of three hundred members elected by direct election provided for in clause (2) and fifty women members provided for in clause (3)”.

24. **Amendment of article 66 of the Constitution.**— In the Constitution, in article 66,—

- (i) in clause (2), in sub-clause (d), the word ‘or’ and sub-clause (dd) shall be omitted;
- (ii) after the omitted sub-clause (dd), the following new sub-clauses (e) and (f) shall be inserted, namely:—

“(e) has been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972;

(f) holds any office of profit in the service of the Republic other than an office which is declared by law not to be disqualified its holder; or”; and

- (iii) for clause (2A), the following clause (2A) shall be substituted, namely:—

“(2A) Notwithstanding anything contained in sub-clause (c) of clause (2) of this article, if any person being a citizen of Bangladesh by birth acquires the citizenship of a foreign State and thereafter such person—

- (i) in the case of dual citizenship, gives up the foreign citizenship; or
- (ii) in other cases, again accepts the citizenship of Bangladesh—

for the purposes of this article, he shall not be deemed to acquire the citizenship of a foreign State.

- (iv) after clause (2B), the following clause (3) shall be inserted, namely:—

“(3) For the purposes of this article, a person shall not be deemed to hold an office of profit in the service of the Republic by reason only that he is the President, the Prime Minister, the Speaker, the Deputy Speaker, a Minister, Minister of State or Deputy Minister.”.

25. **Substitution of article 70 of the Constitution.**—In the Constitution, for article 70, the following article 70 shall be substituted, namely:—

“70. **Vacation of seat on resignation or voting against political party.**— A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he

- (a) resigns from that party; or
- (b) votes in Parliament against that party;

but shall not thereby be disqualified for subsequent election as a member of Parliament.”.

26. Amendment of article 72 of the Constitution.—In the Constitution in first proviso of clause (1) of article 72 after the word “provided that” the following words “except the period of ninety days as mentioned in sub-clause (a) of clause (3) of article 123 for remaining term” shall be inserted.

27. Amendment of article 80 of the Constitution.—In the Constitution, in article 80,—

(i) For clause (3) the following clause (3) shall be substituted, namely:

“(3) The President within fifteen days after a Bill is presented to him, shall assent to the Bill or, in the case of a Bill other than a Money Bill, may return it to Parliament with a message requesting that the Bill or any particular provisions thereof be reconsidered, and that any amendments specified by him in the message be considered; and if he fails so to do he shall be deemed to have assented to the Bill at the expiration of that period.”;

(ii) in clause (4), the words “by the votes of a majority of the total number of members of Parliament” shall be omitted.

28. Amendment of article 82 of the Constitution.—In the Constitution, in article 82, in the proviso, after the words “provided that” the words “in any Money Bill” shall be inserted.

29. Amendment of article 88 of the Constitution.—In the Constitution, in article 88,

(a) in para (b), for sub-para (ii), the following sub-para (ii) shall be substituted, namely :

“(ii) the Judges of the Supreme Court;”;

(b) for para (c), the following para (c) shall be substituted, namely :

“(c) the administrative expences of, including remuneration payable to, officers and servants of Parliament, the Supreme Court, the Comptroller and Auditor-General, the Election Commission and the Public Service Commissions.”.

30. Amendment of article 93 of the Constitution.—In the Constitution, in article 93, in clause (1), for the words “Parliament stands dissolved or is not in session” the following words Parliament stands dessolved or is not in session” shall be substituted.

31. Substitution of CHAPTER I of PART VI of the Constitution.—In the Constitution, in Part VI, for the CHAPTER I, the following CHAPTER I shall be substituted, namely:

“CHAPTER I-THE SUPREME COURT

94. Establishment of Supreme Court.—

(1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.

(2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.

(3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division, and the other Judges shall sit only in the High Court Division.

(4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

95. Appointment of Judges.—

(1) The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and—

- (a) has, for not less than ten years, been a advocate of the Supreme Court; or
- (b) has, for not less than ten years, held judicial office in the territory of Bangladesh; or
- (c) has such qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.

(3) In this article, "Supreme Court" includes a Court which at any time before the commencement of this Constitution, exercised jurisdiction as a High Court in the territory of Bangladesh.

96. Tenure of office of Judges.—

(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.

(2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.

(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The function of the Council shall be—

- (a) to prescribe a Code of Conduct to be observed by the Judges; and
- (b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge—

- (a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
- (b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.

(7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.

(8) A Judge may resign his office by writing under his hand addressed to the President.

97. Temporary appointment of Chief Justice.—

If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is, on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division.

98. Additional Supreme Court Judges.—

Notwithstanding the provisions of article 94, if the President is satisfied that the number of the Judge of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be Additional Judges of that division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High Court Division to sit in the Appellate Division for any temporary period:

Provided that nothing in this article shall prevent a person appointed as an Additional Judge from being appointed as a Judge under article 95 or as an Additional Judge for a further period under this article.

99. Disabilities of Judges after retirement.—

(1) A person who has held office as a Judge (otherwise than as an Additional Judge pursuant to the provisions of article 98), shall not, after his retirement or removal therefrom, plead or act before any court or authority or hold any office or profit in the service of the Republic not being a judicial or quasi-judicial office.

(2) Notwithstanding anything contains in clause (1), a person who has held office as a Judge of the High Court Division may, after his retirement or removal therefrom, plead or act before the Appellate Division.

100. Seat of Supreme Court.—

The permanent seat of the Supreme Court shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint.

101. Jurisdiction of High Court Division.—

The High Court Division shall have such original, appellate and other jurisdictions and powers as are conferred on it by this Constitution or any other law.

102. Powers of High Court Division to issue certain orders and directions, etc.—

(1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—

(a) on the application of any person aggrieved, make an order—

- (i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or
- (ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order—

- (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
- (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of—

- (a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or
- (b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).

(5) In this article, unless the context otherwise requires, a person” includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

103. Jurisdiction of Appellate Division.—

(1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.

(2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division—

- (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or
- (b) has confirmed a sentence of death or sentenced a person to death or to imprisonment for life; or

- (c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.

(3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.

(4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

104. Issue and execution of processes of Appellate Division.—

The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.

105. Review of Judgments or orders by Appellate Division.—

The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by that division to review any judgment pronounced or order made by it.

106. Advisory jurisdiction of Supreme Court.—

If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Appellate Division for consideration and the divisions may, after such hearing as it thinks fit, report its opinion thereon to the President.

107. Rule making power of the Supreme Court.—

(1) Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it.

(2) The Supreme Court may delegate any of its functions under clause (1) and article 113 and 116 to a division of that Court or to one or more Judges.

(3) Subject to any rules made under this article the Chief Justice shall determine which Judges are to constitute any Bench of a division of the Supreme Court and which Judges are to sit for any purpose.

(4) The Chief Justice may authorise the next most senior-Judge of either Division of the Supreme Court to exercise in that division any of the powers conferred by clause (3) or by rules made under this article.

108. Supreme Court as court of record.—

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make and order for the investigation of or punishment for any contempt of itself.

109. Superintendence and control over courts.—

The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it.

110. Transfer of cases from subordinate courts to High Court Division.—

If the High Court Division is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may—

- (a) either dispose of the case itself; or
- (b) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of the judgment of the division on such question, and the court to which the case is so returned or transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.

111. Binding effect of Supreme Court judgments.—

The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.

112. Action in aid of Supreme Court.—

All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.

113. Staff of Supreme Court.—

(1) Appointments of the staff of the Supreme Court shall be made by the Chief Justice or such other judge or officer of that Court as he may direct, and shall be made in accordance with rules made with the previous approval of the President by the Supreme Court.

(2) Subject to the provisions of any Act of Parliament the conditions of service of members of the staff of the Supreme Court shall be such as may be prescribed by rules made by that court.”.

32. **Substitution of article 116 of the Constitution.**—In the Constitution, for article 116, the following article 116 shall be substituted, namely:—

“116. **Control and discipline of subordinate courts.**—The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.”

33. **Amendment of article 117 of the Constitution.**—In the Constitution, in article 117, in clause (1), for sub-clause (c), the following sub-clause (c) shall be substituted, namely :

“(c) any law to which clause (3) of article 102 applies.”;

34. **Omission of PART VIA of the Constitution.**—In the Constitution, Part VIA shall be omitted.

35. **Amendment of article 118 of the Constitution.**—In the Constitution, in article 118,

(a) in clause (1), for the words and commas “a Chief Election Commissioner and such number of other Election Commissioners if any, as the President may from time to time direct,” the following words “the Chief Election Commissioner and not more than four Election Commissioners” shall be substituted; and

(b) in clause (5), for the words “Supreme Court”, the following words “Supreme Court” shall be substituted.

36. **Amendment of article 122 of the Constitution.**—In the Constitution, in article 122, in clause (2), for the sub-clauses (c) and (d), the following sub-clauses (c), (d) and (e) shall be substituted, namely:—

“(c) does not stand declared by a competent court to be of unsound mind;

(d) is or is deemed by law to be a resident of that constituency; and

(e) has not been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972.”

37. **Amendment of article 123 of the Constitution.**— In the Constitution, in article 123, for clause (3), the following clause (3) shall be substituted, namely:—

“(3) A general election of the members of Parliament shall be held—

(a) in the case of a dissolution by reason of the expiration of its term, within the period of ninety days preceding such dissolution; and

(b) in the case of a dissolution otherwise than by reason of such expiration, within ninety days after such dissolution:

Provided that the persons elected at a general election under sub-clause (a) shall not assume office as members of Parliament except after the expiration of the term referred to therein.”

38. Amendment of article 125 of the Constitution.—In the Constitution, in article 125, at the end of the clause (d) for the full stop, the semi colon shall be substituted, and, after clause (d) the following new clause (e) shall be added, namely :

“(e) A court shall not pass any order or direction, ad interim or otherwise, in relation to an election for which schedule has been announced unless the Election Commission has been given reasonable notice and an opportunity of being heard.”

39. Amendment of article 129 of the Constitution.— In the Constitution, in article 129, in clause (2), for the words “the Supreme Court”, the following words “Supreme Court” shall be substituted.;

40. Amendment of article 139 of the Constitution.— In the Constitution, in article 139, in clause (2), for the words “Supreme Court”, the following words “Supreme Court” shall be substituted.;

41. Amendment of article 141A of the Constitution.— In the Constitution, in article 141A—

(a) in clause (1), after the word “Emergency” the words “for one hundred twenty days” shall be added;

(b) in clause (2), in sub-clause (c), the words and comma “, unless before the expiration of that period it has been approved by a resolution of Parliament” shall be omitted;

(c) in the proviso of clause (2), after the words “passed by Parliament” the words and comma “or at the expiration of one hundred and twenty days, whichever occurs first” shall be added.

42. Substitution of article 142 of the Constitution.—In the Constitution, for article 142, the following article 142 shall be substituted, namely:—

“142. **Power to amend any provision of the Constitution.**— Notwithstanding anything contained in this Constitution —

(a) any provision thereof may be amended by way of addition, alteration, substitution or repeal by Act of Parliament:

Provided that —

- (i) no Bill for such amendment shall be allowed to proceed unless the long title thereof expressly states that it will amend a provision of the Constitution;
 - (ii) no such Bill shall be presented to the President for assent unless it is passed by the votes of not less than two-thirds of the total number of members of Parliament;
- (b) when a Bill passed as aforesaid is presented to the President for his assent he shall, within the period of seven days after the Bill is presented to him assent to the Bill, and if he fails so to do he shall be deemed to have assented to it on the expiration of that period.”

43. Substitution of article 145A of the Constitution.—In the Constitution, for article 145A, the following article 145A shall be substituted, namely:—

“145A. **International treaties.**—All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament:

Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.”

44. Amendment of article 147 of the Constitution.—In the Constitution, in article 147, in clause (4),—

- (i) for sub-clause (b), the following sub-clause (b) shall be substituted, namely:—

“(b) Prime Minister;” and

- (ii) for sub-clause (d), the following sub-clause (d) shall be substituted, namely:—

“(d) Minister, Minister of State or Deputy Minister;”

45. Substitution of article 150 of the Constitution.—In the Constitution, for article 150, the following article 150 shall be substituted, namely:—

“150. **Transitional and temporary provisions.**—(1) The provisions set out in the Fourth Schedule of the Constitution at the time of the commencement of this Constitution on the 16th day of December, 1972 shall have effect as transitional and temporary provisions notwithstanding anything contained in any other provisions of this Constitution.

(2) In the period between the 7th day of March, 1971 and the date of commencement of this Constitution on the 16th day of December, 1972, the historical speech delivered by Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation, in the Rescource Moidan on the 7th day of March, 1971, set out in the Fifth Schedule of the Constitution, the telegram of the declaration of independence of Bangladesh made by Sheikh Mujibur Rahman, the Father of the Nation on the 26th day of March, 1971 set out in the Sixth Schedule and the proclamation of independence of the Mujibnagar Government on the 10th day of April, 1971 set out in the Seventh Schedule are the historical speech and instruments of the independence and the struggle of freedom of Bangladesh which shall be deemed to be the transitional and the temporary provision for the said period.”.

46. Amendment of article 152 of the Constitution.—In this Constitution, in article 152, in clause (1),—

- (a) The expression “Advisor” shall be omitted;
- (b) for the words and expressions ““the Appellate Division” means the Appellate Division of the Supreme Court” and “The Chief Justice” means the Chief Justice of Bangladesh””, the following words and expressions ““The Chief Justice” means the Chief Justice of Bangladesh” and “the Appellate Division” means the Appellate Division of the Supreme Court”” shall be substituted respectively.
- (c) after the expression “clause”, the following new expression shall be inserted, namely:—
 ““court” means any court of law including Supreme Court;”; and
- (d) the expression “Chief Advisor” shall be omitted.

47. Amendment of First Schedule of the Constitution.—In Constitution, in the First Schedule, after the words, figures, comma, brackets and full stop “The Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (A.P.O No.1 of 1972) the words, figures, comma, brackets and full stop “The Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O.No.8 of 1972).” shall be inserted.

48. Amendment of the Third Schedule of the Constitution.—In the Constitution, in the Third Schedule—

- (a) In Form 1, for the words “Chief Justice” the word “Speaker” shall be substituted;
- (b) Form 1A shall be omitted;

- (c) In Form 2, for the words "Prime Minister", The following words "Prime Minister" shall be substituted;
- (d) Form 2A shall be omitted;
- (e) for Form 6, the following Form 6 shall be substituted, namely :—
- "6. Chief Justice or Judges.**—An oath (or affirmation) in the following forms shall be administered, in the case of the Chief Justice by the President, and in the case of a Judge appointed to a division, by the Chief Justice—
- "I,, having been appointed Chief Justice of Bangladesh (or Judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (of affirm) that I will faithfully discharge the duties of my office according to law :
- That I will bear true faith and allegiance to Bangladesh :
- That I will preserve, protect and defend the Constitution and the laws of Bangladesh :
- And that I will do right to all manner of people according to law, without fear of favour, affection or ill-will."; and
- (f) in Form 8, for the words "Chief Justice" the words "Chief Justice" shall be substituted.

49. Amendment of the Fourth Schedule of the Constitution.—In the Constitution, in the Fourth Schedule,—

- (a) For the word and figure "Article 150", the word, figure and brackets "Article 150(1)" shall be substituted; and
- (b) for Articles 12, the following Article 12 shall be substituted, namely :
- "12. Local government.**—Until elections are held to constitute the local government bodies referred to in article 59, the administrative arrangements existing in the different administrative units of the Republic immediately before the commencement of this Constitution shall continue, subject to such changes as may be made by law."; and
- (c) Articles 3A, 6A, 6B, 18, 19, 20, 21, 22 and 23 shall be omitted.

50. **Addition of certain new Schedules in the Constitution.**—In the Constitution, after the Fourth Schedule the following new Schedules respectively Fifth, Sixth and Seventh shall be added, namely:—

FIFTH SCHEDULE
[Article 150(2)]

HISTORIC SPEECH OF THE FATHER OF THE NATION, BANGABANDHU
SHEIKH MUJIBUR RAHMAN OF THE 7TH MARCH, 1971

My brothers,

I have come before you today with a heart laden with sadness. You are aware of everything and know all. We have tried with our lives. And yet the sadness remains that today, in Dhaka, Chittagong, Khulna, Rajshahi and Rangpur the streets are soaked in the blood of my brothers. Today the people of Bengal desire emancipation, the people of Bengal wish to live, the people of Bengal demand that their rights be acknowledged.

What wrong have we committed? Following the elections, the people of Bangladesh entrusted me and the Awami League with the totality of their electoral support. It was our expectation that the Parliament would meet, there we would frame our Constitution, that we would develop this land, that the people of this country would achieve their economic, political and cultural freedom. But it is a matter of grief that today we are constrained to say in all sadness that the history of the past twenty three years has been the history of a persecution of the people of Bengal, a history of the blood of the people of Bengal. This history of the past twenty three years has been one of the agonising cries of men and women.

The history of Bengal has been a history where the people of this land have made crimson the streets and highways of this land with their blood. We gave blood in 1952; in 1954, we won the elections and yet were not permitted to exercise power. In 1958, Ayub Khan imposed Martial Law and kept the nation in a state of slavery for ten long years. On 7 June 1966, as they rose in support of the Six-Point movement, the sons of my land were mown down in gunfire. When Yahya Khan took over once Ayub Khan fell in the fury of the movement of 1969, he promised that he would give us a Constitution, give us democracy. We put our faith on him. And then history moved a long way, the elections took place. I have met President Yahya Khan. I appealed to him, not just as the majority leader in Bengal but also as the majority leader in Pakistan, to convene the National Assembly on 15 February. He did not pay heed to my appeal. He paid heed to Mr. Bhutto. And he said that the assembly would be convened in the first week

of March. I went along with him and said we would sit in the parliament. I said that we would discuss matters in the Assembly. I even went to the extent of suggesting that despite our being in a majority, if anyone proposes anything that is legitimate and right, we would accept his proposal.

Mr. Bhutto came here. He held negotiations with us, and when he left, he said that the door to talk had not closed, that more discussions would take place. After that, I spoke to other political leaders. I told them to join me in deliberations so that we could give shape to a Constitution for the country. But Mr. Bhutto said that if members elected from West Pakistan came here, the Assembly would turn into a slaughter house, an abattoir. He warned that anyone who went to the Assembly would end up losing his life. He issued dire warnings of closing down all the shop from Peshawar to Karachi if the Assembly Session went ahead. I said that the Assembly Session would go ahead. And then, suddenly, on the first of March the Assembly Session was put off. Mr. Yahya Khan, in exercise of his powers as president, had called the National Assembly into Session; and I had said that I would go to the Assembly. Mr. Bhutto said he would not go. Thirty five members came here from West Pakistan. And suddenly the Assembly was put off. The blame was placed squarely on the people of Bengal, the blame was put at my door. Once the Assembly meeting was postponed, the people of this land decided to put up resistance to the act.

I enjoined upon them to observe a peaceful general strike. I instructed them to close down all factories and industrial installations. The people responded positively to my directives. Through sheer spontaneity they emerged on to the streets. They were determined to pursue their struggle through peaceful means.

What have we attained? The weapons we have bought with our money to defend the country against foreign aggression are being used against the poor and down-trodden of my country today. It is their hearts the bullets pierce today. We are the majority in Pakistan. Whenever we Bengalis have attempted to ascend to the heights of power, they have swooped upon us.

I have spoken to him over telephone. I told him, ~~æ~~Mr. Yahya Khan, you are the President of Pakistan. Come, be witness to the inhuman manner in which the people of my Bengal are being murdered, to the way in which the mothers of my land are being deprived of their sons." I told him, "come, see and dispense justice". But he construously said that I had agreed to participate in a Round Table Conference to be held on 10 March. I have already said a long time ago, what RTC? With whom do I sit down to talk? Do I fraternise with those who

have taken the blood of my people? All of a sudden, without discussing matters with me and after a secret meeting lasting five hours, he has delivered a speech in which he has placed all responsibility for the impasse on me, on the people of Bengal.

My brothers,

They have called the Assembly for the twenty-fifth. The marks of blood have not yet dried up. I said on the tenth that Mujibur Rahman would not walk across that blood to take part in a Round Table Conference. You have called the Assembly. But my demands must be met first. Martial Law must be withdrawn. All military personnel must be taken back to the barracks. An inquiry must be conducted into the manner in which the killings have been caused. And power must be transferred to the elected representatives of the people. And only then shall we consider the question of whether or not to sit in the National Assembly. Prior to the fulfilment of our demands, we cannot take part in the Assembly.

I do not desire the office of Prime Minister. I wish to see the rights of the people of this country established. Let me make it clear, without ambiguity, that beginning today, in Bangladesh, all courts, magistracies, government offices and educational institutions will remain closed for an indefinite period. In order that the poor do not suffer, in order that my people do not go through pain, all other activities will continue, will not come within the ambit of the general strike from tomorrow. Rickshaws, horse carriages, trains and river vessels will ply. The Supreme Court, High Court, Judge's Court, semi-government offices, WAPDA, - nothing will work. Employees will collect their salaries on the twenty-eighth. But if the salaries are not paid, if another bullet is fired, if any more of the people are murdered, it is my directive to all of you: turn every house into a fortress, resist the enemy with everything you have. And for the sake of life, even if I am not around to guide you, direct you, close off all roads and pathways.

We will strive them into submission. We will submerge them in water. You are our brothers. Return to your barracks and no harm will come to you. But do not try to pour bullets into my heart again. You cannot keep seventy five million people in bondage. Now that we have learnt to die, no power on earth can keep us in subjugation.

For those who have embraced martyrdom, and for those who have sustained injuries we in the Awami League will do all we can to relieve their tragedy. Those among you who can please lend a helping hand through contributing to our relief committee. The owners of industries will make certain that the wages

of workers who have taken part in the strike for the past week are duly paid to them. I shall tell employees of the government, my word must be heard, and my instructions followed. Until freedom comes to my land, all taxes will be held back from payment. No one will pay them. Bear in mind that the enemy has infiltrated our ranks to cause confusion and sow discord among us. In our Bengal, everyone, be he Hindu or Muslim, Bengali or non-Bengali, is our brother. It is our responsibility to ensure their security. Our good name must not be sullied.

And remember, employees at radio and television, if radio does not get our message across, no Bengali will go to the radio station. If television does not put forth our point of view, no Bengali will go to television. Banks will remain open for two hours to enable people to engage in transactions. But there will be no transfer of even a single penny from East Bengal to West Pakistan. Telephone and telegram services will continue in East Bengal and news can be despatched overseas.

But if moves are made to exterminate the people of this country, Bengalis must act with caution. In every village, every neighbourhood, set up Sangram Parishad under the leadership of the Awami League. And be prepared with whatever you have. Remember: Having mastered the lesson of sacrifice, we shall give more blood. God willing, we shall free the people of this land. The struggle this time is a struggle for emancipation. The struggle this time is a struggle for independence.

Joi Bangla!

SIXTH SCHEDULE

[Article 150(2)]

DECLARATION OF INDEPENDENCE

BY

**THE FATHER OF THE NATION, BANGABANDHU SHEIKH MUJIBUR
RAHAMAN SHORTLY AFTER MIDNIGHT OF 25TH MARCH, i.e. EARLY
HOURS OF 26TH MARCH, 1971**

"This may be my last message, from today Bangladesh is independent. I call upon the people of Bangladesh wherever you might be and with whatever you have, to resist the army of occupation to the last. Your fight must go on until the last soldier of the Pakistan occupation army is expelled from the soil of Bangladesh and final victory is achieved.

Sheikh Mujibur Rahman
26 March 1971"

SEVENTH SCHEDULE

[Article 150 (2)]

THE PROCLAMATION OF INDEPENDENCE

MUJIBNAGAR, BANGLADESH

Dated 10th day of April, 1971.

WHEREAS free elections were held in Bangladesh from 7th December, 1970 to 17th January, 1971, to elect representatives for the purpose of framing a Constitution,

AND

WHEREAS at these elections the people of Bangladesh elected 167 out of 169 representatives belonging to the Awami League,

AND

WHEREAS General Yahya Khan summoned the elected representatives of the people to meet on the 3rd March, 1971, for the purpose of framing a Constitution,

AND

WHEREAS the Assembly so summoned was arbitrarily and illegally postponed for an indefinite period,

AND

WHEREAS instead of fulfilling their promise and while still conferring with the representatives of the people of Bangladesh, Pakistan authorities declared an unjust and treacherous war,

AND

WHEREAS in the facts and circumstances of such treacherous conduct BangaBandhu Sheikh Mujibur Rahaman, the undisputed leader of 75 million of people of Bangladesh, in due fulfilment of the legitimate right of self-determination of the people of Bangladesh, duly made a declaration of independence at Dacca on March 26, 1971, and urged the people of Bangladesh to defend the honour and integrity of Bangladesh,

AND

WHEREAS in the conduct of a ruthless and savage war the Pakistani authorities committed and are still continuously committing numerous acts of genocide and unprecedented tortures, amongst others on the civilian and unarmed people of Bangladesh,

AND

WHEREAS the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution, and give to themselves a Government,

AND

WHEREAS the people of Bangladesh by their heroism, bravery and revolutionary fervour have established effective control over the territories of Bangladesh,

We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme duly constituted ourselves into a Constituent Assembly, and

having held mutual consultations, and

in order to ensure for the people of Bangladesh equality, human dignity and social justice,

declare and constitute Bangladesh to be a sovereign People's Republic and thereby confirm the declaration of independence already made by BangaBandhu Sheikh Mujibur Rahaman, and

do hereby affirm and resolve that till such time as a Constitution is framed, BangaBandhu Sheikh Mujibur Rahaman shall be the President of the Republic and that Syed Nazrul Islam shall be the Vice-President of the Republic, and

that the President shall be the Supreme Commander of all the Armed Forces of the Republic,

shall exercise all the Executive and Legislative powers of the Republic including the power to grant pardon,

shall have the power to appoint a Prime Minister and such other Ministers as he considers necessary,

shall have the power to levy taxes and expend monies,

shall have the power to summon and adjourn the Constituent Assembly, and

do all other things that may be necessary to give to the people of Bangladesh and orderly and just Government.

We the elected representatives of the people of Bangladesh do further resolve that in the event of there being no President or the President being unable to enter upon his office or being unable to exercise his powers due to any reason whatsoever, the Vice-President shall have and exercise all the powers, duties and responsibilities herein conferred on the President,

We further resolve that we undertake to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and to abide by the Charter of the United Nations.

We further resolve that this Proclamation of Independence shall be deemed to have come into effect from 26th day of March, 1971.

We further resolve that in order to give effect to this instrument we appoint Prof. Yusuf Ali our duly Constituted potentiary and to give to the President and the Vice-President oaths of office.

PROF. YUSUF ALI
Duly Constituted Potentiary
By and under the authority
of the Constituent Assembly
of Bangladesh.”

আশফাক হামিদ
সচিব।

Appendix 5

Constitution of the People's Republic of Bangladesh

PART IX A

EMERGENCY PROVISIONS

141A. Proclamation of Emergency

(1) If the President is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency:

* * * * *

[Provided that such Proclamation shall require for its validity the prior counter signature of the Prime Minister.]

(2) A Proclamation of Emergency-

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be laid before Parliament;
- (c) shall cease to operate at the expiration of one hundred and twenty days, unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation is issued at a time when Parliament stands dissolved or the dissolution of Parliament takes place during the period of one hundred and twenty days referred to in sub-clause (c), the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first meets after its re-constitution, unless before that expiration of the meets after its re-constitution, unless before that expiration of the said period of thirty days a resolution

approving the Proclamation has been passed by Parliament.

(3) A Proclamation of Emergency declaring that the security of Bangladesh, or any part thereof, is threatened by war or external aggression or by internal disturbance may be made before the actual occurrence of war or any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

141B. Suspension of provisions of certain articles during emergencies

While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the State to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made shall, to the extent of the incompetence, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

141C. Suspension of enforcement of fundamental right during emergencies

(1) While a Proclamation of Emergency is in operation, the President may, [on the written advice of the Prime Minister, by order], declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made under this article may extend to the whole of Bangladesh or any part thereof.

(3) Every order made under this article shall, as soon as may be, be laid before Parliament.

Appendix 6

Friday, January 12, 2007
Emergency Power Ordinance, 2007
Ordinance No. 1 / 2007

In order to preserve the security and interest of the state and its people, maintain public order and sustain economic life, and ensure supply of deadly necessities and services of social life, and with a view to adopting special measures

Ordinance

Whereas The President of the People's Republic of Bangladesh has declared the State of Emergency under the Article 141A (1) of the Constitution;

And whereas in preserving the security and interest of the state and its people, in maintaining public order and sustaining economic life, and in ensuring supply of deadly necessities and services of social life, adoption of special measures appears expected and inevitable;

And whereas the Parliament stands not in session and it has been satisfactorily proved to the President that due ground, prompting immediate measures, prevails;

The President of the People's Republic of Bangladesh, under the Article 93 (1) of the Constitution, promulgates and declares the ordinance as follows-

1. **Short title and tenure-** (1) this ordinance will be introduced as Emergency Power Ordinance 2007,

(2) this will remain enforceable until the period of emergency declared on January 11, 2007
2. **Predominance of the ordinance-** Whatsoever obverse is stated in currently enforced other laws, treaties or legal documents, provisions of this ordinance or rules framed under these provisions or orders under so framed rules will remain enforceable.
3. **Promulgation of rules-** (1) In order to preserve the security and interest of the state and its people, maintain public order and sustain economic life, and ensure supply of deadly necessities and services of

social life, the government will promulgate such rules, with a circular in the public gazette, as are considered necessary.

(2) specially, and making no alteration to the exclusiveness of the subsection (1), under such section, provisions may be made as follows, or power may be delegated to any authority to make provisions on such matters as-

- a) abating activities spreading hatreds to the government or panic in people's mind.
- b) abating activities jeopardizing relations with foreign countries.
- c) abating activities affecting peace and harmony in any corner of Bangladesh
- d) abating activities provoking hatred or hostility amongst parts or classes of societies.
- e) abating activities opposed to the security and interest of the state and its people
- f) abating activities jeopardizing economic life and public order in Bangladesh
- g) abating activities hindering supply of deadly necessities and services in the society
- h) prohibition of publications in the form of news, books or articles, documents or papers jeopardizing people's security, public order and supply of deadly necessities or services, and prohibition of broadcasting such news or information through electronic media.
- i) putting ban on newspapers, books or articles, documents or papers referred to in provision (h), and summoning deposits of the printing press concerned and ban it.
- j) besides banning deposits or, where necessary, prohibiting broadcasting referred to in provision (i), closure of newspapers, books and articles, documents or papers or the printing press concerned as referred to in provision (h), and take in to custody the tools of the electronic media.

- k) bringing under safety-net the rivers, sea ports, air ports, dock yards, railways, streets, bridges, canals, telegraph, gas and electricity supply system, river and road transport, air and railway warehouses, mills, industrial or commercial institutions, and residential installments used or to be used by the government authority or any local authority, premises, and other properties.
- l) making provisions to take into custody a person, or imposing restrictions on him / her in terms of entrance, living, appearance or movement who attempts activity likely to jeopardize relations with any foreign country, safety and interest of the state and its people, supplies of deadly necessities and services of social life or peace and harmony in any part of Bangladesh.
- m) restricting any person entering into, leaving or traveling in Bangladesh.
- n) restricting tenures and leaves of the river and sea ports, air ports, dock yards and industrial and commercial organizations and institutions.
- o) restricting transportations in rail ways, roads and highways and preservation of seats, if necessary for any government or local authority, in water vehicles, trains or highway vehicles.
- p) taking in custody the postal apparatus or its delayed distribution, or monitoring exchange of messages over radio, telegram, telex, fax, internet or telephone, and taking in custody the message sent, or putting hindrance in sending messages.
- q) restricting industries, trade and commerce in order to ensure the supply of deadly necessities and services of social life.
- r) controlling supply, distribution and utilization of electricity.
- s) getting hold of, by the government, the maintenance of any institution or property concerned with the supply of deadly necessities or services of social life.
- t) controlling possession, utilization or dealings of currencies, gold or silver, bank note, currency note, security and foreign currency .
- u) getting hold of durable or temporary properties.

- v) impeding unfair activities like storing, unfair profiting, and black marketing to support supply of deadly necessities in social life.
 - w) prohibiting of export and import of commodities or materials including currencies, gold or silver, bank note, currency note, security and foreign currency, and enforcing Customs Act 1969 (IV of 1969) to control the export and import.
 - x) prohibiting and controlling of meeting, conference, fair, procession, rally and blockade and controlling media coverage of these events.
 - y) withholding functions and activities of political parties, trade unions, clubs or associations.
 - z) taking in custody such materials as are deemed to have been being used in a particular place jeopardizing safety and interest of the state and its people.
 - zz) banning strike and lockout.
- (3) under sub-section (1), provisions may be made on any or all of the matters as follows-
- a) arrest and trial of any person violating such law or any provision under it;
 - b) violation of such law or any provision under it, or attempt to violate it, or aid to violate it, or attempt to aid violating it will be convicted to death penalty or life sentence or, imprisonment for up to fourteen years or financial penalty or both of them.
 - c) taking into custody the property that made ground for a person to violate the provision referred to in provision (b).
 - d) empower or vest authority to the government or any officer or any authority, on the matters relating to that provision.
 - e) determining duties and responsibilities on public officers and other persons in enforcing that provisions and combating any violation of it.
 - f) combating any obstacle in serving any notice under that rule or any provision of it.

g) collecting fee of any license, permit or certificate issued under that rule.

(4) any rule subject to this section may be given retrospective effect.

4. Vesting Power- Government can, by an order, vest power referred to in section 3, on any of its serving official or authority.

5. Preservation of Order- (1) Nothing stated in this ordinance or no provision subject to this ordinance can be challenged in any court.

(2) in the cases where, under this ordinance or through power vested under this ordinance, any order is released or signed by any authority, that order shall be attributed to that particular authority, subject to the Evidence Act 1872 (X of 1872).

6. Indemnity- (1) no action, done by a person in good faith, according to this ordinance or any rule under this ordinance or any provision under such rule, may be challenged in civil or criminal court.

(2) no action, done in good faith by the government, according to this ordinance or any rule under this ordinance or any provision under such rule, and any resultant damage due to the action, may be challenged in civil or criminal court.

Professor Dr. Yazuddin Ahmed
President

People's Republic of Bangladesh

Appendix 7

The Peoples' Republic of Bangladesh
Ministry of Home

Notification

Dhaka , 12 Magh, 1413 / 25 January, 2007

S.R.O. no. 15-Ain/2007.- The government formulates the following Rules as per the power given under section 3 of the Emergency Power Ordinance, 2007 (Ordinance No. 1/2007):-

1. Title and Introduction. - (1) This Rules shall be called the **Emergency Power Rules, 2007.**

(2) This Rules shall be deemed to be valid from 12 January 2007, 29 *Poush* 1413

2. Definition.- Unless opposed to the subject and context, in this Rules,,

(A). **"Law and Order Enforcing Agency"** means the members of the Police, Armed Police Battalion, Rapid Action Battalion, Ansar, Battalion Ansar, Bangladesh Rifles, Coast Guard, National Defence Security, DGFI and Armed Forces of Bangladesh;

[(AA). **"Commission Executive"** means any lower-rank executive empowered by the Anti-Corruption Commission, established under Anti-Corruption Commission Act, 2004 (5th act of 2004);]

(B). **"Penalty"** means any punishment under this rule;

(C). **"Person"** means a company, an association, a joint-stock business, statutory organization or others institutes;

(D). **"Code of Criminal Procedure"** means that of 1898 (Act V of 1898);

(E). **"The Government"**, in respect to any general or special order, means all the ministries and departments of the government whose area of responsibility includes the subject matter or the area of the order as per the

Allocation of Business Among the different Ministries and Divisions (Schedule I of the Rules of Business, 1996).

3. Prohibition of procession and meetings.- (1) To safeguard the security and interest of the state and the people and to maintain mass discipline during the state of emergency, holding any type of processions, meetings, protests or taking part thereof in whole country or at any part of it is strictly prohibited under the Sub-rules (2) and (3) of the rule.

(a) Meetings of political parties are permitted only in the Dhaka Metropolitan area;

(b) The decision of a political party to hold a meeting must be informed by the party to the Metropolitan Police Commissioner, Dhaka at least twenty four hours before the meeting;

(c) Not exceeding 50 (fifty) members of the concerned party can attend the meeting;

(d) Permission from the Ministry of Home is necessary at least forty eight hours prior to hold a meeting with participation of more than 50 (fifty) members;

(e) The meeting is to be held in the head office of the party, the residence of any member of the party or the indoor atmosphere of a community center, hotel or restaurant in the metropolitan area;

(f) Such meeting is not permitted in the open field or under a shroud in the open field;

(g) No agenda for discussion and decision making is permitted other than the party organization and the national election;

(h) No one but the party members is allowed to participate in the meeting;

(i) The reporters of news agencies are allowed to be present to collect news;

(j) Live broadcast of the meeting programs is not allowed, but the news footage and coverage can be broadcast as the part of regular news;

(k) No mechanism for audio-amplification can be used to make the sound audible to the outside people.

Explanation: To accomplish the objective of this notification "Political Party" will mean a faction thereof as well.

(2) In spite of Sub-rule (1), arranging processions, meetings and celebrations and taking part thereof is permitted for religious, social, state or government programs.

(3) If any ambiguity or confusion arises regarding the provision of holding processions, meetings and celebrations and taking part thereof, it is permitted to hold processions, meetings and celebrations and take part thereof with the permission of the district magistrate or police commissioners in metropolitan areas.

(4) Any person violating this provision will be subject to imprisonment for a period not exceeding five years and not less than two years and monetary penalties as well.

4. Prohibition of hartal, strike, lockouts etc.- (1) To safeguard the security and interest of the state and the people and to maintain mass discipline and peace and to ensure proper flow of essentials and service for social life, holding hartal, gherao, seizure, strike, lockout and trade union activities all over the country or in any part thereof during the state of emergency is strictly prohibited.

(2) To safeguard the security and interest of the state and the people and to maintain mass discipline and peace, student and teacher politics, politics of the public servants and that of professional bodies are prohibited during the state of emergency.

(3) A person violating section (1) or (2) of this rule will be subject to rigorous imprisonment for a period not exceeding five years and not less than two years and monetary penalties as well.

5. Control over broadcasting some news, picture.- (1) To safeguard the security and interest of the state and the people and to maintain peace, the

government, with general or special order, may prohibit or control applying conditions as per requirement of the situation the news or information related to any meeting, procession, seizure, agitation, oration, briefing or destructive or provocative activities; and any airing, publication or broadcasting of news, editorial, subeditorial, article, feature, caricature, cartoon, talk-show or discussion session or any still photograph thereof in the print or electronic media and internet or any other mass media.

(2) During the state of emergency, wall writing is prohibited all over the country; and the local government authority and the institutions are liable to wipe away the wall writings from the concerned area.

(3) If any news or information described in sub-rule (1) is promulgated violating the government order, the government may seize the source thereof like the press or electronic equipment used in the publication or broadcasting of the newspaper, book, manuscript or certificates and the concerned person will be subject to rigorous imprisonment for a period not exceeding five years and not less than two years and monetary penalties as well.

6. Prohibition of politically purposeful, provocative speech and activities.- (1) With this Rules promulgated to safeguard the security and interest of the state and the people and to maintain mass discipline and peace, the government prohibits provocative oratory against the government and any of its activities; putting up any obstructions against its activities; printing, furnishing and showing of caricature or cartoon on the government or any of its activities or any of its person; and making and setting fire to any types of statuettes.

(2) A person violating the provisions of this rule will be subject to rigorous imprisonment for a period not exceeding five years and not less than two years and monetary penalties as well.

7. Getting information etc.- (1) If it is deemed expedient to procure and test any information or substance in order to safeguard the security and interest of the state and the people, the government can order a person having possession thereof to furnish or submit the same to the person or institute specified by the order.

(2) If a person refrains from furnishing or submitting the information or substance according to the order given under this rule, or deliberately

conveys false information, he will be subject to rigorous imprisonment for a period not exceeding five years and not less than two years and monetary penalties as well.

8. Trying to violate the Rules etc.- (1) If a person tries to violate or helps or influences others to violate any provision of the Rules or any order given under the provisions, he will be deemed to have violated the provision or the order.

(2) A person violating the provisions of this rule will be subject to rigorous imprisonment for a period not exceeding five years and not less than two years and monetary penalties as well.

9. Indictment of statutory organizations etc.- If a statutory organization, company or firm transgresses any provision of this rule or any order given under that, the director, owner, partner, manager, secretary or any other executive or agent thereof will be deemed to have violated the provision or the order unless he can prove that he has tried his best to resist the violation.

10. Trial, cognizability, non-compoundability, and non-bailability.-
(1) Whatever may be in other acts or Rules, crimes under this Rule will be adjudicated by the Speedy Trial Court, Speedy Trial Tribunal, Metropolitan Magistrate or first class magistrate.

(2) Crimes committed under this Rules will be cognizable, non-compoundable, and non-bailable

11. Appeal etc.- (1) If a person is aggrieved by the verdict given by a court under this Rules, he can appeal to an appropriate court having such jurisdiction, within thirty days of the verdict:

given that, the time required to get the certified copy of the verdict is to be deducted from this period.

(2) If an appeal is lodged under sub-rule (1), it must be settled within 90 (ninety) days of the lodgment.

(3) If a person penalized in a corruption allegation places appeal against it, the appeal court cannot free him on bail, or cannot stay the verdict of the lower court or effectiveness of it while the appeal proceeding is in progress.

(4) The order of siege, croak or forfeiture against the cash or cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets owned or reserved in the name of the penalized person or any other person on his behalf will remain valid until the appeal is finally settled.

(5) If a person penalized in a case under this rule appeals against it, the penalized person can not participate in the national parliamentary election and in the local government elections as well.

(6) A person penalized in a case under this rule will, after he is freed the punishment being over, not be eligible to hold a position in any government, semi-government, statutory organization or any other institute related to the government.

12. Application of the Code Of Criminal Procedure etc. - (1) Unless otherwise stated in this Rules, the provisions of the Code of Criminal Procedure will be applicable to the filing of a case or first information recording, investigation, pre-trial procedures, trial and settlement of an appeal under this Rules.

(2) Despite the provision under Sub-rule (1), if there are special provisions for the investigation and trial of the crimes described under Rules 14 and 15 or other acts mentioned thereby, the investigation and trial of that is to be conducted according to those special provisions.

13. Confinement of parcel, wireless etc. - To safeguard the security and interest of the state and the people and to maintain discipline and peace and to ensure proper flow of essentials and service for social life, the government, with general or special order,--

(A) can empower any officer or authority to confine any material or a class of material sent or consigned to be sent through post, to unwrap and test it and to seize it if it is detrimental to the security of the state and the people or subversive of mass discipline, or to postpone its delivery;

(B) can empower any officer or authority to confine any message or news or a class of message or news transmitted or consigned to be transmitted by any person or institute or any class of persons or institutes through post, wireless, telegram, telex, fax or telephone; or to postpone or hamper its delivery or transmission.

14. Confinement of parcel, wireless etc. - To safeguard the security and interest of the state and the people and to maintain discipline and peace, the law and order forces will play an active role in applying the Penal Code (Act XLV of 1860), Arms Act, 1878 (Act XI of 1878), Explosive Substances Act, 1908 (Act VI of 1908), Foreign Exchange Regulation Act, 1947 (Act VII of 1947), Special Powers Act, 1974 (Act XIV of 1974), Narcotics Control Act, 1990 (Act XX of 1990) and special other acts in restraining illegal arms, explosive substances, sabotage, hoarding, adulteration in drugs and food stuff, counterfeiting money and government stamps, black marketing, smuggling, narcotics and other crimes subversive of the security and economic life of the state and the people.

15. Provisions related to corruption. – During the state of emergency, to effectively restrain the crimes related to income tax, corruption and money laundering, law and order forces or the commission executive will take apt initiatives to unearth or probe into crimes, file accusation or case and, if required, arrest and handover the criminals to the legitimate authority for investigation and trial under Anti Corruption Act, 2004 (Act 5 of 2004), Money Laundering Prevention Act, 2002 (Act 7 of 2002) and Income Tax Ordinance, 1984 (Ordinance XXXVI of 1984) deemed to suppress the crimes perturbing the economic life, interest and security of the state and the people.

15A. Injunction of freezing or croak of money, movable or immovable assets etc during the proceedings or trial of corruption crimes. – (1) If a case is filed against a person for involvement in corruption under provision 15 or in accusation of being financially benefited by streaming work bids toward his own name or to any other person or organization by tenders or through misuse of power in any government, semi-government, autonomous or government controlled organization; or if the person is arrested for the sake of the legal procedure; and if the cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets reserved in his own name or in the name of any other person on his behalf, in any bank or other financial

institutes either in the country or abroad is susceptible of being confiscated in favor of the state on the basis of the verdict of the trial, the first class magistrate, or in cases, the metropolitan magistrate, in any stage of the proceedings, can order freezing or croak of such cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets in response to the application of the commission executive or other investigation officers.

(2) The cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets freezed or croaked under sub-rule (1) can not be sold or negotiated; and such sale or negotiation will be void and invalid.

15B. Blockade or croak injunction against money, movable or immovable assets before starting legal procedure or trial of corruption crimes. — (1) Whatever may be in provision 15A or other valid acts or any provision promulgated under it, regarding any corruption under provision 15, if the commission executive or the concerned officer legitimately believes that, being dishonestly motivated, a person can sell or otherwise negotiate, before a corruption allegation or case is formally filed against him, any cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets owned and reserved in his own name or in the name of any other person on his behalf, the commission executive or the concerned officer can appeal, before he can formally file a case or allegation against the person, to the first class magistrate or, where applicable, metropolitan magistrate to effect a order against that cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets.

(2) In response to an appeal under sub-rule (1), the first class magistrate or, where applicable, metropolitan magistrate can promulgate an injunction to freeze or croak the cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets.

(3) If an allegation or a case is filed after the injunction of freeze or croak is made under sub-rule (2), the injunction will remain valid until the settlement of the case.

(4) If an injunction of freeze or croak under sub-rules (2), is made fully or partially against a factory, industrial establishment, bank, financial

institution, or a commercial organization, if the government (the commission executive or the concerned officer) thinks necessary, can employ an administrator, with the permission from a first class magistrate, metropolitan magistrate or any other relevant court, to ensure that the usual operation of the factory, industrial establishment, bank, financial institution, or commercial organization is not hampered.

(5) If no case is formally filed within 60 (sixty) days after the injunction of freeze or croak is made under sub-rule (2), the term of the injunction can be extended for the next 30 (thirty) days with the approval of the first class magistrate or, where applicable, metropolitan magistrate but after the expiry of that period, the injunction of freeze or croak will automatically turn invalid.

15C. Time limit of investigation. — (1) The investigation of an allegation against a person arrested or confined by the law and order forces under provision 15 for involvement in corruption, money laundering, income tax or other crimes under this Rules will be carried out by the investigation officer (investigation officer or any other concerned officer) employed by the government for this purpose and the investigation officer will complete the investigation within 30 (thirty) days after being charged.

(2) The investigation officer failing to complete the investigation within the 30 (thirty) days stipulated under sub-rule (1), will complete the investigation within the next 15 (fifteen) days by showing the proper reason in writing and taking prior permission from the higher authority.

(3) The investigation officer failing to complete the investigation within the 15 (fifteen) days extended under Sub-rule (2), will complete the investigation within the next 15 (fifteen) days taking prior permission from the higher authority next to that mentioned in Sub-rule (2).

(4) If the investigation is not completed within the period stipulated under this provision, the concerned officer along with all other officers helping him will be considered as failing to perform their duty, and for this reason, punitive actions are to be taken against them all as per the concerned service-Rules of the department.

15D. Authority to order the submission of the statement of movable or immovable properties. — (1) During the investigation under provision

15, if the law and order enforcing agency or the investigating officer or the commission executive is, upon necessary investigation based on information, satisfied that a person or any other person on his behalf is in possession or ownership of assets inconsistent to valid sources, the officer can order in writing to the person to submit the statement of all movable and immovable assets in his possession or ownership and necessary other statements; on such order, the person is bound to convey the information.

(2) If a person, according to an order under sub-rule (1), does not submit the required information to the ordering authority being present himself within 72 (seventy two) hours from the order is given, or, in corruption cases, if the appropriate authority legitimately believes that he is deliberately refraining from submitting the information, the ordering authority or officer or the commission executive or any other officer under sub-rule (1) can appeal to first class officer or, where applicable, to the metropolitan magistrate to freeze or croak the cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets owned and reserved in his own name or in the name of any other person on his behalf.

(3) In response to an appeal under sub-rule (2), the first class magistrate or, where applicable, metropolitan magistrate can promulgate an injunction to freeze or croak the cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets.

(4) The government or any officer empowered by the government for this purpose or commission executive or any other concerned officer, on permission from appropriate court, can sell in open bid the cash, cashable bonds, securities, share certificates and such other certificates or instruments or movable or immovable assets freezed or croaked under sub-rule (3).

(5) If a person, being ordered under this provision, does not submit the written information accordingly or submits any written information that can reasonably be considered to be fake or baseless or submits any book, record, declaration, return, or certificates that can reasonably be considered to be fake or baseless, he will be subject to rigorous imprisonment for a period not exceeding 5 (five) years and not less than 3 (three) years or monetary penalties or both and in addition, his movable or immovable assets will be confiscated in favor of the government.

16. Appointment of different law and order forces to help civil administration.- (1) The government can employ different law and order forces beside police to help the civil administration during the state of emergency.

(2) Members of different law and order forces employed under sub-rule (1) will have the same level of power regarding raid and arrest as the police officers enjoy under the Code of Criminal Procedure; and any member of the law and order forces on duty can arrest without warrant and take legal actions against any person found to be committing any crime under this Rules or any other valid act, or any person legitimately suspected to be involved in such crimes.

(3) Members of different law and order forces will strictly follow the provisions of the Code of Criminal Procedure in executing a raid under sub-rule (2).

17. Authority to direct an eviction campaign.- The government, if required, can order the law and order forces to take befitting legal actions to evict the individuals or institutions encroaching government lands, buildings, streets, waterways, roads, open terraces, play grounds, factories or other establishments or any other immovable assets during the state of emergency.

18. Provision regarding trial of serious crimes.- If the government considers a crime under provisions 14 or 15 of this Rules or any other valid act to be so serious, the government can transfer a related case at any stage of its trial proceedings from a session judge court, special court, magistrate court or special tribunal to the Speedy Trial Tribunal according to provision (6) of the Speedy Tribunal Act, 2002 (Act 28 of 2002) during the state of emergency.

(2) After a case under sub-rule (1) is transferred to the Speedy Trial Tribunal, the later proceedings are to be conducted according to the provisions of the Speedy Tribunal Act, 2002 (Act 28 of 2002) subject to the provisions of this Rule.

18A. Special provision regarding transfer or case.- (1) Whatever contradiction may be in this Rules or in any other acts in force, during the state of emergency the government can, by notifying the Anti Corruption

Commission or, if required to safeguard public interest, in government gazette, transfer a case filed under any act mentioned in provisions 14 or 15 of this Rules at any stage of its trial proceedings from a session judge court, magistrate court, special judge court or special tribunal, situated at any part of the state, to the court of a special judge employed under Criminal Law Amendment Act, 1958.

(2) After a case under sub-rule (1) is transferred to the court of a special judge, the later proceedings are to be conducted according to the provisions of the Criminal Law Amendment Act, 1958 subject to the provisions of this Rule.

(3) Under sub-rule (1)—

(A) a case will proceed under the special judge's court from the stage it is transferred there;

(B) the witness and evidence recorded in a court which they are transferred from, will be considered as recorded in the special judge's court and unless required for ensuring justice, those witness and evidence will not be recorded again;

(C) the time spent to transfer a case will be deducted from the period specified in provision 19A.

18B. Provision regarding trial under special judge's court.- (1) Whatever contradiction may be in this Rules or in any other acts in force, during the state of emergency, any crime under any act mentioned in provision 14, which is approved under provision 19J, and any crime under any act mentioned in provision 15, can be settled under any special judge's court, employed under Criminal Law Amendment Act, 1958.

(2) Any judge is eligible to judge over any case filed for trial in a special judge's court under sub-rule (1) and the whole Bangladesh will be the territory of jurisdiction for his court.

(3) If any case under sub-rule (1) is received for trial in special judge's court, the trial proceedings of that case will be conducted according to the provisions of the Criminal Law Amendment Act, 1958 subject to the provisions of this Rule.

19. Provisions With Regard to Crimes Under this Rules: Until the Emergency is in effect, trial and investigation of those crimes under this Rules and punishable not more than 5 years of rigorous imprisonment, will be carried on according to the Speedy Trial Act 2002 (Act 11 of 2002) in a way as if the crime is exactly what is embodied in section 2 (b) of the Act and will be tried under the section 9 of the Act.

19A. Duration of Case Disposal- (1) Notwithstanding whatever is stated in any law in force at present, in the period of enforcement of the declaration of the state of emergency, any case filed under the provisions of this Rules or under provisions 14 and 15 is to be settled within 45 (forty five) days from the date of commencement of trial in any court or tribunal.

(2) If the settlement of the case appears impossible due to some unavoidable reason, the court or tribunal, by notifying the reason, can settle the dispute within the next 30 (thirty) days and will inform the Supreme Court about the time extension in writing and send a copy thereof to the government.

(3) If the settlement of the case becomes impossible within the period mentioned in sub-rule (2) due to some legitimate reason, the court or tribunal, by notifying the reason, can take even 15 (fifteen) days further to settle the dispute and will inform the Supreme Court in writing about the time extension and send a copy thereof to the government.

19B. Adjournment of trial- (1) If the trial of a case filed under any provision mentioned in this Rules or provisions 14 and 15 starts in any court or tribunal in the period of enforcement of the declaration of the state of emergency, it will continue uninterruptedly until settlement, but if the court or tribunal is satisfied by the appeal from any concerned party that the trial should be adjourned for the sake of justice, it can do so for not exceeding 3 (three) days.

(2) Under the sub-rule (1), the court or tribunal will not adjourn the trial of a case in such a manner that the trial of the case stands impossible within the period stipulated under the provision 19(A).

19C. Accountability of courts, tribunals etc.- In the case of non-settlement of a dispute within the period stipulated under the provision 19(A), the

accountability of the court or tribunal, the public prosecutor, the law and order enforcing agency, the commission official under provision 15, the concerned police officer or any person related to the trial will be ensured by applying the provision 15 of the Speedy Tribunal Act, 2002 (Act No. 28 of 2002) with necessary adaptation.

19D. Rules related to bail.- In the period of enforcement of the declaration of state of emergency, the accused can not appeal for bail to any court or tribunal during the inquiry, investigation and trial under any act mentioned in this provision or provisions 14 and 15, whatsoever may be stated in the provision 497 and 498 of Code of Criminal Procedure or in any other Act;

Provided that in the case where the principle accused is accompanied by some other co-accused like his wife, offspring under age of 18, bachelor daughter, mother, mother in law or sister, the court or the tribunal, having recorded the appropriate reason, can consider bail in response to an application on behalf of the co-accused.

19E. The nature of the order of the courts or tribunals.- In the period of enforcement of the declaration of the state of emergency, it is not permitted to ask for any remedy or to dispute any injunction, except the final verdict, in any higher court or tribunal during probe, case filing or First Information Recording, investigation, pre trial procedures or during the trial under any act mentioned in this provision or provision 14 and 15.

19F. Verification of income tax certificates etc.- during investigation of corruption cases and placing it as evidence.- (1) In the period of enforcement of the declaration of state of emergency, the investigating officer, in investigating into the corruption cases, can inspect, examine and seize income tax certificates and other tax certificates, bank account or other accounts in other financial or other types of associations or institutions for the sake of investigation, if necessary, taking permission from Anti-Corruption Commission, National Board of Revenue, ministry of home, Bangladesh Bank or related other organizations, notwithstanding anything stated in the Income Tax Ordinance, 1984 (Ord. No. XXXVI of 1984) or any other Acts.

(2) If the certificates mentioned in sub-rule (1) are to be presented as evidence, the court or tribunal can ask for that and that are admissible as evidence.

19G. Witness-value of pictures recorded in camera etc.- Under the state of emergency, during the trial of any case under any act mentioned in this provision or provisions 14 and 15, any moving or still picture of the crime scene or related other photograph, tape, disk, information or any other related element captured by law and order forces, commission executive, or any other person so empowered under this rule is admissible as evidence given that depending upon that evidence only the court or the tribunal can penalize the accused .

19H. Witness of experts etc.- During the trial of any case under any act mentioned in this provision or provisions 14 and 15, if the court requires the witness of some forensic expert, chirographer, chirologist, ammunitions expert, bank account auditor, income tax auditor or other expert who has previously examined the things and submitted a report to the authority but now it is not feasible to place him before the court because either he is dead, or he is incapable of being an witness, or he is missing or the cost, effort and difficulty exceeds the expected level, his signed report is admissible as evidence, provided that depending upon only that evidence the court or the tribunal cannot penalize the accused .

19 I. Trial in absence of the witness.- (1) During the state of emergency, if the accused is mentioned as absconding in the report of investigation of any crime filed under any act mentioned in this Rules or Rules 14 and 15, and if the court or the tribunal reasonably believes that the accused person is deliberately hiding to escape arrest and facing trial, the court or the tribunal will attach one notice in an easily visible place of the court building or the tribunal and one in the last residence or office of the accused specifying the time limit, not exceeding three days, and order the accused to attend the court within that time and if he fails to do so in the stipulated time, the court or the tribunal will continue trial in his absence.

(2) A notice served under the sub-rule (1) is considered to be served individually on the accused.

19J. Special provision regarding the application of the Rules.- (1) Whatever may be in other Acts or in this Rules , if the provisions of this Rules if to be applicable to the investigation, trial, appeal, bailment and such other related affairs, an approval is to be taken from the government or other authority.

(2) The government or other authority, by a written general or special injunction, can designate a subordinate officer the power of approval under sub-rule (1).

(3) In an approval given under sub-rule (1), a statement must mention "Provisions under Emergency Power Rules, 2007 is to be applied"

(4) In giving approval under sub-rule (1) and (2), the approving officer must ascertain the impact of the crime on the people.

(5) Under the provision of rule 14—

(a) Starting from the date of validation of this Rules up to March 20, 2007 and

(b) From 21 March, 2007 onward up to the gazette notification of this Rules, under Sections 161, 162, 163, 385, 386, 387, 401, 406, 408, 409, 420, 423, 467, 468, 471, 477 of Penal Code (Act XLV of 1860) and filed under other acts mentioned in rule 14

any case, within ten days of the gazette notification of this Rules, can be admissible retrospectively under the sub rule (1).

(6) If not approved under sub-rule (5), after the expiry of the period stipulated under the sub-rule, no provisions of this Rules including the provisions of 19D regarding bail shall be applicable in any trial under the sub-rule.

20. Use of force in implementing order.- To implement any order under this rule, any police officer or any member of the law and order force authorized or charged for this may take any necessary step including the use of force.

21. Provision related to preventive warrant of arrest.- Under the state of emergency, if it legitimately appears satisfactory or believable that a person has committed or may commit an offence under any act mentioned in this rule or Rules 14 and 15, provisions related to the preventive warrant of arrest under Special Power Act, 1974 (Act XIV of 1974) may be applied against that person.

21 A. Special administrative initiative in applying emergency power.- (1) The government, by notification in the gazette, can launch any type of administrative initiative to arrange for coordinated support in the investigation, probe, trial, or any other dealings under this Rules.

(2) If any committee or authority is formed under any administrative arrangement initiated by the gazette notification under sub-rule (1), such committee, its members or the authority or the persons empowered by the authority with their duty, responsibility and domain of control is to be specified.

(3) "National Coordination Committee" formed by the memorandum no MPB/K: B: S:/Adviser Council 4/2007/36 of the committee branch of the cabinet division, which was published in the additional issue of Bangladesh gazette dated March 8, 2007/Falgun 24, 1413 will be considered to have been formed under this Rules.

22. Validity period of order.- Any general or special injunction stated under this rule will, unless the validity period is specified therewith, remain valid in the period of the state of emergency.

23. Explanation of the Rules.- The General Clauses Act, 1897 (Act X of 1897) will be so applicable in explaining this Rules, the way it is applicable in explaining any Act of Parliament.

List of Persons Interviewed

Abdul Mannan Bhuiyan

Former Secretary-General of Bangladesh Nationalist Party (BNP), Former Minister, Ministry of LGRD and MP; Interviewed on 10 August 2009 in Dhaka.

Professor AQM Badruddoza Chowdhury

Former President of the People's Republic of Bangladesh. Founding Secretary-General of BNP. Deputy Leader of the House and Foreign Minister in the Fifth JS. Deputy Leader of the Opposition in the Seventh JS. Founding Chairman of Bikalpa Dhara Bangladesh. Interviewed on 16 October 2009 in Dhaka.

Khondokar Delwar Hossain

Former Secretary-General of Bangladesh Nationalist Party (BNP), Former Chief Whip in the Eighth JS. Interviewed on 11 July 2009 in Dhaka.

Rashed Khan Menon

President, Workers Party of Bangladesh; Former student leader and Vice-President, Dhaka University Central Student Union (DUCSU) 1963-64, Chairman, Parliamentary Standing Committee on the Ministry of Education affairs in the Ninth JS. Three times elected MP of the JS. Interviewed on 14 October 2009 in Dhaka.

Tofail Ahmed

Former student leader and Vice-President, Dhaka University Central Student Union (DUCSU). Convener, Students Committee of Action (1968-1969). Former Minister, Ministry of Industries. Five times elected MP of JS. Interviewed on 19 November 2009 in Dhaka.

Siddikullah Bhuiyan

Deputy Secretary (Political), Ministry of Home Affairs;
Interviewed on 01 January 2010 in Dhaka.

Mohammad Zahangir Kabir,

Deputy Secretary, Ministry of Education, Interviewed on 06
January 2010 in Dhaka.

Abdul Mannan Swapon

Editor, Dhamoni (A Literary Magazin), Kishoreganj, Interviewed
on 11 July 2009 in Dhaka.

Tandra Shikdar

Deputy Secretary, Ministry of Information, Interviewed on 02
January 2010 in Dhaka.

Hosne Ara Begum

Deputy Secretary, Ministry of Education,, Interviewed on 12
January 2009 in Dhaka.

Md. Kafil Uddin

Deputy Secretary, Ministry of Public Administration,, Interviewed
on 10 October 2010 in Dhaka.

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2005; and N°91, Nepal's Royal Coup: Making a Bad Situation Worse, 9 February 2005.

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Crisis Group interview, Kamal Hossain, 7 November 2007.

Crisis Group interview, Hannan Shah, adviser to Khaleda Zia, 3 November 2007.

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