

Democracy in Bangladesh: From Fragility to Collapse?

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Introduction

The events that have been unfolding since Prime Minister Khaleda Zia completed her five-year term in October 2006 have farther-reaching implications for democracy in Bangladesh than normally recognized. The rapidly changing political atmosphere during the past few months has considerably damaged various democratic institutions in the country, especially the offices of the President, Prime Minister, Election Commission, as well as Caretaker Government.

By all accounts, the second Caretaker Government formed in January 2007 enjoys popular support for its actions against political corruption. At the same time, the Caretaker Government has exceeded the limited mandate and tenure set by the Constitution, and has usurped powers that only an elected government could carry forward. It has emerged as a benign dictatorship and is trying to consolidate democracy through actions that do not conform with democratic norms.

As the following analysis will highlight, every major institution in Bangladesh has proved to be inadequate to keep the country on the democratic path.

President

Following the resignation of Khaleda in October 2006 upon the completion of her five-year term, President Iajuddin Ahmed concurrently assumed the office of Chief Advisor to the Caretaker Government. To a very large extent, his actions precipitated the crisis, and have contributed to the indefinite postponement of the *Jatiya Sangsad* (Bangladeshi Parliament) elections.

Under the 13th Amendment adopted in March 1996, Bangladesh would have a Caretaker Government that would supervise and conduct elections.^[1] Such a government would be formed within 15 days of the dissolution of the *Jatiya Sangsad* and the President “shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired last” [Article 58 C]. If this was not possible the Constitution suggests “the Chief Justices of Bangladesh retired next before the last retired Chief Justice, or the retired Judges of the Appellate Division who retired last or the retired Judges of the Appellate Division retired next before the last such retired Judge” could be appointed as head the Caretaker Government. If these options are not available or not feasible, the President “shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh.”

When none of these alternatives are available and under extreme circumstances, “the President shall assume the functions of the Chief Adviser of the Non-Party Caretaker Government in addition to his own functions under this Constitution.” Thus the President concurrently becoming head of the Caretaker Government would have to be exceptional, and only when all other alternatives are unavailable.

President Iajuddin, however, did not follow any of these alternatives suggested by the Constitution. The resignation of Khaleda was followed by political uncertainty and chaos. As per the norm, Justice K M Hasan, who was the last retired Chief Justice of the Bangladeshi Supreme Court, should have headed the Caretaker Government. On the eve of Khaleda’s resignation, the opposition raised two principal objections to Hasan’s possible appointment: one, in the past, he was a party functionary of the Bangladesh Nationalist Party (BNP); and two, Khaleda ensured that Hasan would head the Caretaker Government by increasing the retirement age of the judges of the Supreme Court from 65 to 67 years. This change, brought about through a constitutional amendment passed by Parliament on May 16, 2004, was sudden and was interpreted as a partisan calculation aimed at the next *Jatiya Sangsad* elections.

As the date for BNP-led coalition’s term was coming to an end, there was popular discontent against the possible nomination of Hasan, who eventually bowed to public pressure and became “unavailable.” The Awami-led opposition suggested a couple of former judges of the Supreme Court as possible compromise candidates, but they were not acceptable to the BNP and its allies. Khaleda was adamant that Hasan should head the Caretaker Government and was not prepared to accept any compromise.

The President saw the impasse as an opportunity: without exploring other alternatives, including popular non-political figures mentioned in the Constitution, on October 29 he assumed office as Chief Advisor. The Awami gave a cautious welcome to the concurrent functions assumed by the President, and expressed hope that Iajuddin would ensure free and fair elections.

Meanwhile on October 31, the President appointed ten technocrats as his advisors. Though they were apolitical, things began to deteriorate from the very beginning. The wait-and-watch approach of the opposition was accompanied by a set of conditions which were said to establish the neutrality of the Iajuddin-led interim administration. Within days, however, Awami resorted to its *hartal* (strike action) politics^[2] and launched widespread protests against the refusal of the interim government to ‘rectify’ some of the partisan measures of the Khaleda government.

Even within the government there were serious differences between Iajuddin and his team. Members of the interim government complained that the Chief Advisor was making decisions without consulting his advisors, and the advisors came to know about a brief deployment of the military from the media.^[3] Bangladeshi media was replete with reports of internal divisions and disagreements. The President came under intense pressure from inside and outside Bangladesh to relinquish his concurrent positions and to appoint a neutral person to head the interim government.

The opposition accused the President of pursuing the policies of the BNP-led government rather than acting as a neutral administrator.^[4] His reluctance to remove the controversial Chief Election Commission led to charges that he was acting as the henchman of Khaleda rather than as the upholder of a constitutional position. Nor was he prepared to concede to opposition demands to prevent the Election Commission from going ahead with the elections for the 9th *Jatiya Sangsad*. Despite public protests, on November 25, 2006, the Chief Election Commissioner (CEC) announced January 22 as the election date.

This move infuriated the opposition, which reached its climax on January 7, when the 18-party alliance led by Awami League declared its intention to boycott the elections. This not only

indicated the emboldened status of the opposition but also the isolation of the BNP-led coalition. Virtually the entire political spectrum in the country swung against the planned elections under such a controversial situation. The prospect of Bangladesh repeating the farcical elections of February 1996 loomed larger.^[5] This time, however, such a move would have happened under a supposedly neutral Caretaker Government.

As a result of widespread discontent and possible large-scale violence in the country, on January 11 President Iajuddin resigned as Chief Advisor and the following day named well-known economist Fakhruddin Ahmed as Chief Advisor.^[6] A new team was constituted a couple of days later.

Meanwhile, the President, when relinquishing his concurrent responsibilities, imposed an internal emergency which curtailed political activities, media and popular gatherings. Unlike the half-hearted attempt in December, the military was given the power and responsibility to patrol the streets of Dhaka and other major cities.

Until he relinquished the office of Chief Advisor and appointed Fakhruddin as the head, President Iajuddin's actions came under criticism and condemnation. By appointing himself to the position without going through the constitutionally laid down procedure, the President made himself a target of popular discontent. By temporarily usurping the office of Chief Advisor, Iajuddin had considerably brought down the office of the President. In the words of one Bangladeshi commentator:

If there is only one person to be blamed for this situation, it is Professor Iajuddin Ahmed, the honorable President cum CA of the republic. The President has, by assuming the dual role of President and Chief of the Caretaker Government, made a mess of both the institutions—the office of the President as well as that of the Caretaker Government—not to mention the election [of] 2007. The President has wasted 45 days in the name of resolving the political stalemate, with little or no progress. Some critics suggest that he has, in fact, by going alone in an authoritarian style instead of taking his advisers in confidence, made the situation more complex. Nobody now believes that a free, fair and meaningful election that is acceptable to all can be held within January 2007.^[7]

The appointment of Fakhruddin as head of the Caretaker Government, however, did not to resolve the stalemate over elections. The determination of all the political parties, except the BNP and its allies, to boycott the polls made the scheduled elections a farce. Since the Constitution does not provide for delaying the elections, the President had no option but to impose an emergency. At the same time, he did not exercise powers granted by the Constitution to refer to the Supreme Court for its opinion if he felt “a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance.” [Article 106] Hence, the indefinite postponement of the elections does not enjoy constitutional backing.

Caretaker Government

The formation of a Caretaker Government presented a different set of problems for Bangladesh. According to the constitution, the term of the Caretaker Government begins from the day the Advisor assumes office and expires on “the date on which a new Prime Minister enters upon his office after the Constitution of Parliament.” [Article 58 B1]. While dealing with the provisions of elections, the Constitution demands that general elections “shall be held within ninety days after Parliament is dissolved” [Article 123-3]. In short, a Caretaker Government should have been constituted within 15 days after the dissolution of the *Jatiya Sangsad* and should be in a position to hand over powers to a duly constituted popular government within 90 days after the dissolution of the previous parliament.

In the current context this would mean, since the 8th *Jatiya Sangsad* was dissolved on October 28, 2006, that a Caretaker Government should have been installed by November 12. Going by the 90-day constitutional stipulation for holding elections, it would mean the Caretaker Government coming to an end around January 25, when a popularly elected government would assume office.

President Iajuddin's decision to concurrently appoint himself as Chief Advisor considerably complicated the process. The appointment of a second Caretaker Government in January, however, did not solve the problem either.

The principal function of the Caretaker Government is to provide "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." With this object in mind the second Caretaker Government has initiated a process of revising and updating of the voters list. Part of the current crisis in Bangladesh emanates from malpractices in the voters list, and it was on that account that the Awami League and its allies refused to participate in the elections. Therefore, finalizing a credible list became essential if Fakhrudin were to organize free and fair elections.

Even if one takes January 12 as the commencement of the Caretaker phase, then Bangladesh should hold elections before early April. The Caretaker Government has already crossed the 90-day lifespan set by the constitution. Furthermore, with the Election Commission actively taking up the revision and updating of the voter list is expected to be completed only by October 2008. The Caretaker Government has already indicated that the elections to the 9th *Jatiya Sangsad* would be held towards the end of 2008, or more than two years after the dissolution of the previous *Jatiya Sangsad*.

More over, as the nonpolitical interim arrangement between two elected governments, the Caretaker Government is mandated to "carry on the routine functions of such government with the aid and assistance of persons in the services" of the country. According to the constitution, "except in the case of necessity for the discharge" of its routine functions, the Caretaker Government "shall not make any policy decision." This rider however, has often been violated by Caretaker Governments. There were instances in the past when Caretaker Governments exceeded their limits in changing or annulling some of the policy decisions taken by popular governments. In 2001, for example, the Latifur Rahman-led Caretaker Government cancelled the contracts signed by the Hasina government.

The Fakhrudin-led Caretaker Government, however, went a step further. Since assuming office in January 2007, he had initiated a number of actions which clearly fall into the category of policy decisions. Some of controversial decisions taken by the Caretaker Government included:

- Separating the Judiciary from the administrative control of the Executive.
- Initiating a large scale anti-corruption drive in the country.
- On March 22, the Caretaker Government promulgated an ordinance denying bail or any other legal remedy from any higher court until the corruption cases were resolved in a trial court. This in practical terms would mean so long as the Judiciary does not dispose the corruption cases, the charged individuals will not have any legal reprieve. Moreover, this ordinance issued on March 22, was made effective from February 13, with an explicit intention of bringing in Tarique Zia (the eldest son of Khaleda), who was arrested on March 6, under the purview of the ordinance. In short, not only the anti-corruption ordinance falls within category of policy decisions as defined by the Constitution but also is a politically motivated move initiated by the Caretaker Government.
- The Caretaker Government also modified some of the earlier foreign policy decisions of the elected government such as negotiating strategic ties with the United States, or an expression of interest in the Indo-Myanmar gas pipeline.

In terms of its time limit and functions, the Caretaker Government thus has already crossed the limits set by the Constitution and its continued existence is largely linked to the backing it enjoys from the military.

Election Commission

To a large extent the responsibility for the current crisis should be traced to the Election Commission, especially its Chief, M A Aziz. Indeed all the major events during the past few months are directly or indirectly linked to Aziz. The manner in which he was functioning since his appointment in May 2005 made him a controversial figure. Some of the controversial measures taken by him include:

- In 2005 the Chief Election Commissioner (CEC) went along with the decision of the BNP-led coalition to appoint party members and supporters as election officers in various districts and *upzila* [district] levels. These appointments, estimated by some at 700, were meant to ensure the victory of the BNP coalition even under a neutral Caretaker Government.[8]
- On January 1, 2006, without consulting other members of the Election Commission, Aziz decide to draw up a fresh voters list. Even the High Court ruling did not result in him abandoning his decision. Aziz could do this partly because the Judiciary remained under the control of and not independent of the Executive.
- Both opposition and independent observers were critical of the discrepancies in the voters list prepared by Aziz. According to U.S.-based National Democratic Institute, there were as many as 120,000 fake voters while others put the number at 13 million.[9]

To circumvent opposition to his autocratic decisions within the Election Commission, in January 2006 the CEC inducted two BNP loyalists, Mahfuzur Rahman and S M Zakaria, as members.

Due to these problems, the opposition was adamant that the 9th *Jatiya Sangsad* elections should not be held with Aziz as the CEC. This became the principal opposition demand during the last days of the Khaleda government and she was forced to initiate a dialogue with the opposition over electoral reforms. The meeting of the reform committee, however, was derailed over the participation of Jama'at.

When President Iajuddin appointed himself as the Chief Advisor, the public protests against Aziz intensified. The brief mediation efforts initiated by the President came to nothing. With the backing of BNP and its allies, the CEC was determined that he would conduct and supervise the 9th *Jatiya Sangsad* elections. Both Aziz and Khaleda were keen on the constitutional propriety and were not willing to accede to opposition demands regarding fictitious names in the voters list. While the public outcry was continuing on November 22, Aziz announced the election schedule and set January 22 as the election date. With the constitutionally mandated 90-day period due to expire on January 25, this was the last possible date that Bangladesh could have gone to the polls without creating a constitutional crisis. This announcement infuriated the opposition further.

Meanwhile public protests began to intensify and his isolation from the people came to the forefront when the Dhaka Metropolitan Shop Owners' Association announced a boycott of Aziz and his family. Among others it declared that a number of goods and services such as vegetables, groceries, and bread would not be supplied to Aziz and his family if he did not resign as the CEC.[10]

Against this background, on November 27 Aziz went on long leave and was replaced by Mahfuzur Rahman as acting CEC. In a way, the crisis which began with the attitude of Aziz vis-à-vis elections was largely neutralized by his departure. The opposition, however, decided to

boycott the elections without adequate electoral reforms. The crisis was eventually resolved on January 11, 2007, when the elections were indefinitely postponed.

Political Parties

The shortsighted approach of the political parties was also equally responsible for the current crisis in Bangladesh. Despite the introduction of multiparty elections in 1991, political parties in Bangladesh have not internalized the spirit of democracy. The introduction of the Caretaker Government between two elected governments has also not resulted in a mature political norm. Their refusal to accept the electoral verdict resulted in opposition parties resorting to extra-parliamentary forms of protest. For various genuine and trivial reasons political parties resort to street protests and *hartals*. With the result, dialogue between government and the opposition has remained alien to Bangladesh. Indeed, since the public function orchestrated by former U.S. President Jimmy Carter on the eve of the 2001 elections, Hasina and Khaleda have never met in person.

This lack of mature political interactions reached its zenith during the weeks leading up to end of 8th *Jatiya Sangsad*. As the date for Khaleda Zia's resignation was nearing, the Awami League and its allies intensified their campaign. The controversies surrounding Hasan being tipped as the head of the Caretaker Government and Aziz presiding over a controversial elections process provided much needed ammunition to the leader of the opposition.

The last minute effort of Khaleda Zia to initiate a dialogue with the opposition fumbled over Jama'at. This was supposed to resolve the differences between the two sides over opposition demands for foolproof identity cards for voters and transparent ballot boxes. This committee did not take off because of Awami League objected to presence of the Jama'at representative while the BNP was not prepared to abandon its coalition partner to pacify the opposition.

Much of the controversy surrounding the Caretaker Government and the CEC could have been avoided if Khaleda was less rigid and more accommodating. It was her backing that enabled Aziz to defy the High Court orders and publish the inaccurate voters list. It was due to her insistence and support that Aziz was able to declare an election date despite the public tension and uproar.

Even though a number of charges leveled against the BNP government were serious and valid, the shortsightedness of Hasina was also exhibited during the crisis.

- Despite her strong reservations vis-à-vis the CEC, the fraudulent voters list and the ability of the President Iajuddin to conduct free and fair elections, in the early days the Awami League was more than eager to participate in the elections.
- Hasina, who was accusing Khaleda of corruption, was more than happy to accommodate former President *Jatiya Party* leader H M Ershad who was fighting a legal battle over corruption. When the BNP could not guarantee his filing nomination papers, Ershad switched sides and briefly joined hands with the Awami League.
- Her secular posturing did not prevent Hasina from forging a partnership with *Khilafat Majlish Bangladesh*, a religious hardliner group this is committed to the Islamicization of Bangladesh.^[11] The Awami also made overtures to other religious parties including Islamic Constitution Movement and the breakaway faction of *Islamic Oikya Jote* (IOJ) known as *Bangladesh Nejame Islami Party*, headed by Mufti Izharul Islam Chowdhury. Through such maneuvers, Hasina expanded the opposition to an 18-party coalition.^[12]
- The announcement of the election schedule on November 22 did not result in the League boycotting the polls, and the Awami was hoping that limited reforms demanded by the opposition could be implemented. All political parties, including the Awami-led opposition, were intensifying their preparations, coalition expansion, and allocation of seats to coalition partners. However, after Ershad switched sides again and rejoined the BNP-led

coalition, the opposition feared that similar attempts would be made towards other smaller parties, and felt that a boycott would be a better strategy to forestall future poaching. Thus, on January 3, or more than six weeks after the election schedule was announced, the Awami-led opposition announced the election boycott.

The final push towards an internal emergency came on January 6, when the opposition announced its decision to lay siege to *Bangabhavan*, the official residence of the President. When Iajuddin was not ready to address the issue of bogus voters, the Awami and its allies intensified its street protest and threatened to bring the city of Dhaka to a halt and lay siege to the President's residence. The BNP also threatened to resort to street protests in defense of the constitutional propriety of the Election Commission to hold elections as planned. There was a real possibility that Awami and BNP supporters would clash violently in the streets of Bangladesh. The imposition of an emergency thus became the only way to avoid a bloodbath in the country.

Judiciary

Through a government notification issued on January 16, 2007, the Caretaker Government began the process of separating the Judiciary from the administrative control of the Executive. This was a delayed implementation of a Supreme Court ruling of December 1999 that ruled that the independence of the Judiciary could not be maintained if it remained an arm of the Executive. Political parties supported this position while in opposition, but quickly took a different stand when elected to power. Though done without much public debate, the decision has enjoyed widespread public support.

Though the separation is yet to be formalized, the popular support for the decision has energized the Judiciary to challenge some of the actions of the Caretaker Government. The High Court, for example, has challenged the government's initial plans to prevent Hasina returning to Bangladesh from her overseas trip or to keep Khaleda under house arrest. The Judiciary is the only institution which could gain popular respect, power and influence in the ongoing crisis in Bangladesh. The erstwhile linkages with politicians and prolonged patronage of the Executive are so deep-rooted that independence of the Judiciary would be a long drawn process.

Army

The imposition of an emergency and suspension of certain rights by the Caretaker Government would not be possible without the backing of the army. This was the first time since 1991 that the military has shown an active interest in Bangladeshi politics and has gradually emerged as a real power behind the Caretaker Government. As discussed earlier, the legality of a number of actions of the Caretaker Government are questionable and even might have crossed the boundaries set by the constitution. The military has been instrumental in the enforcement of the internal emergency and has been patrolling the major streets of Bangladesh. In December the army was briefly deployed in Dhaka to throttle a planned opposition rally.

Interfering in the unfolding political developments, Chief of Staff Lt Gen Moeen U Ahmed has been making statements that question the nonpolitical character of the military. Speaking at a meeting in honor of the Freedom Fighters Contingent on March 27, he redefined democracy in Bangladeshi terms. According to him:

the aspiring democratic process of Bangladesh and the current transition period allow us an opportunity to develop a new concept and find a new sense of direction to the future politics of Bangladesh. By its own merit the country has a principle to live by and a purpose to strive for, and this needs rethinking so that we can reinvent a system of governance with new leadership at all levels.[13]

These developments raise serious questions about the political ambitions of the senior army commanders. The continuation of the emergency and even the prolongation of the Caretaker Government would be possible only with the support and cooperation of the military. The possibility exists that the army would use the civilian Caretaker Government as its front in pursuing its political agenda. Without formally taking over the reins of power, the military might use an unelected interim administration to rule Bangladesh.

Conclusion

The past few months have proved the fragility of democracy in Bangladesh. Driven by personal ambitions and shortsighted calculations, political leaders in Bangladesh have tended to pursue courses that eventually snowball into a major crisis. The failure of the Prime Minister to organize a smooth transition of power to an interim Caretaker Government that would organize *Jatiya Sangsad* elections has resulted in all major institutions competing for greater political power. In the process, they have undermined the very institutions that brought them to public limelight.

Thus, irrespective of the eventual resolution of the ongoing crisis, Bangladesh will have to refine its democratic institutions, make them transparent and accountable, and above all set and follow a democratic norm. Without such far-reaching changes, the progress made in Bangladesh since the removal of military rule in 1991 will be jeopardized.

Figure 1: Bangladeshi Crisis at a Glance*

Date	Developments
28 October 2006	Resignation of Khaleda Zia-led government and the dissolution of the <i>Jatiya Sangsad</i>
29 October 2006	President Iajuddin Ahmed takes over as Chief Advisor to Caretaker Government
12 November 2006	Constitutional deadline for the formation of the interim Caretaker Government
22 November 2006	Chief Election Commission Aziz announces the election schedule
27 November 2006	CEC goes on leave due to prolonged public protest and opposition
3 January 2007	Opposition Announces election boycott
11 January 2007	President relinquishes the post of Chief Advisor to Caretaker Government
11 January 2007	Declaration of internal Emergency in Bangladesh
12 January 2007	New Caretaker Government headed by Fakhruddin Ahmed is formed
22 January 2007	Election date originally set by CEC Aziz
25 January 2007	Constitutionally mandated last date for hold elections to the 9 th <i>Jatiya Sangsad</i>
11 May 2007	Constitutional deadline for the parliamentary ratification of the Internal Emergency declared on January 11.
October 2008	Deadline set by the Election Commission for completing the preparation of the voters list
Late 2008	Date suggested by Caretaker Government for holding elections to the 9 th <i>Jatiya Sangsad</i>

*Source: Compiled from various issues of *The Daily Star*.

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2. For Hartal politics see, Akhtar Hossain, "Anatomy of *hartal* politics in Bangladesh," *Asian Survey* 40, no. 3 (May-June 2000): 508-29.
3. It was the dissent within the Caretaker Government that forced President to quietly withdraw the army within hours of their deployment.
4. "AL, allies give 24-hour ultimatum to implement package proposal," *New Age*, December 19, 2006.
5. In February 1996 Khaleda held elections that were boycotted by the entire opposition and was forced to organize a fresh round of polls in June under a neutral Caretaker Government.
6. Around the same time, various donor nations have been expressing their displeasure over the President's handling of the crisis. Questioning the credibility of elections under such circumstances, in early January a number of international agencies including the UN, EU, National Democratic Institute, and International Republican Institute have announced their decision to withdraw from or not to send their election monitors to Bangladesh.
7. Hussain Imam, "Where lies the remedy?" *The Daily Star*, December 19, 2006.
8. "Corruption, nepotism dog civil service recruitments: Insiders blame political intervention," *New Age*, November 27, 2005.
9. Report prepared by National Democratic Institute had identified over 120,000 fake voters name in the electoral roll, *NDI Election Watch: Bangladesh 2007 Elections*, no.2, December 31, 2006; and Asif Saleh, "Elections 2007: The road to nowhere," *The Daily Star*, November 20, 2006.
10. "Shop owners' won't sell to Aziz, family," *The Daily Star*, November 15, 2006.
11. "AL scraps fatwa deal with bigots," *The Daily Star*, February 13, 2007. However, under internal criticisms, Hasina broke off from the deal.
12. Hasina apparently learnt her lessons for her debacle in October 2001 Khaleda who forged a four-party pre-election coalition won more than two-third seats, Awami which fought elections alone could win only 62 seats in 300-member *Jatiya Sangsad*.
13. "Bangladesh to have own brand of democracy," *The Daily Star*, April 3, 2007.