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Non-Political Caretaker Administrations and Democratic Elections in Bangladesh: An Assessment

THE TRANSITION TO DEMOCRACY IN BANGLADESH AFTER THE overthrow of the authoritarian regime in 1990 began with the formation of a non-political caretaker administration (NCA) to prepare the ground for the transfer of power to a popularly mandated government. Its other important purpose was to manage the affairs of the state during the interlude that separated the dissolution of the authoritarian regime (December 1990) and the complete installation of the democratically-elected government (September 1991) to rule the country in its own right.

The need for this NCA was imperative in the wake of the dismantling of authoritarian rule. The attempts of the ousted regime to conduct a third election,¹ while still in power, were not acceptable to its political adversaries, given the former's proven tendency to unduly influence the electoral process in the past.² The question of power-sharing between the incumbent authoritarian regime and the major opposition parties in the form of an interim administration to initiate the democratization process also did not receive any consideration; none of the parties could sufficiently trust one another to make such an option work. Indeed, significant variations in the political thinking of the principal protagonists of the anti-

¹ The regime arranged one election in 1986 and another in 1988. The party it had ousted from power in March 1982 boycotted both. The other major opposition party participated in the first one but refrained from doing so in the second. The regime-sponsored Jatiya Party (JP) heavily rigged both elections. For details on these elections, see Ahmed S. Huque and Muhammad A. Hakim, 'Elections in Bangladesh: Tools of Legitimacy', *Asian Affairs: An American Review*, 19:4 (1993), pp. 248–61.

² Habib Zafarullah and M. Yeahia Akhter, 'Military Rule, Civilianization and Electoral Corruption: Pakistan and Bangladesh in Perspective', Unpublished Paper, 1997.

authoritarian movement always kept them poles apart. An independent administration whose primary purpose would be to superintend an electoral process that would ensure a fair contest between the two principal opposition parties – the Bangladesh Nationalist Party (BNP) and the Awami League (AL) – was seen as the best alternative to any other ‘unworkable’ models. It was the product of an extraordinary rapport between the major contending forces in Bangladesh politics, each bent upon winning power.

This NCA served its purpose fairly well – paving the way for a popularly-elected government to assume power after years of non-democratic rule. Parliamentary democracy was reinstated, the foundations of democratic institutions were laid and normal political activities initiated. The NCA as a quintessential systemic tool lost its relevance in the new ‘democratic’ polity, which was expected to operate on the basis of political trust, respect for democratic values and a positive understanding between the government and the opposition. Yet, within years, the furore caused by the constitutional opposition for another NCA disrupted democratic politics in the country. Apparently, the opposition lost faith in the democratically-elected government’s ability to ensure fairness in elections. An institutionalized NCA, it was argued, was necessary to serve as a bridge between the terms of two democratic administrations. The opposition pressure was too great for the government to withstand and, after a prolonged political impasse, the NCA found its constitutional place in democratic governance in Bangladesh. Its basic task would be to conduct all parliamentary elections after the expiry of the term of each democratically-elected government, or earlier if necessary. The first NCA in the new scheme conducted the seventh parliamentary elections of 1996. Like its predecessor, it refereed an electoral contest in which all parties had an equal chance of winning; as in the founding democratic elections of 1991, there was no incumbent government’s party contesting the polls and, hence, influencing the electoral process.

The institutionalization of a constitutionally-mandated NCA in Bangladesh adds a new dimension to the process of democratic consolidation in post-authoritarian polities. Its main purpose is to manage corruption-free and peaceful national elections where all contesting parties would enjoy similar electoral rights and privileges. Neutrality and rectitude would be its guiding principles. Additionally, it must manage the affairs of the country during the interim.

Because of its ephemeral nature and single purpose, it has limited legitimacy; is not expected to make any major decisions on governance (except those relating to free and fair elections), to undertake major reforms, to sign treaties with foreign governments, or enter into major accords with domestic groups. As an 'administrative' rather than a 'political' government, its only concern will be with routine governmental business,³ maintenance of law and order, and preservation of normal diplomatic relations with other countries.

This article examines the performance of the two NCAs in post-authoritarian Bangladesh in terms of their primary role as independent, non-partisan managers of parliamentary elections and their secondary role as operators of the business of government. To make a sound evaluation of these roles, the broader political context, the background to their creation, the nature of their composition and their attitude towards particular parties and groups will be explored. The purpose of this article is not to elaborate on the nature of the Bangladesh state or to examine comprehensively its political culture. However, to place the discussion on the NCAs in perspective, some relevant observations are presented in the next section.

THE CONTEXT

The political culture and its offshoot – electoral culture – in Bangladesh today are deeply embedded in its political legacy inherited from years of non-democratic rule since independence. For almost half that time, strong personalist and/or military regimes ruled the country. These regimes had very little respect for democratic values, freedom of choice and expression and fundamental human rights.⁴

The democratically elected AL government in 1972, riding on the crest of nationalism and initially pledge-bound to build democratic institutions, failed to realize that political populism, which its leader Sheikh Mujibur Rahman had employed when operating as an opposition crusader before independence, would not be effective in governing a new state. The AL, despite its

³ Yossi Shain and Juan Linz, *Between States: Interim Governments and Democratic Governance*, London, Cambridge University Press, 1995, pp. 52–3.

⁴ US Department of State, *Bangladesh Human Rights Practices*, Washington DC, USDS, 1991.

'mass-party' label and orientation, abhorred political pluralism and resorted to the institutionalization of a variant of patrimonialism based on Mujib's charisma and the time-honoured social-political relationship built upon clientelism.⁵ He attempted to use his and his party's populist stance to command the support of the masses and used the first general elections to obtain a mandate to rule with a free hand. The party did win by a landslide but at the cost of corrupting the electoral system, which could have been avoided had its leadership been committed to founding a democratic electoral culture at that juncture in the nation's political life. But even that show of strength was not enough for the populist politician to feel secure and, unable competently to manage social, political and economic crises that overwhelmed the nation, he transformed himself into a personalist leader presiding over a one-party state. Parliamentary democracy was unilaterally abandoned, all other political parties were declared illegal, newspapers opposed to the regime were closed, civil service and military personnel were inducted into the only valid 'national' party and total central control was established over the entire country. The regime abandoned its political and party-centred approach for a bureaucratic mode that would complement and support an authoritarian style of governance.⁶ This set a bad precedent for the country's political future. However, the authoritarian protocol that it stood for and attempted to put in place ultimately miscarried.

The subsequent two military-turned-civilian regimes, one led by General Ziaur Rahman and the other by General Hussein Ershad, sustained the centralized system albeit with slight variations. Behind the façade of a multi-party 'representative' system stood a military strong-man whose singular purpose was to hang on to power and rule by authoritarian diktats, which were formalized by a regime-controlled powerless legislature. Mujib's patrimonialism was transformed into praetorianism and, later when civilianization replaced military rule, neo-patrimonialism became the political order. Both Zia and Ershad sustained their variety of neo-patrimonial rule

⁵ Shamsul Khan et al., *Political Culture, Political Parties and the Democratic Transition in Bangladesh*, Dhaka, Academic Publishers, 1996, pp. 24–5.

⁶ Emajuddin Ahmed, 'The Military and Democracy in Bangladesh', in R. J. May and Viberto Selochan (eds), *The Military and Democracy in Asia and the Pacific*, Bathurst, Crawford, 1998, pp. 102–3.

by suborning political opponents mainly to broaden their political base.⁷

The military rulers were quite adept in applying a 'divide-and-rule' policy or in persuading prominent leaders from other parties to join their own 'state-sponsored' parties, often with the assurance of rewarding them with ministerial positions or party nominations. This became evident at the preliminary phase of the new party's creation or before an election. Consequently, the existing parties experienced desertions not only by those leaders expecting immediate or impending benefits but also by a section of the rank and file loyal to the departing leaders. The major parties (AL during the Zia regime and the BNP during Ershad's rule) also experienced break-ups not on grounds of ideological or policy differences but because of personality clashes or greed for power and position. Some of these breakaway groups either formed their own parties, with or without a different nomenclature, returned to the fold of their parent parties or merged with other parties. In some cases, the military rulers served as catalysts or made political capital from this kind of phenomenon. This was detrimental to the growth of stable party systems in the country.

The several elections and referendums that were organized during the Zia and Ershad periods were little more than attempts to validate pseudo-military rule; they hardly offered the electorate the opportunity truly to exercise its democratic right to choose its representatives.⁸ They were held under conditions of restricted freedom, limited participation or severely constrained choice. Elections under the Ershad regime, in particular, became meaningless without the spontaneous participation of major parties. Even the last-ditch impetuous entry into the electoral arena by the AL failed to provide the election with any credibility. Allegedly, General Ershad made dubious arrangements with the AL to facilitate its participation in the 1986 elections⁹ and with a motley group of small parties in 1988 when he faced a total boycott of the elections by the major opposition parties including the AL.

The Zia and Ershad regimes' use of the state machinery – the bureaucracy, law-enforcing agencies and the state-controlled

⁷ Khan et al., op. cit., pp. 24–7.

⁸ Huque and Hakim, op. cit., pp. 248–61.

⁹ Muhammad A. Hakim, *Bangladesh Politics: The Shahabuddin Interregnum*, Dhaka, University Press Limited, 1993, p. 24.

electronic media – for electioneering by the ruling party made elections a travesty. Opposition parties contested the polls on unequal terms. In organizing and managing the electoral process, the election machinery lost its neutrality after continuous inroads into its operations by the regimes. Opposition allegations of widespread rigging by ruling party activists and tampering with results were forceful and not without foundation.¹⁰ For all practical purposes, these elections were never entirely free and fair; nor were they devoid of violence and intimidation or the influence of money politics. Their conduct was marred by deliberate attempts by both ruling and opposition parties and their candidates to buy off voters either by coercion or through patron–client networks that are still powerful in Bangladesh society. The campaigns were characterized by gratuitous polemics, political rhetoric and character assassinations rather than focusing on substantive national and societal issues.

While historically the people have always demonstrated their democratic orientation by spontaneous participation in mass movements against authoritarianism, as well as in elections that required a large turnout to give electoral issues legitimacy, political parties do not show a similar level of orientation and attitude towards democracy and upholding democratic values. They display little initiative in effectively organizing and democratizing their own parties and in playing a more constructive role in institutionalizing democracy in the country. Democratic traits such as tolerance, trust, respect for divergent viewpoints, willingness to negotiate and compromise, etc. are alien to the country's political culture. The lack or perversion of democracy in the past impeded the development of an effective party system and the creation of an environment conducive to the practice of democracy. Political parties have not learned to play a constructive role 'as the effective allocator of values or platforms for conflict resolution or a meaningful focus of civic loyalty'.¹¹ On the other hand, political roles are vaguely articulated and there is little understanding by either the ruling political elite or the opposition leadership about the part that they are expected to play in the democratic process. There is a lack of consensus on pressing national problems including fundamental constitutional

¹⁰ M. Yeahia Akhter, *Elections and Electoral Corruption in Bangladesh*, Unpublished PhD Thesis, University of Sydney, 1999.

¹¹ Ahmed, op. cit., p. 116.

issues and on the rules of the democratic game. As in most political cultures of the fragmented type,¹² even after a united struggle for independence 28 years ago and unique cultural homogeneity, Bangladeshi politicians have failed to agree upon a corpus of operative civil procedures for conflict management.¹³ The ruling regime always seems suspect to the opposition. Election pledges remain largely unaccomplished, internal security and safety laws are cleverly used to repress opposition leaders and activists, organized protests against the regime and its policies are disrupted by police action, and the electronic media faithfully serve ruling party interests. Thus, alongside a weak and non-autonomous state¹⁴ reside widespread civil disorder, social tension and political hostilities largely due to the incoherence of the political system, personality-focused political loyalties, disinclination by parties to accept electoral defeat with dignity and intense social distrust between major social groups.

THE TRANSITORY NCA

The transfer of power to the NCA was constitutionally handled by the authoritarian regime. The president dissolved parliament; the chief justice, who ultimately assumed the presidency after the resignation of the president, replaced the incumbent vice-president. These events occurred on the same day as a sequel to the prolonged movement by a united opposition backed by a strong and uncompromising student coalition and under immense public and civil society pressure, discontent amongst the law-enforcing and paramilitary forces and the bureaucracy, and, most critical for the regime, the military's withdrawal of support.

The choice of Shahabuddin Ahmed, the chief justice, as the head of the NCA (acting president) was the outcome of an extraordinary consensus (unusual in the context of the country's political culture)

¹² Walter Rosenbaum, *Political Culture*, New York, Praeger, 1975, pp. 37–52.

¹³ Habib Zafarullah, 'Consolidating Democratic Governance: One Step Forward, Two Steps Back', in Mohammad Alauddin and Samiul Hasan (eds), *Development, Governance and the Environment in South Asia: A Focus on Bangladesh*, London, Macmillan, 1999, pp. 185–92.

¹⁴ Quamrul Alam, 'The State: Weak and Fragmented', in Habib Zafarullah (ed.), *The Zia Episode in Bangladesh Politics*, New Delhi, South Asia Publishers, 1996, p. 55.

among the major opposition parties including the Jatiya Party (JP) – the political arm of the ousted regime. This provided him with the leverage to embark upon important electoral reforms before the parliamentary elections constitutionally due within 90 days of the dissolution of the old parliament. A thirteen-member ‘neutral’ council of advisers supported him. They were mainly drawn from the bureaucracy with a few representing the academic community and the professions.¹⁵

The electoral reforms of the NCA were both structural and procedural in nature. Given its past track record, the election machinery in its existing format could not be relied upon as a neutral instrument in the electoral process. The Election Commission (EC) was reconstituted with three members, each a sitting judge of the Supreme Court (SC). The organizational structure was adjusted to achieve economy and efficiency. The electoral rolls were corrected and expanded and, as far as possible, the tendency among parties to register non-existent voters was contained.¹⁶ All personnel involved in election duty, including civil servants and public sector employees, were brought under the EC’s purview and forbidden to attend political meetings or even social gatherings where political leaders were expected to be present.¹⁷ Local government councils were linked with the EC and were empowered to coordinate the electoral process at the sub-national level. These councils risked dissolution if they failed to resist all activities directed against the holding of fair elections, including any attempt to violate electoral laws and to disrupt peace in the locality.¹⁸

The EC was given sweeping powers to ensure accountability among election officials, who were to be taken to task for contravening electoral laws, for misconduct and for impropriety. An election code of conduct, ‘intended to facilitate mutual trust, respect and tolerance among widely divergent political parties’, was framed and the range of disciplinary measures for election offences by

¹⁵ Keesing, *Record of World Events*, 36:12 (1990), Bethesda, MD, Keesing’s Worldwide, LLC, p. 37907.

¹⁶ R. W. Timm and Philip Gain (eds), *Fifth National Parliamentary Election 1991: Observation Report* (Bengali version), Dhaka, Coordinating Council for Human Rights in Bangladesh, 1991, p. 62.

¹⁷ Hakim, op. cit., p. 51; *Inquilab*, 2 January 1991.

¹⁸ *Bangladesh Observer*, 19 January 1991.

candidates and parties was expanded.¹⁹ The government was particularly concerned about candidates' use of black money for election purposes. They were therefore required to submit statements to returning officers about the sources of their proposed election expenses and to disclose all their debts, annual incomes and expenditures.²⁰ The likelihood of violence during the polls was of prime concern to the NCA, which amended the Arms Law, launched a nationwide drive to recover illegal arms, and increased the maximum penalty for possessing them to life imprisonment.

THE FIFTH PARLIAMENTARY ELECTIONS

In 1991, for the first time in Bangladesh's political history, a general election was held without any particular party enjoying state patronage or having a monopoly over state resources. Voters' enthusiasm was very high and they displayed a spontaneous interest in exercising their franchise. In the absence of a ruling junta fielding its own candidates, all parties, major and minor, found an opportunity to establish their popularity among the people. The two major opposition parties, the BNP and the AL, both in the political wilderness for a long time, were especially keen to regain power. The Jamat-e-Islami (JI), bred in Islamic fundamentalism, found it opportune to capitalize on the religious sentiments of a vast majority of the electorate in winning seats in parliament. Even the JP, though only recently rejected by the people, utilized the election to rehabilitate itself politically. Thus, the 'non-threatening' political atmosphere attracted 76 political parties, some without any grassroots base, to contest the 300 parliamentary seats. This large number of participating parties lent credence to multi-party democracy.

While the NCA had nothing to do with the political mission of the several parties,²¹ it did play a key role in facilitating the election

¹⁹ Mohammad M. Khan and Syed A Husain, 'Process of Democratization in Bangladesh', *Contemporary South Asia*, 5:3 (1996), pp. 325–26.

²⁰ *Inquilab*, 10 January 1991; Fahimul Quadir, 'Jatiya Sangsad Elections 1991: A Survey' (in Bengali), *Journal of Human Development*, 3:4 (1991), p. 53.

²¹ For analyses of party manifestos, see Craig Baxter, 'Bangladesh in 1991: A Parliamentary System', *Asian Survey*, 32:2 (1992), p. 163; Muhammad A. Hakim, 'The 1991 Parliamentary Elections in Bangladesh: A Review', *Politics Administration and Change*, 17 (Jul.–Dec. 1991), pp. 30–1.

campaign. As a 'neutral' instrument, it did not hinder any party from professing its electoral pledges but deterred each from disrupting the campaign activities of other parties or resorting to high-pressure canvassing. The state-controlled electronic media were instructed to give adequate coverage of the campaign of all parties proportionate to the number of candidates they nominated for the election. Television was made accessible to the parties (fielding at least 30 candidates) for their election presentations. Here, however, the NCA compromised its neutral stance by denying the JP (with 272 candidates) the opportunity of appearing before the nation with its election statements. The major parties argued with feeling that since the JP regime had previously abused its use of the media and had been removed from power only recently by popular upsurge, it would not be sensible to give it access to the electronic media.²²

None the less, the state media worked with a fair degree of impartiality and presented a number of programmes to educate the voters on fair polling. These included speeches by the president, election officials and political leaders, documentary films, short dramas, announcements on election rules and responsibilities of election officials, advertisements and slogans and discussions and dialogues.²³

By all standards, the 1991 election was the best organized since independence. Election monitoring groups from home and abroad²⁴ considered the elections to be impartial, free and fair. People exercised their franchise without fear or favour, the degree of enthusiasm was extremely high and voters responded positively to the call of the NCA to assert their democratic right. Election officials were under strict instructions not to permit any undue influence to disrupt fair polling. The law-enforcing agencies were steadfast in their duties to maintain peace.²⁵ The EC, working under the careful

²² Commonwealth Observer Group, *Parliamentary Elections in Bangladesh*, London, Commonwealth Secretariat, 1991, pp. 16–18.

²³ Timm and Gain, op. cit., p. 68.

²⁴ Teams came from the United States, Britain, Japan, Malaysia and the European Community. There was also a team representing the South Asian Association for Regional Cooperation and several local NGOs, which monitored the polls.

²⁵ There was, however, sporadic violence in some parts of the country. Voting was postponed in some constituencies where the situation went beyond the control of the election and law-enforcing personnel and inter-party violence claimed the lives of several people. The NCA reacted sharply to these incidents and promptly suspended five local councils for their failure to maintain law and order. Timm and Gain, op. cit., p. 70.

scrutiny of the NCA, was responsible for establishing a credible electoral process that could be used effectively in future elections.

TRANSFER OF POWER

The NCA transferred power to the BNP, which won a simple majority in the elections. The head of the NCA remained the acting president until the question of the system of government was resolved and a new president elected. This created an anomaly, but not an obstacle to governance. The government retained its non-political caretaker orientation while at the same time permitting a partisan cabinet of elected representatives to be incorporated in its fold. The form of government was still presidential in character with its chief enjoying almost unlimited powers while the prime minister, the leader of the majority party in parliament, was unable to govern in her own right.

A referendum endorsed the change, and the omnipotent presidential system, in operation for more than 16 years, was replaced by a parliamentary system that envisaged a cabinet government representing the majority in a 'sovereign' legislature. A titular president was elected under the new arrangement, the head of the NCA returned to his old job,²⁶ the new cabinet was sworn in for the second time under the changed governmental system and the transition to democracy was complete. But the need for an NCA to conduct future elections was not seriously mooted. Perhaps the politicians had complete faith and confidence in the party government to ensure fair elections.

POLITICAL CRISIS AND DEMANDS FOR ANOTHER NCA

Parliamentary democracy in the new political set-up in Bangladesh began experiencing a rough ride within three years of its installation. The government and the opposition adopted an antagonistic stance

²⁶ Before the 12th Amendment Bill introducing the parliamentary system was enacted, another Act was passed enabling the acting president to return to the Supreme Court as the Chief Justice. It was a special arrangement made at the personal request of Justice Ahmed.

on several issues of governance. Disagreements on almost every matter brought before parliament were not uncommon. The government used its majority to push through legislation without permitting adequate deliberation or accepting positive opposition inputs; the opposition found fault with whatever the treasury proposed.²⁷ Procedural constraints, the speaker's partisan position, intolerant behaviour of both government and opposition legislators, and ineffective working of the committee system made a mockery of parliamentary democracy.

The AL looked for an opportunity to discredit the BNP government. That came with a by-election in a constituency (Magura) in northern Bangladesh. AL lost that election and alleged that there had been massive vote-rigging by the BNP and made an emphatic declaration that no polls could be fair under the BNP government. It demanded the resignation of the government and the appointment of an NCA to conduct new elections to parliament.

While there may have been some truth in the AL's allegation regarding the by-election, it was also true that its candidates won several other by-elections and local government elections as well as key mayoral positions in two large port cities during BNP rule. On the other hand, the BNP's loss of the two mayoral positions severely jolted its confidence gained in the 1991 elections. It was eager to restore its electoral credibility by ensuring that it lost no further by-elections. Consequently, its over-commitment to undercut its adversary's growing popularity²⁸ led to some manipulation of the Magura by-election and a previous one in the capital.²⁹ The AL's assertion that the BNP government could not ensure fair elections, therefore, had some basis and did raise serious doubts about the integrity of the government in conducting impartial elections.

The AL and its 'allies' (JP and JI) created a political impasse that was to have a significant impact on the future of parliamentary democracy in Bangladesh. The opposition continuously stayed away

²⁷ Zafarullah, op. cit.; Harry Blair et al., *The Bangladesh Democracy Program Assessment: Final Report*, Washington, DC, Bureau for Asia, 1992, p. 37.

²⁸ The BNP had won nearly 50 per cent of the popular vote in the 1991 elections in the metropolitan areas but it was able to secure only 39 per cent in the 1994 city corporation polls. In contrast, the AL's vote surged from 34 to 42 per cent.

²⁹ Muhammad A. Hakim, 'The Mirpur Parliamentary By-Election in Bangladesh', *Asian Survey*, 34:8 (1994), pp. 738-47.

from parliament before resigning *en masse* after its demand for fresh elections under an NCA was not met. Parliament was thereby reduced to a one-party house and largely made dysfunctional. Simultaneously, the opposition-organized, frequent nationwide general strikes paralysed the administration, weakened the economy, encouraged lawlessness, and hampered activities in all sectors.³⁰ A legislative attempt by the government to strengthen the EC was a failure, for nothing short of an NCA would satisfy the opposition demand.

Neither the government nor the opposition was willing to compromise its resolute stand on the NCA issue; initially the former was reluctant to recognize it as significant in the context of Bangladesh's electoral culture but gradually it softened its attitude and agreed to enter into a dialogue with the opposition to give it an institutional shape. Both sides of the political fence advanced their own NCA models, which were basically similar, but neither was willing to accept the other's proposition. The several attempts by both domestic and overseas mediators to facilitate a solution to the crisis ended in failure. The continued stalemate finally led to the dissolution of parliament and the calling of fresh elections which, predictably, were boycotted by the major opposition parties.³¹

The sixth parliamentary elections were a one-party show with only 10 per cent of the electorate voting. The BNP, which won a landslide, defended the election, dubbed 'farical' by the opposition, as a constitutional necessity. The party now had the numbers in parliament to amend the constitution to provide for the much-coveted NCA. The fifth parliament, truncated by the absence of the opposition, had lost its authority to do so.

³⁰ M. Rashiduzzaman, 'Political Unrest and Democracy in Bangladesh', *Asian Survey*, 37:3 (1997), pp. 254–68.

³¹ Stanley A. Kochanek, 'Bangladesh in 1996: the 25th Year of Independence', *Asian Survey*, 37:2 (1997), p. 137; Rashiduzzaman, *op. cit.*, pp. 259–60.

THE CONSTITUTIONALIZED NCA

During the political crisis, both the BNP government and the AL-led opposition proposed models of their preferred NCA. The model advanced by the mainstream opposition parties was more elaborate³² than that of the BNP.³³ The opposition model was, not surprisingly, dismissed by the BNP as 'unconstitutional' and antithetical to the principles of democracy. Several minor parties, including some left-leaning ones, were also critical of the proposal. The opposition brushed aside the BNP proposal that a party leader could not head an NCA, as it was contrary to the concept of neutrality or non-partisanship. Finding its proposal unacceptable, the opposition proposed a variant of their earlier model.³⁴ The civil society was divided on the NCA issue. A section supported an NCA to conduct all future parliamentary elections, while another considered it more significant to confer additional powers on the EC and have trust in politicians to create an environment conducive to a free and fair electoral process.³⁵

³² According to this model, the incumbent prime minister and the cabinet would resign with the announcement of the election schedules by the EC following the dissolution of parliament by the president. He would then appoint a new prime minister either from among the judges of the SC Appellate Division (AD) or a retired judge of the AD or a neutral non-partisan person to head the NCA. The caretaker prime minister, acting as the chief executive of the government under Article 55 of the constitution, would form a cabinet with persons known for their neutrality, i.e., they would not be members of any political party and, like the head of the NCA, would be debarred from standing as candidates in the parliamentary elections. The main responsibility of the NCA would be to ensure free and fair elections and it would perform only emergency and routine state functions as envisaged in the constitution. The new parliament would legalize this arrangement by amending the constitution, providing for an NCA to conduct at least three parliamentary elections in future. *Inquilab*, 29 June 1994.

³³ The BNP model proposed an interim national government to supervise the elections. It was to consist of a cabinet of ten members of parliament, equally representing the government and the opposition, to be headed by the incumbent prime minister.

³⁴ According to their new formula the president, in consultation with the prime minister and the leader of the opposition, would appoint an impartial person, either a sitting SC judge, a retired judge or any dignified person acceptable to both sides, as head of the NCA. Half of the ten non-partisan members of the 'cabinet' would be nominated by the prime minister and the other half by the opposition leader.

³⁵ Kochanek, op. cit., p. 137.

In keeping with its pre-election commitment to maintaining constitutional continuity, the BNP government passed in the sixth parliament (a body lacking any opposition) the Constitution Thirteenth Amendment Bill and paved the way for another NCA. Its salient features were:

- a non-party caretaker administration, constituted within fifteen days of the dissolution of parliament, would govern the country until the appointment of the new prime minister after elections to the new parliament. Accountable to the president, it would perform the routine work of a government but would not make any policy decisions.

- the president would appoint the chief adviser from amongst the most recently retired SC chief justices and select other advisers in consultation with him. Each member must be below the age of 72, must not be affiliated to any political party and would be debarred from contesting the parliamentary elections he or she would supervise.

- the chief adviser would enjoy the rank of prime minister and the advisers that of ministers.³⁶

In spite of their earlier branding of the sixth elections as ‘farical’ and the parliament it created as ‘illegal’, the opposition parties cooperated with the president in forming the new NCA.

The enactment of the bill was quickly followed by the dissolution of the shortest parliament in the country’s political history, the resignation of the prime minister, and the appointment of the NCA headed by Justice Habibur Rahman. It was a representative body consisting, apart from the chief adviser, of an expert in constitutional law, three university professors (economics, political science and engineering), two bankers, a former educational administrator, an industrialist, a retired military officer and a former bureaucrat.

PREPARING THE GROUND FOR ELECTIONS

The new NCA followed a similar path to the first NCA in preparing the ground for the parliamentary elections. Its principal concern was that the appalling lawlessness that prevailed throughout the country in the interim could be a likely obstacle to the holding of

³⁶ Government of Bangladesh, *The Thirteenth Constitutional Amendment Act*, Dhaka, Government Press, 1996.

fair elections. The recovery of illegal arms thus became a priority and both the BNP and the AL expressed their willingness to cooperate with the NCA to restore law and order. The police administration was directed to take special corrective measures, the Home Ministry was instructed to monitor progress, and the Cabinet Division was asked to oversee the entire process.³⁷

The election machinery came in for major reorganization. The chief election commissioner and his two deputies were removed and the upper echelon of the EC secretariat was reconstituted. The existing electoral rolls were updated, permitting eligible citizens who had missed the opportunity to cast their votes in previous elections to register. The bureaucracy, a large section of which had directly supported the opposition movement against the BNP regime, was told by the NCA chief to be neutral in discharging its election responsibilities and to bolster the reputation of the executive branch of the government. Its members were warned of stern action on failure to uphold the neutrality of the electoral process. Senior administrative and police officers at district level came under strict scrutiny for their partisan role in the past and a large number were transferred to other districts or to new positions.³⁸

The code of conduct that was used during the fifth parliamentary election by the first NCA was further refined and expanded to ensure electoral accountability. Particular attention was paid to the sources of campaign funding of candidates who were now required to disclose all sources including personal income, contributions by relatives, other forms of voluntary donations, and all kinds of institutional funding.³⁹

The Election Training Institute, managed by the EC, was revitalized. It organized intensive workshops for senior election officials to conduct the polls at different levels. This official training activity was supplemented by large-scale unofficial programmes undertaken by the Free Election Monitoring Alliance, a coalition of 175 non-governmental organizations.⁴⁰

³⁷ R. W. Timm (ed.), *Bangladesh: Parliamentary Election '96. Observation Report*, Dhaka, Coordinating Council for Human Rights in Bangladesh, 1996, pp. 24–5.

³⁸ *Bangladesh Observer*, 3 and 27 April 1996.

³⁹ *Ibid.*, 6 May 1996.

⁴⁰ Fair Election Monitoring Alliance, *Bangladesh Parliamentary Elections, 12 June, 1996*, Dhaka, FEMA, 1996.

THE SEVENTH PARLIAMENTARY ELECTIONS

The seventh election was notable for the number of parties contesting – 86, the largest since independence. But most of them were so politically insignificant as to have no impact on the elections. The main contest was to be between the AL and the BNP with the JP and the JI expected to put up some challenge in a few constituencies. On average, 8.58 candidates contested each seat – an increase of 0.71 from the 1991 figure. The election manifestos of the major parties⁴¹ varied little from the ones projected in 1991.

The electronic media were allowed to work independently and no censorship was imposed by the NCA as far as coverage of the election was concerned. As in the 1991 election, Bangladesh Television allocated each party the same amount of time to make its election broadcasts. The main news on radio and television covered the campaign activities of the major parties, but some inequity was evident (see below). The print media were fairly partisan in projecting the views of different parties. Some newspapers openly supported particular parties.⁴²

The BNP, which rode the high crest of success following the 1991 election, was defeated. It secured 24 seats fewer than in the fifth elections. On the other hand, the AL increased its number by 58. The BNP was defeated but not rejected by the electorate. It constituted the single largest opposition ever in the parliamentary history of Bangladesh.

The several national and international election monitoring groups characterized the elections as free and fair.⁴³ The turnout was the highest (73.19 per cent) since independence, displaying the enthusiasm and spontaneity of the electorate seeking a democratic order. The non-governmental organizations were, to some extent, instrumental in motivating the people, especially in the rural areas, to exercise their democratic right. However, in keeping with conventional practice, the losing parties and candidates brought charges of electoral fraud against both its opponents and the NCA. The AL charged the BNP with vote-rigging in the constituencies in which its candidates lost; the BNP pointed to ‘massive rigging’ in

⁴¹ See *ibid.*, pp. 27–8, for the manifestos of the major parties.

⁴² Commonwealth Observer Group, *op. cit.*, p. 16.

⁴³ Timm, *op. cit.*, p. 21; Commonwealth Observer Group, *op. cit.*

over 100 constituencies and demanded re-polling. The NCA and the EC were accused of failing to conduct fair elections in which party activists stuffed ballot boxes with false votes, evicted the polling agents of their opponents, forcefully took control of polling centres, and terrorized the people with the support of the local administration. Local election officials were accused of manipulating results. Formal protests to the EC had no effect.⁴⁴

While claims of electoral corruption might have been exaggerated, the election was not totally free from irregularities and violence which neither the NCA nor the EC could contain. Polling had to be suspended in 208 centres within 74 constituencies due to inter-party violence and other forms of disruption and the EC had to order re-polling in 27 seats.⁴⁵ Independent accounts of terrorism, intimidation and partisanship by election officials were widely reported in the press but the NCA chose not to react to all the accusations brought against it.

With the formation of the AL government, the second NCA became redundant. It was in office for 82 days and fulfilled its task of conducting the seventh parliamentary elections. A new president was elected by the new parliament soon after its inauguration and the accession to power of the second democratically-elected regime in post-authoritarian Bangladesh was complete.

NCAS, ELECTIONS AND NEUTRALITY: AN APPRAISAL

There were qualitative differences between the transitory and constitutionalized NCAs. The first was necessary as a bridge between authoritarianism and democracy and was largely the product of an unprecedented consensus between the political parties who were at the forefront of the democratic movement of the 1980s and the initial year of the 1990s. It was necessary to fill the void created by the ousting of the authoritarian regime, specifically to facilitate a free and fair electoral process, transfer power to the winning party and then disband. It thus had a single-use purpose; it was not anticipated that it would be needed again in a democratic set-up. It was not created by an act of parliament; rather its creation was a

⁴⁴ *Bangladesh Observer*, 13, 14, 16, 21 and 23 June 1996; *Ajker Kagoj*, 13 June 1996; Fair Election Monitoring Alliance, op. cit., p. 36.

⁴⁵ *Asia Week*, 28 June 1996, p. 30.

logical consequence of the constitutional appointment of a neutral non-partisan person as the country's acting president. His own personal attributes (e.g., chief justice of the Supreme Court) and the non-political nature of the advisory council that he headed and which ran the country during the interregnum gave it the appearance of a transient non-political caretaker administration.

The periodically-recurring constitutionalized NCA (henceforth 1996 NCA), on the other hand, was a creature of parliament, created to conduct a periodic political event (general elections) and to serve as a link between an outgoing and an incoming democratic government, both of which could be the same party or coalition of parties. It was enacted as a part of the constitution by an absolute majority of the house to enable it to 'automatically' make its appearance after the dissolution of every future parliament either at the expiry of its stipulated five-year term or earlier if mid-term elections were called. Unlike the transitory NCA constituted under the existing presidential form of government, the 1996 NCA operated within the framework of parliamentary democracy.

Organizationally, the transitory NCA was a coherent body with a single chain of command emanating from the acting president. He presided over meetings of the council of advisers and ratified all its decisions. All governmental agencies took orders either from him or his advisers, who were all chosen by him and who were accountable to him for their actions. The 1996 NCA was substantially different. Although designed to adhere to the tenets of the parliamentary model, all executive powers were not vested in the chief adviser (prime minister) or his/her advisory council (cabinet). The BNP legislators in the sixth parliament approved an NCA, which apparently placed the incumbent figurehead president in a pre-eminent position. The executive responsibility of running the country's administration until the new elected government took over would not be entirely vested in it. It would share some measure of power with the president. Indeed, the kind of governmental structure and authority that would emerge with the appointment of an NCA would be dyarchical in nature. In some matters, especially those related to defence administration, the president would make the decisions without consulting the caretaker prime minister; in others, the NCA would have precedence.⁴⁶ However, the prime minister

⁴⁶ Rashiduzzaman, *op. cit.*, p. 265.

and his associates, being responsible and accountable to the 'nominal' president, would, for all practical purposes, make the presidency very powerful and could give its incumbent freedom to act in an authoritarian manner.⁴⁷

Furthermore, the president would be constitutionally obliged to appoint the caretaker prime minister from among a group of recently retired chief justices, but his personal choice would certainly have implications for the neutrality of the NCA. The term 'recently' is vague, and chief justices do not retire at frequent intervals. Obviously, as a president elected by the majority (ruling) party in the parliament dissolved in the immediate past or the one earlier (in the event of a mid-term dissolution), he would be influenced by the party in making his selection of the caretaker prime minister. And, in a country where the courts are inherently politicized, finding a former chief justice, supportive of or sympathetic towards a particular party, would not be hard. Hypothetically, the scheme might also be used by a 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 NCA. In such an event, the entire edifice of neutrality would fall apart.

In terms of their composition, the two NCAs were not entirely neutral. After the fall of the dictator in 1990, the two major parties had high stakes in the transition to democratic governance. Each ensured that the NCA had no elements within its fold which were openly opposed to it or would work against its interest. The demand from each was that it should be composed of competent people who would pursue their tasks dispassionately. But it proved quite difficult for the acting president to find people combining the two elements of neutrality and competence. In the end, he had to make some compromise which, some argued, was made under pressure

⁴⁷ An event during the term of the 1996 NCA had profound political and administrative ramifications and demonstrates the snares of dyarchy. The president unilaterally took action against the chief of the army and some of his associates who were accused of plotting a coup to seize power. On the day the coup plan came to his knowledge he went on television without informing the caretaker prime minister. He had the perpetrators arrested and later dismissed them from service without the NCA's concurrence. The prime minister took exception to the president's behaviour and himself addressed the nation explaining his position. Kochanek, op. cit., p. 138; *Asia Week*, 7 June 1996.

from both the AL and the BNP. Apart from the bureaucrats on the NCA, who represented different formal groupings and informal factions in the civil service and thus were highly politicized, a few were known for their direct or indirect affiliation with either of the two parties. One had served as a member of the planning machinery during the AL regime (1972–75) and was associated with several of its policies, while another was acknowledged as its staunch supporter in academic circles. Some who had advanced their civil service careers during the earlier BNP rule (1975–82) maintained their close links with senior party members, while another academic (later to be rewarded by the incoming BNP regime) was a leader of the BNP-inclined faction of teachers at the premier university of the country. The 1996 NCA also was not completely lacking in partisan elements, several of whom were acknowledged supporters or sympathizers of either party and were not above controversy.

NCAs, being ephemeral, are generally not expected to make major policy decisions concerning governance or embark upon significant reforms. Usually, their task is limited to the management of the electoral process, to create an environment conducive to political pluralism and unfettered electoral campaigning and to guarantee a neutral arrangement to enable fair elections. The transitory NCA, however, was not constitutionally restrained from operating beyond the task entrusted to it, i.e., conducting the fifth parliamentary elections. It had the power to take any action it desired but, as a purely stop-gap device to facilitate the assumption of power by a democratic government, it was not morally expected to do so as envisaged in the Joint Declaration of all parties during the mass upsurge against authoritarianism. That Declaration had clearly defined the role and functions of the proposed NCA.⁴⁸ On the contrary, the 1996 NCA is constitutionally debarred from enlarging its operational jurisdiction beyond that of undertaking routine administrative functions and in conducting the elections.

Yet, both NCAs came in for some criticism either for being insensitive to political expectations or for overstepping their obligatory boundaries, or both. They were also censured for their partisan behaviour during the elections under their supervision. But the degree of criticism of the two NCAs varied. Their neutrality was questioned by some parties, whose suspicion reached such a level

⁴⁸ See, Hakim, *Bangladesh Politics*, op. cit., App. V.

in 1991 as to impel the acting president to contemplate resignation in utter disgust 'at the politicking of the rival parties'. Foreseeing a constitutional crisis, his close aides prevailed upon him to change his mind.⁴⁹

In reality, there was no concrete evidence of conspicuous partisan behaviour on the part of either NCA. It was the intensity of political rivalry during the election campaigns which aroused cynicism and, to some extent, trepidation, among the competing parties; anything going against their electoral interests was viewed with suspicion. The NCAs thus had to be discreet in handling their tasks. They had a delicate mission to accomplish and often they failed to satisfy all parties.

As part of its electoral reform programme, the transitory NCA did replace a large number of EC senior officers to enhance the integrity of the election machinery. But its appointment and transfer of some senior bureaucrats did raise doubts about its neutrality and 'scope of authority'.⁵⁰ The 1996 NCA was implicated in tampering with the field administration by rotating a large number of bureaucrats across the country, including administrative heads and police officials of districts and sub-districts and some senior officials in the national secretariat. This move, it was alleged, was made by design or default to the advantage of a particular party. The AL welcomed the reshuffling; the BNP, which had appointed them when in power, raised a clamour. On the other hand, the failure of the 1996 NCA to discipline a number of senior officers who had openly sided with the AL during its agitation against the BNP bred scepticism among political observers.⁵¹ It was also used as an ostensible reason by the BNP for its defeat in the election.

The different parties indicted both NCAs for inequities in the use of the state-controlled electronic media. The denial of television time to two participating parties was a blot on the otherwise unblemished character of the transitory NCA. On the other hand, the 1996 NCA was clearly partisan in allocating more time to the AL than to other parties. Its election activities were covered in more depth and detail (coverage on radio and television news and pictorial coverage on television) than the BNP and other major parties.⁵²

⁴⁹ *The Annual Register*, Vol. 233, London, Longman, 1991, p. 316.

⁵⁰ *Far Eastern Economic Review*, 17 January 1991.

⁵¹ R. Karim, 'The Election Debacle of the BNP', *Daily Star*, 21 June 1996.

⁵² Fair Election Monitoring Alliance, op. cit., pp. 20-1.

There were other criticisms in the way election-related programmes on television were conducted.⁵³ The NCA simply overlooked the discriminatory stance of the television authority. In another move, the NCA restrained the JP chairman (imprisoned) and the JI chief (not a contestant) from making election broadcasts on television. Interestingly, the former, even though serving a 13 year sentence, was allowed to stand in five constituencies but not to address voters.

The widely known partisan activities of a coalition of NGOs were also disregarded by the 1996 NCA. In the pretence of educating the rural voters on electoral practices, the NGO personnel were active in politically motivating and influencing them to vote for candidates representing the AL.⁵⁴ Yet, the NCA refrained from imposing a ban on their partisan role.

The transitory NCA appointed several task forces to enquire into different areas of the economy and society and make extensive policy prescriptions rather than leaving the exercise, which obviously entailed a large sum of the taxpayers' money, to a democratically-elected government. It also went to the extent of appointing a committee on educational reform under pressure from vested quarters and interested political parties. In a similar vein, the 1996 NCA attempted to make significant changes in the curricula and assessment of religious studies, also under pressure.

The transitory NCA's most remarkable decision was essentially a political one, which it could have tactfully avoided and left to the democratically-elected government: it had the deposed authoritarian president arrested on charges of illegally possessing firearms and of embezzlement of public funds. Some ministers of the deposed government were also taken into custody and warrants were issued for those in hiding.⁵⁵ This action of the NCA, hailed by the major parties, partially tarnished its non-partisan image, for it restrained JP leaders from campaigning in their constituencies although they were permitted to contest the elections. It was an extraordinary case of electoral anomaly – letting law-breakers stand in elections but

⁵³ Mujahidul Islam, 'The Neutrality and Other Aspects of the Caretaker Government' (in Bengali), in Golam Farouque (ed.), *Election '96: NGO, the Bureaucracy, Black Money and Corruption*, Dhaka, Mimma Prokashan, 1996, p. 96; A. K. M. Badruddoja, 'Electoral Rigging: '96 Style', *ibid.*, pp. 93–6.

⁵⁴ Farouque, *ibid.*, pp. 26–34, 60–2.

⁵⁵ Keesing, *Record of World Events*, 37:1 (1991), Bethesda, MD, Keesing's Worldwide, LLC 1991, p. 37965.

imposing restraints on their campaign activities. The JP, an enthusiastic participant in the 1991 elections, despite its recent ousting from power, was made to pay for the follies of its founder and supreme leader. Because it became a victim of deliberate electoral discrimination, it could not compete on equal terms with other parties.

CONCLUSION

Post-authoritarian Bangladesh experienced three parliamentary elections. Two of these were supervised by neutral caretaker governments, were enthusiastically contested by all political parties, had massive voter turnouts, were certified as relatively free and fair by impartial election monitors, and the results were not strongly or persistently disputed by the losing parties as in the days of authoritarian rule. The other election was held under a party government in a hazardous political atmosphere, was boycotted by the major opposition forces, was ignored by the electorate, and was manipulated by the ruling party. But it did pave the way for institutionalizing the much wanted NCA scheme.

For all the preventive measures the NCAs had taken to ensure free and fair polling and a violence-free atmosphere, some instances of electoral irregularities were evident in the two elections that they supervised and, because they operated in a highly charged political environment, they could not fully insulate themselves from partisan influences. Inside bureaucracy, the several factions manifested their inclination for particular parties. Both NCAs had to make decisions, either impelled by their own judgment or yielding to political intervention and bureaucratic pressure, which were not entirely deemed appropriate or logical under the circumstances. Often they transcended the functional limits stipulated either politically/informally (in the case of the transitory NCA) or constitutionally/formally (in the case of the 1996 NCA) and became, to some extent, controversial in the public eye.

While both caretaker administrations have generally served the purposes for which they were created, the NCA concept cannot be a permanent arrangement because it casts doubt on the ability of an elected representative government to protect the institution of free elections. It undervalues the credibility of a democratic government to uphold democratic values and points to the failure of the political

community to accept 'certain rules of the game which structure and limit the struggle for power'.⁵⁶ Its recurrent use as a constitutional mechanism to safeguard electoral integrity and ensure a violence-free election might inhibit the growth of a democratic electoral culture; party governments would be denied the opportunity to take responsibility for conducting fair elections and contesting parties would be disinclined to enforce strict electoral discipline on their own initiative by mutually agreeing to an abiding code of electoral conduct, leaving the matter instead to the NCA. An institutionalized bureaucracy, in handling the routine job of government, however neutral, upright and competent but bereft of legitimacy, will dominate any caretaker administration. The role of the election machinery as the accepted neutral manager of an impartial electoral process in a democratic polity will be greatly diminished.

The transition to democracy in 1991 provided the Bangladesh polity with the basic institutions (elections, parliament, party system) for fostering a democratic environment, but the absence of an accompanying democratic culture, derived from long periods of military and authoritarian rule, has stultified the process of democratic consolidation. While electoral democracy is in place, its efficacy will be established only when an elected party government may perform its democratic rites with probity and sincerity.

⁵⁶ M. Harrop and W. L. Miller, *Elections and Voters: A Comparative Introduction*, London, Macmillan, 1987, pp. 6-7.