

Assumption of the Office of Chief Adviser of Non-Party Caretaker Government in Bangladesh: A Critical Politico-Legal Analysis

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Abstract

Allegation of electoral rigging is a common phenomenon in Bangladesh. This allegation became acute in the reign of autocratic H.M. Ershad. Hence the Non-party Caretaker Government was instituted on the basis of consensus of political parties with the fall of H.M. Ershad in 1990 for holding free, fair and neutral poll. By and large the Caretaker Governments of Justices Shahabuddin Ahmed, Habibur Rahman and Latifur Rahman performed their desired goal. In 2006 crisis arose as to the appointment of the Head of Non-party Caretaker Government because of enhancement of the age of Justices of the High Court by 14th Amendment. It is supposed that this amendment was intended to employ a person having leaning to out going government as the head of Caretaker Government. Thus stormy opposition surfaced against the appointment of head of Caretaker Government. In the last days of out going government chaotic and anarchic situation arising out of uncompromising stand of the outgoing ruling parties and the opposition forced the President to take over the office of Non-party caretaker Government. This study is intended to analyse legal and political scenario that made the unconstitutional step of President constitutional.

Keywords: Non-party caretaker Government, free and fair election, election commission, opposition demand, neutral person, movement, violence, crisis

1. Introduction:

Bangladesh emerged as an independent nation with the dream of establishing a exploitation free democratic society. In democracy election is the only mechanism to attain state power. Hopes and aspiration of the people is manifested in the election. If the casting of vote is not counted for the candidate in favour of whom that has been given for in that case thoughtful opinion of the subjects has of no value in running the state. And the legitimacy i.e stimulus force to exercise sovereign power over the people by the government loses its credibility. The politicians in Bangladesh are alleged to be corrupt, dishonest, partial and lacking of democratic norms and values. Past experience shows incumbent government tries to perpetuate its regime. One of the easiest ways to stay in power is to apply unfair means in election. That's why critics opine no election held under party government was free, fair and credible. To make the election result acceptable the political leaders in Bangladesh innovated a new type of interim government termed as " Non-Party Caretaker Government" for arranging and holding free, fair, impartial and neutral election. It is a good system but it questions the image of Bangladeshi politicians before the world.

1.1. Research Questions:

Q1: Was the demand of opposition for the appointment of neutral person to the office of Chief Adviser justifiable?

Q2: Was the role of government right?

Q3: Was the decision of President Iajuddin Ahmed regarding taking over Chief Adviser's Office right?

1.2. Research Objectives:

The objectives of the research are to:-

- i) analyse the rationality of the demands of opposition for neutral person.
- ii) find out the intention of government's adherence to constitutional provisions.
- iii) justify the role of President Iajuddin Ahmed.

1.3 Research Hypothesis:

The hypotheses of the research are:-

- a) The stand of both opposition and treasury benches impeded democracy and democratization process in Bangladesh.
- b) President Iajuddin Ahmed carried out his constitutional responsibility as head of the state.

2. Emergence of Non-Party Caretaker Government:

After the fall of the autocratic regime of H.M. Ershad on December 6, 1990 the circumstances and the united stand of all the political parties demanded the appointment of such person as the head of the interim government who will hold a free, fair and neutral election. As a result of consensus among the political parties Chief Justice Shahbuddin was appointed as the head of interim government for three months. The interim government of Chief Justice Shahbuddin was termed as Caretaker Government. Chief Justice Shahbuddin's Caretaker Government presented for the first time in the electoral history of independent Bangladesh a free, fair and neutral election on Feb 27, 1991. Both national and international election observers as well as foreign delegates recognized this election and acclaimed it as the best, free and fair general election Bangladesh have ever seen. But the defeated Awami League declined it as subtle rigged election.

However at the end of the tenure the then ruling party BNP denied to hold election under neutral person as it was against the constitutional provision. But the wonderful experience of Chief Justice Shahbuddin's interim government in holding free, fair and transparent election and the united stand of the opposition parties not to participate in any election under any party government, mutual mistrust among the political leaders forced the voteless 1996 BNP government to include the Non-party caretaker government provision in the Constitution by 13th amendment. It is supposed that this change has no legitimacy at all as the turnover of sixth Parliamentary polls of February 15, 1996 was nominal. No main stream political party participated in the polls. Not only that they (Alami League, Jatiya Party, Jamaat-e-Islam, Workers Party and others) resisted the polls by calling hartal on election day February 15, 1996. Surprisingly no opposition party raised any question discarding 13th amendment. Political scientists opine as the object of opposition was served they shun the issue of legality of 13th amendment to the constitution.

However a writ petition was filed in 1996 questioning the legality of 13th amendment to the constitution. The court kept it aside with the argument that though the 6th Parliament had no legitimacy to make any change to the constitution yet it did something for which the people in general had struggled a lot. That is why 13th amendment to the constitution by voteless 6th parliament can't be declared ultravires. (The Bangladesh Observer, July, 2003) Mr. Salimullah, Advocate of Supreme Court, filed another writ petition in 1999 challenging the validity of Non-Party Caretaker Government in another Division Bench. In his submission he said that

- I. The 13th amendment was against the concept of democracy which is a basic structure of the Constitution.
- II. It is void because as per the Constitution it was not sent for referendum.
- III. It destroyed the independent character of judiciary.

The High Court Bench on January 25, 2000 issued a Rule Nisi upon the government and other concerned to show cause on the matter. The government in its reply said the 13th amendment was done to ensure free and fair election, a pre-condition for democracy. There was no need to send the matter on referendum as articles 8, 48, or 56 of the Constitution were not amended by it.

After hearing both sides the Court did not agree with its earlier decision and held that by 13th amendment provisions of article 48 and 56 had been suspended which was unconstitutional. However, for better clarification this Division Bench proposed to send the case to larger Bench in order to remove the anomalies of judgments of different Benches of the High Court Division. (The Bangladesh Observer, July, 2003) The Appellate Division on May 10, 2011 declared the 13th amendment illegal with prospective effect. (The Naya Diganta, May 2011)

3. Provisions of Non-party Caretaker Government:

The fundamental provision of the Nonparty caretaker government are: 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. (F-4) (Ministry of Law and Parliamentary Affairs, 2006)

The Non-party Care-taker Government shall be collectively responsible to the President. (Ministry of Law, Justice and Parliamentary Affairs, 2006)

The executive power of the Republic shall be exercised 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.

The Non-party Care-taker Government shall consist of the Chief Adviser as its head and not more than other ten Advisers, all of whom shall be appointed by the President. (Ministry of Law, Justice and Parliamentary Affairs, 2006)

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. (Ministry of Law, Justice and Parliamentary Affairs, 2006)

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.(F-9) (Ministry of Law and Parliamentary Affairs, 2006)

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. (Ministry of Law and Parliamentary Affairs, 2006)

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.

If such retired judge is not available or unwilling 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.

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 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.(Ministry of Law, Justice and Parliamentary Affairs, 2006)

The Constitution identifies following criteria for the Advisers: (Ministry of Law, Justice and Parliamentary Affairs, 2006)

- a) Persons who are qualified for election as members of Parliament;
- b) Persons who are not members of any political party or of any organization associated with or affiliated to any political party;
- c) Persons who are not, and have agreed in writing not to be, candidates for the ensuing election of members of Parliament;
- d) Persons who are not over seventy-two years of age.

The Constitution disqualifies following persons for the post of Advisers.

A person is disqualified for election if-

- (i) he is declared unsound by a competent court.
- (ii) he is un-discharged insolvent;
- (iii) he is a citizen of, or affirms or acknowledges allegiance to a foreign state;
- (iv) he has been on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release;
- (v) he hold any office of profit in the service of the Republic other than an office which is declared by law not to disqualify its holder,
- (vi) he is disqualified for such election by or under any law.

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- 58c. (Ministry of Law, Justice and Parliamentary Affairs, 2006)

This non-party caretaker government is literally free from the naked cluster of the ill-thought politicians. But in order to secure victory in the poll the party in power and the opposition always strive

their best to appoint to the office of Chief Adviser such type of person upon whom they have belief that he will assist them in attaining state power in the forth coming election.

4. The Provisional Caretaker Government:

Chief Justice Mr. Shahabuddin Ahmed was the head of first Caretaker Government. After the fall of autocratic President Ershad on Dec. 6 1990 all the major political parties were in agreement that the then sitting Chief Justice of the constitutional court should be employed to that office. (The Daily Star, December 1990) Accordingly the then Chief Justice Md. Shahabuddin Ahmed was asked to hold the post. He accepted the offer under condition that he would home his office after the formation of new government. According to Article 99 (1) no Chief Justice will hold any office of profit after retirement or removal from his office. The leaders of political parties agreed to this proposition for which 11th Amendment had to be made.

And two major changes were made: (Ministry of Law, Justice and Parliamentary Affairs, 1991)

- I. Return to the office of chief Justice after holding Chief Adviser post.
- II. The office of Chief Adviser/adviser post was declared as an office of no profit.

5. First Constitutional Caretaker Government:

Immediately after the insertion of the Caretaker Government provision to the Constitution the then last retired Chief Justice Habibur Rahman was appointed as the Chief Adviser on March 29, 1996 according to the Constitution. The prevailing political situation of that time (from February 13 to March 29, 1996 before the appointment of Chief Justice Habibur Rahman) was so anarchic that combined opposition did not tolerate the existence of BNP led government let alone the holding of referendum on the thirteen amendment bill which was essential for its legality. However the combined opposition did not question the appointment of Habibur Rahman as Chief Adviser. Some critics opine that Chief justice Habibur Rahman had some swing towards Awami League. (Matin, 2001) BNP Leadership alleged that government machinery played pro-AL role in the election. BNP leader Dr. Badruddojo Chowdhury alleged government did not take necessary action in maintaining her impartiality. (The Bangladesh Observer, June, 1996) BNP leaders said in spite of providing vote rigging information with evidence the government officials remained inactive. They claimed that rigging occurred in 98 constituencies. Khaleda Zia the BNP Chairperson in a press conference claimed not subtle rigging but large scale rigging happened under the auspices of Chief Justice Habibur Rahman. (The Bangladesh Observer, June, 1996) Jamaat-e-Islam one of the major parties to the combined opposition vehemently criticized the government for acting for the AL in the polls. (The Bangladesh Observer, June, 1996)

6. Second Constitutional Caretaker Government:

Second Caretaker Government was formed on July 14, 2001 with the then last retired Chief Justice Latifur Rahman according to the Constitution. Regarding the Caretaker Government of Chief Justice Latifur Rahman few allegations of partiality before his appointment as Chief Adviser were raised by the oppositions specially by BNP. The allegations were:

- a) He is loyal to Awami League i.e his previous professional and unofficial activities indicated so;
- b) He is the handpick of Prime Minister Sheikh Hasina;
- c) He is appointed without conjunction with the opposition especially with the BNP led four-party alliance.

On these issues the opposition parties showed their negative attitude through arranging mass public gathering in the streets and observing few spontaneous hartals. The then Awami League government invited the BNP led four-party alliance to give their choice relating to Chief Adviser. But they did not participate. Chief Justice Latifur Rahman as Chief Adviser told in his nation wide maiden speech regarding his integrity and impartiality that he would take such steps in government and election commission that ensure the participation of all political parties in upcoming national election. (The Bangladesh Observer, July, 2001)

Chief Adviser of Non-party Caretaker Government of 2001 Justice Latifur Rahman through his relentless efforts made the October 1, 2001 polls free and fair. However after election Awami League denied his honesty and impartiality because it lost in the polls.

7. Third Caretaker Government:

Bangladesh faced the biggest national crisis on the issue of appointment of Chief Adviser of Non-party Caretaker government in 2006. The BNP led four-party alliance government brought

few changes to the constitution by fourteenth amendment (May 16th 2004). One change was relating to the increase of retirement age of the judges of the Supreme Court. Before this amendment retirement age of the Supreme Court judge was 65 years. After this amendment retirement age was increased to 67 years. Awami League did not recognise the change. They vehemently opposed this arguing that change was made just to appoint BNP loyal chief justice to the office of Chief Advisor. BNP government enhanced the retirement age of the Judges just to keep the election in control under Caretaker Government.(The Bangladesh Observer, May, 2004)

However breathtaking wild atmosphere created by opposition forced the last retired Chief Justice K.M. Hasan to decline the office of Chief Advisor. (The Daily Star, October, 2006)

With the expression of unwillingness by Chief Justice K.M. Hasan second option of Article 58C(3) called for the retired Chief Justice who retired next before the last retired Chief Justice. Since last retired Chief Justice Mainul Reza Chowdhury died in 2004 para two of Clause (3) of Article 58C came to an end.

However some renowned law professionals interpreting the constitution voiced to convey Chief Adviser's post to Mahmudul Amin Chowdhury who was the third retired Chief Justice who retired on June 18, 2002 next before the second retired Chief Justice Mainul Reza Chowdhury who retired on June 23, 2003. It did not find wide support because the Constitution does not say anything regarding the third retired Chief Justice.

Then option number three opened under Article 58C Clause (4) para (1). Accordingly the name of Justice M.A. Aziz came because he was the last retired Judge of the Appellate Division. Neither the constitutional experts nor the President uttered his name as the opposition parties were dead against Justice M.A. Aziz and the four-party alliance negated him on the ground that he was the Chief Election Commissioner.

Justice M.A. Aziz did not belong to any political party nor was a member of any organization affiliated to any political party. He was honest, sincere, and man of integrated personality. He did not commit any wrong in his professional career. Nobody could raise any question relating his impartial service to the Supreme Court and he was so resourceful that his verdicts were never altered in appeal. After retirement from the Appellate Division the four-party alliance government appointed him as the Chief Election Commissioner.

Justice M.A. Aziz was defamed by opposition for this reason but the President should have called upon him to offer Chief Adviser's post to uphold constitutional sanctity.

Next the offer should have been made to Justice Hamidul Haq but the President did not make any such offer. From the media it appeared that he was in a dilemma to accept or reject this post. Once he said that he was forced to reject this post.(The Daily Inqilab, October, 2006) BNP rejected him and Awami League preferred him. The irony was that the constitutional provision at this particular stage does not allow any interference by the political parties in influencing on the appointment of the Chief Adviser. In this stalemate Justice Hamidul Haq disappeared in the scene. President had not taken any initiative on the matter of appointing Chief Adviser under Clause(5) of Article-58C.He had to consult with major political parties with the aim of finding out their expected candidates' names. He could at least send his representative to the major political parties to have their selection. He did not do so. It is necessary to mention here that Chief Justice K.M. Hasan retired on January 27, 2004. Chief Justice Mainul Reza Chowdhury on June 23, 2003. Chief Justice Mahmudul Amin Chowdhury on June 18, 2002. Justice M.A. Aziz went into retirement in May of 2005, Justice Hamidul Haq retired next before Justice M.A.Aziz.

Critics say BNP led four party alliance barred the President in this regard. Here a phrase "as far as practicable" is used under which President's limitation could be excusable. In an appalling and violent situation where opposition and exchequer party stood face to face with bitter disbelief and hatred, and party men as well as common people were killed like beast. The whole country was anarchic. President had no other option but to step forward. However President could have asserted his own choice. It is unconceivable why didn't he cast focus on that. There were so many acceptable prominent figures one of whom could be appointed to the post of Chief Adviser. Scholars said the out going ruling parties especially BNP did not let the President to do so. While opposition protested this stand of President, four-party alliance appreciated it. Too many legal and constitutional opinions were expressed here. Some experts opined that constitutional text had been blurred. It might not have been correct. It seems even if the President offered for a dialogue in this regard it might have resulted in a futile, waste of time as both alliances would not have given any

concession to other. The anarchic situation forced the President to be unconstitutional in appointing himself as a Chief Adviser.

8. The Context of Constitutional Crisis:

While constitution provisions were side stepped political issues were getting momentous and cemented gradually. It may be recalled worthwhile that when the 14th amendment to the Constitution was made it created suspicion in the 14 party alliance from May 16, 2004. They argued the retiring age of the Judges of the Supreme Court was enhanced from 65 to 67 by 14th amendment calculating a subtle plan to have the retired Chief Justice K.M. Hasan as the future Head of Non-party Caretaker government of 2006.(The Bangladesh Observer, May, 2004) Jatiya Party chairman H.M. Ershad said this amendment was not acceptable as it might influence the next election. (The Bangladesh Observer, May, 2004) Awami League claimed Chief Justice K.M. Hasan was the editor on foreign affair in BNP government in the years 1977-79.(The Daily Inqilab, September, 2006). This led the opposition to claim that Chief Justice K.M. Hasan had political affiliation with BNP for which he is disqualified for the office of Non-party Caretaker Government. With regard to enhancing retiring age of the Judges of the Supreme Court fourteenth amendment was initiated at the instance of an advice by the out going Chief Justice Mainul Reza Chowdhury in June, 2003.(The Daily Star, September, 2006)_

However Awami League chief Sheikh Hasina at a meeting of Chhatra League on September 3, 2006 said “Let no election be held under KM Hasan”. If KM Hasan made Chief Advisor come to Dhaka with sticks to resist him, she further added.(The Daily Star, September, 2006)

In the meantime Chief Justice K.M. Hasan visited Zia cemetery on Sept 19, 2006.(The New Age, September, 2006) This visit infuriated the opposition. The AL observed Dhaka seige program on September 20, 2006 to put pressure on the regime to drop the name of Chief Justice K.M. Hasan as Chief Advisor. (The New Age, September, 2006)

On September 26, 2006 Sheikh Hasina threatened at a news conference if Chief Justice K.M. Hasan’s name was not scrapped her alliance would apply all sorts of mechanisms to attain their goal.(The Daily Star, September, 2006)

Following her declaration a dialogue between BNP Secretary Abdul Mannan Bhuiyan and AL Secretary M.A Jalil was started to avert constitutional and political stalemate. Dialogue was held on October 5th, 16th & 23rd, 2006 but ended in smoke. Looming the failure of dialogue Sheikh Hasina declared on October 20, 2006 in a mammoth meeting at Paltan if their claims were not met, her alliance would observe 72 hours nation-wide *hartal* and *Gheraw* from Oct. 28, 29 & 30, 2006.(The Daily Star, September, 2006) At this the outgoing regime became restive and arranged a meeting at Paltan with few supports. In this meeting Khalada Zia the outgoing PM declared that they would go by the Constitution. This declaration intensified the political and constitutional crisis.

Sheikh Hasina ordered her party men to cordon capital Dhaka from October 27, 2006 by closing all the roads towards Dhaka.(The Daily Star, September, 2006) In response to this call of their leaders members of opposition parties staged on the streets with sticks, oars, poles and seized capital Dhaka as if capital city Dhaka was segregated from rest of Bangladesh and fallen to enemy state. The ruling BNP led four-party alliance government failed to maintain law and order as well as normalcy in public life. The law enforcing authority became inoperative. Armed cadres of both opposition and ruling parties took the control of law enforcing agencies. Both the opposition and outgoing parties were endeavoring their best to keep the public roads in their control by resorting to all sorts of mechanism. The Awami League led *Mohajat* used *Logi Baitha* to crush any attempt to make KM Hasan as the Chief Adviser. BNP led four-party alliance conversely employed their efforts to persist to their position. Both sides were shining their weapons to crush the other as if they were struggling for survival.

The term of BNP led 4 party alliance regime ended on 28th October, 2006. On 27th October, 2006 four persons were killed and more than 500 wounded.(The Daily Star, September, 2006) Transports were burnt down, party offices and vehicles were set on fire, public properties were destroyed. Anxiety, fear, panic engulfed the thought of common people. Law and order was broken down. General feeling emerged in the common people that they were living in a lawless state.

On 28th October, 2006 downtown Dhaka turned into battlefield. Violence hit the country. The Country was brought to standstill. Thirteen people were killed and more than 2000 wounded.(The Daily Janakantha, October, 2006) Unprecedented clashes broke out between two sides. Shooting, bomb explosion became rampant. Suffering of common people became acute. People lived under constant fear of losing their life, liberty and property. Having been impelled by the deteriorating condition of the country retired Chief Justice K.M Hasan decided to stay away from performing his constitutional mandated responsibility on Saturday 28th October at 7.30 P.M.(The New Age, October, 2006) Awami League Leader chief Sheikh Hasina, leader of fourteen-party alliance, asked President Iajuddin Ahmed

to follow the constitution.(The Bangladesh Observer, October, 2006) On 29th October unrest flared up as four-party alliance and fourteen-party alliance battled on for political supremacy. Unprecedented breaking down of law and order was seen in the country. BNP & Awami League set to establish their supremacy even at the cost of physical attacks on each other. Eight men were killed and more than 500 injured. As a result anarchy grasped the whole country.(The Bangladesh Observer, October, 2006

9. Grasping the Situation:

Man is passionate for peace, liberty and property.(Hobbs, 1949) But under this anarchic atmosphere these became worthless. People felt unsecured even at their residence. Commonwealth is a march of God on earth.(Hobbs, 1949) Commonwealth emerged to protect life, liberty and property of men.(Hobbs, 1949) Protection and preservation of these life, liberty and property of the subjects is the duty of Leviathan.(Hobbs, 1949) In Bangladesh in the absence of political Government President is in charge of the state power. Accordingly President Iajuddin as the head of commonwealth was responsible for the safety and security of life, liberty and property of its subjects. He could have gone through the Constitution. Accordingly Justice MA Aziz and Justice Hamidul Haq could have become the Chief Advisor but one was negated by Awami League and latter rejected by BNP.(The Bangladesh Observer, October, 2006) And the question of a person having appreciation of all the political parties was irrelevant because no person was available over whom both parties had confidence.

President Iajuddin had two options:- One was to declare emergency under article 141A of the Constitution of The People's Republic of Bangladesh and another was to take added responsibility as Caretaker Government's head. He did not adopt the first option as four-party alliance was not for that option. But he chose the second one.

Circumstances impelled President Iajuddin to take the office of Chief Adviser and carry out the utmost responsibility of the head of commonwealth to protect the life, liberty and property of its subjects.(The Bangladesh Observer, October, 2006) President Iajuddin got only 24 hours to cover up all the provisions regarding the appointment of Chief Adviser. And within this period 8 persons were killed and more than 500 injured, scores of vehicles, private cars, public and private properties were destroyed.(The Bangladesh Observer, October, 2006) Immediately with the taking of the charge all the anarchic situation came to an end.

President himself assumed Chief Adviser's post under Clause(6) of Article-58C overlapping the provisions of Clauses(4) and (5) of the same on 29th October 2006. In his oath taking ceremony only leaders of BNP led four-party alliance were present. Opposition parties' leaders were absent. Constitutional experts and prominent legal professionals criticized the role of President in occupying Chief Adviser's office. Pro-four party alliance leaning constitutional experts upheld President's decision as perfect. Anti-government constitutional specialists described President's action as extra judicial. They dissent to on couple of grounds, viz. (1) Professor Md. Iajuddin Ahmed used to be a member of Dhaka University Teachers Association affiliated to BNP before assuming the office of President, (2) Mr. Iajuddin ahmed was above seventy two years of age.(F-55) Opposition's arguments were genuine under Clauses (3),(4),(5) and (7) of Article 58C. Clauses (3),(4) and (5) each of Article 58C contain the language "Who is qualified to be appointed as an Adviser under this article" and Clause(7) of article 58C inserts the qualifications of Advisers. Sub-clauses (b) and (d) of clause (7) of article 58C disqualified Mr. President as Chief Adviser or Advisers of Non-party caretaker government. Second para of Clause (6) of article 58C does not possess such condition in case of President and this clause bears an important group of wards "Notwithstanding anything contained in this Chapter" that negate the application of clauses (3), (4), (5) and (7) of article 58C. In this respect oppositions' discard towards President was not appreciable. However provision of clause (10) of article 58C diminishes the credibility of President Iajuddin Ahmed as Chief Adviser as he was holding an office of profit in the service of the Republic under article 66(2)(dd) and was above 72 years of age under article 58C(7)(d). The opposition and others accepted it as necessary evil for it at least ended the breath-taking dreadful atmosphere for the time being and showered the country with peace.

10. Conclusion:

Caretaker Government was instituted with the mission of holding free and fair election. The Caretaker Governments of Chief Justice Habibur Rahman and Chief Justice Latifur Rahman were formed under article 58A of the Constitution of the Peoples Republic of Bangladesh and they were successful in their businesses in 1996 and 2001 respectively. But the formation of the Caretaker Government under President Iyajuddin Ahmed faced great challenge because of the rigid stands of the immediate past BNP led four-party alliance government under Khaleda Zia and the

fourteen-party alliance led by Awami League on question of appointing Chief Adviser. All the options of article 58A were turned out to be unacceptable to either of the two political alliances. Consequently lawlessness crippled the entire country. People became fearful of the existence of the state. As a result President Iyajuddin Ahmed had to follow the last provision of Caretaker Government for the protection of the life, liberty and property of the people of the Republic of Bangladesh. Therefore assumption of the office of Chief Adviser was though to some to be unconstitutional yet it was imperative for the safety and security of the people. His decision may have triggered too many criticisms but in reality it brought law and order situation in control. Hence his taking over of Chief Adviser office was not unconstitutional.

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