

Constitutional Legitimacy of the Interim Government: An Analysis of Bangladesh

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Abstract:

Bangladesh now has an interim government, which acts as a transitional government between the old and new regimes, with the responsibility of maintaining stability and laying the groundwork for a more permanent solution. Imagine a country on the verge of collapse. A valid revolution was successful. A fascist prime minister has resigned and is running away, and it has left the country in disarray. What happens next? Who takes control? This is where the fascinating concept of an interim government steps onto the stage. The issue of constitutional legitimacy surrounding an interim government in Bangladesh is a pivotal subject that impacts the country's democratic processes. This paper analyzes the constitutional legitimacy of an interim government in Bangladesh, focusing on historical context, legal principles, and the ongoing scenario after the July revolution.

Keywords: Interim government, Fascist, Revolution, Constitutional Law, Legitimacy

INTRODUCTION

An interim government is a temporary governing body established for the administration of a country during a transitional period. It is often formed in situations where a standard government is unable or unsuitable to govern such as during elections, crises, or periods of political reorganization. Interim governments are typically intended to be non-partisan or neutral, minimizing the influence of any political party or group to maintain fair governance until a permanent or elected government is established. The role of such a government is crucial for maintaining stability and ensuring the smooth transition of power.

Prime Minister Sheikh Hasina's sudden resignation after fifteen years in government has left Bangladesh with a political and constitutional vacuum. In the wake of this resignation, the military announced the creation of an interim administration to restore order and guide the nation toward new elections. The interim administration consists of prominent members of Bangladesh's civil society, including professors, lawyers, former government officials, human rights advocates, student leaders, and others. While the formation of such an administration may be seen as a necessary response to the political crisis, there are several legal complexities surrounding this provisional government, particularly with regard to its constitutional legitimacy. The absence of explicit provisions in the Bangladesh Constitution concerning the establishment of an interim government, coupled with the involvement of the military, raises significant questions about the adherence to democratic principles, the separation of powers, and the preservation of civil rights (Hossain Zillur Rahman, 2023).

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Temporary governments in Bangladesh often face serious constitutional challenges, as their formation and actions may conflict with established democratic principles and constitutional mandates that require elected civilian leadership and the maintenance of a separation of powers (Mohammad Shah, 2024).

This paper seeks to analyze the constitutional legitimacy of the interim government formed in the aftermath of Prime Minister Hasina's resignation. It will examine the relevant constitutional provisions, historical precedents of interim governments, and the potential legal challenges the interim administration may face in fulfilling its role. The key concern is whether the military's involvement in the formation of this government complies with the constitutional framework of Bangladesh, which envisions a civilian-led democratic system of governance. Furthermore, the analysis will explore how the interim government can balance its temporary role while respecting the long-term democratic aspirations of the people of Bangladesh.

METHODS

The article employs multiple methods to examine the legitimacy of Bangladesh's interim government, combining legal analysis, historical context, and philosophical insights. It uses doctrinal analysis to ground the interim government's authority in doctrines such as Necessity, Constitutional Supremacy, and Transitional Justice, while comparative examples from South Africa and Europe provide an international context for interim governments' roles. Historical analysis highlights the evolution of Bangladesh's caretaker systems, and interpretative analysis of specific constitutional articles emphasizes the President's possible role in legitimizing the interim government through an ordinance. Additionally, references to thinkers like Machiavelli and Jefferson underscore the ethical and practical need for flexible governance during national crises to maintain stability and rule of law.

RESULTS

The article on the constitutional legitimacy of Bangladesh's interim government presents a comprehensive analysis of how legal doctrines and constitutional principles can support a provisional administration. It explores the role of doctrines such as Constitutional Supremacy, Necessity, Transitional Justice, and the concepts of *de jure* and *de facto* authority. These doctrines collectively justify the existence and function of the interim government amid a constitutional vacuum caused by the sudden resignation of the Prime Minister.

The article asserts that the interim government's legitimacy is upheld by constitutional law, international acknowledgment, and the practical need for stability. By invoking these legal principles, Bangladesh's interim administration can constitutionally navigate its transitional role until a permanent government is established.

Purpose of Interim Government

An interim government is essentially a temporary administration, a bridge between a collapsing old regime and a newly established one. It serves as a caretaker, the 'hold-the-fort' crew, tasked with guiding the nation through a period of transition. Think of it as the intermission between acts in a play, a pause to reset the stage for the next grand performance (Susmita Banik, 2024).

An interim government serves three purposes. Firstly, it gives a country in crisis instant stability. Think of it as a steady hand on the tiller that guides the boat through severe seas. It guarantees that the wheels of government don't completely come off, law and order is upheld, and vital services keep operating.

Secondly, the interim government lays the groundwork for a more permanent solution. This might entail starting important changes, creating a new constitution, or setting up elections. Most significantly, by working to restore confidence, encourage communication, and clear the path for a more united future, an interim administration may aid in the healing of a nation that has been divided.

Thirdly & most importantly, an interim government can help heal the wounds of a fractured nation, aiming to rebuild trust, promote dialogue, and pave the way for a more unified future.

Short Background

The term "interim government" gained modern significance during the revolutions of 1848 in Europe. Many of these revolutionary governments were labelled as "provisional", as they aimed to establish new political orders and prepare for future elections.

In Bangladesh, the concept of interim or caretaker governments has evolved through various constitutional amendments and political crises. The 13th Amendment of the Constitution passed in 1996 provided the legitimacy of a non-party care taker government to assist the Election Commission in holding a peaceful, fair and impartial general election. The caretaker government, collectively responsible to the president, would be dissolved when the new prime minister took office.

After the Supreme Court's judgment on caretaker government in 13th Amendment Case, under the present constitution, an interim government can be formed as per Article 57(3) and 58(4) of the Constitution of Bangladesh. These Articles state that after the dissolution of parliament the ousted Prime Minister and ministers shall act as an interim government till the newly elected government is in office. Since the ousted Prime Minister and many ministers have already fled the country and their holding office itself was through a controversial election, it would be unrealistic to suggest that the constitutional provisions should be followed to the letter (Barrister Moyeen Firozee, 2024).

However, the 15th Amendment in 2011 abolished the caretaker government system, citing major flaws, including the politicization of the judiciary, which undermined public confidence in the Supreme Court. As a result of the abolishment of the caretaker government, Bangladesh is currently experiencing a political and constitutional vacuum as a result of the abrupt resignation of the Prime Minister.

After that, the military announced the formation of an interim administration to restart order and guide the nation toward new elections. In the resulting power vacuum, this administration consists of prominent members of Bangladesh's civil society, including professors, lawyers, former government officials, human rights advocates, and student leaders. However, there are several legal complexities surrounding this provisional administration.

DISCUSSION

Discussion on Legitimacy

Bangladesh's current interim government is thriving in a "constitutional emptiness" (M Jashim Ali Chowdhury and Md Imamunur Rahman, 2024). At the time of crisis in Bangladesh, strict observance of the the Constitution or other laws may lead to of absurdity, as Machaevelli observes that in case of emergency, 'a strict observance of the established laws will expose the country to ruin'.

Now discuss how legal doctrines can support the provisional administration and thereby stabilize Bangladesh's democratic system.

1. Discussion under the ambit of our preamble

The doctrine of constitutional supremacy places the constitution at the vertex of all the sources of law. Pursuant to this doctrine, the constitution trumps any other norm in case of conflict or inconsistencies. This hierarchal doctrine enshrines the constitution with all-powerfulness (Fatima Jahra Ahasan Raisa and Suriya Tarannum Susan, 2024).

The preamble of the constitution begins with "We, the People of Bangladesh." These words reflect the collective mind of the people of the nation. The Constitution of the People's Republic of Bangladesh is the supreme law of the land and, as it's Article 7 (2) state, it is the solemn expression of the will of the people. According to article 13 of the Constitution gave the ownership of the State to the People, nonadherence to some constitutional provision cannot be a hindrance to resolve the constitutional crisis in the country.

The primary mandate of the interim government is a peaceful transition to democracy by holding free and fair elections. The formation of an interim government was not the result of partisanship. Rather, it

was the collective expression of the leaders of the student-led mass uprising, representatives of the major political parties, and key members of the civil society. It is reminiscent of the Roman law maxim urged by Ivor Jennings that "the well-being of the people is the supreme law".

2. Doctrine of Necessity

The Doctrine of Necessity is a principle in constitutional and administrative law that permits acts which would otherwise be unlawful to be deemed lawful if they are necessary to safeguard essential interests, such as maintaining law and order. First conceptualized by the English jurist Henry de Bracton in the 13th century, this doctrine is invoked in extraordinary situations where institutional or political disruptions prevent the government from functioning normally.

In Bangladesh's current context, the Doctrine of Necessity might be applied as a justification for certain state actions to maintain stability and security amid civil unrest or violent protests (Moin Rahman, 2023). For example, if violent clashes between political groups disrupt public order, the government may impose emergency measures, such as temporary curfews, restrictions on public gatherings, or even deploy the military to restore peace. Although such actions might typically be seen as limiting civil rights, they could be deemed lawful under the Doctrine of Necessity to prevent further chaos and protect citizens' safety.

The doctrine allows flexibility in applying constitutional norms to uphold the rule of law, advocating a pragmatic approach over strict adherence to idealistic principles when the country faces significant turmoil. In such cases, adaptability and a focus on the "greater good" of the people take precedence, enabling the state to act decisively to restore order.

3. Doctrine of transitional Justice

The doctrine of transition highlights the fact that in dire circumstances, drastic measures such as the installation of transitional governments are required to avoid further instability and violence. According to the concept the interim administration's main responsibilities are to implement institutional reforms, prosecute those responsible for human rights abuses, stop future abuses, and create a constitutional order.

Even while the leaving government could view the interim administration as illegitimate, its legitimacy comes from its duty to uphold justice and restore the rule of law throughout the transition phase. The UAE President Sheikh Mohamed bin Zayed's participation in pardoning 57 Bangladeshi nationals who had been imprisoned for demonstrating shows that the interim administration has international backing and recognition, which strengthens its legitimacy (The Financial Express, 2024). When combined, these actions demonstrate how the Doctrine of Transitional Justice promotes a smooth and legal transition to a temporary administration in Bangladesh. Additionally, The UN Convention on Enforced Disappearances was signed shortly after the interim government of Bangladesh took office, demonstrating its dedication to correcting the historical injustices connected to the "Aynaghar" holding camps.

4. Discussion on De facto, De Jure

In international law, 'de jure' and 'de facto' describe different aspects of government authority. 'De jure' signifies a government's legitimacy as recognised by a nation's legal framework. By taking an oath officially administered by the president, the current interim government ensures its legal status.

'De facto' refers to actual, practical control. An interim government's effective management of state functions demonstrates de facto control, implying public support and a tangible exercise of power. Although not necessarily formally sanctioned, this control reflects the reality of governance and the interim government's ability to function (Susmita Banik, 2024).

Additionally, International acknowledgement is very important. When entities like the United Nations or other nations acknowledge and engage with a new authority, it further solidifies that government's legitimacy. In the modern global arena, international acknowledgement plays a critical role in reinforcing legitimacy.

Example of Interim Government

The European revolutions of 1848 gave the phrase "interim government" a contemporary meaning. Many of these revolutionary administrations were referred to be "provisional" because their goals were to create new political structures and get ready for elections in the future.

For example, the transition in South Africa following the end of apartheid provides a clear example of the role of an interim government in facilitating democratic change. Nelson Mandela's interim administration, which took office in 1994, was instrumental in overseeing the first democratic elections and establishing the groundwork for a new, inclusive political system. The government's efforts were crucial in promoting national reconciliation, drafting a new constitution, and establishing the Truth and Reconciliation Commission (TRC) to address the human rights violations of the apartheid era (South African History Online, n.d.). It provided the groundwork for a peaceful and sustainable future for the country, assisted in the creation of a new constitution, and established a Truth and Reconciliation Commission to redress historical injustices.

Nepal has experienced significant political transitions marked by the establishment of interim governments during key moments in its history, especially in the shift from monarchy to a republic. In 2007-2008, following a decade-long civil war, the monarchy was abolished, and an interim government was formed under Prime Minister Girija Prasad Koirala, following the signing of the Comprehensive Peace Agreement (CPA) between the government and Maoist rebels (Nepal Government, 2007). This interim government oversaw the transition from a constitutional monarchy to a federal democratic republic, organized the first democratic elections to the Constituent Assembly in 2008, and played a critical role in drafting a new constitution. Earlier, in 2005-2006, Nepal faced a political crisis when King Gyanendra assumed direct control of the government, leading to widespread opposition. The people's movement (Jana Andolan II) in 2006 successfully pressured the monarchy to restore parliament and form an interim government, which played a key role in negotiating a peace deal with the Maoists and paving the way for the eventual abolition of the monarchy and the establishment of a republican system. Both interim governments were crucial in guiding Nepal through its complex transitions from conflict and authoritarian rule to a more democratic and republican state (Bhattarai, 2018).

CONCLUSION

Tomas Jefferson in his "The Writings of Thomas Jefferson" stated that "the laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose the law itself. The Constitution cannot be read in isolation. It must be read together and interpreted as per its spirit which has been reiterated in numerous judgments of the Supreme Court of Bangladesh.

It is a misconception that the formation of an interim government is not permissible other than under article 57(3) and article 58(4) of the Constitution. Rather under article 48(2) of the Constitution of Bangladesh the Hon'ble President shall, as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law.

Formation of the new interim government should not be done by merely passing an executive order by the Hon'ble President. The Hon'ble President should promulgate an Ordinance under article 93 of the Constitution of Bangladesh which will have legislative force and allow the interim government to function not just as mere executives, but a constitutionally ordained functionary under legislative order.

This will legitimize the duration of their governance even if the succeeding political government does not ratify the Ordinance as required under art 93(2) of the Constitution. The legality of the present interim government is justified based on the existing constitutional law of Bangladesh. Therefore, it is possible to determine the legitimacy of this government from the standpoints of international, constitutional, and jurisprudential law.

Conflict of Interest

All the authors declare that there are no conflicts of interest.

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