

The Politics behind the Passage of Fourth Amendment to the Constitution of the People's Republic of Bangladesh and Its Provisions: A Modest Analysis

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Abstract

Awami League as a political party fought for establishing westminister system of democracy during her 24 years' movement. For its realization it incorporated 6-point program of 1966, students' 11-point program of 1969 and Legal Frame Work Order, 1970 in her election manifesto for 1970 general polls. But brutality of AL surfaced immediately after riding on the saddle of state power in 1972. The democratic norms and values nourished, cultured and practiced by AL leadership disappeared from the actions and working of AL government. In running the government it established authoritarian rule in place of secularized democracy. It termed the democratic opposition enemy of the state, and made the people their rival. As a result, AL government found itself totally isolated from the people. Under these circumstances it buried democracy for establishing so-called democracy of the exploited and oppressed people by constitutional amendment. This discourse is intended to reveal the motive of AL government behind fourth constitutional amendment and its effects on Bangladesh politics in short.

Keywords: Spirit of Liberation War, Democracy, Awami League, Corruption, Failure, Opposition, Movement.

1. Introduction

In democracy business of the government is nothing but the output of the hopes and aspirations of the people. For that reason in democratic system popular party is voted to power. When a popularly voted government fails to meet up the cherished desires of the people in her working, people start to withdraw support as well as confidence on the government. Awami League government under the leadership of Sheikh Mujib, the father of the nation, was elected to power in 1973 polls with unprecedented popular support. But Sheikh Mujib, as a statesman, badly failed to do justice to overwhelming confidence of the masses in discharging his duties and responsibilities. Unlimited corruption in party and government, acute nepotism and favouritism, lawlessness, roaring prize of daily needs led the nation to famine and earned the derogatory title 'Bottomless Basket' for the country Bangladesh in 1974. Because of this AL government found herself isolated from the people. People started to shift their confidence to other political parties for the realization of the spirit of liberation war. On the other hand government under chairmanship of Sheikh Mujib used all tools of her pocket to stop the birth and emergence of strong political force against ruling AL government.

AL government under the leadership of Sheikh Mujib, in spite of removing Islamic political parties from the opposition movement by first amendment and arresting other secular political parties by second amendment, could not bring any positive sign of good governance in the country. Rather it became more reckless in running the administration. Top leadership started revealing the failure of the system of government in lieu of admitting their incapacity, failure and lust for power. In order to remove remaining constitutional opposition from her way to state power AL government brought fourth change in the constitution.

2. Role of AL in 1973 polls

Awami League did not want opposition victory in 1973 election. It adopted terrorism(The Daily Ittefaq, January, 1973) and used all government machineries to remove opposition from the House.(The Daily Ittefaq, March, 1973) Maulana Bhasani the President of NAP(B) accused the government of terrorizing the opposition. He said with pathetic tone, "Press owner, mike owner and even the handbill provider do not work for opposition because of the fear of losing their lives in the hands of Awami League party men."(The Morning News, January, 1973) Opposition did not recognize AL victory in this election.(The Morning News, March, 1973) AL bagged 293 seats in the election.(The Daily Ittefaq, March, 1973)

3. Role of AL in the House

Opposition got nine seats in the Parliament. They formed opposition party with Ataur Rahman Khan as president. Prime Minister Sheikh Mujib did not recognize it as opposition party.(Jahan, 1980) Ruling party leaders smiled at the opposition as cocktail party.(Jahan, 1980,pp.79-86)

4. Political Stand of AL and Its Alliance

Bangladesh Awami League, NAP (M) and Bangladesh Communist Party asserted themselves as the pro-liberation forces in Bangladesh. These three parties formed an alliance under the leadership of Prime Minister Sheikh Mujib on September 3, 1973.(The Daily Ittefaq, September 1973), They branded opposition parties as foreign agent(The Morning News, September, 1973) anti socials, anti-state and anti-liberation forces(The Morning News, September, 1973).

5. Intra-party Feud in AL

Sheikh Mujib, Sheikh Moni, Tofael Ahmed, Abdur Razzak were for democratic socialism.(Ahmed, 1984, p.217) Young students and workers led by Abdul Jalil, ASM Abdur Rab, Shahjzhan Siraj of AL were for radical socialism. This division of opinion created divisions in AL and JSD was formed. JSD created severe threat to every political stand of AL government.(Ahmed, 1984, p.217)

6. Flood and Role of Government

In 1973 Bangladesh faced two terrible floods which caused unprecedented damage in agri-production. It also resulted in huge human loss along with damages to homes and domestic animals.(Ahmed, 1984, pp.208-209) Government banned cow slaughter on Tuesday, Wednesday and Thursday. AL leaders and members of government swallowed relief instead of distributing it to flood victims. Flood affected people led their lives taking one meal a day or without any meal and in some areas dead bodies were buried with banana leaves.(The Daily Ittefaq, May, 1974) NAP(B) President Maulana Bhasani observed hunger strike for 8 days in May, 1973 in order to pressurize the government to take proper steps for ebbing the sufferings of flood victims.(The Daily Ittefaq, May, 1974)

7. Falling Economy

Awami League took the charge of economy with precarious bank reserve and moreover with world sympathy. It received huge foreign aid and relief to overcome that situation. But corruption in AL leadership and administration, relentless smuggling, hoarding, floods did not advance economic wheel forward. Consequently prices of daily needs reached sky high and the suffering of common people reached to an unbearable point.

8. Deteriorating Law and Order

Awami League government did not restore law and order to a satisfactory level. Home Minister Abdul Malek Ukil told the House that from January 1, 1972 to June 15, 1973 4957 persons had been killed, 350 women had been kidnapped, and 150 women had been dishonoured.(The Morning News, July, 1973) Another report suggested that only in the year 1973 incidents of 5200 dacoity, 26 bank looting, 2500 killing, 13 Police station attack by miscreants had been occurred.(Huq, 2007, p.57) Famine and emergence of underground political parties for establishing scientific socialism made this situation severe in 1974.

9. Pro-India Role of AL

Awami League government from the first day of independence followed pro-Indian role and was busy in protecting Indian business interest in Bangladesh. Some AL leaders did not like this. All opposition including NAP(M), NAP(B), JSD, CPB etc disliked this role of AL government.(Franda, 1982, p.22)

10. Growing Opposition and Special Powers Act, 1974

Deteriorating law and order, too much pro-Indian policy of AL government, falling economy, unlimited corruption in government, smuggling, precarious suffering of flood victims, spiral price of daily necessities alienated AL government from the people. Capitalizing government failure opposition forces got enormous support and observed successful hartal on August 29, 1973. It also observed other political programme against the government. Spontaneous participation of people in these programmes made the government fearful. In order to remove secular political parties from opposition politics AL government passed the Special Powers Act on February 9, 1974. It detained all the high profile opposition political leaders such as NAP (B) President Maulana Bhasani, JSD President Major Jalil, General Secretary of JSD ASM Abdur Rab, Bangla National League President Oali Ahad, Messrs Mashiur Rahman, Nirur Rahman, Al- Mahmood, Moudud Ahmed(The Morning News, December, 1974) and others on suspicion of anti-state and anti-national activities.(The Morning News, November, 1974) Government also banned the publication and circulation of opposition news papers such as the Gana Kantha, the Azad and others, and issued arrest warrant against the editors and staffs of these newspapers.(The Morning News, September, 1974)

11. Famine and Emergence of *Nouveauriche* Class

In spite of applying Special Powers Act against political opposition government did not arrest persons engaged

in corruption, smuggling, hoarding, black marketing and hiking price of daily needs. Such failure caused famine in 1973-1974.(Franda, 1982, pp.181-200) According to government 42 lacs people were being fed by the government through it's 5737 cooked food centres throughout Bangladesh.(The Morning News, November, 1974) Comrade Moni Singh, President of Bangladesh Communist party, a sister party of Awami League said present democracy presented a famine as a result of which one lakh people died of starvation.(The Morning News, November, 1974) Mr Abdul Momen, Food Minister, told the House that government was determined to do every thing to save the hungry millions of Bangladesh.(The Morning News, November, 1974) In this famine a nouveau riche class was expanding in it's size in AL leadership and government.¹

12. Emergence of Underground Parties

AL government banned Islamic political parties by first Constitutional amendment and arrested the working of constitutional opposition by Special Powers Act. This atmosphere gave birth to underground political parties. Purba Bangla Communist Party², Banglar Communist Party, Purbo Banglar Sarbahara Party, Purbo Banglar Communist Party, Purbo Banglar Sammyabadi Dal in the name of establishing scientific socialism were waging war against the government.(Jahan, 1980, p.11) Scientific socialism is in brief implementation of socialist doctrine through revolutionary means. History of mankind is the history of class struggle. According to scientific socialists such as Karl Marx, Angle, Lenin, etc the state is an instrument of exploitation. By controlling means of production and distribution the ruling elite i.e., the bourgeoisie exploits the toiling masses i.e., the proletariat. In order to get rid of this situation the proletariat are to be united under the leadership of communist party. They will conquer citadel of power through armed struggle and establish dictatorship of proletariat. The state will wither away. Ultimately a classless society will be established. Administration of person would be replaced by administration of things. Each would get according to his/her need and ability. The followers of scientific socialism don't believe in the mode of establishing socialism through constitutional means. Hence they resort to revolutionary means i.e., armed struggle. Because of suppressive and exploitative policy of the government left leaning underground political parties became active and strived to cripple the state authority by attacking police stations, local government offices and killing rich people in rural areas. In December, 1974 and January, 1975 seven police stations were attacked and looted by the members of these parties. (The Daily Ittefaq, December, 1974 and January, 1975)

13. Failure of Government and Role of Opposition

In protest of government's free style corruption and sky high price of daily goods and to resist the fascist policy towards opposition JSD observed "*Gono Gherao*"(public seize) on March 17, 1974. On this day JSD seized the Chairman of Red Cross, Chairman of the Mahalla Relief Committee, illegal occupants of car, houses, land and factories, the State Trading Corporation, fake licence holders, government import-export office, Freedom Fighters' Welfare Trust, Agricultural Development Corporation, Central Jail, the Secretariat, Planning Commission, Offices and residence of Ministers, Deputy Ministers, and Members of Parliament, Radio-Television and government owned newspapers and Offices of the Rakkhi Bahini and all government and semi-government offices.(The Daily Ittefaq, March, 1974) Police and Rakkhi Bahini took drastic action against the leaders and followers of JSD on this day.(The Daily Ittefaq, March, 1974) Constitutional political parties demanded All Party National government to overcome the national crisis- famine.(The Morning News, November, 1974) They asked the people to launch united movement in order to overcome present famine and misrule of Awami League government.(The Morning News, December, 1974) Accordingly All Party United Front was formed with Aatur Rahman Khan as it's Chairman.(The Morning News, November, 1974) The JSD asked the government to meet 16-point demand and the demands were viz, the release of all political prisoners, formation of national government, repeal of all "black laws", bringing down the prices of all essentials, fight famine on war footing with all efforts, take effective measures for flood control, and denounce close tie with India etc.(the Morning News, November, 1974)

In the meantime AL government gave South Berubari to India and India started the Farakka Barrage project harnessing the Ganges water unilaterally. It infuriated opposition further. JSD started mass movement from November 16, 1974 and it called hartal on November 26, 1974 in support of its 16-point demand.(The Morning News, November, 1974) Awami League government not only imposed ban on *hartal*, meeting, rally, rather it called for it's party men to resist the *hartal*.(The Morning News, November, 1974) Mr Aatur Rahman Khan, President of Bangladesh National League, as well as the convener of the Grand National Democratic Conference called for mass rally on January 5, 1975 in protest of Government's fascist rule.(The morning News,

¹ On November 12, 1974 Tofael Ahmed, Political Secretary to Prime Minister, said that a nouveau riche class was trading on sufferings of common people. On November 8, 1974 Sheikh Fazlul Huq Moni, President of Awami Jubo League held that a small section of Awami League leadership was responsible for the present famine and economic ills.

² Communist Party of East Bengal, Communist Party of Bengal, Proletariat Party of East Bengal,

December, 1974)

14. Loss of Popularity and Strategy of AL to Hang in Power

Accepting the contention of the opposition Mr. AHM Kamruzzaman, President of Awami League, maintained that wide ranging smuggling was the sole cause of famine.(The Morning News, November, 1974) Sheikh Fazlul Huq Moni, President of Awami Jubo League, disclosed that Sheikh Mujib might have to undertake a new programme of action next December, 1974 for total recovery from the social, political and economic ills then prevailing in the country.(The Morning News, November, 1974)

Sheikh Mujib, Prime Minister, declared that his government was fully prepared to give a “crushing blow” to the smugglers, hoarders, black marketeers, corrupt elements and miscreants who were trading on the miseries of the common people of the country.(The Morning News, December, 1974) Sheikh Fazlul Huq Moni, President of Awami Jubo League, spelled out present political system had failed, and Bangabandhu was thinking of his second phase of leadership in which the exploited would have say only.(The Morning News, November, 1974)

Comrade Moni Singh, the President of Bangladesh Communist Party, expressed that Parliamentary democracy was no longer capable of meeting the requisite of time and they should struggle for establishing democracy of the working class in the country. He also pointed out that they would support any constitutional change in that regard.(The Morning News, November, 1974)

Prime Minister Sheikh Mujib told the Bengalis living in Kuwait that bright days were ahead.(The Morning News, November, 1974) During his visit to UAE Prime Minister Sheikh Mujib expressed that sufferings of 75 million people in Bangladesh were temporary and his government would take appropriate steps to overcome this situation very soon.(The Morning News, December, 1974)

It was mentioned earlier that law and order situation in 1974 was worse than the year 1973. In November-December it deteriorated further. On the day of Eid-ul-Azha Gulam Kibria, the MP from Awami League party, along with two UP Chairmen were killed.(The Morning News, December, 1974) Consequently the Government declared emergency on 28th December, 1974 to contain the situation. Government suspended all the fundamental rights enshrined in Part III of the constitution.

Government Ministers blamed the opposition for the proclamation of emergency. Mr AHM Kamruzzaman, Awami League President, said that the emergency provisions had been invoked to curb the activities of all anti-socials and corrupt elements including smugglers, hoarders, profiteers.(The Morning News, December, 1974) In spite of government’s failure in every department and fascist policy of government against the constitutional opposition Sheikh Mujib as a leader enjoyed unprecedented popularity.(Jahan, 1980, p.115) Watching the popularity of Sheikh Mujib London based The Weekly Spectator wrote an editorial saying that Mujib alone could save Bangladesh and to do so he must act ruthlessly.(The Morning News, January, 1975)

Sheikh Mujib in a meeting held at Comilla said that Government was determined to crush the anti-social and anti-state elements who had been disturbing peace and trying to create chaos on the economic front.(The Morning News, January, 1975) On January 11, 1975 Sheikh Mujib ordered the police cadets to launch crusade against the profiteers, hoarders, smugglers and miscreants.(The Morning News, January, 1975) In spite of such big leap and tall talk of the government Ministers economic condition, and law and order did not come to normalcy.(The Bangladesh Observer, January, 1975)

Under this atmosphere Awami League Parliamentary Party and Awami League Executive Committee met at Gono Bhavan under the presidency of Sheikh Mujib on January 18, 19 and 22, 1975. In those meetings Prime Minister expressed his frustration of the present political system and also was seen disgusted for the poor outcome of government actions.(The Daily Ittefaq, January, 1975) Perceiving the intent of Bangabandhu the members present there unanimously gave him the power to write down the future of new Bangladesh.(The Daily Ittefaq, January, 1975)

Under this backdrop Prime Minister Sheikh Mujib introduced the Constitution (Fourth Amendment) Bill in the House on Saturday, January 25, 1975 in order to consolidate his power absolutely in the name of establishing democracy of the exploited. Before introducing the bill he accepted that corruption engulfed his government’s achievement, administration did not carry out government order, law and order deteriorated severely, economy was at the verge of collapse and at last he blamed the then political system for all these failure in lieu of his failure.¹ The Constitution (Fourth Amendment) Bill brought the following changes to the Constitution.

15.1 Democracy and Human Rights

In original Constitution article 11 stipulated that Bangladesh as a Republic would ensure democratic values,

¹ The speech of Bangabandhu Sheikh Mujib given in the House on January 25, 1975 before the passage of Constitution Fourth Amendment Act.

freedom, dignity of human person and election at all state affairs.(Appendix-1) Fourth amendment removed election system from this guideline.(Appendix-2) This change abolished democratic philosophy from the Constitution.

15.2 Enforcement of Fundamental Rights

In original Constitution article 44 laid down that the Supreme Court would enforce the fundamental rights enshrined in Part III of this Constitution. It also said that Parliament might set up other court or tribunal alone with the Supreme Court to quicken the enforcement of fundamental rights.(Appendix-1) Fourth amendment deserted the Supreme Court of this power and said that tribunal would be set up to enforce fundamental rights stipulated in Part III of the Constitution.(Appendix-2)

The AL government did not set up any Constitutional Court, tribunal or commission for the enforcement of fundamental rights enshrined in part III of the Constitution. As a result this change made AL's long struggle for preserving fundamental rights for all a farce.

15.3 Amendment of Part IV of the Constitution

Framers of the constitution incorporated parliamentary form of government in this part. AL government accused this system of their failure in good governance. With the object of establishing democracy of exploited people, AL government brought change in this part.

15.3.1 Change of Chapter I

The title "The President" of chapter I of part IV was replaced by "The President and Vice-President" by fourth amendment. In original Constitution chapter I contained the following provisions-(Appendix-1)

There shall be a President who will be elected by the members of Parliament. He shall act under the advice of the Prime Minister except in respect of appointment of Prime Minister. He shall be 35 years of age along with other qualifications of an MP. He shall have some prerogative power such as granting pardon. The President shall hold office for five years unless he resigns earlier or removed by impeachment. He shall not hold office for more than two terms. He can't stand for election. However if an MP is elected as President he vacates his membership in the House forthwith. He shall not be tried for his action in office. During his term of office all sorts of criminal proceeding shall remain suspended. He shall be impeached for violation of Constitution, grave misconduct, or physical or mental incapacity. In both cases a motion shall be passed in the House in this regard by simple majority. After investigation final resolution requires two thirds majority of the House in this regard. In case of vacancy due to absence or removal or illness of President Speaker shall discharge the functions of President until a new President is elected or the President resumes functions.

Fourth amendment brought overwhelming change in this Chapter. The changes were as follows:(Appendix-2)

President shall be elected by direct vote. He shall act as the head of the state. There shall be a Vice-President along with the President. Both President and Vice-President shall be 35 years of age and fulfill other qualification of an MP. The tenure of office of President shall be five years. He shall hold office until his successor arrives. Vice-President shall too hold office for five year term but his term is made dependent on the mercy of President. Both are made disqualified for any election. But if an MP becomes President or Vice President he will lose his membership in the House forthwith. No criminal proceeding shall go against them during their term in office. They shall resign earlier. President shall be removed by impeachment for (1) violation of Constitution, and grave misconduct or (2) physical incapacity. In both cases two thirds majority of the House shall be required for bringing an impeachment motion. Later on, after hearing of the tribunal or medical board constituted for this purpose a resolution shall be passed by three fourths majority of the House. In the absence of President due to ill-health or incapacity Vice-President shall carry out his duty. In the absence of President and Vice-President Speaker shall perform their functions as Acting President. Vice- President shall act according to the order of President. All executive power shall be exercised by President. President shall enjoy some prerogative power such as granting pardon, commuting punishment etc.

This provision was against the spirit of liberation war. It violated point-I of 6-point programme that spoke for sovereign Parliament. It also violated point-2 of Students 11-point programme which depicted the idea of parliamentary government. This provision made President a dictator in respect of tenure of and removal from the office.

By these provisions AL government kicked off the Westminster system of government within a period of 30 minutes for which AL as political party had struggled for 24 years.

15.3.2 Change of Chapter II

In original Constitution Chapter II of Part IV laid down that (Appendix-1)

There shall be a Cabinet headed by Prime Minister. The executive power shall be exercised by or on the

authority of the Prime Minister. The cabinet shall be collectively responsible to the Parliament. All executive actions shall be taken in the name of President. President shall appoint an MP as Prime Minister. He shall command the majority support of the Parliament. Other ministers shall be appointed by the President subject to the approval of the Prime Minister. A minister may be appointed outside the Parliament. In this case he shall be elected as a member of Parliament within a period of six months from the date of his appointment. Prime Minister shall hold office until his successor arrives. However he may lose this office if he resigns earlier or ceases to be a Member of Parliament. Where he loses majority support of the House he shall either resign or advise the President to dissolve the Parliament. Other ministers' lives depend on the survival of the Prime Minister.

Fourth amendment omitted these above provisions and a new chapter II was added under the title "The Council of Ministers". It puts down that there shall be a Council of Minister to aid and advise the President. All members shall be appointed by the President and shall hold office during the pleasure of the President. All the ministers shall be appointed from outside the Parliament.(Appendix-2)

This provision violated the spirit of liberation war. Point-1 of 6-point programme and point-2 of Students 11-point programme which demanded for establishment of parliamentary system and sovereign parliament were vitiated by this provision.

By fourth amendment Bangabandhu Sheikh Mujibur Rahman made the Council of ministers a rubber stamp in the hands of President.

15.4 Abolition of Local Government

In original Constitution chapter III of part IV laid down provisions regarding local government. The provisions were as follows-(Appendix-1)

There shall be elected local government body in local administrative unit to carry out the function of public officer, maintaining law and order and economic development. It shall have taxation power along with the power of preparing its own budget and fund.(Appendix-2)

These provisions were omitted in order to keep common people away from government activities. Not only that it might have been done to stop acquiescence of free style corruption and failure of government with common people.

15.5 Recognition of Public Servants in Active Politics

In original constitution article 66 contained provisions regarding the qualifications and disqualifications for election to parliament. Sub-clause (f) of clause (2) of article 66 laid down that a person who holds any office of profit in the service of the republic other than an office which is declared by law not to disqualify its holder is disqualified for standing in parliamentary polls.(Appendix-1)

Fourth amendment deleted this sub-clause. As a result the government officials were encouraged to take part in politics and to stand for parliamentary polls.(Appendix-2)

15.6 Vacation of Seat of Members

In original Constitution article 67 (1) (a) said that an elected member of Parliament should lose his seat if he failed to take oath before the Parliament within 90 days from the first meeting of Parliament after his election.(Appendix-1) By fourth amendment the words "before Parliament" were omitted from this clause.(Appendix-2) As a result of which power of Parliament was further shrunk.

15.7 Vacation of Seat on Resignation etc

In original Constitution article 70 said "A Member of Parliament belonging to a political party shall lose his membership if he resigns or votes against that party in the House. However such loss of membership shall not disqualify him for subsequent election.(Appendix-1) Fourth amendment omitted these provisions and said "A Member of Parliament shall lose his seat not only for resignation and voting against his party in the House but also for ignoring the direction of the party in the House such as remain absent in voting or absent from the House ignoring party order."(Appendix-2) By this change a Member of Parliament was made slave to the party which nominated him in the election.

15.8 Increasing Gap between Two Sessions of Parliament

In original Constitution second paragraph of clause (1) of article 72 laid down that intervening period between two sessions of parliament would not be more than 60 days.(Appendix-1) By second amendment it was increased to 120 from 60 days.(Ministry of Law, Justice and Parliamentary Affairs, 1973)

Fourth amendment reduced the number of Parliamentary sessions to two in one year.(Appendix-2) Consequently Parliament lost its surveillance over the executive.

15.9 Insertion of Article 73A in the Constitution after Article 73

Fourth amendment inserted a new article authorizing all the ministers including Prime Minister to take part in the parliamentary debate but it prohibited ministers who are not members of Parliament from voting in the House.(Appendix-2) Though the ministers were made responsible to the President yet to show their accountability to the House this provision was inserted in the Constitution.

15.10 Amendment of Article 74 of the Constitution

Article 74(3) of original Constitution said “where the Speaker is exercising the function of the President or is absent from his office Deputy Speaker will act as Speaker. In the absence of Deputy Speaker a member of Parliament determined by rules of procedure of Parliament shall act as Speaker.”(Appendix-1) Fourth amendment replaced the words “exercising the function of the” by “acting as” in this clause.(Appendix-2) This amendment had no legal importance but it supplied with better language in the article.

15.11 Amendment of Article 76

In original Constitution article 76(1) contained “Standing committees shall be formed at the first meeting in each session of Parliament with its members.”(Appendix-1) Fourth amendment removed the time bar and said” Parliament shall appoint standing committees among its members.”(Appendix-2) This shrunk the role of Parliament further. It is said that standing committees are the heart of parliament. If these are not formed in time then how the working of the government would be scrutinised.

15.12 Veto Power of President

In original Constitution clause (3) of article 80 said, “President shall put his signature on the bill within 15 days from its presentation before him. With the expiration of that period he shall be deemed to have put his signature on the bill. Except money he may refer other bill back to the Parliament for reconsideration.”(Appendix-1) Fourth amendment authorised President to veto the bill placed before him for assent. Where he did not use veto, the bill would come into force after the expiration of 15 days after its presentation.(Appendix-2) This enhanced the power of the President.

15.13 Charges on Consolidated Fund

In 1972 Constitution clauses (a), (b), (c) of article 88 revealed, “The Consolidated Fund shall bear the remuneration of President and expenditure of his office, remuneration of Speaker, Deputy Speaker, judges of the Supreme Court, Comptroller and Auditor-General, Election Commissioners, members of public service commission, administrative expenses of Parliament, SC, Comptroller and Auditor-General, EC and public service commission including remuneration of its staff and servants.(Appendix-1) Fourth amendment brought the remuneration of Vice-President and expenses of his office within the ambit of Consolidated Fund.(Appendix-2) Burden on the consolidated fund was increased by this insertion.

15.14 Appointment of Judges

In original Constitution clause (1) of article 95 laid down, “President shall appoint the Chief Justice. He shall appoint other judges in consultation with the Chief Justice.”(Appendix-1) Fourth amendment gave President absolute power to appoint the Chief Justice and other judges of the Supreme Court.(Appendix-2) This provision reduced the role of Supreme Court and increased the power of the political executive i.e., President in respect of recruiting judges. The result could be appointment of judges having political affiliation.

15.15 Tenure of Office of Judges

In original Constitution article 96 addressed, “the Supreme Court judges shall hold office until they attain the age of 62 years. They shall not be removed from the office other than by impeachment for misconduct and incapacity. The impeachment resolution shall be passed by two thirds majority of the House. A Judge may resign earlier by writing under his hand.”(Appendix-1) Fourth amendment stipulated, “A judge shall hold office until he attains 62-years of age. He may be removed earlier by President on the ground of misbehaviour or incapacity. He may resign earlier by writing under his hand.(Appendix-2) This provision along with the earlier one made the judges of the highest court subservient to the President owing to their job security.

15.16 Additional Supreme Court Judges

In original Constitution provision of article 98 stipulated, “The President shall in consultation with the Chief Justice appoint one or more qualified person as additional Judge of the High Court for not more than two years. He may after parley with Chief Justice require any High Court Judge to sit in the Appellate Division for temporary period. Such additional Judge shall not be disqualified for being appointed as Judge or Additional Judge of the High Court in future.”(Appendix-1)

Fourth amendment gave President free hand in appointing Additional Judge of the High Court or temporary Judge of the Appellate Division.(Appendix-2) As a result executive control was increased over judiciary through appointing its chosen persons.

15.17 Power of High Court Division

In original Constitution the High Court enjoyed absolute power in enforcing fundamental rights of the people under article 102. It described, “Every person whose fundamental rights enumerated in Part III of this Constitution has been affected or lost shall have the right to knock the door of the High Court for redress. The High Court after receiving such call, at first, directs the concerned authority or person including the government why its or his action shall not be declared null and void, or orders the suspension of his or their action. After such order it hears both sides and gives effective remedy to the concerned persons. But it shall not give any order stopping any action of the government which has been taken for greater public importance. Not only that it shall not interfere in the action of courts set up for defense services or tribunals set up under article 117 for specific purpose.”(Appendix-1)

Fourth amendment removed the power of enforcement of fundamental rights from the ambit of High Court. As regard other cases it said, “if any other remedy is not available in that case aggrieved party may come to the High Court for redress. The court then by order or direction asks any authority or person including the government why his or their action shall not be declared *ultra-vires*. After hearing both sides it gives efficacious remedy to the concerned parties. But it shall not pass any order in respect of any law relating to article 47 which gives immunity to some laws. It shall not interfere in the action of court dealing with Defense services of Bangladesh or tribunal set up under article 117 for specific purposes.”(Appendix-2)

This provision revoked the guardianship of Constitution from the High Court and reduced it to a normal adjudicating institution where fundamental rights would not be heard.

15.18 Superintendence and Control over Courts

In 1972 Constitution under article 109 the High Court had superintendence and control over all subordinate courts and tribunals.(Appendix-1) Fourth amendment withered away High Court’s superintendence and control over tribunals.(Appendix-2) This provision decreased the power and sanctity of the constitutional court.

15.19 Appointments to Subordinate Courts

Under original Constitution President appointed district judges on the recommendation of the Supreme Court. It mentioned qualifications of district judge. In case of recruitment of lower class Magistrates or judges President had to follow certain rules. He made these rules in consultation with the public service commission and the Supreme Court.(Appendix-1) Fourth amendment vested this power of appointment of district judges and other lower class judges and Magistrates with the President ignoring recommendation of the Supreme Court and consultation with the Public Service Commission.(Appendix-2) This provision made the subordinate judiciary totally loyal to the executive because of their recruitment.

15.20 Control and Discipline of Subordinate Courts

In original Constitution Supreme Court enjoyed control and discipline of subordinate judicial officers and magistrates exercising judicial power under article 116.(Appendix-1) Fourth amendment deserted the Supreme Court of this power and gave this to the President.(Appendix-2)

Although the power of the Supreme Court was snatched away but in order to make lower judiciary properly workable a new article 116A was inserted in the Constitution directing the judicial officers and magistrates to carry out their functions independently.(Appendix-2) Although new provision was inserted to ensure independence of the lower judiciary but it withered their independence away by handing over their control such as promotion, posting, grant of leave and discipline to the executive.

15.21 Administrative Tribunal

In original constitution article 102(3) stipulated that High Court should not interfere in any laws relating to compulsory acquisition, nationalization or requisition of any private or public property, or any business carried out by government or government owned corporation, or statutory public authority, etc. It also laid down the High Court should not question any law enlisted in first schedule of the Constitution.(Appendix-1) For adjudicating these cases article 117 contained provisions regarding the establishment of tribunals. In original constitution article 117(1)(c) contained that government should set up tribunals for the subject matters stipulated in article 102(3).(Appendix-1) But by fourth amendment the provisions of article 102(3) were put down in article 102(2).(Appendix-2) Hence in article 117(1)(c) article 102(2) was substituted for 102(3).(Appendix-2) Such change was nominal.

15.22 National Party

Original Constitution had no such provision. It was against the spirit of liberation war. Violating this spirit by fourth amendment article 117A was incorporated in the Constitution in order to set up one party autocratic rule. This article said, "President shall form a National party. With the formation of this party all other political parties will disappear from the country. Each Member of Parliament shall join the party within a stipulated time. In case of failure his seat shall become vacant. No one shall form any political party or take part in politics except the national party. Government officers shall join the party. Without the approval of national party none shall stand for presidential or parliamentary polls."(Appendix-2)

Under this provision pioneer of democracy in Bangladesh Sheikh Mujibur Rahman formed national party BAKSAL on February 25, 1975 with AL leadership and he was made party president. Accordingly Bangabandhu turned multi-party political system into a one party autocratic polity. Political rights of the people were snatched away. Only AL members got the right to enjoy political rights. There remained no distinction between administration and AL. Bangabandhu as the president of BAKSAL became sovereign under this provision. In a single word democratic norms and values was buried by this provisions.

15.23 Functions of Election Commission

In original constitution under article 119 EC was mainly responsible for arranging and holding Parliamentary election. It did not worry about Presidential polls because president was a titular head.(Appendix-1) Fourth amendment introduced presidential system. As a result EC was asked to give emphasis on arranging and holding Presidential polls as well as parliamentary election.(Appendix-2) Although EC was given extra power and responsibility for holding Presidential polls but PM Sheikh Mujib became President on January 25, 1975 immediately with the passage of fourth amendment without facing direct election.

15.24 Qualifications for Registration as Voter

In original Constitution under article 122 voter list was prepared only for holding parliamentary polls.(Appendix-1) Fourth amendment introduced presidential system. It authorized EC to prepare voter enrollment for presidential election also.(Appendix-2) EC made voter list for presidential elections in 1977, 1981 and 1986. After twelfth amendment which reintroduced parliamentary system, need of separate voter enrollment for direct presidential poll came to an end.(Ministry of Law, Justice and Parliamentary Affairs, 1991)

15.25 Time for Holding Election

In original constitution under article 123 presidential election was to be held within 90 days before the expiration of the term. Where the tenure expired before the dissolution of parliament election was to be held within 30 days from the first meeting of new parliament. Where vacancy occurred due to death of the president the poll was to be held within 90 days after the vacancy. In case of parliamentary election it was to be held within 90 days before the dissolution of parliament. Where dissolution took place otherwise than expiration of term it was to be held within 90 days from such dissolution.(Appendix-1) Fourth amendment stipulated that both presidential and parliamentary polls would be held within 180 days after such vacancy or dissolution.(Appendix-2) This change ignored the responsibility of parliament and its accountability because it allowed a seat vacant for 6 months.

15.26 Legislative Power of Parliament in respect of Election, etc

In original Constitution under article 124 Parliament had power to make law for all matters relating to holding parliamentary polls.(Appendix-1) Fourth amendment gave parliament power to make law not only for arranging and holding parliamentary polls but also for presidential election.(Appendix-2)

15.27 Amendment of Emergency Provision

By second amendment emergency provision was inserted in the constitution. According to that provision president had to take prior approval of the Prime Minister for declaring emergency.(Ministry of Law, Justice and Parliamentary Affairs, 1973) Fourth amendment omitted this provision and gave president free hand to promulgate emergency.(Appendix-2) The reason was that fourth amendment introduced single party authoritarian presidential system in place of parliamentary form.

15.28 Remuneration etc of Certain Officers

In 1972 Constitution under article 147 parliament by its Act determined the remuneration, salary, office of profit and other allowances of (a) President;(b) Prime Minister,(c) Speaker or Deputy Speaker, (d) Minister, Minister of State or Deputy Speaker, (e) Judge of the Supreme Court, (f) Comptroller and Auditor-General, (g) Election Commission, (h) Member of the public service commission.(Appendix-1) Fourth amendment gave the parliament to make law to determine the salary, remuneration, office of profit etc for the newly created post of Vice-President.(Appendix-2)

15.29 Oath of Office

In original constitution under article 148 specified persons had to administer oath to specified person. If that authorized person failed to carry out his duty for unavoidable reason such absence, illness, etc in that case he could transfer this duty to other.(Appendix-1) Fourth amendment gave the oath administering person power to transfer their duty to others even in normal situation.(Appendix-2)

15.30 Omission of Second Schedule

In original Constitution under second schedule EC enjoyed every power relating to presidential election. CEC himself was to act as a returning officer in this election. He determined when, how and in which manner this election would be held. He with the approval of the President made rules for arranging presidential polls.(Appendix-1) Fourth amendment introduced direct election for the President. For that, provision of second schedule became inoperative and it was omitted.(Appendix-2)

15.31 Change in Third Schedule regarding Administration of Oath

In 1972 Constitution Chief Justice administered oath to President.(Appendix-1) Fourth amendment gave Speaker this power in place of Chief Justice.(Appendix-2) Chief Justice administered oath to Speaker and Deputy Speaker.(Appendix-1) Under fourth amendment President was given oath administering power in place of Chief Justice.(Appendix-2) In original Constitution MPs were to take oath at a meeting of Parliament.(Appendix-1) Fourth amendment stipulated that for administering oath to MP parliamentary meeting was not required.(Appendix-2) This alteration made Prime Minister Sheikh Mujib President in the House without any delay on January 25, 1975. If President were to take oath from Chief Justice, PM Sheikh Mujib could have not been the President in the House in the night of passage of fourth amendment. He had to wait for a while for the preparation of Chief Justice.

15.32 Amendment of Fourth Schedule

In original Constitution paragraph 12 of fourth schedule allowed government arrangement for local government units to continue until these units were filled up by elected representatives.(Appendix-1) Fourth amendment abolished the system of elected local government bodies and thus paragraph 12 of fourth schedule was omitted.(Appendix-2) As a result democratic culture (election) disappeared from grass-root level.

15.33 Extension of the Term of the First Parliament

Fourth amendment extended the term of first Parliament to seven years from five years.(Appendix-2) This provision violated clause (3) of article 72 of the Constitution which said life of Parliament might be extended only in time of war for one at a time.(Appendix-1) Bangladesh was not engaged in any war with any foreign country at that time. AL government could have extended the tenure of parliament for one year. But it extended its term for two years at a time. This provision illegally deserted the people of power in choosing their representatives through direct election for governance for two years. Thus it violated spirit of liberation war.

15.34 Special Provisions relating to President

Fourth amendment said immediately after the passage of this Act the office of President Ahshanillah would be vacant and PM Sheikh Mujib would become President.(Appendix-2) This process of departure of President Ahshanulla was not right. This violated provisions regarding both resignation and impeachment of President under original and amended constitution.(Appendixes-1 and 2) PM Sheikh Mujib was made President. It violated the provision of original constitution regarding the election of President by indirect vote of parliament. It also violated amended provision of article 48 which made direct election for President.(Appendixes-1 and 2)

By this Bangabandhu himself not only vitiated all norms and values of democratic constitution but also demolished the spirit of liberation war. In spite of denying the spirit of liberation war, and destroying all norms and values of democracy none challenged the legality of fourth amendment in the court.

16. Consequence

On January 25, 1975 the political authority under the presidency of Bangabandhu Sheikh Mujib sealed all roads to democracy and threw the freedom loving people in despair in the name of Second Revolution by fourth amendment to the Constitution of the People's Republic of Bangladesh. This amendment presented Bangladesh with a single-party authoritarian presidential system. Thus the democracy that originated in the nascent state of Bangladesh was buried. This amendment changed whole structure of the constitution without seeking a fresh mandate from the people. The fourth amendment was illegal as it questioned the legitimacy of the regime.(Jahan, 1980, p.140) This amendment extended the life of the *Jatiya Sangsad* elected in March 7, 1973 to 1980 i.e., the tenure of first elected parliament was made seven years. Sheikh Mujib was made President without people's verdict. Fundamental rights of the people were snatched away. Judiciary was made puppet in the hands of the

President. All political parties were banned except the ruling Awami League. All the top level opposition political leaders were arrested and detained under the Special Powers Act, 1974. All daily news papers, mouthpiece of the people, were banned except four government owned papers. Thus the whole nation came under a constitutional despot.(Franda, 1982, pp.53-58) Against this backdrop a section of mid-level army officers who had fought the occupation army along with other freedom fighters and oriented to the spirit of liberation war staged a coup on August 15, 1975 for restoration of democracy it was claimed.

17. Conclusion

Awami League as a political party was voted to power in 1970 election for the establishment of economically solvent exploitation free democratic society based on Islamic ideology. But the stubborn attitude of the regime for not transferring power to victorious AL led to the formation of Bangladesh state under the leadership of AL. the dream for implanting desired system began fading immediately with the start of AL rule. Again AL got overwhelming election victory in 1973 on the basis of materializing spirit of liberation war. AL government for her relentless corruption, lawlessness, fascist role, famine, lost her relation with the common masses. Exploiting the failure of AL government name based political parties abled to earn the confidence of the people. Government constitutionally barred the emergence of a strong political force against the government by first and second constitutional amendments. In spite of that government failed to arrest her growing gap with the people because people's hopes and aspirations were disappeared from the working of the government. Government with the aim of removing all probable existing political groups from her path to smooth power exercise passed the fourth amendment without prescribing any medicine to her failure in materializing the spirit of liberation war i.e., economically solvent, exploitation free democratic polity. By this amendment Sheikh Mujib basically buried the spirit of liberation war and betrayed with the blood of Martyr of 1971 war.

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Appendixes:

1. List of selected provisions and articles of 1972 Constitution
2. Provisions of Fourth Constitutional Amendment
3. Student's 11-point Programme of 1969 Mass-upsurge
4. 6-point Programme of 1966
5. Legal Framework Order of 1970

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