LECTURE 11 & 12

CONSTITUTIONAL AMENDMENTS AND POLITICAL DEVELOPMENT 1971-1990

General Elections of 1973

1. First General Elections were held in Bangladesh on 7 March 1973. Awami League had a stunning victory winning 293 of the 300 seats.

First Amendment

1. “The Constitution (First Amendment) Act 1973” was passed on 15 July 1973 by the new parliament. It amended Article 47 by inserting an additional clause which allowed prosecution and punishment of any person accused of 'genocide, crimes against humanity or war crimes and other crimes under international law'.

2. After Article 47 it inserted a new Article 47A specifying inapplicability of certain fundamental rights in those cases.

Second Amendment

3. The Constitution (Second Amendment) Act 1973 was passed on 22 September 1973. This Act resulted in:

a. Amendment of Articles 26, 63 72 (Clause 4a omitted) and 142 of the constitution. Inclusion emergency provision suspension of fundamental rights and preventive detention.

b. A new part i.e., IXA (Article 141A) inserted conferring authority on Parliament and the administration to deal with state of emergency and providing for postponement of some fundamental privileges during the episode of emergency.

Enactment of Special Powers Act 1974

4. Special Powers Act 1974 was promulgated on 09 February 1974. It is an Act to provide for special measures for the prevention of certain prejudicial activities, for more speedy trial and effective punishment of certain grave offences and for matters connected therewith.

Third Amendment

4. The Constitution (Third Amendment) Act 1974 was enacted on 28 November 1974 by bringing in changes in Article 2 of the constitution with a view to giving effect to an agreement between Bangladesh and India in respect of exchange of certain enclaves and fixation of boundary lines between India and Bangladesh.

Fourth Amendment

5. The Constitution (Fourth Amendment) Act 1975 was passed on 25 January 1975. Major changes were brought into the constitution by this amendment. Mentionable changes were:

a. The presidential form of government was introduced in place of the parliamentary system of government.

b. Made special provisions for the office of the president and its incumbent.

c. A one-party system in place of a multi-party system was introduced. It provided for a National Party abolishing all political parties.

d. The powers of the Jatiya Sangsad were curtailed.

e. The Judiciary lost much of its powers; the Supreme Court was deprived of its jurisdiction over the protection and enforcement of fundamental rights.

f. Altered the Third and Fourth Schedule.

g. Extended the term of the first Jatiya Sangsad

6. Changes were brought to following Parts/Articles:

a. Articles amended were: 11 (democracy and human rights), 66 (qualification and disqualification for election to Parliament), 67 (Vacation of seats for members), 72 (sessions of parliament), 73 (Rights of Ministers as respects parliament), 76 (Standing committees of parliament), 80 (Legislative procedure), 88 (Charges on consolidated fund), 95 (appointment of judges), 98 (Additional Supreme Court Judges), 109 (Superintendence and control over courts), 116 (independence of judicial officers), 117 (Administrative

tribunals), 119 (functions of election commission), 122 (qualification of voter), 123 (time for holding elections), 141A (Proclamation of emergency), 147 (remuneration) and 148 (oaths of office) of the constitution;

b. Articles 44, 70, 102, 115 and 124 of the constitution were substituted;

c. Amended part III (fundamental rights) of the constitution extensively.

g. Inserted a new part, i.e., part VIA in the constitution (National Party)

h. Inserted articles 73A and 116A in the constitution.

Tragic 15 August and the Aftermath

1. A tragic incident in world History and the most tragic incident in the history of Bangladesh took place on 15 August 1975. Bangabandhu Sheikh Mujibur Rahman, the Architect of Independent Bangladesh and the then President of Bangladesh along with most of his family members were brutally killed during the early hours of 15 August 1975 by a group of disgruntled Army personnel. The then Minister of Commerce Khondaker Mostaq Ahmad immediately took control of the government and proclaimed himself president and imposed Martial Law. One party system was also abolished reintroducing multi-party system.

2. A series of coup and counter coup took place between 03 November and 07 November 1975. Four national leaders Syed Nazrul Islam, Tajuddin Ahmad, Mansur Ali and A.H.M. Qamruzzaman were killed in the jail. A coup d'état launched by left-wing army personnel like Colonel Abu Taher (retd) in collaboration with left-wing politicians from Jatiya Samajtantrik Dal freed Major General Ziaur Rahman from house arrest and eventually created the opportunity for him to become the President. Ziaur Rahman as president and Chief Martial law Administrator issued proclamation order no. 1 of 1977 adding the expression “Bismillah-hir-Rahman-Ar-Rahim; before the preamble.

Emergence of Bangladesh Nationalist Party

3. Ziaur Rahman won president election held on 03 June 1978 defeating M. A. G. Osmani. After the Presidential election of 1978 the Bangladesh Nationalist Party (BNP) was established on 1 September with Ziaur Rahman as the chief convener, Dr. A. Q. M. Badruddoza Chowdhury was appointed as the Secretary General.

Parliamentary Elections of 1979

4. Second Parliamentary elections were held on 18 February 1979. The result was a victory for the Bangladesh Nationalist Party, which won 207 of the 300 seats.

Fifth Amendment

5. This Amendment Act was passed by the Jatiya Sangsad on 6 April 1979. This Act amended the Fourth Schedule to the constitution by adding a new paragraph 18, which provided that all amendments, additions, modifications, substitutions and omissions made in the constitutional issues during the period between 15 August 1975 and 9 April 1979 (both days inclusive) by any Proclamation or Proclamation Order of the Martial Law Authorities had been validly made and would not be called in question in or before any court or tribunal or authority on any ground whatsoever.

Sixth Amendment Act

6. The Sixth Amendment Act was enacted by the Jatiya Sangsad with a view to amending Articles 51 and 66 which made way for the Vice President to participate in Presidential Election.

Assassination of President Zia

7. In May 1981, Zia was assassinated in Chittagong by dissident elements of the military. In accordance with the constitution, Vice President Justice Abdus Sattar was sworn in as acting president. He immediately set out to continue Zia's policies and called for fresh elections. Acting President Satter won the Presidential elections of 15 November 1981 as BNP's candidate.

Ershad Regime

8. Army Chief Lieutenant General Hussain Mohammed Ershad assumed power in a full-fledged but bloodless coup on 24 March 1982. He removed the country's democratically elected president and suspended the constitution and declared martial law.

9. Ershad established Jatiya Party on 01 January 1986. On 7 May 1986 elections, the Jatiya Party won 153 seats in the national elections. In the presidential election of 15 October 1986, Ershad was elected President of Bangladesh.

10. **Seventh Amendment to the Constitution**. This Act was passed on 11 November 1986. It amended Article 96 of the constitution; it also amended the Fourth Schedule to the constitution by inserting a new paragraph 19 thereto, providing among others that all proclamations, proclamation orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders, Martial Law Instructions, ordinances and other laws made during the period between 24 March 1982 and 11 November 1986 (both days inclusive) had been validly made, and would not be called in question in or before any court or tribunal or authority on any ground whatsoever.

11. **Eighth Amendment Act**. This Amendment Act was passed on 7 June 1988. It amended Articles 2, 3, 5, 30 and 100 of the constitution. Amendments were:

a. Declared Islam as the state religion

b. Decentralised the judiciary by setting up six permanent benches of the High Court Division outside Dhaka by amending Article 100.

c. Changed the words 'Bengali' into 'Bangla' and 'Dacca' into 'Dhaka' in Article 5 of the constitution.

d. Amended Article 30 of the constitution by prohibiting acceptance of any title, honours, award or decoration from any foreign state by any citizen of Bangladesh without the prior approval of the President.

It may be noted here that the Supreme Court subsequently declared the amendment of Article 100 unconstitutional since it had altered the basic structure of the Constitution.

12. **Ninth Amendment**. The Constitution (Ninth Amendment) Act 1989 was passed in July 1989 and provided for direct election of the president and the Vice President simultaneously.

13. **Tenth Amendment**. The Tenth Amendment Act was enacted in June 1990. It amended Article 65 providing for reservation of thirty seats for the next 10 years in the Jatiya Sangsad exclusively for women members to be elected by the members of the Sangsad.

Fall of Ershad

11. Protests for democracy gained momentum in 1987. Consequently, Ershad dissolved the Jatiya Sangsad on 6 December 1987. Elections for the fourth Jatiya Sangsad held on 3 March 1988, the Jatiya Party secured 251 seats, while other major political parties, including the BNP and the Awami League, boycotted the election. Ershad resigned in December 1990 in the face of rising protests. Ershad handed over power to Justice Shahabuddin Ahmed, the then Chief Justice on 6 December 1991.

Negative Impacts of Military Intervention in Politics

14. Intervention of military in politics had following impacts:

a. **Image in the International Community**. International community views military rule negatively. Consequently, Bangladesh had to bear the brunt of an image crisis during the military rule.

b. **Violation of Human rights.** During martial law human freedom and liberties were comparatively restricted. It hampered development of the political process smoothly. Since military administrators deal with civil affairs in military style, sometimes it becomes counterproductive.

c. **Diversion of Military from Defence**. Involvement of military in the civil affairs, divert their attention from their core responsibility i.e., preparing them for war.

d. **Disturbance in Civil Services**. When military intervenes in politics a cold war between civil and military bureaucracy starts. This cold war proves fatal for national development.