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Politics behind the Passage of Fourteenth Amendment to Bangladesh Constitution: A Politico Legal Analysis

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Abstract- BNP led four-party alliance came into power with a landslide victory in October, 2001 parliamentary polls. This four-party alliance government became unpopular within a short period owing to her misdeeds, corruption, terrorism and Islamic fundamentalism etc. Under such condition government as of her electoral pledge brought changes in the constitution but sudden insertion of a clause regarding increase of retiring age of judges maligned her willingness regarding holding free and fair election. This change opened the path for opposition for creating strong movement against the government which led to the formation of 1/11 government in Bangladesh. This paper is intended to portray the socio-economic and political atmosphere which encouraged the government to make such amendment and at the same time which action of the government stimulated the opposition to create suffocating environment that paved the way for military takeover in January, 2007.

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I. Introduction

Inbuilt character of power is to stay in power and apply all sorts of mechanism to prolong power. In democracy fate of the government lies with the people i.e., fate is determined in periodically held election in which people express their decision in free, fair and peaceful atmosphere. In Bangladesh the land of hotchpotch democracy governments-civilian and military, are seen to employ different tactics to avoid reflection of just opinion of the people in free and fair election. Bangladesh Nationalist Party led four-party alliance government came into power with an overwhelming majority in a free, fair, neutral and nationally and internationally recognized election held under the auspices of caretaker government headed by Justice Latifur Rahman in 2001. Within a short span of time government lost support and started manipulating the next parliamentary polls scheduled in December 2006- January, 2007 in her favour. Under such environment government brought constitutional fourteenth amendment bill in the house with object of materializing the demand of women groups with respect women reserve seat and some trifling issues unconnected with general importance. Immediately before the passage of the bill government inserted couple of new clauses in the said bill one of which, it is said, was inserted just to give constitutional sanction of government's on going election manipulation plan. However, government had justification for such incorporation. But opposition and the people were unhappy with the plea. This article is intended to portray the socio-economic and political environment prevalent before and at the time of making amendment, and at the same time to unearth the moto of sudden inclusion a controversial clause in the said amendment.

II. Fourteenth Amendment

Under thirteenth amendment non-party caretaker government was formed to hold seventh *Jatiya Sangsad* polls. In the election AL won and formed government. During AL reign from June 13, 1996 to July 13, 2001 no amendment was brought in the constitution. But by legislative interpretation change was made in paragraph 3A of fourth schedule of the constitution and the Indemnity (Repeal) Act, 1996 was passed for the trial of the leaders of August coup 1975. In October 1, 2001 eighth parliamentary election BNP led four-party alliance won and formed government with Khaleda Zia as Prime Minister. This government brought fourteenth amendment to the constitution to consolidate its power.

a) Law and order

Immediately after victory in October 1, 2001 polls, new breed of terrorists under the banner of JCD in Dhaka University, Rajshasi University, Chittagong University and other educational institutions and their adjacent areas became so desparate for cash money and revenge attack that law and order started deteriorating in lieu of improving it. Not only that different groups of the ruling party engaged in scuffling over due and undue privileges in these institutions.[1] Home Minister Altaf Hossain on October 14, 2001 asked the law enforcing agencies to act against trouble makers and criminals without fear and favour.[2]

On December 5, 2001 alarming news published in daily newspapers spoke that some illegal armed cadres took control of garment factories and dairy firms

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[1] *The Bangladesh Observer*, October 14, 2001
[2] *Ibid*, October 15, 2001

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in Narayanganj evicting the owners. It was claimed that these terrorists belonged to BNP. While such incident occurred, PM asked the police to ensure security in markets, terminals and highways.[3] Watching the inconsistency between government's speech and reality regarding punishment of wrong-doers common people started taking law into their own hands for relieving their own grievances against the law enforcing agencies. As a result 21 miscreants (snatchers or mastans) were killed by mob in brought daylight in the presence of police within a period of one week starting from December 4 to 10, 2001.[4]

Terrorist activities had been carrying on in full swing inspite of change of government. Only difference lied with the fact that during AL rule Awami cadres directed the robbery, snatching, trespass, treat and other terrorist deeds now BNP cadres did the same thing. With the arrest of Nasiruddin Ahmed Pintu, BNP law maker for terrorism on December 26, 2001 it became clear that top level BNP leadership had connection with terrorism.[5] Law and order situation became so poor that only during Eid holidays in December 2001, 34 persons were killed.[6]

Observing the lawlessness atmosphere in the country visiting Secretary General of Amnesty International Irene Khan expressed her deep concern over massive human rights violation in Bangladesh.[7] She was exchanging views with Home Minister Altaf Hossain. In another meeting with Attorney General she sought cooperation from top law office in checking such human rights violation.[8] The US State Department criticized government for failure in improving law and order, human rights violation and poor economic reform.[9]

The government in lieu of accepting its futility blamed opposition for deteriorating law and order in the country. In order to make the allegation real AL Chairperson's APS was arrested on February 28, 2002 and was given 10-day remand on charge of patronizing and harbouring terrorists.[10] AL leader Mohammad Nasim was also arrested on sedition charge and put into jail on March 20, 2002.[11] But government's blame game foiled when AL Chairperson Sheikh Hasina's car was attacked and damaged by terrorist attack on her way to Naogaon on March 4, 2002.[12]

Being frustrated of falling law and order on June 22, 2002 Finance Minister Saifur Rahman said that protracted miserable law and order was hindering economic uplift and poverty alleviation programme of the government.[13] On June 23, 2003 State Minister for Home Affairs Mr. Lutfuzzaman Babar filed a general diary with Ramna Thana seeking police protection for his life.[14] On July 3, 2002 Canadian High Commissioner David Preston and British High Commissioner David Carter urged the government to improve law and order, ensure security and make parliament effective for economic interest and image of Bangladesh.[15]

All of a sudden according to the information of two captive illegal armed dealers on August 12, 2002 police arrested Mofazzal Hossain Chowdhury Maya, Obidul Kader, Kamal Ahmed Majumder, Shafi Ahmed, Ashim Kumar Ukil on charge of sophisticate illegal fire arms deal.[16] All these persons belonged to AL. Perhaps for this reason common people accused AL of state terrorism it was argued.

Watching the failure of her government in maintaining law and order PM Khaleda Zia on April 3, 2002 told the House that Army would be brought in to gear up operation for recovering illegal arms and improving law and order situation.[17] In the meeting of International Development Partners at Bangladesh Development Forum in Dhaka on May 17-18, 2003 which was held for providing aid to Bangladesh for 2003-2004 financial years, the donors expressed their concern over the poor state of governance and law and order situation in the country.[18]

b) Corruption

While corruption charges were being lodged against the members of former AL regime Danish Under Secretary Peter Hansen brought corruption allegation of demanding bribe against Port and Shipping Corporation Minister Col (Retd) Akbar Hossain.[19] Transparancy International Bangladesh ranked Bangladesh top in corruption second time on August 28, 2002.[20]

Referring to the corruption title of Bangladesh World Bank Country Director Fedrich T Temple told a News Network workshop in Dhaka on January 12, 2003 that an independent Anti-Corruption Commission was a must for dealing with institutional corruption. An exceptionally high level of pervasive and endemic corruption ate up national wealth and frustrated Bangladesh venture for sustained economic growth to help people out of poverty. Speakers of the seminar all agreed that corruption existed in high level government officials.[21]

[3] *Ibid*, December 6, 2001
[4] *Ibid*, December 11, 2001
[5] *Ibid*, December 27, 2001
[6] *Ibid*, December 20, 2001
[7] *Ibid*, December 31, 2001
[8] *Ibid*
[9] *The Daily Star*, March 6, 2002
[10] *Ibid*, March 1, 2002
[11] *Ibid*, March 21, 2002
[12] *Ibid*, March 5, 2002
[13] *Ibid*, June 23, 2002
[14] *The New Nation*, June 24, 2002
[15] *Ibid*, July 4, 2002
[16] *Ibid*, August 13, 2002
[17] See the parliamentary debate of April 3, 2002 published in *the Bangladesh Observer* on April 4, 2002
[18] *Ibid*, May 19, 2003
[19] *Ibid*, April 29, 2002
[20] See the TIB report published in *the Bangladesh Observer* on August 29, 2002
[21] *Ibid*, January 13, 2003

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Not only that inefficiency and corruption in administration got evolving with dominant force. On May 18, 2003 World Bank Country Representative Fedrick T Temple recognized poor performance in governance-particularly in public utility sector as the main hurdle on the way of achieving development.[22] World Bank Vice President of South Asia Region Mieko Nishimizu told the journalists that corruption issue was discussed openly in the meeting of International Development Partners at Bangladesh Development Forum in Dhaka. She observed that she would not be happy until corruption was addressed properly.[23] In the meantime on May 29, 2003 Amnesty International published its 2003 human rights report. The report revealed that human rights violation had increased very sharply in Bangladesh.[24]

Corruption was so deep rooted in government that Mahmudul Islam, a smuggler, on August 8, 2003 threatened customs officials not to seize nor arrest them with their smuggled goods.[25] Government did not say anything nor take any step against the smugglers. On August 30, 2003 Dr. Moinul Islam, a leading economist, in a meeting held at Chittagong said that 102 lawmakers of the eighth parliament had link with smuggling. Political parties were responsible for criminalization of politics. The smugglers and criminals jeopardized law and order situation. They hindered good governance. The meeting was attended by Commerce Minister Amir Khasru Mahmud Chowdhuary, Major General (Retd) Syed Mohammad Ibrahim, former GOC of Chittagong MajorGeneral (Retd) Azizur Rahman, former Additional IGP Nurul Alam, Anis Alamgir, President Chittagong Journalist Forum-Dhaka, and others.[26]

c) Appointment of Judges of the High Court

In order to ensure reelection of four-party alliance partisan caretaker government was a must. They expected a Chief Adviser who would act for BNP like Chief Justice Habibur Rahman who helped AL victory in seventh parliamentary election. And to have a partisan Chief Adviser Justices of the Supreme Court must have to be loyal to BNP. In order to materialize these dream BNP government appointed 9 Additional Judges in the High Court Division on May 28, 2002. Another 10 Additional Judges on April 27, 2003. But it did not confirm 6 Additional Judges appointed during AL government. On June 22, 2003 government appointed Justice K.M. Hasan as Chief Justice of the Supreme Court. He was selected superseding senior most Judge of the Appellate Division. He took oath as Chief Justice on June 23, 2003.[27] This appointment antagonized opposition lawyers further. Barrister Rokanuddin Mahmud, President of Supreme Court Bar Association, denounced this appointment. He termed the appointment of K.M. Hasan as violation of long standing tradition and convention.[28] The executive committee of the Supreme Court in a resolution said the appointment of Justice K.M. Hasan was unprecedented in the annals of Bangladesh Judiciary.[29] Former Law Minister Abdul Matin Khashru said, "the appointment of K.M.Hasan as Chief Justice is purely politically motivated. BNP wants the next caretaker government to be headed by its chosen man."[30] Referring the news published in different newspapers that Justice K.M. Hasan was an adviser of BNP government in foreign affairs during the reign of late President Ziaur Rahman in 1977-1978, Barrister Rokanuddin Mahmud, President of Supreme Court Bar Association, said this appointment was made to fulfill a particular political party's desire which Bar Council did not believe.[31] Before chilling this issue government appointed Justice M.M. Ruhul Amin to the Appellate Division on July 13, 2003 superseding Justice Syed Amirul Islam, senior most Judge of the High Court Division.[32] Again on January 6, 2004 Justice M.A. Aziz was appointed as Appellate Division Justice superseding Mr. Syed Amirul Islam senior most judge of the High Court Division.[33]

In the meantime government said that it might increase the retirement age of the Chief Justice to 67 from 65. Accordingly government sources revealed that former Chief Justice not mentioning the name had made a recommendation to the Prime Minister Khaleda Zia for the extension of retirement age of the judges of the Supreme Court by amending the constitution.[34] Here it is worthy to mention that Chief Justice K.M. Hasan was going to end his job on January 27, 2004.[35] On January 11, 2004 Finance Minister Saifur Rahman while exchanging views with reporters after Cabinet meeting said government might raise the retirement age of the public servants to avoid shortage of experienced officials.[36]

On the other hand perhaps as a part of long term conspiracy, government appointed Justice Syed J.R Mudassir as Chief Justice of the Supreme Court on January 26, 2004.[37] He was picked up knocking down two senior Justices of the Appellate Division.[38] With regard to this appointment Supreme Court Bar Association President Barrister Rokanuddin Mahmud

[22] *Ibid*, May 19, 2003
[23] *Ibid*
[24] *Ibid*, May 30, 2003
[25] *Ibid*, August 9, 2003
[26] *The Bangladesh Observe,* August 31, 2003
[27] *Ibid*, June 24, 2003
[28] *Ibid*, June 23, 2003.
[29] *Ibid*
[30] *Ibid*
[31] *Ibid*, June 24, 2003
[32] *Ibid*, July 14, 2003
[33] *Ibid*, January 7, 2004
[34] *Ibid*, January 8, 2004
[35] *Ibid* , January 7, 2004
[36] *Ibid*, January 12, 2004
[37] *Ibid*, January 27, 2004
[38] *Ibid*, January 28, 2004

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said, "The Supreme Court has been turned into a political chessboard which government wants to use at will."[39]

With regard to the extension of the retiring age of the judges of the Supreme Court, Law Minister Moudud Ahmed said three out of seven judges of the Appellate Division would go on retirement by 2005, while another one would be retired by 2007. That means four out of seven judges of the Appellate Division would go into retirement within a period of three and a half years. In High Court Division another 21 judges would retire by 2005 and 2006. He said so many retirements would create vacuum in the court. In order to save the highest judiciary from this vacuum and to keep the ongoing trial tempo there was no alternative but to increase the age of the judges.[40]

d) Election Commission and Government

Conflict started to reveal between government and EC over the declaration of election schedule of Union Parishad polls. EC announced that UP polls would be held from January 4 to February 27, 2003. Government insisted on deferring the polls. On November 24, 2002 CEC M.A Sayeed strongly criticised government decision. However in order to minimize difference EC shifted UP polls schedule to January 25, 2002.[41]

Difference between government and CEC became deep when CEC M.A. Sayeed on January 1, 2003 announced that during UP polls army would be deployed to arrest law and order for making polls free and fair.[42] But on January 8, 2003 Mr. Harish Chowdhury Political Secretary to PM Khaleda Zia said, "Non-deployment of army for policing forthcoming UP election does not mean violation of the constitution."[43] On January 9, 2003 Communication Minister Barrister Nazmul Huda denounced army involvement in UP election. He rebutted contention of the CEC that government would violate constitution if it does not permit army deployment for policing UP polls.[44] On January 11, 2003 CEC M.A. Sayeed said EC would send letter demanding army deployment in UP polls to the government. He said government should give priority to the opinion of the EC for holding election free and fair and it is constitutional.[45] Defying EC demand UP polls began from January 25, 2003 in wide spread rigging and violence. But on February 4, 2003 Home Secretary Omar Farooq in a press briefing said UP elections were being held in a free, fair and neutral manner in comparatively congenial and non-violent atmosphere.[46] On the other hand refuting the government's claim CEC M.A. Sayeed on March 10, 2003 said UP polls was marked with wide spread rigging and violence which claimed more than 50 lives and injured several thousand. While the newspapers published news of wide spread rigging and violence in UP polls EC press release expressed that vote was held free and fair in peaceful atmosphere without the knowledge of CEC. CEC M.A Sayeed again remarked that some Election Commission officials were playing in the hands of government.[47] On March 16, 2003 UP polls ended with the dissatisfaction of the CEC M.A. Sayeed.[48] However in Barisal and Sylhet City Corporation polls government deployed army at the request of EC.[49]

In Netrokona-3 by-election on August 22, 2003 BNP candidate became victorious. CEC M.A. Sayeed expressed his satisfaction on the process of polls. EC said 63 % vote were cast in the polls.[50] On the other hand Odhikar, Association of Human Rights Activist said not more than 50% vote were cast. AL President on August 23, 2003 accused BNP of vote rigging. BNP Secretary General Abdul Mannan Bhuiyan said election was free and fair.[51]

Due to the presence of CEC M.A. Sayeed government had to face criticism and fall in awkward situation. Opposition appreciated CEC M.A. Sayeed's role for holding free and fair polls. Government expected his removal. With a view to accomplish that object government started to play dirty game with the CEC. Though trial started from early 2003, on the question of deployment of army in UP polls, its climax reached with the declaration of schedule for by-election to Munshigang and Dhaka-10. It was said BNP MP Major (Retd) M.A. Mannan and Mahi B. Chowdhury resigned from parliament on March 10, 2004 and formed Bikalpa Dhara new political party with A.Q. M Badruddoza as president. Consequently EC had to arrange by-election to those seats. At first new party was denied of their desired party symbol for election by the EC for unknown reason. Later on at the interference of High Court they were given their party as well as polls symbol "*Kula*". Government said they had nothing to do with the business of the EC. Of the two by-polls Dhaka - 10 by-polls was very significant for the government. Government had a chance to measure its popularity through these by-polls after spending two and a half years in office. Mahi B Chowdhury won the Munshiganj by-polls easily. But government did not want to lose Dhaka-10 seat. BNP nominated Alhaj Mosaddek Ali Falu, a known terrorist at his early age, as their

[39] *Ibid*
[40] *The Bangladesh Observer*, April 21, 2004. See the parliamentary proceedings of April 20, 2004. See the Cabinet resolution of April 20, 2004.
[41] *The Bangladesh Observer*, December 1, 2002.
[42] *Ibid*, January 2, 2003.
[43] *Ibid*, January 9, 2003
[44] *Ibid*, January 10, 2003
[45] *Ibid*, January 12, 2003
[46] *Ibid*, February 5, 2003
[47] *Ibid*, March 11, 2003
[48] *Ibid*, March 17, 2003
[49] *Ibid*, March 13, 2003
[50] *Ibid*, August 24, 2003
[51] *Ibid*

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candidate against Bikalpa Dhara candidate Major (Retd) M.A. Mannan. In order to bag the election it is alleged that government marched terrorists and criminals in this constituency.[52] In such a case it was heard that Sheikh Jahangir Hussain, judge of Speedy Trial Tribunal was transferred for not giving bail to two notorious criminals viz. Sweden Aslam and his right hand associate. Jahangir Hussain said, "PP Abdullah Mahmud Hasan, Dhaka Metropolitan Sessions Court, and Md. Moinuddin, Special PP to Dhaka Speedy Trial Tribunal No-2 asked him in his chamber to enlarge some criminals accused of STT case No-4 of 2004 on bail before the by-polls of Dhaka-10 seat. Since he refused to do that he was transferred to Barisal as Judge of Nari-O-Shishu Nirjatan Daman Tribunal on June 13, 2004.[53]

Referring the event Sheikh Hasina accused the government of bringing together notorious criminals from across the country to ensure election victory in Dhaka-10 seat.[54] Not only that, CEC for maintaining peace asked for army deployment in the by-polls. In this regard CEC M.A. Sayeed on June 17, 2004 sent letter to the government.[55] But government did not heed to his demand. This refusal forced the EC and opposition candidate M.A. Mannan to take the assistance of the court. Under these circumstances perceiving certain irregularities in Dhaka-10 by-polls CEC M.A. Sayeed left the country on 50 day leave to USA on June 25, 2004 on the ground of personal cause.[56] In his place EC Shafiur Rahman was made Acting CEC. Such leave of 50 days before the crucial by-polls was not a good sign. It signed the victory of the government in getting relief of honest and strong person Mr. Sayeed for the time being. Later Mr. Sayeed spent his last year in office beyond the media. At the last moment one day before polls on June 29, 2004 High Court asked the government to deploy armed forces at all polling centres across the constituency.[57] But during the poll army was inactive. Mannan withdrew his candidature at 10.30 a.m. immediately after the start of polls on July 1, 2004 terming the by-polls nothing but a farce.[58] AL, JP, eleven-party LDF accused the government of unleashed fraud, rigging and absence of proper army personnel in polling station.[59] On the other hand BNP Secretary General Abdul Mannan Bhuiyan said that by-polls was free and fair.[60] Victorious candidate Falu expressed his deep satisfaction over election process, voters' turnout and fair polls.[61] EC in its press release expressed its deep satisfaction regarding by-polls.[62] After getting rid of M.A. Syeed government appointed Justice M.A Aziz as CEC on May 23, 2005. Here it is worthy to mention that M.A. Aziz was appointed as Appellate Division Justice keeping aside two senior most judges of the High Court Division on January 6, 2004.[63]

e) Supreme Court Bar and Government

Pro-AL lawyers were annoyed with the government over the non-confirmation of 6 Additional Judges recruited by AL government. In order to realize their demand High Court lawyers observed court boycott and hunger strike on March 1, 2003.[64] They also called to hold grand convention of lawyers on March 14, 2003 in support of their cause. Countering the opposition programme pro-government lawyers called grand rally on the same day. But on March 13, 2003 government backed lawyers captured opposition stage. However on March 14, 2003 pro-AL and pro-government lawyers held their concerned conventions in the Supreme Court premises in a chaotic condition. Pro-government lawyers opposed the demand of the pro-AL lawyers. As a result of which clashes broke out in the premises of High Court.[65] Amid such tense stand-off between pro-government and anti-government lawyers election held in Supreme Court Bar Association on April 1, 2003. In the election AL and left alliance backed white panel bagged 10 seats including President and Secretary out of 15. Barrister Rokanuddin Mahmud was elected president. And Advocate Mahbub became Secretary.[66] This body throughout four-party alliance rule played anti-government role.

f) Loss of Support and Opposition Movement

Watching the relentless corruption, deteriorating law and order, severe power cut people of the country lost their confidence on the alliance government it was claimed. Not only that, some said alliance government had no chance to win if midterm polls would have been held. Under this circumstances AL and CPB leaders on August 10, 2003 agreed to launch movement against the 4-party alliance government.[67] AL General Secretary Abdul Jalil and CPB President Manjurul Ahsan Selim were present in the meeting. They decided their issues on the basis of which the movement would be moved forward. These issues were:-[68]

1) Full implementation of the four principles of liberation war;
2) Holding trial of war criminals;
3) Halting distortion of the history of liberation war; and

[52] *The Bangladesh Observer*, June 24, 2004.
[53] *Ibid*, June 23, 2004
[54] *Ibid*, June 24, 2004
[55] *Ibid*, June 18, 2004
[56] *Ibid*, June 22, 2004
[57] *Ibid*, June 30, 2004
[58] *Ibid*, July 2, 2004
[59] *Ibid.*
[60] *Ibid.*
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid*, January 7, 2004
[64] *Ibid*, March 2, 2003
[65] *Ibid*, March 15, 2003
[66] *Ibid*, April 2, 2003
[67] *Ibid*, August 11, 2003
[68] *Ibid*

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4) Recognition and evaluation of all participated in liberation war irrespective of their party affiliation.

None of these issues was connected with the sufferings of the common people. That means, AL and its allies did not feel the pulse of the people, although they claimed themselves as the party of the people.

g) Kidnapping and Ransom

Along with lawlessness, corruption, smuggling, emergence of fundamentalist element, electricity failure another form of crimes increased very fast i.e. kidnapping and ransom in the country. BNP leader and business tycoon Mr. Jamaluddin Ahmed was kidnapped from his way to office in Chittagong on July 24, 2003. It was alleged that his kidnapper demanded 10 crore of taka as ransom. Police arrested his alleged kidnapper but failed to find out his whereabouts. Most astonishing thing in this case was that alleged kidnapper lost his life in police custody on December 11, 2003.[69] It was claimed that rival BNP leaders were behind this incident. In another event high profile business magnet Rezanur Rahman Zakir was killed for money in Chittagong on August 13, 2003.[70]

The business community of the country in an open statement aired on August 31, 2003 expressed their deep concern over the deteriorating law and order along with new nature of crime. They said daily incidents of extortion, smuggling, kidnapping and murder had created widespread scare among the businessmen of all sizes affecting their morale. Similar scare has been prevailing in nearly all sectors of the society who feel captive in the hands of criminals and anti-social elements. They urged the government to launch anti-criminal drive immediately in the name of "2nd Clean Heart" against the criminals, terrorists, and corrupt elements. The signatories of the statement were viz. Mr. Anis Ud-Dowla, President Bangladesh Employers Federation, Kazi Moniruzzaman, President BGMEA, M.A. Awal, Chairman of Bangladesh Textile Mills Association, Tapan Chowdhury, President Metropolitan Chamber of Commerce and Industry and others.[71]

h) Loss of Popularity and Dream for Re-election

Along with all these problems the spiral price hike of daily necessities not only made the life of common people hell but also accumulated the burden of the government to an unbearable position.[72] As a result of which popularity of the alliance government reached to its all time low it was claimed.

However condemning the opposition PM Khaleda Zia said, "Inshallah BNP led alliance would return to power again in future with the cooperation of people for furthering the development of the country and welfare of the people."[73]

PM on December 30, 2003 blamed opposition for maligning Bangladesh image. Sensing their defeat in next election the opposition was trying to create disorder through destructive activities.[74] Such statement of BNP Chairman Khaleda Zia smelt some conspiracy in next parliamentary polls. Common people could raise question why conspiracy was sensed. It was claimed that BNP-Jamaat *Jote* lost support of the people. For the alleged connection with Islamic fundamentalists foreign governments such as USA, UK, Canada, Australia started maintaining distance from the government from mid 2003. In spite of that BNP-Jamaat *Jote* dreamed of re-election.

The experts opined there was another option for re-election and that was manipulation in election. It is only possible when both the administration and EC would act for the BNP-Jamaat *Jote*. Perhaps keeping that point in view four-party alliance government from the very beginning started manning administration with partisan officials. AL Chairperson on January 7, 2003 alleged government of politicizing administration. She in an open letter written to IED programme said, "5000 employees were terminated out of political malice, 400 officers were graded down to OSD and 400 officers were appointed on contract basis."[75] Although number was exaggeration no doubt but genuineness was found when around 200 mid level bureaucrats were seen praying to 1/11 government for remedy against step-motherly behaviour by four-party alliance government.[76]

i) Fourteenth Amendment and Opposition

Although JP from the very beginning was opposing the Constitution (Fourteenth Amendment) Bill but it voted for the bill. Referring the change of position JP leader G.M. Kader, younger brother of H.M. Ershad in an interview with TV channel said that JP (Ershad) MPs were compelled to give vote for the Constitution (Fourteenth Amendment) Bill, 2004 in order to save their party Chairman H.M. Ershad from being arrested.[77] Such type of statement not only revealed the hollowness of judicial system but also proved the fear of the opposition true that government was using the highest court for her political interest and would use that in next election. Though AL MPs were not present in the House when the bill was placed on voting yet outside the House Sheikh Hasina said there required no amendment for those subjects.[78] Deputy leader of the opposition Abdul Hamid Khan referring the extension of age of the judges of the Supreme Court called the amendment bill a black legislation designed to meet

[69] *Ibid*, December 12, 2003
[70] *Ibid*, August 14, 2003
[71] *Ibid*, September 1, 2003
[72] *Ibid*, September 5, 2002.
[73] *Ibid*, October 20, 2003.
[74] *Ibid*, December 31, 2003.
[75] *Ibid*, January 8, 2004.
[76] *Ibid*, January 19, 2007.
[77] *The Bangladesh Observer*, May 17, 2004.
[78] *Ibid*

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political ends of the ruling alliance. He told the reporters in *Sangsad Bhaban* that that was a clear arrangement to fabricate and manipulate the future election by BNP and their allies as the bill had set who would be the Chief Adviser of the next caretaker government. They wanted to keep control over the next election. He also said BNP violated its pre-election commitment and ignored the demands of all opposition parties and women organizations for direct election to the women reserved seats.[79]

It appeared that last retired Chief Justice K.M. Hasan and sitting Chief Justice Mr. J.R. Mudassir held pro-BNP political view. Because both were appointed as Chief Justice superseding senior most judge of the Appellate Division. If retiring age were not increased Chief Justice Mudassir would have been retired earlier not only that other two/more judges could have gone into retirement at the end of 2006. As a result BNP government would not have gotten any Chief Justice of their choice. By this increase of retiring age BNP government got both retired Chief Justice K.M. Hasan and incumbent Chief Justice J.R. Mudassir as certain Chief Adviser of caretaker government for ninth *Jatiya Sangsad*.

III. Provisions of Fourteenth Amendment

Four party alliance government led by BNP had in its election manifesto pointed out that it would amend the Constitution to increase women reserved seats in the House. On January 14, 2004 four-party alliance in a meeting presided over by PM Khaleda Zia resolved to increase the seats of JS to 450 from 300. Of the 150 seats 100 seats for men and 50 for women. BNP General Secretary Abdul Mannan Bhuiyan said women seats would be distributed proportionately to the political parties having general seats in the House. He told the pressmen that 500-member parliament was one of the election commitments of BNP led alliance. Since maximum accommodation of the House is 450, the alliance has decided to stick to that.[80]

On March 8, 2004 Cabinet approved the Constitution (Fourteenth Amendment) Bill. The bill contained three provisions viz.,[81]

1) Women reserved seats in the House:- There will be 45 reserved seats in the House for women. They will be indirectly elected by the elected members of the House. The reserved seats will be distributed proportionately to the political parties having representation in the Parliament.

However opposition and women organizations demanded direct election to the women seats. Law Minister Moudud Ahmed rejected that proposal saying it was not politically and constitutionally possible.[82]

2) The bill proposed a provision for the government officials to run any local government body if election is not held on time after the expiry of the tenure of elected representatives.
3) The projection and preservation of the portraits of the President and Prime Minister in government offices and organizations is made mandatory.

On March 17, 2004 Law Minister Moudud Ahmed introduced the Constitution (Fourteenth Amendment) Bill in the House. The bill contained the following provisions:[83]

1) There shall be 45 reserved seats for women in the parliament. They will be indirectly elected by the elected member of the House. These seats will be distributed proportionately to the political parties having representation in the House. This provision is made for 10 years from first session of ninth parliament but it will come into effect for the residual period of eighth parliament.
2) The portrait of the President must be preserved and displayed at the offices of the President, the Speaker and all Bangladesh Mission abroad. While the PM's portrait will be displayed at the office of the President, the Speaker and in head and branch offices of all government, semi-government, autonomous bodies, statutory public authorities, government educational institutions and Bangladesh Missions abroad.

In this regard Law Minister said AL government issued an administrative order with regard to display of portrait of incumbent Prime Minister and President. Accordingly at all government, semi-government and autonomous offices portrait of the then Prime Minister was hung. With the departure of Hasina government supporters of four-party alliance kicked off these portraits disgracefully. Watching the feeling of the supporters of four-party alliance BNP government revoked that order.

3) The CEC will administer oath to the elected members of the Parliament within three days if the designated person under the constitution fails to conduct the oath after three days of the publication of official result of the general polls.
4) The elected members of the local government bodies such as Union Parishad, Municipality, City Corporation shall not continue in office after the expiration of their terms and the election must be held within 90 days of such expiry to reconstitute

[79] *Ibid*
[80] *The Bangladesh Observer*, January 15, 2004
[81] See the Constitution (forteenth amendment) Bill approved in the Cabinet on March 8, 2004. see *the Bangladesh Observer* , March 9, 2004
[82] *The Bangladesh Observer*, March 12, 2004
[83] See the Parliamentary Proceeding of March 17, 2004 published in *the Bangladesh Observer* on March 18, 2004

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those bodies. During the interim period a public officer to be appointed by the government will take care of that local unit.

Mr. Kader Siddiqi, president Bangldesh Krishak Sramik Janata League, opposed the bill. None of the proposed provisions was related to public causes, it was argued. BNP had promised 200 new seats but proposed only 45 seats only for women.[84]

The House sent the bill to the Parliamentary Standing Committee for further scrutiny giving two weeks to complete. On April 20, 2004 all of a sudden three new provisions were included in the Constitution amendment bill and those provisions were as follows;[85]

1) Enhancement of the retirement age of the judges of the Supreme Court from 65 to 67.
2) Increasing of the retirement age of the Comptroller and Auditor General, Chairman and members of the PSC from 62 to 65 years.
3) The Comptroller and Auditor General, Chairman and members of the PSC will hold office for five years.

With regard to the extension of the retiring age of the judges of the Supreme Court Law Minister Moudud Ahmed said three out of seven judges of the Appellate Division would go on retirement by 2005, while another judge will retire by 2007. That means four out of seven judges of the Appellate Division would go into retirement within a period of three and a half years. In High Court Division another 21 judges would retire by 2005 and 2006. He said so many retirements would create vacuum in the court. In order to save the highest judiciary from this vacuum and to keep the ongoing trial tempo there was no alternative but to increase the age of the judges.[86]

On April 26, 2004 Cabinet unanimously approved the reformed amendment bill.[87] On April 28, 2004 the bill was introduced in the House for discussion. Bangabir Kader Siddiqi opposing the bill said that the amendments were not necessary. He suggested that the women reserved seat should be raised to 150 and direct election should be made for their election. Regarding the display of portraits he suggested new provision for the display of portraits of Sheikh Mujib and Ziaur Rahman along with President and PM.[88] However, House sent the bill back to the Parliamentary Standing Committee for further scrutiny.[89] By this time on April 25, 2004 AL submitted a memorandum to the government demanding for the withdrawal of the amendment bill along with four other causes.[90] On May 10, 2004 JP President H.M. Ershad called for the government to withdraw the constitution fourteenth amendment bill. He contended that the provisions for which amendment to the constitution had been proposed were unnecessary. With regard to the extension of the age of the Supreme Court judge he said amendment was not acceptable as it might influence the next election.[91] On May 12, 2004 AL breaking their 11-month long Parliament boycott joined the House. But they did not participate in the voting of the bill on May 16, 2004.

On May 13, Parliamentary Standing Committee submitted the amendment bill with the recommendation for scrapping the provision of appointment of executive to local government bodies for interim period after the end of tenure but before the holding of election.[92] Finally on May 16, 2004 the Constitution (Fourteenth Amendment) Bill was passed by 226 to 1 notes.[93]

a) Display of Portraits of President and Prime Minister

A new article 4A was inserted in the Constitution. It lays down that the portrait of incumbent president shall be preserved and displayed at the office of President, Prime Minister, Speaker and all embassies and missions of Bangladesh abroad. Another provision was made with regard to the display of PM's portrait. It writes down that the portrait of incumbent Prime Minister shall be preserved and displayed at the offices of President, and Speaker, and head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government educational institutions, embassies and missions of Bangladesh abroad.[94] This new provision stopped dirty politics between the major two political parties – BNP and AL with respect to hanging of the portraits of the head of the state and head of the government in government, semi-government and autonomous offices.

b) Increase of Women Reserved Seats in Parliament

By tenth amendment term of women reserved seats in the House had been extended for further ten years which ended in the year 2001. The fourteenth amendment made provision for women reserved seat for further ten years starting from tenth parliament. It increased the number of seats from thirty to forty five. A rational concept of distribution of women reserved seats was inserted in the Constitution. It says that every political party having a minimum representation in the Parliament shall get share of women reserved seats

[84] *Ibid*
[85] See the parliamentary proceeding and Cabinet resolution of April 20, 2004 published in *the Bangladesh Observer* on April 21, 2004
[86] *The Bangladesh Observer*, April 21, 2004
[87] The Cabinet resolution of April 26, 2004 published in *the Bangladesh Observer* on April 27, 2004
[88] The Parliamentary proceeding and debate of April 28, 2004 published in *the Daily Star* on April 29, 2004
[89] *Ibid*
[90] *The Bangladesh Observer*, April 26, 2004
[91] *Ibid*, May 11, 2004
[92] The parliamentary proceeding of May 13, 2004 published in *the Bangladesh Observer* on May 14, 2004
[93] The parliamentary proceeding of May 16, 2004 published in *the Bangladesh Observer* on May 17, 2004
[94] See Act No.XIV of 2004 published in official gazette on May 17, 2004

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proportionately.[95] This insertion ensured the participation of female in law making process and politics. For the first time in Bangladesh it did justice in distributing female reserved seats among the political parties having seats in the House. Earlier majority party in the House who possessed 151 seats bagged all women reserved seats.

c) *Extension of Retiring Age of Judges*

In clause (1) of article 96 retiring age of the judges of the Supreme Court was increased to 65 from 62. [96]

Although this extension was very much essential for the working of the highest court but it was contended that the government did it for getting political benefit. Such extension made Chief Justice K.M. Hasan who retired on January 23, 2004 the last retired Chief Justice who should have been the Chief Adviser unless the opposition forced him to denounce the offer. Chief Justice K.M.Hasan was the editor of BNP Foreign Affairs in 1977-1978.[97]

d) *Extension of Retiring Age of Members of Public Service Commission, and Auditor-General*

In clause (1) of article 129 and clause (1) of Article 139 retiring age of the Auditor-General and members of Public Service Commission was increased to 65 from 62.[98] This extension opened the door for more experienced persons to be appointed as Auditor-General and PSC Chairman or members.

e) *Chief Election Commissioner as Oath Administering Officer*

A new clause (2A) was inserted after clause (2) in article 148. Previously Speaker was to administer oath to the Members of Parliament. New provision lays down that within three days from the publication of parliamentary result in official gazette Members of Parliament shall take their affirmation. In case of failure CEC shall administer oath to the members of Parliament within three days next thereafter.[99] Under this change Speaker is given relief of some duty in respect of administering oath to elected Member of Parliament who fails to take oath from him within three days after the publication of election result in gazette notification.

f) *Amendment of Fourth schedule*

A new paragraph was added after paragraph 22 in fourth schedule. This paragraph introduced forty-five women reserved seats for the residual period of the eighth parliament. These seats were distributed among the political parties which had seats in the House proportionately.

IV. Opposition Movement against Chief Justice K M Hasan

Because of the increase of retirement age under the fourteenth amendment government ensured Chief Justice K M Hasan as the head of caretaker government in 2006. But opposition did not agree with Justice K M Hasan because of his political affiliation with BNP. Opposition in order to materialize their stand created a very violent and destructive political movement leading to lawlessness all over the country. On the other hand government was seen to abide by the constitution with fourteenth amendment. But anarchic suffocating wild political atmosphere created by the opposition did not only force KM Hasan to give up his post before entering into office but also lead the nation towards the military rule under Fakruddin Ahmed from 11th January, 2007.

V. Conclusion

In democracy power of the government lasts so far it has the support of the people for its performance. BNP led four-party alliance having been voted in power in a landslide victory lost acceptability to the people for its failure in fulfilling her electoral promises. In spite of that government expressed her desire for prolonging power till 2020. Mysterious behaviour of government with Chief Election Commissioner MA Sayed and Election Commission, and appointment of Chief Justice in violation of seniority rule were directed to materialize that dream. These events further defused the image of the government. In spite of losing popular support government brought fourteenth amendment bill incorporating provisions regarding display of portrait, women reserve seat and some other tricky matters. Opposition had no headache regarding these matters. But sudden inclusion of the provision with regard to the increase of retiring age of Supreme Court judge malign the amendment and shaken willingness of the government for testing her fate in a free and fair election. The pre and post amendment behaviour of the government and unequivocal desire for victory in future election questioned the veracity of the government relating people's expectation under caretaker government. But opposition movement foiled government's plan and led the nation towards emergency rule under Fakruddin Ahmed.

[95] *Ibid*
[96] See Act No.XIV of 2004 published in official gazette on May 17, 2004
[97] See chapters 2.4.15, 3.1.9.3 and 3.2.1
[98] See Act No. XIV of 2004 published in official gazette on May 17, 2004
[99] *bid*

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