

SUBJECT: POLITICAL SCIENCE VI

COURSE: BA LLB SEMESTER V (NON-CBCS)

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MODULE I, BANGLADESH

GOVERNMENT STRUCTURE

Any modern state stands on three basic pillars: executive, judiciary and legislature. Most of the newly independent states, while adopting their constitutions, have been vigilant about giving attention to the type, nature, and powers of the executive branch of the government. Several models are there to fashion the details of the executive. Bangladesh followed in turn the presidential and the parliamentary models of executive. The legal basis of the Bangladesh provisional government, established on 10 April 1972, was provided by the proclamation of independence which was to take effect from 26 March 1971.

The Constitution, established under this proclamation, created an all-powerful presidential executive. Both executive and legislative powers, including the power to grant pardon, were vested in the President. He had the power to appoint a Prime Minister and other ministers, if he considered it necessary to do so. The power to summon and dissolve the assembly, as well as that of levying taxes and making expenditures, was exclusively vested in him. Furthermore, the President was entitled to do whatever was felt necessary for the sake of the people of Bangladesh. The proclamation created an all powerful Presidential executive in the context of the extraordinary circumstances prevailing during and after the war of liberation. Bangabandhu Sheikh Mujibur Rahman, the undisputed leader of the war of liberation, was made President of the Republic. As he was confined in West Pakistan, the office of Vice President was also created; he was to exercise all the powers, and fulfil all the duties and responsibilities of the President in absentia. Bangladesh was to be governed under the proclaimed Constitution until a new constitution was adopted.

The parliamentary system of government in Bangladesh started soon after the return of Bangabandhu Sheikh Mujibur Rahman from Pakistan on 10 January 1972. Using his legislative power under the Proclamation of Independence, he changed the basic structure of the provisional government and adopted a parliamentary form of government by a Presidential order called the Provisional Constitution of Bangladesh Order, 1972. The Provisional Constitution created by the decree had all the features of the British Westminster type of government with a council of ministers headed by a Prime Minister to aid and advise, and a ceremonial head of the state, namely the President. The Order enabled Sheikh Mujibur Rahman to step down from the presidency to become the Prime Minister, whereas

Section 8 provided the opportunity for Justice Abu Sayeed Choudhury, who was not a member of the Parliament, to assume the presidency until a President was elected under the new constitution.

Executive under the 1972 Constitution The executive adopted under the Constitution of 1972 was parliamentary executive whose main feature was the fusion between the executive and the legislature. Part IV of the Constitution dealt with the executive, the President, the Prime Minister and the cabinet-encompassing issues such as the qualifications of the President, his term of office, methods for the removal of the President, etc. The executive consisted of two components: a ceremonial head of state in the form of an indirectly elected President and an effective and elected Prime Minister who with his cabinet was collectively responsible to the Jatiya Sangsad as in the British parliamentary system.

Bangladesh Constitution of 1972 had ensured that the President would not interfere with the office of the Prime Minister. The selection and appointment of a Prime Minister was made simple and straightforward. He/she had to be a leader of the majority party in the Sangsad. The members of the cabinet were to be appointed by the President on the advice of the Prime Minister. The real executive power was to be exercised by the Prime Minister and he/she would be aided by a council of ministers who would hold office during his/her pleasure. Similarly, the power to dissolve the Jatiya Sangsad by the head of state rested on the advice of the Prime Minister. Thus, the office of the President was relegated to a mere constitutional head of state, like that of the British monarch. The Prime Minister along with his cabinet was the real executive, collectively responsible to the Sangsad. Subsequently, however, extraordinary constitutional devices like preventive detention, emergency powers and a special power act, through which the executive could dominate the Sangsad, were incorporated in the Constitution.

Executive under Fourth Amendment Drastic transformation in the nature and type of the executive took place in Bangladesh through the Fourth Amendment of the Constitution. It relegated the parliamentary democracy to a constitutional one-party dictatorship in which all powers were concentrated in the presidency, thus virtually abolishing the two parts of the executive. A one-party presidential form of government was introduced in which direct election was provided for the election of a President. The President, with tenure of five years, was made independent of the legislature.

An office of Vice President was created who was to be appointed by the President and in case of a vacancy in the presidency, the Vice President was to take over. All executive authority was vested in the President and was to be directly exercised by him. A council of ministers to aid and advise the President was created, and its members, including the Prime Minister were to be appointed by the President at his discretion. The council was to be presided over by the President and would hold office during his/her pleasure. A new section, Part VIA was added to the Constitution in which Article 117A empowered the President to

create a single party if needed in order to give full effect to the fundamental principles of state policy set out in part II of the Constitution. Once the President, by order, created such a national party, all political parties were to stand dissolved. The nomenclature, programme, membership, organisation, discipline, finance, and functions of the national party were to be decided by Presidential order. The executive created under the Fourth Amendment was not a genuine Presidential system. The parliament had no authority to act as a watchdog for Presidential activities. The office of the President was made all powerful and without any checks on his/her executive authority.