

The Constitution (Second Amendment) Act, 1973

(Act No. XXIV of 1973)

[22nd September, 1973]

An Act farther to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows: -

1. Short title and commencement.—(1) This Act may be called the Constitution (Second Amendment) Act, 1973.

(2) It shall come into force at once, except sections 2 and 7 which shall be deemed to have taken effect on the 15th day of July, 1973.

2. Amendment of article 26 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 26, after Clause (2), the following new clause shall be added, namely: -

"(3) Nothing in this article shall apply to any amendment of this Constitution made under article 142."

3. Substitution of article 33 of the Constitution.—In the Constitution, for article 33 the following shall be substituted, namely: -

"33. Safeguards as to arrest and detention.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the joinery from the place of arrest to the court of the magistrate, and no such person shall be detained in custody the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person-

(a) who for the time being is an enemy alien; or

(b) who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the

expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose.

(6) Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4)."

4. Amendment of article 63 of the Constitution.— In the Constitution, in article 63, clauses (2) and (3) shall be omitted.

5. Amendment of article 72 of the Constitution. — In the Constitution, in article 72, in clause (1), in the proviso, for the words "sixty days" the words "one hundred and twenty days" shall be substituted.

6. Insertion of new Part IXA in the Constitution. —In the Constitution, after Part IX, the following new Part IXA shall be inserted, namely: -

"PART-IXA"

EMERGENCY PROVISIONS

141A. Proclamation of emergency.— (1) If the President is satisfied that a grave emergency exist in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency:

Provided that such Proclamation shall require for its validity the countersignature of the Prime Minister.

(2) A Proclamation of Emergency—

(a) may be revoked by a subsequent Proclamation;

(b) shall be laid before Parliament;

(c) shall cease to operate at the expiration of one hundred and twenty days, unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation is issued at a time when Parliament stands dissolved or the dissolution of Parliament takes place during the period of one hundred and twenty days referred to in sub-clause (c), the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first meets after its reconstitution, unless before that expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

(3) A Proclamation of Emergency declaring that the security of Bangladesh, or any part thereof, is threatened by war or external aggression or by internal disturbance may be made before the actual occurrence of war or any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

141B. Suspension of provisions of certain articles during emergencies.— While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the State to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

141C. Suspension of enforcement of fundamental rights during emergencies.— (1) While a Proclamation of Emergency is in operation, the President, may, by order, declare that the right to move any court for the enforcement of such of the rights conferred by part III of this Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made under this article may extend to the whole of Bangladesh or any part thereof.

(3) Every order made under this article shall, as soon as may be, be laid before Parliament."

7. Amendment of article 142 of the Constitution.—(1) In the Constitution, Article 142 shall be re-numbered as clause (1) of that article, and—

(i) in the marginal heading to that article, the words "or repeal" shall be omitted;

(ii) in sub-clause (a) of clause (1) as so re-numbered, for the words "amended or repealed" the words and commas "amended by way of addition, alteration, substitution or repeal" shall be substituted, and the words "or repeal", occurring twice, shall be omitted;

(iii) after clause (1) as so re-numbered, the following new clause shall be added, namely:—

(2) Nothing in article 26 shall apply to any amendment made under this article."