

The Constitution (Twelfth Amendment) Act, 1991

(Act No. 28 of 1991)

[18th September, 1991]

An Act further 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 (Twelfth Amendment) Act, 1991.

(2) The provisions of this Act, except the provisions of section 14(b), shall come into force at once and the provisions of section 14(b) shall be deemed to have come into force on the 1st day of Chaitra, 1397 corresponding to the 16th day of March, 1991.

2. Amendment of article 11 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, after the word "guaranteed" the comma and words", and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" shall be *inserted*.

3. Amendment of Part IV of the Constitution.—In the Constitution in Part IV, for Chapters I and II the following Chapters I, II and III shall be substituted, namely: -

"CHPATER-I

THE PRESIDENT

"48. The President.—(1) There shall be a President of Bangladesh who shall be elected by members of Parliament in accordance with law.

(2) The President shall, as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law.

(3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister:

Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court.

(4) A person shall not be qualified for election as President if he-

(a) is less than thirty-five years of age; or

(b) is not qualified for election as a member of Parliament; or

(c) has been removed from the office of President by impeachment under this Constitution.

(5) The Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter which the President may request him to refer to it.

49. Prerogative of Mercy.—The President shall have power to grant pardons, reprieve and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

50. Term of Office of President.—(1) Subject to the provisions of this Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office.

(2) No person shall hold office as President for more than two terms, whether or not the terms are consecutive.

(3) The President may resign his office by writing under his hand addressed to the Speaker.

(4) The President during his term of office shall not be qualified for election as a member of Parliament, and if a member of Parliament is elected as President he shall vacate his seat in Parliament on the day on which he enters upon his office as President.

51. President's Immunity.—(1) Without prejudice to the provisions of article 52, the President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of this office, but this clause shall not prejudice the right of any person to take proceedings against the Government.

(2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against the President in, and no process for his arrest or imprisonment shall issue from, any court.

52. Impeachment of The President.—(1) The President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by a majority of the total number of members of Parliament and delivered to the Speaker, setting out the particulars of the charge, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered; and the Speaker shall forthwith summon Parliament if it is not in session.

(2) The conduct of the President may be referred by Parliament to any court, tribunal or body appointed or designated by Parliament for the investigation of a charge under this article.

(3) The President shall have the right to appear and to be represented during the consideration of the charge.

(4) If after the consideration of the charge a resolution is passed by Parliament by the votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed.

(5) Where the Speaker is exercising the functions of the President under article 54 the provisions of this article shall apply subject to the modifications that the reference to the Speaker in clause (1) shall be construed as a reference to the Deputy Speaker, and that the reference in clause (4) to the vacation by the President of his office shall be construed as a reference to the vacation by the Speaker of his office as Speaker; and on the passing of a resolution such as is referred to in clause (4) the Speaker shall cease to exercise the functions of President.

53. Removal of President of ground of incapacity. (1) The President may be removed from office on the ground of physical or mental incapacity on a motion of which notice, signed

by a majority of the total number of members of Parliament, is delivered to the Speaker, setting out particulars of the alleged incapacity.

(2) On receipt of the notice the Speaker shall forthwith summon Parliament if it is not in session and shall call for a resolution constituting a medical board (hereinafter in this article called "the Board") and upon the necessary motion being made and carried shall forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board.

(3) The motion for removal shall not be put to the vote earlier than fourteen nor then thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament.

(4) The President shall have the right to appear and to be represented during the consideration of the motion.

(5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if it is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the motion is passed.

(6) If before the motion for removal is made in Parliament, the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament.

(7) If after consideration by Parliament of the motion and of the report of the Board (which shall be submitted within seven days of the examination held pursuant to clause (2) and if not so submitted shall be dispensed with the motion is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which there solution is passed.

54. Speaker to Act as President During Absence, etc.—If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any other cause the Speaker shall discharge those functions until a President is elected or until the President resumes the functions of his office, as the case may be.

CHAPTER-II

THE PRIME MINISTER AND THE CABINET

55. The Cabinet.—(1) There shall be a Cabinet for Bangladesh having the Prime Minister at its head and comprising also such other Ministers as the Prime Minister may from time to time designate.

(2) The executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister.

(3) The Cabinet shall be collectively responsible to Parliament.

(4) All executive actions of the Government shall be expressed to be taken in the name of the President.

(5) The President shall by rules specify the manner in which orders and other instruments made in his name shall be attested or authenticated, and the validity of any order of instrument so attested or authenticated shall not be questioned in any court on the ground

that it was not duly made or executed.

(6) The President shall make rule for the allocation and transaction of the business of the Government.

56. Ministers.— (1) There shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determined by the Prime Minister.

(2) The appointments of the Prime Minister and other Ministers and of the Ministers of State and Deputy Ministers, shall be made by the President:

Provided that not less than nine-tenths of their number shall be appointed from among members of Parliament and not more than one-tenth of their number may be chosen from among persons qualified for election as members of Parliament.

(3) The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament.

(4) If occasion arises for making any appointment under clause (2) or clause (3) between a dissolution of Parliament and the next following general election of members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purposes of this clause as continuing to be such members.

57. Tenure of Office of Prime Minister.—(1) The office of the Prime Minister shall become vacant—

a) if he resigns from office at any time by placing his resignation in the hands of the President; or

b) if he ceases to be a member of Parliament.

(2) If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President in writing to dissolve Parliament, and if he so advises the President shall, if he is satisfied that no other member of Parliament commands the support of the majority of the members of Parliament, dissolve Parliament accordingly.

(3) Nothing in this article shall disqualify the Prime Minister for holding office until his successor has entered upon office.

58. Tenure of Office of Other Ministers.—(1) The office of a Minister other than the Prime Minister shall become vacant-

a) if he resigns from office by placing his resignation in the hands of the Prime Minister for submission to the President;

b) if he ceases to be a member of Parliament, but this shall not be applicable to a Minister chosen under the proviso to article 56(2);

c) if the President, pursuant to the provisions of clause (2), so directs; or

d) as provided in clause (4).

(2) The Prime Minister may at any time request a Minister to resign, and if such Minister fails to comply with the request, may advise the President to terminate the appointment of such Minister.

(3) Nothing in sub-clauses (a), (b) and (d) of clause (1) shall disqualify a Minister for holding office during any period in which Parliament stands dissolved.

(4) If the Prime Minister resigns from or ceases to hold office each of the other Ministers shall be deemed also to have resigned from office but shall, subject to the provisions of this Chapter, continue to hold office until his successor has entered upon office.

(5) In this article "Minister" includes Minister of State and Deputy Minister.

CHAPTER-III

LOCAL GOVERNMENT

59. Local Government.—(1) Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to-

a) administration and the work of public officers;

b) the maintenance of public order;

c) the preparation and implementation of plans relating to public services and economic development.

60. Powers of Local Government Bodies.—For the purposes of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds."

4. Amendment of article 66 of the Constitution.—In the Constitution, in article 66, in clause (2A), the words and commas "Vice-President," and "Deputy Prime Minister," shall be omitted.

5. Substitution of article 70 of the Constitution.—(1) In the Constitution for article 70 the following shall be substituted, namely:—

"70. Vacation of Seat on Resignation, etc.—(1) A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party.

Explanation.—If a member of Parliament-

a) being present in Parliament abstains from voting, or

b) absents himself from any sitting of parliament.

ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party.

(2) If, at any time, any question as to the leadership of the Parliamentary party of a political party arises, the Speaker shall, within seven days of being informed of it in writing by a person claiming the leadership of the majority of the members of that party in Parliament, convene a meeting of all members of Parliament of that party in accordance with the Rules of procedure of Parliament and determine its Parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership so determined, he shall be deemed to have voted against that party under clause (1) and shall vacate his seat in the Parliament.

(3) If a person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as

a nominee of that Party."

6. Amendment of article 72 of the Constitution.—In the Constitution, in article 72,-
a) in clause (1), for the proviso the following provisos shall substituted, namely:

"Provided that a period exceeding sixty days shall not intervene between the end of one session and the first sitting of Parliament in the next session."

7. Amendment of article 73A of the Constitution.—In the Constitution, in article 73A,-

a) in clause (1), after the words "entitled to vote", the words or to speak on any matter not related to his Ministry" shall be inserted; and

b) in clause (2), the words "Deputy Prime Minister" shall be omitted.

8. Amendment of article 88 of the Constitution.—In the Constitution, in article 88, clause (aa) shall be omitted.

9. Amendment of article 92 of the Constitution.—In the Constitution, in article 92, after clause (2), the following new clause shall be added, namely: -

"(3) Notwithstanding anything contained in the foregoing provisions of this Chapter, if, in respect of a financial year, Parliament—

a) has failed to make the grants under article 89 and pass the law under article 90 before the beginning of that year and has not also made any grant in advance under this article; or

b) has failed to make the grants under article 89 and pass the law under article 90 before the expiration of the period for which the grants in advance, if any, were made under this article,

the President may, upon the advice of the Prime Minister, by order, authorise the withdrawal from the Consolidated Fund moneys necessary to meet expenditure mentioned in the financial statement for that year for a period not exceeding sixty days in that year, pending the making of the grants and passing of the law."

10. Amendment of article 92A of the Constitution.—In the Constitution, article 92A shall be omitted.

11. Amendment of article 109 of the Constitution.—In the Constitution, in article 109 after the word "courts" the words "and tribunals" shall be inserted.

12. Amendment of article 19 of the Constitution.—In the Constitution, in article 19, for clause (1) the following shall be substituted, namely:—

"(1) The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law—

a) hold elections to the office of President;

b) hold elections of members of Parliament;

c) delimit the constituencies for the purposes of elections to Parliament; and

d) prepare electoral rolls for the purposes of elections to the office of President and to Parliament."

13. Amendment of article 122 of the Constitution.—In the Constitution, in article 122-

a) in clause (1), the words "to the offices of President and Vice-President and" shall be

omitted;

b) clause (3) shall be omitted.

14. Amendment of article 123 of the Constitution.—In the Constitution, in article 123,-

a) for clauses (1), (2), (2A) and (2B) the following shall be substituted, namely: -

"(1) In the case of a vacancy in the office of President occurring by reason of the expiration of his term of office an election to fill the vacancy shall be held within the period of ninety to sixty days prior to the date of expiration of the term:

Provided that if the term expires before the dissolution of the Parliament by the members of which he was elected the election to fill the vacancy shall not be held until after the next general election of members of Parliament, but shall be held within thirty days after the first sitting of Parliament following such general election.

(2) In the case of a vacancy in the office of President occurring by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy."; and

(b) in clause (4), for the full-stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:

"Provided that in a case where, in the opinion of the Chief Election Commissioner, it is not possible, for reasons of an act of God, to hold such election within the period specified in this clause, such election shall be held within ninety days following next after the last day of such period."

15. Substitution of article 124 of the Constitution.—In the Constitution, in article 124 the following shall be substituted, namely: -

"124. Parliament May Make Provision as to Elections.— Subject to the provisions of this Constitution, Parliament may by law make provision with respect to all matters relating to or in connection with elections to Parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due Constitution of Parliament."

16. Amendment of article 125 of the Constitution.—In the Constitution, in article 125, in clause (b), the words "and Vice-President" shall be omitted.

17. Amendment of Article 141A of the Constitution.— In the Constitution, in article 141A, in clause (1), the following proviso shall be added, namely: -

"Provided that such Proclamation shall require for its validity the prior counter signature of the Prime Minister."

18. Amendment of article 141C of the Constitution.—In the Constitution, in article 141C, in clause (1), for the words "by order" the words and comma "on the written advice of the Prime Minister, by order" shall be substituted.

19. Amendment of article 142 of the Constitution.—In the Constitution, in article 142,-

a) in clause (1A) for the comma before the figure "56" the word "or" shall be substituted and the commas and figures ", 58,80,92A" shall be omitted;

b) in clause (1B), for the words "the office of President" the word "Parliament" shall be substituted; and

c) after clause (1C), the following new clause shall be inserted, namely: -

"(ID) Nothing in clause (1C) shall be deemed to be an expression of confidence or no-confidence in the Cabinet or Parliament."

20. Amendment of article 145A of the Constitution.—In the Constitution, in article 145A for the proviso the following proviso shall be substituted, namely: -

"Provided that any such treaty connected with national security shall be laid in a secret session of Parliament."

21. Amendment of article 147 of the Constitution.—In the Constitution, in article 147, in clause (4),—

a) sub-clause (aa) shall be omitted; and

b) in sub-clause (b), the words "or Deputy Prime Minister" shall be omitted.

22. Amendment of article 148 of the Constitution.—In the Constitution, in article 148, in clause (1A) shall be omitted.

23. Amendment of article 152 of the Constitution.—In the Constitution, in article 152, in clause (1), the words "the Vice-President" means the Vice-President of Bangladesh elected or appointed under this Constitution" shall be omitted.

24. Amendment of the Third Schedule to the Constitution.—In the Constitution, in the third schedule,—

a) form 1A shall be omitted; and

b) in form 2, in the heading, the comma and words ",Deputy Prime Ministers" shall be omitted.

25. Amendment of the Fourth Schedule to the Constitution.—In the Constitution, in the fourth schedule,—

a) paragraph 20 shall be omitted; and

b) after paragraph 21, the following new paragraph 22 shall be added, namely, -

"22. Notwithstanding anything contained in the Constitution, the Parliament functioning immediately before the commencement of the Constitution (Twelfth Amendment) Act, 1991 (XXVIII of 1991) shall be deemed to have been duly elected and constituted in accordance with the Constitution and Law and shall continue to function under the provisions of article 72 of the Constitution."