

Amendment bill placed for switchover to parliamentary form

The following is the text of the Constitution (Twelfth Amendment) Bill, 1991 introduced in the Jatiya Sangsad (Parliament) on Tuesday afternoon by Law and Justice Minister Mirza Ghulam Hafiz.

A Bill 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 12, shall come into force at once and the provisions of section 12 shall be deemed to have come into force on 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 shall be substituted, namely:—

CHAPTER 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 the provisions contained in the Fifth Schedule.

(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, 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, reprieves 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 at least one-half 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 forth with 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 function 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 Speaker's 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 on 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 not less than one-half 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 later than 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 reported to Parliament, and if the Board reports that the President is not fit to hold office, the motion shall 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

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 deemed 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 the resolution 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 function of this office, as the case may be.

CHAPTER II—THE PRIME MINISTER AND THE CABINET

55. The Cabinet.—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 or 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. Minister.—(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 four-fifths of their number shall be appointed from among members of Parliament and not more than one-fifth of their number may be chosen from 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 purpose of this clause as continuing to be such members.

57. Tenure of office of Prime Minister.—(1) The office of the Prime Minister shall be vacated—

(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 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;

(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) Every body 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 purpose 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.

61. Amendment of article 66 of the Constitution.—In the Constitution, in article 66,—

(a) in clause (2), for sub-clause (d) the following shall be substituted, namely:—

"(d) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless—

(i) such conviction has been reversed on appeal or revision; or

(ii) a period of five years has elapsed since his release;"

(b) in clause (2A) the words and commas "President, Vice-President, Prime Minister, Deputy Prime Minister," shall be omitted; and

(c) in clause (4), the words and figure "or as to whether a member of Parliament should vacate his seat pursuant to article 70" shall be omitted.

62. 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.—If a person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party—

(a) resigns from that party;

(b) loses the membership of, or is expelled from, that party;

(c) forms, together with some other members of that party, any group within that party;

(d) acts in Parliament against the decision of that party; or

(e) votes in Parliament against that party; and the leader of that party in Parliament communicates this fact to the Election Commission in writing, the seat of that member shall fall vacant on the date of receipt of such communication by the Election Commission.

Explanation.—If a member of 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) A member of Parliament whose seat falls vacant under clause (1) shall be disqualified for election as a member of Parliament for a period of five years from the date his seat so falls vacant.

(3) If at any time groups are formed by members of Parliament of a political party and a question arises as to which group represents that party, the question may be referred to the Speaker by any such group in writing for a decision, and the Speaker shall, within seven days of the receipt of the reference, convene a meeting of all members of Parliament of that party and decide the question by putting it to vote and the decision of the Speaker on the result of such voting shall be final.

(4) 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."

63. Amendment of article 72 of the Constitution.—In the Constitution, in article 72,—

(a) in clause (1), in the proviso, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:—

"Provided further that in the exercise of his functions under this clause, the President shall act in accordance with the advice of the Prime Minister tendered to him in writing; and

(b) clause 4(A) shall be omitted.

64. Amendment of article 73A of the Constitution.—In the Constitution, in article 73A, in clause (2), the words "Deputy Prime Minister" shall be omitted.

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

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

67. Amendment of article 119 of the Constitution.—In the Constitution, in article 119, for clause (1) the following shall be substituted, namely:—

"(1) The superintendence, direction and control of the preparation of the electoral rolls for all elections 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 of members of Parliament; and

(b) delimit the constituencies and prepare electoral rolls for the purpose of elections to Parliament."

68. Amendment of article 122 of the Constitution.—In the Constitution, in article 122,—

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

(b) clause (3) shall be omitted.

69. Amendment of article 123 of the Constitution.—In the Constitution, in article 123,—

(a) for clause (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 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 Speaker and 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."

70. Substitution of article 124 of the Constitution.—In the Constitution, for article 124 the following shall be substituted, namely:—

"124. Parliament may make provision as the 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, and all other matters necessary for securing the due Constitution of Parliament."

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

72. 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."

73. 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.

74. Amendment of article 142 of the Constitution.—In the Constitution, in article 142,—

(a) in clause (1A), the figures and commas "48, 56, 58," shall be omitted;

(b) after clause (1C), the following new clause shall be inserted, namely:— "(D) Nothing in clause (1C) shall be deemed to be an expression of confidence or no-confidence in the Cabinet or Parliament."

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

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

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

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

77. 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.

78. 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 Minister" shall be omitted.

79. Amendment of the Fourth Schedule to the Constitution.—In the Constitution, in the Fourth Schedule, 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 (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."

80. Insertion of new Fifth Schedule to the Constitution.—In the Constitution, after the Fourth Schedule, the following new Fifth Schedule shall be inserted:—

"FIFTH SCHEDULE
[Article 48]
Election of President

1. The Speaker shall hold and conduct any election to the office of President, and shall be the returning officer for such election.

2. The Speaker shall preside at the meeting of the members of Parliament held pursuant to the provisions of this Schedule.

3. The Speaker shall, by public notification, fix the time and place for delivering nomination papers, holding a scrutiny, making withdrawals, and (if necessary) holding a poll.

4. At any time before noon on the day fixed for depositing nomination papers any member of Parliament may nominate for election as President a person qualified for such election, by delivering to the returning officer a nomination paper signed by himself as proposer and by another member of Parliament as seconder, together with a statement signed by the person nominated that he consents to the nomination:

Provided that on person shall sign, whether as proposer or as seconder, more than one nomination paper at any one election.

5. A scrutiny of nomination papers shall be held by the Speaker at the time and place fixed by him, and if after a scrutiny only one person remains validly nominated, the Speaker shall declare that person elected, but if more than one person remains validly nominated he shall announce, by public notification, the names of the persons validly nominated (in this Schedule referred to as the candidates).

6. A candidate may withdraw his candidature at any time before noon on the day fixed for this purpose by delivering a notice in writing under his hand to the Speaker, and a candidate who has so withdrawn shall not be allowed to cancel such notice.

7. If all but one of the candidates have withdrawn, that one shall be declared by the Speaker to be elected.

8. If there is no withdrawal or if, after withdrawals have taken place, two or more candidates remain validly nominated, the Speaker shall announce by public notification the names of the candidates and their proposers and seconds and shall proceed to hold a poll in accordance with the provisions of the succeeding paragraphs.

9. If, before the close of the poll a candidate who has been validly nominated dies and a report of his death is received by the Speaker and the Speaker is satisfied that the candidate has died, he shall countermand the poll and all proceedings with reference to the election shall be commenced anew.

10. A poll shall be taken at a meeting of members of Parliament on such date and time as the Speaker may, by public notification, fix in this behalf and the Speaker shall conduct the poll with the assistance of such officers as he may appoint.

11. If there are only two candidates the candidate who has obtained the larger number of votes shall be declared by the Speaker to be elected.

12. If there are three or more candidates and one of those candidates has obtained a larger number of votes than the aggregate number of votes obtained by the remaining candidates, he shall be declared by the Speaker to be elected.

13. If there are three or more candidates and the last preceding paragraph does not apply, a further poll shall be held at which the candidate who obtained the smallest number of votes at the previous poll shall be excluded.

14. Where at any poll any two or more candidates obtain an equal number of votes, then the result of the poll shall be decided by the casting votes of the Speaker openly.

15. After the close of the poll the Speaker shall announce the result of the poll and shall forthwith cause it to be declared by public notification.

16. The decision of the Speaker on all matters relating to the election of the President shall be final.

17. The Speaker may, by public notification, with approval of the President, make rules for carrying out the purposes of this Schedule."