# MPs to elect President, says AL Constitutional Amendment Bill

■ Full text of Constitutional Amendment Bill of Awami League submi-

(Bill to be introduced into Parliament)

A BILL, TO AMEND ARTICLES 48,49,50,51,52,53,54,55,56,5 7,58,59,60,66,72,73A, 88 92A, 119, 122, 123, 124, 125, 141A, 142, 145A, 147, 148, CERTAIN AND PROVISIONS OF SECOND. AND FOURTH THIRD THE SCHEDULE 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 fol-

1. Short title and commencement.

(1) This Act may be called the Constitution (Eleventh Amendment) Act, 1991

(2) It shall come into force at once.

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 the words" and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" shall be added.

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 (1) There shall be a President of Bangladesh who shall be elected by Members of Parliament in accordance with the Provisions contained in the Second 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 en quired 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

(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.

#### **Article 49** Prerogative of mercy

49. 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 au-

#### Article 50 Term of Office of President

50 (1) Subject to the Provisions of this Constitution the President shall hold Office for a Jerm 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.

#### Article 51 President's immunity

51. (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 his 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.

#### Article 52 impeachment of the President

52(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, set ting 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 con-

sideration of the charge. (4) If after the consideration of the Charge a resolution is passed by parliament by the votes of not less than twothirds 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. Article 53 Removal of President on ground of incapacity

53 (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 (hereafter 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 con-

sideration 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 twothirds 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 the resolution is passed.

tted by Abdus Samad Azad to Parliament Secretariat Article 54 Speaker to act as President

during absence, 54. 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, fliness or any other cause, the Speaker shall discharge those functions until a president is elected or until the President resumes the functions of his

#### Minister and the Cabinet . Article 55

office, as the case may be."

"CHAPTER II -The prime

The Cabinet 55. (1) There shall be a Cabinet for Bangladesh having the Prime Minister at its head and comprising also such other Minister 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 au thority 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 rules for the allocation and transaction of the business of the Government.

#### Article 56 Ministers

56 (1) There shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determine 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, subject to Clause (4) no person shall be eligible to be so appointed un-

less he is a Member 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) A Minister who at the time of his appointment is not a Member of Parliament shall, unless elected as a Member of Parliament within a period of six months from the date of such appointment, cease to be

a Minister.

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 mem-

#### Article 57 Tenure of Office of

Prime Minister.

57(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 to dissolve

vises the President shall dissolve Parliament accordingly. (3) Nothing in this article shall disqualify the Prime Minister for holding office until his successor has entered

Parliament, and if he so ad-

#### upon office. Article 58 **Tenure of Office** of other Ministers. 58(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 ap-

pointment 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. 4. Insertion of CHAPTER III

in Part-IV of the constitution :- The following CHAPTER III shall be inserted in the Constitution. \*CHAPTER III - LOCAL

#### GOVERNMENT Article 59 Local

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

(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; the maintenance of

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

#### Article 60 Powers of Local Government bodies.

60. 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."

#### Article 66 Qualification and disqualification for election to Parliament.

5. Amendment of article 66 of the Constitution: in the Constitution, in article 66 for clause (2A), the following shall be substituted, namely: - "(3) For the purpose of this article a person shall not be deemed to hold an office of profit in the service of the Republic by reason only that he is a Minister, Minister of State or Deputy Minister."

#### Article 72 Sessions of Parliament.

6. Amendment of article 72 of the Constitution :- In the Constitution, in article 72 clause (4A) shall be omitted.

#### Article 73A **Right of Ministers** as respects Parliament.

7. Amendment of article 73A, of the Constitution :- In the Constitution, article 73A, 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 92A of the Constitution :- In the Constitution article 92A shall be omitted.

10. Amendment of article 119 of the Constitution :- In the Constitution, for article 119 the following shall be substituted, namely:-

"119(1) The superinten dence, direction and control of the preparation of the electoral rolls for all elections to Parliament, the conduct of such elections and of elections to the office of President, shall vest in the Election Commission which shall, in accordance with this Constitution and any other

(a) hold elections to the office of President;

(b) hold elections of members of Parliament; and (c) delimit the con stituencies and prepare electoral rolls for the purpose of elections to Parliament.

(2) The Election Commission shall perform such functions, in addition to those specified in the foregoing clauses, as may be prescribed by this Constitution or by any

#### Article 122 Qualifications for registration as voter.

11. Amendment of article 122 of the Constitution :- In the Constitution,(a) in article 122 the words "to the offices of President and Vice President" shall be omitted, and (b) in article 122, clause

(3) shall be omitted. 12. Amendment of article 123 of the Constitution,- In the Constitution, for article 123 the following shall be substituted, namely:-

#### Article 123 Time of holding elections

"123(1) In the case of vacancy in the office of

# Radio, TV were not neutral during polls'

Following is the remaining part of Thursday's Parliament proceedings:

Matiur Rahman Nizami (Jamaat-Pabna) said the mass movement was launched for realisation of the fundamental rights of the people. Establishment of parliamentary democracy and institutionalisation of democracy were also aimed at the joint declaration of the three alliances, he said.

Nizami said congenial political atmosphere had to be created for reaching correct news to the people through electronic media. People cannot take part in any development if they are deprived to correct news from these

The Jamaat leader said they had no objection in making Radio and TV autonomous. He however, said while giving freedom to these media we should make them responsible and accountable. The electronic media have to be freed from the clutches of autocracy. Nizami alleged that Radio

and TV did not maintain neutrality during election. He expressed the hope these two mass media would project the hopes and aspirations of the majority of the people.

## Dr Latif Bhuiyan

Speaking next, Dr. a Latif Bhuiyan (BNP-Kishoreganj) said creation of autonomous status from Radio and TV would not serve the purpose. We would have to see whether our ideology is reflected by the media, he stressed.

#### **Tofael Ahmed** Tofael Ahmed (AL- Bhola)

supported the motion and said the very creation of Radio and TV had been thwarted by the government controlling the media. Tracing the history of vari-

ous movements launched

against the autocratic regimes, Ahmed said the junta had never portrayed the correct picture of the obtaining situation then.

As a result, the people could not get the correct picture at that time.

# Sajeda Chowdhury

Begum Sajeda Chowdhury alleged that there was a conspiracy against the people through Television. She said history of Bangalee was not projected on the Radio and TV since August 15,1975. These two mass media did never mention the names of the father of the nation Bangabandhu Sheikh Mujibur Rahman and four national leaders.

## Nazmul Huda

Participating in the discussion, State Minister for Food Barrister Nazmul Huda said the BNP government would redeem all its pledges made to the people.

He said it would take sometime to shape Radio and TV in a new order as a lot of home work was needed for the pur-

#### Salahuddin Quader Chowdhury

The chair then gave the floor to Salahuddin Quader Chowdhury (NDP-Chittagong) to speak on the resolution. Chowdhury said it had to be seen first whether Radio TV

at all should remain under the

control of the government. He said since the Pakistani time Radio and TV used to be controlled by the government. Now it had to be decided whether the government would expand its hands of control on such media or it (government) would withdraw the control.

The Speaker adjourned the house at 10-40 pm to resume at 3 pm on Saturday (April 27).

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

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 siting of Parliament following such general elec-

(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.

(3) A general election of members of Parltament shall be held -

(a) In the case of a dissolution by reason of the expiration of its term, within the period of ninety days preceding such dissolution; and

(b) in the case of dissolution otherwise than by reason of such expiration, within ninety days after such dissolution:

Provided that the persons elected at a general election under sub-clause (a) shall not assume office as members of Parliament except after the expiration of the term referred to there in.

(4) An election to fill the scat of a member of Parliamen which falls vacant otherwise than by reason of the dissolution of Parliament shall be held within ninety days of the occurrence of the vacancy."

#### Article 124 Parliament may make Provision as to election.

13. Amendment of article 124 of the Constitution, -In the Constitution, for article 124 the following shall be substituted, namely:-

"124. Subject to 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 Constitutions of Parliament."

#### Article 125 Validity of election law and elections.

14. Amendment of article 125 of the Constitution, - In the Constitution, in article 125, in clause (b), for the words "Offices of President and Vice-President" the words "Office of President," shall be substituted.

#### Article 141A Proclamation of emergency

15. Amendment of article 141A of the Constitution, - In the Constitution, in article 141A, at the end of clause (1) the following new paragraph shall be added, namely :-"Provided that such Proclamation shall require for its validity the counter signature of the Prime Minister."

#### Article 142 Power to amend any Provision of the Constitution.

16. Amendment of article 142 of the Constitution, — In the Constitution, in article 142, the clauses (1A), (1B) and (1C) shall be omitted.

17. Amendment of article 145A of the Constitution, - In the Constitution, in article 145A, the words "Provided that no such treaty shall be so laid if the President considers it to be against the national interest so to do" shall be omitted.

18. Amendment of article 147 of the Constitution, - In the Constitution, in article 147 for clause (4) the following shall be substituted, namely : -\*(4) This article applies to the offices of -

(a) President; Prime Minister; Speaker or Deputy Speaker; (d) Minister, Minister of State or Deputy Minister;

(f) Comptroller and Auditor General; (g) Election Commissioner; (h) Member of a Public

Court;

(e) Judge of the Supreme

Service Commission." 19. Amendment of article 148 of the Constitution, - In the Constitution, in article 148, clause (IA) shall be omit-

20. 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.

21. Insertion of new Second Schedule in the Constitution. - In the Constitution, after First Schedule, the following Second Schedule shall be inserted, namely :-

"SECOND SCHEDULE" (Article 48) **Election of President** 

1. The Chief Election Commissioner (in this Schedule referred to as "the Commissioner") shall hold and conduct any election to the office of President, and shall be the returning officer for such

election.

2. The Commissioner shall appoint a presiding officer to preside at the meeting of the members of Parliament held pursuant to the provisions of this Schedule.

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

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 state-

signed by the person nominated that he consents to the nomination:

Provided that no person shall sign, whether as proposer or as seconder, more than one nomination paper at any one election. A scrutiny of nomina-

tion papers shall be held by

the Commissioner at the time and place fixed by him, and if after a scrutiny only one person remains validly nominated, the Commissioner 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 presiding officer, 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 Commissioner to be

elected. If there is no with drawal or if, after withdrawals have taken place, two or more candidates remain validly nominated, the Commissioner shall announce by public notification the names of the candidates and their proposers and seconders, and shall proceed to hold a poll by secret ballot in accordance with the provisions

of the succeeding paragraphs. 9. If, before the close of the poll, a candidate who has been nominated dies and a report of his death is received by the presiding officer, the presiding officer, if he is satisfied that the candidate has died, shall countermand the poll and report the facts to the Commissioner, and all proceedings with reference to the election shall be commenced a

10. A poll shall be taken at a meeting of members of Parliament and the presiding officer shall conduct the poll with the assistance of such officers as he may, with the approval of the Commissioner,

11. A ballot paper, bearing the names of the candidates, shall be issued to every member of Parliament who presents himself for voting at the meeting of Parliament hereinafter referred to as person voting ), and he shall exercise his vote personally by marking the paper with a cross against the name of the candidate for whom he whishes to vote.

invalid if -(a) there is upon it any name, word or mark, other than the official number, by which the person voting may

A ballot paper shall be

be identified; or (b) it does not contain the initials of the presiding officer;

(e) it does not contain a cross; or (d) a cross is placed against the names of two or more

(e) there is any uncertainty

as to the identity of the

candidate against whose name

candidates; or

the corss is placed.

13. After the close of the poll the presiding officer shall, in the presence of such of the candidates or their authorised representatives as may desire to be present, open and empty the ballot boxes, count in the manner prescribed by law under article 124 the number of votes recorded for each candidate on the valid ballot papers, and communicate the number of the votes so

recorded to the Commissioner 14. If there are only two candidates the candidate who has obtained the larger number of votes shall be declared by the Commissioner to be elected.

15. 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 Commissioner

to be elected. 16. If there are three or more candidates and the last preceding paragraph does not apply, a further poll shall be held in accordance with the preceding provisions of this Schedule, at which candidate who obtained the smallest number of votes at the

previous poll shall be excluded. 17. The three last preceding paragraphs shall apply in relation to the further poll and any subsequent poll which may be necessary under the provisions of those para-

18. Where at any poll any two or more candidates obtain an equal number of votes, then (a) if there are only two candidates for election, or

(b) if one of the candidates who obtained equal number of votes is required to be excluded from a further poll under paragraph 16 of this schedule; the selection of the candidate to be elected or, as the case may be, excluded, shall be made by the drawing of lots.

completed and the result of the voting determined, the Commissi-oner shall forthwith cause it to be declared by public notification. 20. The Commissioner may be public notification, with the

approval of the President,

19. When, after any poll, the

counting of the votes has been

make rules for carrying out the purposes of this Schedule. 21. Amendment of THIRD SCHEDULE - In the Constitution, Constitution, (a) in the Third Schedule, paragraph 1A shall be omitted, (b) in the Third Schedule, in paragraph 2, the words, "Deputy Prime Ministers" shall be omitted. and (c) in the Third Schedule, in Forms 3 and 4 for the word

Justice" shall be substituted. 22. Amendment of FOURTH SCHEDULE to Constitution, - In the Constitution, IN FOURTH SCHEDULE, for paragraph 20, the following shall be substi-

"20. Special Provisions

tuted, namely:-

"President" the words "Chief

relating to President, - (1) On the Commencement of this Act, the person who as the Vice-President of Bangladesh holding the office of Acting-President immediately before such commencement, shall become the President and 'shall enter upon the office of President of Bangladesh and shall hold the office of President of Bangladesh as if he has been an elected President under the Constitution as amended by this Act, until a person, elected under article 48 of this amended Constitution enters upon the office of President of Bangladesh. (2) After the commencement of this Act, the Parliament shall as soon as possible hold the election of the President under the amended article 48 of the Constitution. (3) Immediately after the President, elected under Paragraph (2) of this article has entered upon the office, the person mentioned in Sub-Paragraph (1) who was holding the office of the Acting President before the commencement of this Act, shall return to the office of the Chief Justice of Bangladesh and shall hold the said office under CHAPTER VI of the Constitution.

It is necessary to hand over power to a sovereign Parliament and to ensure the accountability of the Government to the Parliament composed of the elected representatives of the people, elected in an election held under a caretaker Government formed by way of an achievement of popular upsurge, based on the Programme of united movement of three alliances - fifteen party alliance, seven party alliance and five party alliance, and to attain those objectives and to establish Parliamentary Form of Government and to institutionalise democracy this amendment is necessary and indispensable.