



FOR YOUR information



# The 14th Amendment of the Constitution

1. Short title and commencement. -- (1) This Act may be called the Constitution (Fourteenth Amendment) Act, 2004.

(2) This Act shall come into force at once.

2. Insertion of article 4A in the Constitution. -- In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 4, the following new article shall be inserted, namely:

"4A. Portrait. (1) Portrait of the President shall be preserved and displayed at the offices of the President, Prime Minister and Speaker, and all embassies and missions of Bangladesh abroad.

(2) In addition to clause (1), Portrait, of only the Prime Minister, shall be preserved and displayed at the offices of the President and the Speaker, and in head and branch offices of all government and semi-government offices, autonomous bodies statutory public authorities, government education institutions, embassies and missions of Bangladesh abroad."

3. Amendment of article 65 of the Constitution. -- In the Constitution, in article 65 for clause (3), the following clause (3) shall be substituted, namely:

"(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of the commencement of the Constitution (Fourteenth Amendment) Act, 2004, there shall be reserved forty five seats exclusively for women members and they will be elected by the aforesaid members in accordance with law on the basis of procedure of proportional representation in the Parliament through

single transferable vote:

Provided that nothing in this clause shall be deemed to prevent a woman from being elected to any of the seats provided for in clause (2) of this article."

4. Amendment of article 96 of the Constitution. -- In the Constitution, in Clause (1) of article 96, for the word "sixty-five," the word "sixty-seven" shall be substituted.

5. Amendment of article 129 of the Constitution. -- In the Constitution, in article 129, for clause (1), the following clause shall be substituted, namely:

"(1) The Auditor-General shall, subject to the provisions of this article, hold office for five years from the date on which he entered upon his office, or until he attains the age of sixty-five years, whichever is earlier."

6. Amendment of article 139 of the Constitution. -- In the Constitution, in clause (1) of article 139, for the word "sixty-two," the word "sixty-five" shall be substituted.

7. Amendment of article 148 of the Constitution. -- In the Constitution, in article 148, after clause (2), the following new clause shall be inserted, namely:

"(2A) If, within three days next after publication through official Gazette of the result of a general election of members of Parliament under clause (3) of article 123, the person specified under the Constitution for the purpose or such other person designated by that person for the purpose, is unable to, or does not, administer oath to the newly elected members of Parliament, on any account, the Chief Election Commissioner shall administer such oath within three days next thereafter, as if, he is the person specified under the Constitution for the purpose."

8. Amendment of the Fourth Schedule to the Constitution. -- In the Constitution, in the Fourth Schedule, after paragraph 22, the new following paragraph 23 shall be added, namely:

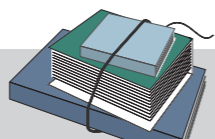
"23. Temporary special provision regarding women members in the Parliament. -- (1) For the residual period of the Parliament in existence at the time of the commencement of the Constitution (Fourteenth Amendment) Act, 2004, there shall be reserved forty five seats exclusively for women members and they will be elected by the members of the Parliament in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote.

(2) During the period mentioned in sub-paragraph (1), the Parliament shall consist of the three hundred members mentioned in clause (2) of article 65 and the forty five women members mentioned in sub-paragraph (1) of this paragraph."



গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়



## REVIEWING the views

### 'How to have experienced judges in the Supreme Court'

I read the law-opinion written by Mr Hasanat Alamgir under the above caption. I do not agree with all the observations made by Mr Alamgir. In the article he has tried to say that only 20% of the appointment of High Court Justices are from the lower judiciary while the rest are from the Advocates practicing at the Supreme Court. This figure is not correct if we consider the number of appointments over the last decade or so. Justices are appointed from both the lower judiciary and from amongst the members of the Bar. Moreover what is the problem in appointing learned lawyers as Justices? or should one ask -- what are the merits in appointing Justices as Justices of the High Court? It is not true that the lower court Judges

have no political inclination personally and it is not true that just because they acted as Judges they are automatically and mechanically well-equipped to become Supreme Court Justices (as contended by Mr Alamgir). On the other hand we must consider the advantages of Advocates of the Supreme Court who are appointed as Justices. They not only have the proper qualification and experience of the rules and norms of the Supreme Court but also have sufficient knowledge about those branches of the law that only involve the Supreme Court. For instance there are writ petitions habeas corpus matters, company matters and criminal matters involving inherent powers of the High Court Division, which are

exclusively within the knowledge of the Advocates of the Supreme Court as opposed to the Judges of the lower judiciary. Then why did Mr Alamgir think that the lawyers are not as proper persons to be appointed as Justices as the Judges? Perhaps the better view is this -- it does not matter where the Justices are appointed from as long as they are done upon consideration of their seniority, performance and not upon their political affiliation. We do need more experienced and qualified Justices -- this cannot be denied. In my opinion, we require quality rather than quantity as far as Justices are concerned.

Rehan Husain, Barrister-at-law, practicing at the Supreme Court of Bangladesh.

## LAW views



### We reject the provision for 45 nominated seats

Advocate Sultana Kamal, Executive Director, Ain o Salish Kendra (ASK)

The provision of mandatory displaying of the portrait according to us is quite unnecessary. It definitely does not add any value in the Constitution. Under the present circumstances, the change relating to the retirement age of judges seems to be mere political. Any political manipulation is likely to bring crisis to the system. The main motivation in introducing the system was to ensure absolute neutrality. Whatever threatens the guarantee to neutrality is undesirable.

As women we reject the provision for 45 nominated seats. It is the provision of nomination that we are against, not the provision of reserved seats. One of the ways of ensuring women's proper participation would be through direct election to the parliament.

### Increasing the retirement age of the Judges is done with an ulterior motive

Justice K.M. Subhan

The constitution has been subjected to major surgery by the ruling clique. Increasing the retirement age of the Judges of the Supreme Court is done with an ulterior motive. The purpose is clearly to have a trusted Chief Adviser of the caretaker Government of the ruling party's choice. This is apparent from the timing of the amendment. This is bound to make the concerned Chief Justice controversial which is most undesirable. This calculated move is taken purely in self-interest of the party in power.

Increasing the age of the Supreme Court Judges under the amendment is not a new phenomenon. During President Zia's martial law, Chief Justice Sayem, as the Chief Martial Law Administrator increased the retirement age of the Judges of the Supreme Court from 60 years to 62 years by a martial law order, to favour some Judges. If the age of the Supreme Court Judges is considered necessary to be increased because of experience etc. It should be adequately increased not only for the Judges of the supreme Court but also for the same reason of the entire judiciary. In that case it would be double standard to leave behind other government and semi-government servants. What is sauce for gander is also sauce for goose.

### Why women could not be elected in the parliament?

Shirin Akhter, President Karmojibi Nari (KN)

Karmojibi Nari (KN)

I oppose the 14th Amendment of Constitution, especially the 45 reserved seats for women representation. Women Organisations are bargaining, lobbying and advocating for direct election in the women seats in various ways for the last 20 years. So, Direct election is the main issue that has been denied by the 14th Amendment of Constitution. Women are now more conscious about their own rights, so they are fighting for their political empowerment. The UP members are the best example for us. The Women Members are doing their duty with their level best to serve the nation fighting the existing external and internal constraints. So, why the women could not be elected in the parliament? We absolutely oppose the Law Minister's note about the selection process of women parliamentarians. It is important for the government to rethink about the women seats and it would be the best solution to take necessary action to arrange direct election in the women seats.

We know our politics and election is more or less dominated by the power, black money and muscle man. So, the elected parliamentarians who come from this process, would never select such women who is honest, sincere to women cause. So, through the selection process- the honest, committed, sincere women activist who has been fighting for the women empowerment for a long time, could not be the part of the policy making process of the nations as well as of the women folk. That's why, it is impossible for the selected women policy makers to serve and fight for the women interest.

### The amendment will manipulate the caretaker government system

Mushfiqur Rahman

Advocate, Dhaka Judges Court

The change brought into the retirement age of Supreme Court judges is without any doubt prompted by the desire to manipulate the caretaker government system. This event reminds us of the inevitable truth that law can't make one behave democratically but can only provide the mere basis of democracy. It is always susceptible to political motive and irresistible temptation to hold the crown for an indefinite period of time. Only when the practice of democratic values is established within and outside the political parties, one can think of real democracy. Otherwise whatever good or bad is written down in the law books, it is no more than rhetoric.

## LAW week



### Ban ends on journalists

New Age, 01 June.

A ban on journalists, covering the heated hearing of Dhaka-10 parliamentary by-poll case, was lifted on Monday, 31st May with an intervention by Chief Justice Syed JR Modassir Husain. Following the intervention of the chief justice, the journalists who had earlier protested such ban, entered the court room of the Supreme Court to cover the full-court bench hearing of the case which began Monday. Earlier on a Special Bench of the Appellate Division banned newsmen from the hearing of the petition filed by returning officer (RO) of the Dhaka-10 parliamentary by-polls against the High Court order that stayed all election proceedings in the constituency until 12 June.

### Charge sheet in Ctg arms haul case soon

New Age, 0 June.

The Criminal Investigation Department (CID) inquiring into the sensational arms haul in Chittagong may have to submit its charge sheet in hurry without delving into details due to legal process and time constraints. The CID, Chittagong zone, in its recent report prayed to the additional inspector general of the CID seeking more time to carry out a full-length investigation before submitting charge sheet. But it was turned down as per rigidity of law. For that the charge sheet in arms haul is to be submitted by June 10 next, even though the full facts in the case might not be unearthed by then and the perpetrators brought to justice.

### 20 killed by law enforcers last month

New Age, 0 June.

Law enforcers killed as many as 20 people across the country last month. This was revealed by a report of Odhikar, a coalition for human rights. In its report Odhikar said that nine people were killed in police custody during the time. It said five journalists were injured and two others assaulted in May while 19 others were threatened and six others implicated in cases. The report also said that political violence left 48 killed and 200

### By-polls of Dhaka-10 stayed

Daily Star, 02 June.

The Supreme Court (SC) on Wednesday, 2nd June has rejected the petition the Election Commission filed against the High Court (HC) stay order on Dhaka-10 parliamentary by-polls, ending the prospect of June 6 election to the seat. The Supreme Court full bench headed by Chief Justice Syed JR Modassir Husain upheld the stay order on the high-profile election symbol dispute after three days of hearing. The bench directed both parties to move to the High Court which will now hold a hearing on June 12 on its rule upon the Election Commission and the returning officer (RO).

### SP arrested for offering bribe

Daily Star, 03 June.

A special superintendent of police (SP) has been arrested for offering bribe to State Minister for Home Lutfozzaman Babar, Muhammad Abdul Baten, special SP of the Criminal Investigation Department (CID) of police, offered to bribe the minister to have an order for his transfer to Khagrachhari cancelled. But The accused has refuted the allegation of bribing and told that it was a conspiracy against him. Police said SP Baten, who received the transfer order just two days ago, entered Babar's office at the Secretariat on the plea of having a talk with him. He then put a packet containing money on the table, requested Babar to accept it and cancel his transfer order. He also told the minister that he wanted to remain posted in Dhaka since he is due to retire in about 16 months' time.

### Legal notice on govt against troops to Iraq

Daily Star, 04 June.

A "demand of justice notice" has been issued on the government asking it not to enter into any contract with the United States on sending Bangladesh troops to Iraq without any UN resolution and approval of the Jatiya Sangsad. The legal notice, served upon defence secretary, foreign secretary, cabinet secretary and principal secretary to the Prime Minister, came ahead of Saturday's arrival of US defence secretary Donald Rumsfeld on his first visit to Bangladesh reportedly to discuss the contentious troop issue. Bangladesh has so far refused to send its peacekeeping troops to Iraq without UN sanction. Advocate Asaduzzaman issued the notice on behalf of Farhad Mazhar and Farida Akhter of UBINIG. "Any such step will be a clear violation of the Constitution, the Army Act 1952 and the UN Charter," said the notice asking the government to reply to the notice within three days. Bangladesh so far refused to send its peacekeeping troops to troubled Iraq without UN sanction.

### Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email <dslawdesk@yahoo.co.uk>

## READER'S queries



### Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: Almost a year and a half ago, we secretly got married. I was still a teenager, but legally eligible to be married; he was much older and more matured than me. Then, I went to my parent's house and he went to his. There were no reasons for us to take the drastic step because there were no immediate pressures from our families. But, unfortunately, we took the step and now we are bound. We never shared a conjugal life, all there was between us was a signed document but that is enough to turn life hell. I still don't feel married, but legally, I am. As days went by, we realised our mistake. The only thing to do now is rectify it legally. Our families now know, but they have left the decision on our hands, they are not trying to pressurise us in any way. We both want a legal remedy that does not involve too much chaos, legal representation or explicitness. In one word we want absolute discretion. Can you please help us in this regard? As witness, only one of my female friend was present from my side and another male friend was the 'ukil baap'. None of the other witnesses were from my side. Will that make the marriage illegal? If it will, what procedures need to be followed to have it legally declared as illegal? Alternatively, what are procedures to be followed for a mutual divorce? I don't have any claims on the 'kaabin', all I want is a discrete closure. I would also like to know if the bride can ask for a divorce, in case the groom for some ulterior motive refuse to easily come to a mutual divorce agreement? How can she do that? Please help us and please try to answer as soon as possible.

Rabeya Dhaka.

Your Advocate: Your sudden secret marriage, on mutually living apart from the start, never to live like husband and wife, absence of negative pressure from the respective families and finally calling it a mistake and taking decision to walk out of the wedlock do not conform the ordinary course of conduct. This is, however, a matter of somebody's inner cry and disquiet not something to be guessed or speculated from outside. Be that as it may, you want to clear yourself off from matrimonial bondage as quickly and easily as possible without taking much of trouble and run-around. You have at the same time doubted the validity of your marriage as there was some technical omission in the Nikahnama. Mere absence of one of the two witnesses required to sign the document does not invalidate the marriage, which is otherwise valid. As to the question of divorce you have indicated that your husband is agreeable to mutual separation. You do not also claim the dower money and the whole concern is to get rid of the bondage.

Yes, there is provision for dissolution of Muslim marriage by mutual consent without intervention of court. This is called Mubara'at. But in view of the Muslim Family Laws Ordinance, 1961, intervention by an Arbitration Council to be constituted by the local Chairman, UP/Paurasabha or Mayor, City corporation as the case may be, is mandatory. Since you both are agreeable to a mutual separation it is more advisable in your case to ask your husband to exercise his right of divorce as per Section 7 of the aforesaid Ordinance. He is required under law to give notice to the Chairman/Mayor with a copy to you, i.e., his wife informing that he has divorced his wife. The Chairman of Mayor as the case may be will then constitute an Arbitration Council and go through the formalities of law towards bringing about a reconciliation between the parties. As this is in fact a case of mutual separation reconciliation will virtually fail and divorce will take effect on the expiry of 90 days from the date of notice received by the office of the Chairman/Mayor and you will be free once for all from the day on. Remember that you will have to take this much trouble of taking recourse to the Chairman/Mayor as it is the mandatory requirement of law. Any attempt at making short-cut would leave scope for future complications.

Now to the second limb of your question. A Muslim woman can divorce herself from her husband if she has such power delegated to her by her husband. Nowadays it has become customary with the bridegroom to delegate such power to his wife. Non-delegation is an exception. Please check through column No.18 of your Nikahnama. This is the column that contains the stipulation about delegation of such power. If there is delegation of power mentioned in your Nikahnama you can also exercise the power in accordance with the provisions of Section 8 of the same Ordinance by giving notice to the local Chairman/Mayor in the similar way with some changes in technical language. In any case you should take advice of lawyers. Should all the devices fail you will have no choice but to go to court for dissolution of marriage. And this will unavoidably entail some trouble and fussing you wanted so anxiously to avoid.

## LAW news

### New inheritance law for Iranian women

Iran's reformist Parliament has passed a bill granting women the same inheritance rights as men, a move that sets the stage for a showdown with the conservative 12-member Guardian Council.

The proposed legislation would equalise inheritance laws for widows and widowers. Under current law, a woman with children can inherit one-eighth of her husband's money, possessions and buildings. A woman without children can inherit one-fourth of those goods, but she cannot inherit land in either case. The rest of her husband's property goes to other relatives or, if they are not alive, to the state.

Men, by contrast, may inherit one-fourth of their wives' assets if they have children and half if they do not.

Rights lawyers reportedly voiced doubt, however, that the law would pass the Guardian Council, an unelected panel dominated by Islamic hard-liners. The constitutional watchdog has rejected several laws promoting equality between the sexes. Last year it refused to ratify the Parliament's proposal to accede to the U.N. Convention on the Elimination of All Forms of



Discrimination against Women.

The council also attempted to quash a law last November passed by Parliament granting divorced Iranian mothers the right to custody of their sons up to age 7 (they already had the right to custody of their daughters up to that age).