

The Tale of Ninth Amendment to the Constitution of Bangladesh: Alive or Dead?

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Abstract

Bangladesh is a country where rulers are found adamant to introduce bangladesh style democracy where opposition and people's voice remains unheard and what government say/portray is treated as the outburst choice of the nation. Government's voice is always inserted in the constitution as the demand of the nation by amendment. Military regime under H.M. Ershad added ninth amendment at such a moment when people as well as opposition demanded for midterm election under caretaker government. But the regime squeezing people's voice added new democratic provisions in the constitution so as to making the then existing so-called democratic regime more accountable and democratic. Regime's farce is proved when its application was withheld for future. This so-called democratic change did not surface because of the establishment of people's voice. This paper is about ninth amendment- its requirement, political aspect of the military ruler and its ineffectiveness last of all.

Keywords: Democratic government, Accountable, opposition demand, mid-term election, neutral government, elected Vice-president.

1. Introduction

Constitution is the highest law of the land. It is said that good one stipulates the hopes and aspirations of the people of the country. Dynamism is the feature of a good constitution. Since constitution is what the people want to be, people should have the knowledge and say in any constitutional change or stipulation. But it is reverse in the context of Bangladesh. Ninth amendment is not the out burst demand of the people of Bangladesh, nor people have affiliated with its provisions. The regime portrayed the substance of the amendment as peoples' choice. But the real goal was not unearth. Most interesting thing, this amendment was made out of order without being put into operation. This article is intended to find out the object of this amendment, whether the provisions of the change were people oriented or spoke of the peoples' interest, whether regime had any need for its incorporation and lastly was the change put into reality.

2. Ninth Amendment

After the passage of the eighth amendment to the constitution, Awami League and BNP, two major political parties started mudslinging towards each other. It slowed down opposition movement. Government for a while was able to rule the country quite peacefully. At this time government took some initiatives to make the constitution more democratic.

2.1 Formula of Holding Free and Fair Election

President Ershad on February 1, 1989 delivering inaugural speech at the winter session of the fourth Parliament invited all the opposition political parties and groups to come forward for healthy growth of constitutional politics in the country. He said, "let us hold aloft democratic values in all sections of national life." He said that our society was becoming relatively more respectful to constitutional politics than before.¹ On February 16, 1989 he while exchanging views at a meeting with members of the British Bangladesh Parliamentary Group and Commonwealth Parliamentary Association at Committee Room of the House of Commons said that his government was very much concerned over the burning question of holding free and fair election. He expressed his government's willingness to make the election free and fair, and neutral.²

On March 11, 1989 Mirza Golam Hafiz, former Speaker and BNP leader in reply to the president's offer suggested that a free and fair election could be held under a neutral administration without resignation of President Ershad. President might dissolve parliament and went on a long leave not less than five months outside Bangladesh handing over power to an impartial Vice-President appointed by him. He further added that that was an alternative to resignation of the government suggested by constitutional experts.³

Awami League leader, Mohammad Nasim, on March 21, 1989 spelt out the criterion of neutral government for holding free and fair election. He said government could be considered neutral when its head remains non-partisan and acceptable to people and political parties. He should not also become a candidate in the

¹ *The Bangladesh Observer*, February 2, 1989. See the inaugural speech of President H.M. Ershad in the first session of fourth parliament.

² *Ibid*, February 17, 1989, *the Inqilab*, February 17, 1989

³ *Ibid*, March 12, 1989, *the Inqilab*, March 12, 1989

election nor join campaign for any particular political party. He said a neutral government would have to ensure complete impartiality and honesty of administration and election conducting authority in voting, counting and announcing election result.¹ These suggestions undermined the credibility of the government. When leaders of two largest political parties emphasized on the absence of President for holding free and fair election it naturally questioned the willingness of the government for arranging impartial election. It means that most of the people believed that their President Ershad was the bottleneck to the way of holding neutral election. Mr. Mizanur Rahman Chowdhury, former Prime Minister termed opposition demand for resignation of President Ershad as unrealistic. He said it would be unprecedented in country's history if the president has to resign to pave the way for election.²

2.2 Possibility of Midterm Election

It was aired that government might arrange midterm election. Referring the midterm election Awami League chairperson Sheikh Hasina on March 7, 1989 said, "Awami League will not join polls under Ershad government."³ Five-party alliance led by Rashed Khan Menon on February 19, 1989 denounced any election under president Ershad.⁴ On June 11, 1989 a confidential source of the government said, "It is willing to talk with opposition political parties regarding their participation in future elections." It was also heard that if all the major political parties agree to participate in polls then government could arrange mid-term parliamentary election.⁵

2.3 Democratic Constitution

Speaking on the bill President Ershad said that his current five year term in the office of president shall come under the amended provisions. The ruling Jatiya Party source told that President had expressed his readiness to contest for the second term of the office of the President if nominated by JP.⁶ In the objective of the bill it was laid down that the office of Vice-President was very important because he should not be appointed by the President and must not hold office at the will of the President.⁷ It was also laid down in the objective that there was no bar then in holding the office of the President again and again. This was not desirable. The term of office of the President had therefore been restricted to two terms in the proposed ninth amendment bill.⁸

On July 9, 1989 in the House Prime Minister Mr. Moudud Ahmed termed the ninth amendment bill as pragmatic step to further strengthen democratic set up in the country.⁹ Referring to the fourth amendment to the constitution which established one party rule in the country he said that it was aimed at concentration of powers in the hands of government while ninth amendment seeks to curb the authority of the President.¹⁰ Deputy Prime Minister Mr. Shah Moazzem Hossain, General Secretary of Jatiya Party said that the step was unprecedented in the country. This bill seeks to limit the term of office of the President to two five-year terms. Neither Sheikh Mujib nor Ziaur Rahman took any move to limit the term of their offices though there were several amendments to the constitution during Awami League and BNP rule.¹¹ Mr. Nure Alam Jhiku, Chief Whip of the opposition supported the bill. While he was discussing on the bill he criticized the fourth amendment to the constitution.¹²

Kazi Zafar Ahmed, Deputy Prime Minister speaking on the bill said that a statesman rises above personal interests. President Ershad sought to deliver the goods for all by rising above his own petty interest of retaining power for good. President Ershad was not only a politician, he was a poet and was a soldier who through his dream and thought was trying to illuminate them. He was a framer.¹³

Mr. Mizanur Rahman Chowdhury, former Prime Minister and General Secretary of Jatiya Party said that the ninth amendment would set up an unprecedented example of democracy in third world. Describing the ninth amendment bill as "epoch-making event" he said it would make the presidential form of government fully democratic where the Vice-President would be a running mate of the President in the election like the system in the United States.¹⁴

The constitutional experts appreciated the ninth amendment saying that it removed the vacuum in case of

¹ *Ibid*, March 22, 1989, *the New Age*, March 22, 1989

² *Ibid*, March 28, 1989, *the Daily Star*, March 28, 1989

³ *Ibid*, March 8, 1989, *the Inqilab*, March 8, 1989

⁴ *Ibid*, February 20, 1989, *the Sanbad*, February 20, 1989

⁵ *Ibid*, June 12, 1989, *the Sanbad*, June 12, 1989

⁶ *The Bangladesh Observer*, July 7, 1989, *the Daily Star*, July 7, 1989

⁷ *Ibid*, See the objective of the Constitution (Ninth Amendment) Bill. read out in the House on July 6, 1989

⁸ *Ibid*

⁹ *The Bangladesh Observer*, July 10, 1989. See the parliamentary debate of July 9, 1989.

¹⁰ *Ibid*, and *the New Nation*, July 10, 1989

¹¹ *Ibid*

¹² *Ibid*

¹³ See the parliamentary debate of July 10, 1989. see also the *Daily Ittefaq* of July 11, 1989

¹⁴ *Ibid*.

demise, absence etc of President, Vice-President and Speaker simultaneously.¹ But interesting thing was that nowhere in the bill it was laid down that Ershad's first term in office would be counted in two terms of elected President under ninth amendment.

3. Provisions of Ninth Amendment

On July 6, 1989 the Constitution (Ninth Amendment) Bill, 1989 was introduced in the House by Prime Minister Mr. Moudud Ahmed.² On July 10, 1989 the House passed the Constitution (Ninth Amendment) Bill, 1989 by 272-0 votes which was supposed to come into operation from March 1, 1991. Prime Minister Moudud Ahmed said the bill was designed to democratize and improve the constitution and it would remove leadership crisis. "The passage of the bill will help consolidate the national independence and sovereignty," he added.³ He said the term of office of the President would expire on October 14 or 15, 1991. After the passage of the ninth amendment bill President could appoint a Vice-President. He made it clear that the appointment would require to be ratified by the *Jatiya Sangsad* with an absolute majority provided that the Act would come into force on March 1, 1991.⁴

3.1 Amendment of article 49

By fourth amendment the post of Vice-President was created and it stipulated that he should be appointed by President.⁵ Ninth amendment made that he should be directly elected on the basis of universal adult franchise.⁶ This provision made the office of Vice-President an important and democratic one.⁷

3.2 Amendment of article 50

Fourth amendment said that a person should be qualified for election as President or appointment as Vice President if he had certain qualifications.⁸ Ninth amendment made provisions for election of Vice President as well along the President.⁹

3.3 Term of Office of President

In original Constitution President was a titular head.¹⁰ By fourth amendment an authoritarian Presidential system was introduced with unlimited power and for indefinite terms.¹¹ By fifth amendment absolute power of the President was curtailed but term of office was kept unlimited which could encourage authoritarian rule.¹² Ninth amendment restricted maximum term of office of President to two consecutive periods. Term of office of President remained five years.¹³ Such provisions made the constitution theoretically democratic by restricting indefinite terms of office of President to just two terms.¹⁴

3.4 Term of Office of Vice-President

Under fourth amendment Vice-President had to stay in office on the pleasure of the President. Ninth amendment inserted article 51A in the Constitution. It laid down that Vice-President should hold office for five years term and should not hold office for more than two terms. He might resign earlier. If he was elected as Member of Parliament he should not sit in the House until he left the office. Where a member of parliament was elected Vice-President he should not hold the office unless he gave up membership in the House.¹⁵

3.5 Appointment of Vice-President

In original constitution there was no post of Vice-President. Fourth amendment incorporated this post in the constitution. It said that President should appoint Vice-President. Ninth amendment inserted provision for the direct election of Vice-President. But interestingly it kept provision for the appointment of Vice-President in the constitution. A new article 55A said that where any vacancy occurred in the office of the Vice-President earlier

¹ *Ibid*

² See the Parliamentary Proceeding of July 6, 1989 published in *the Daily Ittefaq* on July 7, 1989

³ See the Parliamentary proceeding of July 10, 1989 published in the *Bangladesh Observer* on July 11, 1989

⁴ *Ibid*

⁵ See Appendix-2

⁶ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁷ *Ibid*

⁸ See the fourth amendment in Appendix-2

⁹ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

¹⁰ See Appendix-1

¹¹ See Appendix-2

¹² See Appendixes 3, 4, 5, and 6

¹³ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

¹⁴ *Ibid*

¹⁵ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

due to death or removal or impeachment or resignation a person should be appointed to the post of Vice-President, provided that such appointment should be ratified in the House. If the House did not ratify nor reject the appointment after expiration of 90 days from the date of submission of the appointment to the House such Vice-President should hold the office until an elected Vice-President took the charge.¹ This provision undermined the spirit of direct election for Vice-President.²

3.6 Amendment of Articles 53 and 54

The impeachment procedure applicable for removing President on the ground of violation of the Constitution or gross misconduct, and removal of President on ground of physical or mental incapacity should be henceforth applicable in case of Vice-President. That means Vice-President should not be removed unless a resolution passed by three-fourths majority of the House in this regard.³

3.7 Acting President

It also proposed change in article 72 regarding the appointment of Acting President at the event of simultaneous absence of President, Vice-President and Speaker because of death, illness, physical inability etc. It was laid down that where President, Vice-President and Speaker were not available due to death or resignation or any other reason then the Parliament would sit together and elect an Acting President for not more than six months who would arrange election and resign handing over power to new elected President.⁴ It laid down that the person holding the office of Vice-President immediately before the commencement of the ninth amendment should continue to hold such office.⁵

3.8 Functions of Election Commission (EC)

In original constitution under article 119 EC was mainly responsible for arranging and holding Parliamentary election. It did not worry about Presidential polls because President was a titular head.⁶ Fourth amendment introduced presidential system. As a result EC was asked to give emphasis on arranging and holding presidential polls as well as parliamentary election.⁷ Ninth amendment stipulated that EC should arrange and hold vice-presidential polls too.⁸

3.9 Qualifications for Registration as Voter

In original Constitution under article 122 voter list was created only for holding parliamentary polls.⁹ Fourth amendment introduced presidential system. It authorized EC to prepare voter enrollment for presidential election also.¹⁰ Ninth amendment said electoral roll should be prepared for both presidential and vice-presidential polls.¹¹

3.10 Time for holding election

In original constitution under article 123 presidential election was to be held within 90 days before the expiration of the term. Where the tenure expired before the dissolution of parliament election was to be held within 30 days from the first meeting of new parliament. Where vacancy occurred due to death of the President the poll was to be held within 90 days after the vacancy. In case of parliamentary election it was to be held within 90 days before the dissolution of parliament. Where dissolution happened otherwise than expiration of term it was to be held within 90 days from such dissolution.¹² Fourth amendment stipulated that both presidential and parliamentary polls would be held within 180 days after such vacancy or dissolution.¹³ Ninth amendment stipulated that vice-presidential election would be held simultaneously with president.¹⁴

3.11 Legislative Power of Parliament

In original Constitution under article 124 Parliament had power to make law for all matters relating to holding

¹ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

² *Ibid*

³ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁴ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁵ *Ibid*

⁶ See Appendix-1

⁷ See Appendix-2

⁸ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁹ See Appendix-1

¹⁰ See Appendix-2

¹¹ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

¹² See Appendix-1

¹³ See Appendix-2

¹⁴ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

parliamentary polls.¹ Fourth amendment gave parliament power to make law not only for arranging and holding parliamentary polls but also for presidential election.² Ninth amendment said parliament should make law for arranging and holding parliamentary, presidential and vice-presidential polls.³

3.12 Amendment of Clause (b) of Article 125

Original constitution stipulated that no question should be raised regarding the validity of Presidential and Parliamentary polls unless it was initiated through EC.⁴ Ninth amendment introduced direct election for the office of President and Vice-President. Hence in article 125 provisions were made that no question regarding the validity of the election to parliament, President and Vice-President would be heard unless it was initiated through EC.⁵

3.13 Oath of Office

President and Vice President should take oath on the same day. Where oath was not possible on same day President should take oath first and Vice-president on next day should take oath.⁶

3.14 Amendment of Article 152

Fourth amendment created the office of Vice-President and it defined it as an appointed post by President.⁷ Ninth amendment changed this definition and said Vice-President meant the Vice-President of Bangladesh elected or appointed under this Constitution.⁸

3.15 Amendment of Fourth Schedule

A new paragraph 20 was inserted in fourth schedule for interim period for the Vice President. It said that the person holding the office of Vice-President immediately before the commencement of this Act should hold this office until the term of office of the person holding the office of President before the commencement of this Act expired. Where the post fall vacant before the commencement of this Act another person should be appointed in his place by the President and he should hold office after the commencement of this Act as if he had been elected under the Act.⁹ It undermined the main objective of this act for an elected Vice President. It stipulated that the provisions of ninth amendment will commence from March 1, 1991.¹⁰ But nowhere in the Act it was said that President Ershad's first term should be counted within the two terms enunciated in the said Act.¹¹

4. Decision of the Court on Ninth Amendment:

On August 20, 1989 a Writ petition was filed by Advocate Md Abdul Berek in the Division Bench of the High Court comprising of Justice Abdul Matin Khan and Justice Naimuddin Ahmed against the ninth amendment Act.¹² The petitioner submitted that the amendment indirectly intended to change the basic structure and frame work of the constitution. Barrister Rafiqul Islam Miah, Barrister Jamiruddin Sarkar, Advocate Abdur Rahman Biswas, Advocate Abdur Rouf assisted the petitioner. The court rejected the petition saying that there was no violation of any provision of the constitution by ninth amendment.

5. Application of Ninth Amendment:

The appointment of Chief Justice Shahabuddin Ahmed as Acting President on December 6, 1990 after the fall of autocratic President Ershad in the face of mass upsurge prematurely put the provision of ninth amendment in operation. However after the introduction of twelfth amendment to the constitution, ninth amendment with regard to the provision of Vice-President and direct election of President ceased to exist.

However, in spite of absence of peoples' interest and participation in the ninth amendment, it may be said the amendment was made to make the constitution more democratic and systematic no doubt.

¹ See Appendix-1

² See Appendix-2

³ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁴ See Appendix-1

⁵ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁶ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁷ See Appendix-2

⁸ See Act No. XXXVIII of 1989 published in the official gazette on July 11, 1989

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Ibid*

¹² See the writ petition filed against Constitution ninth amendment on August 20, 1989 published in the *Daily Ittefaq* on August 21, 1989

6. Conclusion:

Ninth amendment of Bangladesh constitution was made at the time when neither the opposition nor the people had any say in the making and unmaking of government and legislation. The opposition was vocal and demanded for holding free and fair election under a neutral government. On the other hand government ignoring the peoples' demand endeavoured to portray the image of the government as democratic government committed to welfare of the people. With the aim of making reign of government more democratic and accountable, the government inserted the ninth amendment restricting the term of president to two and making provision for direct election for Vice- President. Though this amendment would have to be commenced on March 1, 1991 its application happened prematurely on December 6, 1990. But the return of parliamentary form of government negated the application of ninth amendment. The whims of the regime if not matched with the people or peoples' desire if not incorporated in the business of the government constitution and constitutional amendment both would fall apart like the ninth amendment of Bangladesh Constitution. Regime should stop proceeding alone with such type of deeds where the say of the people as a whole is inevitable.

Appendixes

1. List of selected provisions and articles of 1972 Constitution
2. Provisions of Fourth Constitutional Amendment
3. The Proclamations (Amendment) Order, 1977
4. The Second Proclamation (Seventh Amendment) Order, 1976
5. The Second Proclamation (Tenth Amendment) Order, 1977
6. The Second Proclamation (Fifteenth Amendment) Order, 1978

Appendix-1 PREAMBLE

We, the people of Bangladesh, having proclaimed our independence on the 26th day of March 1971 and, through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh; Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution;

Further pledging that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitations society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens;

Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind;

In our Constituent Assembly, this eighteenth day of Kartick, 1379 B.S. corresponding to the fourth day of November, 1972 A. D., do hereby adopt, enact and give to ourselves this Constitution.

Article 1. The Republic Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh.

Article 2. The territory of the Republic. The territory of the Republic shall comprise—

- (a) the territories which immediately before the proclamation of independence on the 26th day of March 1971 constituted East Pakistan; and
- (b) such other territories as may become included in Bangladesh.

Article 3. Language .The state language of the Republic is Bengali.

Article 5. The capital. (1) The capital of the Republic is Dacca.

(2) The boundaries of the capital shall be determined by law,

Article 6. citizenship. Citizenship of Bangladesh shall be determined and regulated by law; citizens of Bangladesh shall be known as Bangalees.

Article 7. Supremacy of the Constitution.(1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.

(2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

Article 8. Fundamental principles (1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from them as set out in this Pan, shall constitute the fundamental

principles of state policy.

(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.

Article 9. Nationalism. The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism.

Article 10. socialism and freedom from exploitation A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man

Article 11. Democracy and human rights. The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

Article 12. (Secularism and freedom of religion)

The principle of secularism shall be realised by the elimination of—

- (a) communalism in all its forms;
- (b) the granting by the State of political status in favour of any religion
- (c) the abuse of religion for political purposes;
- (d) any discrimination against, or persecution of, persons practising a particular religion.

Article 25. Promotion of international peace, security and solidarity. The state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, on the basis of those principles shall-strive for renunciation of the use of force in international relations and for general and complete disarmament; uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

Article 26. (1) All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.

(2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

Article 30. (1) No title, honour or decoration shall be conferred by the state.

(2) No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign state.

(3) Nothing in this article shall prevent the state from making awards for gallantry or from conferring academic distinctions.

Article 33. (1) A person who is arrested shall not be detained in custody unless he has been informed of the grounds of his arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be brought before a court within twentyfour hours of his arrest(excluding the time required to transport him to the court), and shall not be further detained save by order of the court.

(3) Nothing in the foregoing clauses shall apply to an enemy alien.

Article 38. Every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by law in the interests of morality or publicorder; provided that no person shall have the right to form, or be a member or otherwise take part in the activities of, any communal or other association or union which in the name or on the basis of any religion has for its object, or pursues, a political purpose

Article 42 (1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

(2)A law made under clause (1) shall provide for the acquisition, nationalization or requisition with or without compensation, and in a case where it provides for compensation shall fix the amount or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that it does not provide for compensation or that any provision in respect of such compensation is not adequate.

Article 44. (1) The right to move the Supreme Court in accordance with Clause (1) of article 102, for the enforcement of the rights conferred by this part III, is guaranteed.

(2) Without prejudice to the powers of the Supreme Court under article 102, parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers”.

Article 47(1) No law providing for any of the following matters shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the rights guaranteed by this Part—

- (a) the compulsory acquisition, nationalisation or requisition of any property, or the control or management thereof whether temporarily or permanently;
- (b) the compulsory amalgamation of bodies carrying on commercial or other undertakings;
- (c) the extinction, modification, restriction or regulation of rights of directors, managers, agents and officers of any such bodies, or of the voting rights of persons owning shares or stock (in whatever form) therein;
- (d) the extinction, modification, restriction or regulation of rights to search for or win minerals or mineral oil;
- (e) the carrying on by the Government or by a corporation owned, controlled or managed by the Government, of any trade, business, industry or service to the exclusion, complete or partial, of other persons; or
- (f) the extinction, modification, restriction or regulation of any right to property, any right in respect of a profession, occupation, trade or business or the rights of employers or employees in any statutory public authority or in any commercial or industrial undertaking;

if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in Part II of this Constitution.

(2) Notwithstanding anything contained in this Constitution the laws specified in the First Schedule (including any amendment of any such law) shall continue to have full force and effect, and no provision of any such law, nor anything done or omitted to be done under the authority of such law, shall be deemed void or unlawful on the ground of inconsistency with, or repugnance to, any provision of this Constitution:

Provided that nothing in this article shall prevent the modification or repeal of any such law or provision by Act of Parliament, but no Bill for such an Act, if it contains provision for or has the effect of divesting the State of any property, or of enhancing any compensation payable by the State, shall be presented to the President for assent unless it is passed by the votes of not less than two-thirds of the total number of members of Parliament.

Article 48. 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 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 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.

Article 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.

Article 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.

Article 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

Article 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 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 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 the resolution is passed,

Article 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.

Article 55. 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 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-(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, subject to clause (4), no person shall be eligible to be so appointed unless 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.

(5) 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.

Article 57. Tenure of the 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 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.

Article 58. Tenure of the 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).

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.

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.

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.

Article 59. (1) Local Government - 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 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.

Article 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.

Article 61 Supreme Command. The supreme command of the defence services of Bangladesh shall vest in the president and the exercise thereof shall be regulated by law.

Article 63. War. (1) War shall not be declared and the Republic shall not participate in any war except with the assent of Parliament.

(2) In case of actual or imminent invasion of Bangladesh by land, sea or air, the Parliament may take whatever steps he considers necessary for the protection and defense of Bangladesh, and Parliament if not sitting shall be summoned forthwith.

(3) Nothing in this Constitution shall invalidate any law enacted by Parliament which is expressed to be for the purpose of securing the public safety and preservation of the state in time of war, invasion or armed rebellion.

Article 65. Parliament. (1) There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic:

Provided that nothing in this clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, byelaws or order instruments having legislative effect.

(2) Parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election and, for so long as clause (3) is effective, the members provided for in that clause; the members shall be designated as Members of Parliament.

(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years from the commencement of this Constitution there shall be reserved fifteen seats exclusively for women members, who shall be elected according to law by the members aforesaid:

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

(4) The seat of Parliament shall be in the capital.

Article 66. (1) A person shall, subject to the provisions of clause (2), be qualified to be elected as, and to be, a

member of parliament if he is a citizen of Bangladesh and has attained the age of twenty-five years.

(2) A person shall be disqualified for election as, or for being, a member of parliament who-

- (a) is declared by a competent court to be of unsound mind;
- (b) is an undischarged insolvent;
- (c) acquires the citizenship of, or affirms or acknowledges allegiance to, a foreign state;
- (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 a period of five years has elapsed since his release;
- (e) has been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order 1972;
- (f) holds any office of profit in the service of the republic other than an office which is declared by law not to disqualify its holder; or
- (g) is disqualified for such election by or under any law.

(3) For the purpose of this article a person shall not be deemed to hold office of profit in the service of the republic by reason only that he is a Minister, Minister of State or Deputy Minister.

(4) if any dispute arises as to whether a member of parliament has, after his election, become subject to any of the disqualifications mentioned in clause (2) or as to whether a member of parliament should vacate his seat pursuant to article 70, the dispute shall be referred to the Election Commission to hear and determine it and the decision of the Commission on such reference shall be final.

(5) Parliament may, by law, make such provision as it deems necessary for empowering the Election Commission to give full effect to the provisions of clause (4).

Article 67. (1) A member of Parliament shall vacate his seat-

- (a) if he fails, within the period of ninety days from the date of the first meeting of Parliament after his election, to make and subscribe before Parliament the oath or affirmation prescribed for member of Parliament in the Third Schedule.”

Provided that the Speaker may, before the expiration of that period, for good cause extend it;

- (b) if he is absent from Parliament, without the leave of Parliament, for ninety consecutive sitting days;
- (c) upon a dissolution of Parliament;
- (d) if he has incurred a disqualification under clause (2) of article 66; or
- (e) in the circumstances specified in article 70.

(2) A member of Parliament may resign his seat by writing under his hand addressed to the Speaker, and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform his functions, by the Deputy Speaker.

Article 70. 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 –

- (a) resigns from that party; or
- (b) votes in Parliament against that party;

but shall not thereby be disqualified for subsequent election as a member of Parliament.

Article 72. (1) Parliament shall be summoned, prorogued and dissolved by the President by public notification, and when summoning Parliament the President shall specify the time and place of the meeting:

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:

(2) notwithstanding the provisions of clause (1) Parliament shall be summoned to meet within thirty days after the declaration of the results of polling at any general election of members of Parliament.

(3) unless sooner dissolved by the President, Parliament shall be dissolved on the expiration of the period of five years from the date of its first meeting:

Provided that at any time when the Republic is engaged in war the period may be extended by act of Parliament by not more than year at a time but shall not be so extended beyond six month after the termination of the war.

(4) If after a dissolution and before the holding of the next general election of members of Parliament the President is satisfied that owing to the existence of a state of war in which the Republic is engaged it is necessary to recall Parliament, the President shall summon the Parliament that has been dissolved to meet.

(5) Subject to the provisions of clause (1) the sittings of Parliament shall be held at such times and places as Parliament may, by its rules of procedure or otherwise, determine.

Article 74. (1) Parliament shall at the first sitting after any general election elect from among its members a Speaker and a Deputy Speaker, and if either office becomes vacant shall within seven days or, if Parliament is not then sitting at its first meeting thereafter, elect one of its members to fill the vacancy.

(2) The Speaker or Deputy Speaker shall vacate his office-

- (a) if he ceases to be a member of Parliament ;
- (b) if he becomes a Minister ;
- (c) if Parliament passes a resolution (after not less than fourteen days' notice has been given of the intention to move the resolution) supported by the votes of a majority of all the members thereof, requiring his

- removal from office ;
- (d) if he resigns his office by writing under his hand delivered to the President ;
 - (e) if after a general election another member enters upon that office ; or
 - (f) in the case of the Deputy Speaker, if he enters upon the office of Speaker.
- (3) While the office of the Speaker is vacant or the Speaker is exercising the function of the President, or if it is determined by Parliament that the Speaker is otherwise unable to perform the functions of his choice, those functions shall be performed by the Deputy Speaker or, if the office of the Deputy Speaker is vacant, by such member of Parliament as may be determined by or under the rules of Procedure of Parliament; and during the absence of the Speaker from any sitting of Parliament the Deputy Speaker or, if he also is absent, such person as may be determined by or under the rules of procedure, shall act as Speaker.
- (4) At any sitting of Parliament, while a resolution for the removal of the Speaker from his office is under consideration the Speaker (or while any resolution for the removal of the Deputy Speaker from his Office is under consideration, the Deputy Speaker) shall not preside, and the provisions of clause (3) shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker is absent.
- (5) The Speaker or the Deputy Speaker, as the case may be, shall have the right to speak in, and otherwise to take part in, the proceedings of Parliament while any resolution for his removal from office is under consideration in Parliament, and shall be entitled to vote but only as a member.
- (6) Notwithstanding the provisions of clause (2) the Speaker or as the case may be, the Deputy Speaker, shall be deemed to continue to hold office until his successor has entered upon office.
- Article 76. Standing Committees of Parliament (1) At its first meeting in each session Parliament shall appoint from among its members the following standing committees, that is to say-
- (a) a public accounts committee;
 - (b) a committee of privileges; and
 - (c) such other standing committees as the rules of procedure of Parliament require.
- (2) In addition to the committees referred to in clause (1), Parliament shall appoint other standing committees, and a committee so appointed may, subject to this Constitution and to any other law-
- (a) examine draft Bills and other legislative proposals;
 - (b) review the enforcement of laws and propose measures for such enforcement ;
 - (c) in relation to any matter referred to it by Parliament as a matter of public importance, investigate or inquire into the activities or administration of a Ministry and may require it to furnish, through an authorised representative, relevant information and to answer questions, orally or in writing;
 - (d) perform any other function assigned to it by Parliament.
- (3) Parliament may by law confer on committees appointed under this article powers for-
- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) compelling the production of documents.
- Article 80. Legislative procedure(1) Every proposal in Parliament for making a law shall be made in the form of a Bill.
- (2) When a Bill is passed by Parliament it shall be presented to the President for assent.
- (3) The President, within fifteen days after a Bill is presented to him, shall assent to the Bill or, in the case of a Bill other than a Money Bill may return it to Parliament with a message requesting that the Bill or any particular provisions thereof be reconsidered, and that any amendments specified by him in the message be considered; and if he fails so to do he shall be deemed to have assented to the Bill at the expiration of that period.
- (4) If the President so returns the Bill Parliament shall consider it together with the President's message, and if the Bill is again passed by Parliament with or without amendments, it shall be presented to the President for his assent, whereupon the President shall assent to the Bill within the period of seven days after it has been presented to him, and if he fails to do so he shall be deemed to have assented to the Bill on the expiration of that period.
- (5) When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament.
- Article 88. Charge on Consolidated Fund. The following expenditure shall be charged upon the Consolidated Fund-
- (a) the remuneration payable to the President and other expenditure relating to his office;
 - (b) the remuneration payable to-
 - (i) the speaker and deputy speaker;
 - (ii) the judges of the supreme court;
 - (iii) the comptroller and auditor-general;
 - (iv) the election commissioners;

- (v) the members of the public service commissions;
- (c) the administrative expenses of, including remuneration payable to, officers and servants of parliament, the supreme court, the comptroller and auditor-general, the election commission and public service commission;
- (d) all debt charges for which the government is liable including interest, sinking fund charges, the repayment or amortization of capital, and other expenditure in connection with the raising of loans and the service and redemption of debt;
- (e) any sums required to satisfy a judgment, decree or award against the Republic by any court or tribunal; and
- (f) any other expenditure charged upon the Consolidated Fund by this Constitution or Act of Parliament.

Article 93. Ordinance making power. (1) At any time when Parliament is not in session, if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament:

Provided that no Ordinance under this clause shall make any provision-

- (i) which could not lawfully be made under this Constitution by Act of Parliament;
 - (ii) for altering or repealing any provision of Parliament; and
 - (iii) continuing in force any provision of an Ordinance previously made.
- (2) An Ordinance made under clause (1) shall be laid before Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by Parliament before such expiration, upon the passing of the resolution.
- (3) At any time when the Parliament stands dissolved the President may, if he is satisfied that circumstances exist which render such action necessary, make and promulgate an Ordinance authorising expenditure from the Consolidated Fund, whether the expenditure is charged by the Constitution upon that fund or not, and any Ordinance so made shall, as from its promulgation, have the like force of law as an Act of Parliament.
- (4) Every Ordinance promulgated under clause (3) shall be laid before Parliament as soon as may be, and the provisions of article 87, 89 and 90 shall, with necessary adaptations, be complied with in respect thereof within thirty days of the reconstitution of Parliament.

Article 94. Establishment of Supreme Court. 94. (1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.

- (2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.
- (3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division, and the other Judges shall sit only in the High Court Division.
- (4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

Article 95. Appointment of Judges (1) The Chief Justice shall be appointed by the President, and the other judges shall be appointed by the President after consultation with the Chief Justice.

- (2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and—
 - (a) has, for not less than ten years been an advocate of the Supreme Court; or
 - (b) has, for not less than ten years, held judicial office or been an advocate, in the territory of Bangladesh and has, for not less than three years, exercised the powers of a district judge.
- (3) In this article "Supreme Court" includes a court which at any time before the commencement of this Constitution exercised jurisdiction as a High Court in the territory of Bangladesh.

Article 96. (1) Subject to the provisions of this article a Judge shall hold office until he attains the age of sixty-two years.

- (2) A Judge shall not be removed from his office except by an order of the President passed pursuant to a resolution of Parliament supported by a majority of not less than two-thirds of the total number of members of Parliament, on the ground of proved misbehaviour or incapacity.
- (3) Parliament may by law regulate the procedure in relation to a resolution under clause (2) and for investigation and proof of the misbehaviour or incapacity of a judge.
- (4) A judge may resign his office by writing under his hand addressed to the president.

Article 97. If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is, on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division.

Article 98. Notwithstanding the provisions of article 94, if the President is satisfied, after consultation with the Chief Justice, that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be Additional Judges of the division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High

Court Division to sit in the Appellate Division for any temporary period:

Provided that nothing in this article shall prevent a person appointed as an Additional Judge from being appointed as a Judge under article 95 or as an Additional Judge for a further period under this article.

Article 99. A person who has held office as a Judge (otherwise than as an Additional Judge pursuant to the provisions of article 98) shall not after his retirement or removal therefrom plead or act before any court or authority, or be eligible for any appointment in the service of the Republic.

Article 100. The permanent seat of the Supreme Court shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint.

Article 101. The High Court Division shall have such original, appellate and other jurisdictions and powers as are conferred on it by this Constitution of any other law.

Article 102. (1) The High Court Division, on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—

(a) on the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order-

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(3) Notwithstanding anything contained in the foregoing clauses the High Court Division shall have no power under this article to pass any order in relation to any law to which article 47 applies.

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-

(a) prejudicing or interfering with any measure designed to implement any socialist programme, or any development work; or

(b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).

(5) in this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or a tribunal to which article 117 applies."

Article 103. (1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.

(2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division-

(a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or

(b) has confirmed a sentence of death or sentenced a person to death or to transportation for life; or

(c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.

(3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.

(4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

Article 104. The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document. Article 105. The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by the division, to review any judgment pronounced or order made by it.

Article 106. If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court

upon it, he may refer the question to the Appellate Division for consideration and the division may, after such hearing as it thinks fit, report its opinion thereon to the President.

Article 107, (1) Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court, and of any court subordinate to it.

(2) The Supreme Court may delegate any of its functions under clause (1) and article 113, 115 and 116 to a division of that court or to one or more judges.

(3) Subject to any rules made under this article the Chief Justice shall determine which judges are to constitute any Bench of a division of the Supreme Court and which judges are to sit for any purpose.

(4) The Chief Justice may authorise the next most senior judge of either division of the Supreme Court to exercise in that division any of the powers conferred by clause (3) or by rules made under this article.

Article 108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.

Article 109. The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it.

Article 110. If the High Court Division is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may-

(a) either dispose of the case itself; or

(b) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of the judgment of the division on such question, and the court to which the case is so returned or transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.

Article 111. The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.

Article 112. All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.

Article 113(1) Appointments to the staff of the Supreme Court shall be made by the Chief Justice or such other judge or officer of that court as he may direct, and shall be made in accordance with rules made with the previous approval of the President by the Supreme Court.

(2) Subject to the provisions of any Act of Parliament the conditions of service of members of the staff of the Supreme Court shall be such as may be prescribed by rules made by that court.

Article 114. There shall be in addition to the Supreme Court such courts subordinate thereto as may be established by law.

Article 115. (1) Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President —

(a) in the case of district judges, on the recommendation of the Supreme Court; and (b) in the case of any other person, in accordance with rules made by the President in that behalf after consulting the appropriate public service commission and the Supreme Court.

(2) A person shall not be eligible for appointment as a district judge unless he—

(a) is at the time of his appointment in the service of the Republic and has, for not less than seven years, held judicial office in that service; or

(b) has for not less than ten years been an advocate.

Article 116. The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the Supreme Court.

Article 117. (1) Notwithstanding anything hereinbefore contained, Parliament may by law establish one or more administrative tribunals to exercise jurisdiction in respect of matters relating to or arising out of-

(a) the terms and conditions of persons in the service of the Republic, including the matters provided for in Part IX and the award of penalties or punishments;

(b) the acquisition, administration, management and disposal of any property vested in or managed by the Government by or under any law, including the operation and management of, and service in, any nationalised enterprise or statutory public authority;

(c) any law to which clause (3) of article 102 applies.

(2) Where any administrative tribunal is established under this article, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal:

Provided that Parliament may, by law, provide for appeals from, or the review of, decisions of any such tribunal.

Article 119. (1) The superintendence, 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 law-

- (a) hold elections to the office of President;
 - (b) hold election of members of Parliament; and
 - (c) delimit the constituencies 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 other law.

Article 122. (1) the election to Parliament shall be on the basis of adult franchise.

- (2) a person shall be entitled to be enrolled on the electoral roll for a constituency delimited for the purpose of election to Parliament, if he-
- (a) is a citizen of Bangladesh;
 - (b) is not less than eighteen years of age;
 - (c) does not stand declared by a competent court to be of unsound mind;
 - (d) is or is determined by law to be a resident of that constituency; and
 - (e) has not been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order 1972.

Article 123. (1) in the case of 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 vacancy.

(3) A general election of members of Parliament 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 a 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 therein.

(4) An election to fill the seat of a member of Parliament 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. 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.”

Article 125. Validity of election law and elections. Notwithstanding anything in this Constitution-

- (a) the validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made or purporting to be made under article 124, shall not be called in question in any court;
- (b) no election to the office of President or to Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by Parliament.

Article 139. Term of office.(1) The term of office of the chairman and other members of a public service commission shall , subject to the provisions of this article, expire five years after the date on which he entered upon his office, or when he attains the age of sixty-two years, whichever is earlier.

(2) The chairman and other members of such a commission shall not be removed from office except in like manner and on the like grounds as a Judge of the Supreme Court.

(3) A chairman or other member of a public service commission may resign his office by writing under his hand addressed to the President.

(4) On ceasing to hold office a member of a public service commission shall not be eligible for further employment in the service of the Republic, but, subject to the provisions of clause(1)-

- (a) a chairman so ceasing shall be eligible for re-appointment for one further term; and
- (b) a member(other than the chairman) so ceasing shall be eligible for re-appointment for one further term or for appointment as chairman of a public service commission.

Article 147. Remuneration etc of certain officers. (1) The remuneration, privileges and other terms and conditions of service of a person holding or acting in any office to which this article applies shall be determined by or under Act of Parliament, but until they are, so determined-

- (a) they shall be those (if any) appertaining to the person holding or, as the case may be, acting in the office in question immediately before the commencement of this Constitution; or
 - (b) if the preceding sub-clause is not applicable, they shall be determined by order made by the President.
- (2) The remuneration, privileges and other terms and conditions of service of a person holding or acting in any

office to which this article applies shall not be varied to the disadvantage of any such person during his term of office.

- (3) No person appointed to or acting in any office to which this article applies shall hold any office, post or position of profit or emolument or take any part whatsoever in the management or conduct of any company, association or body having profit or gain as its object:

Provided that such person shall not for the purposes of this clause be deemed to hold any such office, post or position by reason only that he holds or is acting in the office first abovementioned.

- (4) this article applies to the offices of-

- (a) President;
- (b) Prime Minister;
- (c) Speaker or Deputy Speaker;
- (d) Minister, Minister of State or Deputy Minister;
- (e) Judge of the Supreme Court;
- (f) Comptroller and Auditor-General;
- (g) Election Commissioner;
- (h) Member of a public service commission.

Article 148. (1) A person elected or appointed to any office mentioned in the Third Schedule shall before entering upon the office make and

subscribe an oath or affirmation (in this article referred to as "an oath") in accordance with that Schedule.

- (2) Where under this Constitution an oath is required to be administered by a specified person and for any reason it is impracticable for the oath to be made before that person, it may be administered by such other person and at such place as may be designated by that person.

- (3) Where under this Constitution a person is required to make an oath before he enters upon an office he shall be deemed to have entered upon the office immediately after he makes the oath.

Article 149. The transitional and temporary provisions set out in the fourth Schedule shall have effect notwithstanding any other provisions of this Constitution.

151. The following Presidents orders are hereby repealed-

- (a) The Laws Continuance Enforcement Order, made on to¹ April 1971;
- (b) The Provisional Constitution of Bangladesh Order 1972;
- (c) The High Court of Bangladesh Order 1972 (P. 0. No. 5 of 1972);
- (d) The Bangladesh Comptroller and Auditor-General Order 1972 (P. 0. No. 15 of 1972);
- (e) The Constituent Assembly of Bangladesh Order 1972 (P. 0. No. 22 of 1972);
- (f) The Bangladesh Election Commission Order 1972 (P. 0. No. 25 of 1972);
- (g) The Bangladesh Public Service Commissions Order 1972 (P. 0. No. 34 of 1972)
- (h) The Bangladesh Transaction of Government Business Order 1972 (P. 0. No. 58 of 1972);

152. Interpretation

(1) In this Constitution, except where the subject or context otherwise requires-

"administrative unit" means a district or other area designated by law for the purposes of article 59;

"the Appellate Division" means the Appellate Division of the Supreme Court;

"article" means an article of this Constitution;

"borrowing" includes the raising of money by annuity, and "loan" shall be construed accordingly;

"the capital" has the meaning assigned to that expression in article 5;

"Chief Election Commissioner" means a person appointed to that office under article 118;

"the Chief Justice" means the Chief Justice of Bangladesh;

"citizen" means a person who is a citizen of Bangladesh according to the law relating to citizenship;

"clause" means a clause of the article in which the expression occurs;

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charge" shall be construed accordingly;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means-

(a) the army, navy or air force; (b) the police force; (c) any other force declared by law to be a disciplined force within the meaning of this definition; "district judge" includes additional district judge;

"existing law" means any law in force in, or in any part of, the territory of Bangladesh immediately before the commencement of this Constitution, whether or not it has been brought into operation ;

"financial year" means a year commencing on the first day of July;

"guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;

"the High Court Division" means the High Court Division of the Supreme Court;

"judge" means a judge of a division of the Supreme Court ;

"judicial service" means a service comprising persons holding judicial posts not being posts superior to that of a district judge;

"law" means any Act, ordinance, order, rule, regulation, bye-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh ;

"Parliament" means the Parliament for Bangladesh established by article 65;

"Part" means a Part of this Constitution ;

"pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay or gratuity so payable by way of the return or any addition thereto of subscriptions to a provident fund;

"political part/" includes a group or combination of persons who operate within or outside Parliament under a distinctive name and who hold themselves out for the purpose of propagating a political opinion or engaging in any other political activity ;

"the President" means the President of Bangladesh elected under this Constitution or any person for the time being acting in that office;

"property" includes property of every description, movable or immovable, corporeal or incorporeal, and commercial and industrial undertakings, and any right or interest in any such property or undertaking;

"public notification" means a notification in the Bangladesh Gazette ;

"public officer" means a person holding or acting in any office of emolument in the service of the Republic;

"the Republic" means the People's Republic of Bangladesh;

"Schedule" means a schedule to this Constitution; "securities" includes stock ;

"the service of the Republic" means any service, post or office whether in a civil or military capacity in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic;

"session", in relation to Parliament, means the sittings of Parliament commencing when it first meets after the commencement of this Constitution or after a prorogation or dissolution of Parliament, and terminating when Parliament is prorogued or dissolved;

"sitting" in relation to Parliament, means a period during which Parliament is sitting continuously without adjournment;

"the Speaker" means the person for the time being holding the office' of Speaker pursuant to article 74 ;

"the State" includes Parliament, the Government and statutory public authorities;

"statutory public authority" means any authority, corporation or body the activities or the principal activities of which are authorised by any Act, ordinance, order or instrument having the force of law in Bangladesh;

"sub-clause" means a sub-clause of the clause in which the expression occurs;

"the Supreme Court" means the Supreme Court of Bangladesh constituted by article 94;

"taxation" includes the imposition of any tax, rate, duty or impost, whether general, local or special, and "Tax" shall be construed accordingly.

(2) The General Clauses Act 1897 shall apply in relation to

(a) this Constitution as it applies in relation to an Act of Parliament; (b) any enactment repealed by this Constitution, or which by virtue thereof becomes void or ceases to have effect, as it applies in relation to any enactment repealed by Act of Parliament.

Article 153. (1) This Constitution may be cited as the Constitution of the People's Republic of Bangladesh and shall come into force on the sixteenth day of December, 1972, in this Constitution referred to as the commencement of this Constitution.

(2) There shall be an authentic text of this Constitution in Bengali, and an authentic text of an authorised translation in English, both of which shall be certified as such by the Speaker of the Constituent Assembly. (3) A text certified in accordance with clause (2) shall be conclusive evidence of the provisions of this Constitution:

Provided that in the event of conflict between the Bengali and the English text, the Bengali text shall prevail.

**First Schedule
(Article 47)**

Laws effective notwithstanding other provisions

The State Acquisition and Tenancy Act, 1950 (E. B. Act XXVIII of 1951).
The Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order 1972 (A. P. O. No. 1 of 1972).
The Bangladesh Collaborators (Special Tribunals) Order 1972 (P. O. No. 8 of 1972).
The Government of Bangladesh (Services) Order 1972 (P. O. No. 9 of 1972).
The Bangladesh Shipping Corporation Order 1972 (P. O. No. 10 of 1972).
The Bangladesh (Restoration of Evacuee Property) Order 1972 (P. O. No. 13 of 1972).
The Bangladesh Public Servants' (Retirement) Order 1972 (P. O. No. 14 of 1972).
The Bangladesh Abandoned Property (Control, Management and Disposal) Order 1972 (P. O. No. 16 of 1972).
The Bangladesh Banks (Nationalisation) Order 1972 (P. O. No. 26 of 1972).
The Bangladesh Industrial Enterprises (Nationalisation) Order 1972 (P.O. No. 27 of 1972).
The Bangladesh Inland Water Transport Corporation Order 1972 (P. O. No. 28 of 1972).
The Bangladesh (Vesting of Property and Assets) Order 1972 (P. O. No. 29 of 1972).
The Bangladesh Insurance (Emergency Provisions) Order 1972 (P. O. No. 30 of 1972).
The Bangladesh Consumer Supplies Corporation Order 1972 (P. O. No. 47 of 1972).
The Bangladesh Scheduled Offences (Special Tribunals) Order 1972 (P. O. No. 50 of 1972).
Bangladesh Nationalised and Private Organisations (Regulation of Salary of Employees) Order 1972 (P. O. No. 54 of 1972).
The Bangladesh Jute Export Corporation Order 1972 (P. O. No. 57 of 1972).
The Bangladesh Water and Power Development Boards Order 1972 (P. O. No. 59 of 1972).
The Government of Bangladesh (Services Screening) Order 1972 (P. O. No. 67 of 1972).
Bangladesh Government Hats and Bazars (Management) Order 1972 (P. O. No. 73 of 1972).
The Bangladesh Government and Semi-autonomous Organisations (Regulation of Salary of Employees) Order 1972 (P. O. No. 79 of 1972).
The Bangladesh Insurance (Nationalisation) Order 1972 (P. O. No. 95 of 1972).
The Bangladesh Land Holding (Limitation) Order 1972 (P. O. No. 98 of 1972).
The Bangladesh Biman Order 1972 (P. O. No. 126 of 1972). The Bangladesh Bank Order 1972 (P. O. No. 127 of 1972).
The Bangladesh Shilpa Rin Sangstha Order 1972 (P. O. No. 128 of 1972).
The Bangladesh Shilpa Bank Order 1972 (P. O. No. 129 of 1972).
And all Presidential Orders and other existing law effecting amendment to the above mentioned Act and Orders.

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 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 no 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 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.
8. If there is no withdrawal 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 validly 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 anew.
 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, appoint.
 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 a 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 wishes to vote.
 12. A ballot paper shall be invalid if—
 - (a) there is upon it any name, word or mark, other than the official number, by which the person voting may be identified; or
 - (b) it does not contain the initials of the presiding officer; or
 - (c) it does not contain a cross; or
 - (d) a cross is placed against the names of two or more candidates; or
 - (e) there is any uncertainty as to the identity of the candidate against whose name the cross 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 the 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 paragraphs.
 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.
 19. When, *after* any poll, the counting of the votes has been completed and the result of the voting determined, the Commissioner shall forthwith announce the result to those present, and shall forthwith cause it to be declared by public notification.
 20. The Commissioner may by public notification, with the approval of the President, make rules for carrying out the purposes of this Schedule

THIRD SCHEDULE

[Article 143] Oaths and Affirmations

1. The President—An oath (or affirmation) in the following form shall be administered by the Chief Justice—*do* solemnly swear (or affirm) that I will faithfully discharge the duties of the office of President of Bangladesh according to law:
That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."
2. The Prime Minister and other Ministers, Ministers of State and Deputy Ministers.—Oaths (or affirmations) in the following forms shall be administered by the President—
 - (a) Oath (or affirmation) of office:
"I, *do* solemnly swear (or affirm) that I will faithfully discharge the duties of the office of Prime Minister (or as the case may be) according to law:
That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."
 - (b) Oath (or affirmation) of secrecy:

"I, do solemnly swear (or affirm)
that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Prime Minister (or as the case may be) except as may be required for the due discharge of my duty as Prime Minister (or as the case maybe)."

3. The Speaker.-An oath (or affirmation) in the following form shall be administered by the Chief Justice-
"I, do solemnly swear (or affirm)

that I will faithfully discharge the duties of the Speaker of Parliament and (whenever I am called upon so to do) of the President, according to law:

That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."

4. Deputy Speaker.- An oath (or affirmation) in the following form shall be administered by the Chief Justice—
do solemnly swear (or affirm) that I will faithfully discharge the duties of Deputy Speaker of Parliament and (whenever I am called upon so to do) of the Speaker, according to law:

That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."

5. Member of Parliament—An oath (or affirmation) in the following form shall be administered at a meeting of Parliament by the Speaker—

having been elected a member of Parliament do solemnly swear (or affirm) that I will faithfully discharge the duties upon which I am about to enter according to law: That I will bear true faith and allegiance to Bangladesh: And that I will not allow my personal interest to influence the discharge of my duties as a member of Parliament."

6. Chief Justice or Judges.—An oath (or affirmation) in the following form shall be administered, in the case of the Chief Justice by the President, and in the case of a Judge appointed to a division, by the Chief Justice-

Having been appointed Chief Justice of Bangladesh (or Judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law:

That I will bear true faith and allegiance to Bangladesh:

That I will preserve, protect and defend the Constitution and the laws of Bangladesh:

And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."

7. Chief Election Commissioner or Election Commissioner.- An oath (or affirmation) in the following form shall be administered by the Chief Justice— having been appointed Chief

Election Commissioner (or Election Commissioner), do solemnly swear (or *affirm*) that I will faithfully discharge the duties of my office according to law:

That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will not allow my personal interest to influence my official conduct or my official decisions."

8. Comptroller and Auditor-General.-An oath (or affirmation) in the following form shall be administered by the Chief Justice— having been appointed

Comptroller and Auditor-General do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law:

That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will not allow my personal interest to influence my official conduct or my official decisions."

9. Member of Public Service Commission. -An oath (or affirmation) in the following form shall be administered by the Chief Justice— having been appointed

Chairman (or Member) of a Public Service Commission do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law:

That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution: And that I will not allow my personal interest to influence my official conduct or my official decisions."

FOURTH SCHEDULE

[Article 150] Transitional and Temporary Provisions

1. Upon the commencement of this Constitution, the Constituent Assembly, having discharged its responsibility of framing a Constitution for the Republic, shall stand dissolved.

2. (1) The first general election of members of Parliament shall be held as soon as possible *after* the commencement of this Constitution and for this purpose the electoral rolls prepared under the Bangladesh Electoral Rolls Order 1972 (P. O. No. 104 of 1972) shall be deemed to be the electoral rolls prepared in accordance with article 119.

(2) For the purpose of the first general election of members of Parliament, the delimitation of constituencies made for the purpose of elections to constitute the erstwhile Provincial Assembly, and published in 1970, shall be deemed to be made under article 119, and the Election Commission shall, after incorporating such changes,

as it may consider necessary, in the nomenclature of any constituency or any sub-division or thana included therein, publish, by public notification, the list of such constituencies: Provided that provision may be made by law to give effect to the provisions relating to seats for women members referred to in clause (3) of article 65.

- 3.(1) All laws made or purported to have been made in the period between the 26th day of March 1971 and the commencement of this Constitution, all powers exercised and all things done during that period, under authority derived or purported to have been derived from the Proclamation of Independence or any law, are hereby ratified and confirmed and are declared to have been duly made, exercised and done according to law.
- (2) Until the day upon which Parliament first meets pursuant to the provisions of this Constitution, the executive and legislative powers of the Republic (including the power of the President, on the advice of the Prime Minister, to legislate by order) shall, notwithstanding the repeal of the Provisional Constitution of Bangladesh Order 1972, be exercised in all respects in the manner in which, immediately before the commencement of this Constitution, they have been exercised. (3) Any provision of this Constitution enabling or requiring Parliament to legislate shall, until the day upon which Parliament first meets as aforesaid, be construed as enabling the President to legislate by order, and any order made under this paragraph shall have effect as if the provisions thereof had been enacted by Parliament. 4. (1) The person holding office as President of Bangladesh immediately before the commencement of this Constitution shall hold office as President, as if elected to that office under this Constitution, until a person elected as President under article 48 enters upon office: Provided that the holding of office under this paragraph shall not be taken into account for the purposes of clause (2) of article 50. (2) The persons holding office as Speaker and Deputy Speaker of the Constituent Assembly immediately before the commencement of this Constitution shall, notwithstanding that Parliament has not yet been constituted, be deemed to hold office respectively as Speaker and Deputy Speaker until an election to each of those offices is made under clause (1) of article 74.
5. The person holding office as Prime Minister, immediately before the date of the commencement of this Constitution shall, until his successor appointed under article 56 after the first general election held under this Constitution enters upon office, hold office as Prime Minister as if appointed to that office under this Constitution, and the persons holding offices as Ministers immediately before that date shall continue to hold office as Ministers until the Prime Minister otherwise directs, and nothing in article 56 shall prevent the appointment of other Ministers on the advice of the Prime Minister.
6. (1) The person holding office as Chief Justice immediately before the date of the commencement of this Constitution and every person who then held office as judge of the High Court constituted by the Provisional Constitution of Bangladesh Order 1972, shall as from that date hold office as if appointed under article 95 as Chief Justice or, as the case may be, as judge.
(2) The persons (other than the Chief Justice) holding office as judges pursuant to sub-paragraph (1) of this paragraph shall at the commencement of this Constitution be deemed to have been appointed to the High Court Division, and appointments to the Appellate Division shall be made in accordance with article 94.
(3) All legal proceedings pending in the High Court immediately before the commencement of this Constitution (other than those referred to in sub-paragraph (4) of this paragraph) shall be transferred to, and be deemed to be pending before the High Court Division for determination, and any judgment or order of the High Court delivered or made before the commencement of this Constitution shall have the same force and effect as if it had been delivered or made by the High Court Division.
(4) All legal proceedings pending before the Appellate Division of the High Court immediately before the commencement of this Constitution shall be transferred to the Appellate Division for determination and any judgment or order of the former division delivered or made before the commencement of this Constitution shall have the same force and effect as if it had been delivered or made by the Appellate Division.
- (5) Subject to the provisions of this Constitution and of any other law—
 - (a) all original, appellate and other jurisdiction which was vested in the High Court constituted by the Provisional Constitution of Bangladesh Order 1972 (other than jurisdiction vested in the Appellate Division of that Court) shall from the commencement of this Constitution, vest in and be exercised by the High Court Division;
 - (b) all civil, criminal and revenue courts and tribunals exercising jurisdiction and functions immediately before the commencement of this Constitution shall continue to exercise their respective jurisdictions and functions, and all persons holding office in such courts and tribunals shall continue to hold their respective offices.
- (6) The provisions of Chapter II of Part VI (which relate to subordinate courts) shall be implemented as soon as is practicable, and until such implementation the matters provided for in that Chapter shall (subject to any other provision made by law) be regulated in the manner in which they were regulated immediately before the commencement of this Constitution.
- (7) Nothing in this paragraph shall affect the operation of any existing law relating to the abatement of proceedings
7. An appeal to the Appellate Division of the Supreme Court shall lie, notwithstanding any limitation as to time,

against any judgment, decree, order or sentence delivered, issued or pronounced since the 1st day of March 1971 by any High Court (but excluding the Appellate Division constituted by the High Court of Bangladesh (Amendment) Order (P. O. No. 91 of 1972) functioning in the territory of Bangladesh:

Provided that article 103 shall apply in respect of any such appeal as it applies in respect of appeals from the High Court Division:

Provided further that no appeal under this article shall be lodged after the expiration of the period of ninety days from the commencement of this Constitution.

8. (1) The Election commission existing immediately before the date of commencement of this Constitution, shall, as from that date, be deemed to be the Election Commission established by this Constitution.
- (2) The person holding office as Chief Election Commissioner, and every person holding office as Election Commissioner, immediately before the date of the commencement of this Constitution, shall, as from that date, hold office as if appointed to such office under this Constitution.
9. (1) The public service commissions existing immediately before the date of the commencement of this Constitution shall as from that date be deemed to be public service commissions established under this Constitution.
- (2) Every person holding office as chairman or other member of a public service commission immediately before the date of the commencement of this Constitution shall as from that date hold office as if appointed to that office under this Constitution.
10. (1) Subject to this Constitution and to any other law—
 - (a) any person who immediately before the commencement of this Constitution was in the service of the Republic shall continue in that service on the same terms and conditions as were applicable to him immediately before such commencement;
 - (b) all authorities and all officers, judicial, executive and ministerial throughout Bangladesh exercising functions immediately before the commencement of this Constitution shall, as from such commencement, continue to exercise their respective functions.
- (2) Nothing in sub-paragraph (1) of this paragraph shall—
 - (a) derogate from the continued operation of the Government of Bangladesh (Services) Order, 1972 (P.O. No. 9 of 1972), or the Government of Bangladesh (Services Screening) Order 1972 (P.O. No. 67 of 1972); or
 - (b) prevent the making of any law varying or revoking the conditions of service (including remuneration, leave, pension rights and rights relating to disciplinary matters) of persons employed at any time before the commencement of this Constitution or of persons continuing in the service of the Republic under the provisions of this paragraph.
11. Any person who, under this Schedule, is continued in an office in respect of which a form of oath or affirmation is set out in the Third Schedule shall, as soon as practicable after the commencement of this Constitution, make and subscribe before the appropriate person an oath or affirmation in that form.
12. Until elections are held to constitute local government bodies referred to in article 59, the administrative arrangements existing in the different administrative units of the Republic immediately before the commencement of this Constitution shall continue, subject to such changes may be made by law.
13. All taxes and fees imposed under any law in force in Bangladesh immediately before the commencement of this Constitution shall continue to be imposed but may be varied or abolished by law.
14. Unless Parliament otherwise resolves, the provisions of articles 87, 89, 90 and 91 of this Constitution shall not have effect in respect of the financial year current at the commencement of this Constitution, and expenditure defrayed during that year out of the Consolidated Fund or the Public Account of the Republic shall be deemed to have been validly incurred: Provided that the President shall, as soon as is practicable, cause a statement of all such expenditure, authenticated by his signature, to be laid before Parliament.
15. The powers of the Comptroller and Auditor-General under this Constitution shall apply in respect of all accounts relating to the financial year current at the commencement of this Constitution and to earlier years, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the President who shall cause them to be laid before Parliament.
16. (1) All property, assets and rights which immediately before the commencement of this Constitution were vested in the Government of the People's Republic of Bangladesh or any person or authority on its behalf shall vest in the Republic.
- (2) All liabilities and obligations of the Government of the Republic as they existed immediately before the commencement of this Constitution shall continue to be the liabilities and obligations of the Republic.
- (3) No liability or obligation of any other government which at any time functioned in the territory of Bangladesh is or shall be a liability or obligation of the Republic unless it is expressly accepted by the Government of the Republic.
17. (1) For the purpose of bringing the provisions of any law in force in Bangladesh into conformity with this

- Constitution the President may, within the period of two years from the commencement of this Constitution, by order, amend or suspend the operation of such provisions and any order so made may have retrospective effect.
- (2) The President may, for the purpose of removing any difficulties in relation to the transition from the provisional constitutional arrangements existing before the commencement of this Constitution to the arrangements under this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem necessary or expedient: Provided that no such order shall be made after the first meeting of the Parliament constituted under this Constitution.
 - (3) Every order made under this paragraph shall have effect notwithstanding any other provision of this Constitution, shall be laid before Parliament, and may be amended or revoked by Act of Parliament

Appendix-2

PART V—Acts, Bills, etc., of the Bangladesh Parliament BANGLADESH PARLIAMENT Dacca, the 25th January, 1975

The following Act of Parliament received the assent of the President on the 25th January, 1975, and is hereby published for general information. :—

ACT No. H OP 1975

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.—This Act may be called the Constitution (Fourth Amendment) Act, 1973.
2. Amendment of article H of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, 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 omitted.
3. Substitution of article 44 of the Constitution.—In the Constitution, for article 44 the following shall be substituted, namely :—
"44. Enforcement of fundamental rights.—Parliament may by law establish a constitutional court, tribunal or commission for the enforcement of the rights conferred by this Part."
4. Amendment of Part IV of the Constitution.—In the Constitution, in Part IV,—
(a) for Chapters I and II the following shall be substituted, namely :—

CHAPTER I

THE PRESIDENT AND VICE-PRESIDENT

48. The President.—(1) There shall be a President of Bangladesh who shall be elected in accordance with law by direct election.
(2) The President shall, as Head of State, take precedence over all other persons in the State.
49. The Vice-President.—There shall be a Vice-president of Bangladesh who shall be appointed by the President.
50. Qualifications for election as President and appointment as Vice-President.—A person shall not be qualified for election as President or appointment as Vice-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 or Vice-President under this Constitution.
51. Term of office of President and Vice President.—(1) Subject to the provisions of this Constitution, a 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, a President shall continue to hold office until his successor enters upon his office.
 - (2) A Vice-President shall, unless sooner removed from his office by the President, hold office for a term of five years from the date on which he enters upon his office.
 - (3) A President may resign his office by writing under his hand addressed to the Vice-President and a Vice-President may resign his office by writing under his hand addressed to the President.
 - (4) A President or a Vice-President shall not during his term of office, be qualified for election as a member of Parliament, and if a member of Parliament is elected as President or appointed as Vice-President, he shall be deemed to have vacated his seat in Parliament on the date on which he enters upon his office as President or Vice-President.
52. Immunity of President and Vice-President.—(1) Without prejudice to the provisions of article 53, a President

- or a Vice-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 a President or a Vice-President *in*, and no process for his arrest or imprisonment shall issue from, any court.
53. Impeachment of President.—(1) A President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by not less than two-thirds 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 tribunal appointed 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 three-fourths 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.
54. Removal of President on ground of incapacity. — (I) A 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 two-thirds 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 President¹ 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 three-fourths 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 given² 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 three-fourths of the total number of members of Parliament, the President shall vacate his office on the date on which the resolution is passed.
- Acting President. — (1) 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 Vice-President shall act as President until a new President elected to fill such vacancy enters upon his office or until the President resume the functions of his office, as the case may be.
- (2) At any time when both the offices of President and Vice-president are vacant or when both the President and Vice-President are unable to discharge the functions of their respective offices on account of absence, illness or any other cause, the Speaker shall act as President until a new President elected or Vice- President appointed to fill such vacancy enters upon his office or until the President or the Vice-President resumes the functions of his office, as the case may be.
- (3) Parliament may make such provisions as it thinks fit for the discharge of the functions of President in any contingency not provided for in this article.
56. Executive authority of the Republic. — (1) The executive authority of the Republic shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with this Constitution.
- (2) Notwithstanding anything contained in clause (1), the Vice-President may exercise such power of the President as the President may, by order, specify.
- (3) All executive action of the Government shall be expressed to be taken in the name of the President.
- (4) 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 not duly made or executed.

- (5) The President shall make rules for the allocation and transaction of the business of the Government.
57. Power of President to grant pardons, etc.— The President shall power to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence pas .ed by any court, tribunal or other authority.

CHAPTER II

THE COUNCIL OP MINISTERS

58. Council of Ministers.— (1) There shall be a Council of Minister; to aid and advise the President in the exercise of his functions.
- (2) The question whether any, and if so what, advice was tendered by the Council or a Minister to the President shall not be inquired into in any court.
- (3) The President shall, in his discretion, appoint from among the members of Parliament or persons qualified to be elected as members of Parliament, a Prime Minister and such other Ministers, Ministers of State and Deputy Ministers as he deems necessary :
- Provided that a Minister of State or Deputy Minister shall not be a member of the Council.
- (4) The President shall preside at the meetings of the Council or may direct he Vice-President or Prime Minister to preside at such meetings.
- (5) The Ministers shall hold office during the pleasure of the President.
- (6) A Minister may resign his office by writing under *his hand* addressed to the President.
- (7) In this article, "Minister" includes a Prime Minister, Minister of State and Deputy Minister,"; and
- (b) Chapter III shall be omitted.
5. Amendment of article 66 of the Constitution.- In the Constitution, in article 66,—
- (a) in clause (2),—
- (i) in sub-clause (e), after the semi-colon at the end, the word "or" shall be inserted; and
- (ii) sub-clause (f) shall be omitted; and
- (b) clause (3) shall be omitted.
6. Amendment of article 67 of the Constitution.—In the Constitution, in article 67, in clause (1), in sub-clause (a), the words "before Parliament" shall be omitted.
7. Substitution of article 70 of the Constitution — In the Constitution, for article 70 the following shall be substituted, namely :—
- "70. Vacation of seat on resignation etc.—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."
8. Amendment of article 72 of the Constitution.—In the Constitution, in article 72, in clause (1), for the proviso the following shall be substituted, namely :—
- "Provided that there shall be at least two sessions of Parliament in every year."
9. Insertion of new article 73A in the Constitution,—In the Constitution, after article 73, the following new article 73A shall be inserted, namely :—
- "73A. Rights of Ministers as respects Parliament.—(1) Every Minister shall have the right to speak in, and otherwise to take part in the proceedings of, Parliament, but shall not be entitled to vote unless he is a member of Parliament also-
- (2) In this article, "Minister includes a Prime Minister, Minister of State and Deputy Minister."
10. Amendment of article 74 of the Constitution.—In the Constitution, in article 74, in clause (3), for the words "exercising the functions of the" the words "acting as" shall be substituted.
11. Amendment of article 76 of the Constitution.—In the Constitution, in article 76, in clause (1), the words "At its first meeting in each session shall be omitted.
12. Amendment of article 80 of the Constitution.—In the Constitution, in article 80, in clause (3), after the words "assent to the Bill the words "or declare that he withholds assent there from" shall be inserted.
13. Amendment of article 88 of the Constitution.—In the Constitution, in article 88, after clause (a), the following new clause shall be inserted, namely :—
- "(aa) the remuneration payable to the Vice-President and other expenditure relating to his office;"
14. Amendment of article 95 of the Constitution.—In the Constitution, in article 95, for clause (1) the following shall be substituted, namely :—
- "(1) The Chief Justice and other judges shall be appointed by the President."
15. Amendment of article 96 of the Constitution.—In the Constitution, in article 96,—
- (a) for clause (2) the following shall be substituted, namely :

(2) A judge may be removed from his office by order of the President on the ground of misbehaviour or incapacity : Provided that no judge shall be removed until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."; and

(b) clause (3) shall be omitted.

16. Amendment of article 98 of the Constitution.—In the Constitution, in article 98, the commas and words ", after consultation with the Chief Justice," shall be omitted.

17. Substitution of article 102 of the Constitution.—In the Constitution, for article 102 the following shall be substituted, namely :—

"102. Power of High Court Division to issue certain orders and directions, etc.—(1) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—

(a) on the application of any person aggrieved, make an order—

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order—

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(2) Notwithstanding anything contained in clause (1), the High Court Division shall have no power under this article to make an interim order or to pass any order in relation to any law to which article 47 applies.

(3) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies."

18. Amendment of article 109 of the Constitution.—In the Constitution, in article 109, the words "and tribunals" shall be omitted.

19. Substitution of article 115 of the Constitution.—In the Constitution, for article 115 the following shall be substituted, namely :—

"115. Appointments to subordinate courts.—Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf."

20. Amendment of article 116 of the Constitution.—In the Constitution, in article 116, for the words "Supreme Court" the word "President" shall be substituted.

21. Insertion of new article 116A in the Constitution.—In the Constitution, in Part VI, in Chapter II, after article 116, the following new article 116A shall be inserted, namely :—

"116A. Judicial officers to be independent in the exercise of their functions.—Subject to the provisions of the Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions."

22. Amendment of article 117 of the Constitution.—In the Constitution, in article 117, in clause (1), in sub-clause (c), for the figure "3" the figure "2" shall be substituted.

23. Insertion of new Part VIA in the Constitution.—In the Constitution, after Part VI, the following new Part VIA shall be inserted, namely :—

"PART VIA THE NATIONAL PARTY

117A. National Party.—(1) If the President is satisfied that with a view to giving full effect to any of the fundamental principles of state policy set out in Part II of this Constitution it is necessary so to do, he may, by order, direct that there shall be only one political party in the State (hereinafter referred to as the National Party).

(2) When an order is made under clause (1), all political parties in the State shall stand dissolved and the President shall take all steps necessary for the formation of the National Party.

(3) All matters relating to the nomenclature, programme, membership, organisation, discipline, finance and function of the National Party shall be determined by order made by the President.

(4) Subject to the order made by the President under clause (3), a person in the service of the Republic shall be qualified to be a member of the National Party.

(5) Notwithstanding anything contained in this Constitution, when the National Party is formed, a person shall—

(a) in the case he is a member of Parliament on the date the National Party is formed, cease to be such member,

- and his seat in Parliament shall become vacant, if he does not become a member of the National Party within the time fixed by the President;
- (b) not be qualified for election as President or as a member of Parliament if he is not nominated as a candidate for such election by the National Party;
- (c) have no right to for, or be a member or otherwise take part in the activities of, any political party other than the National Party.
- (6) An order made under this article shall remain in force until revoked by a subsequent order."
24. Amendment of article 119 of the Constitution.—In the Constitution, in article 119, in clause (1),—
- (a) for the words and commas "all elections to Parliament, the conduct of such elections and of elections to the office of President," the words "all elections to the office of President and to Parliament and the conduct of such elections" shall be substituted;
- (b) in clause (b), the word "and" shall be omitted; and
- (c) for clause (c) the following shall be substituted, namely :—
- "(c) delimit the constituencies for the purpose of elections to Parliament; and
- (d) prepare electoral rolls for the purpose of elections to the office of President and to Parliament."
25. Amendment of article 122 of the Constitution.—In the Constitution, in article 122,—
- (a) in clause (1), after the word "elections" the words "to the office of President and" shall be inserted; and
- (b) after clause (2), the following new clause shall be added, namely :—
- "(3) A person shall be entitled to be enrolled on the electoral roll for the purpose of elections to the office of President if he is entitled to be enrolled on the electoral roll for a constituency under clause (2)."
26. Amendment of article 123 of the Constitution,—In the Constitution, in article 123,—
- (a) hi clause (1),—
- (i) for the words "ninety days" the words "one hundred and eight) days" shall be substituted; and
- (ii) the proviso shall be omitted; and
- (b) in clause (2), for the words "ninety days" the words "one hundred ant eighty days" shall be substituted.
27. 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 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, ejections !o the office ""••of President or to Parliament, including—
- (a) the preparation of electoral rolls ;
- (b) in the case of elections to Parliament, the delimitation of constituencies ;
- (c) the holding of elections ; and
- (d) all other matters necessary for securing the elections to the office of President and the due constitution of Parliament."
28. Amendment of article 141A of the Constitution.—In the Constitution, article 141A, in clause (1), the proviso shall be omitted.
29. Amendment of article 147 of the Constitution.—In the Constitution, article 147, in clause (4), after sub-clause (a), the following new sub-clause -shall be inserted, namely :—
- "(aa) Vice-President ; "
30. Amendment of article 148 of the Constitution.—In the Constitution, in article 148, in clause (2), the words "and for any reason it is impracticable for the to be made before that person" shall be omitted.
31. Omission of Second Schedule to the Constitution.—In the Constitution, the Second Schedule shall be omitted.
32. Amendment of Third Schedule to the Constitution.—In the Constitution, *in* the Third Schedule,—
- (a) in form I, for the words "Chief Justice" the word "Speaker" shall be substituted ;
- (b) after form 1, the following new form shall be inserted, namely :—
- "1A. The Vice-President.—An oath (or affirmation) in the following form ^hall be administered by the President— "I, do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of Vice-President of Bangladesh according to law;
That I will bear true faith and allegiance to Bangladesh :
That I will preserve, protect and defend the Constitution :
And that I will do right to all manner of peop'e according to law, without fear or favour, affection or ill-will.
- (c) in form 3, for the words "Chief Justice" the word President: shall be substituted ;
- (d) in form 4, for the words "Chief Justice" the word "President" shall be substituted ; and
- (e) in form 5, the words "at a mse;in3 of Parliament;" shall be omitted.
33. Amendment of Fourth Schedule to the Constitution.—In the Constitution, in the Fourth Schedule, paragraph 12 shall be omitted.
34. Extension of the term of the First Parliament.—Notwithstanding Any thing contained in the Constitution,

- the Parliament functioning immediately before the commencement of this Act shall, unless sooner dissolved by the President, stand dissolved on the expiration of the period of five years from such commencement.
- 35- Special provisions relating to President.—Notwithstanding anything contained in the Constitution, on the commencement of this Act,—
- the person holding office as President of Bangladesh immediately before such commencement shall cease to hold, and vacate, the office of President of Bangladesh ;
 - Bangabandhu Sheikh Mujibur Rahman, Father of the Natty a shall become, and enter upon the office of President of Bangladesh - shall, as from such commencement, hold office as President of Bangladesh as if elected to that office under the Constitution as amended this Act,

S. M. RAHMAN
Secretly

APPENDIX-3
THE PROCLAMATIONS (AMENDMENT) ORDER, 1977
PROCLAMATIONS ORDER No. I OF 1977
[23rd April, 1977]

WHEREAS it is expedient further to amend the Proclamation of the 8th November, 1975, and to amend the Third Proclamation of the 29th November, 1976, for the purposes hereinafter appearing ;

Now, THEREFORE, in pursuance of the Third Proclamation of the 29th November, 1976, read with the Proclamations of the 20th August, 1975, and 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President and the Chief Martial Law Administrator is pleased to make the following Order:—

- Short title and Commencement.—(1) This Order may be called the Proclamations (Amendment) Order, 1977.
(2) It shall come into force at once except paragraph 2(6) (g) which shall come into force on the revocation of the Proclamations of the 20th August 1975, and 8th November, 1975, and the Third Proclamation of the 29th November, 1976, and the withdrawal of Martial Law.
- Amendment of the Second Proclamation—In the Proclamation of the 8th November, 1975,—
 - for clause (ea) the following shall be substituted, namely :—
"(ed) for article 6 of the Constitution, the following shall be substituted, namely :—
"6. Citizenship.—(7) The citizenship of Bangladesh shall be determined and regulated by law.
(2) The citizens of Bangladesh shall be known as Bangladeshis/";
 - in clause (f), the words and figures " of Article 48" shall be omitted:
 - clause (/&) shall be omitted;
 - in clause (gc), after the word " Schedule" at the end, the words "to tins Proclamation" shall be added;
 - in clause (i), for the words"! may" the words "the Chief Martial Law Administrator may" shall be substituted;
 - in the Schedule,—
 - entries 1, 2, 3,4, 5, 6,7, 8, 9, and 10 shall be renumbered respectively as entries 8, 10, 11, 13, 14, 15, 19, 20, 21 and 22 ;
 - before entry 8 as so renumbered, the following new entries shall "be inserted, namely :—
"1. In the beginning of the Constitution, above the Preamble, the following shall be inserted namely :—
"BISMILLAH-AR-RAHMAN-AR-RAHIM (In the name of Allah, the Beneficent, the Merciful)".
- In the Preamble,—
 - in the first paragraph, *for* the Words "a historic struggle for national liberation" the words "a historic war for national independence" shall be *substituted*; and
 - for second paragraph the following shall be substituted, namely :—
"pledging that the high ideals of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, which inspired our heroic people to dedicate themselves to and our brave martyrs to sacrifice their Jives in, the war for national independence, shall be the fundamental principles of the Constitution;"
- In article 8, *for* clause (1) the following shall be *substituted*, namely:—
"(1) The principles of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them as set out in this Part, shall constitute the fundamental principles of state policy.
(1A) Absolute trust and faith in the Almighty Allah shall be the basis of all actions."
- For* articles 9 and 10 the following shall be *substituted*, namely;—
"9. Promotion of local Government institutions.—The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be

- given, as far as possible, to peasants, workers and women.
10. Participation of women in national life.—Steps shall be taken to ensure participation of women in all spheres of national life."
 5. Article 12 shall be omitted.
 6. Article 25 shall be renumbered as clause (1) of that article, and after clause (7) as so renumbered, the following new clause shall be added, namely :
"(2) The State shall endeavour to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity."
 7. In article 42, for clause (2) the following shall be substituted, namely:—
"(2) A law made under clause (1) shall provide for the acquisition, nationalisation or requisition with compensation and shall either fix the amount of compensation or specify the principles on which, and the manner in which, compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision in respect of such compensation is not adequate.
 - (3) Nothing in this article shall affect the operation of any law made before the commencement of the Proclamations (Amendment.) Order, 1977 (Proclamations Order No. I of 1-977), in so far as it relates to the acquisition, nationalisation or requisition of any property without compensation."
 - (c) after entry 8 as so renumbered, the following new entry shall be *inserted*, namely :—
"9. In article 47, in clause (2), *for* the proviso the following shall be *substituted*, namely: —
"Provided that nothing in this article shall prevent amendment, modification or repeal of any such law."
 - (d) after entry 11 as so renumbered, the following new entry shall be *inserted*, namely :—
"12. In article 93, in clause f7), *for* the words 'Parliament is not _ in session' the words 'Parliament stands dissolved or is not in session' shall be substituted"
 - (1) in entry 13 as so renumbered, in Chapter IB as substituted, by that entry,—
(1) in article 105, for clauses (2), (3) and (4) the following shall be substituted, namely —
"(2) A Judge of the Supreme Court or of the High Court shall not be removed from office except in accordance with the following provisions of this article.
(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges of the Supreme Court:
Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge of the Supreme Court who is next in seniority to those who are members of the Council shall act *a&* such member.
(4) The functions of the Council shall be- to-) to prescribe a Code of Conduct to be observed by the Judges of the Supreme Court and of the High Court ; and
(6) to inquire into the capacity or conduct of a Judge of the Supreme Court or of the High Court or of any other functionary who is not removable from office except in like manner as a Judge of the Supreme Court or of the High Court.
(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge of the Supreme Court or of the High Court—
(a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
(6) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.
(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct the President shall, by order, remove the Judge from Office.
(7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.
(8) A Judge of Supreme Court or of the High Court may resign his office by writing under his hand addressed to the President." and
(1) in article 107, in clause (2), after the word "period" at the end, the words and commas "as an ad hoc Judge and such Judge, while so sitting, shall exercise the same jurisdiction, powers and functions as a Judge of the Supreme Court" shall be added;
(f) after entry 15 as so renumbered, the following new entries shall be inserted, namely :—
"16. In article 118, in clause (5), in the proviso, for the words "Supreme Court" the words "High Court" shall be substituted.
11. In article 129, in clause (2), for the words "Supreme Court" the words "High Court" shall be substituted.
18. In article 139, in clause (2), for the words "Supreme Court" the words "High Court" shall be substituted."
(g) in entry 22 as so renumbered, *for* the words, commas, colon and dash "In the Fourth Schedule, after paragraph 6, the following new paragraph shall be inserted, namely :—" the following shall be substituted, namely :—

"In the Fourth Schedule,—

(1) after paragraph 3 the following new paragraph shall be inserted, namely :—

"3 A. Validation of certain Proclamations, etc.—(1) The Proclamations of the 20th August, 1975, and 8th November 1975 and the Third Proclamation of the 29th November, 1976, and all other Proclamations and Orders amending or supplementing them, hereinafter in this paragraph collectively referred to as the said Proclamations, and all Martial Law Regulations, Martial Law Orders and all other laws made during the period between the 15th day of August, 1975, and the date of revocation of the said Proclamations and the withdrawal of Martial Law (both days inclusive), hereinafter in this paragraph referred to as the said period, shall be deemed to have been validly made and shall not be called in question in or before any Court or Tribunal on any ground whatsoever.

(2) AH orders made, acts and things done, and actions and proceedings taken, or purported to have been made, done or taken, by the President or of the Chief Martial Law Administrator or by any other person or authority, during the said period, in exercise or purported exercise of the powers derived from any of the said Proclamations or any Martial Law Regulation or Martial Law Order or any other law, or in execution of or in compliance with any order made . or sentence passed by any Court or authority in the exercise or purported exercise of such powers, shall be deemed to have been validly made, done or taken and shall not be called in question in or before any Court or Tribunal on any ground whatsoever.

(3) No suit, prosecution or other legal proceeding shall lie in any Court or Tribunal against any person or authority for or on account of or in respect of any order made, act or thing done, or action or proceeding taken whether in the exercise or purported exercise of the powers referred to in sub-paragraph (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers.

(4) All amendments, additions, modifications, substitutions and omissions made in this Constitution by the said Proclamations shall have effect as if such amendments, additions, modifications, substitutions and omissions were made in accordance with," and in compliance with the requirements of, this Constitution.

(5) Upon the revocation of the said Proclamations and the withdrawal of Martial Law this Constitution shall, subject to amendments, additions, modifications, substitutions and omissions as aforesaid, have effect and operate as if it had been in continuous operation.

(6) The revocation of the said Proclamations and the withdrawal of Martial Law shall not revive or restore any right or privilege which was not existing at the time of such revocation and withdrawal.

(7) AH laws in force immediately before the revocation of the said Proclamations and withdrawal of Martial Law shall, subject to the Proclamation revoking the said Proclamations and withdrawing the Martial Law, continue in force until altered, amended or repealed by the competent authority.

(8) The General Clauses Act, 1897, shall apply to the revocation of the said Proclamations and the withdrawal of Martial Law and the repeal of the Martial Law Regulations and Martial Law Orders made during the said period as it applies to the repeal of an Act of Parliament as if the said Proclamations and the Proclamation revoking them and withdrawing the Martial Law and the Martial Law Regulations and Martial Law Orders were all Acts of Parliament,

(9) In this paragraph, 'laws' includes Ordinances, rules, regulations, bye- laws, orders, notifications and other instruments having the force of law." and

(II) after paragraph 6, the following new paragraph shall be inserted, namely ;—".

3. Amendment of the Third Proclamation.—In the Third Proclamation of the 29th November, 1976,—

(1) in clause (b), for the words "The Proclamation" the words and commas "this Proclamation, to make new Proclamation, and to revoke them by a subsequent Proclamation" shall be substituted ; and

(11) in clause (c), for the words "to make" the words and comma "to make, amend and repeal" shall be substituted and shall be deemed always to have been so substituted.

APPENDIX-4
THE SECOND PROCLAMATION
(SEVENTH AMENDMENT) ORDER, 1976
SECOND PROCLAMATION ORDER No. IV OF 1976
[28th May 1976]

WHEREAS it is expedient further to amend the Proclamation of the 8th November, 1975, for the purposes hereinafter appearing ;

Now, THEREFORE, in pursuance of the said Proclamation and in exercise of all - Powers enabling me in that behalf, I, ABUSADAT MOHAMMAD SAYEM, President of the People's Republic of Bangladesh and Chief Martial Law Administrator, do hereby make the following Order :—

1. Short title and commencement.—(1) This Order may be called the Second Proclamation (Seventh

Amendment) Order, 1976.

- (2) It shall come into force on such day¹ as the President may, by order notified in the official Gazette, appoint.
2. Amendment of the Second Proclamation.—In the Proclamation of the 8th November, 1975,—
- (1) after clause the following new clause shall be inserted, namely :— other provisions of the Constitution shall be amended in the manner specified in the Schedule"; and
- (2) after clause, the following Schedule shall be added, namely : SCHEDULE [See clause (gc)]
1. For article 44 the following shall be substituted, namely :—
- "44. Enforcement of fundamental rights.—(1) The right to move the High Court in accordance with clause (2) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.
- (2) Without prejudice to the powers of the High Court under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers."
2. In Part IV, after Chapter V, the following, new Chapter shall be added, namely:—

CHAPTER VI

ADVOCATE-GENERAL

- 64A.—Advocate-General.—(1) The President may appoint a person who is qualified to be appointed as a judge of the High Court to be Advocate-General for Bangladesh.
- (2) The Advocate-General shall perform such functions as may be assigned to him by the President.
- (3) In the performance of his duties, the Advocate-General shall have the right of audience in the High Court and all courts and tribunals subordinate thereto :
- Provided that this clause shall not be construed as denying the Advocate-General the right to appear and act in or before the Supreme Court if he is otherwise qualified for the purpose.
- (4) The Advocate-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."
3. In article 88,—
- (a) in clause (b), in sub-clause, for the words "Supreme Court" the words "Supreme Court and High Court" shall be substituted; and (&) in clause (c), after the words "Supreme Court", the comma and words ", the High Court" shall be inserted.
4. In Part VI, for Chapter I the following shall be substituted, namely;—

CHAPTER I

THE SUPREME COURT.

94. Establishment of Supreme Court—(1) There shall be a Supreme Court of Bangladesh.
- (2) The Supreme Court shall consist of a Chief Justice, to be called the Chief Justice of Bangladesh, and such number of other Judges as the President may, from time to time, deem it necessary to appoint.
95. Appointment of Supreme Court Judges.—(7) The Chief Justice of the Supreme Court shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.
- (2) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of Bangladesh and—
- (a) has, for not less than five years, been a Judge of the High Court; or
- (b) has, for not less than fifteen years, been an advocate of the High Court ; or
- (c) has such other qualification as may be prescribed by law for appointment as a Judge of the Supreme Court..
- Explanation.—In this clause "High Court" includes a Court which at any time before the commencement of the Second Proclamation (Seventh Amendment) Order, 1976, exercised jurisdiction as a High Court or Supreme Court in the territory now forming part of Bangladesh.
96. Jurisdiction of Supreme Court—(1) In addition to the jurisdictions and powers conferred on it by this Constitution, the Supreme Court shall have such other jurisdictions, powers and functions as are or may be conferred by law.
- (2) Subject to this article, the Supreme Court may hear and determine appeals from judgment, decrees, orders or sentences of the High Court.
- (3) An appeal to the Supreme Court from a judgment, decree, order or sentence of the High Court shall lie as of right where the High Court—
- (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution ; or
- (b) has confirmed a sentence of death or sentenced a person to death or to transportation for life ; or
- (c) has imposed punishment on a person for contempt of that Court ; and in such other cases as may be provided for by Act of Parliament.
- (4) An appeal to the Supreme Court from a judgment, decree, order or sentence of the High Court in a case to which clause (3) does not apply shall lie only if the Supreme Court grants leave to appeal.
- (5) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or

- tribunal as they apply in relation to the High Court.
97. Advisory jurisdiction of Supreme Court.—If, at any time, it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Supreme Court for consideration, and the Supreme Court may, after such hearing as it deems fit, report its opinion thereon to the President.
98. Issue and execution of processes of Supreme Court—The Supreme Court shall have power, to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.
99. Review of judgments or orders by Supreme Court.—The Supreme Court shall have power, subject to the provisions of any Act of Parliament and of any rules made by that Court, to review any judgment pronounced or order made by it.

CHAPTER II The HIGH COURT.

100. Establishment of High Court.—(1) There shall be a High Court of Bangladesh.
- (2) The High Court shall consist of a Chief Justice and such number of other Judges as the President may, from time to time, deem it necessary to appoint.
101. Appointment of High Court Judges.—(1) A Judge of the High Court shall be appointed by the President after consultation with the Chief Justice of the Supreme Court and, except where the appointment is that of Chief Justice, with the Chief Justice of the High Court.
- (2) A person shall not be qualified for appointment as a Judge of the High Court unless he is a citizen of Bangladesh and —
- (a) has, for not less than ten years, been an advocate of the High Court ; or
- (b) has, for not less than ten years, held judicial office or been an advocate in any territory now forming part of Bangladesh and has, for not less than three years, exercised the powers of a District Judge ; or
- (c) has such other qualification as may be prescribed by law for appointment as a Judge of the High Court.
- Explanation.—In this clause "High Court" includes a Court which at any time before the commencement of the Second Proclamation (Seventh Amendment) Order, 1976, exercised jurisdiction as a High Court or Supreme Court in the territory now forming part of Bangladesh,
102. Jurisdiction of High Court.—(1) The High Court shall have such original, appellate and other jurisdictions powers and functions as are or may be conferred on it by this Constitution or any other law.
- (2) The High Court, on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.
- (3) The High Court may, if satisfied that no other equally efficacious remedy is provided by law—
- (a) on the application of any person aggrieved, make an order—
- (i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do ; or
- (ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect ; or
- (b) on the application of any person, make an order—
- (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner ; or
- (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.
- (4) Notwithstanding anything contained in the foregoing clauses, the High Court shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.
- (5) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence service of Bangladesh or any disciplined force or a tribunal to which article 117 applies.
103. Superintendence and control over subordinate Courts.—The High Court shall have superintendence and control over all courts subordinate to it.
104. Transfer of cases from subordinate courts to High Court.—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to

the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may—

- (a) either dispose of the case itself ; or
- (6) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of its judgment on such question and the court to which the case is so returned or transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.

CHAPTER III

GENERAL PROVISIONS AS TO SUPREME COURT AND HIGH COURT.

105. Tenure of office of Judges of Supreme Court and High Court.—(7)

Subject to the provisions of this article,—

- (5) a Judge of the Supreme Court shall hold office until he attains the age of sixty-five years ;
- (6) a Judge of the High Court shall hold office until he attains the age of sixty-two years.
- (2) A Judge of the Supreme Court or of the High Court shall not be removed from his office except by an order of the President made pursuant to a resolution of Parliament passed by a majority of not less than two-thirds of the total number of members of Parliament on the ground of proved misbehaviour, or incapacity.
- (3) Parliament may by law regulate the procedure in relation to a resolution under clause (2) and for investigation and proof of the misbehavior or incapacity of a Judge of the Supreme Court or of the High Court.
- (4) A Judge of the Supreme Court or of the High Court may resign his office by writing under his hand and addressed to the President,

106. Temporary appointment of Chief Justice of Supreme Court and High Court.—If the office of the Chief Justice of the Supreme Court or of the High Court becomes vacant, or if the President is satisfied that any such Chief Justice is, on account of absence, illness or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until that Chief Justice has resumed his duties as the case may be, be performed by the next senior Judge of that Court,

107. Additional Judge of Supreme Court and High Court.—(1) If the

President is satisfied that the number of Judges of the Supreme Court or of the High Court should be for the time being increased, the President may appoint the required number of persons qualified for appointment as Judge of such Court to be Additional Judges of that Court for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High Court to sit in¹ the Supreme Court for any temporary period.

(2) Nothing in this article shall prevent a person appointed as an Additional Judge from being appointed as a Judge under article 95 or under article 101 or as an Additional Judge for a further period under this article.

108. Disabilities of Judges of Supreme Court and High Court.—(1) Except as provided in clause (2), a person who has held office as a Judge of the Supreme Court or of the High Court, otherwise than as an Additional Judge of such Court, shall not, after his retirement or removal there from, plead or act before any court or authority or hold any office of profit in the service of the Republic not being a judicial or quasi-judicial office.

(2) A person who has held office as a Judge of the High Court may after his retirement or removal there from, plead or act before the Supreme Court.

109. Seats of Supreme Court and High Court.—The permanent seat of the Supreme Court and of the High Court shall be in the capital, but sessions of the Supreme Court or of the High Court may be held at such other place or places as the Chief Justice of the Court may, with the approval of the President, from time to time, appoint.

110. Rules of Procedure.—Subject to this Constitution and any law made by Parliament,—

(a) the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of the Court ;

(f) the High Court may, with the approval of the President, make rules for regulating the practice and procedure of the Court or of any other court subordinate to it.

111. Supreme Court and High Court to be Courts of record.—The Supreme Court and the High Court shall be Courts of record and shall have all the powers of such a Court, including the power, subject to law, to make an order for the investigation of, or punishment for, any contempt of itself.

112. Binding effect of Supreme Court and High Court decisions.—(7)

The law declared by the Supreme Court shall be binding on the High Court and on all other courts subordinate to the High Court.

(2) Subject to clause (1), the law declared by the High Court shall be binding on all courts subordinate to it.

(3) All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court and the High Court.

113. Staff of Supreme Court and High Court.—(1) Subject to the provision of any Act of Parliament, the Supreme Court and the High Court may, with the approval of the President, make rules for the appointment of officers

- and servants of that Court and for their terms and conditions of employment.
- (2) Subject to any rules made under clause (1), appointments of the officers and servants of the Supreme Court or of High Court shall be made by the Chief Justice or by such other Judge or officer of that Court as he may direct."
5. In article 114, after the words "Supreme Court", the words "and the High Court " shall be inserted.
6. In article II7, in clause (/), for sub-clause (c) the following shall be substituted, namely :—
"(c) any law to which clause (4) of article 102 applies."
7. In article 147, in clause, after sub-clause (e), the following new sub- clause shall be inserted, namely:
"(ee) Judge of the High Court."
8. In article 152, in clause (1), the definitions of the expressions "the Appellate Division", "the Chief Justice", "the High Court Division", "Judge" and "the Supreme Court" shall be omitted.
9. In the Third Schedule,—
(a) in form I, for the word "Speaker" the words "Chief Justice of the Supreme Court" shall be substituted ;
(b) for form 6 the following shall be substituted, namely :—
"6. Chief Justice or Judge of Supreme Court and High Court.—An oath (or affirmation) in the following form shall be administered, in the case of the Chief Justice of the Supreme Court and of the High Court by the President, and in the case of a Judge of the Supreme Court, by the Chief Justice of that Court, and in the case of a Judge of the High Court, by the Chief Justice of that Court :—
"I, having been appointed Chief Justice of the Supreme Court/High Court (or Judge of the Supreme Court/High Court) do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law :
That I will bear true faith and allegiance to Bangladesh :
That I will preserve, protect and defend the Constitution and the laws of Bangladesh :
And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."; and
(c) in forms 7, 8 and 9, for the words "Chief Justice" the words "Chief Justice of the High Court" shall be substituted.
10. In the Forth Schedule, after paragraph 6, the following new paragraph shall be inserted, namely :—
"6A. Provisions as to existing Judges and pending proceedings.—
The person holding office of Chief Justice of Bangladesh immediately before the commencement of the Second Proclamation (Seventh Amendment) Order, 1976 (hereinafter referred to as the said Order), and every person who then held office as Judge or Additional Judge of the Appellate Division of the Supreme Court shall as from such commencement hold office as Chief Justice, Judge or Additional Judge of the Supreme Court, as the case maybe, on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement.
- (2) A person holding office as Judge or Additional Judge of the High Court Division of the Supreme Court immediately before the commencement of the said Order shall as from such commencement hold office as Judge or Additional Judge of the High Court as the case may be, on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement.
- (4) All legal proceedings pending before the Appellate Division of the Supreme Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the Supreme Court for determination ; and any judgment, or order of the Appellate Division of the Supreme Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the Supreme Court,
- (5) AH legal proceedings pending before the High Court Division of the Supreme Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the High Court for determination ; and any judgment or order of the High Court Division delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the High Court.
- (6) Subject to the other provisions of this Constitution, the Supreme Court shall have the same functions, jurisdiction, and powers as were, immediately before the commencement of the said Order, exercisable by the Appellate Division of the Supreme Court, and references in any law, legal instrument or other document to the Appellate Division of the Supreme Court shall, unless the con text otherwise requires, be construed as references to the Supreme Court.
- (7) Subject to the other provisions of this Constitution, the High Court shall have the same functions, jurisdiction and powers as were, immediately before the commencement of the said Order, exercisable by the High Court Division of the Supreme Court, and references in any law, legal instrument or other document to the High Court Division of the Supreme Court shall, unless the context otherwise requires, be construed as references to the High Court."

Appendix-5
APPENDIX-XIV THE SECOND PROCLAMATION (TENTH AMENDMENT)
ORDER, 1977

SECOND PROCLAMATION ORDER No. I OF 1977
[27th November, 1977]

WHEREAS it is expedient further to amend the Proclamation of the 8th November, 1975, for the purposes hereinafter appearing;

Now, THEREFORE, in pursuance of the Third Proclamation of the 29th November, 1976, read with the Proclamations of the 20th August, 1975, and the 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President and the Chief Martial Law Administrator is pleased to make the following Order :—

1. Short title and commencement.—(7) This Order may be called the Second Proclamation (Tenth Amendment) Order, 1977.

(2) It shall come into force on the first day of December, 1977.

2. Amendment of the Second Proclamation.—In the Proclamation of the 8th November, 1975, in the Schedule,—

(1) in entry 8, in article 44 as substituted by that entry, for the words "High Court" occurring twice, the words "High Court Division" and for the word, brackets and figure "clause (2)" the word, brackets and figure "clause (.)" shall be substituted ;

for entry 10, the following shall be substituted, namely :— "10. In Part IV, Chapter VI shall be omitted." for entry 11, the following shall be substituted, namely :—

11. In article 88,—

(a) in clause (b), in sub-clause (11), the words "and High Court" shall be omitted ; and

(6) in clause (c), the words and comma "the High Court," shall be omitted. ;

(4) for entry 13, the folio wing shall be substituted, namely:—

"13. In Part VI, for Chapters I, IA and IB the following shall be substituted, namely :—

"CHAPTER I-THE SUPREME COURT

"94. Establishment of Supreme Court. (1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.

(2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.

(3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that Division, and the other Judges shall sit only in the High Court Division.

(4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions,

95. Appointment of Judges.--(7) The Chief Justice and other Judges shall be appointed by the President.

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and—

(a) has for not less than ten years been an advocate of the Supreme Court; or

(b) has, for not less than ten years, held judicial office in the territory of Bangladesh ; or

(c) has such other qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.

(3) In this Article, "Supreme Court" includes a Court which at any time before the commencement of the Second Proclamation (Tenth Amendment) Order, 1977, exercised jurisdiction as a High Court or Supreme Court in the territory now forming part of Bangladesh.

96. Tenure of office of Judges.—(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-two years.

(2) A Judge shall not be removed from office except in accordance with the following provisions of this article.

(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges ;

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The functions of the Council shall be—

(6) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge—

(a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or

- (b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.
- (6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.
- (7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.
- (8) Judge may resign his office by writing under his hand addressed to the President.
97. Temporary appointment of Chief Justice.—If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division.
98. Additional Supreme Court Judges.—Notwithstanding the provisions of article 94, if the President is satisfied that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be additional Judges of that division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High Court Division to sit in the Appellate Division for any temporary period as an *ad hoc* Judge and such Judge while to sitting, shall exercise the same jurisdiction, powers and functions as a Judge of the Appellate Division :
Provided that nothing in this article shall prevent a person appointed as an additional Judge from being appointed as a Judge under article 95 or as an additional Judge for a further period under this article,
99. Disabilities of Judges.—(1) Except as provided in clause (2), a person who has held office as a Judge otherwise than as an Additional Judge shall not., after his retirement or removal there from, plead or act before any court or authority or hold any office of profit in the service of the Republic not being a judicial or quasi-judicial office.
- (2) A person who has held office as a Judge of the High Court Division may, after his retirement or removal there from, plead or act before the Appellate Division.
100. Seat of Supreme Court.—The permanent seat of the Supreme Court, shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint.
101. Jurisdiction of High Court Division.—The High Court Division shall have such original, appellate and other jurisdictions, powers and functions as are or may be conferred on it by this Constitution or any other law.
102. Powers of High Court Division to issue certain orders and directions etc.—(7) The High Court Division on the application of any person aggrieved, may give such directions or order to any person or authority, including any, person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of tills Constitution.
- (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—
- (a) on the application of any person aggrieved, make an order—
- (1) directing a person performing any functions in connection with the affairs of the Republic or of a local to authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or
- (11) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect ; or
- (b) on the application of any person, make an order—
- (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner ; or
- (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.
- (5) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other or in relation to any law to which article 47 applies.
- (4) Where on an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of—
- (a) prejudicing or interfering with any measure designed to implement any development programme, or any development work ; or
- (A) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (6).

- (3) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.
103. Jurisdiction of appellate Division.—(7) The appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.
- (2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division—
- (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or
 - (b) has sentenced a person to death or to transportation for life ; or
 - (c) has imposed punishment on a person for contempt of that division ;
- and in such other cases as may be provided for by Act of Parliament.
- (5) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall He only if the Appellate Division grants leave to appeal,
- (4) Parliament may by law declare that the provisions of this article shall appl. in relation to any other court or tribunal as they apply in relation to the High Court Division.
104. Issue and execution of processes of Appellate Division.—The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.
105. Review of judgments or orders by Appellate Division.—The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by that division, to review any judgment pronounced or order made by it.
106. Advisory jurisdiction of Supreme Court.—If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Appellate Division for consideration and the division may, after such hearing as it thinks fit, report its opinion thereon to the President.
107. Rule-making power of the Supreme Court.—(1) Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it.
- (2) The Supreme Court may delegate any of its functions under clause (1) and article 113 to a division of that Court or to one or more Judges.
 - (3) Subject to any rules made under this article the Chief Justice shall determine which Judges are to constitute any Bench of a division of the Supreme Court and which Judges are to sit for any purpose.
 - (4) The Chief Justice may authorise the next most senior Judge of either Division of the Supreme Court to exercise in that division any of the powers conferred by clause (3) or by rules made under this article.
107. Supreme Court as court of record.—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.
109. Superintendence and control over courts.—The High Court Division shall have superintendence and control over all courts subordinate to it.
110. Transfer of cases from subordinate courts to High Court Division.—
If the High Court Division is satisfied that a case pending in a Court sub-ordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may—
- (a) either dispose of the case itself; or
 - (b) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of the judgment of the division on such question, and the court to which the case is so returned or transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.
111. Binding effect of Supreme Court judgments.—The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.
112. Action in aid of Supreme Court.—All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.
113. Staff of Supreme Court.—(1) Appointments to the staff of the Supreme Court shall be made by the Chief Justice or such other judge or officer of that Court as he may direct, and shall be made in accordance with rules made with the previous approval of the President by the Supreme Court.

- (2) Subject to the provisions of any Act of Parliament the conditions of service of members of the staff of the Supreme Court shall be such as may be prescribed by rules made by that court.";
- (5) for entries 14, 15, 16, 17, 18, 19, and 20 the following shall be substituted, namely :—
- "14. In article 114, the words "and the High Court" shall be omitted.
15. in article 117, in clause (7), for sub-clause (c) the following shall be substituted, namely :—
"(c) any law to which clause (3) of article 102 applies."
16. in article 118, in clause (5), in the proviso, for the words "High Court" the words "Supreme Court" shall be substituted,
17. In article 129, in clause (2), for the words "High Court" the words "Supreme Court" shall be substituted.
18. In article 139, in clause (2), for the words "High Court" the words "Supreme Court" shall be *substituted*.
19. In article 147, in clause (4), sub-clause (ee) shall be omitted.
20. In article 152, in clause (i),—
- (a) after the definition of the expression "administrative unit", the following shall be inserted, namely :—
"the Appellate Division" means the Appellate Division of the Supreme Court ;";
- (b) after the definition of the expression "Chief Election Commissioner", the following shall be inserted, namely :—
"the Chief Justice" means the Chief Justice of Bangladesh;";
- (c) after the definition of the expression "guarantee", the following shall be inserted, namely :—
"the High Court Division" means the High Court Division of the Supreme Court ;
"Judge" means a Judge of a division of the Supreme Court ;"
- (d) after the definition of the expression "sub-clause", the following shall be inserted, namely :—
"the Supreme Court" means the Supreme Court of Bangladesh constituted by article 94 ;
- (6) for entry 21 the following shall be substituted, namely :—
"21. In the Third Schedule,—
- (a) in form I, for the words "Chief Justice of the Supreme Court" the words "Chief Justice" shall be substituted ;
- (b) for form 6, the following shall be substituted, namely :—
"6. Chief Justice or Judge.—An oath (or affirmation) in the following form shall be administered, in the case of the Chief Justice by the President, and in the case of a Judge appointed to a division, by the Chief Justice —
"I, having been appointed
Chief Justice of Bangladesh (or judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law :
That I will bear true faith and allegiance to Bangladesh :
That I will preserve, protect and defend the Constitution and the laws of Bangladesh :
And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will,";
and
- (c) in forms 7, 8 and 9, for the words "Chief Justice of the High Court" the words "Chief Justice" shall be substituted ; and
- (7) in entry 22,—
- (a) in item, the word "and" at the end shall be omitted;
- (b) in item (ii), for the full-stop at the end the semi-colon and word and shall be substituted ; and
- (c) after item (ii), the following new item shall be added, namely ;—
- (d) after paragraph 6A, the following new paragraph shall be inserted, namely :—
"6B. Provisions as to Judges of the Supreme Court and High Court existing before the Second Proclamation Order No. I of 1977 proceedings pending before commencement of that Order, etc.—
A person holding office as Chief Justice or Judge or Additional Judge of the Supreme Court or Chief Justice or Judge or Additional Judge of the High Court immediately before the commencement of the Second Proclamation (Tenth Amendment) Order, 1977 (hereinafter referred to as the said Order), shall, if he has attained the age of sixty-two years on the date of such commencement, stand retired on that date.
- (2) A person holding office as Chief Justice or Judge of Additional Judge of the Supreme Court immediately before the commencement of the said Order shall, if he has not attained the age of sixty-two years on the date of such commencement, as from such commencement hold office as Chief Justice, of Bangladesh or Judge or Additional Judge of the appellate Division as the case may be, on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement.
- (3) The person holding office as Chief Justice of the High Court immediately before the commencement of the said Order shall, if he has not attained the age of sixty-two years on the date of such commencement, as from such commencement hold office as Judge of the High Court Division on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement,
- (4) A person, holding office as Judge or Additional Judge of the

High Court immediately before the commencement of the said Order shall, if he has not attained the age of sixty-two years on the date of such commencement, as from such commencement hold office as Judge or Additional Judge of the High Court Division, as the case may be, on the same terms and conditions, as to remuneration and other privileges as were applicable to him immediately before such commencement.

- (5) All legal proceedings pending before the Supreme Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the Appellate Division for determination; and any judgment or order of the Supreme Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the Appellate Division.
- (6) All legal proceedings pending before the High Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the High Court Division for determination; and any judgment or order of the High Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the High Court Division.
- (7) Subject to the other provisions of this Constitution, the Appellate Division shall have the same functions, jurisdiction and powers as were, immediately before the commencement of the said Order, exercisable by the Supreme Court, and references in any law, legal instrument or other document to the Supreme Court shall, unless the context otherwise requires, be constituted as references to the Appellate Division.
- (8) Subject to the other provisions of this Constitution, the High Court Division shall have the same functions, jurisdiction and powers as were, immediately before the commencement of the said Order, exercisable by the High Court, and references in any law, legal instrument or other document to the High Court shall, unless the context otherwise requires, be construed as references to the High Court Division.
- (9) The person holding office as Advocate-General immediately before the commencement of the said Order shall on such commencement cease to hold that office."

APPENDIX-6
THE SECOND PROCLAMATION (FIFTEENTH AMENDMENT)
ORDER, 1978.

SECOND PROCLAMATION ORDER No. IV OF 1978.
[8th December, 1978]

WHEREAS there has been persistent demand for the repeal of the undemocratic provisions of the Constitution incorporated therein by the Constitution (Fourth Amendment) Act, 1975;

AND WHEREAS some of such undemocratic provisions have already been repealed by the President and the Chief Martial Law Administrator;

AND WHEREAS the President and the Chief Martial Law Administrator, in response to the said popular demand, pledged to the nation to repeal the remaining undemocratic provisions after obtaining mandate from the people in the election to the office of President, and he has obtained that mandate;

AND WHEREAS it is expedient further to amend the Proclamation of the 8th November, 1975, for the purpose of fulfilling the said pledge and other purposes hereinafter appearing ;

Now,, in pursuance of the Third Proclamation of the 29th November, 1976, read with the Proclamations of the 20th August, 1975, and 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President and the Chief Martial Law Administrator is pleased to make the following Order:—

1. Short title, —This Order may be called the Second Proclamation (Fifteenth Amendment) Order, 1978.

2. Amendment of the Second Proclamation.—In the Proclamation of the 8th November, 1975,—(?) clause (fa) shall be omitted;

(2) in clause (gc), for the word "Schedule" the words "First Schedule" shall be substituted;

(3) after clause (gc), the following new clause shall be inserted namely :—

"(gd) the provisions of the Bengali text of the Constitution shall be amended in the manner specified in the Second Schedule to this Proclamation;"

(4) in the existing Schedule,

(i) in the heading, for the word "SCHEDULE" the words "FIRST SCHEDULE" shall be substituted;

(ii) after entry 9, the following new entry shall be inserted, namely :—

"9A. for article 58 the following shall be substituted, namely :—

"58. Council of Ministers.—(1) There shall be a Council of Ministers, consisting of Prime Minister, one or more Deputy Prime Ministers and other Ministers, to aid and advise the President in the exercise of his functions,

(2) The question whether any, and if so what, advice was tendered by the Council of Ministers or a Minister to the President shall not be inquired into in any court.

(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) The President shall appoint the Deputy Prime Ministers and other Ministers and also Ministers of State and Deputy Ministers from among the members of Parliament or from among persons qualified for election, as such members :

Provided that not more than one-fifth of their number shall be chosen from among persons qualified for election as members of Parliament.

(5) The Ministers shall hold office during the pleasure of the President.

(6) The President shall preside at the meetings of the Council of Minister or may direct the Vice-President or the Prime Minister to preside at such meetings.

(7) A Minister may resign his office by writing under his hand addressed to the President.

(8) In this article, unless the context otherwise requires, "Minister" includes a Prime Minister, Deputy Prime Minister, Minister of State and Deputy Minister.;"

(iii) after entry 10, the following entries shall be inserted, namely :—

"10A. In article 65, in clause (3), for the words "ten years" the words "fifteen years" and for the words "fifteen seats" the words "thirty seats" shall be substituted

10B. In article 66,— (a) In clause (2),— (0 In sub-clause (d), the word "or" at the end shall be omitted; and

after sub-clause (d), the following new sub-clause shall be inserted, namely :—

"holds any office of profit in the service of the Republic other than an office which is declared by law not to disqualify its holder; or " ; and

(b) after clause (2), following new clause shall be inserted, namely :—

"For the purposes 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 Prime Minister, Deputy Prime Minister, Minister, Minister of State or Deputy Minister."

10C. In article 73A, in clause (2), after the words "Prime Minister", the comma and words ", Deputy Prime Minister" shall be inserted.

10D. In article 80,—

- (a) in clause (3), the words "or declare that he withholds assent there from" shall be *omitted*; and
- (b) in clause (4), *after* the words "without amendments", the words "by the votes of a majority of the total number of members of parliament" shall be *inserted*.

10E. *after* article 92, the following new article shall be *inserted*, namely:—

"9A. Authorisation of expenditure in certain cases.—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 article 92; 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 article 92; or
- (c) has refused or reduced the demands for grants, and a request for the reconsideration of the demands has been made by the President in a message to it, the President may, by order, authorise the withdrawal from the Consolidated Fund moneys necessary to meet expenditure mentioned in the annual financial statement for that year for a period not exceeding one hundred twenty days in that year, pending the making of the grants and passing of the law.";

(iv) *after* entry 14, the following new entries shall be *inserted*, namely :—

"14A. In article 116, *after* the word "President" the words "and shall be exercised by him in consultation with the Supreme Court" shall be *inserted*.";

(v) *after* entry 18, the following new entries shall be *inserted*, namely :—

"ISA. In article 142, *after* clause (7), the following new clauses shall be *inserted* namely :—

"(I A) Notwithstanding anything contained in clause (I), when a Bill, passed as aforesaid, which provides for the amendment of the preamble or any provisions of article 8, 48, 56, 58, 80, 92A or this article, is presented to the President for assent, the President shall, within the period of seven days after the Bill is presented to him, cause to be referred to a referendum the question whether the Bill should or should not be assented to.

(IS) A referendum under this article shall be conducted by the Election Commission, within such period and in such manner as may be provided by law, amongst the persons enrolled on the electoral roll prepared for the purpose of election to the office of President.

(IC) On the day on which the result of the referendum conducted in relation to a Bill under this article is declared, the President shall be deemed to have —

- (a) assented to the Bill, if the majority of the total votes cast are in favour of the Bill being assented to; or
- (6) withheld assent therefrom, if the majority of the total votes cast are not in favour of the Bill being assented to."

18B. *After* article 145, the following new article shall be *inserted*, namely :—

"145A. International treaties.—All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament :

Provided that no such treaty shall be so laid if the President considers it to be against the national interest so to do.";

(vi) *for* entry 19 the following shall be *substituted*, namely :—

"19. In article 147, in clause (4), *for* sub-clause (b) the following shall be *substituted*, namely :—

"(b) Prime Minister or Deputy Prime Minister;"

(vii) in entry 20, *after* item (b), the following new item shall be *inserted*, namely :—

"(bb) *after* the definition of the expression "clause", the following shall be *inserted*, namely :—

"court" means any court of law including Supreme Court;"

(viii) in entry 21, *after* item (a) the following new item shall be *inserted*, namely:—

"(aa) in form 2, in the marginal heading *for* the words "Prime Minister" the words and comma "Prime Minister, Deputy Prime Ministers" shall be *substituted*;" and

(a) in entry 22, in item (1), in paragraph 3A, as inserted by that item, *for* sub-paragraphs (8) and (9) the following shall be *substituted*, namely :—

"(8) The General Clauses Act, 1897, shall apply to the said Proclamations and the Martial Law Regulations and Martial Law Orders made during the said period and also to the revocation of the said proclamations and the withdrawal of Martial Law and the repeal of the said Martial Law Regulations and Martial

Law Orders as it applies to, and to the repeal of, an Act of Parliament as if the said Proclamations and the Proclamation revoking them and withdrawing the Martial Law and the Martial Law Regulations and Martial Law Orders were all Acts of Parliament.

(9) In the event of any conflict, contradiction, discrepancy or inconsistency between the Bengali and the English text of the Constitution, in so far as it relates to any amendment, addition, modification, substitution or omission made in any of the texts or in both the texts by the said Proclamations, the English text shall prevail.

- (10) In this paragraph, 'laws' includes Ordinances, rules, regulations, bye-laws, orders, notifications and other instruments having the force of law."; and
- (5) *after* the First Schedule, the following new Schedule shall be *added*, namely : — *sec* clause.