

REFERENDUM ACT, 1991

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Act No.25 of 1991

An Act made to provide for the conduct of a referendum for the decision of the question whether or not a Bill providing for the amendment of the Preamble or any provision of article 8, 48, 56, 58, 80, 92 or 142 of the Constitution of the People's Republic of Bangladesh should, after having been passed in Parliament in accordance with article 142 (1) of the said Constitution, be assented to by the President

Whereas it is expedient to provide in accordance with article 142 (1A) of the Constitution for a referendum for the decision of the question whether or not a Bill providing for the amendment of the Preamble or any provision of article 8, 48, 56, 58, 80, 92 or 142 of the Constitution of the People's Republic of Bangladesh should, after having been passed in Parliament in accordance with article 142 (1) of the said Constitution, be assented to by the President;

Now, therefore, it is enacted as follows:-

1. Short title.- This Act may be called the Referendum Act, 1991.

2. Definitions- Unless there is anything repugnant in the subject or context, in this Act-

- a) "Commission" means the Election Commission referred to in Article 118 of the Constitution;
- b) "Referendum" means the plebiscite to be conducted under this Act;
- c) "presiding officer" means a presiding officer appointed under section 6 and includes an assistant presiding officer exercising the powers and performing the functions of presiding officer;
- d) "polling officer" means a polling officer appointed under section 6;
- e) "rule" means any rule made under this Act;
- f) "electoral roll" means an electoral roll prepared or deemed to have been prepared under the Electoral Rolls Ordinance, 1982 (LXI of 1982);
- g) "voter" means a person who is enrolled on the electoral roll;
- h) "Returning Officer" means the Returning Officer appointed under section 4;
- i) "Assistant Returning Officer" means an Assistant Returning Officer appointed under section 4.

3. Notification by the Commission.- The Commission shall, within a period of seven days after the receipt of the President's order to conduct a referendum in accordance with Article 142 (1A) of the Constitution, by notification in the official Gazette, determine the date of the referendum:

Provided that the said date shall be determined in such a way that the referendum can be conducted within forty days after the issue of the said notification.

4. Appointment of Returning Officer.- (1) The Commission shall, for the purpose of conducting the referendum, appoint a Returning Officer and as many Assistant Returning Officers as may be necessary specifying the areas assigned to each.

(2) Subject to such instructions as may be given by the Commission, an Assistant Returning Officer may appoint one or more assistant officers within his area to assist him in the performance of his functions under this Act.

5. Polling stations.- (1) Subject to such instructions as may be given by the Electoral Commission, every Assistant Returning Officer shall provide within his area for as many polling stations as may be necessary for the conduct of the referendum.

(2) In every polling station there shall be made provision for as many separate polling booths for male and female voters as may be necessary.

(3) No place that is closed to the public shall be designated as a polling station.

6. Appointment of presiding officers and polling officers.- (1) The Assistant Returning Officer shall appoint for each polling station a presiding officer and such number of assistant presiding officers and polling officers as may be necessary.

(2) A presiding officer shall conduct the poll in accordance with the provisions of this Act and be responsible for maintaining order at the polling station and inform the Returning Officer or Assistant Returning Officer of any occurrence which may, in his opinion, be prejudicial to the impartiality of the poll.

(3) It shall be the duty of every assistant presiding officer and polling officer to assist the presiding officer in the fulfillment of his duties.

(4) An assistant presiding officer shall exercise the powers, and perform the functions of a presiding officer which are assigned to him by the Commissioner or entrusted to him by the presiding officer.

(5) The Returning Officer or the Assistant Returning Officer shall authorize one of the assistant presiding officers to act in place of the presiding officer if, through illness or any other cause, the presiding officer is not present at the polling station, or is unable to perform his functions.

(6) The Assistant Returning Officer may, at any time during the poll, for reasons to be recorded in writing, suspend any presiding officer, assistant presiding officer or polling officer and make such arrangements as he may consider necessary for the performance of the functions of the officers so suspended.

7. Voters and electoral roll.- (1) Every person enrolled in the electoral roll for the time being in force shall be entitled to cast his vote at the referendum.

(2) The Assistant Returning Officer shall provide the presiding officer of each polling station with such number of electoral rolls containing the names of the persons entitled to vote thereat as may be necessary.

8. Hours of poll.- The Returning Officer shall, subject to any direction of the Commission, fix the hours during which the poll shall be taken and give public notice of the hours so fixed.

9. Adjourned poll.- (1) If the poll is interrupted or obstructed for any reason beyond the control of the presiding officer, he shall stop the poll and inform the Assistant Returning Officer that he has done so.

(2) Where a poll at any polling station has been stopped under sub-section (1), the Assistant Returning Officer shall immediately report the circumstances to the Commission and the Commission shall, if it is satisfied that the result of the other polling stations has not determined the result of the election, direct a fresh poll at that polling station.

(3) Where the Commission orders a fresh poll under sub-section (2), the Assistant Returning Officer shall as fast as possible appoint a date for the poll and fix the place at which and the

hours during which the poll shall be taken, and shall give public notice of the day so appointed and the place and hours so fixed.

(4) All voters enrolled in the pertinent electoral roll shall be allowed to vote at the poll to be taken under sub-section (3), and no vote cast during a poll under sub-section (1) shall be counted.

10. Election by secret ballot.- The election under this Act shall be conducted by secret ballots and every voter shall vote by means of a ballot paper the form whereof shall be specified by the Commission.

11. Ballot boxes.- (1) The Assistant Returning Officer shall provide each presiding officer with such number of ballot boxes as may be necessary.

(2) For the poll shall be used such ballot boxes as are approved, specified and supplied by the Election Commission.

(3) No more than one ballot box shall be used at a time during the poll at any polling booth.

(4) At least half an hour before the time fixed for the commencement of the poll, the presiding officer shall -

a) show that the ballot box to be used is empty;

b) seal the empty ballot box with sealing-wax;

c) place the ballot box in the polling station within everybody's view so that the voters can cast their votes easily.

(5) If one ballot box is full or cannot further be used, the presiding officer shall seal that ballot box with sealing-wax and keep it at a safe place and use another ballot box in the manner laid down in sub-section (4).

12. Admission to polling stations.- The presiding officer shall, subject to such instructions as the Commission may give in this behalf, regulate the number of electors to be admitted to the polling station at a time and exclude from the polling station all other persons except-

a) any person on duty in connection with the election;

b) any person on duty in rendering assistance in the identification of electors;

c) such other persons as may generally or specifically be permitted by the Commission.

13. Maintenance of order at polling station.- (1) Any person who misconducts himself at a polling station or fails to obey any lawful order of the presiding officer may immediately be removed from the polling station by any person authorised in this behalf by the presiding officer, and the person so removed shall not without the permission of the presiding officer again enter the polling station.

(2) Any person so removed may if he has committed an offence at a polling station be dealt with as a person arrested without warrant.

(3) The powers under this section shall not be so exercised as to deprive an elector entitled to vote of an opportunity to vote at that or another polling station.

14. Voting procedure.- (1) When an elector presents himself at the polling station to vote, the presiding officer shall after satisfying himself about the identity of the elector give him a ballot paper and a seal.

(2) Before a ballot paper and a seal is issued to an elector-

a) his serial number and name as written down in the electoral roll shall be called out;

b) he shall be required to receive a personal mark made with indelible ink on the thumb or any

other finger of either hand;

c) a mark shall be placed on the electoral roll against his name to intimate that the ballot paper has been issued to him;

d) the ballot paper shall on its back be stamped with the official mark and initialled by the presiding officer.

(3) A ballot paper shall not be issued to a person who refuses to receive the personal mark with indelible ink on any of his fingers or if he already bears such a mark or the remnant of such a mark.

(4) The elector on receiving a ballot paper and a seal referred to under sub-section (1), hereinafter referred to as the said seal, shall-

a) forthwith proceed to the place reserved for voting;

b) if he intends to vote yes on the question whether or not the President should assent to the Bills in respect of which the referendum is being conducted, stamp with the said seal for the purpose of voting the square printed on the ballot paper in which is symbolized the building of the National Assembly, and if he intends to vote no on the same question, stamp with the said seal for the purpose of voting the square printed on the ballot paper in which is symbolized a crossing mark.

c) after stamping the ballot paper in the manner referred to in clause a), fold the ballot paper and insert it in the ballot box setup at the specified place and leave the polling station without any delay.

(5) Where an elector is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion, the presiding officer shall allow him such assistance and thereupon such elector may do anything with such assistance which an elector is required or permitted to do under this Act.

(6) No elector may at the referendum-

i) vote more than once at the same polling station; or

ii) vote at more than one polling station.

(7) The presiding officer shall remove by order any elector who contravenes or tries to contravene the provisions of sub-section (6) from the polling station and no person so removed shall be given permission to enter the polling station again.

15. Spoilt ballot paper.- (1) An elector who has inadvertently spoiled his ballot paper that it cannot be used as a valid ballot paper may, upon proving the fact of inadvertence to the satisfaction of the presiding officer and returning the ballot paper to him, obtain another ballot paper.

(2) The presiding officer shall forthwith cancel the ballot paper returned to him under sub-section (1) by making a note to that effect on the counterfoil of the ballot paper over his own signature.

16. Voting after close of poll.- No elector shall be given any ballot paper or seal or be permitted to vote after the close of the hours fixed for the poll, except the electors who before the expiry of such time as may be fixed by rules are standing in line in the polling station and have not voted but are waiting to vote.

17. Procedure on close of poll.- (1) Immediately after the close of the poll or as soon as the last of such person, if any, as are present and waiting to vote as mentioned in section 16, has voted, the presiding officer shall, in the presence of any such member or members of the Union Parishad, Paurasabha or City Corporation as may be present, or, if no such member is present, in the presence of any respectable local citizen chosen on the occasion by the presiding officer, -

- a) open the ballot box or boxes used in the poll and take out all the ballot papers;
- b) set apart and count in the prescribed manner the ballot papers in which is stamped with the said seal the symbol of the building of the National Parliament and the ballot papers in which is stamped with the said seal the symbol of a crossing mark, but from the counting shall be excluded all the ballot papers which-
 - i) are not stamped with the said seal and signed by the presiding officer;
 - ii) are stamped with the said seal in such a way that it is not clear which square has been stamped by the elector:

Provided that it shall be deemed that the elector has stamped the symbol which is marked with more than half of the stamp of the said seal and provided that it shall be deemed that a vote has not been given in favour of any symbol if both squares are marked equally with the stamp of the said seal.

(2) The presiding officer shall put the ballot papers on which the symbol of the building of the National Parliament or the symbol of a crossing mark has been stamped with the said seal in separate packets, and shall seal the packets, and shall attest in written form on each packet the number of ballot papers put in it and the nature of the contents thereof.

(3) The presiding officer shall count and put in a separate packet excluded from the count, and shall seal the packet, and shall attest in written form on the packet the nature of its content.

(4) The presiding officer shall immediately after the count, prepare a statement of the count in such form as may be prescribed showing therein the number of the votes, counting ballot papers which indicate a yes by showing a stamp of the said seal on the symbol of the building of the National Parliament as votes in favour of the said Bill and ballot papers which indicate a no by showing a stamp of the said seal on the symbol of the crossing mark as votes against the said Bill.

(5) The presiding officer shall, after the count in accordance with the provisions of this section, prepare in the prescribed manner a ballot paper account and that account shall contain the following informations, namely:-

- a) the number of the ballot papers entrusted to him;
 - b) the number of the ballot papers taken out of the ballot box and counted;
 - c) the number of un-issued, spoilt and cancelled ballot papers;
 - d) the number of illegal ballot papers and the number of ballot papers excluded from the count.
- (6) the presiding officer shall seal in separate packets the following documents, namely:-
- a) the un-issued ballot papers;
 - b) the spoilt and refused ballot papers;
 - c) the ballot papers used and signed at the polling station;
 - d) the counterfoils of the used ballot papers;
 - e) such other papers as the Returning Officer may direct.

(7) After the close of the proceedings under the foregoing sub-section the presiding officer shall send the statement of the count, the packets of the ballot paper account prepared by him to the Assistant Returning Officer together with such other records as the Commission may direct.

18. Consolidation of results.- (1) The Assistant Returning Officer shall, on receipt of the statement of the count, the ballot paper account and other packets prepared in accordance with the provisions of section 17 from the presiding officer, consolidate the results of the count in the presence of a respectable local citizen, if any:

Provided that, before consolidating the results, the Assistant Returning Officer shall examine the ballot papers excluded from the count and, if he finds that any of those ballot papers should be considered legal, add it to the legal votes:

Provided further that, if the poll has been stopped at any polling station, the Assistant Returning Officer shall consolidate the result of the remaining polling station, without waiting

for the results of the polling station which has been declared closed.

(2) The Assistant Returning Officer shall record in the prescribed form all the votes he excludes from the count and keep them in a separate packet.

(3) The Assistant Returning Officer shall, after consolidation of the results in the manner described in sub-section (1), submit the result of the count in the prescribed form to the Returning Officer.

(4) All the statements and packets opened by the Assistant Returning Officer for the purpose of consolidation of the results shall be sealed again by the Assistant Returning Officer.

19. Consolidation and declaration of result.- (1) The Returning Officer shall, immediately after receipt of the statement of the consolidation of the results from the Assistant Returning Officer in accordance with section 18, consolidate the results in the prescribed form on the basis of the obtained results and, if it is possible to determine the final result without the results of the polling stations which have been declared closed, if any, on the basis of the results obtained from the remaining polling stations, consolidate the result of the referendum without holding again elections at the polling stations which have been declared closed and prepare in the prescribed form a statement of the result.

(2) The Returning Officer shall, after preparing the statement of the result of the referendum in accordance with sub-section (1), submit the statement of the result so prepared to the Commission.

(3) The Commission shall, after receipt of the statement of the result prepared in accordance with sub-section (2) from the Returning Officer, publish the said statement of the result in official Gazette and inform the President.

20. Power of the Election Commission to issue directions.- The Commission may issue such direction and exercise such powers as may, in its opinion, be necessary for ensuring that the referendum is conducted honestly, justly and fairly and in accordance with the provisions of this Act and the rules, including the power to reconsider any order or direction passed in accordance with this Act and the rules by any officer subordinate to it and to pass any interim order with regard thereto.

21. Assistance to Commission.- (1) The Commission may require any person or authority to perform such function or to render such assistance for the purposes of this Act as it may direct.

(2) All executive authorities of the Government shall assist the Commission in the performance of its functions, and for this purpose the Government, upon a request made by the Commission, shall issue such directions as it may consider necessary.

22. Protection of action taken in good faith.- No suit at a civil or criminal court or any other legal proceeding shall lie against the Commission or any other person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Act or of any rule or order made or any direction given thereunder.

23. Directions by Commission in certain matters.- Anything required to be done under this Act for which no provision or no sufficient provision exists shall be done by such authority and in such manner as the Commission may direct.

24. Power to make rules.- The Government may, in consultation with the Election Commission, by publication in the official Gazette, make rules for carrying out the purposes of this Act