

# THE REPRESENTATION OF THE PEOPLE ORDER, 1972

(President's Order No. 155 of 1972)

[26TH DECEMBER, 1972]

(as amended upto October, 2008)

WHEREAS it is necessary to provide for the conduct of elections to Parliament and for matters connected therewith and incidental thereto;

Now, THEREFORE in pursuance to the provisions of paragraph 3 of the Fourth SCHEDULE to the Constitution of the People's Republic of Bangladesh and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Order :-

## CHAPTER I-PRELIMINARY

1. (i) This Order may be called the Representation of the People Order, 1972.
- (ii) It extends to the whole of Bangladesh.
- (iii) It shall come into force at once.
2. In this Order, unless there is anything repugnant in the subject or context,-
  - (i) "ballot paper account" means a ballot paper account prepared under clause (10) of Article 36;  
<sup>1</sup>[(ia)"ballot paper book" means a book containing ballot papers from which ballot papers are used to electors;]
  - (ii) "candidate" means a person proposed as a candidate from election as a member;  
<sup>2</sup>[(iia)"Code of Conduct" means the Code of Conduct formulated under Article 91B;]
  - <sup>3</sup>[(iii)"Commission" means the Election Commission within the meaning of the Constitution;]
  - (iv) "Constituency" means a constituency delimited for the purpose of election of a member;
  - (v) "Constitution" means the Constitution of the People's Republic of Bangladesh;
  - (vi) "contesting candidate" means a candidate who has been validly nominated for election as a member and has not withdrawn his candidature;
  - (vii)"election" means election to a seat of a member held under this Order;
  - (viii) "election agent" means an election agent appointed by a candidate under Article 21 and, where no such appointment is made, the candidate acting as his own election agent;
  - <sup>4</sup>[(viiiia) "election expenses" means the election expenses as defined, in Article 44A;
  - (viiiib) "election observer" means a person permitted in writing by the Commission or by any person authorised by it in this behalf to observe any election under this Order, and includes a group of such observers;]
  - (ix) "election petition" means an election petition made under Article 49;
  - (x) "elector" in relation to a constituency, means a person who is enrolled on the electoral roll in that constituency;
  - <sup>5</sup>[(xi)"electoral roll" means the final electoral roll prepared under the Electoral Rolls Ordinance, 2007 (Ord. No. XVII of 2007); ]
  - <sup>7</sup>[(<sup>8</sup> \*\*\* \*\*\*)]
  - <sup>9</sup>[(xiaa) "law enforcing agency" means any Police Force, Armed Police Battalion, Rapid Action Battalion, Ansar Force, Battalion Ansar, Bangladesh Rifles, Coast Guard Force and the Defence Services of Bangladesh;]
  - (xii) "member" means a member of Parliament
  - (xiii) "nomination day" means the day appointed under Article 11 for the nomination of candidates;

<sup>1</sup> Inserted by 2001 mfb 57bs AvBb, s. 2(K) |

<sup>2</sup> Inserted, *ibid.*, s. 2(L) |

<sup>3</sup> Substituted by Ordinance No. L of 1978, for clause (iii)

<sup>4</sup> Inserted by 2001 mfb 57bs AvBb, s. 2(M) |

<sup>5</sup> Substituted by Ordinance No. XX of 1984, for clause (xi)

<sup>6</sup> substituted by Representation of the People (Amendment) Ordinance, 2008

<sup>7</sup> Inserted by Act XXIII of 1994, s. 2.

<sup>8</sup> deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>9</sup> substituted by Representation of the People (Amendment) Ordinance, 2008.

- (xiv) "Parliament" means Parliament for Bangladesh as defined in Article 152 of the Constitution;  
<sup>1</sup>[(xiva) "political party" means a political party as defined in article 152 (1) of the Constitution;]  
 (xv) "polling agent" means a polling agent appointed under Article 22;  
 (xvi) "polling day" means the day on which poll is taken for an election;  
 (xvii) "polling officer" means a polling officer appointed under Article 9 for a polling station;  
 (xviii) "prescribed" means prescribed by rules made under this Order;  
 (xix) "Presiding Officer" means a Presiding Officer appointed under Article 9 for a polling station and includes an Assistant Presiding Officer exercising the powers and performing the functions of Presiding Officer;  
<sup>2</sup>[(xixa) "registered political party" means a political party registered under Article 90A;]  
 (xx) "returned candidate" means a candidate who has been declared elected as a member under this Order;  
 (xxi) "Returning Officer" means a Returning Officer appointed under Article 7 and includes an Assistant Returning Officer exercising the powers and performing the functions of Returning Officer.  
<sup>3</sup>[(xxia) "rule" means any rule made under this Order;]  
 (xxii) "scrutiny day" means the day appointed under Article 11 for the scrutiny of nomination papers;  
 (xxiii) "spoilt ballot paper" means a ballot paper which has been spoiled and is returned to the Presiding Officer under Article 34;  
<sup>4</sup>[(xxiiiia) "statutory public authority" means a statutory public authority as defined in article 152 (1) of the Constitution;]  
<sup>5</sup>[(xxiv) "ward" means a ward of a union.]  
 (xxv) "withdrawal day" means the day appointed under Article 11 on or before which candidature may be withdrawn.

## CHAPTER II - ELECTION COMMISSION

<sup>6</sup>[3.The Election Commission, constituted in accordance with Article 118 of the Constitution, may be strengthened by appointing such number of Commissioners as may be deemed necessary.

3A. Subject to the provisions of this Order, the Commission shall regulate its own procedure.]

4. The Commission may authorise its chairman or any of its members or any of its officers to exercise and perform all or any of its powers and functions under this order.

5. (1) The Commission may require any person or authority to perform such function or render such assistance for the purposes of this Order 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 President may, after consultation with the Commission, issue such directions as he may consider necessary.

6. (1) The Government or an Officer authorised by it in this behalf, may upon a request made in this behalf by the Commission, by an order in writing, requisition any such vehicle or vessel as is needed or is likely, to be needed for the purpose or transporting to and from any polling station ballot boxes or other election materials or any Officer or other person engaged for the performance of any duties in connection with the election:

Provided that no vehicle or vessel which is being used by a candidate or his election agent for any purpose connected with the election of such candidate shall be so requisitioned.

(2) Any person authorised in this behalf by the Government may take possession of any vehicle or vessel requisitioned under clause (f) and may for that purpose use such force including police force, as may be reasonable necessary.

(3) Where any vehicle or vessel is requisitioned under clause (2), there shall be paid to the owner thereof compensation the amount of which shall be determined by the Government or the officer requisitioning the

<sup>1</sup> Inserted by 2001 m̄bi 57bs AvBb, s. 2(0) |

<sup>2</sup> Substituted, *ibid.*, s. 2(P), for clause (xixa).

<sup>3</sup> Inserted, *ibid.*, s. 2(0) |

<sup>4</sup> Inserted, *ibid.*, s. 2(R) |

<sup>5</sup> Substituted, *ibid.*, s. 2(S), for clause (xxiv).

<sup>6</sup> Substituted by Act. XXIII of 1994, s. 3, for the former Article 3.

vehicle or vessel on the basis of the fares and rates prevailing in the locality for its hire:

Provided that where the owner of the vehicle or vessel being aggrieved by the amount of compensation so determined, makes an application to the Government within the period of thirty days from the date the amount has been determined for the matter being referred to an arbitrator the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Government may determine.

### CHAPTER III -ELECTION

<sup>1</sup>[7. <sup>2</sup>\* \* \*-(1) The Commission shall appoint a Returning Officer for each constituency for the purpose of election of a member for that Constituency; and a person may be appointed as Returning Officer for two or more constituencies.

(2) The Commission may appoint as many Assistant Returning Officers as may be necessary:

Provided that no Assistant Returning Officer shall be appointed for more than one constituency.

(3) An Assistant Returning Officer shall assist the Returning Officer in the performance of his functions under this order and may, subject to any condition imposed by the Commission, exercise and perform under the control of the Returning Officer, the power and functions of the Returning Officer.

(4) It shall be the duty of a Returning Officer to do all such acts and things as may be necessary for effectively conducting an election in accordance with the provisions of this order and the rules.

(5) Subject to the superintendence, direction, and control of the Commission, the Returning Officer shall supervise all work in the district in connection with the conduct of elections and shall also perform such other duties and functions as may be entrusted to him by the Commission,

(6) The Commission may, at any time, for reasons to be recorded in writing, withdraw any officer performing any duty in connection with an election, or any other public functionary, or any other law enforcing personnel who obstructs or prevents or attempts to obstruct or prevent the conduct of fair and impartial poll or interferes or attempts to interfere with an elector when he records his vote, or influences in any manner the polling staffer an elector or does any other act calculated to influence the result of election, and make such arrangements as it may consider necessary for the performance of the functions of the officer or person so withdrawn.

<sup>3</sup>[(7) Where the Commission withdraws any officer or person under clause (6), it-

(a) may, if such officer or person is working in any polling station or constituency, direct him to leave the polling station or the constituency at once;

(b) shall, in case of a direction under sub-clause (a), direct such officer or person to remain out of the constituency for the period specified in the direction and accordingly he shall comply with the direction, and if he is required to perform any official duty only in that constituency, his appointing authority shall make arrangement for his leave or otherwise;

(c) shall refer the matter to the appropriate authority for taking disciplinary and other actions in relation to such officer or person.]

8. <sup>4</sup>[(1) The Commission shall maintain a list of polling stations for the purpose of election of a member for every constituency.]

(2) <sup>5</sup>[The Commission may make such alterations in the list of polling stations as it may consider necessary and shall, at least twenty five days] before the polling day, publish in the Official Gazette the final list of polling stations specifying the area the electors whereof will be entitled to vote at each polling station.

(3) The Returning Officer shall provide each constituency with polling stations according to the final list published under clause (2).

(4) No polling station shall be located in any such premises as belong to, or are under the control of, any candidate.

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<sup>1</sup> Substituted by Act XXIII of 1994, s. 4, for the former Article 7.

<sup>2</sup> The words and comma "Appointment of District Returning Officer and Returning Officer, etc." were omitted by 2001 mġbi 57bs AvBb, s. 3(K) |

<sup>3</sup> Substituted by *ibid.*, s. 3(L), for clause (7).

<sup>4</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>5</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>1</sup>[(5) At any time after the finalization of candidature, if it is found that any polling station published in the Official Gazette under clause (2), belongs to, or is under the control of any candidate, the Commission may alter such polling station.]

9. <sup>2</sup>[(1) The Returning Officer shall, by a notice in writing, require all heads of offices, institutions and establishment, whether Government or non-Government, in the district to provide him with a list of their Officers and employees of such grades as he may specify for preparation of a panel of Presiding Officers, Assistant Presiding Officers and Polling Officers from among them.

(1A) After the preparation of the panel, the Returning Officer shall send a copy, thereof to the heads of all the Offices, institutions and establishments whose Officers and employees have been included in the panel with a request to place the service of these officers and employees at the disposal of the Commission for use for election purpose and also forward a copy of the panel to the Commission.

(IB) The Returning Officer shall appoint from the panel for each polling station a Presiding Officer and such number of Assistant Presiding Officers and Polling Officers to assist the Presiding Officers as the Returning Officer may consider necessary:

Provided that a person who is, or has at any time been, in the employment of any candidate shall not be appointed as a Presiding Officer, Assistant Presiding Officer or Polling Officer.]

(2) A Presiding Officer shall conduct the poll in accordance with the provisions of this Order, and the rules, shall be responsible for maintaining order at the polling station and shall report to the Returning Officer any factor incident which may, in his opinion, affect the fairness of the poll:

Provided that during the course of the poll the Presiding Officer may entrust such of his functions as may be specified by him to any Assistant Presiding Officer and it shall be the duty of the Assistant Presiding Officer to perform the functions so entrusted.

(3) The Returning Officer shall authorise one of the Assistant Presiding Officers to act in place of the Presiding Officer if the Presiding Officer is, at any time during the poll, by reason of illness or other cause, not present at the polling station, or is unable to perform his functions; and any absence of the Presiding Officer, and the reasons therefor, shall as soon as possible after the close of the poll, be reported to the Returning Officer.

(4) The Returning Officer may, at any time during the poll for reasons to be recorded in writing, suspend any Presiding Officer, Assistant Presiding Officer, Polling Officer and make such arrangements as he may consider necessary for the performance of the functions of the Officer so suspended.

10. (1) The Commission shall provide the Returning Officer for each constituency with copies of electoral rolls for that constituency <sup>3</sup>[immediately after the publication of notification under clause (1) of Article 11].

(2) The Returning Officer shall provide the Presiding Officer of each Polling station with copies of electoral rolls containing the names of the electors entitled to vote at that polling station.

11. (1) For the purpose of holding elections for constituting Parliament, the Commission shall, by notification in the Official Gazette, call upon the electors to elect a member from each constituency and shall, in relation to each constituency, specify in the notification.

<sup>4</sup>(a) a day on or before which the nomination of candidates may be filed;

(b) a day <sup>5</sup>[or days] for the scrutiny of nomination papers;

(c) a day on or before which candidature may be withdrawn; and

(d) a day <sup>6</sup>[or days], at least fifteen days after the withdrawal day, for the taking of the poll.

(2) A Returning Officer shall, as soon as may be after the publication of a notification under clause (1), give public notice of the dates specified by the Commission in respect of the constituency or constituencies of which he is the Returning Officer; and the public notice shall be published at some prominent place or places within the constituency to which it relates.

(3) A public notice issued under clause (2) shall also invite

<sup>1</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> Substituted by Act XXIII of 1994, s.5, for the former clause (1).

<sup>3</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>4</sup> Substituted by Ordinance No. XIX of 1986, for sub-clause (a).

<sup>5</sup> The words "or days" were inserted, *ibid*.

<sup>6</sup> The words "or days" were inserted by Representation of the People (Amendment) Ordinance, 2008.

nominations and specify the time before which and the place at which nomination papers shall be received by the Returning Officer <sup>1</sup>[or the Assistant Returning Officer].

12. <sup>2</sup>[(1) Any elector of a constituency may propose or second for election to that constituency, the name of any person qualified to be a member under clause (1) of Article 66 of the Constitution:

Provided that a person shall be disqualified for election as or for being, a member, if he-

- (a) is not listed in the electoral roll of any constituency;
- (b) is not nominated by any registered political party or is not an independent candidate;
- (c) is a person holding any office of profit in the service of the Republic or of a statutory public authority;
- (d) is a person who is convicted of an offence punishable under Article 73, 74, 78, 79, 80, 81, 82, 83, 84, or 86 and sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since the date of his release;
- (e) is a person whose election to a seat is declared void on any of the grounds mentioned in sub-clauses (c), (d) and (e) of clause (1) of Article 63, unless a period of five years has elapsed since the date of such declaration;
- (f) has resigned or retired from the service of the Republic or of any statutory public authority or of the defence service, unless a period of three years has elapsed since the date of his resignation or retirement;
- (g) has been dismissed, removed or compulsorily retired from the service of the Republic or of any statutory public authority or of the defence service, unless a period of five years has elapsed since the date of his dismissal, removal or compulsory retirement;
- (h) has been appointed on contract to the service of the Republic or of any statutory public authority or of the defence service unless a period of three years has elapsed since the expiry or termination of such contract;
- (i) is holding or has resigned or retired or has been discharged from the chief executive post of any non-government organization unless a period of three years has elapsed since such resignation retirement, or discharge;
- (j) not being an independent candidate, has not been a member of a registered political party for three years:

Provided that this provision shall not apply to a nominated candidate of any political party during the period of three years from the date of its first registration with the Commission;

- (k) whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not been a contract between a co-operative society and Government, for the supply of goods to, or for the execution of any contract or the performance of any services undertaken by Government;
- (l) being a loanee, other than a loanee who has taken small loan for agricultural purposes, has defaulted in repaying before <sup>3</sup>[fifteen days] from the day of submission of nomination paper any loan or an instalment thereof taken by him from a bank or financial institution;
- (m) is a director of a company or a partner of a firm who has defaulted in repaying before <sup>4</sup>[fifteen days] from the day of submission of nomination paper any loan or an instalment thereof taken by him from a bank or financial institution;
- <sup>5</sup>[(n) personally has failed to pay the telephone, gas, electricity, water or any other bill of any service providing organization of the Government before fifteen days from the day of submission of nomination paper;] or
- (o) has been convicted as a war criminal by any national or international Court or Tribunal.

**Explanation I.-** “office of profit” means holding any office, post or position in the full-time service of the Republic or any statutory public authority or company in which government has more than 50% (fifty percent) share.

<sup>1</sup> Inserted by Ordinance NO. XVII of 1986.

<sup>2</sup> Clause 12(1) was substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> The words "fifteen days" were substituted for the words "six months" by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>4</sup> The words "fifteen days" were substituted for the words "six months" by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>5</sup> The sub-clause (n) was substituted by Representation of the People (Second Amendment) Ordinance, 2008.

**Explanation II.-** <sup>1</sup>[The disqualification under sub-clause (k) shall not apply to a person]-

- (i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him or such longer period as the president may, in any particular case allow; or
- (ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Act, 1994 (Act No. XVIII of 1994), of which he is a share-holder but is neither a director holding an office of profit under the company nor a managing agent; or
- (iii) where he is a member of Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest.

**Explanation III.-** “bank” means-

- (i) any “bank company” as defined in Bank Company Act, 1991 (Act No.14 of 1991);
- (ii) “Bangladesh Shilpa Rin Sangstha” established under Bangladesh Shilpa Rin Sangstha Order, 1972 (P.O.No. 128 of 1972);
- (iii) “Bangladesh Shilpa Bank” established under Bangladesh Shilpa Bank Order, 1972 (P.O.No. 129 of 1972);
- (iv) “Bangladesh House Building Finance Corporation” established under Bangladesh House Building Finance Corporation Order, 1973 (P.O.No.17 of 1973);
- (v) “Bangladesh Krishi Bank” established under Bangladesh Krishi Bank Order, 1973 (P.O.No. 27 of 1973);
- (vi) “Investment Corporation of Bangladesh” established under Investment Corporation of Bangladesh Ordinance, 1976 (Ord. No. XI of 1976);
- (vii) “Rajshahi Krishi Unnayan Bank” established under Rajshahi Krishi Unnayan Bank Ordinance, 1986 (Ord. No.LVIII of 1986);
- (viii) “Basic Bank Limited” (Bangladesh Small Industries and Commerce Bank Limited) established under Companies Act, 1994 (Act No.XVIII of 1994).

**Explanation IV.-** “small loan for agricultural purposes” means all crops loan excepting tea, tobacco and includes short term loan for development of fishery and marketing of agricultural produce and long term loan for irrigation equipment, animal husbandry, development of fishery, agricultural equipment, nursery and horticulture, betel-leaf plantation, management of Jalmahal and for the purpose of producing silk worm, tuth tree, lakhkha tree, catechu tree, etc. the amount of which shall not exceed taka one lakh aggregating with interest and capital against every loan.

**Explanation V.-** A person or a company or a firm shall be deemed to have defaulted in repaying a loan or an instalment thereof referred to in sub-clauses (l) and (m) of Article 12(1) if he or it is a defaulter within the meaning of the expression 'defaulter loanee' as defined in Bank-Company Act,1991(Act 14 of 1991) and for financial institution, as defined by Bangladesh Bank under Financial Institution Act, 1993 (Act No. 27of 1993). The list of defaulter may be obtained from CIB of Bangladesh Bank or from the concerned bank or financial institution.

**Explanation VI.-** "financial institution" means a non-banking financial institution as defined in Financial Institution Act, 1993 (Act No. 27of 1993).

<sup>2</sup>[ **Explanation VII.-** ‘chief executive’ referred to in sub-clause (i) of Article 12(1) means a person holding full time post of a chief executive of any non-government organization who receives salary and other emoluments in that capacity.]]

(2) Every proposal shall be made by a separate nomination paper in the prescribed form which shall be signed by the proposer and the seconder and shall contain-

- (a) a declaration signed by the candidate that he has consented to the nomination and that he is not subject to any disqualification for being, or being elected as, a member; <sup>3\*\*\*</sup>
- (b) a declaration signed by the proposer and the seconder that neither of them has subscribed to any other nomination paper either as proposer or seconder <sup>4</sup>[; and]

<sup>1</sup> The amendment was made by the Representation of the People (Second Amendment) Ordinance, 2008.

<sup>2</sup> The explanation VII was added by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>3</sup> The word "and" deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>4</sup> The word "and" inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>1</sup>[(c) a declaration signed by the candidate that he is not a candidate for more than three constituencies.]

(3) Every nomination paper shall be delivered by the candidate, or his proposer, or seconder to the Returning Officer '[or the Assistant Returning Officer] who shall acknowledge the receipt of the nomination paper specifying the date and time of receipt.

<sup>2</sup> [(3a) Every nomination paper under clause (2) shall be delivered along with the following documents, namely-

(a) in the case of an independent candidate, a list of signatures of one percent electors of the concerned constituency:

Provided that such list need not to be delivered if the independent candidate has previously been elected in any parliamentary election;

(b) a certificate signed by the chairman or secretary or a person holding the equivalent rank on behalf of the registered political party stating that the candidate has been nominated by that party:

Provided that any registered political party may primarily nominate more than one candidate and if more than one candidate are nominated, the name of one nominated candidate shall be sent to the Returning Officer in writing before the scrutiny of the nomination papers.

(3b) Every nomination paper under clause (2) shall be delivered along with an affidavit signed by the candidate which shall include the following information and particulars, namely-

(a) an attested copy of the certificate of his highest educational qualification;

(b) whether at present he is accused of any criminal offence or not;

(c) whether he has any past criminal record, and if any, the judgement of the case;

(d) description of his profession or business;

(e) probable sources of his income;

(f) a statement of property or debt of his own or his dependents;

(g) what promises he made before an election in which he was elected as a member in the past, and how many of those promises were fulfilled; and

(h) the amount of loan received by him alone, or jointly or by his dependents from any bank or financial institution, and the amount of loan received by him from any bank or financial institution as a Chairman, Managing Director or Director thereof.

**Explanation.-** "dependent" means the wife or husband of a candidate and includes son, daughter, father, mother, brother or sister of the candidate who are fully dependent upon him."

(4) A person may be nominated in the same constituency by more than one nomination paper '[and a nomination paper may be delivered to both the Returning Officer and the Assistant Returning Officer].

(5) If any person subscribes to more than one nomination paper, all such nomination papers, except the one received first by the Returning Officer '[or the Assistant Returning Officer, as the case may be], shall be void.

(6) The Returning Officer shall give a serial number to every nomination paper and endorse thereon the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which he shall hold scrutiny.

<sup>3</sup>[(6a) The Assistant Returning Officer shall give a serial number to every nomination paper and endorse thereon the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which the Returning Officer shall hold scrutiny, and immediately after the time for receiving nomination paper is over, forward all the nomination papers received by him to the Returning Officer.]

(7) The Returning Officer shall cause to be affixed at some conspicuous place in his office a notice of every nomination paper received by him <sup>1</sup>[or received by the Assistant Returning Officer and forwarded to him under clause (6a) containing particulars of the candidate and the names of the proposer and seconder as shown in the nomination paper.]

13. (1) Subject to the provisions of clause (2), no nomination paper delivered under Article 12 shall be accepted unless-

<sup>1</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> Inserted by Ordinance No. XVII of 1986.

(a) a sum of Taka <sup>1</sup>[<sup>2</sup>ten] thousand] is deposited in cash by the candidate or by any person on his behalf at the time of its delivery; or

<sup>3</sup>(b)it is accompanied by a receipt or a true copy thereof duly attested by a gazetted government servant showing that a sum as aforesaid has been deposited by the candidate or by any person on his behalf with the Returning Officer or the Assistant Returning Officer or at any Bank or at a Government Treasury or Sub-Treasury.]

(2) Not more than one deposit under clause (1) shall be required in the case of a person who has been nominated as candidate by more than one nomination paper.

<sup>4</sup>[13A. (1) Notwithstanding anything contained in this Order, no person may at the same time be a candidate for more than <sup>5</sup>[three] constituencies.]

(2) <sup>6</sup>\*\*\*      \*\*\*      \*\*\*

(3) If a person is at the same time a candidate for more than <sup>7</sup>[three] constituencies, all his nomination papers in respect of all the constituencies shall be void.]

14.(1) The candidates, their election agents, proposer and seconders, and one other person authorised in this behalf by each candidate may attend the scrutiny of nomination paper and the Returning Officer shall give them reasonable opportunity for examining all nomination papers <sup>8</sup>[delivered or forwarded to him] under Article 12.

(2) The Returning Officer shall, in the presence of the persons attending the scrutiny under clause (1), examine the nomination papers and decide any objection raised by any such person to any nomination.

(3) The Returning Officer may, either of his own motion or upon any objection, conduct such summary enquiry as he may think fit and reject a nomination paper if he is satisfied that-

- (a) the candidate is not qualified to be elected as a member;
- (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
- (c) any provision of Article 12 or Article 13 has not been complied with; or
- (d) the signature of the proposer or the seconder is not genuine:

Provided that-

- (i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;
- (ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not a substantial nature and may allow any such defect to be remedied forthwith; and
- (iii) the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.

(4) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it <sup>9</sup>[ ] record a brief statement of the reason therefor.

<sup>10</sup>[(5) If a candidate is aggrieved by the decision of the Returning Officer, he may prefer an appeal to the Commission within the prescribed period and any order passed on such appeal shall be final.]

15 (1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of candidates who have been validly nominated.

(2) In case an appeal against rejection of a nomination paper has been accepted by the Commission, the list of validly nominated candidates shall be revised accordingly.

16. (1) Any validly nominated candidate may, by notice in writing signed by him and delivered, on or before the withdrawal day, to the Returning Officer, either by such candidate in person or by an agent authorised

<sup>1</sup> Substituted by Ordinance No. XVI of 1986, for "ten thousand".

<sup>2</sup> Substituted by 2001 m̄bi 57bs AtBb, s. 5, for "five".

<sup>3</sup> Substituted by Ordinance No. XVII of 1986, for sub-clause (b).

<sup>4</sup> Inserted by Ordinance No. XVIII of 1986.

<sup>5</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> Clauses (2) deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>7</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>8</sup> Substituted by Ordinance No. XVII of 1986, for "delivered to him".

<sup>9</sup> Deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>10</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

in this behalf in writing by such candidate, withdraw his candidate.

(2) A notice of withdrawal under clause (1) shall, in no circumstances, be open to recall or cancellation.

(3) On receiving a notice of withdrawal under clause (1) the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at some conspicuous place in his Office.

(4) The Returning Officer shall, on the day next following the withdrawal day prepare and publish in the prescribed manner a list of contesting candidates.

17. (1) If a validly nominated candidate who has not withdrawn his candidature dies, 1[or if his candidature is cancelled under clause (2) of Article 91E,] the Returning Officer shall, by public notice terminate the proceedings relating to that election.

(2) Where Proceedings relating to an election have been terminated under clause (1), fresh proceedings shall be commenced in accordance with the provisions of this Order as if for a new election <sup>2</sup>[:

Provided that it shall not be necessary for the other contesting candidates to file fresh nomination papers or make a further deposit under Article 13.]

18. Where the proceedings relating to nomination, scrutiny or withdrawal cannot, for reasons beyond the control of the Returning Officer, take place on the day appointed therefor, he may postpone or adjourn such proceedings and shall with the approval of the Commission, by the public notice fix another day for the proceedings so postponed or adjourned and, if necessary, also the day or days for subsequent proceedings.

19. (1) Where, after scrutiny under Article 14, only one person remains as a validly nominated candidate for election as a member from a constituency or where after withdrawal under Article 16 only one person is left as a contesting candidate, the Returning Officer shall, by public notice, declare such candidate to be elected to the seat:

Provided that if after scrutiny any candidate indicates that he intends to make an appeal under clause (5) of Article 14 against the rejection of his nomination paper, no person shall be declared elected uncontested until the period prescribed for filing such appeal has expired and no such appeal has been filed, or, where an appeal is filed, until the disposal of such appeal.

(2) The Returning Officer shall submit to the Commission a return of the election in respect of which he has made a declaration under clause (1).

(3) The commission shall publish in the Official Gazette the name of the returning candidate.

20. (1) If there are more contesting candidates than one in respect of any constituency, the Returning Officer shall-

<sup>3</sup>[(a) allocate, in the case of a contesting candidate set up by a registered political party, the symbol reserved for that party by the Commission under this Order or the rules <sup>4</sup>[:]

<sup>5</sup> [Provided that the Commission may, on an application made to it in this behalf within three days after the publication of the notification under clause (1) of Article 11, allot one of the prescribed symbols to the candidate of a combination of two or more registered political parties who have agreed to set up joint candidates for election;]

(aa) allocate, <sup>6</sup>[in the case of independent] contesting candidates, subject to any direction of the Commission, one of the prescribed symbols to each such contesting candidate; and in so doing shall, so far as

<sup>1</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> The colon was substituted for the full-stop at the end of clause (2) of Article 17, and thereafter the proviso was added by Act XXIII of 1994, s. 8.

<sup>3</sup> Substituted by 2001 mibi 57bs A1Bb, s. 6, for sub-clause(a).

<sup>4</sup> A ":" was substituted for ";" by Representation of the People (Amendment) Ordinance, 2008.

<sup>5</sup> This new proviso was inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> The words "in the case of other" was substituted by the words "in the case of independent " by Representation of the People (Amendment) Ordinance, 2008.

possible, have regard for any preference indicated by the candidate; <sup>1</sup>[and]

(b) publish in such manner as the Commission may direct the names of contesting candidates arranged in the alphabetical order specifying against each the symbol allocated to him<sup>2</sup> [

\*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*]]

(2) The Returning Officer shall arrange to exhibit prominently at each polling station the name and symbol of each contesting candidate.

21. (1) A candidate may appoint a person qualified to be elected as a member to be his election agent.

(2) The appointment of an election agent may, at any time, be revoked in writing by the candidate and, when it is so revoked or the election agent dies, another person may be appointed by the candidate to be his election agent.

(3) When an election agent is appointed, the candidate shall send to the Returning Officer a notice in writing of the appointment containing the name, father's name and address of the election agent.

(4) here no appointment of an election agent is made under this section, a candidate shall be deemed to be his own election agent and shall so far as the circumstances permit, be subject to the provisions of this Order both as a candidate and as an election agent.

22. <sup>3</sup>[(1) The contesting candidate or his election agent, may, before the commencement of the poll, appoint for each polling booth of a polling station not more than one polling agent and shall give notice thereof in writing to the Presiding Officer.]

(2) The appointment of a polling agent under clause (1) may at any time be revoked by the candidate or his election agent and, when it is so revoked or the polling agent dies, another person may be appointed by the candidate or the election agent to be a polling agent; and a notice of such appointments shall be given to the Presiding Officer.

<sup>4</sup>[(3) The Presiding Officer shall not accept a polling agent unless he wears an identity card granted by the person appointing him containing his name and the name of the candidate for whom he is appointed as a polling agent.]

23. Where any act or thing is authorised by this Order to be done in the presence of the candidate an election agent or a polling agent, the failure of such person to attend at the time and place appointed for the purpose shall not invalidate any act or thing otherwise validly done [:]

<sup>5</sup>[Provided that the Returning Officer or the Presiding Officer, as the case may be, shall, as far as practicable, endeavour to ensure the attendance of the said person at the time of doing the said act or thing :

Provided further that, if a candidate or his election agent or polling agent is found absent at the time of doing the said act or thing, the Returning Officer or the Presiding Officer, as the case may be, shall immediately try to find out the reason of such absence and record the fact and communicate it to the Commission together with his comments thereon, and shall endeavour to ensure such attendance.]

24. 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.

25. (1) The Presiding Officer of a polling station shall stop the poll and inform the Returning Officer that he has done so if-

(a) the poll at the polling station is, at any time, so interrupted or obstructed for reason beyond the control of the Presiding Officer that it cannot be resumed during the polling hours fixed under Article 24; or

(b) any ballot box used at the polling station is unlawfully taken out of the custody of the Presiding Officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with to such and extent that the result of the polling station cannot be ascertained.

(2) Where a poll has been stopped under clause (J), the Returning Officer shall immediately report the circumstances to the Commission and the Commission shall direct a fresh poll at that polling station, unless it is

<sup>1</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> The "semicolon" at the end of sub-clause (b) was replaced by "full stop"; the word "and" at the end of sub-clause (b) was deleted. The sub-clause (c) together with first, second and third proviso were deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> Clause (1) was substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>4</sup> Added by 2001 mbi 57bs A/Bb, s. 7.]

<sup>5</sup> A colon was substituted for the full-stop at the end and thereafter the provisos were inserted, *ibid*

satisfied that the result of the election has been determined by the polling station, taken with the results of the polling at other polling stations in the same constituency.

(3) Where the Commission orders a fresh poll under clause (2), the Returning Officer shall, with the approval of the Commission-

(a) appoint a day for a fresh poll and fix the place at which and the hours during which such fresh poll shall be taken; and

(b) give public notice of the day so appointed and the place and hours so fixed.

(4) At a fresh poll taken under clause (3) at a polling station, all electors entitled to vote there at shall be allowed to vote and no vote cast at the poll stopped under clause (1) shall be counted; and the provisions of this Order and the rules and orders made thereunder shall apply to such fresh poll.

26. An election under this Order shall be decided by secret ballot and, subject to the provisions of Article 27, every elector shall cast his vote by inserting, in accordance with the provisions of this Order, in the ballot box, a ballot paper in the prescribed form.

27. (1) The following persons may cast their votes by postal ballot in such manner as may be prescribed, namely:—

<sup>1</sup>[(a) a person referred to in sub-sections (3) and (5) of section 8 of the Electoral Rolls Ordinance, 2007 (Ord. No. XVIII of 2007);]

(b) a person appointed for the performance of any duty in connection with an election at a polling station other than the one at which he is entitled to cast his vote.

(2) An elector who, being entitled to do so, intends to cast his vote by postal ballot shall-

in the case of a person referred to in sub-clause (a) of clause (1) within fifteen days from the date of the publication of the notification under Article 11, and

in the case of a person referred to in sub-clause (b) of that clause as soon as may be after his appointment,

Apply to the Returning Officer of the constituency in which he is an elector for a ballot paper for voting by postal ballot; and every such application shall specify the name of the elector, his address and his serial number in the electoral roll.

(3) The Returning Officer shall immediately upon the receipt of an application by an elector under clause (2) sent by post to such elector a ballot paper and an envelope bearing on its face a form of certificate of posting, showing the date thereof, to be filled in by the proper official of the Post Office at the time of posting by the elector.

(4) An elector on receiving his ballot paper for voting by postal ballot shall in the prescribed manner record his vote and after so recording post the ballot paper to the Returning Officer in the envelope sent to him under clause (3) with minimum of delay.

28. (1) The Returning Officer shall provide each Presiding Officer with such number of ballot boxes as may be necessary.

(2) The ballot boxes shall be of such material and design as may be approved by the Commission.

(3) Not more than one ballot box shall be used at a time for the purpose of the poll at any polling station, or at any polling booth, where there are more than one polling booth at a polling station.

(4) At least half an hour before the time fixed for the commencement of the poll the Presiding Officer shall-

(a) ensure that every ballot box to be used is empty;

<sup>3</sup>[(aa) deliver such empty ballot boxes to Polling Officer to be numbered serially against their signatures in prescribed forms to be maintained by him and supplied by the Commission. Agents of candidates may, if they so like, sign such prescribed form as witnesses which shall contain such columns;]

(b) show the empty ballot box to the contesting candidates and their election agents and polling agents whoever may be present;

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<sup>1</sup> Substituted by Ordinance NO. XX of 1984, for sub-clause (a).

<sup>2</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> Clause (aa) was inserted by Act XXIII of 1994, s. 9.

- (c) after the ballot box has been shown to be empty close and seal it; and
- (d) place the ballot box so as to be conveniently accessible to the elector, and at the same time within the sight of himself and of such candidates or their election or polling agents as may be present.

(5) If one ballot box is full or cannot further be used for receiving ballot papers, the Presiding Officer shall seal that ballot box <sup>1</sup>[with his own seal and signature and with the seals or signatures of the contesting candidates or election agents or polling agents present who may wish to seal or sign it] and keep it in a secure place and use another ballot box in the manner laid down in clause (4).

(6) A Presiding Officer shall, make such arrangements at the polling station that every elector may be able to mark his ballot paper in secret before the same is folded and inserted in the ballot box.

29. 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;
- <sup>2</sup>[(b) the contesting candidates and their election agents and one polling agent of each contesting candidate for each booth;
- (bb) election observers;] and
- (c) such other persons as may be specifically permitted by the Returning Officer.

30. (1) The Presiding Officer shall keep order at the polling station and may remove or cause to be removed any person who misconducts himself at a polling station or fails to obey any lawful orders of the Presiding Officer.

(2) Any person removed under clause (1) from a polling station shall not, without the permission of the Presiding Officer, again enter the polling station during the day and shall, if he is accused of an offence in a polling station, be liable to be arrested without warrant by a police officer.

(3) The powers under this Article shall not be so exercised as to deprive an elector of an opportunity to cast his vote at the polling station at which he is entitled to vote.

31. <sup>3</sup>[(1) Where an elector presents himself at the polling station to vote, the Presiding Officer shall, after satisfying himself about the identity of the elector with reference to <sup>4</sup>[the electoral roll], issue to him a ballot paper.

<sup>5</sup>[ \*\*\*        \*\*\*        \*\*\*        \*\*\*        \*\*\*        \*\*\*        \*\*\*]

- (2) Before a ballot paper is issued to an elector-
  - (a) he shall be required to receive a personal mark made with indelible ink on the thumb or any other finger of either hand;
  - (b) the number and name of the elector as entered in the electoral roll shall be called out;
  - (c) a mark shall be placed on the electoral roll against the number and name of the elector to indicate that a ballot paper has been issued to him;
  - (d) the ballot paper shall on its back be stamped with the official mark; <sup>6\*</sup>
  - (e) the number of the elector on the electoral roll shall be marked in writing on the counterfoil by the Presiding Officer who shall also stamp the counterfoil with the official mark <sup>7</sup>[;]
  - (f) the elector shall put his signature or thumb impression on the counterfoil of the ballot paper.]

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

(4) If a contesting candidate or his election or polling agent alleges that an elector to whom a ballot paper is about to be issued already has one or more ballot papers in his possession, the Presiding Officer may require the elector to satisfy him that he does not have any other ballot paper in his possession and may also take such measures as he thinks fit, to ensure that such elector does not insert more than one ballot paper in the ballot box.

<sup>1</sup> Inserted by 2001 mibi 57bs AvBb, s. 9

<sup>2</sup> Substituted, *ibid.*, for clause (b).

<sup>3</sup> Substituted by Act XXIII of 1994, s. 10, for the former clause (1).

<sup>4</sup> The words "the electoral roll" were substituted for the words "his identity card"

<sup>5</sup> Clauses 1(A) and 1(B) were deleted by the Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> The word "and" was omitted by Ordinance No. XLIII of 1978.

<sup>7</sup> The semicolon was substituted for the full-stop at the end of sub-clause(e) and thereafter sub-clause(f) was added, *ibid.*

(5) The elector, on receiving the ballot paper, shall-

<sup>1</sup>[(a)if so requested by any contesting candidate or an election agent, <sup>2</sup>[or polling agent] show the official mark on the back of the ballot paper to him;

(aa) forthwith proceed to the place reserved for marking the ballot paper;]

(b) put the prescribed mark on the ballot paper at any place within the space containing the name and symbol of the contesting candidate for whom he wishes to vote;<sup>3</sup>[\*\*\*]

<sup>4</sup>(bb) if he does not wish to vote any of the contesting candidates, shall put the prescribed mark on the ballot paper at the place within the space containing the symbol of "none of the above candidates "; and]

(c) after he has so marked <sup>5</sup>[according to sub-clause (b) or (bb)], fold the ballot paper and insert it in the ballot box.

(6) The elector shall vote without undue delay and shall leave the polling station immediately after he has inserted his ballot paper in the ballot box.

(7) 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 with such assistance anything which an elector is required or permitted to do under this Order.

<sup>6</sup>[(8)<sup>7</sup>[\*\*\* \*\* \* \*\* \* \*\*]]

32. (1) If a person representing himself to be an elector applies for a ballot paper when another person has already represented himself to be that elector and has voted under the name or the persons so applying, he shall be entitled, subject to the provisions of this Article to receive a ballot paper (hereinafter referred to as "tendered ballot paper") in the same manner as any other elector.

(2) A tendered ballot paper shall, instead of being put into the ballot box, be given to the Presiding Officer who shall endorse thereon the name and number in the electoral roll of the person applying for it and place it in a separate packet endorsed with the name of the candidate for whom such person wishes to vote.

(3) The name of the person applying for a ballot paper under clause (1) and his number on the electoral roll shall be entered in a list (hereinafter referred to as "the tendered votes list") to be prepared by the Presiding Officer.

33. (1) If, at the time a person applies for a ballot paper for the purpose of voting, a candidate or his <sup>8</sup>[election agent or] polling agent declares to the Presiding Officer that he has reasonable cause to believe that person has already voted at the election, at the same or another polling station or is not the person against whose name entered in the electoral roll he is seeking to vote, and undertakes to prove the charge in a court of law and deposits with the Presiding Officer a sum such as may be prescribed, the Presiding Officer may, after warning the person of the consequences and obtaining his thumb impression and, if he is literate, also his signature, on the counterfoil, issue a ballot paper (hereinafter referred to as "challenged ballot paper") to that person.

(2) If the Presiding Officer issues a ballot paper under clause (1) to such person he shall enter the name and address of the person in a list to be prepared by him (hereinafter referred to as "the challenged votes list") and obtain thereon the thumb impression and, if he is literate, also the signature, of that person.

(3) A ballot paper issued under clause (1) shall, after it has been marked and folded by the elector, be placed in the same condition in a separate packet bearing the label ("challenged ballot papers") instead of being placed in the ballot box.

34. (1) An elector who has inadvertently so 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 and cast his vote by such other ballot paper.

(2) The Presiding Officer shall forthwith cancel the ballot paper returned to him under clause (1), make a note to that effect on the counterfoil over his own signature and sign the cancelled ballot paper, and place it in a

<sup>1</sup> Substituted by Ordinance No. XLIII of 1978, for sub-clause (a).

<sup>2</sup> Inserted by 2001 mibi 57bs A1Bb, s. 11.

<sup>3</sup> The word "and" was deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>4</sup> Sub-clause (bb) was inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>5</sup> The words "according to sub-clause (b) or (bb)" were inserted by The Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> Inserted by Act XIII of 1996 (w.e.f 25-4-1996).

<sup>7</sup> Clause 31(8) was deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>8</sup> Inserted by 2001 mibi 57bs A1Bb, s. 12.

separate packet labelled "Spoilt Ballot Papers."

35. No person shall be given any ballot paper or be permitted to vote after the hour fixed for the close of the poll except the persons who at that hour are present within the building, room, tent or enclosure in which the polling station is situated and have not voted but are waiting to vote.

36. (1) Immediately after the close of the poll, that is, as soon as the last of such persons, if any, as are present and waiting to vote as mentioned in Article 35, has voted, the Presiding Officer shall, in the presence of such of the contesting candidates, election agents and polling agents as may be present, proceed with the count of votes.

(2) The Presiding Officer shall give such of the contesting candidates, election agents and polling agents as may be present, reasonable facility of observing the count and give them such information with respect there to as can be given consistently with the orderly conduct of the count and the discharge of his duties in connection therewith.

(3) No person other than the Presiding Officer, the Polling Officer, any other person on duty in connection with the poll, the contesting candidates, <sup>1</sup>[election agents, polling agents and election observers shall be allowed to remain] present at the count.

(4) The Presiding Officer shall-

- (a) open the used ballot box or ballot boxes and count the entire lot of ballot papers taken out therefrom;
- (b) open the packet labelled "challenged ballot papers" and include the ballot papers therein the count;
- (c) count, in such manner as may be prescribed, the votes cast in favour of each contesting candidate excluding from the count the ballot papers which bear-
  - (i) no official mark;
  - (ii) any writing or any mark other than the official mark and the prescribed mark or to which a piece of paper or any other object of any kind has been attached;
  - (iii) no prescribed mark indicating the contesting candidate for whom the elector has voted; or
  - (iv) any mark from which it is not clear for whom the elector has voted, provided that a ballot paper shall be deemed to have been marked in favour of a candidate if the whole or more than half of the area of the prescribed mark appears clearly within the space containing the name and symbol of that candidate; and where the prescribed mark is divided equally between two such spaces, the ballot paper shall be deemed not to show clearly for whom the elector has voted.

(5) The Presiding Officer may recount the votes-

- (a) of his own motion if he considers it necessary; or
- (b) <sup>2</sup>[upon the request in writing] of a contesting candidate or an election agent '[or polling agent] prescribed if in his opinion, the request is not unreasonable.

(6) The valid ballot paper cast in favour of each contesting candidate shall be put in separate packets and each such packet shall be sealed and shall contain a certificate as to the number of ballot papers put in it and shall also indicate the nature of the contents thereof, specifying the name and symbol of the contesting candidate to whom the packet relates.

(7) The ballot papers excluded from the count shall be put in a separate packet indicating thereon the total number of ballot papers contained therein.

(8) The packets mentioned in clauses (6) and (7) shall be put in a principal packet which shall be sealed by the Presiding Officer.

(9) The Presiding Officer shall, immediately after the count, prepare a statement of the count in such form as may be prescribed showing therein <sup>3</sup>[, in both words and figures,] the number of valid votes polled by each contesting candidate and the ballot paper excluded from the count.

(10) The Presiding Officer shall also prepare in the prescribed form a ballot paper account showing separately-

- (a) the number of ballot papers entrusted to him;
- (b) the number of ballot papers taken out of the ballot box or boxes and counted;
- (c) the number of tenderd ballot papers;
- (d) the number of challenged ballot papers;

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<sup>1</sup> Substituted by 2001 mibi 57bs A\Bb, s. 13(K), for "their election agent and polling agents shall be".

<sup>2</sup> The words "upon the request in writing" were substituted for the words "upon the request" by Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> Inserted by 2001 mibi 57bs A\Bb, s. 13(L) I (M) |.

- (e) the number of un-issued ballot papers; and
- (f) the number of spoiled ballot papers.

<sup>1</sup>[(11) The Presiding Officer shall, on application, give a certified copy of the statement of the count and the ballot-paper account, showing the number in both words and figures, to such of the candidates, their election agents or polling agents as may be present, and obtain a receipt for such copy, and if any such person refuses to give any receipt, the Presiding Officer shall record that fact.]

(12) The Presiding Officer shall seal in separate packets-

- (a) un-issued ballot papers;
- (b) spoiled ballot papers;
- (c) tendered ballot papers;
- (d) challenged ballot papers;
- (e) the marked copies of the electoral rolls;
- (f) counterfoils of used ballot papers;
- (g) the tendered votes list;

2[(gg) ballot box issue forms showing the total number of ballot boxes issued and used;]

- (h) the challenged votes list; and
- (i) such other papers as the Returning Officer may direct.

<sup>3</sup>[(13) The Presiding Officer shall obtain on each statement and packet prepared under this Article the signature of such of the contesting candidates or their election agents or polling agents as may be present, and if any such person refuses to sign the Presiding Officer shall record that fact.]

(14) A person entitled to sign a packet or statement under clause (13) may, if he so desires, also affix his seal to it.

(15) After the Close of the proceedings under the foregoing clause the Presiding Officer shall, in compliance with such instructions as may be given by the Commission in this behalf, cause the packets, the statement of the count and the ballot paper account prepared by him to be sent to the Returning Officer together with such other records as the Commission may direct <sup>4</sup>[,] <sup>3</sup>[and shall also send a copy of the statement of the count to the Commission by post.]

37. (1) The Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place for the consolidation of the results and, in the presence of such of the contesting candidates and election agents as may be present, consolidate in the prescribed manner the results of the count furnished by the Presiding Officer, including therein, the postal ballots received by him before the time aforesaid.

(2) Before consolidating the results of the count, the Returning Officer shall examine the ballot papers excluded from the count by the Presiding Officer and, if he finds that any such ballot paper should not have been so excluded, count it as a ballot paper cast in favour of the contesting candidate for whom the vote has been cast thereby.

(3) The Returning Officer shall also count the ballot papers received by him by post in such manner as may be prescribed and include the votes cast in favour of each contesting candidate in the consolidated statement except those which he may reject on any of the grounds mentioned in clause (4) of Article 36.

(4) The ballot papers rejected by the Returning Officer under clause (3) shall be shown separately in the consolidated statement.

(5) The Returning Officer shall not recount the valid ballot papers in respect of any polling station unless-

- (a) the count by the Presiding Officer is challenged in writing by a contesting candidate or his election agent and the Returning Officer is satisfied about the reasonableness of the challenge; or
- (b) he is directed so to do by the Commission.

38. Where, After consolidation of the results or the count under Article 37, it is found that there is equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would

<sup>1</sup> Substituted, *ibid.*, s. 13(N), for clause 11.

<sup>2</sup> Inserted by Act XXIII of 1994, s. 11.

<sup>3</sup> Substituted by 2001 mbi 57bs A/Bb, s. 13(0), for clause (13).

<sup>4</sup> Substituted and inserted, *ibid.*, s. 13(P) |

entitle him to be declared elected, the Returning Officer shall forthwith draw a lot in respect of such candidates and the candidate on whom the lot falls shall be deemed to have received the highest number of votes entitling him to be declared elected. The lot shall be drawn in the presence of such of the contesting candidates and their election agents as "may be present. The Returning Officer shall record the proceedings in writing and obtain thereon the signature of such, candidates and election agents as have been witness to the proceeding.

39. (1) The Returning Officer shall, after obtaining the result of the count under Article 37 or of the drawal of the lot under Article 38, declare by public notice the contesting candidate who has or is deemed to have received the highest number of votes to be elected.

(2) The public notice shall contain the name of and the total number of votes received by, each contesting candidate <sup>1</sup>[as a result of consolidation under Article 37 or drawal of lot under Article 38].

(3) The Returning Officer shall, immediately after publication of the notice under clause (1), submit to the Commission a return of the election in the prescribed form together with a copy of the consolidated statement.

(4) The Commission shall publish in the Official Gazette the name of the returned candidate.

40. The Returning Officer Shall-

(a) immediately after preparing the consolidated statement and the return of election result in the prescribed manner the packets and statement opened by him for the purpose of consolidation permitting such of the candidates and their election agents, as may be present to sign the packets and affix their seals to such packets if they so desire; and

(b) supply duly attested copies of the consolidated statement and the return of election to such of the candidates and their election agents as may desire to have them.

<sup>2</sup>[40A. (1) Notwithstanding anything contained in any Article of this Order, if the number of "none of the above candidates" votes exceeds 50% (fifty percent) of the total votes cast in any constituency, the Returning Officer shall cancel the election proceedings after giving an immediate notice and inform the Commission accordingly.

(2) Where election proceedings are cancelled under clause (1), fresh proceedings shall be commenced in accordance with the provisions of this Order as if for a new election.]

41. (1) After the termination of the proceedings relating to an election under Article 17 where the proceedings have been so terminated, or after the declaration of the result of an election under Article 19, or Article 39, the deposit made under Article 13 in respect of any candidate shall be returned to the person making it or to his legal representative except the deposit in respect of a candidate who has received less than one-eighth of the total number or votes cast at the election.

(2) A deposit which is not required to be returned under clause (1) shall be forfeited to the Government.

42. (1) The Returning Officer shall retain on behalf of the Commission-

(a) the packets containing the ballot papers each of which shall be sealed with the seal of the Presiding Officer, or, if opened by the Returning Officer, with the seal of the Returning Officer;

(b) the packets containing the counterfoils of issued ballot papers;

(c) the packets containing the marked copies of the electoral roll;

(d) the packets containing the ballot paper account;

(e) the packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes list and the challenged votes list; and

(f) such other papers as the Commission may direct.

(2) The Returning Officer shall endorse on each packet retained under clause (1) the description of its contents the date of the election to which the contents relate and the name and number of the constituency for which the election was held.

(3) The documents contained in the packets mentioned in clause (1) shall be retained for a period of one year, and thereafter the Commission shall, unless otherwise directed by '[The High Court Division] cause them to be destroyed.

43. The documents retained under Article 42, except the ballot papers, shall be open to public inspection at such time and subject to such conditions as may be prescribed, and the Returning Officer shall, upon an

<sup>1</sup> Inserted by 2001 mibi 57bs A\Bb, s. 14 |

<sup>2</sup> Inserted by The Representation of the People (Amendment) Ordinance, 2008.

application made in this behalf and on payment of such fee and subject to such conditions as may be prescribed, furnish copies of, or extracts from, those documents.

44. (1) <sup>1</sup>[The High Court Division] may order the opening of packets of counterfoils and certificates or the inspection of any counted ballot papers.

(2) An order under clause (1) may be made subject to such conditions as to persons, time, place and mode of inspection, production of documents and opening of packets as the <sup>2</sup>[High Court Division] making the order may think expedient:

Provided that in making and carrying into effect an order for the inspection of counted ballot papers, care shall be taken that no vote shall be disclosed until it has been held by the <sup>2</sup>[High Court Division] to be invalid.

(3) Where an order is made under clause (1), the production by the Returning Officer of any document in such manner as may be directed by the order shall be conclusive evidence that the document relates to the election specified in the order, and any endorsement or any packet of ballot papers so produced shall be *prima facie* evidence that the ballot papers are what the endorsement states them to be.

(4) The production from proper custody of a ballot paper purporting to have been used at an election, and of a counterfoil having a number, shall be *prima facie* evidence that the elector whose vote was given by that ballot paper was the elector who had on the electoral roll the same number, as was written on the counterfoil.

(5) Save as in this section provided, no person shall be allowed to inspect any rejected or counted ballot paper in the possession of the Returning Officer.

### <sup>3</sup>CHAPTER IIIA-ELECTION EXPENSES

44A. In this Chapter, "election expenses" means any expenditure incurred or payment made, whether by way of gift, loan, advance, deposit or otherwise, for the arrangement, conduct or benefit of, or in connection with, or incidental to, the election of a candidate, including the expenditure on account of issuing circulars or publications or otherwise presenting to the electors the candidate or his views, aims or objects, but does not include the deposit made under Article 13.

<sup>4</sup>[44AA. (1) <sup>5</sup>[At the time of submitting the nomination paper, every contesting candidate shall submit to the Returning Officer,] a statement, in the prescribed form, of the probable sources of fund to meet his election expenses showing-

- (a) the sum to be provided by him from his own income and the sources of such income;
- (b) the sum to be borrowed, or received as voluntary contribution, from his relations and the sources of their income;
- (c) the sum to be borrowed, or received as voluntary contribution, from any other person;
- (d) the sum to be received as voluntary contribution, from any political party, organisation or association;
- e) the sum to be received from any other source <sup>6</sup>[:]

<sup>7</sup>[Provided that the provisions of sub-clauses (a) to (e) shall not apply to a case where the amount of such sum is not more than taka five thousand to be received as voluntary contribution or grant.]

*Explanation-* In this clause, "relations" mean spouse, parents, sons, daughters, brothers and sisters.

(2) The statement under clause (1) shall be accompanied by a statement in the prescribed form, of the contesting candidate's assets and liabilities and his annual income and expenditure and, if he is an income-tax assessee, a copy of the income-tax return last submitted by him.

(3) A copy of the statement submitted under clause (1) together with a copy of the statement and the return mentioned in clause (2), shall be sent by the contesting candidate to the Commission by registered post at the time of their submission to the Returning Officer.

<sup>1</sup> Substituted by 2001 m̄ḥbi 57bs AḥBb, s. 15, for "a Tribunal".

<sup>2</sup> Substituted, *ibid*, s. 16, for "Tribunal".

<sup>3</sup> Chapter IIIA was inserted by Ordinance No. IV of 1985.

<sup>4</sup> Article 44AA was inserted by Act X of 1991, s. 2 (w.e.f. 6-1-1991)

<sup>5</sup> "Every contesting candidate shall submit to the Returning Officer, within seven days next following the withdrawal day," were replaced by the following: "At the time of submitting the nomination paper, every contesting candidate shall submit to the Returning Officer," by Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> The "colon" was substituted for "full stop" by Representation of the People (Amendment) Ordinance, 2008.

<sup>7</sup> This proviso was inserted by Representation of the People (Amendment) Ordinance, 2008.

(4) If the contesting candidate receives any sum from any source other than any of the sources mentioned in his statement submitted under clause (1), he shall, <sup>1</sup>[with the return under clause (1) of Article 44C], submit a supplementary statement to the Returning Officer showing the sum so received and the source from which it is received, and a copy of such statement shall be sent by him to the Commission by registered post at the time of its submission to the Returning Officer,]

44B. (1) No person shall, except to the extent provided in clause (2) make any payment whatsoever towards the election expenses of a candidate except to the election agent of such candidate:

(2) No person other than the election agent of a contesting candidate shall incur any election expenses of such candidate:

Provided that-

<sup>2</sup>\* \* \* \* \*

(ii) any person may, if so authorised by the election agent in writing specifying a maximum amount, to the extent of such amount, make payment for stationery, postage, telegram and other petty expenses.

<sup>3</sup><sup>4</sup>[(3) The election expenses of a contesting candidate, including the expenditure incurred for him by the political party which has nominated him as its candidate, shall not exceed taka <sup>5</sup>[fifteen lakh:]]

<sup>6</sup>[Provided that the election expenses of a contesting candidate shall be determined per capita on the basis of total number of electors in a constituency and a notification to that effect shall be published in the official gazette.]

(3A) The amount of the money mentioned in clause (3) or any portion thereof shall not be utilised for-

(a) printing of a poster with more than one colour; or

<sup>7</sup>[(aa) printing of a poster of a size bigger than the size prescribed of specified by the Commission; or]

<sup>8</sup> [\*\*\* \*\*]

<sup>9</sup>[(c)erection of any gate, arch or barricade; or]

(d) setting up a pandal covering an area of more than four hundred square feet; or

<sup>10</sup> [\*\*\* \*\*]

(f) employing or using more than three microphones or loudspeakers at a time in a constituency; or

(g) commencing election publicity in any manner at any time three weeks prior to the date fixed for the poll; or

<sup>11</sup>[(h) setting up more than one election camp or office in any union or in any ward of a municipality or city, of more than one central election camp or office in any constituency; or;

(hh)entertainment of electors in any manner; or]

(i) using any vehicle or vessel such as, truck, bus, car, taxi, motor cycle and speed-boat, for taking out any procession; or

<sup>12</sup>[(ii) hiring or using any vehicle or vessel of any kind for conveying electors to or from any polling station; or]

(j) illumination by use to electricity in any form; or

(k) using symbol or portrait of candidate with more than one colour; or

(l) display of a symbol exceeding the size proposed by the commission.

<sup>13</sup>[(m) writing in ink or paint or in any manner whatsoever as means of advertisement for propagating

<sup>1</sup> In clause (4) the words "within three days after receipt of such sum" were replaced by the words "with the return under clause (1) of Article 44C" by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> Sub-clause (i) was omitted by 2001 m̄bi 57bs AṽBb, s. 17(K) ]

<sup>3</sup> Substituted by Act X of 1991, s. 3(b), for the former clause (3).

<sup>4</sup> Substituted by 2001 m̄bi 57bs AṽBb, s. 17(L), for clause (3).

<sup>5</sup> The word "fifteen lakh:" was substituted for the word "five lakh;" by the Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> Inerted by Representation of the People (Amendment) Ordinance, 2008.

<sup>7</sup> Inserted, *ibid.*

<sup>8</sup> Sub-clause (b) was deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>9</sup> Substituted, *ibid.*, for sub-clause (c).

<sup>10</sup> Sub-clause (e) was deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>11</sup> Substituted by 2001 m̄bi 57bs AṽBb, s. 17(M)(3), for sub-clause (h).

<sup>12</sup> Inserted, *ibid.*

<sup>13</sup> Added by Act XXIII of 1994, s. 12.

election campaign <sup>1</sup>[; or]]

<sup>2</sup>[(n) operating camps on the polling day.]

<sup>3</sup>[(3B) Any money utilized in violation of any provision of clause (3A) shall be deemed to be election expenses incurred by the contesting candidate concerned in excess of the amount mentioned in clause (3) and shall be deemed to be a contravention of Article 44B.]

(4) Any candidate incurring personal expenditure and any person making any payment under clause (2) shall, within <sup>4</sup>[seven days] of the declaration of the result of the election, send to the election agent a statement of such expenditure of particulars of such payment.

(5) An election agent shall, by a bill stating the particulars and by a receipt vouch for every payment made in respect of election Expenses except when the amount is less than Taka <sup>5</sup>[one hundred].

<sup>6</sup>[44BB. Every election agent or, where there is no such agent, the contesting candidate shall—

(a) open a separate account with a scheduled bank for the purpose of making payment of the election expense, other than personal expenditure, that may be incurred in pursuance of provisions of Article 44B;

(b) Make from that account all payments towards the said election expense other than personal expenditure.]

44C. (1) Every election agent of a contesting candidate shall, within <sup>7</sup>[<sup>8</sup>thirty] days] after the publication of the name of the returned candidate under Article 19, or Article 39, submit to the Returning Officer a return of election expenses in the prescribed form containing-

(a) A statement of all payment made by him <sup>9</sup>[each day] together with all the bill and receipts;

<sup>10</sup>[(aa) a statement certified by the scheduled bank referred to in clause (a) of Article 44BB showing the amount deposited in and withdrawn from the account opened under that clause;]

(b) a statement of the amount of personal expenditure, if any, incurred by the contesting candidate;

(c) a statement of all disputed claims of which the election agent is aware;

(d) a statement of all unpaid claims, if any, of which the election agent is aware;

<sup>11</sup>[(e) a statement of all sums received from any sources, together with evidence of such receipts, for the purpose of election expenses, specifying the name of every such source.]

(2) The return submitted under clause (7) shall be accompanied by an affidavit sworn severally by the contesting candidate and his election agent or, where a contesting candidate is his own election agent, only by such candidate.

<sup>12</sup>[(3) A copy of the return submitted under clause (7), together with a copy of the affidavit mentioned in clause (2), shall be sent by the election agent to the Commission by registered post at the time of their submission to the Returning Officer.]

<sup>13</sup>[44CC. (1) Every political party setting up any candidate for election shall maintain proper account of all its income and expenditure for the period from the date of publication of notification under clause (1) of Article 11 till the completion of elections in all the constituencies in which it has set up candidates and such account shall show clearly the amount received by it as donation above <sup>14</sup>[taka five thousand] from any candidate or any person seeking nomination or from any other person or source giving their names and addresses and the amount received from each of them and the mode of receipt.

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<sup>1</sup> The full stop at the end of sub-clause was replaced by comma sign and a word "and" was inserted by the Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> Inserted by the Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> Inserted by 2001 m̄bi 57bs AṽBb, s. 17(N) ]

<sup>4</sup> Substituted by Act X of 1991, 3(c), for "fourteen days" (w.e.f. 6-1-1991)

<sup>5</sup> Substituted by Act X of 1991, s. 3(d), for "five hundred" (w.e.f 6-1-1991)

<sup>6</sup> Inserted by Act XIII of 1996 (w.e.f. 24-4-1996)

<sup>7</sup> Substituted by Act X of 1991, s. 4, for "sixty five days" (w.e.f. 6-1-1991)

<sup>8</sup> The word ""thirty" was substituted for the word "fifteen" by The Representation of the People (Amendment) Ordinance, 2008.

<sup>9</sup> Inserted, vide Act X of 1991.

<sup>10</sup> Inserted by Act XIII of 1996 (w.e.f. 24-4-1996)

<sup>11</sup> Substituted by Act X of 1991, for the former sub-clause (e).

<sup>12</sup> Clause (3) was added by Act X of 1991 (w.e.f 6-1-1991)

<sup>13</sup> Inserted by 2001 m̄bi 57bs AṽBb, s. 18.

<sup>14</sup> The words "taka five thousand " were substituted for the words " taka one thousand " by Representation of the People (Amendment) Ordinance, 2008.

- (2) The funds of every such political party shall be deposited and maintained in any scheduled bank.
- (3) No such political party shall expend during the aforesaid period for election purposes, including election expenses for the contesting candidates set up by it, an amount exceeding-
- where the number of such candidates is more than two hundred, taka <sup>1</sup>[ taka four crore and fifty lakh],
  - where the number of such candidates is more than one hundred but not more than two hundred, <sup>2</sup>[taka three crore],
  - where the number of such candidates is not more than one hundred taka seventy five lakh <sup>3</sup>[more than fifty but not more than one hundred, taka one crore and fifty lakh,
  - <sup>4</sup>(d) where the number of such candidates is not more than fifty, taka seventy five lakh,]
- <sup>5</sup>[Provided that the amount mentioned in sub-clauses (a), (b), (c) and (d) shall be subject to maximum taka one lakh and fifty thousand per candidate.]]
- (4) No such political party shall receive any donation amounting to more than <sup>6</sup>[taka twenty thousand] unless it is made by cheque.
- (5) If any political party contravenes any provision of this Article, it shall be punishable with fine which may extend to taka ten lakh.

44CCC. (1) Every political party nominating any candidate for election shall submit to the <sup>7</sup>[Commission, for its scrutiny, within ninety days] of the completion of election in all constituencies, an expenditure statement giving details of the expenses incurred or authorised by it in connection with the election of its candidates for the period from the date of publication of the notification under clause (1) of Article 11 till the completion of elections in all the constituencies in which it has set up candidates.

(2) The expenditure mentioned in clause (1) shall include, to be shown separately, expenditure incurred on general propagation of the manifesto, policy, aims and objects of the party and expenditure incurred or authorized in connection with the election of each of its contesting candidates.

(3) <sup>8</sup>[Every statement submitted under clause (1) shall be certified to be correct and complete by the secretary to the party, showing] the opening balance of the party funds on the date of publication of the notification under clause (1) of Article 11, the closing balance of the funds on the date of completion of election in all constituencies and the total amount received by the party, as donation or otherwise, during the period between the said two dates.

<sup>9</sup>\*\*\*                      \*\*\*                      \*\*\*

<sup>10</sup>[(5) If any registered political party fails to submit its expenditure statement within the time specified in clause (1), the Commission shall issue a notice of warning directing it to submit the statement within thirty days and if the concerned registered political party fails to submit it within that period of time, the Commission may, subject to payment of a fine of taka ten thousand, extend the time for another fifteen days, and if such registered political party fails to submit its statement within that extended time, the Commission may cancel its registration.]]

<sup>11</sup>[<sup>12</sup>[44D.(1) The statement, return and documents submitted under Articles 44AA, 44C and 44CCC shall

<sup>1</sup> The words "taka four crore and fifty lakh" were substituted for the words "taka one hundred and fifty lakh" by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> The words "taka three crore" were substituted for the words "taka one hundred lakh" by Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> The words "not more than one hundred, taka seventy five lakh" were replaced by the words "more than fifty but not more than one hundred, taka one crore and fifty lakh" in addition the full stop at the end was replaced comma and a new sub-clause (d) was inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>4</sup> The sub-clause was added by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>5</sup> The proviso was added by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>6</sup> The words "taka twenty thousand" were substituted for the words " taka one thousand" by Representation of the People (Amendment) Ordinance, 2008.

<sup>7</sup> The words " Returning Officers concerned, for their scrutiny, within sixty days" were substituted by the words "Commission, for its scrutiny, within ninety days" by The Representation of the People (Amendment) Ordinance, 2008.

<sup>8</sup> The words "Every political party shall furnish to the Commission a separate statement, certified to be correct and complete by the secretary to the party, showing" were substituted by the words and number "Every statement submitted under clause (1) shall be certified to be correct and complete by the secretary to the party, showing" by Representation of the People (Amendment) Ordinance, 2008.

<sup>9</sup> Clause (4) was deleted by Representation of the People (Amendment) Ordinance, 2008.

<sup>10</sup> A new clause (5) was inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>11</sup> Substituted by Act X of 1991, s. 5, for "The return and document submitted under Article 44C" (w.e.f. 6-1-1991)

<sup>12</sup> Substituted by The Representation of the People (Amendment) Ordinance, 2008.

be kept by the Returning Officer or the Commission, as the case may be, in his or its office or at such other convenient place as he or it may think fit and shall, during one year from the date of receipt, be open for inspection by any person on payment of the prescribed fees.

(2) The Commission or the Returning Officer shall, on an application made in this behalf and on payment of the prescribed fees, give any person copies of any statement, return or document or any part thereof kept under clause (1).

(3) The copies of the statement, return or documents under clause (1) shall be published in the website of the Commission.]]

### <sup>1</sup>[CHAPTER IIIB— ADMINISTRATION AND CONDUCT DURING ELECTION PERIOD

44E. (1) During the period after the publication of a notification under Article 11 and the expiration of fifteen days after the declaration of the result of the election by the Returning officer under Article 39, no-

<sup>2</sup>[\*\*\* \*\*]

<sup>3</sup>[(aa) Metropolitan Police Commissioner;]

(b) Deputy Commissioner;

(c) Superintendent of Police; or

(d) Officer subordinate to any of them serving in the district concerned shall be transferred to any place without prior consultation with the Commission.

(2) <sup>4</sup>[A Metropolitan Police Commissioner or a Deputy Commissioner] or Superintendent of Police or any officer subordinate to any of them shall be transferred outside the district if the Commission requests in writing that such transfer is necessary in the interest of fair election.

(3) No person whose name appears in a panel prepared under Article 9 shall be transferred outside the district without the prior approval of the Returning Officer till the polls are taken.

(4) All persons mentioned in clause (1) shall render all such assistance and help as may be required by the Returning Officer for the purposes of the election.]

<sup>5</sup>\* \* \* \* \*

### CHAPTER V-ELECTION DISPUTES

<sup>6</sup>[(49.) (1) No election shall be called in question except by an election petition presented by a candidate for that election in accordance with the provisions of this Chapter.

(2) An election petition shall be presented to the High Court Division within such time as may be prescribed.

(3) An election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(4) At the time of presenting an election petition, the petitioner shall deposit in the High Court Division in accordance with the rules of the High Court Division a sum of Taka two thousand as security for the costs of the petition.]

50. The petitioner shall join as respondents to his election petition-

a) all contesting candidates; and

(b) any other candidate against whom any allegation, if any, of any corrupt or illegal practice is made <sup>7</sup>[.]

<sup>1</sup>\* \* \* \* \*

*Explanation.* - in this Article and in the following provisions of this Chapter, "corrupt or illegal practice"

<sup>1</sup> Chapter IIIB was inserted by Act XXIII of 1994, s.13.

<sup>2</sup> Sub-clause (a) was deleted by The Representation of the People (Amendment) Ordinance, 2008.

<sup>3</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>4</sup> The words "A Metropolitan Police Commissioner or a Deputy Commissioner" were substituted for the words "A Deputy Commissioner" by Representation of the People (Amendment) Ordinance, 2008.

<sup>5</sup> Chapter IV was omitted by Ordinance No. L of 1978.

<sup>6</sup> Substituted by 2001 m̄ḡi 57bs AḡBb, s. 19, for Article 49.

<sup>7</sup> Substituted for comma at the end and the words "and shall serve personally or by registered post on each such respondent a copy of his petition." were omitted by 2001 m̄ḡi 57bs AḡBb, s.20]



document shall be inadmissible in evidence at the trial of an election petition only on the ground that it is not duly stamped or registered.

(2) No witness shall be excused from answering any question as to any matter in issue, or relevant to a matter in issue, in the trial of an election petition upon the ground that the answer to such question may incriminate or tend to incriminate him or that it may expose or tend to expose him to penalty or forfeiture but no witness shall be required or permitted to state for whom he has voted at an election.

(3) A witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the <sup>1</sup>[High Court Division] and answer given by him to a question put by or before the <sup>1</sup>[High Court Division] shall not, except in the case of any criminal proceeding for perjury in respect of his evidence, be admissible in evidence against him in any civil or criminal proceedings.

(4) A certificate of indemnity granted to any witness under clause (3) may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter DCA of the Penal Code or under this Order, arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by any law for the time being in force.

(5) The reasonable expenses incurred by any person in attending to give evidence may be allowed to him by the <sup>1</sup>[High Court Division] and shall, unless the <sup>1</sup>[High Court Division] otherwise directs, be deemed to be part of the costs.

61. (1) Where in an election petition a declaration is claimed that a candidate other than the returned candidate has been duly elected, the returned candidate or any other party may produce evidence to prove that the election of such other candidate would have been declared void had he been the returned candidate and had a petition been presented calling his election in question:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within the fourteen days next following the commencement of the trial, given notice to the <sup>2</sup>[High Court Division] of his intention so to do and has also deposited the security referred to in Article 49.

(2) Every notice referred to in clause (1) shall be accompanied by a statement of the case, and all the provisions relating to the contents, verification, trial and procedure of an election petition, or to the security deposit in respect of an election petition shall apply to such a statement as if it were an election petition.

62. (1) The <sup>3</sup>[High Court Division] may upon the conclusion of the trial of an election petition, make order-

- (a) dismissing the petition;
- (b) declaring the election of the returned candidate to be void;
- (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or
- (d) declaring the election as a whole to be void.

(2) Save as provided in clause (3), the decision of the <sup>4</sup>[The High Court Division] on an election petition shall be final.

<sup>5</sup>[(3) Any person aggrieved by a decision of the High Court Division may, within thirty days of the announcement of the decision, appeal to the Appellate Division, if it grants leave to appeal.]

63. (1) The <sup>6</sup>[High Court Division] shall declare the election of the returned candidate to be void if it is satisfied that-

- (a) the nomination of the returned candidate was invalid; or
- (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or
- (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or
- (d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by

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<sup>1</sup> Substituted by 2001 m̄ṭbi 57bs AṽBb, s. 25, for "Tribunal".

<sup>2</sup> Substituted *ibid* s. 26

<sup>3</sup> Substituted by 2001 m̄ṭbi 57bs AṽBb, s. 27, for "Tribunal".

<sup>4</sup> Substituted, *ibid*, for "a Tribunal".

<sup>5</sup> Substituted, *ibid*, for clause (3).

<sup>6</sup> Substituted, *ibid*, s. 28 |

any other person with the connivance of the candidate or his election agent; or

<sup>1</sup>[(e)The returned candidate has spent more money than what is allowed under Article 44B (3).]

(2) The election of a returned candidate shall not be declared void on the ground-

(a) that any corrupt, or illegal practice has been committed if the <sup>2</sup>[High Court Division] is satisfied that it was not committed by, or with consent or convenience of that Candidate or his election agent and that the Candidate and the election agent took all reasonable precaution to prevent its commission; or

(b) that any of the other contesting candidates was, on the nomination day not qualified for, or was disqualified from, being elected as a member.

64. The <sup>1</sup>[High Court Division] shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the <sup>1</sup>[High Court Division] is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected.

65. The <sup>1</sup>[High Court Division] shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of-

(a) the failure of any person to comply with the provisions of this order and the rules; or

(b) the prevalence of extensive corrupt or illegal practice at the election.

66. (1) Where, after the conclusion of the trial, it appears that there is an equality of votes between two or more contesting candidates, and the addition of one vote for one such candidate would entitle him to be declared elected,, the <sup>1</sup>[High Court Division] shall so inform the Commission. In the event that no appeal is filed against the decision of the <sup>1</sup>[High Court Division], the Commission shall, after expiry of the period specified for the filing of and appeal, direct a fresh poll to be taken in respect of the said candidates, and fix a date for such poll, but otherwise, the Commission shall await the result of the appeal and shall act as above only if the decision of the <sup>1</sup>[High Court Division] is upheld in appeal on all points.

(2) All the provisions of this order relating to polling, counting of votes, and preparation of ballot paper account, declaration of result and preservation and inspection of document shall apply to the fresh poll as at an election held under the provisions of this Order.

<sup>3</sup>[67. (1) The High Court Division shall, as soon as possible after the conclusion of the trial of an election petition, intimate the substance of its decision to the Commission and shall, as soon as may be, send to the Commission as authenticated copy of its order.

(2) As soon as may be after the receipt of any order made by the High Court Division under Article 62, the Commission shall publish it in the official Gazette.

(3) An order made by the High Court Division under Article 62 shall take effect on the date on which it is made.]

68. <sup>4</sup>[(1) An election petition may be withdrawn by leave of the High Court Division.]

(2) Where leave is granted by the <sup>5</sup>[High Court Division], the petitioner shall be order to pay the costs incurred by the respondents to the election petition or such portion thereof as the <sup>3</sup>[High Court Division] may direct.

69. (1) An election petition shall abate on the death of a sole petitioner or of the sole survivor of several petitioners.

<sup>6</sup>[(2) Where an election petition abates under clause (1), notice of the abatement shall be given by the High Court Division to the Commission.]

70. If before the conclusion of the trial of an election petition. a respondent dies or gives notice in the prescribed form that he does not intend to contest the petition. and no respondent remain to contest the petition. the <sup>3</sup>[High Court Division] shall. without any further hearing or after giving such persons as it may think fit an opportunity of being heard. decide the case *ex parte*.

71. Where, at any stage of the trial of an election petition no petition makes an appearance, the <sup>3</sup>[High Court

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<sup>1</sup> Added by Act XXIII of 1994, s. 15.

<sup>2</sup> Substituted by 2001 m̄bi 57bs A\Bb, s. 28, for "Tribunal".

<sup>3</sup> Substituted by 2001 m̄bi 57bs A\Bb, s. 29, for Article 67.

<sup>4</sup> Substituted, *ibid.*, for clause (1), S. 30|

<sup>5</sup> Substituted, *ibid.*, for "Tribunal".

<sup>6</sup> Substituted, *ibid.*, for Clause (2), s. 31|

Division] may dismiss the petition for default, and made such order as to costs as it may think fit.

72. (1) The <sup>3</sup>[High Court Division] shall, when making an order under Article 62, also make an order determining in its discretion the costs and specifying the persons by and to whom such costs are to be paid.

(2) If, in any order as to costs under clause (1), there is a direction for the payment of costs by any party to any person, such costs shall, if they have not already been paid, be payable in full, and shall upon application in writing in that behalf made to the <sup>1</sup>[High Court Division] within six months of the order by the person to whom costs have been awarded, be paid, as far as possible, out of the security for costs deposited by such party.

(3) Where no costs have been awarded against a party who has deposited security for costs, or where no application for payment of costs has been made within the aforesaid six months, or where a residue remains after costs have been paid out of the security, such security or the residue thereof, as the case may be, shall, upon application in writing therefor by the person who made the deposit or by his legal representative, be returned by the <sup>1</sup>[High Court Division] to the person making the application.

(4) Any order for costs may be enforced upon application in writing made to the principal civil court of original jurisdiction of the district in which the person from whom the costs are to be recovered resides or owns property, or of the district in which the constituency, or any part of the constituency, to which the disputed election relates, is situated as if such order were a decree passed by that court:

Provided that no proceeding shall be brought under this clause except in respect of costs which have not been recovered by an application under clause (2).

#### CHAPTER VI-OFFENCES, PENALTY AND PROCEDURE

73. A person is guilty of corrupt practice punishable with <sup>2</sup>[rigorous imprisonment for a term which may extend to seven years and shall not be less than two years, and also with fine] if he-

<sup>3</sup>\* \* \* \* \*

<sup>4</sup>[(2) has met any election expenses from any source other than sources specified by the contesting candidate in the statement or' the supplementary statement submitted under Article 44AA;

(2A) Contravenes the provisions of Article 44B;

(2B) is guilty of bribery, personation or undue influence;]

(3) makes or publishes a false statement-

(a) concerning the personal character of a candidate or any of his relations calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate unless he proves that he had reasonable grounds for believing and did believe, the statement to be true;

(b) relating to the symbol of a candidate, or not such symbol has been allocated to such candidate; or

(c) regarding the withdrawal of a candidate.

(4) calls upon or persuades any person to vote, or to refrain from voting for any candidate on the ground that he belongs to a particular religion, community, race, caste, sect or tribe;

(5) Knowingly, in order to support or oppose a candidate lets. lends, employs. hires, borrows or uses any vehicle or vessel for the purpose of conveying to or from the polling station any elector except himself and members of his immediate family; or

(6) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

74. A person is guilty of illegal practice <sup>5</sup>[punishable with rigorous imprisonment for a term which may extend to seven years and shall not be less than two years, and also with fine] if he-

<sup>1</sup> Substituted by 2001 mfb 57bs A/Bb, s. 33(L), for "Commission".

<sup>2</sup> Substituted by Act X of 1991, s. 7, for "imprisonment for a term which may extend to two years, or with fine which may extend to Taka one thousand or with both" (w.e.f 6-1-1991)

<sup>3</sup> Clause (1) was omitted by Ordinance No. L of 1978.

<sup>4</sup> Substituted for the former clauses (2) and (2A) by Act X of 1991, s. 7 (w.e.f 6-1-1991)

<sup>5</sup> Substituted by Act X of 1991, s. 8 for "punishable which may extend to Taka five hundred" (w.e.f 6-1-1991)

<sup>1</sup>\* \* \* \* \*

<sup>2</sup>[(2) fails to comply with the provisions of article <sup>3</sup>[44AA or] 44C

(2A) obtains or procures, or attempt to obtain or procure, the assistance of any person in the service of Bangladesh to further or hinder the election of a candidate;]

(3) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;

(4) votes or applies for a ballot paper for voting more than once in the same polling station;

(5) votes or applies for a ballot paper for voting in more than one polling station for the same election;

(6) removes a ballot paper from a polling station during the poll; or

(7) Knowingly induces or procures any person to do all of the aforesaid acts.

75. A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf,-

(1) receives or agrees to receiver or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing from an election; .

(2) gives, offers or promises any gratification to any person-

(3) (a) for the purpose of inducing-

(i) a person to be, or to refrain from being, a candidate at an election;

(ii) an elector to vote, or refrain from voting, at an election; or

(iii) a candidate to withdraw an election; or

(b) for the purpose of rewarding-

(i) a person for having been, or for having refrained from being, a candidate at an election;

(ii) an elector for having voted or refrained from voting at an election; or

(iii) a candidate for having withdrawn from an election.

*Explanation.* - In this article, "gratification" includes a gratification in money or estimable in money and all forms of entertainment or employment.

76. A person is guilty of personation, if he votes or applies for a ballot paper for voting, as some other person whether that other person in living or dead or fictitious.

77. A person is guilty of undue influence, if he,-

(1) in order to induce or compel any person to vote or refrain from voting; or to offer himself as a candidate, or to withdraw his candidature, at an election, directly or indirectly by himself or by any other person on his behalf,-

(a) makes or threatens to make use of any force. violence or restraint;

(b) inflicts or threatens to inflict any injury, damage, harm or loss;

(c) Calls down or threatens to call down divine displeasure or the displeasure of any Saint or fir;

(d) gives or threatens to give any religious sentence; or

(e) uses any official influence or governmental patronage; or

(2) on account of any person having voted or refrained from voting or having offered himself as a candidate, or having withdrawn his candidature does any of the acts specified in sub-clause (1);

(3) by abduction duress or any fraudulent device or contrivance,-

(a) impedes *or* prevents the free exercise of the franchise by an elector; *or*

(b) Compels. induces or prevails upon any elector to vote or refrain in from voting.

*Explanation-* In this article "harm" includes social ostracism or excommunication or expulsion from any caste or community.

78. (1) No person shall convene, hold or attend any public meeting, and no person shall promote or join in

<sup>1</sup> Clause (1) was omitted by Ordinance No. L of 1978.

<sup>2</sup> Substituted by Ordinance No. IV of 1985, for Clause (2).

<sup>3</sup> The figures, letters and word "44AA or" were inserted by Act X of 1991. s. 8 (w.e.f. 6-1-1991).

any procession within the area of any constituency <sup>1</sup>[during the period beginning at forty-eight hours prior to start of the poll and ending at forty-eight hours after conclusion of the poll"] for any election in that constituency.

<sup>2</sup>[(1A) During the time mentioned in Article 78 (1) no person shall-

- (a) resort to an act of violence or unruly behaviour,
- (b) hold threats or intimidate voters or persons connected with election activities or duties,
- (c) show or use any arms or force.]

(2) Any person who contravenes the provisions of clause (1) shall be punishable with <sup>3</sup>[rigorous imprisonment for a term which may extend to seven years and shall not be less than two years, and also with fine].

79. A person is guilty of an offence <sup>4</sup>[punishable with imprisonment for a term which may extend to three years and shall not be less than six months, and also with fine], if he, within a radius of four hundred yards of the polling station, on the polling day-

- (1) canvasses for votes
- (2) solicits the vote of any elector
- (3) persuades any elector not to vote at the election or for a particular candidate; or
- (4) exhibits, except with the permission of the Returning Officer and at a place reserved for the candidate or his election agent beyond the radius of one hundred yards of the polling station, any notice, sign, banner or flag designed to encourage the electors to vote, or discourage the electors from voting, for any contesting candidate.

80. A person is guilty of an offence punishable with imprisonment for a term which may extend to <sup>5</sup>[three years and shall not be less than six months and also with fine], if he, on the polling day-

- (1) uses, in such manner as to be audible within the polling station, any gramophone, megaphone, loudspeaker or other apparatus for reproducing or amplifying sounds;
- (2) persistently shouts in such manner as to be audible within the polling station;
- (3) does any act which-
  - (a) disturbs or causes annoyance to any elector visiting a polling station for the purpose of voting; or
  - (b) interferes with the performance of the duty of a Presiding Officer, Assistant Presiding Officer, Polling Officer or any other person performing any duty at a polling station; or
- (4) abets the doing of any of the aforesaid acts.

81. (1) except as provided in clause (2) a person is guilty of an offence punishable with <sup>6</sup>[rigorous imprisonment for a term which may extend to <sup>7</sup>[seven years] and shall not be less than three years, and also with fine], if he-

- (a) intentionally defaces or destroys any nomination paper, ballot paper or official mark on a ballot paper;
- (b) intentionally takes out to the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorised by law to put in;
- <sup>8</sup>[(bb) is found in possession of any ballot paper or ballot paper book or is seen exhibiting them before the members of the public outside the polling station.]
- (c) without due authority,-
  - (i) supplies any ballot paper to any person;

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<sup>1</sup> The words "during the period beginning at forty-eight hours prior to start of the poll and ending at forty-eight hours after conclusion of the poll" was substituted for the words "during a period of forty-eight hours ending at midnight following the conclusion of the poll" by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> Clause (1A) was inserted by Act XXIII of 1994 s. 16.

<sup>3</sup> Substituted by Act X of 1991, s. 9, for "rigorous imprisonment which may extend to six months or with fine which may extend to Taka one thousand or with both" (w.e.f. 6-1-1991).

<sup>4</sup> Substituted, *ibid.*, s. 10, for "punishable with fine which may extend to Taka two hundred and fifty" (w.e.f. 6-1-1991)

<sup>5</sup> Substituted, *ibid.*, s. 11 for "three months or with fine which may extend to Taka two hundred and fifty, or with both" (w.e.f. 6-1-1991).

<sup>6</sup> Substituted by Act X of 1991, s. 12, for "imprisonment for a term which may extend to six months or with fine which may extend to Taka five hundred, or with both" (w.e.f. 6-1-1991)

<sup>7</sup> The words "ten years" were substituted by "seven years" by Representation of the People (Amendment) Ordinance, 2008.

<sup>8</sup> This new sub-clause was added by Representation of the People (Second Amendment) Ordinance, 2008.

- (ii) destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use for the purpose of election; or
- (iii) breaks any seal affixed in accordance with the provisions of this Order;
- (d) forges any ballot paper or official mark;
- (e) causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll <sup>1</sup>[;]
- <sup>2</sup>[(f) in the furtherance of the prospect of the election of a contesting candidate or to subvert election, captures, or abets, or connives at, the capturing of, a polling station or polling booth-
- (i) and compels the polling authorities to surrender the ballot papers, ballot boxes or other polling materials and documents and do any other acts affecting the orderly conduct of election or counting of votes or preparation of documents relating to election; or
- (ii) drives out any candidate or his election agent or polling agent from the polling station and compels the polling authorities to proceed with the election work in their absence; or
- (iii) drive out polling authorities, seizes the ballot papers, ballot boxes, polling materials and documents and use them fraudulently in such manner as he likes; or
- (iv) allows only his supporters or supporters of his candidate or the candidate of his political party to vote and prevents others from voting.]

(2) A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, or any other officer or clerk on duty in connection with the election, who is guilty of an offence under clause (1) shall be punishable with <sup>2</sup>[rigorous imprisonment for a term which may extend to ten years and shall not be less than three years, and also with fine].

82. A person is guilty of an offence punishable with imprisonment for a term which may extend to <sup>3</sup>[five years and shall not be less than one year, and also with fine], if he-

- (1) interferes or attempts to interfere with an elector when he records his votes;
- (2) in any manner obtains or attempts to obtain in a polling station information as to the candidate for whom an elector is about to vote or has voted; or
- (3) communicates at any time any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted.

83. A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, or Polling Officer, or any candidate, election agent or polling agent attending a polling station or any person attending at the counting of votes is guilty of an offence punishable with imprisonment for a term which may extend to <sup>2</sup>[five years and shall not be less than one year and also with fine] if he-

- (1) fails to maintain or aid in maintaining the secrecy of voting;
- (2) Communicates, except for any purpose authorised by any law, to any person before the poll is closed any information as to the official mark; or
- (3) communicates any information obtained at the counting of votes as to the candidate for whom any vote is given by any particular ballot paper.

84. A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other officer or clerk performing any duty In connection with an election, or any member of a police force, is guilty of an offence punishable with imprisonment for a term which may extend to <sup>4</sup>[five years and shall not be less than one year, and also with fine], if he, in the conduct or management of an election or maintenance of order at a polling station,-

- (1) persuades any person to give his vote;
- (2) dissuades any person from giving, his vote;
- (3) influences in any manner the voting of any person; or
- (4) does any other act calculated to influence the result of the election.

85. A Returning Officer, Assistant ,Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other person employed by any such officer in connection with his official duties imposed

<sup>1</sup> Semicolon was substituted for the full-stop at the end and thereafter sub-clause (f) was added by 2001 m̄bi 57bs AṽBb, s. 34.

<sup>2</sup> Substituted by Act X of 1991, for "imprisonment for a term which may extend to two years or with fine which may extend to Taka one thousand, or with both" (w.e.f 6-1-1991)

<sup>3</sup> Substituted, *ibid.*, s. 13 "six months" or with fine which may extend to Taka five hundred, or with both" (w.e.f. 6-1-1991)

<sup>4</sup> Substituted, *ibid.*, s. 15 "six months" or with fine which may extend to Taka five hundred, or with both" (w.e.f. 6-1-1991)

by or under this Order, is guilty of an offence punishable <sup>1</sup>[with imprisonment for a term which may extend to one year, or with fine which may extend to Taka five thousand, or with both], if he wilfully and without reasonable cause, commits breach of any such official duty by act or omission.

86. A person in the service of Bangladesh is guilty of an offence punishable with imprisonment for a term which may extend to five years and shall not be less than one year, and also with fine], if he, misuses his official position in a manner calculated to influence the result of the election.

<sup>2</sup>[87. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, a member of any law enforcing agency performing any duty in connection with an election -

- (a) shall have, even if he is not a police officer, the same powers as a police officer has under the said Code for arrest without warrant any person, other than a person performing any duty in connection with an election, who commits an offence under Article 73(2B), (5) And (6). Article 74(2A), (3), (4), (5) and (6), Article 78, Article 79, Article 80, Article 81(1), and Article 82, or for the maintenance of peace, law and order, in the polling station or within a radius of four hundred yards of the polling station, on the polling day, as if he were a police officer;
- (b) shall arrest without warrant any person who commits an offence under any of the Articles mentioned in clause (a), if the Returning Officer or the Presiding Officer so directs;
- (c) may arrest without warrant any person, who being removed from the polling station by the Presiding Officer under Article 30, commits any offence in the polling station;
- (d) may remove any notice, sign, banner or flag used in contravention of Article 79;
- (e) may seize any instrument or apparatus used in contravention of Article 80; and
- (f) may take such steps, including use of force, as may be reasonably necessary for the exercise of his powers and performance of his duties under this Article.]

<sup>3</sup>[87 A. (1) Any police officer, or any other member of a law enforcing agency performing any duty in connection with an election, shall remove or cause to be removed, or direct the removal of, whenever or wherever he comes to know about it or it comes to his notice, any-

- (a) multi-coloured poster or portrait of a candidate or the poster or symbol of a candidate which is bigger than the size prescribed or specified by the Commission;
- (b) gate, arch or barricade erected for a candidate;
- (c) pandal of a candidate covering an area, of more than four hundred square feet;
- (d) <sup>4</sup>[\*\*\* \*\*\*]
- (e) micro-phone or loudspeaker used by a candidate in excess of three in number in a constituency at any given time;
- (f) election camp or office of a candidate in excess of one in a union, or in a ward of a municipality or city or in excess of one central camp or office in a constituency;
- (g) illumination as part of election campaign of a candidate by use of electricity in any form; and
- (h) writing in ink or paint or in any other manner whatsoever as a means of advertisement for a candidate in any wall, building, pillar, bridge, vehicle or vessel, or in any other place or object not belonging to the candidate or not meant for such advertisement.

(2) If a police officer or any other member of a law enforcing agency fails or neglects to take action under clause (1), without any reasonable cause, he shall be deemed to be guilty of inefficiency or misconduct and his appointing authority shall, on being requested to do so by the Commission or the Returning Officer, take appropriate disciplinary action against him and inform the Commission or the Returning Officer, as the case may be, about the action so taken, and shall note the action in the relevant service record.

(3) A Returning Officer or an Assistant Returning Officer may direct any police officer, or any other member of a law enforcing agency performing any duty in connection with an election, to remove, within such time as he may specify, any matter, thing or article which is liable to be removed under clause (1), and such police officer or member of the law enforcing agency shall take prompt action in accordance with such direction and report compliance to the Returning Officer and the Assistant Returning Officer; and if such police officer or

<sup>1</sup> Substituted *ibid.*, s. 16 for "with fine which may extend to Taka five hundred" (w.e.f. 6-1-1991)

<sup>2</sup> Substituted by 2001 m̄bi 57bs AvBb, s. 35, for Article 87.

<sup>3</sup> Inserted by 2001 m̄bi 57bs AvBb, s. 36.

<sup>4</sup> Deleted by Representation of the People (Amendment) Ordinance, 2008.



- (a) fulfil one of the following conditions, namely-
  - (i) secured at least one seat with its electoral symbol in any parliamentary election held since the independence of Bangladesh; or
  - (ii) secured five percent of total votes cast in the constituencies in which its candidates took part in any of the aforesaid parliamentary elections; or
  - (iii) established a functional central office, by whatever name it may be called, with a central committee and district offices in at least ten administrative districts and offices in at least fifty Upazilas or Metropolitan Thanas; and

(b) in addition to complying with the terms and conditions referred to in clause (1), shall have the following specific provisions in its constitution, namely-

- (i) to elect the members of the committees at all levels including members of the central committee <sup>1</sup>;
- (ii) to fix the goal of reserving at least 33% of all committee positions for women including the central committee and successively achieving this goal by the year 2020;
- (iii) to prohibit formation of any organization or body as its affiliated or associated body consisting of the teachers or students of any educational institution or the employees or labourers of any financial, commercial or industrial institution or establishment or the members of any other profession;
 

Explanation:- Nothing shall be construed to prevent (a) the teachers, students, employees or labourers from organizing independently in their respective fields or forming association, society, trade union etc. and exercising all democratic and political rights; and (b) individuals, subject to the provisions of the existing laws, to be a member of any political party.
- (iv) to finalize nomination of candidate by central parliamentary board of the party from the panels prepared by members of the Ward, Union, Thana, Upazila or District committee, as the case may be, of concerned constituency.

(2) If an independent member of parliament joins any unregistered political party, the fact of his joining alone shall not qualify that party for registration with the Commission.

<sup>2</sup>[(3) \*\*\* \*\*\*)

90C. (1) A political party shall not be qualified for registration under this Chapter, if-

- (a) the objectives laid down in its constitution are contrary to the Constitution of the People's Republic of Bangladesh; or
- (b) any discrimination regarding religion, race, caste, language or sex is apparent in its constitution; or
- (c) by name, flag, symbol or any other activity it threatens to destroy communal harmony or leads the country to territorial disintegration; or
- (d) there is any provision in its constitution for the establishment or operation of any office, branch or committee outside the territory of Bangladesh.

(2) No political party shall be registered under a name, under which another political party has already been registered:

Provided that where more than one party apply for registration <sup>3</sup>[with] the same name and no party has already been registered under such name, the Commission may, after giving the parties reasonable opportunity of being heard, register any of the parties with such name.

(3) The Commission shall not register any party banned by the Government.

90D. Any political party complying with the conditions laid down in Article 90A <sup>4</sup>[, Article 90B and not disqualified under Article 90C] may apply for registration in the prescribed manner under the signature of its Chairman and General Secretary or any other person holding equivalent ranks <sup>5</sup>[:

Provided that the Commission may allow any political party to apply for registration which has a provisional constitution containing provisions as specified under sub-clauses (b)(i), (b)(ii), (b)(iii) and (b)(iv) of clause (1) of Article 90B as well as complying with the provisions under Article 90C along with a resolution of the highest policy-making body of the party, by whatever name it may be called to the effect that the party shall submit a ratified constitution within six months from the date of first

<sup>1</sup> The words "as laid down in the constitution" were deleted by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>2</sup> Clause (3) was deleted by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>3</sup> The word "with" was substituted for the word "which" by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>4</sup> These were added by Representation of the People (Second Amendment) Ordinance, 2008.

<sup>5</sup> This proviso was added by Representation of the People (Second Amendment) Ordinance, 2008.

sitting of the ninth parliament.]

90E. (1) The Commission shall, after taking a decision to register a political party, issue a registration certificate in the prescribed form and shall publish it in the Official Gazette.

(2) If the application for registration of a political party is rejected, the Commission shall, within seven working days, inform the concerned party of its decision in writing.

(3) The decision on registration by the Commission shall be final.

90F. (1) Subject to the provision of clause (2), a registered political party shall be entitled to-

(a) receive donation or grants from any person, company, group of companies except the sources mentioned in clause (1) of Article 44CC:

Provided that such amount of donation or grants shall not exceed the following limits, in a calendar year-

- (i) in the case of a person, taka five lakh or property or service equivalent to it;
- (ii) in the case of a company or organization, taka twenty five lakh or property or service equivalent to it;
- (b) one of the prescribed symbols for all the candidates set up by it in any election under this Order or rules according to the preference indicated by it and the symbols so allotted shall be kept reserved for it, unless it indicates its preference for any other prescribed symbol available;
- (c) one set of electoral rolls in compact disk (CD) or digital versatile disk (DVD) or any other electronic format free of cost;
- (d) broadcasting and telecasting facilities in the state-owned media during the general election to Parliament according to the principles and guidelines prescribed by the Commission; and
- (e) be consulted with by the Commission in respect of any matter relating to election, particularly problems of and measures for holding election fairly, peacefully and in accordance with this Order and rules.

(2) No registered political party shall receive any gift, donation, grant or money from any other country, or non-government organization or from any person who is not a Bangladeshi or any organization established or maintained by such person.

90G. A registered political party shall inform the Commission in the prescribed manner about the compliance of the provisions in clause (1)(b) of Article 90B.

90H. (1) The registration of a political party may be cancelled for any one of the following reasons, namely-

- (a) if the party is declared dissolved according to the constitution of the party by the highest decision making body, by whichever name it is called, or an application is made to the Commission along with the minutes for dissolution of the party under the signature of the chairman and general secretary of the party or any other person holding equivalent rank;
- (b) if the political party is declared banned by the Government;
- (c) if the political party fails to provide any information under this Order and rules to the Commission for three consecutive years;
- (d) if the political party violates any provision of clause (1)(b) of Article 90B; or
- (e) if the political party does not participate in the parliamentary elections for two consecutive terms.

(2) The Commission shall, prior to cancellation of registration under clauses (c), (d) and (e), give the concerned political party an opportunity of being heard in the prescribed manner.

(3) No political party shall be registered in the name of a political party which has been declared dissolved.

(4) The name of the dissolved and cancelled political parties shall be published in the Official Gazette.

90I. If a registered political party is aggrieved by an order of cancellation of registration by the Commission, it may prefer an appeal to the High Court Division.]]

## CHAPTER VII-MISCELLANEOUS

<sup>1</sup>[91. <sup>2</sup>\* \* \*- Save as otherwise provided, the Commission may-

<sup>1</sup> Articles 91 and 91A were substituted for the former Article 91 by Act XXIII of 1994, s. 17

<sup>2</sup> The words, comma and full-stop "Commission to ensure fair election, etc." were omitted by 2001 m̄bi 57bs AṽBb, s. 40.

- (a) Stop the polls at any polling station <sup>1</sup>[or entire constituency, as the case may be,] at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under this Order or the rules, including rejection or acceptance of a ballot paper; and
- (c) issue such instructions and exercise such powers, and make such consequential orders as may, in its opinion, be necessary for ensuring that an election of any polling station is conducted impartially, justly and fairly, and in accordance with the provisions of this Order and the rules.

91A. (1) <sup>2</sup>\* \* \*: The Commission shall establish a Committee to ensure the prevention and control of pre-poll irregularities, to be known as the Electoral Enquiry Committee, hereinafter referred to as "the Committee".

(2) <sup>1</sup>\* \* \*: The Committee shall consist of such number of persons as may be determined by the Commission from amongst the Judicial Officers.

(3) <sup>1</sup>\* \* \*: The Committee shall, on the basis of information received by it, or complaints made to it, or on its own initiative, inquire into any matter or situation which in its view may constitute an offence under this order, or <sup>2</sup>[any pre-poll irregularity including any situation or matter which, in its opinion, may involve], by any person whatsoever, as an act or omission constituting intimidation, obstruction, coercion, or the publication of false information, or any other act or omission intended to or actually resulting in the obstruction or frustration of the preparation for, or the conduct of, free and fair election in accordance with this order and the rules.

(4) <sup>1</sup>\* \* \*: In performing its functions under this order, and subject to the direction of the Commission, the Committee may conduct any inquiry as it deems necessary before the election is over.

(5) <sup>1</sup>\* \* \*: The Committee, in conducting such inquiry, shall have the right to:

- (a) require, in writing, any person to appear before it and give evidence under oath or affirmation to it; and
- (b) require, in writing, any person to produce any documents or objects under his control to it.

(6) <sup>3</sup>\* \* \*: <sup>4</sup>[(6) After conducting an inquiry, the Committee shall inform the Commission within three days of the inquiry and may make a recommendation which may include-

- (a) proposals for any order, directive or instruction to be made by the Commission to any person responsible for any act to stop such act forthwith; or
- (b) in the case of any omission, to perform any specific act, including, if necessary, the appropriate correction of any false information.]

<sup>5</sup>[(6a) After receiving the recommendation under clause (6), the Commission may issue necessary order or instruction to the concerned person, or registered political party to implement the recommendation.

(6b) Where, any order or instruction is issued under clause (6a), the concerned person or registered political party shall carry out the same instantly.

(6c) In the event of non-compliance of an order or instruction made under clause (6a), the Commission may impose a fine not exceeding taka one lakh but not less than taka twenty thousand upon the concerned person or registered political party.]

<sup>6</sup>[(7) The Commission shall, for the purpose of clause (1), specify the acts and omissions which shall be deemed to be pre-poll irregularities and shall publish them in the official Gazette or in such other manner as it deems fit.

(8) Any proceeding before the Committee shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code (Act XLV of 1860).

(9) The committee shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of enforcing the attendance of any person and examining him on oath or affirmation and compelling the production of documents and material objects.]

<sup>1</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>2</sup> The marginal headings of clauses (1), (2), (3), (4), (5) & (6) were omitted by 2001 mibi 57bs A/Bb, s. 41(K).

<sup>3</sup> Omitted by 2001 mibi 57bs A/Bb, s. 41.

<sup>4</sup> Substituted by Representation of the People (Amendment) Ordinance, 2008.

<sup>5</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

<sup>6</sup> Added by Act XIII of 1996 (w.e.f. 25-4-1996)

<sup>1</sup>[91B. (1) The Commission may, for the purpose of ensuring free and fair election, formulate a Code of Conduct not inconsistent with the provisions of this Order.

(2) Violation of any provision of the Code of conduct shall be deemed to be a pre-poll irregularity within the meaning of article 91A.]

<sup>2</sup>[91C. (1) The Commission may permit in writing any person, whether national or foreign, as an election observer who is in no way associated with, or affiliated to, any political party or contesting candidate and who is not known for his sympathy, direct or indirect, for any particular political ideology; creed or cause or for any manifesto, program, aims or object of any political party or contesting candidate.

(2) An election observer may, in accordance with the guidelines issued by the Commission, observe any poll by staying near about any polling station or entering into, with the permission of the Presiding Officer, any polling booth or polling station or by being present at the counting of votes or consolidation of the results of the count.

(3) No election observer shall be allowed to observe the poll as aforesaid, unless he displays the permit of the Commission bearing his name, nationality and photograph attested by the Commission.

(4) An election observer may be asked by any Returning Officer or Presiding Officer to leave any constituency or polling station, if he is found indulging in any activities not befitting any neutral election observer' or interfering with the polling process or with the work of the election authorities in any manner.

(5) Any action taken under clause (4) shall be reported to the Commission forthwith.

(6) An election observer may submit a report to the Commission or the Returning Officer on his observation about the fairness or otherwise of the poll, discipline and situation inside and outside the polling station, counting of votes, consolidation of the results of the count, compliance with the provisions of this Order or the rules or the Code of Conduct, or on any other matter relating to election.

(7) Notwithstanding any thing contained in this Order the Commission or the Returning Officer, as the case may be. may consider the report of an election observer along with any other report submitted or sent to it or him under this Order at the time of taking any decision under any provision of this Order in respect of any matter on which the report of the observer has any bearing.

91D (1) The Commission, while making an enquiry under any provision of this Order, shall have, for the purposes of such enquiry, all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath.
- (b) requiring the discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavit
- (d) requisitioning any public record or any copy thereof from any court or office;
- (e) issuing commission for examination of witness or documents.

(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code (XLV of 1860).

(3) The Commission shall be deemed to be a civil court within the meaning of sections 476, 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(4) The Commission shall have the power to regulate its own procedure.

(5) Any person holding an enquiry under any provision of this Order under the authority or direction of the Commission shall have the same powers as are vested in the Commission under this Article.]

<sup>3</sup>[91E. (1) Notwithstanding anything contained in this Order or rules, if it appears to the Commission on receiving an information from any source or any verbal or written report that, any contesting candidate or his agent or any other person on his behalf, by his order or under his direct or indirect consent, engages or attempts to engage in any serious illegal activity or violates or attempts to violate any provision of this Order or rules or Code of Conduct for which he may be disqualified to be elected as a member, the Commission may pass an order for an investigation of the matter giving the contesting candidate a reasonable opportunity of being heard.

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<sup>1</sup> Inserted, *ibid*

<sup>2</sup> Inserted by 2001 m̄bi 57bs AvBb, s. 42.

<sup>3</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.

(2) After receiving the investigation report under clause (1), if the Commission is satisfied that, the report was true, the Commission may, by a written order, with appropriate reasons assigned, cancel the candidature of such candidate and in that event the election shall be held among the other contesting candidates of the concerned constituency; and where only one person remains as a contesting candidate because of cancellation of candidature of the other contesting candidate, election shall be held under Article 17 for that constituency.

(3) Any order made under clause (2) shall be sent to the concerned candidate or his election agent by hand or by fax or by courier service or by any other quickest possible means.

(4) The order made under clause (2) shall immediately be sent to the Returning Officer, Presiding Officer and other contesting candidates and the political party that has nominated such candidate.

(5) The order made under clause (2) shall be notified in the Official Gazette and in any other manner which the Commission thinks fit.]

92. No court shall question the legality of any action taken in good faith by or under the authority of, the Commission, a Returning Officer, Presiding Officer or an Assistant Presiding Officer or any decision given by any of them or by any other officer or authority appointed under this Order or the rules.

93. No suit, prosecution or other legal proceeding shall lie against the Commission or any officer or other person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Order or of any rule or order made or any direction given thereunder.

<sup>1</sup>[93A. The Government may provide the contesting candidates or the political parties which have nominated them as candidates with such facilities as it deems fit for the purpose, of ensuring a fair election.]

<sup>2</sup>[94. The Commission may, by notification in the official Gazette, make rules for carrying out the purpose of this Order.]

<sup>3</sup>[94A. The Government may, by notification in the Official Gazette, publish an authentic text in Bangla of this Order.]

95. The following laws are hereby repealed-

- (1) The National and Provincial Assemblies (Election) Ordinance, 1970 (XIII of 1970).
- (2) The Legal Frame Work Order 1970 (P.O. No.2 of 1970).

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<sup>1</sup> Article 93A was inserted by Ordinance No. LII of 1978.

<sup>2</sup> Substituted by 2001 m̄bbi 57bs AıBb, s. 43.

<sup>3</sup> Inserted by Representation of the People (Amendment) Ordinance, 2008.