

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

THE LAW COMMISSION

- SUBJECT-

**REPORT ON VOTING RIGHTS OF CITIZENS OF BANGLADESH RESIDING
OUTSIDE THE COUNTRY**

OFFICE OF THE LAW COMMISSION

OLD HIGH COURT BUILDING

DHAKA-1000

FEBRUARY 22, 2001

Preface

On a reference from the Government the Law Commission examined a proposal sent to the Hon'ble Prime Minister of Bangladesh by the Hon'ble Speaker of the Bangladesh Jatiya Sangshad for conferring voting right on the Bangladeshi citizens residing outside the country.

After examining the relevant laws and other aspects the Commission has prepared its report.

Ikteder Ahmed
Secretary
Law Commission

Report on voting rights of citizens of Bangladesh residing outside the country

This is a reference by the Government under section 6 (Ena) of the Law Commission Act, 1996, under Memo. No. 188- আইন Dated 15.02.2001 of the Ministry of Law, Justice and Parliamentary Affairs.

The relevant portion of the letter of reference runs as follows:-

“বিষয়ঃ প্রবাসী বাংলাদেশী নাগরিকদের ভোটাধিকার প্রদান প্রসঙ্গে।

সূত্রঃ (১) প্রধানমন্ত্রীর কার্যালয়ের পত্র সংখ্যা ৫২-৩১, ১৬০০, ০২, ৯৯-১৮ (২)

তারিখঃ ২৯/০১/২০০১ ইং এবং

(২) মাননীয় স্পীকার, বাংলাদেশ জাতীয় সংসদ এর পত্র নং স্পীকার - ৩/২০০১ (০৫)

তারিখঃ ১৪-০১-২০০১*ইং।

উপরোক্ত বিষয়ে মাননীয় স্পীকারের পত্রটি এতদসঙ্গে প্রেরণ পূর্বক নির্দেশক্রমে নিম্নবর্ণিত বিষয়ের উপর সুপারিশ/মতামত প্রদানের উদ্দেশ্যে কমিশনের নিকট পেশ করার জন্য অনুরোধ জানাইতেছি-

বিবেচনা ও সুপারিশের বিষয়ঃ

প্রবাসী বাংলাদেশী নাগরিকদের ভোটাধিকার প্রদান সমীচীন কিনা এবং সমীচীন হইলে এতদ্বিষয়ে কি কি পদক্ষেপ নেওয়া উচিত?

১৫/০২/২০০১
(নাসরিন বেগম)
উপসচিব”

The letter of the Hon'ble Speaker of Bangladesh Jatyia Sangsad which gave rise to the above reference need not be quoted in verbatim. Suffice it to say, in the above letter addressed to the Hon'ble Prime Minister of Bangladesh, the Hon'ble Speaker requested her to take steps for enrolment of all citizens of Bangladesh residing outside Bangladesh as voters in the electoral rolls prepared by the Election Commission.

By the reference in question the Government have sought opinion/recommendation on two points which are as follows:-

- (1) Whether it will be proper to confer the right to vote on Bangladeshi citizens residing outside Bangladesh?
- (2) What steps are required to be taken if it is found proper to confer the right to vote on Bangladeshi citizens residing outside Bangladesh?

So far as the first point is concerned, the Law Commission feels that it is not desirable to deprive a citizen of his right to vote merely because he is resident outside the country. So, the Commission is of opinion that every eligible citizen, irrespective of whether he is resident in Bangladesh or outside Bangladesh, should be entitled to vote for electing the members of the Parliament and other representative bodies in accordance with law. Consequently, all citizens who are resident outside Bangladesh should be enrolled as voters in the respective electoral rolls provided they are not otherwise disqualified by law.

Regarding the second point, Article 122 of the Constitution which lays down the qualifications for registration as voters should be referred to:-

“122. (1) The elections to Parliament shall be on the basis of adult franchise.

(2) A person shall be entitled to be enrolled on the electoral roll for a constituency delimited for the purpose of election to the Parliament, if he-

(a) is a citizen of Bangladesh;

(b) is not less than eighteen years of age;

(c) does not stand declared by a competent court to be of unsound mind; and

(d) is or is deemed by law to be a resident of that constituency.

For our present purpose, sub-clause (d) of clause (2) of Article 122 of the Constitution is relevant. Since the word, “resident”, means “a permanent inhabitant”, “a person who dwells permanently” etc., a citizen, in order to be eligible to be registered as a voter in the electoral roll of a constituency, must be actually a permanent inhabitant of that constituency or *must be deemed by law* to be a resident i.e. a permanent inhabitant of the said constituency. Section 8 of the Electoral Rolls Ordinance, 1982 (Ordinance No. LXI of 1982) provides the deeming clause as contemplated in sub-clause (d) of clause (2) of Article 122 of the Constitution as follows:- “8 Meaning of resident.- (1) Save as hereinafter provided, a person shall be deemed to be resident in an electoral area or constituency if he ordinarily resides in that electoral area or constituency.

(2) A person who is in Government service or holds any public office, shall, unless he otherwise indicates in writing to the Registration Office, be deemed to be resident in the electoral area or constituency in which he would

have been resident if he had not been in such service or had not held such office.

(3) The spouse of any such person as is referred to in sub-section (2) and such of his or her children as are entitled to be enrolled shall, if they ordinarily reside with such person, be deemed to be resident in the electoral area in which such person is deemed to be resident under that sub-section.

(4) A person who is detained in prison or other legal custody at any place in Bangladesh shall be deemed to be resident in the electoral area or constituency in which he would have been resident if he had not been so detained.”

Sub-clause (d) of clause (2) of Article 122 of the Constitution excludes a citizen from registration as a voter in a constituency if he is not a resident of the constituency or is not deemed by any law to be a resident of the said constituency. Section 8 of the Electoral Rolls Ordinance, 1982, does not cover a citizen who resides outside Bangladesh. So, a citizen of Bangladesh who is a resident in any country outside Bangladesh cannot be registered as a voter in any constituency or any electoral area in Bangladesh in view of sub-clause (d) of clause (2) of Article 122 of the Constitution read with section 8 of the Electoral Rolls Ordinance, 1982. In order to make such citizens eligible for registration as voters appropriate law will be required.

It has, however, to be considered whether Bangladesh has the logistics to make arrangements for providing the citizens residing outside Bangladesh proper facilities for casting their votes, if they are enrolled as voters.

Recommendations

We, accordingly, make the following recommendations:-

- (1) It will be proper to register all citizens of Bangladesh who are residents outside Bangladesh as voters in the relevant electoral rolls if they are not otherwise disqualified.
- (2) If it is decided to register the citizens of Bangladesh who are residents outside Bangladesh as voters, the purpose can be achieved by suitable amendment of section 8 of the Electoral Rolls Ordinance, 1982. (Ordinance No. LXI of 1982).

N. Ahmed

Justice Naimuddin Ahmed
Member
Law Commission

22-2-2001

B.B. Roy Choudhury

Justice B.B. Roy Choudhury
Member
Law Commission

K. Hossain

Justice Kemal Uddin Hossain
Chairman
Law Commission