THE CONSTITUTION (SECOND) AMENDMENT ACT, 1961

[Act No. VII of 1961.]
(The 25th March 1961)

It is hereby enacted as follows:-

1. (1) This Act may be called the Constitution (Second) Amendment Act, 1961.

(2) It shall come into force on such date as the President may, by notification, appoint.

2. In Chapter VI of the Constitution, the following shall be inserted as Part VI, namely:-

"Part VI - ELECTIONS"

113A. The superintendence, direction and control of the preparation of the electoral rolls for all elections and of the conduct of elections of the Parliament and without prejudice to the provisions of the Constitution or the rules of procedure for both Chambers of Parliament or the provisions contained in the Election of the President of Union Act, 1949, the conduct of elections under any other law, shall be vested in the Election Commission constituted under section 113 B.

113 B. (1) There shall be constituted an Election Commission, which shall consist of the Chief Election Commissioner and other Election Commissioners not exceeding four in number, appointed by the President by an order under his hand and seal, with the approval of both Chambers of Parliament in joint sitting.

(2) If at any time during which the Parliament is dissolved it is necessary so to do, it shall be lawful for the President to appoint the Chief Election Commissioner and other Election Commissioners, subject, however, to the approval and confirmation being obtained for such appointment of both Chambers in joint sitting of the next Parliament at its first session.

(3) No discussion shall take place in the Parliament with respect to the appointment of the Chief Election Commissioner and Election Commissioners under sub-sections (1) and (2).

(4) The Chief Election Commissioner shall act as the Chairman of the Election Commission.

(5) The other Election Commissioners shall take precedence according to the seniority of their appointment in the Election Commission.
113 C. (1) Every person appointed under section 113 B as Chief Election Commissioner or Election Commissioner shall make and subscribe the following declaration:

'I .................. do solemnly and sincerely promise and declare that I will duly and faithfully to the best of my knowledge and ability execute the office of the Chief Election Commissioner (or Election Commissioner as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws."

(2) The declaration shall be made and subscribed by every member of the Election Commission in the presence of the Chief Justice of the Union or the senior available Judge of the Supreme Court.

(3) The declaration shall be made and subscribed by every member of the Election Commission before entering upon his office as such member.

(4) Any member of Election Commission who declines or neglects to make and subscribe such declaration as aforesaid, shall be deemed to have declined to accept the appointment.

113 D. All members of the Election Commission shall be independent in the exercise of their functions and subject only to this Constitution and the laws.

113 E. A person shall not be qualified for appointment as a member of the Election Commission unless he is a citizen of the Union who was or whose parents were born in any of the territories included within the Union, or unless he has been for at least five years a citizen of the Union.

113 F. (1) A member of the Election Commission may by resignation under his hand addressed to the President resign his office.

(2) A member of the Election Commission shall not be removed from office except for proved misbehaviour or incapacity.

(3) The charge shall be preferred by either Chamber of Parliament subject to and in accordance with the provisions of this section.

(4) A proposal to either Chamber of Parliament to prefer a charge under this section shall not be entertained except upon a notice of resolution signed by not less than one-fourth of the total membership of that Chamber.
(5) No such proposal shall be adopted by either Chamber of Parliament save upon a resolution of that Chamber, supported by a majority of the members present.

(6) The charge shall be investigated by a Special Tribunal consisting of the Chief Justice of the Union, the Speaker of the Chamber of Nationalities and the Speaker of the Chamber of Deputies.

(7) The member of the Election Commission against whom the charge is preferred shall have the right to appear and to be represented at the investigation of the charge.

(8) The Special Tribunal shall, after investigation, submit its report to the Chamber by which the charge was preferred. The finding of the Special Tribunal declaring that the charge has not been proved, if unanimous, shall be final. But in all other cases, the report of the Special Tribunal shall be considered by both Chambers of Parliament in joint sitting.

If, after consideration, a resolution be passed supported by a majority of the members present and voting at the joint sitting declaring that the charge preferred against the member has been proved and that the misbehaviour was, or incapacity is, such as to render him unfit to continue in office, the President shall forthwith by and order under his hand and seal remove from office the member to whom it relates.

113 G. Neither the salary of member of the Election Commission nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment, unless he voluntarily agrees to any reduction in his salary in the event of general economy and retrenchment in relation to all the services of the Union.

113 H. The Parliament may make provision by an Act for conferring upon the Election Commission such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Election Commission more effectively to exercise the power conferred upon it by or under this Constitution.

113 I. Subject to the foregoing provisions of this Constitution relating to the Election Commission, the Chief Election Commissioner and other Election Commissioners, the following matters shall be regulated in accordance with law:

(a) the remuneration, age of retirement and pension of the Chief Election Commissioner and Election Commissioners; and
(b) the distribution of the Election Commission’s business, its powers and all matters of procedure.

113 J. Until provision is made by any specific Act or rules, the preparation of the electoral rolls for all elections, the conduct of elections to the Parliament and, without prejudice to the provisions of this Constitution or the rules of procedure for both Chambers of Parliament or the provisions contained in the Election of the President of the Union Act, 1949, the conduct of elections under any other law shall be undertaken under the superintendence, direction and control of the Election Commission, subject to the existing laws.”