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সোনারগাঁও ইউনিভার্সিটি (এসইউ)

**Research Monograph**

**On**

# INDEPENDENCE OF THE ELECTION COMMISSION UNDER THE CONSTITUTIONAL MANDATE AND OTHER STATUTORY PROVISIONS BANGLADESH PERSPECTIVE

**A Research Submitted to the Department of Law Sonargaon University in Partial fulfillment of the Requirements for the LL.M (1year)**


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## Letter of Tranmittal

**To**

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**Subject:** Submission of Research Monograph on "**INDEPENDENCE OF THE ELECTION COMMISSION UNDER THE CONSTITUTIONAL MANDATE AND OTHER STATUTORY PROVISIONS BANGLADESH PERSPECTIVE"**

**Dear Sir,**

This is a great pleasure to submit the Research Monograph on "**INDEPENDENCE OF THE ELECTION COMMISSION UNDER THE CONSTITUTIONAL MANDATE AND OTHER STATUTORY PROVISIONS BANGLADESH PERSPECTIVE**" as a partial requirement for the fulfillment of LL.M (1year) under the Department of Law of the Sonargaon University (SU).

I have given due efforts to this Research Monograph as faithful and informative as possible. I hope that this paper will not be the formality of academic course completion, rather it will be a good source of information for future research on this topic.

Yours Sincerely

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(I)

## Declaration

I am fully aware that I have an obligation to make it clear to the assessor as to which is my own work and which is the work of others I will be citing in my paper. Unless, I clearly indicate otherwise, my assessor is entitled to assume that everything being presented in the paper originates from me.

**Signature**

## Supervisor's Certificate

This is to certify that the work presented in this dissertation is based on the work carried out by the author herself under my supervision in the Department of Law, Sonargaon University (SU).

It is also certified that the work presented here is original and suitable for submission in terms of its style and contents for fulfillment of LL.M(1year) Program.

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## Acknowledgement

**"In the name of God, the Beneficent, the Merciful"**

All praise be to Almighty God for enabling me to finish this Research Monograph. I am very happy to complete it. It is a great research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of law in Sonargaon University (SU) to fulfill my dream. But through ought my whole academic life in this field, I did not get mach opportunities to examine and show my knowledge and skill in this wide field. Finally I hope got a great opportunity to make my study meaningful when I got the chance to prepare a Research Monograph on "**INDEPENDENCE OF THE ELECTION COMMISSION UNDER THE CONSTITUTIONAL MANDATE AND OTHER STATUTORY PROVISIONS BANGLADESH PERSPECTIVE".**

**I express my sincere thanks to Abdul Alim,** Lecturer, Department of Law, Sonargaon University for his guidance, advice, help throughout the entire course and specifically when acting as my supervisor for this research.

I am also thankful to my classmate as they helped or assist me to complete the Research Monograph. I am extremely thankful to all the authors and writers whose works helped me to draft this original Research Monograph.

Lastly, I thank the Almighty for being always there for me.

**Abastract**

In a democratic state, good governance depends on the electoral system of the country. Without a transparent and participatory election, democracy cannot be ensured, resulting in severe violations of basic human rights and increased corruption. Moreover, the abuse of power by law enforceable agency and the independence of the judiciary begin to erode, leading to a lack of good governance at every level. For a transparent, fair, and participatory election, an independent election commission is necessary which will be acceptable to every political party and the public. And it requires specific laws to be implemented because if a commission is formed without law, it is likely to be questioned.

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# Chapter One

## 1.1 Introduction

The foundation of strong democracy, in any type of society, is the process of choosing people's representative who would speak for them in appropriate forum i.e. Parliament and elsewhere. The only process through which people can choose their representatives in a transparent manner and in keeping with the essence of democracy is through election arranged by Electoral Management Body (EMB), commonly known as Election Commission. People have to have confidence in EMB as an institution and the transparency and efficiency of the processes adopted by it. If the popular confidence is lacking both in the electoral processes and in the EMB as an institution, neither the election results would be acceptable to the people nor democracy would flourish in a society, be it developed or developing countries.

Democracy seemed likely to take root when Bangladesh emerged from a long period of military authoritarianism in December 1990, especially after a new constitution in 1991 replaced autocratic presidential rule with a parliamentary system. Since then, however, Bangladesh has been struggling to foster a democratic political culture amid frequent disputes over the rules of the game.

Therefore, the Election Commission should be strong and natural for giving free and fair election. The universal use of elections as a tool for selecting representatives in modern democracies is in contrast with the practice in the democratic archetype, ancient Athens. As the Elections were considered as an oligarchic institution and most political offices were filled using satiation, also known as allotment, by which officeholders were chosen by lot. One of the most important parts of these elections is that everyone gets a fair and equal vote. Another important part of an election is that the voters have a choice in what they're voting on. Voting is an excellent way to give people a choice in the decisions that will affect them, which is why people have been using systems of elections for thousands of years.

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[1] Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers Book,3rd edn,2012)

[1] Ibid

[1] Mahmud A Hakim, *Bangladesh Politics: The Shahabuddin Interregnum* (University Press, 1993)

## 1.2 Statement of the Problem

Elections have been the usual mechanism by which modern representative democracy has operated since the 17th century. Election commission reform describes the process of introducing fair electoral systems where they are not in place, or improving the fairness or effectiveness of existing systems. The main motive of the Election Commission is to direct the countries election at any tune and to help to the free and fair election of the parliament in the absence of caretaker government. The Election Commission system in Bangladesh is a form of Commission system by which the countries is ruled during an interim period between the removal of an old government and takeover of a newly elected government the Election Commission comes into force when any Election is needed. The main objective of the Election Commission is to create an environment in which an election can be held in a free and fair manner. One head of the Election Commission who is called chief Election Commission is selected by the president from constitutional fixed person and the chief Election Commissioner and other Election Commissioner shall be elected by the president.

## 1.3 Research Question

This Research paper focuses and tries to answer the following question:

a) How effective Election Commission for holding a free, fair and impartial election?

## 1.4 Rationale of the study

Effective participation by the people in electing their representatives is the main essence of democracy. The basic principles of democracy, norms, decency and conscious are that the government will command the support of and draw its majority people of the country. The success of the democratic process requires free and fair elections which accurately reflect the intent of the electorate through Election Commission. Therefore it is the unique role of election commission to serve as gatekeepers of democracy. Election of good government is profoundly concerned with the existence of a free, fair, and stronger vigilant Election Commission which was the cherished vision of the framers of the constitution. There are some barricades against the free flowing of the election commission in Bangladesh. In reality Election Commission has to depend on the government functionaries. The holding of free and fair elections is at the heart of the democratic process and such

kind of elections can only be arranged through the development of credible election administration institution.

### 1.5 Literature review

Islam in his book *constitutional law of Bangladesh* talks about the constitutional status of the Election Commission, its power and functions.[1] How the election of the members of Parliament take place.[2] But he did not discuss in what manner elections will take place and how far the independence of election commission has been ensured.

Hakim in the book *Shahabuddin Interregnum* analyses the up and down of Ershad, Military administration and government, civilianization, the 1991 parliamentary election, and the caretaker government.[3] The book first time tried to discuss our political crisis about the fair election and how this crisis has been solved by the fair election under the caretaker government.

The book by I. Khan *Political Culture, Political Parties, and the Democratic Transition to Bangladesh* is a systematic effort to analyze the failure of democracy that punctuates politics in Bangladesh.[4]

The book was written by Badruddin Umar *Samorik tothabodayak sarkar Mealey Bangladesh* has discussed the recent political activities from the different political fields in the country.[5] It is a report of political news during the military-backed caretaker government.[6] This has been tried to publish the incidents of the military-backed caretaker government. This book has not discussed the process of democratization and the fair election.

Zaglul Haider in his article *parliamentary Democracy in Bangladesh: from Crises to Crises* described democracy and parliamentary system of Bangladesh where government and opposition are always in

[1] Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers Book,3rd edn,2012)
[2] Ibid
[3] Mahmud A Hakim, *Bangladesh Politics: The Shahabuddin Interregnum* (University Press, 1993)
[4] I. Khan ,*Political Culture, Political Parties, and the Democratic Transition to Bangladesh* ( University Press,2008)
[5] Badruddin Umar**,** *Samorik tothabodayak sarkarer amaley Bangladesh* (2009)
[6] Ibid

compromising challenges.[7] There is no trust among the political parties. For that, the credible election is always questionable.[8] The study does not complete the actual problems of the country.

M. Hassan Sarowardy in his work *Peoples Participation in Bangladesh Politics: A Study of Parliamentary Election* analyzes the conflict military intervention, mistrust among the political parties, change and political uncertainty.[9] The thesis is very significant of the present politics of Bangladesh. The study has been tried to discuss the election and the democracy. This study mainly focused on the voter's participation in the election of Bangladesh.

Syed Sarfaraj in his article *Election Commission of Bangladesh: A Legal Study* highlighted that due to political unrest the Election Commission could not be established as an independent institution, defeated party after every election blame election commission for their defeat.

### 1.6 Methodology of the Research

Research methodology is a guideline or system of methods used to conduct the research and methods are the technique to accomplish the collection of information. I have followed both quantitative and qualitative research methodology to conduct my study as quantitative and qualitative investigates the reasons behind problem. To conduct my study secondary data has been searched to clear the understanding and insight the policy. Among the data sources concerned law, relevant policies, Newspaper, NGO reports, magazines, website and other e-sources are most visited. Actually I has been used both secondary and primary data for clear understanding about the election commission of Bangladesh and function of the commission and obstruct to work and also existing Laws of Bangladesh related to Election process. Analysis interpretation a summary of findings is completely on primary data whereas the recommendation and conclusion are based on primary and secondary data due to nature of the study.

[7] Zaglul Haider, '*parliamentary Democracy in Bangladesh: from Crises to Crises'* (vol.42 June1997)
[8] Ibid
[9] M Hassan Sarowardy, *Peoples Participation in Bangladesh Politics: A Study of Parliamentary Election* (2nd end 2010)

## 1.7 Scope and limitation

There are some limitations those I have faced in preparing my research. The main fact is that the limitation reduced the scope of the study. I have found limited information in the books, journals, articles. The main limitation is time binding work. However there are some vital limitations which I had to encounter when I prepared this research monograph, such limitations are:

a) Limited access to resources.
b) Rare access to relevant information
c) Time management
d) A little access to experts for editing, analyzing and guidance.

## 1.8 Thesis structure:

This research paper elaborated the topic of "The Role of an Independent Election Commission to ensure a free, air and impartial election: A critical analysis" into seven chapter. This book has highlighted the importance of solving the problem of Bangladesh Election to holding free and fair election.

**In Chapter Two:** I discussed the post independent history and of Election Commission of Bangladesh.

**In Chapter Three**: I discuss the power and function of election commission and existing laws governing election commission in Bangladesh

**In Chapter Four:** I will discuss the Independence of Election Commission and Obstacles to work.

**In Chapter Five:** I will discuss the comparative analysis and the Major Steps in the Holding of Free, Fair and Impartial Elections.

**In Chapter Six:** I will try concluding my research and submitted my opinion.

# Chapter Two

# Post Independent History of Election Commission

## 2.1 The First Parliamentary Election in Bangladesh

The first national election was held on 7th march 1973 under the Prime Minister Sheikh Mujibur Rahman. In this election, Awami league (Aheikh Mujib) won with an absolute majority (293 out of 300 seats, 73.2% of casting the vote) and formed the representative parliamentary form of government. This time, Awami league (lead by Sheikh Mujib) had the immense popularity and no other strong political parties were to compete in the election.[10] Therefore, the election was free and fair, but not competitive and it was satisfactorily accepted by Bangladeshi people and international communities. On the other hand, the most regrettable incidence happened within two years of elections. The government amended the constitution in January 1975 (4th amendment) and changed the parliamentary system of government into the presidential form of government.[11] The multiparty system was replaced by a single party- the Bangladesh Krishok Sromik Awami league (baksal). As a result, the power of parliament was curtailed and the judiciary lost much of its independence through this amendment of the constitution.

## 2.2 The Second Parliamentary Election

The election to the 2nd Parliament was held on Feb. 28, 1979 with the participation of 2,547 candidates representing 29 parties and independents and there was an objection regarding the conduct of election under the martial law, but all parties were participated there.

## 2.3 The Third Parliamentary Election:

The 3rd parliamentary election was held on May 7, 1986 where a total of 1,980 candidates representing 28 parties and independents contested for 300 seats. The Jatiya Party, led by then

[10] Arefin AS, Samsul M *"Bangladesh Nirbachan 1970-2001"(*Bangladesh Research and Publications,2003)
[11] Siddiki K *Towards Good Governance in Bangladesh-Fifty Unpleasant Essays*. (University Publication,1996)

military ruler Hossain Mohammad Ershad, bagged highest 153 seats while the Bangladesh Awami League won 73 seats in the 1986 elections. Nearly 66.31 percent of the 47,876,979 registered voters exercised their franchise. There was a huge doubt remain in the mind of people regarding the validity of the election. Foreign investigators and observers alleged regarding the crime and ratified the election and the ruling party was subject to liable for all of this.

### 2.4 The Fourth Parliamentary Election

The 4th parliamentary elections were held on March 3, 1988. The number of candidates totaled 1,192 representing 8 parties and independents. [12]This election was won Jatiya Party and got 251 seats. BNP boycotted all elections held under Ershad regime. The Awami League participated in the 1986 parliamentary elections but did not participate in 1988 polls. [13]In this election, a few people casted their vote and government artificial the election and the opposition party named that as an election of coercion and they claimed to be rule out of the illegal government of Ershad also claimed to hold a free, air and transparent election. On December 6,1990, Ershad offered his resignation.[14]

### 2.5 The Fifth Parliamentary Election

The 5th general elections were held on Feb. 27, 1991 with 2,787candidates, representing 75 parties and independents, contested for the 300 seats. The highest 144 seats were bagged by the Bangladesh Nationalist Party (BNP), founded by former president Ziaur Rahman, which formed the government with Khaleda Zia, who joined politics after her husband Ziaur Rahman was assassinated in 1981, as prime minister. [15]The Bangladesh Awami League secured 88 seats to emerge as the main opposition in the parliament while the Jatiya Party of HM Ershad won 35 seats. The turnout was approximately 52 percent of the registered voters totaling 62,289,556 in the 5th elections. [16]Meaning of the Constitution, on 27 February 1991, the election was took place. [17]Observes from England, USA, Japan and others SAARC affiliated country remarked that election wonderfully. The most success hi a parliamentary democracy system lies on a fair election. In 1991, Khaleda Zia won the election by a

[12] The Daily Itefaque, published on 10 June 1988,Pg-l
[13] Ibid
[14] Ibid
[15] Dr. Abul Fajol Haque, *Bangladesher Shason Babostha O Rajnity*,(2nd end, Sumon Law Book Sindikate, 2008)Pg-210
[16] Ibid
[17] Ibid

non-party government under Justice Shahbuddin. It was a general wishes that will be continued in the near future. But that dream was not fulfilled. There was an allegation raised against BNP relating to the casting of vote through misconduct which was appeared in 11 September 1991 where a number of violence, insurgence, and riots had been occurred during the election. This election also shows that the election commission had failed to hold free, air and impartial election.

### 2.6 The Sixth Parliamentary Election

The sixth general election was held in 15 February 1996 and the main opposition party were boycotted such election. In such election, at least 49 candidate was elected uncontested where all of them were the ruling.govt. BNP nominated candidate. [18]The casting vote was 26.54 which was the lowest rate at that time. Many anomalies, chaos, double crossing had occurred in such uncontested election. [19]This election is not accepted by the national and international community. Foreign Journalist of various countries observed this election and they commented that this election was one kind of coercion, fraud and they cannot imagine that politicians can do that in the name of politics. Ruling government has been failed to conduct a free and fair election Indeed how many people casted their vote, there is no way to say that. The election of 15 February spoiled the whole trustworthy of the government of Khaleda Zia and the election commission.[20]

### 2.7 The Seventh Parliamentary Election

In the 7th general elections held on June 12, 1996 under a caretaker government, a total of 2,574 candidates took part. The candidates represented 81 parties and independents. The Bangladesh Awami League formed the government securing 146 seats in the election while the BNP got 116. According to the provision of the 13th amendment of the constitution, the president on 31st march 1996 appointed the former chief justice Md. Habibur Rahman as the chief adviser of the caretaker government. [21]The chief adviser appointed another 10 persons as an adviser on 3rd April 1996. The election commission was also re-structured. Facing the protestation of the people the chief election commissioner resigned from his post. [22]In the vacancy of him, Md. Abu Hena, the member of the

[18] The Bangladesh observer, Published on 16 February 1996,Pg-l
[19] Ibid
[20] Ataus Samad, News of BBC, Published on 17 February 1996
[21] Ibid
[22] Dr. Abu IFajol Haque, *Bangladesher Shason Babostha O Rajnity*,(2nd end, Sumon Law Book ,2008)Pg-220

commission of Planning, was appointed on behalf of him as an Chief election commissioner. On 15 April another 2 members of election commission was appointed. One of them was the former secretariat Abidur Rahman and another was the district judge Mostak Ahmed Chowdhury. [23]The 7th general election was held under the direction of Justice Habibur Rahman. Though the election was fair and transparent and was recognized in either national.

### 2.8 The Eighth Parliamentary Election

The 8th election was obliged to hold within 11 October 2001. Previously, the entire parliament was dissolved before passing the term of 5 years and no government was passed their term in a normal way. The first term of parliament was 32 months, the second parliament was up to 36 months, the third was up to 17 months, the fourth was up to 31 months, the fifth was up to 56 months, and the sixth parliament was up to only 11 days. [24]Former Prime Minister Khaleda Zia by facing the mass protestation of pubic was bound to dissolve the parliament in just 11 days after forming the parliament and was also bound to handover the power to the caretaker government. [25]The 8th general election was held on October 1, 2001. A total number of 1,935 candidates representing 54 parties and independents contested in the polls. The election was the second to be held under the caretaker government concept, introduced in the Constitution in 1996. The BNP won 193 seats while its key political rival the Awami League got only 62 seats. Total turnout of voters was nearly 74.9 percent. At least 54 parties were participated in the 8th parliamentary election.[26]

### 2.9 The Ninth Parliamentary Election

The term of five years of eighth parliament was expired on 27 October, 2006 and according to the constitution the government of Khaleda Zia resigned. In the meantime, the BNP was designed the field in such way which the opposition parties thought as the death trap. The 9th parliamentary election was scheduled on January 22, 2007. Thereafter, the election was canceled after a declaration of state of emergency on January 11, 2007 amid political turmoil.[27] The ninth parliamentary elections,

[23] Ibid
[24] Dr. Abul Fajol Haque,*Bangladesher Shason Babostha O Rajmty*,(2nd end,Sumon Law Book,2008),Pg-230
[25] Ibid
[26] The Daily Jonokontho, Published on 3 October 2001,Pg-l
[27] Abul Fajol Haque,*Bangladesher Shason Babostha O Rajnity*, (2nd end, Sumon Law Book 2008),Pg-242

once they were held hi 29 December 2008, were a success. International observer's pronounced the process to have been largely consistent with international standards. The highest voter turnout on record, an impressive 86.3 per cent, was testimony to public interest and confidence in the process. The election administration operated efficiently and generally transparently. The overall process was clearly a success and represented the best elections to be held in Bangladesh since independence.

### 2.10 The Tenth Parliamentary Election

On the 5th of January 2014, the Awami League (AL), which has ruled Bangladesh since early 2009, won a three-quarters majority in a parliamentary election that has widely been condemned, both at home and abroad, as lacking democratic credibility. Out of the 300 elected seats in the Bangladesh parliament, only 147 were up for contest on Election Day with the AL bagging 105 of these seats. Since the main opposition party, the Bangladesh Nationalist Party (BNP), had chosen to boycott the vote, the remaining seats had been filled by uncontested candidates well before the voting was even held; the AL won 127 of these 153 seats. Citing the non-inclusive nature of the polls, both the US and the EU refused to send election observers.[28]The election held on 5th January 2014 was not an effective participation by the people as envisaged by Article 11 of the constitution.[29]

### 2.11 The Eleventh Parliamentary Election

Bangladesh is going to polls on Dec 30, 2018 to elect the members of parliament. On Sunday, around 104 million voters are expected to give their verdict, and the chosen party will take the reins of Bangladesh for the next five years. The Election Commission has all the registered political parties contesting in the 11th parliamentary election this time. In the previous election, held five years ago amongst widespread and often deadly violence, most of the registered parties chose to stay away from the crucial ballot[30]. To ensure law and order, 700,000 security personnel, 700,000 election officials and a good number of journalists and observers, making up a total of 1.5 million, are engaged in electoral work. In the 6 seats where EVMs will be used .Awami League and its Grand Alliance partners get 263 seats out of 298.With this win, the ruling party returns to power for five more years

[28] Abul Fajol Haque,*Bangladesher Shason Babostha O Rajnity*,(2nd end ,Sumon Law Book 2008),Pg-244
[29] Article 11 of The Constitution of The People's Republic of Bangladesh
[30] Bdnews24.com,published on 27 December 2018 page -01

winning while Awami League President Sheikh Hasina makes a hat-trick by leading her party power for three consecutive terms. BNP bags only eight seats, while Ershad's Jatiya Party wins in 20 constituencies.[31]

Overall, after reviewing all elections for independence, it is seen that all the interim government or elected government or elected government after the expiry of their term, the elections that were held during the tenure of their care taker government were all disputed except for the election of the caretaker government in 2008. The ninth parliamentary elections, once they were held in 29 December 2008, were a success. International observer's pronounced the process to have been largely consistent with international standards. [32]The environment was extremely calm and peaceful relative to previous elections in Bangladesh.

[31] DhakaTribune.com published on 30 December 2018 page-03
[32] Ibid

## CHAPTER THREE

# Bangladesh Election Commission and Existing Laws

### 3.1 Constitutional Provision Regarding Election Commission

#### 3.1.1 Establishment of Election Commission

Election Commission consisting of a Chief Election Commissioner and not more than four Election Commissioners as the president may direct. When the election commissioner consists of more than one person, the chief election commissioner shall act as the chairmen of the commission. The Chief Election commissioner the other election commissioners shall, subject to the provisions of any law made in this regard, be appointed by the president for a term five years from the date of entering the office. [33]They are to take oath as prescribed in the third schedule before entering upon their office to preserve, protect and defend the constitution. To ensure free, fair and impartial elections, the constitution declares that the election commission shall be independent in the exercise of its functions and be subject only to the constitution and any other law. It is provided that they can be removed only on the grounds and in the manner a judge of the Supreme Court may be removed. To ensure their independence and neutrality it has been further provided that a person holding the office of chief election commissioner shall not be eligible for appointment in the service of the republic and a person holding the office of election commissioner can be appointed as the chief Election commissioner, but shall not be eligible for appointment in the service of the republic.[34]

#### 3.1.2 Functions of Election Commission

Election is a long, elaborate and complicated process which starts with the notification for holding the elections and ends the declaration of the result of polling in the manner prescribed by law. [35]The commission has to supervise, control and direct each and every step of the process to ensure free and fair election and the commission must be deemed to have all the power and discretion to ensure free and fair election as that is the manifest intendment of the constitution in providing for the

[33] Article 118 of the Constitution of The People's Republic of Bangladesh
[34] Ibid
[35] *Shah Alam V.Mujibul Ha*q, DLR (AD) 68;*Mohinder Singh V Chief Election Commissioner*, Air 1978 SC 851

commission. Parliament may by law regulate the exercise of the power by the commission, but such a law has to be in conformity with the constitution and it cannot hi any way curtail or diminish the effectiveness of the commission in holding free and fair elections, hi exercise of the power the commission has two limitations-it must act in conformity with the constitution and the laws validity made by parliament and like all other functions of the republic it must not act arbitrarily.[36]

The Election Commission should make necessary provision to allow the people to know the following from an intending candidate in the election of legislature in Bangladesh: (a) Academic qualification with certificate from the Board or University if possess any qualification (b) Whether he is accused in any criminal case at present (c) whether there was any past record of criminal case and the result (d) profession/occupation (e) source or sources of income (f) whether he was parliament member earlier and the role he played individually and collectively in fulfilling the commitment to the people (g) description of assets and liabilities of the candidate and dependent of the candidates (h) particulars and amount of loan taken from Bank and financial institutions dealing with public money, jointly or by dependent or loan taken by the Company from Bank where the candidate is Chairman, or Managing Director or Director etc. [37]Election Commission's inherent power under the provision of 'superintendence, control and direction" should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair election. [38]When the law is silent, not expressly providing as to what is to be done or not to be done in an election matter, the Election Commission has plenary power to act under Article 119 which is the reservoir of power far it to ensure fair election.[39]

### 3.2 Powers and Functions of Election Commissioner

The Election Commission of Bangladesh (EC) is the constitutional body, which has been working to ensure the people's right to vote and elect their representatives in the parliament. Article 118 of the Constitution of Bangladesh gives the provision for setting up an EC for the superintendence, direction and control of the preparation of electoral rolls for election to the office of the president and to the parliament, and the conduct of such elections in accordance with the Constitution.

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[36] Article 119,of The Constitution Of The People's Republic Of Bangladesh

[37] Dr Belal Husain Joy, *Constitutional History of Bangladesh, Comments Contemporary Political Crisis and Leading Case-Law*s,(2008)Pg- 489.

[38] *Altaf Hussain V. Abul Kashem* 45 DLR (AD) 53

[39] *Afzal Hossain V. Chief Election Commissioner* 45 DLR 255

Institutionally BEC is much enriched having a vast powers and functions. Article-119 of the constitution of Bangladesh deals with the functions of Election Commission. For the authenticity of quotation, I am copying the Article-119 of the constitution[40]. The superintendence, direction and control of the preparation of the election rolls for elections to the office or President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with his Constitution and any other law-

(a) Hold elections to the office of President;

(b) Hold elections of members of Parliament;

(c) Delimit the constituencies for the purpose of elections to Parliament; and

(d) Prepare electoral roles for the purpose of elections to the office of President and to Parliament.

(2) The Election Commission shall perform such functions, in addition to those specified in the foregoing clauses, as may be prescribed by this Constitution or by any other law. The Representation of Peoples Order, 1972 outlines the elaborate powers of the Election Commission. [41]It is empowered to:

1. Appoint of Recruiting officers to supervise all work in the district in connection with the conduct of elections.
2. Superintend, direct and control the recruiting officer
3. Assign other duties and functions of the returning officers.
4. 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.
5. Fixation of the date of submission of nomination papers, scrutiny of nomination and withdrawal of nomination paper and date of the poll.
6. Design and approve the ballot boxes.
7. Regulating and monitor the registration of the political parties.
8. Prescribe the principles and guidelines regarding the broadcast and telecast in the national media during the general election to the parliament.
9. Form and control the electoral Enquiry Committee with powers of a civil court.
10. Prepare electoral codes of conducts.

[40] Article 119 of the Constitution of the People's Republic Of Bangladesh.
[41] Supra Note 42

11. Permit neutral Election observers.

12. Summon and compel the production of evidence, require public records, Issue commission for examination of the witnesses and documents.

13. Regulates its own procedures.

14. Make Rules for carrying out the purpose of the RPO.

15. Decides Electoral Disputes.

16. Regulates the transfer of judicial officers below the District judge, Deputy Commissioner, Superintendent of police etc. during the Election days.

17. Cancel candidature in appropriate cases.[42]

### 3.3 A Critical Analysis of Constitutional Provisions

Part VII (articles 118 - 126) of the Constitution of Bangladesh deals with elections. The Election Commission is entrusted with conducting elections and is required to "be independent hi the exercise of its functions" and subject only to the Constitution and another law. Under article 118 The Election Commission though legally independent is within the administrative set up of the Prime Minister's secretariat. There is no formal advisory body to advise the Prime Minister as to who may be suitable for appointment as election commissioners. Consequently, the appointment is left in the hands of the Prime Minister who has no obligation to consult opposition parties or the Parliament. There is no parliamentary committee or scrutiny process to oversee the appointment. Thus the Prime Minister has a free hand in appointing the election Commissioners. Since 1975 almost all commissioners have been appointed based on their perceived political loyalty. This is the key source of election manipulation. The party in power with the help of loyal election commissioners ensures appointments of loyal personnel to key positions. This lack of independence increases the likelihood that voter lists can be and will be manipulated. The loyal Chief Election Commissioner ignores irregularities such as the control of polling booths by thugs loyal to the ruling party, not allowing representatives of opponents to be present during polling or at the tune of counting at the polling stations, casting false votes, supply of ballot papers to the government candidate's polling agents at the polling centers, intimidation of people likely to vote against a government candidate, and changing the results of counting the votes. The Commission is completely independent from the executives. The constitutional provisions, laws, rules are framed in support to ensure the independence. As per

[42] Supra note 42.

constitutional provision under Article 118 the appointment of Chief Election Commissioner and other Commissioners are subject to the provision of any law made by the President. Such law is yet to be framed. Taking advantages of absence of any such law appointments loyal to the regime has taken place. Lot of such appointments had been taken place in near past which destroyed the image of the independent Election Commission. It may also happen in the future, if appointments of desired personalities are not protected by framing appropriate legal provision.

### 3.4 Electoral Code of Conduct

To avoid malpractice and manipulation of any kind in the election process to ensure free and fair election, the Election Commission has,[43] formulated the Code of Conduct for the observance of political parties and the contesting candidates. The salient features of the Code of Conduct are the following:[44]

a) Ban on subscription, donation etc. to any institution. Following the announcement of the election schedule till the day of polling, no candidate or any person on his behalf shall, openly or in secret, give any subscription or donation, or make promise for giving such subscription or donation, to any institution of their concerned constituency or to any other institution, nor shall commit to undertake any development project within the concerned constituency.

b) Use of Government accommodation like Circuit Houses, rest houses:

All parties and candidates shall be given equal rights for using government rest house and circuit house on the basis of the application first made and in accordance with the existing rules for using of same. But the government officers engaged in the conduct of the election shall get preference to use Government dark-bungalows, rest houses and circuit houses.[45]

b) All political parties and candidates shall be given equal rights with respect to election campaign. Meetings, processions and

c) Election campaigns of the opponent shall be disrupted.[46]

### 3.5 Other Laws relating to Election Commission

[43] 74 Article 92B Of The Representation of The People Order, 1972,
[44] Dr.Md.Abdul Alim, Conducting credible elections,*The Daily Star*(Dhaka,16th February,2017)
[45] Ibid
[46] Dr.Md.Abul Halim,Code of conduct, prevention of pre-poll irregularities and election petitions,*Daily Amar Desh*(Dhaka,2017)

The Constitution of the People's Republic of Bangladesh, 1972, is the key law for the EC. The second most important law with regard to the functions of the EC is the Representation of the People Order (RPO), 1972. A number of laws, rules and regulations have also been enacted. These laws discuss, in detail, procedures of different functions such as preparation of electoral rolls, delimitation of constituencies, election of the president and women members of parliament, and conduct of the elections. Another set of laws and rules provide for administrative functions with regard to salary and privileges of election commissioners, and appointment, promotion and transfer of the officials and staff of the EC Secretariat.

One such exception is the provision of the RPO is that preventing candidates who are unsuccessful in getting the nomination of registered political parties from contesting as independent candidates. This restriction on so-called rebel candidates reduces the number of Candidates in elections, narrowing the range of choice for voters, which is not healthy for democracy. More seriously, it imposes the absolute hegemony of the two major political parties rather two families over our political system. Such dynastic rule, mimicking monarchy, makes our political system stagnant as there is little room for talented outsiders to reach the top. Another limitation of the RPO is that its provisions are unable to prevent the widespread use of money to buy nominations as well as elections, causing the biggest threat to the fairness of our electoral process. Such use of money in elections, more importantly, has turned the profession of politics in our country into a profitable "business" instead of a public service, undermining the very foundations of our democratic system. In the interest of making future ft 1 elections meaningful, the RPO needs to be amended and also vigorously enforced.

A third weakness of the RPO is the disclosure requirements. The existing format used for disclosure of antecedents is unsatisfactory and its enforcement is lax at best. In order to make elections meaningful, we therefore need to revise the disclosure format to elicit more relevant and comparable information and verify their authenticity to prevent concealing or providing misleading information. It may be noted in this connection that the Ninth Parliament has a number of members who concealed information in their affidavits regarding their antecedents, which should have disqualified them to run for election; they are also ineligible to continue as MPs. There are also MPs who have become disqualified to hold their office because of their engaging in business with the government.

# CHAPTER FOUR

# Independence of Election Commission and Obstacles to Work

## 4.1 What are a Free, Fair and Impartial Election?

[47]The election is one of the key components in ensuring democracy because they "enhance citizens' participation in governance, ensure government accountability and encourage political competition". The free, fair and credible election is one of the basic and crucial prerequisites and elements of democratic government and governance[48]. The election would be credible, when rules, regulations and laws governing the electoral process will be followed by and ultimately, the credible candidate will be freely and fairly elected to represent the electorate.[49] According to Diamond, free and fair elections have major four components. These are: (i) Independent political parties will compete in electoral process in freely and fairly; (ii) Individual must be free to participate in politics and election process based on their own choice; (iii) Election process would be free and fair so that every adult franchise can apply their voting right equally with equal weight; and (iv) Finally, outcome of the election or counting vote would be accurate and legitimate. Thus, when all the four variables mentioned above will be available in the process, conduct and outcome of an election, that election could be considered to be free, fair and credible.

## 4.2 Independence of Election Commission

Independence, in the context of an election commission, has two distinct but inter-related aspects. It means empowerment of the commission through suitable legal and institutional means so that it can carry out the tasks assigned to it by the laws. Secondly, it also means the will of the commission to decide each individual case on merit without any fear or favor as well as the determination to implement such decisions against all odds. The first aspect is called structural independence while the other aspect behavioral. As far as structural independence is concerned, Bangladesh election

[47] "Electoral systems -The link between governance, elected members and voters" [2011] Office for Promotion of Parliamentary Democracy (OPPD)
[48] "Democracy, Elections and Political Parties: A Conceptual Overview with Special Emphasis on Africa"." [2008] Institute of Security Studies 166, Pretoria, South Africa.
[49] "The Imperative of Credible Elections for Sustainable National Development in Nigeria-Lessons from the Ekiti State" [2015] Canadian Center of Science and Education 8

commission is already sufficiently empowered and strengthened. While disposing of a Writ filed by Abdul Momin Chowdhury in 2005, the Supreme Court of Bangladesh also gave the precedent. The Representation of People Order is the principal legal instrument for the conduct of elections. This is periodically reviewed for changes to meet emerging situations. [50]This was also amended comprehensively in 2008, in consultation with the political parties, civil society and the media, with the aim of containing, if not to fully eliminate, electoral maladies particularly in respect of nomination of candidates, method of campaign, election expenditure, voting process and resolution of election complaints and disputes. [51]For violation of any of the set procedure, the commission is empowered to take punitive action including power to cancel candidature or fully or partially cancel polling in particular polling station or the entire constituency. The commission has also the power to seek and secure the services of any public official for the conduct of elections. Both executive and judicial magistrates are also available with the commission during election period who conduct summary and regular trials for committed election offences. As a consequence of such trials, in addition to fines and imprisonment, candidates may be debarred from contesting elections for a number of years. The notion of the commission's independence reached a new height with the promulgation of the Bangladesh Election Commission Secretariat Ordinance, 2008 subsequently ratified by the 9th Jatiyo Sangshad into an Act in 2009. The Act has de-linked the Commission Secretariat from the Prime Minister's Office. It is no longer under the control of any Ministry, Division or Office. It has also been given the authority to periodically review its manpower needs in association with officials of relevant government agencies and whatever is decided by this committee would be deemed as final. Similarly, the commission does not have to seek the clearance of the Ministry of Finance every time it needs release of fund once the budget is approved by the Sangshad. Sadly enough, even after the enactment of the Secretariat Act, the commission had faced lot of difficulties in conducting the local government elections due to bottlenecks in release of funds and unusual delay in getting sanction for additional manpower. The Recruitment Rules for the appointment of officers and staff of the commission still require it to obtain the clearance of the government for appointment to Class 1 positions. Finally, it must be emphasized that a fully independent commission, both in terms of structure and behavior, may not be sufficient for holding a

[50] Ibid
[51] Supra note 53

free and fair election. It needs the support and active cooperation of a number of partners, political parties being the most important one.

The Constitution of Bangladesh flawlessly provides the pure independence regarding its functions and powers having conceived its importance of being independent. The Election Commission shall be independent in the exercise of its functions. The term of office of an Election Commissioner is fixed for five years from the date on which he enters upon his office. [52]An Election Commissioner cannot be removed from his office except hi like manner and on the grounds as a judge of the Supreme Court. To make an Election Commissioner free from bias or influence in the exercise of his power, a person who has held office as CEC shall not be eligible for appointment in the service of the Republic and any other Election Commissioner shall, on ceasing to hold office as such, be eligible for appointment as Chief Election Commissioner but shall not be otherwise eligible for appointment in the service of the Republic.[53]

Representation of People's Order, 1972 also ensures the independence of Election Commission of Bangladesh. It provides that The Commission may require any person or authority to perform such function or render such assistance for the purpose of accomplishing the Election. It also provides that all executive authority of the Republic have to assist the Commission in the performance of its duties during the Election period. There have the existence of two other categories by observation of which one may comment that Election Commission is free and fair.

### 4.3 Obstacles faced by Election Commission in Bangladesh

There are some barricades against the free flowing of the Election Commission of Bangladesh. These need comprehensive discussions to give up them by clarifying relevant laws. Some of the loopholes are given below with illustration....

#### 4.3.1 Effects of money

Money influences elections in several important ways. One obvious and widely prevalent use of money is the buying of nominations from established political parties. This seedy act is known as mononoyan banijja or "nomination trade". Candidates often pay huge sums of money to party bosses and sometimes to several leaders of the party. At times larger parties engage in bidding wars to form

[52] Article 118(4) of The Constitution of The People's Republic Of Bangladesh.
[53] Article 118(3) of the Constitution of The People's Republic Of Bangladesh.

electoral alliances with smaller parties. Obtaining nominations by paying bribes to party leaders has become widespread in Bangladesh in recent years. Buying votes is an important use of money in elections. Candidates often pay cash and sometimes material items such as saris, lunges and other things for buying votes. Voters are almost always entertained with drinks and snacks and sometimes more. Another use of money in elections is the buying of official influences. Sometimes Returning Officers, Polling Officers, and law enforcement personnel etc. are bribed. In the same vein, the services of hooligans and musclemen are also bought and weapons leased with money to influence election results.

### 4.3.2 Muscle Power

The influence of muscle power on elections is a fact of life hi many countries, including Bangladesh. Muscle power is normally used for the following ends: intimidating opposing candidates, their representatives and supporters; driving away the polling agents of opposing candidates on election day's threatening the poor and minority voters to prevent them from voting; snatching ballot boxes; stuffing ballot boxes; disrupting the law and order situation around the polling centers to slow down voting, or to chase away voters or stop voting altogether; capturing polling centers; disrupting the counting of votes or destroying ballot papers or result sheets; altering the polling results and the broadcasting of those results; and so on.

### 4.3.3 EC's dependency to Government

It is clear that the EC in reality has to depend on the government functionaries in respect to appointing CECs and other Commissioners, recruiting staff for the EC Secretariat, discharging its functions at field level during elections, maintaining law and order, and managing different financial issues including budget allocation and disbursement of funds.

### 4.3.4 Arbitrary Appointment

The EC's neutrality is hampered due to arbitrary appointment of CECs and Election Commissioners with partisan image, recruitment of local level election officials with partisan background,

politicization of the NCG, and planned placement of officials of the administration before elections. All these are reflected in the results of elections in favor of the ruling party.

### 4.3.5 Election Disputes/Violence

Election Disputes and violence from disputes are common phenomenon around the world. Bangladesh is not an exception. Pre and post-election disputes are common in all elections. Limitations exist in the Election Conduct Rules, 1996 and absence of its implementation has given birth to some of the violence.

### 4.3.6 Members of Election Commission

The president appoints the CEC and other ECs. The commission consists of a CEC and such number of other Election Commissioners as the President may from time to time direct. However, from the language used in Clause 1 and 2 of Article 118, It become quite clear that Election Commission may be constituted even with the Chief Election Commissioner alone. If the Commission is consisted of only CEC alone, Arbitrariness will boost up, and democratic values will decline.

### 4.3.7 Lack of Cooperation of the Political Parties:

Historically, even in America, political parties were considered to be evil as they fostered factionalism. However, over the years they turned out to be engines of democracy. In fact, experiences show that democracy cannot sustain and take deep roots without political parties that are democratic, transparent and accountable. Even free, fair and meaningful elections are not possible without the support and cooperation of political parties. If political parties are bent upon winning elections at any cost, engage in mononoyon banijja (i.e., nomination trade), buy votes with money or other favors, resort to violence or otherwise engage in corrupt practices, it is very difficult, if not impossible, for an independent Election Commission to hold free, fair and credible elections. Many major political parties have largely become conduits for politicizing crime, sometimes criminalizing politics and even sources of violence. They have also become dens of dynastic politics and cronyism. They use money and muscle to get their candidates elected. They do not even abide by electoral laws.

Thus, our present criminalized political culture, with despotic bosses and non-transparent political parties, is not conducive to free, fair and meaningful elections. Political parties are not also likely to cooperate with each other for such elections'.

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[1] Article 118(4) of The Constitution of The People's Republic Of Bangladesh.
[1] Article 118(3) of the Constitution of The People's Republic Of Bangladesh.

# CHAPTER 5

## Essentials to Ensure Free, Fair and Impartial Elections

### 5.1 The Major Steps in the holding of Free, Fair and Independent Elections

#### 5.1.1 Preparation of an accurate voter list

This was a major weakness of electoral process in Bangladesh till the last election. It is impossible to prepare an accurate voter list manually. According to NDI, the percentage of ghost voters in the 2006 consolidated voter list in Bangladesh was 13 percent. The last army-backed caretaker government in cooperation with UNDP has successfully implemented a project for preparation of a computer-based voter list with photo ID. As a result, the total number of voters has decreased from 93 million in 2006 to 81.03 million in 2008 — an elimination of about 12 million phony voters. If the Commission updates the list continuously, the problems of ghost voters can be minimized.[54]

#### 5.1.2 Delimitation of the constituencies

The chances of gerrymandering have been reduced by giving this power to the Election Commission. So far, no complaint of partisanship of the Election Commission in this area has been raised.[55]

Appointment of impartial Returning Officers (ROs) and Assistant Returning officers (AROs)

Elections are really conducted by ROs and AROs under the supervision of Election Commissions. Thus ROs and AROs play the most crucial role hi holding elections. Traditionally, Deputy Commissioners or persons connected with district administration are appointed ROs and AROs. They are the steel-frame of the Executive and are always at the beck and call of the incumbent government. The appointment of district administration officials as ROs and AROs with a partisan interim government at the helm is not at all conducive to neutral election. An alternative could be to appoint officers of Election Commission to these posts. This is not feasible for several reasons. First, they do not have the experience of coordinating the officers of other agencies and in most cases may not be able to provide the needed leadership. Secondly, there are wide allegations that many officers in the

[54] Akbar All Khan, "Electoral Challenges in Bangladesh, The choice between the unpalatable and disastrous", *The Daily Star*,(Dhaka, March 17,2013,)
[55] Ibid

Election Commission were recruited on the strength of their political connections. A third option is to appoint judges as ROs. This will require the approval of the Supreme Court and judges will remain answerable to Supreme Court and not to the Election Commission. They may also lack management experience which is essential for conducting elections.[56]

### 5.1.3 Two measures may be taken to minimize this problem

(a)The publication of a panel of likely ROs and AROs at least three months before election in the website of the Commission seeking comments of registered political parties and finalization of the panel by the commission and requiring the Government to post district administration officers from the approved panel; and (b) Hearing the complaints against any RO or ARO by the Commission and giving decisions within shortest possible time.

### 5.1.4 Selection of polling centers

The location of polling centers within strongholds of candidates may be a threat to a fair election. Sometimes, the candidates manipulate the site selection of polling centers in collusion with electoral officers. The preliminary list of polling centers should be published three months prior to election and the final list should be approved after hearing the objection of stakeholders.[57]

### 5.1.5 Electronic screening of results prior to publication

One of the major weaknesses of National Elections is that results declared by Presiding officers of a polling center are accepted by Election Commission without any scrutiny. This encourages capture of polling stations. First, fake ballot papers are stuffed in ballot boxes in collusion with polling and presiding officers. This may be described as capture from inside. There are two characteristics in the results of such centers: very high percentage of voter turnout (more than 90% of total votes cast) and very large plurality in favor of one candidate. Second, there is often capture from outside. In these instances, voters from opposition camp are not allowed to enter the center at all by illegal means. In such centers, voter turnout is exceptionally low compared to previous elections or comparable centers in the same election. Such outliers could be easily identified by computers. The Election Commission

[56] Ibid
[57] Ibid

should withhold publication of results of polling centers which are clearly outliers from a statistical point of view, hold a special enquiry and if warranted may order re-polling in these centers. Such measures would discourage blatant rigging.[58]

### 5.1.6 General Law and order situation

The deterioration of law and order may interfere with a free, fair and independent election. Such designs to rig elections may be partly foiled by the vigilance of domestic and foreign observers. The Election Commission should actively encourage election observers, establish channels of communication with them and send mobile observer teams comprising retired and serving officers.[59]

## 5.2 Reformation of Election Commission

Firstly, a neutral election-time government is vital to ensure impartiality of the Election Management Body (EMB) as well as to conduct free, fair and credible elections. If we analyze the election-time government of different countries, we mainly find 2 types: (i) the Westminster form of parliamentary government, in which the incumbent government continues in office, but doesn't take any political initiatives (e.g. UK, India). Under this system, during the electoral process all governance is subject to a civic electoral type of governance and its mandate, strictly limiting the ability of government to initiate new public process until the election has expressed the desire of the people; and (ii) non-partisan caretaker government which is basically an ad-hoc arrangement due to the result of a political settlement or peace agreement (e.g. Tunisia in 2011, Bangladesh in 1991).Caretaker governments are also often established to pave the way for transitional elections from a military to a civilian administration — as happened in some African countries. In a few countries credible elections are arranged under military rule (elections during 1974 and 1980 in Uruguay). Whatever government is there, the most important issue is that once an election has been declared the government in effect becomes a caretaker government and must not undertake far-reaching policy or administrative decisions. Constitutional and legal provisions should create an environment which allows EMB to work operationally and behaviorally independently. Thus, in all established democracies, the election-time government becomes 'caretaker government.'

[58] Akbar All Khan, “Electoral Challenges in Bangladesh, The choice between the unpalatable and disastrous”, The Daily Star,(Dhaka, March 17,2013)
[59] Ibid

Secondly, the Constitution of Bangladesh confers power on the people as Article 7(1) says that "all powers in the Republic belong to the people, and their exercise on behalf of the people shall be affected only under, and by the authority of this Constitution." Additionally, Article 7(2) ensures that "this Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other laws shall, to the extent of inconsistency, be void." So, although our Constitution guarantees ensuring of the 'will of the people' it was not ensured in the January 5 election due to the shortcomings of the RPO, which declared the unopposed elections legal. Hence, the provision of unopposed election should be cancelled.

Thirdly, during the 10th Parliamentary election, the parliament was not dissolved, which created inequality among the contestants and a scope for the MPs to interfere in the electoral process. Parliament is dissolved in the countries where elections are held under outgoing political government (e.g. India, UK).

The holding of free and fair elections is at the heart of the democratic process and such kind of elections can only be arranged through the development of credible election administration institutions. There is now broad international consensus among election experts that genuine democratic elections are essential for establishing the legitimate authority of governments. Additionally, only open and legitimate elections are the indispensable foundation for sustainable development and an effective democracy, and actions supporting the right to participate in genuine elections can play a major role in sustaining peace, security and conflict prevention. Hence, it is hoped that the government, after discussion with all political parties and other stakeholders, will initiate reforms to arrange a genuine democratic election.

### 5.3 Essential Grounds for Electoral Reforms

In working out any scheme of electoral reforms, we should not have a system hereunder the electorate come to life only on the Election day and thereafter become dormant; the electorate should remain active and alive all the time. We should have a system where under the nation should be poised and every-ready for elections and elections could be held at a moment's notice. We should have a system; hereunder elections do not involve any additional financial burden. We should have a system which is simple to work, and is free from technicalities beyond the comprehension of the common man. We

should a system, which should be immune to such evils as personating, corrupt practices and other illegalities. We should have a system where under election is a self-propelling process, and no interference of any outside agency is called for. We should a system, which does not engender any heat or give rise to any election dispute. We should have a system where under the returned candidate has to maintain contract with the electorate throughout his term of office. In my observation is that we should have a system where the aspects that are essential to every democratic election or the points that are crucial to ensuring public confidence in an election are prevalent. Some of these universally accepted and respected aspects or points are: (i) A level playing field, (ii) A peaceful environment, (iii) A trusted Election Commission, (iv) An assurance that all eligible voters can cast their ballots freely.

**5.4 Findings:**

. Election Commission is heavily dependent on the executive wing of the Government in various ways, so that it cannot run properly and through maintaining the excepted neutrality.

2. The existing reality the Election Commission is perfect manifestation of the conflict between the theory and practice.

3. This reality has led this Commission to do perform its activities in a brazen manner.

4. Corruption, mismanagement, lack of accountability and other factors make the Election Commissioner ineffective.

5. The BEC has failed to assert itself in monitoring electoral expenditure mainly due to lack of technical capacity. It is to be noted that the Election Commission of India employs auditors to strictly monitor all electoral expenditure during election campaigns.

6. The current election system does not provide sufficient training facilities for the polling personnel. They are not highly educated and experienced.

7. The system is fully paper based, like printing ballot papers are distributing them; high risk of ballot box hijacking in the remote areas. Ballot paper is manually counted which requires huge manpower.

8. There was no provision of negative voting. Except in the national election of 2008.

9. A critical gauge of election process is that the general people do not believe that they are free to exercise their rights to political expression, association, assembly and movement as part of the electoral process.

10. The person who nominated for election, expanse huge amount money for the election purpose. The governmental resources are not properly used in the electoral process.

11. Sometimes election disputes occurred and a lengthy procedure was followed for solving the dispute.

12. The News media are not free to act as conveyers of accurate information and to act as watchdogs over government and political process.

**5.4 Suggestions:**

1. There is no more opportunity to hold elections under a constitutionally caretaker government. So we have to find a way for fair elections under the party government. If the commission is qualified, efficient and courageous, even under the party government, the election commission can at least try to conduct impartial elections.
2. The ruling parties have key responsibilities to strengthen the EC by enacting suitable laws such as enabling law and creating healthy political environment. In the relevant enabling law, among other things, qualification and number of Election Commissioners must be determined. Necessary laws may be enacted in this regard. This can be done through the parliament.
3. The EC should increase its own capacity in terms of empowering staff and developing infrastructural and logistical strength, so that its dependence on bureaucracy may be reduced. The frequency of elections is increasing, so effort to build capacity of EC is needed. A neutral mechanism should be developed for appointing the CEC and Election Commissioners. This responsibility may be laid upon the Law and Parliamentary Standing Committee.

# CHAPTER SIX

## Conclusion

Election is an important milestone for democratic transitions. It provides an opportunity for examining how a range of institutions are functioning in a transitional setting and whether fundamental human rights are being protected and promoted. Elections must be examined in the context of a country's broader transition towards democracy not taken out of context. A critical element in this process is building public confidence in elections. Unless the electors feel that they are free to make political choices, adequately informed to do so and their choices will be respected, an election process will not be truly meaningful. Theoretically the country can be said to be ruled under democracy for 29 years. But the country did not see much success of these types of government. Efficient people are not elected in the election. There is no such efficient person in the country; the efficient people contest in elections but could not win; and there is very little scope for the efficient people to win in the present system of election. So, merely holding a periodic election does not establish democracy; election needs to systematically change and must be free, fair and meaningful. In present system two types of problem we found and those are (i) effects of money, muscle and official influence; (ii) lake of proportional representation. Though the election is the way to shift governmental power, however, merely holding a periodic election does not establish democracy. Elections will be free and fair only if they are not manipulated by money, muscle and official influence. Elections will be meaningful only if free and fair elections lead to changes in the quality of elected representatives and consequently better governance. Unfortunately, money, muscle and official influence surpassed all public expectations in elections over the years in Bangladesh and this increasingly lowered the quality of our elected leaders. The confrontational nature of politics has made election management quite difficult in Bangladesh. The BEC has had to navigate very carefully by way of securing Working Corporation of major political parties. Role of Election Commission in a democratic society is immeasurable. The key function of holding a free, fair and credible Election is vested to Election Commission. In line with that Bangladesh Constitution supplies enough back up in respect of it independent functioning. But, the matters of great grief that in 3rd world developing country like Bangladesh, Constitutions are often overtaken by violating its intrinsic features. For holding a free and fair election, Election Commission should be more conscious about its own

authorities. Besides this, the vital responsibilities go to govt. in power which normally operates the affairs of state to assist Election Commission for discharging its activities. Election Commission should be vigilant in respect of overcoming its loopholes and limitations. Reforms are badly needed to cope with the existing unhealthy and non-democratic situation prevailing in the country. Political parties also have realized and have welcomed those reforms as well as common public. State interests need to protect during drafting and implementing the reform agenda. State interests are not to be compromised. The elections should be organized and conducted by an agency, which is impartial, and independent; fully skilled in the task entrusted to it, and immune to any political pressure or influence. For the conduct of elections it is necessary that the law under which elections are held should be comprehensive and should provide a framework where under free and fair elections can be held, and the changes of the elections being vitiated by corrupt. The election should be contested in a sportsmanlike spirit within the discipline of the election law. The ruling parties have key responsibilities to strengthen the EC by enacting suitable laws such as enabling law and creating healthy political environment. In the relevant enabling law, among other things, qualification and number of Election Commissioners must be determined. The CEC and Election Commissioners must be made accountable to the common people for their activities which incur wastage of public as well as donor money. Necessary laws may be enacted in this regard. This can be done through the parliament. All complications, limitations, and inconsistencies of election laws, rules, orders and ordinances must be identified and resolved with a group of law experts, so that no debates are raised in future. A neutral mechanism should be developed for appointing the CEC and Election Commissioners. This responsibility may be laid upon the Law and Parliamentary Standing Committee. It can also be a selection committee comprising of eminent persons from all segments of the society who will select the CEC or Commissioner for appointment. Necessary amendments may be brought in the Constitution prior to consensus from all political parties.

All shortcomings, complications, and inconsistencies of laws regarding election must be identified first and then should be resolved by a group of law experts so that no debates are raised in future.[60] If any candidate violates electoral law and code of conduct the Commission should have the power to institute a case against that person, and if that concerned candidate is proven guilty the commission

[60] Sayed Sarfaraz Hamid, 'Election Commission on Bangladesh: A legal Study' [2016] 1 International Journal of Law and Legal Jurisprudence Studies

should have the authority to cancel the candidature.[61] The Election Commission should improve its self-capacity in respect of developing infrastructural and logistical strength, empowering staff so that its reliance upon the executive may be reduced. A neutral method should be maintained and developed for appointing Chief Election Commissioner. And finally the commission must be financially independent and there should be separate allocations in the national budget for the Election Commission.[62]Election is an important milestone for democratic transitions. It provides an opportunity for examining how a range of institutions are functioning in a transitional setting and whether fundamental human rights are being protected and promoted. Elections must be examined in the context of a country's broader transition towards democracy not taken out of context. A critical element in this process is building public confidence in elections. Unless the electors feel that they are free to make political choices, adequately informed to do so and their choices will be respected, an election process will not be truly meaningful

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