



**Sonargaon University (SU)**

**Research Monograph**

**On**

**“Independence of Election Commission under the Constitutional  
Mandate of Bangladesh and other Statutory Provisions”**

Research Paper submitted in partial fulfillment of the requirements  
of the degree of LL.B (4 years) under Sonargaon University

**Submitted To**

**Md. Abdul Alim**

Lecturer & Assistant Coordinator

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

**Submitted By**

**Afzal Mahbub**

ID No: LLB1803015040

Batch: 16A

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

**Date of Submission: 5<sup>th</sup> January, 2023**

## Letter of Transmittal

Date : 5<sup>th</sup> January, 2023

**Md. Abdul Alim**

Lecturer & Assistant Coordinator

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

**Subject: Submission of Research Monograph**

Dear Sir,

I am very pleased to inform you that “**Independence of Election Commission under the Constitutional Mandate of Bangladesh and other Statutory Provisions**”. I have tried my level best to prepare this 'Research Monograph' to the required standard. I can hope that this 'Research Monograph' will fulfill your expectation and also the demands of the Course.

I, therefore, pray and hope that you would be kind enough to go through this 'Research Monograph' for evaluation as well as marking.

Thanking you.

-----  
Afzal Mahbub

ID No: LLB1803015040

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

## Acknowledgement

At first, I present my due rewards to all mighty, who have provided me with the valuable opportunity to build and compete this report successfully with Sincere and sound mind.

I would like to express my gratitude to my supervisor **Md. Abdul Alim**, Lecturer & Assistant Coordinator, Department of Law, Faculty of Arts and Humanities Sonargaon University for his guidance during the research program. His suggestions and comments were really a great source of spirit to make the report a good one.

Finally, I would like to thanks my parents from the bottom of my heart for their endless support and encouragement.

-----  
Afzal Mahbub  
ID No: LLB1803015040  
Department of Law  
Faculty of Arts and Humanities  
Sonargaon University (SU)

## Declaration

This is Afzal Mahbub, ID No: LLB1803015040 student of Department of Law, Faculty of Arts and Humanities at Sonargaon University (SU), hereby, declare that the work, presented in this 'Research Monograph' is the outcome of the library based work performed by me under the supervision of **Md. Abdul Alim**, Lecturer & Assistant Coordinator, Faculty of Law, Sonargaon University (SU). I also declare that this is not a comprehensive research. There may be some mistakes in this research. I also declare that this research or no part thereof has been or is being submitted elsewhere for the award of any degree.

-----  
Afzal Mahbub  
ID No: LLB1803015040  
Department of Law  
Faculty of Arts and Humanities  
Sonargaon University (SU)

### **Certificate of the thesis supervisor**

This is to certify that the research monograph on “**Independence of Election Commission under the Constitutional Mandate of Bangladesh and other Statutory Provisions**”. I have tried my level best to prepare this 'Research Monograph' to the required ' is done by Afzal Mahbub, ID No: LLB1803015040, in partial fulfillment of the requirements for the degree of Bachelor of Law from Sonargaon University (SU). The research monograph has been carried out under my guidance and is a record of the bona-fide work carried out successfully.

-----  
**Md. Abdul Alim**

Lecturer & Assistant Coordinator

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

## Abstract

Election Commission an independent constitutional body entrusted with the responsibility of holding national and local government elections. It announces schedules of elections, delimits constituencies, prepares electoral rolls, supervises elections, announces election results and establishes election tribunals to settle election disputes. Part VII of the constitution of the Peoples Republic of Bangladesh defines the composition, powers and functions of the Election Commission. Article 118 of the Bangladesh Constitution provides for the establishment of an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time direct, and the appointment of the Chief Election Commissioner and other Election Commissioners (if any) shall, subject to the provisions of any law made in that behalf, be made by the President. When the Election Commission consists of more than one person, the Chief Election Commissioner is to act as its chairman. Under the Constitution, the term of office of any Election Commissioner is five years from the date on which he enters upon office. A person who has held office as Chief Election Commissioner is not eligible for appointment in the service of the Republic. Any other Election Commissioner is, on ceasing to hold such office, eligible for appointment as Chief Election Commissioner, but is not eligible for appointment in the service of the Republic. At present, Bangladesh Election Commission consists of three members including the Chief Election Commissioner. The Election Commission is constitutionally oath-bound to ensure free and fair elections to the office of President of the Republic, and to Jatiya Sangsad and local government bodies. The Election Commission maintains close relations with all political parties. On matters of election schedule, election process and overall arrangements for elections, dialogue is initiated with all political parties. Discussion on issues relating to voter registration, preparation and updating of electoral rolls and relevant matters is also held with contesting political parties.

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# Chapter 1

## Introduction

### 1.1 Introduction

Democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed has some intrinsic features to possess for ensuring its full swing working in a state. Election Commission whose major work is to hold national parliamentary election as a constitutional institution is one of these intrinsic features which are provided by the constitution of the people's republic of Bangladesh described in Article 118-125. Good governance is vastly concerned with the govt. in power that normally conducts the working of the state. Election of good government is profoundly concerned with the existence of a free, fair, strong and vigilant Election Commission which was the cherished vision of the framers of the constitution. This work aims mainly at discussing the role of Election Commission for holding a free and fair Election. It will also be attempted to describe its constitutional powers and functions with loopholes and limitations. At last, some reforms will be suggests for its flawless working leaving their unused constitutional powers with aiming of appropriate utilization of its authorities.<sup>1</sup>

### 1.2 Research Objectives

The objectives of the study are as follows:

1. An identify the Election Commission of Bangladesh; Its roots of establishment
2. To analyze the Constitutional Powers of Election Commission for Arranging a Free and Fair National Election in Bangladesh: Related provisions of the Constitution
3. To find out the Independence of Election Commission and Obstacles to Work.
4. To find out the Essentials to Ensure Free, Fair and Impartial Elections

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<sup>1</sup> The Constitution of the people's Republic of Bangladesh, 1972. o Representation of People's Order, 1972.

### **1.3. Research Methodology**

In any research data collection is very important. Every research involves methods by which desired result can be achieved in this regard; I have following analytical method to complete this research the data from secondary sources which include different Acts Newspaper books and web sites etc.

### **1.4 Limitations of the Study**

1. The most important of them was “time constraint”. Time was not adequate to complete the study more perfectly.
2. Another important limitation was “inaccessibility in many section of the organization”. I confronted difficulties in getting appointment from the desired respondents as well as appropriate response from the selected respondents due to being confidential for the company.
3. This report also suffered from inadequate secondary information.
4. This report’s factual accuracy may be compromised due to out-of-date information.
5. Sufficient records, publications, facts and figures are not available. These constraints narrowed the scope of the real analysis.
6. Some useful information cannot be expressed in this report for the sake of confidentiality.

## Chapter 2

# *Election Commission of Bangladesh; Its roots of establishment:*

### 2.1 Preface

After the British ruling wiping out from the Indian Sub-Continent, Pakistan Election Commission was first emerged in 1956 with one Regional office in erstwhile East Pakistan.

After the independence of

Bangladesh from Pakistan pouring buckets of blood of her countrymen, she got democratic phenomena having a great featured constitution which provides the establishment of a free and fair Election Commission by inserting Article 118-126. Article 118 of the Constitution provides for the establishment of an Election Commission for Bangladesh consisting of the Chief Election Commissioner and not more than four Election Commissioners. The appointment of the Chief Election Commissioner and other Election Commissioners (if any) is made by the President. When the Election Commission consists of more than one person, the Chief Election Commissioner is to act as its Chairman. Under the Constitution the term of office of any Election Commissioner is five years from the date on which he enters upon office. A person who has held office as Chief Election Commissioner is not eligible for appointment in the service of the Republic. Any other Election Commissioner is, on ceasing to hold such office, eligible for appointment as Chief Election Commissioner, but is not eligible for appointment in the service of the Republic. Powers of Election Commission (Article 118(4) and 126 of the Constitution, read with Article 4 of the Representation of the People Order, 1972): The Election Commission is an independent constitutional body in the exercise of its functions and subject only to the Constitution and any other law. The Commission may authorize 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 the law. Article 126 of the Constitution and Articles 4 and 5 of the Representation of the People Order, 1972 provide that it shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions. The Commission has the power to require any person or authority to perform such functions or render such assistance for the purpose of election as it may direct.<sup>2</sup>

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<sup>2</sup> The Constitution of the people's Republic of Bangladesh, 1972. o Representation of People's Order, 1972.

## 2.2 Election Commission; An upholder of electoral democracy:

Election Commission is a constitutional institution which upholds the electoral democracy and conducts the electoral process that ensures a free and fair election capable of producing an elected government. A common mandate for all the electoral bodies is to hold free and fair elections. Superficially, this phrase 'free and fair elections' seems very simple and straightforward; in reality, it is loaded with tasks and responsibilities that are overwhelming in terms of both their enormity and complexity. For turning an electoral process free and fair, it normally ensures the following points....

- o It gives permission to vote each and every eligible citizen to participate as a voter and as a candidate.
- a) It guarantees freely asserted democratic rights and freedom of expression, especially related to the will of the people in electoral process.
- o It secures neutrality of the authority administering election procedures that ensure votes will be cast freely and counted accurately and an independent control system ensuring honesty of the process.<sup>3</sup>

It has been com out from the above that election is the manifestation of the basic principles of electoral democracy. Successful conduct of free and fair elections by the electoral bodies would constitute the implementation of the goals of electoral democracy. Since the electoral bodies are the principal instruments for the conduct of elections, they occupy the center stage in the process of development of a democratic culture in a country.

## 2.3 Powers and Function of Election Commission; Its major

**role:** 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:-

**Article-119(1)** 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;

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<sup>3</sup> Kazi Mamunur Rashid Vs. Government of Bangladesh, 28 BLD (HCD) 87.

- (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.<sup>4</sup>

***2.4 The Representation of Peoples Order, 1972 outlines the elaborate powers of the Election Commission. It is empowered to:***

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

**2.5 Independence of Bangladesh Election Commission; Pure in**

***black letters:*** The Constitution of Bangladesh flawlessly provides the pure independence regarding its functions and powers having conceived its importance of being independent. ***Article-118(4)*** specifically mentions that the Election Commission shall be independent in the exercise of its functions. The term of office of an Election Commissioner is fixed for five

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<sup>4</sup> Bangladesh Election Commission, Strategic Plan 2011-2016.

years from the date on which he enters upon his office. An Election Commissioner cannot be removed from his office except in 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, Article 118(3) provides that 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. *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. These are.....

## **2.6 Separate Election Commission Secretariat:**

Bangladesh Election Commission has its own secretariat as per Election Commission Secretariat Act, 2009 which is headed by a Secretary. The Secretariat is located in Dhaka and has a Electoral Training Institute, field offices at the Regional, District and Upazilla/Thana level.<sup>5</sup> The Election Commission has a full-fledged Secretariat under it to render all assistance to execute the decisions and orders of the Commission. The Election Commission Secretariat is headed by a Secretary. Functions of the Election Commission Secretariat: Assistance to the Election Commission for...

- o Preparation of electoral rolls for use in all national and local bodies elections.
- o Delimitation of territorial constituencies for the purposes of election to Parliament.
- o Conduct of referendum and elections (including bye-election/re-election) to the office of President, Parliament, Paurashavas (Municipal Committees), City Corporations, Union Parishads (Union Councils) and Three Hill Districts Councils etc.
- o Reservation and allocation of symbols to political parties/candidates, when required;

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<sup>5</sup> Chowdhury, M. Jashim Ali,(2010) An Introduction to Constitutional Law of Bangladesh, 1st Edition, Northern University Bangladesh, Dhaka.

- o Supervision of polling arrangements throughout the country on the eve of each election and appointment of polling personnel, namely : Returning Officers, Assistant Returning Officers, Presiding Officers, Assistant Presiding Officers and Polling Officers;



## Chapter 3

### Constitutional Powers of Election Commission for Arranging a Free and Fair National Election in Bangladesh: Related provisions of the Constitution

#### 3.1 Introduction:

*“Every citizen of this country should be guaranteed that their vote matters, that their vote is counted, and that in the voting booth, their vote has a much weight as that of any CEO, any member of Congress, or any President.”*

.....*Barbara Levy Boxer (A former United States Senator)*

An independent and strong election commission is regarded as the savior of democracy in the modern governance system. The primary responsibility of an election commission is to hold a free and fair election. But in Bangladesh the credibility and transparency of the election commission is questioned due to their roles played in the last few decades. In the article, it is intended to discuss about the constitutional powers of election commission for arranging a free and fair national election in Bangladesh in accordance with the Constitution and other applicable laws in this regard.<sup>6</sup>

#### 3.2 Constitution of Election Commission of Bangladesh:

The Election commission of Bangladesh was established as per the mandate provided by **article 118 of the Constitution of Bangladesh**. Accordingly, the election commission consists of a chief election commissioner and not more than four election commissioners or such number as the president directs.

**Appointment of the Chief Election Commissioner and Other Election Commissioners:** The appointment of chief election commissioner and other election commissioners has to be conducted by the President. The terms of the office of any election commissioner shall be five years. (**Article 118 of the Constitution of Bangladesh, 1972**) In addition, the chief election commissioner and other commissioners shall be appointed by the president from the individuals recommended by the Search Committee constituted under **“Appointment of the Chief Election Commissioner and Other Election Commissioners Act, 2022”**. This Act stipulates that before appointing Chief Election Commissioner and

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<sup>6</sup> <https://www.bdlawpost.com/2022/06/a-short-note-on-appointment-of-chief.html>

Other Election Commissioners the search committee constituted under section 3 must recommend 2 (two) names for each post to the President. Beforehand, politicization of the appointment in such vital office of the Republic had been a big flaw in the election mechanism in Bangladesh. But this new law comes up with the mandate to address this vital issue. The newly appointed Chief Election Commissioner, *Kazi Habibul Awal* has been appointed according to the provisions of this Act.

For other stuff, the President shall make, on the request of the Election Commission, available to it staff necessary for the discharge of its functions (**Article 120**). Article 126 obliges all executive authorities to assist the Election Commission in the discharge of its functions.<sup>7</sup>

### **3.3 Powers of Election Commission:**

The constitution vests the election commission all types of powers like the superintendence, direction and control of the preparation of the electoral rolls to conduct both of presidential and parliamentary elections (art. 119). Art 119 enlists the following functions of the Election Commission:

- To hold elections to the office of President
- To hold elections of members of Parliament
- To delimit the constituencies for the purpose of elections to Parliament and
- To prepare electoral rolls for the purpose of elections to the office of President and to Parliament.

### **3.4 Other related Issues associated with the functions of the Election Commission:**

**Single electoral role:** **Article 121** provides that "there shall be one electoral role for each constituency for the purpose of election to the parliament and no special electoral roll shall be prepared so as to classify electors according to religion, race caste or sex".

**Qualifications for registration as voter (Article 122):** The elections to Parliament shall be on the basis of adult franchise. A person shall be entitled to be enrolled as a voter in any single constituency, if he -

- (a) is a citizen of Bangladesh;
- (b) is at least eighteen years of age
- (c) is declared by a competent court to be of unsound mind ;

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<sup>7</sup> [https://www.bdlawpost.com/2022/06/constitutional-powers-of-election.html#google\\_vignette](https://www.bdlawpost.com/2022/06/constitutional-powers-of-election.html#google_vignette)

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

(e) has not been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972.

**Time for Holding Elections (article 123):**

**Election to the office of President (Clause 1 & 2):** The election to the office of the president shall be held within the period of ninety to sixty days prior to the date of expiration of the term, if the vacancy in the office of President occurs by reason of the expiration of his term. But, if the term expires before the dissolution of the Parliament by members of which he was elected, the election to his office shall not be held until after the next general election of members of Parliament. In such cases, the election shall be held within thirty days after the first sitting of Parliament following such general election.

If the vacancy in the office of President occurs by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy.

**General Election of the members of Parliament (Clause 3 & 4):** If the Parliament is dissolved by reason of the expiration of its terms, a general election of the members of Parliament shall be held within the period of ninety days preceding such dissolution. But in case of a dissolution for other causes the election must be held within ninety days after such dissolution provided that the persons elected at a general election shall not assume office as members of Parliament except after the expiration of the term referred to therein.

An election to fill the seat of a member of Parliament which falls vacant otherwise than by reason of the dissolution of Parliament shall be held within ninety days of the occurrence of the vacancy.

**Provided that** in a case where, in the opinion of the Chief Election Commissioner, it is not possible, for reasons of an act of God, to hold such election within the period specified in this clause, such election shall be held within ninety days following next after the last day of such period.

### **3.5 Nature and extent of power of the Election Commission:**

**1. Independence of the Commission:** According to article 118 of the constitution read with art. 4 of the Representation of the People's Order, 1972, the Election Commission shall be independent in exercising their power for arranging a free, fair and impartial election. **Article 118 of the Constitution provides:**

“The Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law.”

- 2. Inherent Power of election Commission:** As nothing is said in art 119 about the supervisory power of election commission and there is no scope to review the constitutionality of law made to restrain the hand of election commission, the Supreme Court of Bangladesh recognizes the Inherent power of election commission to hold a free and fair election. In *Altaf Hossain v. Abul Kashem (45 DLR (AD) 53)* the Appellate Division took the view that the inherent power is to be exercised to supplement the statutory rule with the sole purpose of ensuring free and fair elections. (*Constitutional law of Bangladesh: Mahmudul Islam*). But there is restriction to use the power as the court observed in a later case *Abdul Quader Farazi v. Chief Election Commissioner, 50 DLR 636:*

*“This power is to be exercised with utmost restraint, for frequent use of it is likely to render other statutory functionaries ineffective. So, the general rule that when the election has been held peacefully and no report has been made about any disturbance or rigging by the Presiding Officer or the Returning Officer, then the Election Commission has no power to interfere, cannot be taken for universal application”*

Again, the matter was further confirmed in 2000 by *Noor Hossain v. Nazrul Islam* case

- 3. Discretion of CEC:** The chief election commissioner has the discretion to postpone the election, if he is of the opinion that it is not possible to hold the election within the specified period of ninety days for reasons of an act of God. (**Proviso to article: 123**)
- 4. No judicial interference** is allowed for the matters in relation to the Election; **Article 125** specifies that a court shall not pass any order or direction *ad-interim* or otherwise, in relation to an election for which schedule has been announced unless the Election Commission has given reasonable notice and an opportunity of being heard.
- 5.** Besides, Parliament may make provision ‘with respect to all matters relating to or in connection with elections to Parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due Constitution of Parliament.’ (Article 124)

### **3.5 Election Commissioners Appointment Act, 2022**

This is said to be one of the best steps in Bangladesh to make the election commission strong and transparent. Beforehand, the appointment of election commission being totally dependent

on the government, there had been a chance of arbitrary appointment by the president to this vital office of the Republic. But, the parliament has recently passed the Chief Election Commissioner and Other Election Commissioners Act, 2022 to step back from the aforesaid position. Let's have a look on the contents of the Act:

**1. Constitution of search Committee and its functions: (Section 3)** The President shall constitute an Inquiry Committee consisting of the following 6 (six) members for the purpose of recommending the names of persons qualified as per this Act for the vacant posts of the Chief Election Commissioner and other Election Commissioners, namely:

- (A) a Justice of the Appellate Division nominated by the Chief Justice, who shall also preside over it;
- (B) a justice of the High Court Division nominated by the Chief Justice;
- (C) the Auditor General and the Comptroller and Auditor General of Bangladesh;
- (D) the Chairman, Bangladesh Public Service Commission; And
- (E) 2 (two) prominent citizens nominated by the President, one of whom will be a woman.

**2. Procedure of meeting of the Committee: Section 3** of the Act provides that The search committee shall determine their procedures of meeting. The quorum shall be completed on the presence of 3 of its members. The decision shall be taken on the basis of majority vote of the members present at the meeting of the search committee and in case of equality of votes; the member presiding over the meeting shall have the power to cast a second or casting vote. The inquiry committee shall submit its recommendation to the President within 15 (fifteen) working days of its formation.

**3. Responsibilities and Functions of the Inquiry Committee: (Section 4)** The Inquiry Committee shall act following the principles of **transparency and impartiality** and shall make recommendations to the President for appointment to the post of Chief Election Commissioner and other Election Commissioners considering the **qualifications, incompetence, experience, honesty and reputation** described in this Act. The search committee shall make a search or call for recommendations from the political parties for the purpose of such appointment or other professional organizations. And the Inquiry Committee shall recommend to the President **the names of 2 (two) persons** for each vacant post.<sup>8</sup>

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<sup>8</sup> [https://www.bdlawpost.com/2022/06/constitutional-powers-of-election.html#google\\_vignette](https://www.bdlawpost.com/2022/06/constitutional-powers-of-election.html#google_vignette)

**4. Qualifications of Chief Election Commissioner and other Election Commissioners: (Section 5):** For being appointed to the post of Chief Election Commissioner and other Election Commissioners, he should have the following qualifications:

- (A) he must be a citizen of Bangladesh
- (B) he shall be at least 50 (fifty) years of age; And
- (C) he must have at least 20 (twenty) years of work experience in any important government, judicial, semi-government, private or autonomous position or profession.

**5. Disqualification of Chief Election Commissioner and other Election Commissioners: (Section 6)** Following persons shall be disqualified for the appointment to the post of Chief Election Commissioner and other Election Commissioners:

- (A) he was declared insane by an appropriate court;
- (B) he has not been exempted from liability after being declared bankrupt;
- (C) he acquires the citizenship of a foreign state or declares or acknowledges allegiance to a foreign state;
- (D) he was convicted of a criminal offense of moral turpitude and sentenced to imprisonment;
- (E) he has been convicted for any offense under the International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973) or Bangladesh Collaborators (Special Tribunals) Order, 1972 (President's Order No. 8 of 1972); Or
- (F) he holds a lucrative position in the service of the Republic, except in cases where the law does not disqualify the incumbent.

Besides, Section 7 requires that the Cabinet shall provide necessary secretarial assistance in the performance of the search committee and section 8 empowers the government to make rules for the purpose of this Act.<sup>9</sup>

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<sup>9</sup> [https://www.bdlawpost.com/2022/06/constitutional-powers-of-election.html#google\\_vignette](https://www.bdlawpost.com/2022/06/constitutional-powers-of-election.html#google_vignette)

## CHAPTER 4

### **Independence of Election Commission and Obstacles to Work**

#### **4.1 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....

##### **4.1.1 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 mononoyanbanijja 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 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.

##### **4.1.2 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.

##### **4.1.3 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.

#### **4.1.4 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.

#### **4.1.5 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.<sup>10</sup>

#### **4.1.6 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.

#### **4.1.7 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 mononoyonbanijja (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.

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<sup>10</sup> Md. Rafiqul Islam,(2010) Electoral process; reforms and challenges : Bangladesh context



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'.<sup>11</sup>

#### 4.2 Challenges of Election Commission to hold a free and fair election:

- **Election under Government instead of non-party Government:** After abolishing the non-party caretaker government by the 15th amendment to the Constitution of Bangladesh, now the election has to be held under elected government. But it is a crucial challenge for the Election Commission to hold impartial election while any ruling party shall try to manipulate election procedure because of the lack of the practice of the democratic political culture among the political parties in our country.
- Three tiers of organs of Election Commission and its secretariat those are independent and separate from each other. And there is no defined relation among them. This lack of coordination between EC and its Secretariat has made the organization weak.
- Dependence on the government for financial issues can make the Election Commission confused in doing its jobs transparently and independently.
- Defective election laws are also responsible for the want of free and fair election.
  - Introducing the Electronic Voting Machine (EVM) in the election process will confuse mass people whereas most of the people are unaware of the technology.

#### 4.3 Corruption in Election Commission

Corruption of Election Commission under Article-120 of the Constitution of the Peoples Republic of Bangladesh, the President shall, when so requested by the Election Commission make the available to it such staff as may be necessary. So most of the practical scenario of this country is that President of the country is a political leader and appointment system is not clear so on the basis of demand of EC, the President shall appoint such person. So there is a call-in-question to the opposition parties and mass people that whether the appointment system is neutral or not Election Commission can make corruption of this system and so they cannot avoid of this incidence. Political parties are essential institution of a democratic society. Their growth is through the participation of the people directly or indirectly. These institutions are based on ideas which are propagated through agenda and implemented when

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<sup>11</sup> ATM Shamsul Huda, Chief Election Commissioner, Role of Civil Society in strengthening Electoral Democracy

in power. Election is the only legitimate means to secure power through peoples legitimate votes. Unless fair, free and transparent elections are held it is difficult for parties aspiring to replace the party in power. Therefore, it is essential that the EBM creates an even field for all participating parties. So, it is fair to assume that it is the political parties who should be the main vehicles for change in electoral system more responsive to the changing election atmosphere.<sup>12</sup>

#### **4.4 Delimitation of Constituencies for Election**

Delimitation of Constituencies to the parliament is one of the major functions of Election Commission. On the other hand delimitation of local body's constituencies is usually the job of Local Government Ministry. Administrative unit, location of the settlement, number of voters is major factors for delimitation. Last delimitation of constituencies for the parliament election has completed on 1991. Resettlement of voters and new growth centers taken place demand delimitation, but it was ignored in past due to undue political pressure. It is considered as an unpleased job and was avoided by the Commissions in the past. Delimitation is one of the agenda of this Commission, placed in the Roadmap to be completed before election.<sup>13</sup>

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<sup>12</sup> Shahzada M Akram and Shadhan Kumar das,(2006) Bangladesh Election Commission: A Diagnostic Study, Transparency International Bangladesh, Gulshan-1, Dhaka-1212.

<sup>13</sup> Chowdhury, M. Jashim Ali,(2010) An Introduction to Constitutional Law of Bangladesh, 1st Edition, Northern University Bangladesh, Dhaka.

## **CHAPTER 5**

### **Election Commission of Bangladesh: A Legal Study**

#### **5.1 Preface**

The Constitution of Bangladesh (Article 118) gives the provision for setting up an Election Commission 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. According to the Constitution, the EC is independent in the exercise of its functions and subject only to the Constitution and applicable laws. Bangladesh EC is constitutionally responsible for the conduct of elections in a free and fair manner. To ensure such elections, transparency and accountability are required at all stages of the electoral process. Although a large number of civil society organizations are engaged in poll observation, there is a serious dearth of documented information on the EC itself, along with a diagnosis of the EC's limitations.

#### **5.2 Suspended Gaibandha by-polls to be held by 15 January**

In the first move of its kind seen in Bangladesh's democratic history, the Election Commission (EC) suspended voting around four hours after it began at 8:00am as the environment at polling centres "went out of control" amid allegations of vote rigging using the hotly debated electronic voting machines (EVMs).

CEC Awal during Wednesday's conference had stressed that the Commission had constitutional authority to call off an election when needed as granted by Section 91 of The Representation of the People Order, 1972.

The section says the EC can stop polls at any polling station or the entire constituency at any stage 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."

Local government expert Tofail Ahmed said the law has empowered the EC with stopping elections, but no Commission had exercised it before.

Congratulating the EC on its stance, he said there was still much left to do.

"Those who forced the election to stop due to their irregularities should be brought to book after investigation. This should be brought up before the government and if it doesn't do anything, the EC can say the government is not cooperating."

Highlighting the extent of the violations during yesterday's polls, CEC Awal said there were reports of many people milling about dressed in matching t-shirts sporting particular electoral symbols, which was another infraction of the electoral code of conduct.

Answering a query on whether the violators were stealing votes, he said, "Those people are dacoits. They are rogues. Those who do not obey the law, we can call them robbers, rogues. We all have to respect the law. The Election Commission cannot sit here and gift people a beautiful election."

Although the EC's decision was roundly praised, the BNP - which was among four parties to boycott the by-polls - said there could be other reasons for it aside from ensuring free and fair voting.

Saying it was natural for voting to be stopped as this government could not ensure a fair election, the party's Standing Committee Member Khandaker Mosharraf Hossain added, "Today's suspension is a ploy to get everyone to trust them. Probably the Awami League candidate was losing so the election was stopped."

Acknowledging that many were commending the EC's boldness, he said this was all part of their strategy.

"Whatever they do, we will stand firm in our demands. We will not go to any election under this government."

Irregularities began to surface as soon the by-polls to Gaibandha-5 began.

As people queued up, election commissioners watched the proceeding on live feed through closed-circuit television cameras set up in all the voting centres across two upazilas - Saghata and Fulchhari upazila.

"From the very start, we saw more than one person entering the voting booths. Voters were helped or coerced to vote, which was very obvious. Some female agents were wearing the same type of sari decorated with party symbols, which went against the code of conduct," CEC Awal said.

"I myself suspended the polls in 43 centres before 12:30 pm – 16 in the second phase, 12 in the third phase, and lastly nine others in the fourth phase.

"We noticed that the CCTV cameras were disconnected in many centres, due to which we could not collect data from those places."

A returning officer also had to close the polls of a centre, he informed.

"We continued to discuss and analyse the matter and realised that closing polls in a few centres would not have any fruitful outcome. It seemed to us that the polling had gone out of control. In our opinion, fair elections were not possible, so we decided to suspend it."

The CEC said the committee will decide the next course of action based on the rules.

Although a tentative date to retake the polls has not been announced, EC Joint Secretary Farhad Ahmed Khan said it is mandatory to hold polls within 90 days from the date of declaration of a vacancy.

He also said anyone could take part in the polls, even those who had earlier boycotted it.

All four opposition candidates, including the Jatiya Party, had announced their boycott of the polls alleging vote fraud at a joint press conference right before voting began on Wednesday.

### **5.2.1 EC wins rare praise**

Although there had been much debate about the EC, its impartiality and its ability to work independently, the Commission won some rare praise yesterday.

Jatiya Party presidium member Shameem Haider Patwary said the EC's decision was tough to make, but it was a landmark one which would help foster confidence in the people about the elections and the EVMs.

"The EC's directives were not followed properly at the field level. We complained to the administration and the police about those, but they could not do anything. Maybe they were a little helpless. We fully support the decision taken by the Commission to stop the election," he said, adding it would send a message that no wrongdoing would be allowed.

Former election commissioner Brigadier General Sakhawat Hossain also expressed his support for the EC's step, but said it must now find and punish those who had committed the irregularities.

"Since taking responsibility, the Commission has said that it would work impartially to organise a free and fair election. After today, I hope they can really do it."

He said all national elections should be dealt with in this way to gradually build the confidence of the political parties.

Another former election commissioner Shah Nawaz said, "The Commission has the legal right to make that decision. If the election gets out of control and there are irregularities and problems, it should be closed. They did the right thing. This Commission showed courage and made history by being the first to take this step."

On whether it would create confidence in the political parties about the EC, he said, "Confidence never comes with one incident. Political parties will gain confidence if such actions are taken whenever necessary."

Mohammad Ibne Mizan, additional superintendent of police in Gaibandha, said law enforcers played a good role during the polls.

"There was no violence or any untoward incident. We kept the situation under control."

Voting in the by-polls to Gaibandha-5 was undertaken after the constituency fell vacant following the death of deputy speaker Fazle Rabbi Miah.

### **5.3 Expedition of Election Commission**

Election Commission is one of those vital institutions the meaning existence of which indicates the strength of democracy. Therefore a strong, vigilant and independent Election Commission was very much in vision of the framers of Constitution. 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 Constitution is father of the Election Commission which is born with the virtue of Article-118. The fundamental optimum sources of power derived from the Constitution under Article-119(1). The superintendence, direction and control of the Election are from the Constitution. In the interpretation of Article-119(1) the High Division of Supreme Court of Bangladesh while disposing a writ petition no 2561 of 2005, *Abdul Momen Chowdhury and others vs. Bangladesh*, the Court in a judgment of 24<sup>th</sup> May 2005 stated that from a close reading of Article 119 of the Constitution, it appears that the Election Commission has been a plenary power of superintendence, direction and control of the preparation of the electoral affairs and therefore whatever power is necessary for the purpose must be presumed to be there unless there is an ouster by express provision.<sup>14</sup>

Bangladesh Election Commission soon after Bangladesh was liberated, as structured under the Constitution of 1972. Prior to the liberation Dhaka had a regional election office since ECP was established in 1956. Therefore, the staff those constituted BEC had the continued experience of holding elections and referendum at all Pakistan basis and Provincial Assembly elections under civil government. The staff those played pioneering role in establishing BEC almost from the scratch had experienced one of the cleanest elections to the then Pakistan National Assembly in 1971 which won by *Awmi leag*. These officials and staff had also held election to the East-Pakistan Provincial Assembly in the same year. These experiences paid rich dividend setting up the BEC at the earlier stage of liberation. BEC was strengthen and

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<sup>14</sup> Origin of Election Commission of Bangladesh: Viewed from-<http://election.bd>. Accessed on 20.11.2022

further structured on the sound footing with the enactment of the most important electoral law the Representative of the People Order 1972. A number of the rules and regulations were enacted in the same period. Under the new order the voting age was lowered from 21 to 18 years. Under the constitution and as per the procedure set in the RPO the first Parliamentary Elections in Bangladesh was held in March 7, 1973. The country was delimited into 300 constituencies' bases on the seats limited by the Constitution. A total 14 parties including independent candidates those participated in the election in which *Awmi leag* under *Bangabundhu Sheikh Mujibur Rahman* emerged as single majority party with overall majority securing 282 seats out of 289 contested constituencies. Though the election was successfully held by BEC yet it was not above, however feeble, opposition parties criticism.<sup>15</sup> Article 65(2) reads, parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election...'', though the Constitution did not mention any system of voting rather left to the law but the Article specifies the method election of members i.e. direct election which remains open to interpretation. Be it as it may, the first ever Parliamentary election was held under FPTP, single constituency basis in Bangladesh as is practiced in most of the Commonwealth and other countries of the world. The regional countries both India and Pakistan had adopted FPTP since independence in 1947. Keeping in view the system followed in the region and elsewhere, Bangladesh elections at National Assembly including local government are also held adopting FPTP system.<sup>3</sup>

EC was established since the liberation of the country with virtue of Article-118 of the Constitution of the People's Republic of Bangladesh. The Constitution itself also provides other guarantees as regards to the function, character and authority. The Constitution further ensures the independence of the Election Commission. Before Proceeding again on the subject heading the Constitutional provisions needs to be examined and analyzed in this concerned. From the Constitutional point of view as there is an Election Commission Consisting with a chief Election Commissioner and such number of Election Commissioners for accelerating the obligatory of the Commission. The appointment procedure of Election Commissioner subject to the provisions of the Constitution and the Constitutional guided of the President. The Commission is an independent in exercise of its functions and subject to

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<sup>15</sup> Dr. Badiul Alam Majumder, Nirbachon Commission E Choloman Dondho Oanakangkito O Ain Bohirvhuto (the Current Conflict in Election Commission in Unexpected and unlawful), The Daily Prothom Alo, 17 December 2005

only this Constitution and any other law. The conditions of service and other affairs subject to the Constitution and other law made by the Parliament. The tenure is fixed under the terms of the Constitution and there is no procedure stipulated in selecting the Commissioners under the Constitution but enacting a separate law for such selection. However, the Constitution is silent about the independence of the secretariat that provides logistical and operational functionalities to the Constitution.<sup>16</sup>

#### **5.4 Establishment of Election Commission**

The President appoints the Chief Election Commissioner and other Election Commissioners under Article-118. The Commission consists of a Chief Election Commissioner and such number of other Election Commissioners as the President may from time to time direct. However, from the language applied in Clauses-(1) and (2) of Article-118, it becomes clear that Election Commission may be constituted even with the Chief Election Commissioner alone. The question of fixing the maximum number of Election Commissioners was raised seriously during 2006.<sup>17</sup>

#### **5.5 Election Commission's Own Laws**

The purpose of Election laws include proper holding of Elections, explaining the proper conduct expected from candidates and the people working on their behalf, and ensuring punishment to those who violate the legal provisions. The provision for an Election Commission was kept in the Constitution framed in 1972 after the emergence of Bangladesh. To prosecute duties as prescribed which are supposed to perform there needs to exist other laws other than Constitution.

Representation of People Order 1972, The Conduct of Election Rules 1972, and The Code of Conduct 1996 has been framed for fixing the procedures to be followed and the measures to be undertaken by the Election Commission. The Election laws comprise of all these orders, rules and regulations.<sup>6</sup> With the assistance of these laws and Constitution, the EC conducts the Elections.

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<sup>16</sup> Present Operational Stage of EC in Bangladesh: Viewed from-[www.EC.org.bd/.../policy%20breif/.../task-force\\_reports/Governancein Election in bd](http://www.EC.org.bd/.../policy%20breif/.../task-force_reports/Governancein%20Election%20in%20bd). Accessed on- 21.11.2022

<sup>17</sup> The Elections Governing laws in Bangladesh: Viewed from- <http://Thaizbangladesh.net/election.phn>. Accessed on- 22.11.2022



## **5.6 Principles of Election Commission**

A freedom is inherent human right, but it is also fragile and can be lost through neglect or misuse. Freedom requires responsibility. Freedom can be maintained and nurtured through the democratic process. The success of the democratic process requires fair and open elections which accurately reflect the intent of the electorate through election commission. Therefore, it is the unique role of election officials to serve as gatekeepers of democracy. It is the sacred honor to protect and promote public trust and confidence by the conduct of election commission. As the public's guardians of freedom within a democracy society, election commission is responsible for the integrity of the process. These roles demand that these principles must be placed above personal or partisan gain. Nurturing and protecting democracy are the team effort in the profession of elections administration. Election Commission task requires wisdom, courage and the desire to remain focused on the vision of free and impartial elections despite changes in our society and its laws. By dedicated adherence to these principles and Standards of the Conduct, it demonstrates the loyalty to freedom, pride in the profession and a commitment to the excellence of the democratic process through a neutral and strong Election Commission.<sup>18</sup>

## **5.7 Extend Election Commission Reformation is Necessary**

The apex court decision on the unconstitutionality of the Caretaker Government system and its hast abolition by the government has generated serious concern among those desirous of free and fair elections to propel a robust democratic governance. This incumbent government and the opposition alike publicly support free and fair election but they differ on how to achieve it. Election is one of the inevitable pre-requisite of democracy. So, free and fair election at any level is a must for an ideal and sustainable democratic system. For this reasons, a standard electoral process is very important for smooth running of our government, state mechanism, development, national growth and a peace loving foreign policy. The recent constitutional amendments and legal changes concerning the electoral process are very much significance for achieving goal enshrining the Constitution in the absence of the Caretaker Government. No legal provision or system of accountability of the Election Commissioners and other officials exists, as a result of which millions of public and donor money was wasted in different projects.<sup>10</sup> Election laws have been interpreted differently by different Commissioners and other EC officials, indicating the complexity of the law and vested interest of manipulating the situation. Gross violation of law and rules with regard to voter

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<sup>18</sup> Election Commission Secretariat Act, 2009.

list preparation and updating indicates poor understanding of such law by CECs and Commissioners<sup>11</sup>. Questions may be raised on such confusions even most of the CECs and Commissioners were from the judiciary. Implementation of law has not been strictly maintained by most of the CECs, although the EC has enough power within the existing law. Non-implementation of these laws indicates weak moral standing of the Commissioners including the CECs.<sup>12</sup> On the whole, this is to uphold the democratic government, a free and fair election is a must. For such the present election commission should be reformed. As the Caretaker Government system is abolished so why the standing election procedure is supposed to alter to bring a good election commission for the betterment of the Republic. It may be the way of poll and code and conduct of the parties concerned. And these processes which are outdated for better election.

### **5.8 Unrest Situation among Political Parties in Respect of Belief**

There is a serious lack of professionalism in terms of discharging the functions of the EC in respect of political dialogue. Poor understanding of electoral laws, non-implementation of the laws, nonperforming regular jobs such as delimitation and updating the voter list, lack of precedence, handing over responsibilities, lack of proper orientation to the job nature at the EC, sense of accountability, and absence of stock taking indicate that capacity building is necessary for the Commissioners as well as other officials of this institution.<sup>15</sup> There is no government policy on strengthening the EC in terms of using the experience of field level officials through their proper placement. These lacunas bring the political parties in unrest mode showing their faith each other when the poll is held under the commonplace Election Commission. The 15<sup>th</sup> amendment brings the political parties in more outdated situation.<sup>16</sup> The present EC is opt to hold such level of election though City Corporation Election is being held under it. But the face of it is not seemed to more confidence, these question to the commentator for criticize and mark to the ultimate poll questionable. This is all about puts an Unrest Situation among Political Parties in Respect of Belief.

### **5.9 Procedure to Reform of Election Commission**

The cost of actions of the EC are quietly depends on financial affairs. However, it is dependent on the Ministry of Finance for its budgetary allocations. Considering the experience to conduct election and election-related expenses such as voter list updating, training of the personnel, costs of the administrative machinery, the Commission estimates the yearly budget. However, the Ministry of Finance does not necessarily provide the amount

as required. There is a huge gap between the demand placed by the EC and provided by the ministry. Sometimes the ministry delays fund disbursement which hampers the activities of the Commission.<sup>17</sup> So the reformation should be addressed with considering each and demands arising from different department. The starting concerned point is to be the financial offspring which is the ultimate fuel to conduct a good mechanism of election. This is the soul matter of the Ministry of Finance. So first of all the sources of money should be ensured for any actions arising from election commission. Then the requirements of staff are to be appointed from talents searching for authentic business. Since all the features demand finance, so for the transparency and fairness should be a guide for a procedure of reformation of election commission. The EC demands assistance from the State Ministry. So every Department of the State should be availed to link up with the EC. These are the aspects need to be considered reformation of election commission.<sup>19</sup>

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<sup>19</sup> Bangladesh Election Commission: A Diagnostic Study: Viewed from- <http://www.ti-bangladesh.org>. Accessed on-23.11.2022

## CHAPTER 6

### Essentials to Ensure Free, Fair and Impartial Elections

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

##### 6.1.1 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.<sup>20</sup>

##### 6.1.2 Duties of Election Commission

Election Commission an independent constitutional body entrusted with the responsibility of holding national and local government elections. It announces schedules of elections, delimits constituencies, prepares election rolls, supervises elections, announces election results and establishes election tribunals to settle election disputes. Part VII of the Constitution of the Peoples Republic of Bangladesh defines the composition, powers and functions of the Election Commission. The Bangladesh constitution provides that 'there shall be an Election Commission consisting of a Chief Election Commissioner and such number of other Election Commission, if any, as the President may from time to time direct.' At present, the Election Commission consists of three members including the Chief Election Commission. The Election Commission is constitutionally oath-bound to ensure free and fair elections to the office of President of the Republic, and to *Jatiya Sangsad* and local government bodies. The Elections Commission maintains close relations with all political parties. On matters of election schedule, election process and overall arrangement for elections, dialogue is initiated with all political parties. Discussion on issues relating to voter registration, preparation and updating of electoral rolls and relevant matters is also held with contesting political parties.<sup>7</sup>

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<sup>20</sup> Akbar All Khan, "Electoral Challenges in Bangladesh, The choice between the unpalatable and disastrous", *The Daily Star*, (Dhaka, March 17, 2013,)

### **6.1.3 Grounds to Reform Election Commission in Bangladesh**

From the diagnosis of the EC, it is revealed 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. 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.<sup>21</sup> All these are reflected in the results of elections in favor of the ruling party. The EC has not been up to the mark in terms of efficiency since there is existence of fake voters in the voter list, irregularities in voter list preparation, imbalance in voter distribution due to not conducting delimitation of constituencies over the last 22 years, lack of actions undertaken on electoral malpractices, and controversial roles played by the CEC and other Commissioners.<sup>22</sup>

### **6.1.4 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.

### **6.1.5 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.<sup>23</sup>

### **6.1.6 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

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<sup>21</sup> Bangladesh-Economic Reconstruction after Independence: Viewed from [http://www.mongabay.com/history/bangladesh/bangladesh-economic\\_reconstruction\\_after\\_independence.html](http://www.mongabay.com/history/bangladesh/bangladesh-economic_reconstruction_after_independence.html). Accessed on 23.11.2022

<sup>22</sup> M. Jashim Ali Chowdhury, An Introduction to The Constitutional Law of Bangladesh, 1st Edition, Northern University Bangladesh (NUB), 2010, pp. 496

<sup>23</sup> Ibid

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 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.<sup>24</sup>

#### **6.1.7 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.<sup>25</sup>

## **6.2 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

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<sup>24</sup>Akbar All Khan, "Electoral Challenges in Bangladesh, The choice between the unpalatable and disastrous", The Daily Star,(Dhaka, March 17,2013)

<sup>25</sup> Ibid

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.

## CHAPTER 7

### Findings, Recommendations and Conclusion

#### 7.1 Findings:

- 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.
- The current election system does not provide sufficient training facilities for the polling personnel. They are not highly educated and experienced.
- 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.
- There was no provision of negative voting. Except in the national election of 2008.
- 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.
- The person who nominated for election, expense huge amount money for the election purpose. The governmental resources are not properly used in the electoral process.
- Sometimes election disputes occurred and a lengthy procedure was followed for solving the dispute.
- The News media are not free to act as conveyers of accurate information and to act as watchdogs over government and political process.
- 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.
- The existing reality the Election Commission is perfect manifestation of the conflict between the theory and practice.
- This reality has led this Commission to do perform its activities in a brazen manner.



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

## 7.2 Recommendations

- The inter-relationship between the EC and the EC Secretariat should be clearly defined.
- The EC must be financially independent.
- There should be separate allocations in the national budget for the EC.
- The rules and laws relating to election and election commission must be updated.
- The appropriate democratic political culture should be practiced by the political parties
- A prosecution wing of the EC should be set up for dealing with all kinds of irregularities election.
- The EC should be given the authority to file cases against any candidate who violate electoral law and code of conduct, and to cancel candidature if the concerned candidate is proven guilty of violating electoral laws or code of conduct.
- 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.
- 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. The EC must be financially independent.
- There should be separate allocations in the national budget for the EC.
- Projects implemented by the EC have to be designed and developed incorporating monitoring and evaluation activities.
- There should be evaluation after each project and the assessment report should be made open for public review.

### **7.3 Conclusion**

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 its independent functioning. But, the matter 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 which have been discussed earlier this paper. Now, We are facing a great problem about holding of next parliamentary election. The Election Commission should try to arrange political dialogue among the leading political parties of Bangladesh to reach in a unified opinion about the holding of next parliamentary election and whereby it should assist to uphold the justice by ensuring fairness in Election Procedures. Some positive initiatives have been taken to find out some way-outs of the problems remaining with the worthiness of existing election commission to hold a free and fair election. However, the enforcement of newly made law for appointing the chief election commissioner and other election commissioners along with proper application of other laws in respect of election can help the election commission carry out its business properly.

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