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Different Provisions Relating to Aboriginal People's of the Sub-Continental Constitutional Laws: A Study

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বাংলাদেশের সংবিধানে নির্দেশিত ভাষা এবং উচ্চতর আদালতে এর ব্যবহার : একটি আইনগত পর্যালোচনা

বাংলাদেশ সংবিধানের ৫ম সংশোধনী বাতিলের রায় ও প্রভাব : সংবাদপত্রের আলোকে একটি বিশ্লেষণ

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The Role of Election Commission in Strengthening Democracy: Reforms and Constitutional Obligation

M Abdul Alim*

Introduction

The term "Election" means a decision making process by which a population chooses an individual to hold formal office. This is the usual mechanism by which modern representative files democratic offices in the legislature, sometimes in executive and judiciary and for regional and local government. This process is also used in many other private and businesses organizations from clubs to voluntary associations and corporations.

Democracy is based on the principle of tolerance and it allows every individual to speak, criticize and disagree with others. A democratic government does not use illegitimate coercion in the name of social welfare, it is the proper way of social and economical freedom and after all the true development of a country depends on it, election is the pre condition of it.¹ To hold a free, fair, transparent and impartial election an independent and effective Election Commission is necessary. Election Commission plays a great role to make a country develop economically, industrially and socially. The actual and responsible candidate will come out from the election who will work for the public. So the necessity of Election Commission is beyond do not for a democratic country. Election is the foundation and bedrock on which democracy stands. On the basis of fundamental principles of state policy election is being held in our country by the election commission. The Election Commission which is the fourth organ of the state as envisaged in the constitution is a constitutionally independent body to control and conduct election process. Administering election process through an independent

* Assistant Professor, Department of Law and Justice, University of Rajshahi, Rajshahi, Bangladesh.

¹ Vidya Dhar Mahajan, *Political Theory* (New Delhi: S. Chand and Company Ltd, 2005). pp.795-796.

election commission is recognized in many democratic countries. Sir Henry Maine said, 'voice of the people may be the voice of God.'² If we go through articles 118 to 126 of our Constitution, it will be seen that the main purpose of establishment of an independent election commission is to ensure a free, fair and neutral election.

At present most of the countries in the world are democratic. Fair and proper election can be treated as the safeguard of democracy. Bangladesh is a democratic country but there are a lot of defects of the Election Commission in Bangladesh. To maintain democracy of the country, fair and proper election is essential which is impossible without reforms of Election Commission.

Election and Democracy

Elections are foundation stone of any democracy. As the democracies in the modern times are mainly representative in character, they are shaped by the method of election. Bangladesh has adopted indirect or representative system of democracy. Besides, universal adult franchise, free, fair and periodic elections; independent election machinery is prominent among the features of Bangladesh democracy. The conduct of free, fair and impartial elections depends much upon the performance of the three elements which form a triangle. They are the independent and impartial electoral machinery; the political parties and candidates; and the electorate. According to the Constitution of Bangladesh, the entire electoral machinery is supposed to function under the Election Commission of Bangladesh, which has been granted freedom of functioning from the executive under Article 119 of the Constitution of Bangladesh.

Holding regular periodic elections, based on universal adult suffrage, granted under Article 118 of the Constitution in a country like Bangladesh with huge population, is not a small and easy task. In the proposed paper, an attempt would be made to make a detailed analysis of the role of Election Commission in Bangladesh in strengthening democracy. Election Commission, like any

² *Ibid*

other institution, comes across many challenges in its functioning viz. corrupt electoral practices, electoral offences, role of money and muscle power, misuse of government power and machinery and discontent with the existing electoral system. Further attempt would be made to enumerate and analyze the problems and challenges facing the electoral machinery of Bangladesh.

Composition of Election Commission

Election is the first and only precaution of democracy. The institution which controls or arranges pre and post situation of election is called Election Commission. Election Commission is a constitutional authority having some power, rules and regulations to run its activities of its own. In this case it is an independent organ of Bangladesh that controls many electoral activities by applying some rules and regulations. In this context article 118 of the Constitution says: "There shall be an election commission for Bangladesh consisting of a chief election commissioners and such member of other election commissioners, if any, as the President may from time to time direct, and appointment of the chief election commissioners and the other election commissioners (if any) shall subject to the provisions of any laws made in that behalf, be made by the president."³ On the other hand, the Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law.⁴ The Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this regard, be appointed by the President for a term of five years from the date of entering the office.⁵ 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

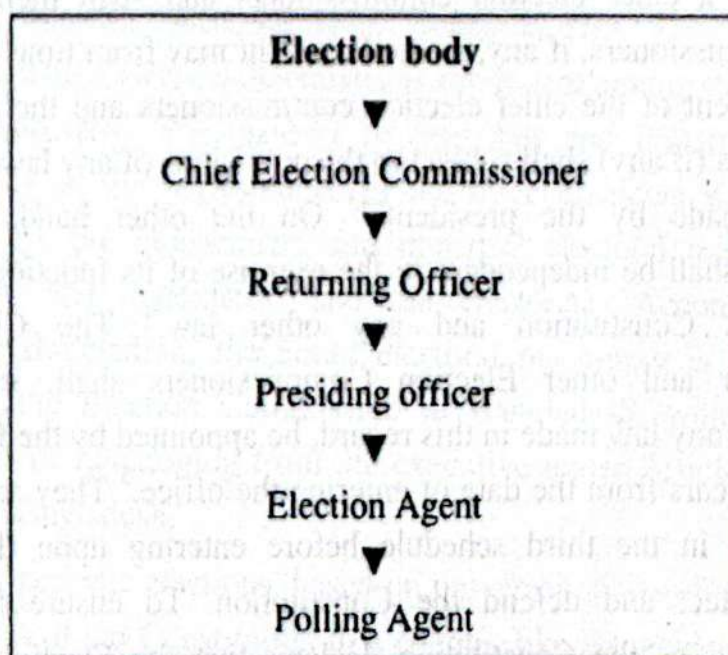
³ Article 118, *The Constitution of Bangladesh*, 1972

⁴ Article 118[4], *The Constitution of Bangladesh*, 1972

⁵ Article 118[3], *The Constitution of Bangladesh*, 1972

Constitution and any other law. Though the conditions of service of the Election Commissioners are to be determined by the President, in order to maintain their independence and freedom from political and executive influence, 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. Their remuneration, privileges and other terms and conditions of service shall not be varied to their disadvantage during their term of office. They are to take oath of office in terms of article 148 of the Constitution. To ensure their independence and neutrality it has been further provided that a person holding the office of 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.⁶

Structure of Election Commission



⁶ *The Constitution of Bangladesh*, Article 118[3][b].

Activities of Election Commission

Election Commission is a commission or constitutional body which is authorized to hold the elections and control the overall code of conduct of the election. It is an institution which is entrusted to hold all kinds of election that means national election, local government election or any other elections subjected to the provision of law. The superintendence, direct and control of the preparation of the electoral rolls for elections to the office of president and to parliament and the conduct of such election are vested on election commission.

According to Article 119 (1) of the Constitution, the functions of election Commission are as follows:

- (1) Hold elections to the office of president;
- (2) Hold elections of members of parliament;
- (3) Delimit the constituencies for the purpose of elections to parliament and
- (4) Prepare electoral rolls for the purpose of elections to the office of president and parliament.

In accordance with other relevant election laws the functions of the Election Commission are:⁷

1. It discharges any party or member because of discipline.
2. It announces the schedule of election.
3. It prepares the election rules.
4. It prints and supply ballot papers.
5. It collects election data for research, reference and records.
6. It prints voter's list.

The Constitution vests the superintendence, direction and control of the preparation of the electoral roll for the presidential and parliamentary

⁷ The Representation of the People Order, 1972, section 7.

elections and conduct of such elections in the Election Commission. 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 of the Constitution which is the reservoir of power for it to ensure fair election.⁸ The commission is required to hold the parliamentary election, delimit the constituencies of parliamentary elections, and to prepare electoral rolls in accordance with the Constitution and any law passed by parliament in this regard. Election is a long, elaborate and complicated process which starts with the notification for holding the elections and ends by the declaration of the result of polling in the manner prescribed law. The Commission has to supervise, control and direct each and every step of the process to ensure free and fair election the Commission must be deemed to have all the power and direction to ensure free and fair election as that is the manifest intendment of the Constitution in providing for the Commission.⁹ 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 in any way curtail or diminish the effectiveness of the Commission in holding free and fair elections. Besides the Elections Commission shall perform such functions in addition to those referred in the foregoing clauses as may be prescribed by the Constitution or by any other law.¹⁰

As to the independence of the Election Commission the following provisions have been provided in the Constitution. These are as follows:-

Article 118 (4) : The Election Commission shall be independent in the practice of its functions & subject only to this Constitution and any other law.

Article 118 (5) : An Election Commission shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court.

⁸ *Afzal Hossain VS Chief Election Commissioner*, 45 DLR 255.

⁹ *Altaf Hussain VS Abul Kashem* 45 DLR (AD) 53.

¹⁰ *The Constitution of Bangladesh*, Article 119[2].

Article 120 : The president shall, when so requested by the Election Commission make available to it such staff as may be necessary for the discharge of its functions.

Article 119 : The superintendence direction and control of the preparation of the electoral rules for elections to the office of president and to parliament and the conduct of such elections shall vest in the Election Commission.

Article 126 : It shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions.

Necessary reforms of Election Commission

The Election Commission which is the fourth organ of the state as envisaged in the Constitution is a constitutionally independent body to control and conduct election process. But for ensuring free and fair election our present Election Commission needs some reforms. From 1972 to 2008, when the Peoples Representation Order, 1972 was revealed and before the 9th parliamentary elections, the Commission has changed many provisions. But still there is a crying need to change and add some new provisions which will make the Election Commission an independent and powerful body to conduct election through the country.

The reforms which seems necessary for the Election Commission are given below:

- (i) Chief Election Commissioner and election commissioners are to be appointed after consultation with political parties.
- (ii) The independence of the Election Commission must be ensured.
- (iii) Election Commission must have its own secretariat free from the influence of the executive.¹¹

¹¹ Philip Gain and others, *Handbook on Election Reporting* (Dhaka: Society for Environment and Human Rights, 2001), p.36

- (iv) Election Commission must be given its full budgetary freedom and the Finance Ministry would have no control over the release of funds.
- (v) The Election Commission must have full authority to appoint returning officers and law enforcing agencies to ensure security during the elections, and the government would be obliged to take necessary action in line with the commission's demands.¹²
- (vi) The persons involved in conducting the elections would be under the Commission for a certain period before and after the polls.
- (vii) During the period, the Commission's would have the authority to take immediate disciplinary action against them for any offence and neglect of duty, and the government would have to act out the Commission decisions.
- (viii) The Commission would be able to postpone or cancel elections in case of violation of election laws and rules and to issue orders of arrest and to punish the violators. During the election period, it would have judicial powers too.
- (ix) The electoral roll would be prepared maintaining full transparency. The roll preparation and issuance of voters, identity cards would have to be computerized and electronic voting would have to be introduced.
- (x) The returning officer would send the consolidated statement of the election results to the Commission secretariat and only the Election Commission would announce the results.
- (xi) The election tribunals would dispose of any cases involving election results within two months and any appeal would have to be disposed of by the Appellate Division of the Supreme Court within three months.

¹² *Ibid.*

(xii) Candidates must make public declaration of their assets and dependents. All candidates must submit statements of their election expenses within one month of the polls. Personal information, including their academic qualifications, source of income and account of assets and liabilities are to be disclosed.¹³

(xiii) Black money holders, loan defaulters and relatives of loan defaulters, of independence and war criminals would be ineligible to contest the elections.

(xiv) A ban would have to be imposed on the use of religion based politics and on the use of religion in seeking votes.¹⁴

(xv) Prisoners are also citizen of our country, But they don't have any voting power. So Election Commission should establish a polling booth in prison for ensuring their voting right.

After doing all these reforms we can hope to have a real democratic neutral governing body. Above-mentioned reforms are necessary to make the election commission really independent which can ensure a fair and credible election. It also needs to frame a proper code of conduct for the contending political parties and candidates. These are: ,

1. Election Commission should be an independent body and it should have its own secretariat. At present, the Election Commission secretariat is attached to the Prime Minister's secretariat. As a result, the Chief Election Commissioner cannot exercise his effective control over the secretariat of Election Commission.
2. Chief election commissioner and other election commissioners should be appointed with the counsel of major political parties.
3. Election commission should have full authority in appointing and controlling returning officers, presiding officers and polling officers.

¹³ Abdul Halim, *Constitution. Constitutional Law and Politics: Bangladesh Perspective* (Dhaka: CCB Foundation, 2008), p.469.

¹⁴ *Ibid*

4. Election Commission should have authority to exercise requisite judicial power upon the persons who are involved in election procedure.
5. Election Commission should strictly monitor pre and post election law and order situation. In this regard it should have necessary authority upon the law enforcing agencies involving in election process.
6. Election Commission should have full budgetary power to bear the expenditure of election process.
7. Election Commission should have mechanism in every constituency to observe the conduct of the political parties, their candidates and their supporters.
8. Election Commission should strictly monitor that no political party can exceed the present ceiling of election expenditure.
9. All political parties will enjoy equal rights with regard to election campaigns, rallies and processions.
10. The contending parties and candidates must inform the police of the time and venue of their rallies, meeting and other programmes in advance so that the authorities may take measures for public movement and ensure law and order.
11. The contending parties, candidates and organizers of election campaign programmes must not take steps against the trouble makers on their own.
12. The political parties may announce their overall development planning but from the date of announcement of election schedule until the polling is completed, they may not donate any sum of money to any institution.
13. No political party may use government officials, official transportation or other state facilities.
14. No political party may use government media like television, newspaper etc. as a means of election campaign. Government offices, government dak bungalows (rest houses) can't be used as a place of election campaign.
15. No contender should use more than three microphones at a time in his respective area and use of mikes will be limited between 3 pm to 6 pm.

16. Posters for election campaigns must be printed on country – made paper in black and white and it can't be more than 22"×18" in size. The contenders can hang their posters on rope and leaflets or handbills may be given. No poster, leaflet or handbill may be put on the posters, leaflets or handbills of rival candidates. No contender can publish any poster or leaflet deriding the rival candidates.
17. All candidates will refrain from all sorts of wall writings for election campaign. Motor vehicles, trucks, buses or torch procession on behalf of any candidate should be banned.
18. No election camp may be set up on the roads or places of public use and lands, buildings or other property of any citizen must not be damaged in connection with election campaign.
19. The voters can't be entertained with food, drinks or money by the political parties and their candidates. The voters must not be influenced by weapons, muscle power or local influences.
20. Religious institutions like mosque, temple etc. can't be used as a means of election campaign. No political party or candidate can give any statement which might hurt the sentiment of the followers of any religion or community.
21. All political parties must cooperate with the officials and employees engaged in election duties. No worker of any political party will be allowed freedom of movement inside the polling centers.
22. To be a candidate of a political party a person must have at least graduation degree. The candidature of bank or bill defaulters should be barred.
23. If any person has any civil and criminal offence, he must not be a candidate. War criminals must not be the candidates of election.
24. The prisoners should have the right to vote as they are the citizens of our country. The immigrated Bangladeshis should have the right to vote because the wheel of our national economy is running by their earned foreign currency. The deprived women involving in prostitution should have right to vote because they are our citizens also. The hermaphrodites must have right to vote because they are also the human beings like us created by God.

25. If any candidate or political party tries to break any election rule, it will be treated as gross violation of the code of conduct of election and necessary judicial steps must be taken against that candidate or political party.

26. During the 9th parliamentary election the Election Commission had to take help from the military force in making voter ID card. But the Commission would have a powerful working team who will conduct such kind of activities. The Election Commission will invite observer team from home and abroad consulting with the political parties so that if any question arise the observer teams will help them.

If the above reforms are adopted, the election commission will be able to conduct a free, fair, neutral and credible election. If we become able to make our Election Commission independent and impartial, no caretaker Government will need to hold an election. So to strengthen our Election Commission we need some reformation of the commission.

Conclusion

Analysis from broader perspective will give the idea that there is no alternative of making the Election Commission fully independent. The flaws and defects of the Election laws should be corrected and the Commission should be invested with full authority to announce and conduct the election. If the above mentioned reforms are taken co-operatively by the government and the Election Commission the nation can expect a free, fair transparent and impartial election that will help us to build a exemplary democratic country.

We expect that our government will take necessary steps to reform Election Commission as soon as possible for the betterment of our country. If we can establish these kinds of reformations we can hope that election commission will become a free, fair, neutral and trustworthy institution and we will get a hopeful and proper election.