

countries in Europe, Latin America and Africa including Israel uses this system for election.

Another kind of electoral system covered with the term PR is the single transferable vote (STV). This system do not depend on the existence of political parties and in that system the above-mentioned "measure of grouping" is entirely left up to the voters themselves.

Mixed PR system combines a proportional system and a single seat district system. The system tends to achieve some of the positive features of both of these. Mixed systems are often helpful in countries with large populations, with ethnic minorities and different geographic boundary since they balance the mechanisms of elections focusing on local or national issues. Many countries who have adopted this system are Bolivia, Germany, Lesotho, Mexico, Germany, New Zealand the Scottish Parliament and Welsh Assembly of UK. Close at home Nepal used the mixed system in 2008 for electing members of the constituent assembly.

Presently in most of the parliamentary democracy, a demand for Proportionate Representation (PR) system is growing for a simple reason that it allows multi-party representation which guarantees inclusion of divergent ideologies and representation of ethnic minorities. But most strong argument is that the system counts for each vote and voters have their representation to the maximum. It also prevents 'winner takes all' attitude and helps in the growth of multi-party.

Duverger in his second 'law' says, "... the second ballot [majority] system and Proportional Representation (PR) to multi-party-ism (Gorfman and Lijphart: 1986). However Duverger has been contested in this issue. Giovanni Sartorgi in his article '... the influence of Electoral Systems: 'Faulty Laws and Faulty Method?' tried to dismiss Duverger's notion of growth of 'multi-party-ism' in PR system of voting. However, since this study is not to analyze or to produce an anti-thesis of these laws therefore, this debate is not included in this study. Nevertheless, issue of a change in the voting system remains a hotly debated subject in the parliamentary democratic world that however does not exclude Bangladesh.

Chapter 3

Electoral System of Bangladesh

This Chapter aims to provide a brief introduction to the formation of BEC, its historical background and various issues and problems both structural and legal that it is faced with. This would then help the reader of greater understanding of the requirement of Electoral Reform that was taken in hand in 2007-08 as pre-condition to 9th Parliamentary election in 2008.

The Constitution of the People's Republic of Bangladesh lays down the composition and electoral system. In that Article 65 (2) provides, "Parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election and, for as long as the clause is effective, the members provided for in that clause; the members shall be designated as Member of Parliament". Clause (3) of the same article under Fourteenth Amendment, Act 2004 mentions reserved 45 seats for women for next ten years further amended in 2011 and raised to 50 seats.. It further says that women members "will be elected by the aforesaid members in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote". However, the clause does not restrict a woman to contest in the direct election.

Analysing Article 65(2) and (3) it would appear that parliament consists of three hundred fifty seats in which three hundred members are elected from single member constituencies on First Past The Post system (FPTP) on multi-party system and fifty seats on proportionate representation in an indirect election based on the number of party members in the Parliament. For the purpose of the direct election of single member constituencies the entire country is divided into three hundred constituencies based on the population.

Constituencies are delimited after every census and before any Parliament elections by law under Article 119 (C). Delimitation is one essential task of the Election Commission.

Bangladesh Election Commission (BEC) and its Powers

Election Commission, in most cases, derives power from the constitution. BEC is a Constitutional body setup under Article 118 and Article 118 (4) stipulates that "Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law" (Constitution of Bangladesh, printed with latest amendment August 1, 2006 Part VII elections). The Constitution also provides power to the Election Commission to take necessary means and all possible measures to discharge its obligation to hold free and fair election. Article 119(1) states, "The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of President and to the Parliament and conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law" (Constitution of Bangladesh, printed with latest amendment August 1, 2006 Part VII elections): In the interpretation of Article 119(1) High Court division of Supreme Court of Bangladesh while disposing a writ petition no 2561 of 2005...Abdul Momen Chowdhury and others vs. Bangladesh and Others, Learned court in a judgement of 24th May 2005 opined, "from a close reading of Article 119 of the Constitution, it appears that the Election Commission has been given a plenary power of superintendence, direction and control of the preparation of the electoral rolls for elections and therefore whatever power is necessary for the purpose must be presumed to be there unless there is an ouster by express provision" (Writ 2561 of Aug 24, 2005).

Thus not only that BEC is deriving power from the Constitution but being supported by the other institution like judiciary which acts as guardian and protector of the democratic values of the country. In that ambit reforms so far carried out by the BEC with the help of other democratic institutions has yield desired result in 2008 Parliamentary and other elections held subsequently. All these

reforms done so far, especially of 2007-8, have put Bangladesh Election Commission and election system ahead of other South Asian countries which we shall discuss separately.

Historical Evolution of the System and BEC

BEC was established 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 was won by AL. These officials and staff had also held election to the then East-Pakistan Provincial Assembly in the same year. These experiences paid rich dividend in setting up the BEC at earlier stage of liberation.

BEC was strengthened and further structured on the sound footing with the enactment of the most important electoral law the Representation of the People Order 1972 (RPO-1972). A number of rules and regulations were also 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 based on the seats limited by the Constitution. A total of 14 parties including independent candidates those participated in the election in which AL under Bangabandhu 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 (Mannan: 2005: 49-50).

Article 65(2) reads, "... the 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 of 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.

Critical Electoral Areas Faced by BEC Since 1972

Ever since establishment of BEC it had conducted numerous elections and bye-elections including all local elections till 2003. It had conducted 9 parliamentary elections up to 2008. BEC conducted three (3) Presidential Elections under presidential system and five (5) Presidential Elections through the votes of members of Parliament in Parliamentary form of government till 2009. BEC also had the experience of three (3) Referendums in 1977, 1985 and 1991.

Apart from elections at national level, mentioned above, BEC conducted other local body elections. It has the experience of Upazila Parishad election in 1985, 1990 and latest in 2009. So far BEC conducted fifteen times city corporation elections till 2011-12 and eight times (8) Pourashava Election including few elections in 2008. BEC conducted Union Council elections in nine occasions till 2011. BEC also conducted one time Hill District Council Election. This particular election was bit complicated and cumbersome as BEC had to rearrange election of fixed numbers of council members from different tribe and chairman reserved only for tribal candidates in all three Hill Districts of Chittagong Hill Tracts.

Analysis of all these elections showed that there existed critical areas of Electoral concern which did not receive adequate attention for looking into the detail for rectifications. Only plausible reasons for such lapse was those could be advanced are, lack of foresight, research and due to non-conducive political environment.

Nevertheless, study shows that there remained some less identified critical areas most of which became overreaching factors for reforms.

In broader terms, the most critical area that lingered for long was lack of public confidence in the electoral process. While analysing peoples' faith in entire electoral process four key areas that needs to be constantly evaluated and reformed, as was done in 2007-08 for holding fair, free, transparent elections and legitimacy of the entire system are:

- Electoral Roll
- Electoral system
- The structure of the EMB or Election Commission: The structure includes all laws especially electoral laws those provide legitimacy of EMB functions and provides legitimate power to conduct the election acceptable to the society.
- The physical structure is also remains critical as discussed.

These were, however, the main areas that were identified, in broader terms, for the reform process in 2007-08.

Electoral Roll: There is ample proof that Electoral Roll was manipulated during the last two decades which had been in the centre of the political turmoil after every election especially since 1991. That remained the most critical area that needed to be corrected. Over the years public had lost confidence on the Electoral Roll. It was proven during 2006 political mayhem. It was found that almost 1.2 million spurious name did exist in the old Electoral Roll.

Electoral System or Process: Electoral system or process includes all aspects of election. Legitimacy of the electoral process is crucial for the establishment and maintenance of democracy. Lack of confidence in the process by the Public could be fatal for democracy to take roots in a society. If the electoral process is threaten by skewing the rules of the process, designed electoral process in favour of chosen actor over others and voter choice is systematically manipulated by rigging (since the voting process is made through the electoral administrative process) then the public confidence in

the system erodes. Such a situation then can jeopardise the entire ethos of democracy. Faith in electoral process is critical in maintaining democracy. Unfortunately, over the years such faith had eroded in Bangladesh.

Structural Issues: One of the most important factors that remained critical was the lack of public confidence on BEC. The fact has been adequately covered. BEC had suffered even on the question of legitimacy as there was no principle rule for appointment of managers i.e. Commission. Most of the time legitimacy of the appointment of the Commission has been questioned by the public. In most cases appointment has been made by the political government from persons of their liking. It remains unaltered till date and therefore, the appointment process of the Commission still remains a critical area that needs focus. One glaring example is the intervention by the President of the country on the question of appointing EC after Dr. Huda Commission. President Zillur Rahman had called for consultation with the registered political parties that started from 22 December 2011. This could be one ad-hoc arrangement though laudable since this was first ever attempted issue based dialogue in the country's history to resolve a burning issue through an attempted consensus. At the same it is pity that this time again opposition group led by BNP did not respond to the call. Thus the talk did not yield desired result as consensus could not be reached where as the appointment through a consensus was most critical.

However, the attempt was, howsoever ad-hoc, has at least resonate the need for a permanent structure for selection. Therefore, it becomes imperative to enact a law that would take care of the appointment of EC under that law as envisaged in the constitution. BEC under Dr. Huda had suggested a draft law but remained in the cold storage. Thus the appointment of EC would hardly be termed as 'all party consensus decision'.

The suggested draft law that was forwarded to the government by BEC envisages constitution of a search committee headed by incumbent Chief Election Commissioner with Auditor and

Comptroller General, Chairman Public Service Commission, a High Court Judge to be nominated by the Chief Justice and Chairman of Anti-Corruption Commission, first three being constitutional appointees and later is a head of a statutory body. The procedure of selection of EC etc would be discussed later in detail.

Along with questionable appointment of the Election Commission the status of its secretariat, as that works as the backbone of the Commission, had been a critical area within the structure of the BEC. The other element of structural strength of BEC is the electoral law, rules and regulations. Unfortunately there remained serious flaws in these legal documents those are supposed to strengthen the hand of the BEC.

Electoral law has been found to have been insufficient in reducing the ever increasing tendency to use money and muscle powers to skew the rules of the game as well manipulate the system. Use of money and muscle power had become the main element of distorting the voting result.

The other area of concern remained to be the process of nomination by the various political parties in exchange of monetary benefit. This practice had almost become endemic with almost all the political parties. Alleged finger had been pointed towards bigger parties as well.

One of the contributing factors to the distortion of the system was the mushroom growth of political parties and their participation in the election which not only entailed extra burden upon the election managers but gave rise to other unscrupulous activities to create enough problem in election management. Most of these parties hardly existed in national politics other than participating in the election and not polling even 1 percent of the votes. For example 54 political parties participated in the 8th Parliamentary Election held in 2001. Except 5 parties and including a group of 486 independent candidates, none of the participating parties polled anything above 1 percent including a party filling 140 candidates. Beside 6 parties, only 3 other parties secured 1 seat each filling over 50 candidates (BEC source: 2002).

The other issue that has been creating unmanageable logistic and discipline problem was the flurry of unchecked number of independent candidates participating in the elections without any conviction. Most of these independent candidates have been landing them as 'dummy candidates' on behalf of the big party. This seems to have been a menacing problem in every election held up to 8th Parliamentary Election. At times presence of large number non-serious independent candidates, 'dummy candidates' had led to utter disorder in the polling stations. Though the RPO -1972 had some criterion set for party candidates but none for independent candidates that kept the flood gate open for non-serious candidates to participate election with various motives. The fact is evident from the statistics that are available since the parliamentary elections held from 1991 to 2001. Out of total 2,787 in 1991, independent candidates were 424, in 1996 out of total 2574 independent candidates were 281 and in 2001 independent candidates stood to 486 out of total 1,939 candidates (BEC source: 2002). This kind of bizarre situation breeds indiscipline in the polling stations and creates huge logistic problems.

Relation between BEC and political Parties: No formal relation existed between BEC and political parties other than election period as there was no provision in the law for mandatory registration of the parties with BEC. Due to non-existence of such provision there were no binding for political parties or for BEC to maintain a formal relationship between two most important institutions of democracy. Having studied the other regional countries EMB structure it is evident that BEC had no such binding till law was reformed in 2007-08. Therefore, there were checks and balances to put political parties in some kind of bindings and to monitor inner-party discipline.

Delimitation of Constituencies: Another important area which may also form part of structural reform is that of delimitation of the constituencies. This is an important issue that definitely adds to the factor of restoring confidence in electoral process. This is not only subject of statutory law but Constitutional obligation to create level-playing field for candidates participating in the process. The fact had been ignored for 24 years. In all other countries this factor has been

considered as critical areas of reform and due importance is accorded. For example in India a separate commission is set up to ensure a fair play in delimiting the constituencies.

In broad terms these were identified as the critical areas for rectifications but no serious attempts were made in the past to resolve them through Electoral Reform.

Therefore, unless these critical areas were addressed and reflected through repeated elections those could demonstrate neutrality of the BEC through even handed application of law. Lack of use of the accurate electoral roll prevented restoration of public confidence.

It therefore became imperative on the part of BEC to restore public confidence in that it had to undertake an arduous task first to identify and then to address the critical areas and to rectify them before facing the real test i.e. elections. This is what the BEC (2007-12) undertook through out the period of 2007-08 before launching into series of successful, fair, legitimate and acceptable elections including most highly appreciated, within and outside the country, National Assembly Election of 2008 i.e. 9th Parliamentary Election.

Institutional and Structural Issues

Lack of Peoples' Confidence in the Process: The Bangladesh electoral process that has been practiced so long had some lacuna those were not given close attention to though democratic elections since 1991 have been satisfactorily fair as they were conducted under NCG installed since Ershad's fall in 1990. Yet there has been constant scepticism from the losing parties of manipulation by the other agencies. Except, in 1990-91 NCG of Justice Shahabuddin all other elections have been seriously questioned by the defeated parties. Political confrontation between ruling BNP and opposition headed by AL took disastrous turn after 1994 Magura-2 bye election conducted under the ruling party. Opposition demands grew on issues like: installation of neutral caretaker government (NCG) to conduct parliamentary elections, reform of electoral process and structural changes in the conduct of election, reform of Election Commission.

The political tangle on the issue became seriously confrontational. The ruling party, BNP, did not yield to the growing demand of the opposition. Unilateral decision was taken to conduct election under the setup that was in place i.e. putting president as head of the interim government. There were no compromises made from both the end. Due to the absence of institutional compromise, the issue of institutionalising of a NCG became the sole issue of confrontation between ruling BNP and opposing AL. Issue of other structural changes was relegated.

Election Commission remained independent only on paper till 2008. Election Commission secretariat remained under Prim Minister's Office which seriously jeopardised the independence of the Election Commission. Not much attention was paid to strengthen the Election Commission by amending the electoral laws. Under the confrontational political environment, Dhaka-11 bye-election was conducted where serious allegation of vote rigging was brought by AL but to no avail. Election Commission was rendered helpless. Then was the much talked about Magura-2 bye-election which totally exposed the inadequacy and inefficiency of the Election Commission and the process in delivering a fair and free election. Election Commission was viewed as surrogate of the ruling party.

The failure of the then Election Commission in tackling those issues was due to some basic structural and psychological factor:

- The organisational lacking of Election Commission
- Election administration process
- Controversy over voter list
- Inadequate law to tackle crisis and
- The political environment

The organisational issue: One of the main issues was that the past electoral reform processes did not have enough element of integrity in the eyes of public and opposing political parties. Therefore, even though there were feeble attempt to bring some changes but it did not affect on electoral culture. No serious attempt was made to the basic structural change within the Election Commission setup.

There had been attempt to free the Election Commission Secretariat from the influence and indirect control of the Prime Minister's Office. Whatever effort was made by the Election Commission and the civil society did not materialise due to lack of political will across the political divide. Therefore, it had calamitous effect on the conduct of the elections as was evident from the above discussed bye elections. Election Commission could not effectively control the administration or the election management system due to unseen influence of the party in power.

Election administration process: One of the biggest problems that Election Commission has faced in past years, is the Election administration system that was and to some extent is practiced. Election Commission has to outsource huge number of manpower including that of law enforcing agencies from the civil administration and from forces under the control of the government. Unfortunately though, due to the low political culture over the years, to a great extent, larger parts of the civil administration has been politicised in such a manner that there are political divide within the administration too. This state of affair makes it difficult for Election Commission to deploy such large number of personal to administer election.

To fathom the enormity of the problem it may be mentioned that about six hundred thousand personnel were involved in the 9th Parliamentary elections. 64 Deputy Commissioners were appointed as ROs and 35,263 were appointed as presiding officers, one each for each polling centres. To assist 1,77,277 assistant presiding officers and 3, 54,554 poling officers were appointed. In addition large number of members of law enforcing agencies including armed forces had been deployed. There was around 10 percent increase in the manpower in each Parliamentary election since Liberation mainly due to increase in the polling centres. It is simply a logistical nightmare that Election Commission has to hold elections to 300 parliamentary seats in a single day.

It has been age old practice to appoint Deputy Commissioners as the ROs for one or number of constituencies. These and other officers

then remain susceptible to intimidation if the elections are held under political government. Though after introducing the system of NCG under the Article 58 of the Constitution, deleted from the amendment of 2011, there had been minimum cases of intimidation by the political parties yet there have been serious allegations of partisan behaviour of some key personnel including, to some extent, that of law enforcing personnel. Though introduction of caretaker government was thought to have helped overcoming of the trust deficit of these administrative personnel but in many cases it was not to be so. A case in point of trust deficit was the rejection of the result by AL after the 1991 election though that election was important in many ways.

1991 election had special significance. One, it was revival of democracy after the fall of Hussain Muhammad Ershad's 'autocratic regime' or 'pseudo democracy', who was compelled to resign by large democratic forces with sustained people's uprising led by AL under Sk. Hasina and BNP led by Begum Khaleda Zia. Two, it was for the first time in the history of Bangladesh that a non-political government known as NCG under then Chief Justice Mr. Shahabuddin Ahmed, as per unanimous decision of all the political parties, was introduced. With ten neutral non-political advisers Mr. Shahabuddin and his NCG held the election to 5th parliament which was acclaimed to be the fairest elections ever held till then through which BNP formed government under Khaleda Zia, as prime-minister. The result not only surprised political pundits but Begum Khaleda Zia and Sk. Hasina as well. Many a political pundits, including Awami League president Sk. Hasina, had contemplated AL to win to form the government but having lost to Khaleda Zia she rejected the election result alleging to have been manipulated in favour of BNP by some beneficial quarter. She commented, "Voters had voted in my party's favour but some unidentified undemocratic force conspired with an invisible force to deny the people the benefit of their verdict" (Hakim, 1992:160). Earlier on the Election Day she expressed "deep satisfaction" having cast her vote in the polling booth. Her statement reflected the fragile political culture. However, that culture continues. Her claim however, was not accepted by the

local and foreign observer as 5th parliament election was termed as "the most free, fair, impartial and peaceful election so far ever held in the country" (Hakim, 1992:160).

Nevertheless, there have been instances in subsequent bye elections where some of the officials behaved in a partisan manner while conducting elections. In most cases results have been either challenged or rejected by the defeated party or candidate. One example could be much discussed Magura-2 election which became catalyst for the legitimisation of the concept of NCG. However, the experience showed that it becomes difficult to minimise the influence that is cast on the civil bureaucrats and government officials those on whom Election Commission usually relies for the conduct of the election. The fact was evident in 3rd Upazila (sub-district) elections held within one month of the 9th Parliamentary elections of 2008. Election Commission had to postpone elections in 3 Upazila, voting centres and withheld the result of 15 Upazila due to alleged interference mainly by the member of parliaments of party in power and other interference. (Author's statement televised on 22nd and published in all news dailies, Prothom Alo etc 23rd January 2009).

Controversy over Electoral Roll: One of the basic instruments for ensuring a free and fair election is a clean and non-controversial electoral roll. If the roll is suspected by the voters and candidate or by the majority political parties the roll becomes controversial and holding elections with such roll that erodes the confidence of the people on the Election Commission and elections held with such suspected roll becomes unacceptable to the people.

It is one of the mandatory tasks of the Election Commission as enshrined in the Constitution of the People's Republic of Bangladesh Article 119. Article 119 (d) mentions and specifies the task to be executed by the Election Commission stating 'prepare electoral rolls for the purpose of elections to the office of the President and to Parliament' thus making Election Commission solely responsible for the preparation and maintenance of electoral roll for the purpose of all kind of elections. However, constitution also limits the number and

put bindings on preparation of electoral roll in Article 121 which says, 'there shall be one electoral roll for each constituency for the purpose of elections to Parliament, and no special roll shall be prepared so as to classify electors according to religion, race, caste or sex' (The Constitution of the People's Republic of Bangladesh –Article 121). Though constitution does not specify the methodology to be used for preparing such roll, except 18 years to be the qualifying age as voter, yet different set of law under the constitution is enacted mainly to define methodology and the other qualifications of voter and the process of updating.

However, the Electoral Law that existed before 2007 reform had set the traditional methodology for the preparation of electoral roll i.e. door to door visit by the enumerators to ascertain voters to be listed. Many a times the enumerators were alleged to be partisans and suffered from distrust. Door to door visit to enumerate was age old practice adopted not only in Bangladesh but exists in many countries in the world. In that system electorate had to fill up a form as presented to him by enumerator. Except listing a voter with name and address there were no extra visible identification system available to ensure his genuineness of the listed voter during the poll. There were no sets of system in place to check voting age while enrolling. In that methodology there was no counter check to stop being voter in multiple constituencies. There were no regular updating program, except prior to next general election, which could not have accounted number of dead voters. The system gave ample opportunity for inclusion of spurious, under age and duplicate or triplicate voters. Revision was a cumbersome process in that methodology. Manipulation of the electoral roll in every stage was common practice by unscrupulous enumerator. Though there was process of inclusion and exclusion during the period of public scrutiny, if objections were raised, but the process was so cumbersome that it increased agony rather than mitigating the objections.

Since the electoral roll was not people oriented, rather the system was too bureaucratic, ordinary people had faint knowledge about the process except becoming part of 'Voter passive' registration where voter did not have any subsequent role. Though the entire process

seemed to be fair but due to 'passive system' voters had no easy access to find out if they were properly enrolled, therefore, by default the electoral roll carried many errors of omission and commission. It is that huge margin of error and voter passive system, inaccessibility, manipulation and bureaucratic registration process which made the enrolment process a huge challenge for Election Commission. In many a cases this default made Election Commission controversial and raised huge political uproar.

A case in point is the controversy over the voter list of 2005 that generated the political heat and confrontation with Election Commission. The brief study of this case would substantiate the observation.

In August 2005, more than a year before the defunct 9th parliamentary election which was scheduled in 2006, the then CEC ordered a door-to-door enumeration to generate a new electoral roll. The then opposition i.e. mainly AL led combined opposition, however, alleged that the enumerators hired to draw up the roll were mostly partisan and alleged that the process was manipulated to pad the lists with millions of "spurious voters." Opposition leaders cited census data to suggest that the new electoral roll included as many as 14 million excess names. The roll prepared at that time alleged to have, which later proved to be true, included 91 million names, a number that did not seem credible in a country of about 130 million people (census 2001). Opposition also charged that there were huge percentages of people below voting age i.e. less than 18 years of age, were enrolled to manipulate and rig the election.

Amidst these allegations sample surveys by number of NGOs working in electoral field validated opposition claims about imperfection of the voter list and their findings were well documented. These surveys also agree with the opposition claim that some selected enumerators openly displayed partisan zeal. Their finding also substantiated that local political elites often interfered in the enumeration process, and that some enumerators did not visit areas with concentrations of religious or ethnic minorities. Surveys, conducted by Bangladesh based NDI, National Democratic Party

USA affiliated organisation, and the NGO Brotee, working in this field for many years, confirmed that there were approximately 12 million of extra names on the lists. This fact can be found in simple analysis of statistics on 'adjusted population by Age, Sex and Residence' of the census report of 2001. The table 1 shows the demographic features:

Table 1: Demographic features of Bangladesh

Population group	Million
Adjusted population age 0-04	16.88
Adjusted population age 5-09	17.33
Adjusted population age 10-14	16.58
Population under 14 years	79.51
Voters in previous and	91.31 (in 2006 list)
Current photo voter list	80.85 (in 2010 updated list)

Sources: Statistical yearbook of Bangladesh, 26th Edition'
Bangladesh Bureau of Statistics 2006, p-42 and Election
Commission, report on Preparation of Voter list May 7, 2006)

It would be logical to presume that even half of the population between 10-14 years of age group would have been qualified to be voter in the electoral roll prepared in 2006, even in that case the total voter would not have exceeded beyond 71 million but it was not so. Therefore, the allegation of malpractice in preparation of electoral roll was not merely opposition rhetoric but logically proven fact. It is evident from the above study that findings by the NGOs of 'spurious voters' in the roll was a fact of the matter. Total number of voters enrolled in 2006 electoral roll defies all logic and simple mathematical calculation. The number of voters enrolled in that controversial roll was ¾th of total population of that time which defied all logic. Fact that the total population of the country and the electoral roll prepared after the census 2001 does not provide rational statistics.

Leaders of the AL filed a court case asking that the new electoral roll be ruled invalid, since the electoral law required the BEC to update the existing (2000) electoral rolls rather than create entirely new rolls. On 4 January 2006, the HC ruled in favour of the petitioners.

The BEC nevertheless continued the process of preparing an entirely new roll, while appealing against the HC's ruling to the Supreme Court. The decision not to honour the HC ruling led to a growing public perception that the BEC was acting partisan. In May, the Supreme Court upheld the HC's judgment and issued a contempt ruling against the Chief Election Commissioner and the Acting Secretary of the Commission for failure to comply with the HC's January ruling.

The controversy escalated further when the Chief Election Commissioner decided in the wake of the Supreme Court's ruling not to conduct a new enumeration using the 2000 list as the basis. Instead, he announced, it would be up to each voter to check and correct his or her own entry on the 2001 list. By mid-June, it was clear that the BEC, through its actions, had begun to lose the confidence of much of the public. Several government ministers joined the opposition and the press in openly criticizing the BEC.

A few weeks later, on 7 July, under mounting domestic pressure, the BEC relented on its decision not to undertake a new enumeration. The Commission claimed that it amended its position based on the opinions expressed by different political parties, and professional, social and cultural organizations, that door-to-door visits would be more likely to lead to a successful revision of the voter list. A second door-to-door enumeration of voters was thus conducted in July and August. The process, however, was widely criticized as being poorly administered and producing worse results than the previous enumeration. The number of voters registered was similar to the earlier enumeration, fuelling opposition charges of a "fix" that would be used to rig the elections.

The quality of the voter list increasingly developed into one of the major issues of controversy surrounding the elections. The lists were widely regarded as highly inaccurate. The BEC's handling of the registration process beginning in 2005 and throughout 2006, together with its failure to seek an acceptable solution to the voter lists problem undercut its reputation and marked it as irredeemably partisan in the eyes of the opposition and much of the media. Its two door-to-door enumerations neither built confidence on the lists nor

remedied their deficiencies. At each stage of the registration process the opposition renewed its demand for voter lists with photographs of all voters as a way to combat fraud at the polling stations. The opposition, acknowledged, however, that a photographic list could not be compiled within the time available before the elections.

The poor quality of the voter lists and the ineffective attempts to remedy the problem became an increasingly disruptive political issue, which contributed to the opposition's demands that the BEC be replaced and reconstituted.

The issue of voter list became the bone of contention that raised the political heat to such an extent that then opposition parties not only opposed the voter list but demanded the resignation of the then Election Commission, particularly the then Chief Election Commission Justice MA Aziz who remained a controversial man throughout. His partisan behavior and defiance of court order complicated the issue of voter list. To fathom the depth of the problem one has to go into little detail of the issue.

On 21 July 2005 the then BEC decided to prepare a fresh voter list for the conduct of the 9th Parliament Election in consultation with the political parties of the country. But the invitation was rejected by the main opposition AL and its 24 other supporting parties. The opposition did not respond to the invitation on the ground that the very CEC's appointment was in contravention of the provision of the Constitution in that the then government had appointed a Supreme Court appellate division serving judge with ulterior motive. However, Election Commission disregarded the boycott of the mainstream opposition parties and went ahead with consultation with 57 political parties, many of which existed on papers only. Majority of these pro-government parties supported that Election Commission should go ahead with the preparation of fresh electoral roll as earlier decided by the BEC. Based on these discussions the BEC on August 6 2005, decided to prepare a fresh electoral roll on following terms:

'...voter list to be prepared as was done in 1983,1990,1992,1995 and in 2000 in accordance with the voter list law 1982 and voter list Rules 1982. The list has to be prepared as per said Law and Rules through

enumerator adopting the method door to door visit for enlisting the voters.' (Decision of Election Commission on January 1, 2005)

It is to note that the electoral roll of the years mentioned in the said decision were rendered ineffective with the initiation of the preparation of the fresh voter list starting from November 22, 2005 by appointing various officials and making available of requisite forms and publications.

Accordingly door to door enumeration for voter listing started January 1, 2006. Meanwhile two writ petitions 9157/2005 and 9180/2005 were initiated in the High Court against BEC decision. The court gave its decision on January 4, 2006 when Election Commission was fully geared to collect the field data. However, the court did not stay the decision of the Election Commission but recorded its observation against both the writ:

The first observation was,

'The Commission should prepare Electoral Roll taking the existing Roll maintained under section 7(6) of the Ordinance as major basis. If there is a computerized database the Commission should make the best use of it and if not, a computerized Electoral Roll with database should always be maintained to avoid future controversy, cost and labour'

And in the second observation the court opined,

'The person whose names are already in the existing Electoral Roll cannot be dropped from the Roll unless they are dead or have been declared to be of unsound mind or ceased to be residents or ceased to be deemed to be a resident of that area or the constituency.'

The BEC nevertheless ignored the High Court order stating that observation by the court did not make it mandatory to discontinue the initiated process. This decision of the CEC was however not supported by the other two Commissioners. The decision not to honour the HC ruling and the rift within the Commission gave birth to public perception that the BEC was acting partisan as propagated by the opposition. However, in May, the Supreme Court upheld the HC's judgment. The Supreme Court also issued a contempt ruling against

the CEC and the Acting Secretary for failure of compliance of the HC court ruling.

At this juncture BEC, under CEC Justice MA Aziz, took another not so well thought decision taking the Supreme Court orders in some kind of cognizance. BEC announced, it would be voter's responsibility to check and correct their own entry on the 2001 roll. By mid-June, it was clear that the BEC, through its actions, had begun to lose the confidence of much of the public. On the unilateral action of BEC few government ministers also openly criticised the decision.

A few weeks later, under tremendous pressure, the BEC reversed its decision and cancelled the earlier decision of preparing a new electoral, rather took fresh decision to carryout a second door to door campaign. BEC claimed that it reversed its decision only to accommodate the views of various political parties it consulted. The claim of the Commission fell flat as no major opposition party or its allies ever responded at the call of the Commission stating that they have no confidence on the BEC. In actual fact so called consultation with political parties as claimed by BEC was seen as a farcical attempt to legitimise its unilateral decision. As per the BEC, 110 parties were invited to participate in exchanging views with BEC. Point to mention that most of these parties were insignificant entities in national politics. Many of them existed in letterhead only. Most of these parties were regarded to be spurious organization. They had no roots which became evident from the fact that only 39 political parties could fulfill the registration criterion in 2008 under registration clause of RPO 1972 (amended in 2009). This issue would be discussed in a later stage of the book. However, only 57 parties responded to the call of the BEC with BNP only being two out of largest parties in Bangladesh. AL and its 13 party opposition alliance did not respond to the invitation expressing their dissatisfaction over the process of the electoral roll preparation and lack of confidence on BEC alleged to be a partisan organization.

However, in spite of all that is stated above the Commission did not deter rather it went ahead with a second door to door enumeration in a slipshod manner that drew wide public criticism. The enumeration

was poorly organized and conducted in a manner that it hardly altered the previous electoral roll. The general people perceived that second door to door enumeration was an eye-wash to legitimize the 'fix' that would be used by the party in power in the upcoming general election in rigging the process. This action provided more fuel to the opposition demand for reorganisation of the BEC including resignation of the CEC.

Be it as it may, serious doubt was raised nationwide on the quality and accuracy of the voter lists. The issue developed into one of the major controversial subject. The public perception was that that the BEC fixed up the voter list with spurious names to rig in favour of ruling party i.e. BNP. Thus uncertainty and suspicion grew surrounding the elections. The electoral roll was widely regarded as highly inaccurate.

Lack of Confidence on BEC: In conduct of 'free and fair elections' four ideal factors must play dominant part. First three are Electoral Law, Voters, Vote which all can be manipulated in one way or other provided that the fourth and most important element i.e. EMB can play its role to ensure and conduct all three in a manner that integrity of elections conducted are not questioned. This can only happen if EMB enjoys public confidence and its credibility is well established through a transparent and non-partisan dealing in the entire process. The BEC is no exception to that.

BEC was established since the liberation of the country under Article 118 of The Constitution of the People's Republic of Bangladesh. The constitution provides other guarantees as regards to its function, character and authority. The constitution also guarantees the independence of the Election Commission. Before proceeding further on the subject heading the constitutional provisions needs to be examined and analyzed in this regard.

The Article 118 (1) states, 'There shall be an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of 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)

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shall, subject to the provisions of any law made in that behalf, be made by the president'. About independent character of the commission Article 118 (4) states 'The Election Commission shall be independent in exercise of its functions and subject to only this constitution and any other law. Article 118 (5) provides the protection to the Election Commission of its service. It states, 'Subject to the provisions of any law made by the Parliament, the conditions of the service of Election Commissioners shall be such as President may, by order, determine: Provided that an Election Commissioner shall not be removed from his office except in like manner and on the grounds as judge of the [Supreme Court]'.

Having gone through Article 118 of the Constitution, as mentioned above, following could be deduced:

- The Election Commission is a constitutionally guaranteed independent institution.
- The tenure of the commission is fixed under the constitution.
- Commission is appointed by the President under any law or in absence of separate law under the Constitutional provision.
- There is no procedure stipulated in selecting the Commissioners under the Constitution but enacting a separate law for such selection.
- There could be a separate law under the constitution provision for selection of the EC, which is not framed till date.

However, the constitution is silent about the independence of the secretariat that provides logistical and operational functionalities to the commission.

Among many other reasons for people's negative perception about BEC that grew over the years, up until 2007, important ones were lack of transparent process of the selection of Commissioners and the independence of the Commission secretariat.

In absence of any law framed under the Constitution for selection of the Commission, entire business rests on the government of the day, be it of any form. In parliamentary form of the government that was

instituted since 1991 it is the prime-minister who would recommend the names for such appointments to the president who being party loyalist remains obliged to endorse the recommendation. In other form i.e. presidential, experienced in the past, it was rested on the prerogative of the president to select for such appointment. More often than not such appointment was fraught to be made upon partisan views. In most cases it proved to be so. One such example was appointment of Justice MA Aziz, a serving judge of the Appellate Division. His appointment by the then president was challenged in the court which added to the negative image of the Commission. Along with him the other appointments, especially the appointment of immediate past secretary to the Commission Mr. Zakaria as one of the Commissioners, who was perceived to have been the protégée of then ruling BNP government.

Though in some cases couple of CECs was appointed during the NCG, considered to have been non-partisan, but some later actions by these CECs brought back the same public perception. Though these Commissions had conducted three successful democratic elections under three caretaker governments within the period of 1991-2001 yet the losing parties had castigated these being 'engineered', a term became synonymous with manipulation of the vote, brought allegations against Commission for favouring the winning party. The phenomenon continues till date though the last claim was not as vociferous as the past because of the greater transparency brought in the system before 2008 election.

Nevertheless, it was 1994 Magura-2 and Dhaka – 10 bye-elections those became worst case scenario of the Election Commissions' partisan behaviour in favour of the government in power. These two incidences were earlier discussed in this chapter.

However, the worst of the state of affair occurred when the BEC's action created commotion over the voter registration all through 2005 and 2006. In that period the BEC's handling of the registration process was a near disaster. It failed to achieve an acceptable solution to the voter list problem due to the very obstinate behaviour of the CEC which undercut its already sagged reputation and

marked BEC as insuppressibly partisan in the eyes of the opposition, larger section of the public and most of both the electronic and print media. All effort of the BEC including couple door-to-door enumerations neither built confidence in the electoral roll, thus neither prepared nor could bring any tangible change in the alleged fraudulent entries in the roll. The opposition totally rejected all effort rather were relentlessly putting up clamorous demand for electoral roll with photographs of all voters as a way to combat fraud at the polling stations and spurious inclusion of the names in the list.

In sum and substance, the poor quality of the electoral roll, lackadaisical attitude and the unproductive endeavors to solve the problem became an increasingly troublesome political issue contributed to the opposition's tumultuous demands that the Election Commission be reconstituted.

In this tumult by the end of 2006 opposition's growing apathy and loss of people's faith in the Election Commission rendered the institution totally beleaguered in that it lost its authority over its own conduct. In many places supporters of the opposition went burning down the offices in demand of the resignation of the Commission and CEC in particular. Amidst all these political snafu the then NCG of President Iazuddin Ahmed increased the number of Commissioners from three to five. Appointments were made in September and November of 2006 which added fuel to the fire. The Opposition and entire media termed these appointees as extremely partisan. However, last knell on the coffin of the BEC led by Justice MA Aziz was struck when, entire opposition boycotted the 9TH Parliament election which was scheduled to have been held on January 22, 2007 on the ground that BEC acted in total connivance in rejecting the appeal on the decision of the RO who earlier had rejected the nomination paper of one of the coalition key leader Hussain Muhammad Ershad on ground that was not tenable by election law.

The episode is worth recording here. Former president Ershad headed the JP, one of the four largest parties in the country, which had earlier

expressed to join BNP but made a turn about and rather joined the opposition coalition instead at the very last moment. No doubt that infuriated BNP. Ershad thought to have held more than two dozen probable seats in the northern districts of the country. As the election approached in one of the two decade old cases on a corruption HC issued its verdict confirming the sentence of imprisonment, which contained a minimum of two years of jail. The HC's verdict was issued just on the verge of last date for submission of nomination paper for January 22, 2007 election. The verdict was pronounced on 14 December. Ershad appealed against the verdict to the appellate division of the Supreme Court, at the same time his party called a hartal in his strong hold in the northern districts of the country. The party demanded resignation of then Chief Adviser cum President Iajuddin Ahmed. They further declared that till their demand fulfilled JP would not participate in any elections. Ultimately two weeks later the appellate division denied Ershad's appeal and asked him to surrender to begin his prison sentence. Consequently his nomination was rejected by the BEC under the RPO article 12 (1) d. Legal issues aside the entire episode of Ershad's disqualification in reference to a two decade old case few weeks before the election was seen by the opposition and gave an impression of manipulation of judiciary by the executives on behest of BNP as Iajuddin's NCG was seen as an extension of the outgoing BNP government.

Following JP's path on 3 January, the AL and its coalition partners announced the boycott withdrawing their candidates from the race which amounted to 60 percent of the total participants. The BEC however, was not to deter rather announced their determination to hold election without majority of parties who were abstaining. Nevertheless BNP supported the BEC's stand. Number of international organisations tried to persuade both BNP and the BEC to ensure the participation all the parties to provide credence to the election but without any result. The Commission issued orders to proceed with ballot printing, without the names of the withdrawn candidates. Some of the prominent BNP members however were declared elected unopposed by the BEC which proved the partisan behaviour of the EMB. BEC was viewed to be subservient to the

NCG of the day who was acting as extension of outgoing government of BNP.

The issue further accentuated virulent street agitation, initiating daily siege and vandalising of Election Commission offices in remote districts with cataclysmic effect which then terminated with the declaration of emergency rule on January 11, 2007. BEC by then was most distrusted and a shattered institution. Public faith was completely lost. So was the faith of many international institutions which had earlier suspended their cooperative works.

Amidst all these political chaos the major change that was brought by the NCG installed after the declaration of emergency was to reconstitute BEC with people having cleaner public image. By mid February 2007 3 member new Commission replaced the old one. The first and foremost challenge that the new Commission faced was to restore people's confidence on the EMB without which it was difficult to bring intended reforms as was the long standing demand from both social and political spectrum.

Polarisation of Bureaucracy and its effect on elections: Like any other EMB Bangladesh Election Commission also conducts elections with the help of government employees seconded to Election Commission for specified period under the Constitution and the election law. Article 120 of the Constitution directs president to provide necessary manpower support. The Article directs, 'the president shall, when requested by the Election Commission, make available to it such staff as may be necessary for the discharge of its function under this Part'. Therefore, it becomes mandatory upon president to arrange such staff. In any given national election BEC needs to mobilize around six hundred thousand personnel to be deployed at a time for the election conducted in a single day. For example over six hundred thousand personnel, including a large part being the members of law enforcing agencies, were deployed in the conduct of 9th Parliamentary elections held during 2008. In that 64 Deputy Commissioners were appointed as RO for 300 constituencies and 35,263 were appointed as presiding officers, one each for each

polling centres. To assist 1, 77,277 assistant presiding officers and 3, 54,554 poling officers were appointed. All most all of these officials were civil servant including teachers of government funded schools and colleges. In a very rare circumstance or to fill up the shortfall, if any, teachers of government funded private schools and colleges are taken as polling officers. It is these grass root level officers and staff who are the kingpin in any given election and its conduct. Therefore, conduct of free, fair and transparent election largely depends on these civil servants and government officials who are temporarily placed under the law to the Election Commission.

Though all the personal deployed in an individual polling station are vital to the conduct of free and fair election but of the appointees, the RO and the presiding officer of the any polling station play the most dominant role. It is upon their integrity and steadfastness that the conduct of free and fair election depends. These are the personal who can guarantee that election laws are not skewed, voters are given right to vote and vote or the result is not manipulated.

The most important appointment is that of the RO at the constituency or administrative district level and ARO at Upazila level who, under the law, given with enormous power in the conduct of election and superintendence on behalf of the Election Commission. They receive and scrutinize nomination papers, decide which candidates are eligible to contest. ROs appoint and trains Presiding Officers, distribute under their responsibility ballot, all election materials, and perform all functions as envisaged in the RPO. Apart from ROs and AROs many high officials of the ministries are also entrusted with election related duties.

In fact it was the ROs who were the final authority in acceptance or rejection of the nomination paper under the law. In RPO-1972 Article 14(5), till the recent amendment made, a candidate could appeal to the Commission only on rejection by the RO but no appeal to the Commission was admissible by law for immediate remedy against acceptance of a nomination paper even if such candidate had elements of disqualification. Therefore, any partisan views or behaviour or favouritism and nepotism while scrutinising

nomination could put the entire process under serious question. A case in point, an incidence in one of the constituency in the district of Comilla during national assembly election 2001. The Deputy Commissioner of the district, like all other districts, was appointed as RO by the Commission under the law. He proved to be a partisan by his act as he validated a nomination paper of a candidate who was proven to be a loan defaulter. Whereas the RPO-1972, prior to recent reforms, 12 (c) which debar a loan defaulter but the said deputy commissioner's acceptance of nomination of a BNP candidate despite the fact that his opponent, AL candidate, had objected to such acceptance even after producing valid documents from the bank proving the fact. Since the law did not allow any immediate relief to the petitioner from the Election Commission, the Commission remained helpless even when such gross violation of the provision of electoral law was brought to its notice. RO's decision was challenged in the court but the aggrieved petitioner could get no relief at all. It all happened not only because of the partisan behaviour of the said RO but largely unlimited power RPO had vested on the RO. This experience called for serious review of the electoral law.

Apart from all other duties that RO is supposed to perform one of the most vital tasks that he is empowered with is the announcement of unofficial result having consolidated the results received from each centre prepared by the presiding officers at polling centre level. Article 39(1) of the RPO-1972 empowers RO to announce the consolidated result. It says, "...the returning officer shall, after obtaining the result of the count under Article 37 or of the draw of the lot under Article 38, declare by public notice the contesting candidate who has or deemed to have received highest votes to be elected. Here again the RO's decision is almost final, even if he manipulates the result in favour of any candidate, except challenging in the court of law. In such cases the Election Commission has no power to provide immediate relief to any complainants. In the past there were allegations of manipulation of the result at RO's level by losing candidates. There were reports of such malpractices by few RO's pressurising the presiding officers to alter the results of

respective centres. There are examples of such manipulation; one such case was in Munshiganj Sadar constituency in 2001 election. The result was manipulated by the then RO in favour of a BNP candidate against rival AL candidate.

In that above mentioned case study it revealed that on the close of the poll of the said constituency the ARO consolidated the results of all polling centres except two, which were suspended for unavoidable incidences. The result unofficially supplied by the ARO clearly showed that the AL candidate had won with sizable margin inspite of closure of two centres. But the unofficial result was not endorsed by the RO rather the next day RO called five of the presiding officers of the constituency to alter the results earlier submitted in favour of the BNP candidate. The presiding officers succumbed to the pressure and altered the result with a statement that polling was disrupted and votes were manipulated by rival candidate's goons therefore, they were forced to give earlier result. Therefore it was decided by the RO for re-polling in all these centres which later went in favour of the BNP candidate and thus was declared the winner. The ARO was also forced to change his statement and cancel the result sheet that he earlier supplied to the AL candidate. This was challenged in the court of law but AL candidate did not get the relief that he prayed for.

There are other incidences where malpractices were proved beyond doubt but due to inadequacy of law the Election Commission could not or did not play its role as it should have. On the other hand these examples prove that at the field level, unless the officials had the courage to withstand pressure or shun favouritism, it is difficult to expect a fair and free election. It is unfortunate that the civil service in Bangladesh has, to a great extent, been politically polarised which called for installation of the NCG but that measure also proved to be insufficient to assure civil service to stand on principal of neutrality.

Though one expects civil service as a professional, impartial, and non-political force, yet the reality in Bangladesh is, due to our low political culture like other sphere of society, this very important state service have been reduced to what it is today. It is unfortunate to

state that, by the time of the 2007 scheduled election there was visible indication that, the civil service in Bangladesh remained highly politicised. Even the recruitment of the civil servants almost followed the party line. Thus the integrity of the service was destroyed.

No one party could be held responsible for the state of affair described above but all regimes that ruled Bangladesh since liberation could be held responsible for such sordid affair. This downward trend started with the introduction of military, quasi-military and quasi-democratic regime and continued even after the revival of 'democratic regime' since 1991. These regimes not only politicised civil servants but maintained a policy of politicising almost all state institutions. Be it as it may, it is alleged, that BNP, in part by virtue of having been in power more than once and being the last regime, had achieved the greatest penetration in public institutions that was so evident from the appointment of 205 Upazila election officers whose link with BNP and its alliance, party's student organization, were proven beyond any shade of doubt.

In any election, particularly in national assembly elections, large number of security force are deployed in which military, paramilitary, police and auxiliary forces are employed. Among these forces police plays the most prominent part. In fact it is the police administration that remains in charge and coordinator of the law enforcement during the election period. Therefore, it is expected that the law enforcing agencies would act as a neutral body but that has not been the case in many places. Unfortunately, like the civil service, the security force, especially the police forces has also been politicised to a great extent. It is due to the political use of police forces by the ruling regime that police remain polarised. It becomes a huge task for BEC to monitor activities of the police force especially the key personnel like Superintendents of Police at the district level and police Officers in Charge at the upazila level. There has been number of instances during 2008 and thereafter elections of changing or withdrawing such number of police officials for alleged partisan activities. A case in point is Bhola-3 bye-election held in 2010 where the Superintendent of Police and

entire officials of Lalmohan Upazila had to be changed due to partisan behaviour.

To ensure that civil service's neutrality during the conduct of elections, it has become routine affair during the interim caretaker period to shuffle the entire setup of district administration including key police personnel connected with the elections. This however has become almost a 'must do' for NCG. In 2001, for example, the CTG reportedly moved about 1,300 civil servants into different positions in order to make a level-playing field. There were two reshuffles made by two successive NCGs preceding national election 2008.

Apart from these reshuffles the Election Commission, under the law, may ask to change any key personal directly or indirectly connected with the elections and the government of the day is obliged to change such personnel.

However, one of the main issues that remained as opposition demand prior to the imposition of emergency on January 1, 2007 was depoliticising of the civil servant. In that bid the reshuffle made by the Iajuddin Ahmed's NCG did not satisfy the agitating opposition. The politicisation of the civil service thus remains a significant factor in the general distrust of the election system that contributed to the collapse of the election process in January 2007.

Politicisation of administration remains to be a lingering problem till date that had to be taken into account by the BEC in subsequent elections including the local election by appointing own officers in the capacity of RO. The experiment worked well but same may not be replicated in national assembly election due to its logistical enormity yet the probability remains to be evaluated. To quote an example, also mentioned earlier, that about six hundred thousand personnel were deployed during 9th parliamentary election held in 2008. Out of these, 64 Deputy Commissioners were appointed as returning officers; 35,263 presiding officers were appointed who were class I government or semi-government officials. To assist the presiding officers a total of 1, 77,277 assistant presiding officers were appointed out of government, semi-government officials and

teachers from government and government supported schools and colleges. This was the highest deployment till that time. It became a Herculean task for BEC to monitor these personnel during and after the election period.

Structural Issue of BEC: Structural framework of the EMBs around the world follows number of models in which three model are the most adoptable. These are the independent model, governmental model and mixed model. Among these three the independent Model of EMB, is considered to be the best model followed by those countries where elections are organised and managed by an EMB which is institutionally independent and autonomous from the executive branch of government, and which has and manages its own budget. Under this model EMB is not accountable to the government or to any ministry or department but may be made accountable to the Parliament, judiciary or to the head of state. It enjoys financial autonomy. It is constituted with members from outside the government control. The government official placed within EMB office, remains under the jurisdiction of the EMB which is normally known as Election Commission. Countries such as Australia, Bangladesh, Bhutan, Canada, India, Indonesia, Nepal, Pakistan, South Africa, Thailand and many other emerging democracies follow this model of electoral management.

The governmental model is controlled by the executive branch of the government though the responsibility of holding of the elections is vested on the 'department of election' or may be called by any other name. This kind of EMB is not independent of the executive branch nor has the independent supervisory powers. The governmental model of EMB does not decide its budget and cannot hire or fire its staff.

In a mixed model an independent board is responsible to formulate policies those are implemented by the executive branch of the government with varying range of supervision of the board. Many countries like, France, Germany, Japan, Spain, Mali and Togo follows this model.

Like any other EMB elsewhere in the world, BEC is also structured for holding and executing a free, fair and transparent election. Establishment of BEC under the Constitution Article 118 it follows the independent model of EMB since it started functioning as EMB in 1972 soon, after the independence of the country. It graduated from a provincial election commission under Pakistan to an independent country's Election Commission with handful of Bengali staff those were employed during Pakistani period. The BEC started with manpower of 77 but with experience of holding elections at provincial and local level. The new setup of BEC then had to carryout few task afresh that included re-demarcating the constituencies, creating new electoral roll and help in formulating the law, RPO 1972, which would empower BEC to hold elections and provide the status of the independent Commission.

Initially BEC secretariat was created under a separate law as it is not mentioned in the Constitution as an integral part of the commission. The secretariat has been under the Election Commission since its creation but status quo changed when under the President Order (PO) on 27 may 1982 the secretariat was put under the President's Secretariat. That very order reduced the independence of the BEC which as best case scenario could qualify as 'mixed model of EMB'.

The status quo did not change with the re-introduction of parliamentary democracy. The secretariat in that case became adjunct to Prime Minister's Office since October 10, 1991 till the promulgation of the Ordinance No 5 of 2008 by the NCG of Mr. Fakhruddin Ahmed months after reconstituting the Election Commission took office. Later the Ordinance was converted in to law as Election Commission Secretariat Law No5 of 2009 (Election Commission Secretariat Act 2009). Since establishment, numbers of National Assembly elections conducted by BEC till mid 2010 with other details are at annexure A and three out of all these election were held under military regime. Four National Assembly and City Corporations and nine Union Councils election was held under four caretaker governments. Apart from National Assembly election four City Corporation and nine Union Council elections were held during Mr. Fakhruddin Ahmed's caretaker government after the promulgation of emergency in 2007.

Under Article 118 of the Constitution the President appoints the Chief Election Commissioner (CEC) and such number of Election Commissioners time to time for the term of five years as may be required. A point to note that there was no restriction on appointment of numbers of ECs in the Constitution therefore it remained open to the president.* There has been incidence where five ECs were appointed in 2006 and earlier. However, since 1972 minimum two ECs have been appointed. The Constitution do not mention any qualification for EC but constitution envisages, if need be a separate law under which appointments of the ECs may be made. If the Commission is constituted with more than one EC in that case CEC is to act as its Chairman. Though the CEC presides over the Commission meeting but he does not have the Veto power. To pass any resolution or policy matter related to election a majority endorsement is essential.

CEC or the ECs cannot be appointed in any other government post except in case of an EC can be appointed as CEC. The Constitution is silent on re-appointment of the entire Election Commission or any of its Commissioners. This then remains the prerogative of the president. There is only one instance where one CEC and one EC spent extended terms beyond specified terms of five years. Till 2006 there were nine CECs and seven out of them were judges, two were from civil service and seventeen Election Commissioners were appointed of which eight of them were judges. The current Election Commission inducted after the emergency rule of 2007 comprises of three members. The current (last) CEC Dr. ATM Shamsul Huda is from civil service and one out of two commissioners from judiciary and the other ex-military officer, being the first ever in Election Commission's history. List of CECs and EC till date are at Annexure B (BEC Documents).

The task of the Election Commission is enshrined in the Constitution and law framed under it. Article 119(1) (a) (b) (c) (d) lays down the task, 'The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of

* Under Fifteenth amendment of the Constitution Act 2011 (Act XIV of 2011) Section 35 (a) the number have been fixed to one CEC with four EC.

President and to Parliament and the conduct of such elections shall vest in Election Commission which shall, in accordance with this Constitution and any other law-

Article 119 (1):

- (a) Hold elections to the office of the President;
- (b) Hold elections of the members of the Parliament;
- (c) Delimit the constituencies for the purpose of the elections to Parliament and;
- (d) Prepare electoral roll for the elections for the office of the President and to parliament.

Article 119 (2) of the Constitution of the People's Republic of Bangladesh, provides the basis of other elections to be conducted by the Election Commission other than those stipulated in Article 119 (1). It says, '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'.

Article 119 (1) gives enormous power to Bangladesh Election Commission to take any appropriate measure to ensure a free and fair election. Actions taken on these issues the Election Commission gets the legitimacy under this article. In this regard H C Division of Supreme court in one of its judgment in a writ petition _No. 2561 of 2005 in matter of Abdul Momen Chowdhury and others Vs Bangladesh and others and Appellate Division of the Supreme Court Civil Appeal No. 57 of 2006, gave the interpretation of Article 119 (1) as 'from a close reading of the Article 119 of the Constitution, it appears that the Election Commission has been given a plenary power to superintendence, direction and control of the preparation of the electoral rolls for elections and therefore, whatever power is necessary for the purpose must be presumed to be there unless there is an ouster by expression of the provision'. This interpretation of the relevant article of the Constitution strengthened the Election Commission in performing its task without being interfered. This interpretation was finally endorsed by Supreme Court in disposing an appeal against the High Court verdict on writ petition in Civil

Appeal No: 57 of 2006 heard on 11 December 2007. (Writ petition No: 2561 of 2005 Abdul Momen Chowdhury and others Vs Bangladesh and others and Appellate Division of the Supreme Court Civil Appeal No. 57 of 2006: Aug 24).

From the foregoing Article, 119(2), it is evident that Election Commission has to perform other election related task that may be given to it by the act of Parliament. Under this clause of the Article that Bangladesh Election Commission is made responsible for local body election that in most of the regional countries is done by the provincial government or designated ministry. Of late Bangladesh Election Commission has taken the responsibility of the entire operation of the National Identity Card (NID) under a separate law. This shall be discussed later.

Be it as it may, to fulfill its obligation as envisaged in the Constitution there are other laws those are part of Election Commission structure other than staff and organizational structure that constitutes Election Commission and its Secretariat.

In terms of organizational structure BEC (as of review period being 2006) broadly divided under two components, secretariat and under it the field component. The BEC has an authorized staff of 2743 persons where as at the secretariat headquarters is supported by 83 officers and 237 staff. It is headed by a secretary to the government who is placed under the CEC for day to day administrative functions. Till 2008 this arrangement was unwritten ad hoc arrangement which had given rise to difference of opinion within the commission in the past. Though this was resolved in the new law for Election Commission Secretariat in 2008 but that did not resolve the difference of opinion within the Commission. Difference of opinion within the Commission persists which needs to be resolved to ensure the neutral control of the secretariat. This still remains a structural problem.

However, if need be, the Commission may ask for some senior ranking officers to be deputed by the government if no suitable candidates are found within the permanent staff of the BEC. Unlike many other sub-continent countries BEC has its own officers and

staff both in the field and at the secretariat. Nevertheless BEC has couple of handicap in regards to its officers. One is that these officers, though are recruited through Public Service Commission but they, are not regarded as service cadre like other administrative cadres which makes the service under Election Commission unattractive to the candidates. This is one of the drawbacks that Election Commission suffers from getting more energetic and competent young people. The other handicap that BEC faces in staffing in the field is the reserved quota for promotion from staffs below class 1 officers to the rank of district and Upazila level. It has been experienced that because of inadequate background, training and education it becomes difficult for these promotee officers to cope with the changes that are brought in electoral process. The rule that was in vogue till 2008 had 33% quota reserved for such promotion which in most cases created innumerable legal complicity in the field of promotion and seniority adjustment. This state of affair had entailed upon the efficiency of the organization.

According to the present organogram (revised one yet not sanctioned)* BEC Secretariat has a total of 211 officers and staffs out of which 46 are class 1 officers, 41 Class II, 55 Class III and 66 Class IV staff. Point to note that out of the class I officers 10 officers, including secretary and additional secretary, are on deputation from government ministry. Rest is directly recruited for BEC by PSC except 23 are promoted from the lower staff. Most of these promoted Class I officers are found aged and lacks in efficiency to comprehend the fast changing Electoral System and Electoral Laws.

Among major functions of the secretariat is the implementation of the Commission policy, preparation of the electoral roll, delimitation, conduct all kind of election, print ballot papers for all kinds of election, registration of political parties, registration of NGOs for election observation (after the reform of 2007-08), supervision of polling arrangement throughout the polls, procurement of all kind of items related to the election, planning

* Revised Organogram, as part of further reform, came in force after this book was first published.

and budgeting for all elections and provide legal advice to the Commission apart from routine administrative work. With changes and introduction of the National Identity Card (NID) Election Commission Secretariat would have to supervise and coordinate the function of the NID wing as per revised organogram.

Pending 2010 modifications other function of the secretariat was largely guided by the Election Commission (Conduct Rules) Rules 1979 later which was replaced by Election Commission (Conduct Rules) 2010. The conduct Rule was changed to accommodate the structural reform that was initiated in 2007.

BEC field offices are designed in three tier administration. These are regional, district and upazila based officers and staff who are BEC officials and staff. There is no provision for deputation at the field level.

Entire country is divided in nine election region.* These are Barisal, Comilla, Chittagong, Dhaka, Khulna, Mymensing, Rangpur, Rajshahi and Sylhet. These regional offices are headed by, at present, Deputy Election Commissioners; the designation may change with the approval of the new organogram. There are nine vacancies for assistant Election Commissioners in each regional headquarters. These regions controls and supervises the work of the 83 district offices where one or more district officials are posted. Point to note here that though the Election Commission district level office commensurate with administrative district i.e. 64 districts yet 87 posts had been created which makes work distribution and maintaining office discipline difficult. Currently (2007) only 45 district officers are posted as against 87 vacancies and 6 of whom are promoted from other staffs.

So far the district offices remained the hub of the field activity on behalf of the commission. These offices are responsible to facilitate holding of the election, assist returning officer in the conduct of the election, arrange election logistics and all aspect of the electoral roll that including preparation, authenticating and maintaining the list.

* As part of reform one more region has been added, latest being Faridpur.

In addition, supervise the work of the Upazila. However, the reorganization of the Upazila office under reforms undertaken by Election Commission would bring changes and challenges for district and Upazila offices.

Beside 87 district officers in every administrative district one each Upazila officers, have been posted. Currently 509 Upazila and Thana Officers, wherever appropriate, vacancies exist, presently 298 officers are posted.

Upazila posts were created in 1995 by the then government but no appointment could be processed during the tenure of the BNP government. With the change in 1996 AL government suspended recruitment of these officers rather made Assistant Commissioners of land at Upazila level to hold these appointment instead. Ultimately with BNP government back in power, after 2001 election, finally approval of appointing separate election officers were accorded under which recruitment started in 2005. Though these officers were directly recruited by the PSC yet allegation of favouritism, nepotism and political consideration brought against then PSC's recruitment of these grass root level election officers. It was alleged that these appointments were totally politicised, designed to influence the general election that was to be held in 2007. This issue became a focal point for media soon after installation of NCG under emergency and became a tricky issue to tackle by the reconstituted Election Commission. However, it was found that allegations of a particular party, political background was discovered, actions were taken by the Election Commission by dismissing 87 officers that was challenged in the Administrative Tribunal that ordered for reinstatement and the implementation of the decision by the Administrative Tribunal landed in some legal complicity.

Upazila office is a new creation. As such its functions remained much undefined except that to assist district official in its function during voter registration, all kind of elections and assist returning officer or assistant returning officer as staff officer. With the reform

that was brought in 2007 the duties and responsibilities are being rehashed.

Over the years BEC's field offices have been working as adjunct to the civil administration. There were no separate office spaces other than shared accommodation within civil administrative offices. Officers of all tiers were appointed as staff officers to the returning officers who were invariably the deputy commissioners in national elections and Upazila Nirbahi Officers as assistant returning officers, except in some instances city corporations or in some municipality elections BEC appointed own officers as returning officers.

Though the RPO is flexible on such appointment, which remains to be the prerogative of the Commission, yet it had become a practice to appoint deputy commissioners as returning officers for one or more than one constituencies. Due to lack of experience and proper training BEC's officers have not been tested as returning officers till 2008. During four city corporations, seven union councils and during bye elections of nine National Assembly constituencies during 2008-2011 and BEC appointed its own officer in all city corporation elections held.

To support the training curriculum for BEC officers a training institute, Electoral Training Institute (ETI) was established in 1995 funded by external donor and the Government of Bangladesh (GOB) with an aim to establish an effective training institute and train personnel of BEC. External donation to establish ETI was under project 'strengthening Election Commission' for enhancing capacity of its officers and staff. On the expiry of the project period ETI became part of the BEC under revenue budget since 1999. ETI is headed by a director with the rank of deputy secretary* with 26 staff. Though regular training is arranged mainly based on the election related issues but much desired standard remains to be achieved.

* elevated to joint secretary in latest BEC organogram. It has also increased number of staff

Though ETI has had its contribution to some extent in raising skill and awareness among the personnel and polling staff in electoral process but it has not achieved or designed to provide other training such as office management or research work. There exists huge gap in structure in existing training institute which includes physical infrastructure as well. On evaluation of the capacity of the BEC officers it revealed that one of the weakest links has been inadequate training on issues that involves office, financial and documentation management in particular and other issues in general. Currently BEC has to depend on government institutes for imparting basic general training for its young officers on issues other than election management. There is however, no scope that exists for research work in the ETI as the institute is not designed as such. Even the library at ETI and in the secretariat is inadequate to fulfill such requirement. Neither the secretariat library nor the ETI library in a position to help individual researcher. ETI is presently situated in a hired accommodation which does not provide adequate space even for more than two classrooms.

One the biggest handicap under which BEC is functioning is the total absence of physical infrastructure like own accommodation at center and field level. This definitely saps the working spirit and individual growth of the prime constitutional institution of the country which is directly connected with sustainable democracy and assists to build a democratic society.

As the Constitution provides the basis of the institution, similarly it also provides parliament with the power of enacting laws relating to the election management, conduct and the management functionality to the election commission. Accordingly laws enacted by the parliament forms the part of infrastructure that strengthens the Election Commission in delivering its given task as enshrined in the Constitution. Some of the important laws are mentioned here as existed without amendments which was part of the reform packages of 2007-08.

Delimitation of Constituencies: One of the major tasks as enshrined in the Constitution, as discussed above, is the delimitation of the constituencies after every Census and before every election. Delimitation if not done there is a provision for certification by BEC stating the reason for not to execute such task [Ordinance XV of 1972 Article 8(1) (a) (b)]. Thus it makes the task mandatory but from the record it reveals that BEC carried out 1973, 1979, 1984, 1991 and 1995 but except 1984 fully and in 1991 partly, physical verification was made before delimiting but in no other occasion such physical verification was ever made. Rest of the years as mentioned the delimitation existed on paper or restricted within the certificate that election commission issued before every general election this led to Gerrymandering* of the constituencies especially during 1991 and in 1995. It was alleged that many of the constituencies were manipulated and redrawn by the influential politicians. This resulted into huge disparity between constituencies that also affected the fairness and creating level playing field for conduct of a fair election's. It is to note that the election expenditure limit remained fixed for all candidates whether they are contesting from large or small constituencies. However, there has been huge political pressure against delimitation of the constituencies particularly by the influential candidates who by and large been part of the Gerrymandering.

It was unfortunate that though last census was completed in 2001 and report was published in late 2006 yet the then EC failed to initiate the process of the delimitation for election that was scheduled for January 2007. The then BEC had no modern tools for delimitation nor had any principal set for such task. Not only that EC was unable to delimit the boundaries in want of tools and time constrain but due to contemplated legal tangle and political pressure then BEC did not venture in delimiting instead issued certificates of delimiting by altering couple of boundaries as nominally as possible.

* Gerrymandering, to divide (a territorial unit) into election districts to give one political party an electoral majority in a large number of districts while concentrating the voting strength of the opposition in as few districts as possible

Over the years BEC, till 2007, either did not put much importance on the issue or could not implement the law mainly due to the political pressure that had been brought upon the Commission. The pressure mainly came from few influential politicians who had been elected from the same constituency over the years. For more than two decade since total delimitation with on ground verification BEC failed also to work out a principal for such delimitation. In the past BEC neither worked out a permanent methodology for regular delimitation nor ventured in using graphical technology that was and is available for quick and accurate resolution. Delimitation carried out since 1972 is shown in Annexure C.

Selected Legal framework of Electoral System

Representation of Peoples' Order 1972 (RPO): (Enacted under PO no 155 of 1972, amended in 1994). Being mother law for BEC it gives the authority to the Election Commission to hold national assembly election and empowers the Commission conducting a fair and free election as envisaged in the Constitution. This law is complimentary to the Constitutional provisions on election. This law was enacted by President Order No: 155 of 1972 dated December 26, 1972. Since then the act retained its nomenclature. Though there has been some amendments made in the past till 2001 but no major changes as part of reform package was undertaken till 2007.

The law contains 95 Articles and remained unchanged. RPO is divided into seven chapters. The RPO deals with all aspect of the national assembly elections. Chapter I deal with the title, dates of effect and definitions, Chapter II deals about Election Commission, its formation, its procedure, powers and all other laws which would facilitate discharge of its functions.

Chapter III, IIIA and IIIB are the main stay of the RPO. Chapter III deals with the individual candidates and their conduct before and during election period. The main article that deals with the disqualification of the candidates is Article 12 of this chapter. All the three part of the main chapter deals with provisions of the appointment of the returning officers, his authority, functions and

jurisdiction. Also deals with appointment of presiding and polling officers, details of the constituencies, polling station, supply of electoral roll, procedure for nomination etc. In one word the chapter deals with the various activities as relates to election from declaration of schedule to the consolidation and final printing of the result. There has been major reform made in this chapter in 2007-08 in reform packages.

Particular mention must be made of Chapter IIIA and IIIB. (Chapter IIIA was inserted by Ordinance of 1985, chapter IIIB was inserted by Act XXIII of 1994 and chapter IV was omitted by Ordinance No. L of 1978). IIIA deals with the election expenses both at candidates and party level. These are private finance at party and candidate level. There is no provision for public funding though there has been demand for such funding. IIIB is to guide the 'Administration and Conduct during Election Period'. It details out the role of various persons including civil administration and the law enforcing agencies during the election period.

Chapter V deals with resolution of election dispute by the court and election tribunal set for it. Chapter VI provides all the provision for election related offences, punishment and procedure. Chapter VI A deals with registration of political parties with the EC which was not mandatory till reforms of 2007-08.

Chapter VII contains miscellaneous issue that includes BEC's power to stop poll partially or the entire poll, conducting enquiries by Electoral Enquiry Committee, authority to make all rules related to conduct of election under RPO and the Code of Conduct Rules. Guidance and deployment of observers, exemption from law suits etc.

It would be interesting to note that Article 91E that deals with the power to cancel candidature at any period of election was inserted in 2001 amendment but had to withdraw under pressure of two major parties along with mandatory registration of the political parties in chapter VI A (Inserted by Ordinance No. 1 of 2001. Registration

could not be made mandatory for political parties to take part in the election). Both have however been part of major reforms of 2007-08 and were included and passed by the 9th Parliament as Act of 2009.

Other Laws: There are number of laws that provide structural strength to the EC. Few of these important laws are:

Electoral Rolls Ordinance 1982: The law deals with all aspect of the preparation of the electoral roll, its procedure, various appointments of Registration officers (RO) and Assistant Registration Officers (ARO). Procedure of preparing roll with door to door visit by the enumerator, identification of the voters, authentication, draft printing, procedure for correction, final printing of the voter roll. In 1994 new insertion was made to include voter identity card for identifying the voters at polling station before issuing ballot paper (Election Commission amendment Act 1994). But the project failed and no further attempt was made. Entire Ordinance was changed as part of reform in 2007-08.

Interesting to note though, the law was made mandatory of issuance of the Identity Card to each voter after the preparation of the electoral roll, but no further attempts were made to fulfill the purpose of Article 11 A of the Order since the project was abandoned as a failure. No amendment was made to the law either before the elections those followed in 1996 and 2001 or attempted preparation of the new voter list in 2006. Even elections were arranged for 9th Parliament without looking to change this issue. Interestingly, neither any political party challenged BEC nor any public took the matter to the courts.

Be it as it may, the entire process and the system of preservation of the roll was changed to facilitate digitized form with replacement of the Ordinance by Voter list Ordinance 2007/18 February 18, 2008 was as part of reform in 2007-08. This new law brought a revolutionary change in the entire electoral roll preparation, preservation in a central data system. The changes shall be discussed in appropriate chapter.

The Delimitation and Constituencies Ordinance XV of 1976:

The Constitution Article 65(2) limits the number of representative to 300 excluding 45* reserved seat for women for whom no constituencies are marked. As per the Article 65(2) the representatives are chosen as single constituency candidate under direct election. To identify constituency entire country is divided into three hundred constituencies based on the population distribution within administrative districts. The constitution also makes it mandatory under task for the Election Commission to delimit constituencies. Article 125(a) in reference to Article 124 bars all courts from questioning the delimitation carried out by the Election Commission under the Constitution. Article 124 also empowers Parliament to enact law in this regard. Accordingly 'The Delimitation of the Constituency Ordinance No.XV of 1976 was promulgated which makes it mandatory for Election Commission to delimit the constituencies based on population after publication of every census report and before any general election.

In this regard Article 8(1) (a) and (b) stipulates,

- (a) '...upon completion of each census, for the purpose of general election to Parliament to be held following such census: and
- (b) '...unless otherwise directed by the Commission for reasons to be recorded in writing, before each general election to Parliament.' [The Delimitation of Constituencies Ordinance XV of 1972 Article 8(1)(a)(b)]

Representation of Peoples (Seats of Women Members): Order 1973 (PO No 17 of 1973): It provides the basis of election of women members allocated to the simple proportional representation system. Total of 45* seats are allocated to the party based on the proportion of seats won in the parliamentary election. Women members are to be elected by the respective party member

* 5 more reserved seats have been added under Fifteenth Amendment making total 50 seats (Act XIV of 2011 of the Constitution).

Parliament but most of the time these women are selected by the respective party and are elected unopposed. Nevertheless, their nomination papers are subject to the scrutiny by the returning officer appointed by the EC. The RPO Article 12 (1) and other clauses are applicable for these reserved seats as well.

The President Election Act 1991 (Act No. 27 of 1991): This Act lays down the procedure for electing a President under a parliamentary system. Presidential candidate essentially have to have the qualification to be a member of the parliament. The Act envisages that the President is to only elected by the MP's in secret ballot unless otherwise elected unopposed. The Act lays down the appointment of the returning officer, preparation of the electoral roll selecting voting center, type of ballot paper and all other activities from voting to counting and declaring the result. Interestingly, CECs have been performing the task of returning officer in presidential election under parliamentary system.

The Bangladesh Special (remuneration and Privileges) Order 1972 (PO No. 49 of 1972): The order is concerning CEC and Election Commissioner(s) in the schedule for entitlements of salary, other allowances and privileges. This Act gives special status to the Commissioners including CEC, different than the members of other Commissions. CEC including Commissioners are of the status of State Minister in the government Order of Precedence.

The Chief Election Commissioner and Commissioners (Remuneration and Privileges) Ordinance 1983: (Ordinance Order No. LVI of 29 September 1983, Article 2) Ordinance deals with salary that makes equivalent to the Judge of Appellate Division for CEC and High Court Division for other Commissioners. It also stipulates similar allowances to respective equivalent Judges of the mentioned courts. The Ordinance has not been changed since. The ordinance needs review as the parameter of the BEC jobs has since been enlarged with the introduction of the field offices, server station and NID.

The Election Officer (Special Provisions) Act 1991 (Act of 1991 replaces PO 90 of 1990): This law deals with the appointment, duties, control and punishments for negligence of duty or criminal negligence for officers deputed or employed to hold elections under the Commission.

Apart from these laws the legal infrastructural strength for functioning of the BEC are other laws those provides legal power to the local body elections. However, it is to be noted that the jurisdiction of enacting any law is the function of the legislative that includes the RPO and other laws related to the National Assembly Elections. BEC only facilitates in the law making by placing suggestions. It may also be noted that laws regarding local body election-part only is processed in the same manner but the onus of the initiation remains with the respective Ministry.

Besides the various laws there are rules that elaborate further the relevant law which includes detail process of each law that rule follows. So far as all election related rules are concerned, BEC retains the power to enact or amend the rules by own accord and not depending upon the government. The only function of the Ministry of Law, Justice and Parliamentary Affairs in this regard is to do the vetting of the rules to ensure that no rule is contradictory to the law it belongs. Few of the important rules are discussed in brief.

The Electoral Rolls Rules 1982 (SRO No. 439-L/82/F-15(3)/82-E-1, September 30, 1982No.): One of the most important rules made to carry out the purpose of the Electoral Roll Ordinance 1982. Its details involve the entire gamut of preparation, preservation and utilization of the electoral rolls, detailing the process of the data collection. The rule set out the detail process of appointing enumerator who are tasked to visit every household by door visit to door to collect the particulars as required for preparation of the said roll. Enumerator has the most important task under this rule to ascertain the identity by the set procedure and also to ascertain the eligibility for to be enrolled as voter. It also details out the function

of registration officers, revising authority and others connected. The rule also covers the procedure of claims and objection against wrong or illegal inclusion of voters and for new inclusion if one is missed out. The procedure for revising the list, amendment and corrections to be made, before printing and finalizing the electoral roll is also provided in detail in this rule. The rule also covered preparation and issuance procedure for voter identity card which was introduced with Act no. 24 of 1994 in The Electoral Roll Ordinance 1982.

There were 10 forms pertaining to the rule that were attached to the rule. However, this rule has been replaced after 2007-08 with the new rule under the new electoral roll law as the entire process of the preparation and preservation of the electoral roll were changed into digital photo electoral roll. That would be discussed in appropriate chapter.

The Conduct of Election Rules 1972 (No. 3F-30/72/1050-CE, December 27, 1972 also as modified by the Conduct of Election Rules (amendments) 2001, SRO No. 223-Law/2001): The Rules were made under Article 94 of the RPO 1972 by the Election Commission for accomplishing the purposes of the law. It lays down the detail procedure of the election, all aspect of the election and actions to be taken from the announcement of election schedule to the final counting of the result. Rules contain the symbol that the political parties and the independent candidates are allocated, the process of allocation and resolving the disputes thereof. Processes of resolution of all election disputes, appeal to BEC against the rejection of the nomination paper by the returning officers, and supply of all the papers connected in such decision. Various forms those are required in the conduct of elections but not part of the RPO is provided as part of the Rule.

The Code of Conduct Rules 1996 [SRO. No. 60-Law/96, April 26, 1996. It was further amended by the Code of Conduct (amendment) 1996 (SRO No. 224-Law/2001 August 20, 2001)]: It was introduced for the first time as a separate rule in 1996. It

includes all those subjects that would guide campaign by the candidates and the political parties but the onus is more on the candidate's campaign. The aim of Code of Conduct Rule is to reduce the use of money, muscle and to bring some discipline during the campaign period.

The Rule includes the size shape of poster, ban on various activities, uses of government circuit house and dak-bungalow, campaign timing, access to the polling centers by the authorized persons etc. Violation of the Code of Conduct is a punishable offence under the rule. However, the implementation of the Code of Conduct could change the entire efficacy of the campaign period leading to a peaceful conduct of the elections. Therefore, in all count the Code of Conduct is a powerful legal instrument in the hand of BEC and strict implementation of which could change the electoral culture.

However, the code of conduct of 1996 could not bring tangible changes in the contesting candidates' campaign irregularities. The shortcoming was noted but no remedial action was taken to rectify them. Since the code of conduct had no provision on the spot punishment it could not prevent violence during campaign, use of accessible money and use of muscle power that Rule indented to.

Whatever was the shortcoming of 1996 Code of Conduct Rule, yet the Election Commission could not fully implement the provisions due to strong resolve on the part of the Election Commission and inadequate punitive measures. Nevertheless owing to the necessity of putting some teeth to the rule in 2001, Election Commission made the provision, under law, and constituted an Electoral Enquiry Committee, comprising of the Joint District Judge and Senior/Assistant Judges in all 64 districts. Yet it was found to be inadequate, and that the Code of Conduct failed to address more serious campaign irregularities observed over the years, thus could not bring any tangible change in campaign culture. These issues were addressed during the legal reforms that were initiated in 2007-08.

These are the few rules those are mainly concerned with the Parliamentary Elections being one of the major tasks of Election Commission as envisaged in the constitution. There are similar rules made by the Election Commission in all other local body elections held under separate law.

In all cases the rule making authority concerning elections remains with the BEC which provides infrastructural strength to the BEC and has been proven to be as such. Laws and rules as existed at shown in Annexure D.

I discussed EMB structural issues in this chapter and identified the areas that needed giving a serious look at the factors that contributed in further Electoral Reform. Importantly this chapter laid out the setting that prevailed during last few decades in managing elections held which had periodically raised questions from the stakeholders. More so, over the year's lack of adequate supervision and non-remedial factors, nonchalant attitude of the conductors and supervisors, inadequate electoral law, polarised bureaucracy and structural deficiency of EMB prompted latest Electoral Reform. Apart from what was discussed in the chapter the public perception on the distortion impelled Election Commission to initiate recent Electoral Reform. This then formed basis and logic for reform in these areas.