

Chapter 4

Experience of Electoral Reform in Regional Countries

Before I take up BEC initiated reforms we need to go through brief overview of the electoral reform that has been undertaken in our neighbouring, mainly SAARC, countries to understand the process, methodology adopted and the contents of reform. This then would provide to the readers a clear understanding of the Bangladeshi electoral reform endeavor in comparison to the regional countries.

Countries of the region may have similar pattern of electoral system and except that of Sri-Lanka all other countries have independent Election Commission though each country has different method of appointing commission. But Indian Election Commissioners can be removed by the president on the recommendation of the CEC. All other regional Election Commission except Sri-Lanka has the constitutional guarantee of the tenure. Consequently, experience of electoral reform processes also varies with each Election Commission of the region.

Though India has a long standing democratic experience but ECI is not independent in making rules, rather dependent on the government. On the other hand like BEC, ECN, ECP and newly established Bhutanese Election Commission retains the rule making power. Sri-Lanka is yet to establish an independent Election Commission though a bill has been passed as 17th amendment but the president is yet to endorse it. Therefore, it remains as adjunct to the government.

Bhutan had its first ever election under an independent Election Commission adopting FPTP. It had to enact all laws and rules from the scratch. Election Commission of Bhutan (ECB) had studied the

system in the region including Bangladesh before enacting their laws and regulations. Their experience with first ever democratic election and switching from monarchy to parliamentary system is a worthy experience.

In the above backdrop this Chapter would examine the varied experience of Electoral System Reform of a few key countries.

Methodology of study of the experiences: Most of the information gathered as part of a field study in India and Nepal and personal interaction between author of this book and ECs of India and Nepal during field study, election observation duty and rest as part of interaction during first ever SAARC Election Commission meeting organized by BEC held in Dhaka, Bangladesh*.

Bhutan

First ever election in Bhutan. Kingdom of Bhutan had its first ever parliamentary election on March 24, 2008 with only two registered political parties. It had held two stage election, primary or a mock election to acquaint people with the democracy before the Parliamentary election. It adopted FPTP as electoral system.

Apart from electoral law, electoral roll and other relevant law Bhutanese government also enacted Public Fund Act of the Kingdom of Bhutan to provide public funding to the registered political parties for election campaign. This is however the first ever such arrangement made in entire region. As the CEC of Bhutan in his paper that he presented in the Dhaka meet that the aim of this funding is to ensure providing equal opportunity to all political candidates, curb undue influence of money power, prevent unregulated flow of money from questionable sources into political contest and to ensure fair, free and clean elections and National Referendums. (Dasho Kunzang Wangdi in Dhaka meets on May 30, 2010).

* Meeting on Cooperation between Election Commissions of South Asia Region was on May 29-30, 2010. This was first ever initiative in South Asia of such forum initiated by BEC to form a South Asia Forum of Election Commissions to share experiences of each country as regards to the Electoral Management System and System Implementation. The meeting was attended by seven SAARC countries except Sri Lanka. The Election Commission of South Africa was special invitee. All the CECs of the participant countries and others attended this two days moot.

ECB issued voter ID for identification of each voter and used EVM for first ever election.

This is a unique experience that Bhutan had in providing such fund as in most of the countries of the region, especially that of Bangladesh and India, a huge demand is growing for public funding for the campaign to achieve similar goal that ECB has set.

India

Electoral Reform Process in India: Reform process in India is totally dependent on the will of the political government though ECI may recommend such reform as practitioner. Over the years ECI has been urging for some very important reforms of electoral system and its law but over a decade the government has remained undecided on many serious issues. Apart from government, only other institution in India which has been forcing, some addition as obligatory directive for ECI, to implement some important issue without going to the government, is the judiciary. In last few years' court decision on couple of public interest litigation, government was forced to bring some changes. Only other reforms that parliament supported the ECI recommendation was introduction of electronic voting machine (EVM) instead of ballot paper and boxes.

As discussed in Chapter 2 on Indian experience it was pointed out that ECI in many respects still remains dependent on the political government as ECI does not have power of making any kind of rules. RPA 1951 Section 28 while referring to rule making, it mentions, 'the central government after consultation with Election Commission, by notification in the official gazette, make rules for carrying out the purpose of the act'. It therefore makes ECI totally dependent on government making the rules of relevant election laws.

The reform process remains complex in that ECI recommends to the Prime-Minister which is then sent to an Electoral Reform Committee to examine. This all party committee examines the ECI recommendations and other suggestions from experts. Having examined the recommendation received, sends to Law Commission

for further examinations those recommendations which in its consideration finds fit to put up to the Parliament. In most cases selections of items are made on political consideration.

ECI and Electoral Reforms: Last four decades, especially after 1996, demand for electoral reform had been mounting up. The subject of electoral reforms received wide attention at various seminars, forums and civil society movement but not much of the demand met. For example 14 recommendations were made to 1990 committee headed by then Prime-Minister Mr. VP Singh, except 'proxy voting', important issues including 'proportional representation' were turned down. Nothing yet has been done to the repeated recommendation of changing the removal rule of 'ECs' which is has yet to be agreed even after repeated recommendation from number of CECs. Recommendation to reduce criminalization of politics made by the ECI was not considered by 1994 committee. Having failed to get it through the committee as regards to introduction of 'none of the above' (no Vote) vote Indian Supreme Court taken 'sue motto' hearing on the subject. Repeated recommendations for delegating rule making power to ECI have fallen in the deaf ear.

There has been growing frustration over the reform issue among both the civil society and ECI. Repeated request has been made thereafter by ECI in 2004 for resolving the pending reforms issue lying with the committee headed by the prim-minister since 1998 had little effect. A case in point is a Demi-Official (DO) letter written in 2004 pointing out 26 areas requiring immediate attention for reform to the then Prime-Minister Mr. Monmohan Singh by then CEC Mr. TS Krishna Murthy is worth noting. The Then CEC writes:

Electoral reforms have been engaging the attention of the Parliament, the Government, the press and also the Commission for long time. Some measures were implemented in the past to remove serious lacunae in the law. Our recent experience in just concluded general elections to the 14th Lok Sabha however, reaffirms our belief that further steps to be taken in this regard quickly.

My predecessors have been very regularly addressing the Government in the last six years on different subjects requiring

reform. Certain new issues have come up based on the experiences gathered by us in the recent past.

He then encloses in total 22 areas of the law that needed immediate attention for further reform and continues; (D.O. No 3/ER/2004 Dated July 5, 2004)

I enclose two sets of notes on areas of immediate concern (Proposals on Electoral Reform, July 2004), to us in the Commission requiring your urgent attention. In the first part, we have set out certain urgent proposals for electoral reforms in areas that have not been taken up in the past by the commission and have arisen due to implementation of certain laws enacted or based on certain directions given by the Supreme Court and High Courts. In the second part, we reiterated some of the pending proposals that remain unresolved and which in no way are less important than the proposals in the first part.

So far the recommendations and appeal remained unattended. When asked about his reaction to the indifferent attitude of the government on ECI's reform initiative, immediate past CEC of ECI Mr. Navin Chawala expressed his concern on the issue during a meet in Dhaka. While discussing and exchanging views on the subject during field trip to ECI, Delhi, both the EC's Mr. Qureshi and Mr. Sampat expressed their exasperation particularly on two issues, one, outstanding subject of reform and the process of removal of Election Commissioners whereas Mr. Navin Chawla had also reminded the government to settle these two issues (SAARC Election Commission Forum: 2010) Outstanding subjects of the Proposed Electoral Reform 2004 is attached as Annexure E.

Independence of ECI: The Election Commission was set up under Article 324 of Indian Constitution. Clause (2) of the Article mentions 'Election Commission shall consist of Chief Election Commissioner and such number of other commissioners, if any, as the president may from time to time fix the appointment of Chief Election Commissioner and Election Commissioners shall, subject to the provision of any law made in that behalf by the Parliament, be made by the president'.

Composition of Election Commission and Constitutional Protection of all Members of the Commission and Independent

Secretariat for the Commission: On October 1 1993 under the above Clause of Article 324 by a Presidential Order number, commissioners was fixed to two but the constitutional guarantee under Clause (5) of Article 324 provided for CEC was not made applicable for the other Election Commissioners. This pertains to the removal of the commissioners. Commissioners can be removed with the recommendation of the CEC which according to the ECI does not go with the character of independent Election Commission (Discussion with ECI: 2010).

In the aforesaid proposal for reforms, ECI has strongly urged to provide Constitutional protection to the other Commissioners like CEC but in almost a decade has gone by, government had shown no inclination to bring any reform to the character of the ECI. It felt that though ECI is a Constitutional institution but it does not enjoy same amount of independence as other regional Election Commission does.

What it appears from study of the ECI structure that it has small secretariat which does not enjoy wide independence as like that of Supreme Court or Lok Sabha. For travel abroad the officials of ECI needs prior sanction from the government and the Commissioners needs the approval of the president. In a recent move government wanted to bring the subject approval in their fold which created a row between ECI and the Law Ministry.

Reform Bid: However, there have been number of Committees reports made for reform such as Tarkunde Committee Report of 1975, the Goswami Committee Report of 1990, the Election Commission's recommendations in 1998 and the Indrajit Gupta Committee Report of 1998 produced a comprehensive set of proposals regarding electoral reforms. Apart from these reports a few number of new initiatives have been taken by the ECI to cleanse the electoral process in India. The important among these are:

Model Code of Conduct: It has been discussed in Chapter 2, this is generally an understanding between political parties and the ECI having no statute. ECI have recommended to accord statutory backing so that violation could be legally dealt with.

Submission of Affidavit by the Candidates: This was made effective in 2004 after long tug of war between the Apex court, political parties and ECI. But subsequent detection of false declaration has not been made into election offence that ECI had recommended.

Registration of Political Parties: This amendment was made in 1989 making it compulsory for political parties to register with ECI. But ECI has no instrument to deregister any registered party even if it violates any conditions which itself are inadequate.

Limits on Election Expenditure: Expenditure for Lok Sabha election varies from Rs. 10, 00,000 to 25, 00,000 and for legislative assembly 5, 00,000 to 10, 00,000. ECI, nevertheless, is ahead of other regional countries in monitoring the expenses on regular basis during campaign period. ECI appoints expenditure observer to keep an eye on the candidate's expenditure.

Use of EVM: It was one of the best reforms that ECI could introduce after long 30 years persuasion with the political parties and the government. Introduction of ballot paper free EVM has made booth capturing almost impossible. With the introduction of the EVM the voting process has become more efficient as there are no spoil or cancel votes and quicker and accurate counting has been made easy. It saves huge amount of paper and from the agony of printing of over 700 million ballot papers.

Introduction of Photo Electoral Roll: Photo electoral roll was introduced during 15th Lok Sabha elections throughout India except few states after experimenting in various states over 25 years. Though 20 percent of voters are yet to be registered in new system yet it has reduced impersonating and casting false votes.

Non-resident Indians (NRIs) Voter: For more than two decades NRIs have been demanding voting right but that was denied so long. Recently a bill has been passed on August 31, 2010 to amend RPA. With this amendment NRIs will now have a right to vote in elections.

Paid News Syndrome: After a long negotiation with the editors of

newspaper the Election Commission has been able to set up a cell to monitor candidates expenditure by using the media through what is termed as paid 'news syndrome'. A memorandum understanding reached between two institutions without any statute. It is therefore that the Election Commission has to depend on the press council and district level panels comprising journalists, for execution of the MOU. Expenditure observers and other persons would keep an eye on the media and report to the ECI of any violation.

Indian Electoral System-looking for a change

In India, for example, like many other countries, 'plurality system' (FPTP) has been practiced since British Raj through the independence in 1947 but the question of the adequacy of the system was raised right at the beginning. Though there has been strong demand soon after independence from many a members of the framer of Indian constitution for PR system but it was strongly opposed.

The demand for change in electoral system in India to allow the growth of multi-party instead domination by two parties has been a constant factor. Mr. LP Singh in his book 'Electoral Reform' writes that PR system was vehemently opposed by B.N Rau who was then adviser of the constituent assembly. His argument was that in a PR system constituency becomes unwieldy and it gives birth to multiplicity of parties, as he said "each wedded to one pet object or another and with no incentive to coalesce with other parties" (LP Singh: 1986: 110) Mr. Rau further stated that in a cabinet formed as result of the system with members of different parties is not cohesive and do not develop a strong bond and so no clear cut policies are evolved.

Rau (LP Singh: 1986: 109) however concluded with an observation admitting that this system is a necessity for countries "with self-conscious racial or communal minorities". LP Singh, one of the exponents of a change in Indian system of voting from plurality to PR, further states that Mr. Rau was opposed at that time by minority community leaders like Mr. Jayapraksh Narayan and others for

indirect election or least adopting PR system for both Lok Sabha and State Assemblies "but there were little support for his views". However, LP Singh opines that Mr. Rau simply ignored the fact that India was and is a country with multi-ethnic dimension.

For the growth of multi-partyism and adequate representation of ethnic and religious minority LP Singh has been a strong advocate of change. He strongly argues that India is a multi-racial, multi-societal and multi-cultural country hence he advocated for change in the system to ensure multi-party and multi-ethnic representation in the parliament and state assembly. LP Singh's recommendation of changing the electoral system has been consistent of Indian Election Commission important suggestion of reforms but in 1990 Indian Committee on Electoral Reforms did not favour the proposal for changing 'plurality system' to PR system. Nevertheless, the civil society organisations consistent in asking for a change of the electoral system for reasons discussed.

Judiciary

One of the main institutions that have been helping ECI in maintaining its independence, prompting reforms in Electoral Law, strengthening ECI for conduct of free and fair elections and interpretation of the Electoral Law, is the Indian Judiciary System. There has been number of occasions where ECI was challenged of its authority in various aspect of the Electoral law but in most cases timely intervention and court judgements have resolved those issues in a manner that some of the reform was brought without going through the laborious methodology of reform that exists in India (Rama and SK Mendiratta: 2007). One of such cases was inclusion of mandatory disclosure by the candidates in sworn affidavit. See Annexure F.

Indian judiciary provides much strength to Election Commission in discharging its duty forcefully. Not only that at times judiciary takes the role of the custodian of the constitutional institution's independence but strictly maintains the Constitutional dictum. One such case is upholding ECI decisions during election process as

enshrined in the Constitution. Indian Constitution has more succinct prohibition of the courts limit in Article 329(b), it reads, 'Once the process of the of election commences in a constituency, the courts cannot interfere until it is complete and culminates in the declaration of the result of the election (VS Rama Devi and SK Mendiratta: 127: 2006). This is one of the strongest supports that Indian Constitution and the judiciary provides to the ECI.

Though in latest amendment of our constitution, Article 126(c) as new insertion, has put partial limit on the court but the courts are yet to take such limit in full cognisance. I shall discuss this issue in appropriate Chapter.

Nepal

Constituent Assembly Election and Electoral Reform: Nepal had gone through two decades of Maoist insurgency demanding the end of monarchy and turning Nepal into a republic. Thousands of Nepalese were killed and thousands became victim of the insurgency. At last through peace negotiation Maoist had ceased their insurgency in 2006 with a promise from then government under king Gyanendra and other stakeholders to hold CA election by 2007. New Election Commission was setup (ECN). In Chapter 2 of this book elaborate discussion has been on the preparation of electoral laws and rules. Since the Nepali interim government with the help of legislative assembly had to make all laws and rules afresh under ECN it had had consultation and study of the regional system. UNDP provided required help with other international donor to prepare all new set of laws, rules and regulations. A successful election was held, with some, delay on April 10, 2008 for 575 CA members out of 601, 26 members were to be selected by the interim cabinet.

For CA, CPN conducted the election on 'mixed electoral system'. 240 members were elected by FPTP and other 335 were elected 'closed list' PR system. Thus Nepal became first ever a country in the region to have its election on 'mixed system'. Whether this system would continue in future or not would not be decided unless new constitution is completed.

In another issue Nepal had gone ahead is the political party registration which is rather far more elaborate than India and Pakistan. BEC had a close look at Nepali political party registration act while carrying out electoral reform in 2007-08.

During 2008 CA election ECN also made a pilot test of EVM with the help of ECI in one of its constituency.

Taking a cue from BEC's digital photo electoral roll, ECN is now piloting the digital photo electoral roll. BEC had extended all help that ECN asked for. In fact ECN may consider another electoral reform once new Constitution is made and prior to next general elections are held under that Constitution. It may take some time to know what reform Nepal may resort to once Constitution is completed.

Nepal – Mixed PR-Voting system

It was for the first time that Nepal introduced the system. Partial PR system was introduced after a peace accord with Maoist movement. Fifty percent of Nepali constituent assembly seats were made open for single constituency single-ballot plurality vote and another fifty percent was on proportional representation from close list. Voters had to vote on the party symbol for Proportional Representation (PR). The party list catered for pre-determined ethnical Representation within the party list. The voting system adopted by the Nepal's interim government was the result of long negotiation between Maoist and the Nepali government. However, what type of electoral system the constituent assembly enshrines in forthcoming democratic constitution remains to be seen. But for countries like Nepal, a multi ethnical, multi cultural and multi societal country it is assumed that Proportional Representation (PR) could be the best option to represent all section of the population.

Pakistan

The Election Commission of Pakistan (ECP) constituted an Electoral Reforms Committee (ERC) in April 2008. It invited proposals for electoral reforms from various entities including

'Pildat' a civil society, which submitted proposals formulated by Citizen Group for Electoral Process (CGEP) to the committee. The ECP presented its proposed electoral reforms to the Pakistani prime minister on March 11, 2009

Among these recommendations one of the main issues is to change the appointing system of CEC and the commission after 17th amendment to the Constitution. The commission will act on a recently passed constitutional amendment that will change the mechanism for appointing the chief of the ECP and members of the commission.

Under the new system, the chief of the ECP will be appointed at the recommendation of a parliamentary committee comprised of members from the ruling coalition and opposition.

ECP is now constituted with all judges both serving and retired. The civil society is pressurizing to change the combination through appropriate amendment to the Constitution.

ECP with the help of ERC, CGEP and other civil society has recommended a proposal for electoral reform of 2009.

Sri-Lanka

Sri Lanka inherited a Westminster model of parliamentary government, since 1931 as a British colony. It continued with that system since first general elections after independence in 1947. Since Sri-Lanka is a nation with multiple ethnicities, as in most of the countries in South Asia, it decided to change the government system in 1978 into Presidential system nearer to French style. With the change of the government system changed the electoral system nearer to French Two-Round System; a compromise was made to minimize the logistic problem.

These considerations prompted an innovative solution to the problem: to combine the initial and run-off rounds of voting into one election via the expression of preferences.

Sri-Lanka also practices closed part list 'modified PR' system for Parliamentary election since it switched over to Presidential form of

the government. Members of parliament are elected by universal (adult) suffrage based on a modified PR system by district to a six-year term.

The modification that Sri-Lanka made is that, the party that receives the largest number of valid votes in each constituency gains a unique "bonus seat."

However, the seats are distributed proportionately among the parties and subsequently party selects its members for given seat. This system that Sri-Lanka pursues said to have been adopted to ensure representation of all ethnical minorities but the danger is that the distribution is made by the party leaders. Sri-Lankan system of election is unique in the region and differs from rest of the countries of the region.

Sri-Lanka is yet to institute an independent Election Commission as bill was passed with the 17th amendment of the constitution and yet remains to be ascended by the president and unless that happen bill cannot be passed as law.

Institutional Learning

Experience of each and every country of the region has its uniqueness though socio-political and culturally these countries complement each other. In depth study of these varied systems, under almost similar socio-political culture, makes great institutional learning. BEC, prior to embarking upon its electoral reforms made sustained study of the systems followed in the region and the reforms that was carried out in the past and proposal for further reforms. For example the concept of compulsory registration of political parties in all the countries, though varied in nature, put impetus on the research made by BEC on this aspect. While studying the conditionality of political party registration Nepali experience was found to be more forward looking than India or Pakistani conditionality of registration.

As regards to the most crucial of all the aspects of holding fair and free election is the preparation of accurate electoral roll. India was

experimenting with photo electoral roll but not in integrated digitized form. It had its pitfall and took longer period to reach the level that it has now. When studying the Indian system it was found that the system still remained 'voter passive'. While studying this issue by BEC it appeared that Indian model has its drawback and that Bangladesh should have a 'voter active system' of electoral roll in that voter has to face the camera in a designated place rather than supplying own photograph without a head count in door to door visit. The learning from the difficulties that ECI was facing, BEC could evolve a better solution which is now becoming a model for many a country as discussed earlier in the Chapter.

One of the menaces that each countries electoral system suffers from is use of 'money and muscle' but ECI has evolved a system of monitoring the campaign expenditure. On the other hand Bhutanese public funding for party and candidates campaign expenditure is worth the study. BEC has made a study of the law in depth so has ECI to suggest respective government to adopt the Bhutanese model of public financing with modification that suits each country's political culture.

Study of the introduction of EVM by ECI and its positive impact on election management has been a great institutional learning for many regional countries and had an affirmative influence on the policy maker. Presently having learned from the ECI experience all other countries of the region are slowly catching up with the idea and piloted the system with great success.

There are areas that each country's system of reform gives opportunity for great institutional learning by others. Meanwhile close contact, observation of conduct of elections within regional countries has proven as a valuable learning tool.

From the above study we find that there exist some common and some opposing issues and experiences within the regional EMBs. The aim of each EMB irrespective of type is to hold a free and fair election under their management. For ensuring a free, fair and transparent election EMB has to have public confidence and to earn that confidence few parameters needs to be ensured. First and

foremost is its own independent existence. Except one, rest of the regional EMBs enjoys independent stature as all of them being constitutional institution designed to help promote democracy. Degree of independence also varies between countries.

EMBs are strengthened by electoral and other laws, rules and regulations in conduct of such election. Under these statutes electoral system is developed suitable to the particular society. Since the proximity and almost common history the electoral system is almost akin to each other.

Each of the EMB periodically reviews its system and initiates reform through established channel. Most common experience is that most of the countries have established channel for such reforms. As in this Chapter we discussed the adopted methodology and in most cases it is observed that the reform process is complicated and in some cases difficult to come by. In case of India and Pakistan's electoral reform what it seems to be absent is that there is no or minimum part of stakeholders in the process of developing the concept paper.

The reform experience is also not same in all the countries.

What seems to be the other concern is the construction EMBs except two newly established democracies in the region. Yet with all pitfalls in most cases EMBs have been delivering the best.

However, having studied the process of reform and experiences that each EMB has gathered provides enough for institutional learning. On this particular field of late exchanges between EMBs have proven to be great learning feat. Studying the experiences gathered by each EMB and the methodology adopted, BEC had been benefited and could formulate more comprehensive and useful policies for electoral reform carried out in 2007-08.

The previous Chapters lay the foundation of the discussion for the following Chapters of this book. Election Commission Structure of selected South Asian Countries is attached as Annexure G.

Chapter 5

Key - Factors and Actors of Electoral Reform in Bangladesh

Electoral Reform is regarded to be one of the prerequisite for conducting free and fair elections. It has to deal with public both from below and above as all endeavours made by EMB either in the conduct of elections or setting system has to result in bringing voters to vote and count every vote for result. The process has also to be supported by the political parties or candidates to whom entire process has to be acceptable as legitimate efforts.

Electoral Reform therefore is not out of vacuum but has to have catalyst to demand such reform. In young or fragile democracies the role of these catalysts cannot be underestimated. However, what has been seen in Bangladesh that these catalysts became major actors in demanding Electoral Reform. Not only that these actors played a significant part in creating a pressure from down below but enhanced the public aspirations for a legitimate democratic system through a fair and free election at all level.

It is very important to note that decade prior to Electoral Reform 2007-08 these actors and enablers played a cataclysmic role in bringing into public demand for much desired Electoral Reform.

Therefore, it is important that we understand and discusses both actors and enabling factors those who played significant role to bring changes to provide enhanced legitimacy in Electoral Process. Point also to note that one of the main Factors, as listed most crucial, was the time and space provided by NCG in 2007-08 that being the unusual exception. Time and space would remain a critical factor as it is long drawn process to bring in Electoral Reform in young or in fragile democracy unless Electoral Reforms become a continuous process.