

## Chapter 6

### Review of Electoral Reform Initiative

Electoral reform is a continuous process. It is a dynamic process that requires fore-thinking, consultation and analysis, past experiences gathered after every election and research to the good practices and system of the regional countries to formulate reform plan or initiative.

Since establishment of BEC soon after the liberation and enactment of RPO-1972 and after the first post-liberation election in 1973 no such initiative had been taken to initiate any kind of reform either to the law, voter registration system or to the structure of the BEC. No record indicates that BEC had established a formal methodology for initiating any kind of reform or developed any mechanism. This lack of foresightedness had entailed upon the public perception of BEC's capacity to hold free and fair elections held thereafter.

Lack of confidence on BEC and its incapacity to carryout continuous reform keeping in view the growing complexity of the elections held over the decades had resulted into complete distrust on BEC as a prime democratic institution. Moreover lack of independence of its secretariat and absence of any law defining the methodology of selection and appointment of the commission added to the distrust. These facts were evidently proved in the foregoing chapters of the book.

Inadequate law to tackle complex election issues, lack of will on part of authority enforcing electoral law, in whatever shape it was, created serious misgiving in public mind on the capacity of BEC holding a free and fair election. Number of cases cited in earlier chapters had proven this statement. Thus the requirement of NCG was felt both by the opposition political parties, civil society in particular and public in general that forced then party in power BNP

in adoption of NCG with 13<sup>th</sup> amendment of the constitution [Constitution of Peoples' Republic of Bangladesh Chapter II A (Article 58E)].

However that does not mean that no effort was taken to amend RPO in bits and pieces over the years that followed but proved to be insufficient as these were not in a reform package. Couple of initiative of major changes failed due to lack of forehand planning, absence of accepted methodology and half hearted implementation. All these efforts were wasted.

#### Reforms 1972-2006

In the last three decades some assorted attempts were made to bring some changes through reform of various laws relating to BEC structure, most of these have been discussed in Chapter 2, and electoral law aiming to achieve:

- Improve capacity of BEC
- Reduce electoral malpractices
- Use of excessive money and muscle in campaign
- Improving quality of the candidates
- Setting norms for campaign by the candidate like Code of Conduct
- Effort for better identification of the voters
- Effort to make political parties accountable through registration with BEC

**Effort to Reform Electoral Law:** Over the decades efforts were taken to bring certain amendment to laws pertaining to the functioning of the secretariat, it's roles and to enhance the authority of the Election Commission and electoral procedure.

Efforts were made to separate Election Commission Secretariat from the executive branch of the government but there was lack of political will from both sides of the political divide. Political parties only resorted to lip service in support of making BEC strong but no government during the period, had acted upon it nor was any pressure felt either from civil society or public.



Be it as it may, some significant amendments were brought to RPO 1972 in that said period. Articles 91A, 91B, 91C, 91D and 91E were included in 2001. 91A was a major reform that pertained to the registration of the political parties in consonance with other practicing democratic countries of the region and elsewhere. Whereas 91B was added for contempt to the Election Commission, 91C pertained to the election observation by local and foreign national or observation group, whereas 91D dealt with powers of BEC to cancel candidature for gross violation of any act or rules thereafter any time during the election period and 91E was for summoning witnesses by the Commission during any enquiry connected with election and under other laws and act. But two of the Articles were cancelled under pressure: 91B and 91D and other three were modified to make them softer.

It was felt that with the cancellation of 91D BEC lost its power to enforce other laws during election effectively. On the other hand most significant of law reform, 91A was diluted under political pressure. It was designed to establish a formal relation between political parties and was an effort to make political parties more accountable.

Other than the above mentioned Articles most of the other amendments were insignificant and was of no consequences or had less effect on the entire process of elections. These amendments were brought between 1978 and 2001 but mostly in 2001. However rest of these amendments were of routine matter. Few of those considered to be significant, are:

**Enlarging the disqualification:** The major changes in the provision of 1978 where the disqualification criterion for the candidates those were enlarged and few more provision were added. This gave authority to BEC to cancel membership in the parliament, if subsequently found that one was ineligible to be a candidate under sub-clauses of Article 12 (1) of RPO-1972 dealing with disqualification of candidates; Article 12 (1) (ai) of said RPO was included in 2001 which deals with disqualification of candidates if punished, in prescribed manner, for some specific electoral offences.

Loan defaulter clause was expanded in 2001 that included loan defaulter being director of any company or any financial institution adding sub-clause 12 (a) and (b).

Chapter IIIA pertaining to election expenses were made stricter than before. It was made part of RPO 1972 first in 1985 and then in 1991. Under 1991 provision every candidate contesting election had to submit election expenses report to returning officer within thirty days. Punishment term was increased for defaulters from maximum two years to minimum two years and maximum seven years.

**Registration of Political Parties:** Chapter IV A was added in 2001 regards to registration of political parties. Initially registration under Article 90A was made compulsory but later it was made optional with few simple conditions. But very few parties, 6 parties registered that too to save their election symbol but two major parties AL, BNP and other parties remained out of it. The Article had no provision of party accounting or conditions to practice internal democracy.

**Other Attempts to strengthen BEC under law:** To curb malpractice in election process and strengthen hands of BEC, Article 91D was enacted by providing the power to cancel candidature if found violating any law under the RPO on 8<sup>th</sup> August 2001. Same was done in case of introduction of Article 93B which was enacted to provide same power like that of Contempt so that BEC can take any action against any one undermining or criticizing the Commission. Both these Article then was cancelled by another Ordinance promulgated on 28<sup>th</sup> August 2001 within span of 20 days as political parties raised serious objection to these two Articles.

**Code of Conduct Rules:** Code of Conduct for the candidates was promulgated in 1996 and it was further amended in 2001 but it did not have separate punishment section for violation.

**Voter Identity Card:** This was one of the major steps of reform that BEC could take, with the amendment of RPO 1972, in 1994. This step was taken to identify voter with the list issuing a separate photo identity to reduce fraudulent voting and to prevent bogus voting.



GOB sanctioned the project which was to be completed by June 1996. The project was then extended up to June 2001. A total of Tk.180 Crores was allocated. But the effort failed as the execution was made without forethought and meticulous planning. The project was abandoned in the middle. No research was carried out prior to embarking in such huge project nationwide.

Apart from the above few small and insignificant amendments were made to the RPO 1972 and other Acts and Rules.

**Political Conundrum over Reforms:** As discussed, most of the reforms attempted pertained to electoral law and rules thereof. And significant among them were 91A, mandatory registration of political parties, however soft it was, to bring some discipline within the electoral process and 91D that could have had a salutary effect on the conduct of the candidates during the entire election process. But political parties found that both ran against their interest. It was bigger parties who had been dominating the entire political spectrum over three decades and AL being the most dominating and oldest trend setter party within the country. Among BNP and AL, having hold upto grass root level, alternating in power over last three decades, were able to cast influence on other smaller parties around them.

The pressure these parties and their allies brought, by threatening to boycott the election unless it was not made optional to comply with the article, on the 2001 NCG, in that entire effort crumbled as regards to 91A. These parties opined that forcing them to be registered with BEC was a bid to regulate them by a body, according to their opinion, which does not have mandate beyond election. Such vehement opposition was encountered during 2007-08 by NCG as well but the BEC's strong stand and prevailing environment helped withstand the pressure which was absent in 2001. However, once modification was made from compulsory to optional registration only 6 parties including JP (E) registered only when the dispute over the election symbol placed before BEC for adjudication.

On the other hand, as regards to 91D, it was totally rejected by the all parties worth any name. Political parties found such power accorded to BEC would undermine their ascendancy over the BEC. Most of them termed the effort as outrageous and unprecedented as, according to them, a draconian law in the hand of an institution which had low public approval. All the parties apprehended that this law could well be misused by the BEC in favour of one or other. This was due to trust deficiency that BEC had. Under the ultimatum of boycotting the elections this Article totally scraped by 2001 NCG and the BEC shifted from its position. Article 91B however was thus withdrawn under criticism from both political parties and civil society.

**Analysis of the Reform Efforts:** While analysing the reform effort 1972-2006 it is clear that not much substantial effort went in for any tangible reforms in times of so called democratic period from 1975 to 1991. Prior to that period, during few initial years of Bangladesh, elections were not as compatible as it grew over the decade. More so in those formidable years of election it did not acquire that type of importance in public perception. However the scenario changed after installation of care-taker government before 1991 democratic election. Yet the institution of Election Commission did not feel for large scale reform. Situation changed as the democratic system stabilized, people's urge for uninterrupted democracy grew stronger. The more public desire to see fair and free election grew so did the desire to support stronger democratic institutions like Election Commission. Pressure from below grew over the period for electoral reforms.

It was with the introduction of caretaker model, people's aspiration for free and fair election grew stronger. On the other hand due to installation of a non-political non-partisan government BEC also got environment to suggest some reforms, keeping the discussed aim in view. But it was not before 2001 that BEC felt pressure from the public and the civil society to take some reform measures but those



reforms mostly remained confined within initiating some innovative reforms in the law except new idea of establishing voter identity to curb tendency of manipulating the voter list, but it failed.

The substantial reform efforts like political party registration which was aimed at making the political party activities more transparent and instill some kind of accountability initiated in 2001, failed as political parties, did not support the idea. Most of the political parties, including larger parties, did not support the idea of being in some kind of obligation to the institution nor was enough public pressure created to accept reforms. On the other hand civil society failed to support BEC. Prevailing environment was yet another factor that did not prove to be conducive for such reform. So was the case of measures contemplated by BEC to strengthen it with the adequate law.

Apart from lack of public pressure on political parties BEC failed to explain the intended aim of reforms to the public, political parties and to the civil society to drum up support in favour of the reforms. Unilateralism was a bigger factor for failed efforts. The then Election Commission did not adopt the consultative methodology. Reforms, whatever, was attempted was not participatory. Major reforms proposal, though limited, were not shared with either stakeholders or with the public or with the civil society. Since the efforts were arbitrary it was not sustainable.

Most important factor for major reform was time factor which was not sufficiently available in the past. Shorter duration of caretaker regime could not provide either sufficient time or could not create conducive ambient for such reform, which also did not provide minimum needed space for research, consultation and testing in the field. Unfortunately neither the BEC nor the NCG had enough resolve to bring major reform. In a case or two, BEC undertook few reforms, without sustainable methodology, had to be abandoned in the process. Preparation of Voter ID 1994-96, is a case in point.

### **Institutional Learning**

Failure teaches maximum lessons than success. Once the past failures are analysed, the causes and mistakes committed, provided enough to ponder for plausible reasons of failure to achieve the minimum requirement for bringing tangible reforms. The aim was identified. The study concluded in setting fresh reform aims and new methodology for achieving sustainable reforms. The analysis of past failure brought out following lessons to learn:

- The institution of Election Commission must establish its strong credential with public and with civil society
- Setting of reform aim must be in clear and succinct terms
- Reform objectives must be clearly defined
- It must be participatory reform for sustainability in that principal stakeholder, political parties, must be included in establishing methodology for reforms as it is they who would materialize by endorsing reforms to provide legal basis. It is the Parliament which provides the legality to the reforms.
- In order to have credible and sustainable reform there is a need to have greater consultations with experts, practitioners, the civil society, media and other stakeholders.
- Input for continuous research and new initiative must not cease.
- Reform process has to be supported by the public and for creating public opinion media support for the reform effort is most essential.

There has been limited reform process that BEC initiated in the past but they were limited to some amendments to the electoral law. Some worth mentioning reform was initiated in 2001 but some important reform issues could not be materialized due to the political pressure. The limited reform whatever was brought did not yield desired result as BEC failed to raise its own image. Though one important reform issuing voter ID was conceptualised by the



then BEC but executive failure and inadequate planning turned the project into failure.

One of the reasons of past failures could be attributed to obscure methodology for bringing reforms. Past attempts failed mainly because reforms were non-participatory. Stakeholders disowned efforts of reform howsoever basic those were.

From the analysis of the reforms efforts of past years clearly showed the importance of public and civil society pressure in support of electoral reform. Political parties did not feel any pressure on them to accept the reform effort those were initiated particularly during the successive NCGs. Lack of BEC resolve is also one of the leading factors in realising the intended electoral reform. However, past failures produced enough for institutional learning and formed basis for future reforms.

## Chapter 7

### Electoral Reforms: 2007-2008

Tumultuous political conundrum that started at the end of 2005 and beginning of 2006 over the probable appointment of Justice KM. Hassan as NCG head became initial cause but soon it engulfed the electoral process and the BEC. Along with the political contestation for power between two rival political groups led by the then opposition party AL and the ruling group led by BNP, the NCG and allegation of probable skewing electoral process under, having dubbed as partisan, CEC Aziz Commission became the focal point of street agitation. The political impasse thus created over these two issues continued to dominate the political agitation almost year preceding Ninth Parliamentary election which was to be held on January 22, 2007. But as opposition demands were ignored by the ruling alliance along with violent street agitation demand for electoral reform including the reform of BEC became stronger and stronger. Street agitation was closely intertwined with issues of confidence in the BEC and the quality of the voter lists as this paper has already pointed out in earlier Chapters. BEC either failed to address the major issues or they acted as partisan body and ignored not only political party demand but public pressure for major electoral reform before any credible elections to be held.

Partisan behaviour or ineptness led to demands for the BEC's resignation and to plummeting public confidence in its ability to conduct a fair election. Concerns that the election administration might be politicized were heightened by bureaucratic arrangements under which the Election Commission Secretariat (ECS) fell, organizationally under the purview of the Prime Minister's Office, rather than under the BEC, and hundreds of civil servants appointed by the outgoing government would occupy key electoral positions