

consultation process has had productive effect on the result achieved.

The Chapter brought out plausible reasons for failure of past attempts. Past reform attempts failed mainly due to arbitrary endeavour without taking the actors and factors in consideration and the manner it was initiated. Time and space was another contributing factor for long term reform efforts that however, was not available in the past.

However, to conclude it could be said that due to all factors those were discussed in the Chapters had proven to be large contributory features in to a successful electoral reform in 2007-08.

Chapter 8

Observations and Recommendations

Democracy is nothing but establishing a government by the people through freely elected representative whom they think could govern on their behalf. For achieving this objective elections have to be free, fair and transparent so that voters' wish can be reflected. Conduct of a free and fair election rests on EMB in the modern era. Trust upon this institution is vital. BEC as EMB has to perform the task enshrined in the constitution, conduct free and fair election for continued democracy in Bangladesh. It is BEC that has to ensure that people have faith in the electoral process. Electoral process must go through continuous reform that BEC has to initiate. But for many years BEC had that trust deficit much of which was due to own inability to be a trustworthy organisation and could not take effective measures for reform. Feeble attempts in the past failed because of trust deficit. However, it is good for the democracy that present setup of the BEC (2007-12) has been able to regain that lost trust through transparent conduct, electoral reforms and through conduct number of free and fair elections that includes 9th Parliamentary election, 3rd Upa-zilla election 7(seven) city corporation elections, over 4000 (four thousand) Union Council elections and number of bye-elections to the National Assembly seats.

Be it as it may, though BEC initiated a massive electoral reform which has been acclaimed at home and abroad yet much remains to be done for strengthening BEC for future challenges by developing further infrastructure. In study it has been concluded that EMB's can be strengthened with or without much of political will if judiciary is fiercely independent and act as both custodian of constitution, elections and democracy as in India.

Observations

My study established that not only that Election Commission needs to be strengthened by further developing legal and organisational infrastructure but persons with convictions; integrity and neutrality must be appointed so that they can retain people's confidence. To ensure the appointment of such persons there must be laid out procedure so that appointees are not stigmatised being political, with partisan view and able to exercise powers vested upon it by the constitution. Once Election Commission gains the confidence of the people then only firm steps can be taken for successful electoral reform. Independence of Election Commission cannot be ensured only by enacting law but must have independent minded persons in the driving seat.

This is most vital and primary criterion for a strong independent Election Commission. What has to be remembered that independence is a state of mind rather than vested power upon the body. It is the state of strongmind set that would help taking bold decision and proper execution of the power vested upon by law.

Few other observation drawn from the study pertaining to the Election Commission and the electoral reform are mentioned below;

General Observation on Previous Reforms

As discussed in chapter 6 the reform bid those were initiated in between 1972-06 could not fulfill the aspiration of the people and the main actor i.e. political parties, due to assorted reforms in the electoral law only which hardly corrected the distortion. There were no serious attempt made to adopt a holistic review of the entire Electoral System. No in depth study or methodology was adopted for continuous reform. Some observations are appended below which contributed to the ineffective reform of the past:

- Half hearted effort was taken for electoral reform in the past
- No analytical review was made after every election to draw lessons
- Most of the elections held in the past did not meet the expectation of the people

- Political parties were not taken into confidence by the past Election Commissions and thus due to trust deficiency reform attempts failed
- No importance was given on capacity building and development of infrastructure
- No methodology was developed for continuous process of electoral reforms

Constitutional and Legal Limitations

While researching the subject reform it was evident that there existed some constitutional limitations on key areas those over the years became key areas of electoral reform and these limitations still remain as critical areas for further reforms:

- Constitution dose not specify numbers of Election Commissioners. (Which has now been specified)
- Though the Constitution did not specify the process of the selection of the ECs except that it has the provision of enacting separate law for such appointment. In absence of such law, the power is vested on the President to select such persons. Most of the democratic countries have a definitive law which stipulates the selections process before the President gives the appointment.
- Neither the Constitution nor any law specifies educational qualification for the candidates of National Assembly.
- No set methodology developed for continuous electoral reform process.
- Though political party registration has been made compulsory and issue of inner party democracy is mentioned but BEC does not have any power to ensure or verify the practice of inner party democracy.
- Independent Election Commission Secretariat Act is inadequate and made the secretariat answerable to CEC only which undermines other ECs.

- No effective instrument developed for monitoring election expenditure by the candidates or of campaign expenditure by the party. Therefore, it is difficult on the part of Election Commission to verify the expenditure return submitted by the candidate or the party.
- The functions and other requirements for polling agents are not specified by law whereas they are an integral part of the election process.
- Not much study or analysis made on the electoral system i.e. FPTP or PR.
- Flexible delimitation law permits non-compliance of the Constitutional requirement.
- No action is stipulated in the RPO for giving false declaration.
- Over the years due to low political culture there is tendency of challenging electoral law and the Commissions decision by the politicians.

Other Observations

Lack of commitment observed on the part of political government for strengthening Election Commission, except occasional rhetoric. Politicisation of civil administration impacts upon the neutral conduct of election as the Commission has to depend on the civil administration for conduct and election logistics.

Infrastructural

There is shortage of manpower for smooth functioning of the Election Commission in conduct of the election. There is no system developed for maintaining either continuity of the Election Commission like India or overlapping period for handing taking over.

Recommendations

In light of the observations the study made some recommendations that are appended below:

- There should be a law made under the Constitution for appointing CEC and other ECs. The selection process should be initiated by a search committee and be first approved by the special Parliamentary Committee comprised of both leader of the house and the opposition. President's final approval should be based on the recommendation of the parliamentary Committee. Appointments made in such manner would then be acceptable to all concerned.

Note: An ad-hoc search committee was convened by the government on request of the President to suggest replacement of Dr. Shamsul Huda Commission but did not have a statute, yet one has to admit that it was good start which would lead to the proposal made by the out going Commission.

- A process should be developed to maintain continuity so that achievements and ongoing work of outgoing Commission is passed to the next for continuous improvements.
- Methodology must be developed for continuous reform of electoral process.
- Monitoring methodology should be developed for verifying and observance of election expenditure.
- Public funding for election campaign be made available for both candidates and the political party under the control of the Election Commission which would reduce use of 'black money' and provision of fund from unwarranted sources.
- Law or an agreed methodology should be enacted or developed to ensure inner party democracy of the registered political parties.
- RPO should specify the detailed duties and obligations of the polling agents employed by the candidates as election agent of the candidates.
- Setting up campaign expenditure monitoring team.
- There has to be political will to strengthen the election commission.

- Government must assist the Election Commission for its capacity building.
- Legal wing of the Election Commission should be strengthened.
- Analytical study should be made adopting appropriate electoral system i.e. FPTP vis a vis PR system.
- Consultative methodology should continue to decide on important issues involving the stakeholders.
- Election Commission should develop its own manpower to be appointed as returning officers to obviate use of highly politicised and fragmented civil administration.
- Government should help to establish a forum of regional Election Commissions for exchange of views and adoption of good practices of other regional countries.
- Strengthening Election Commission as an institution.

Constitutional

Following recommendations were made to the Constitutional Review Committee set under 9th Parliament;

Courts should not accept for hearing any writ during the election process against any decision made by the Election Commission.

Note: That meanwhile amendment has been made in this respect which meets the partial recommendation in that Article 125(c) added under fifteenth amendment of the constitution. That reads ' a court shall not pass an order or direction, ad interim or otherwise, in relation to an election for which schedule has been announced, unless the Election Commission has been given reasonable notice and an opportunity of being heard.' [Clause (c) was added by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), Section 38]

Compared to Indian Constitution, it leaves avenue for courts interference on the subject. Whereas Indian Constitution has similar but more succinct prohibition of the courts limit in Article 329(b) reads, 'Once the process of the 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)

It would have been better to adopt similar limit put by the Indian Constitution which was also made through an amendment.

- Interim or whatever form of government oversee the election* must consult with EC before taking any decision, even routine matters which may directly or indirectly influence the election, after the Assembly is dissolved or upon declaration of schedule till elections are over: Some of the ministries must consult Election Commission before taking any actionable decision. Suggested ministries/divisions are:

Home

LGRD

Establishment and

Cabinet Division

Financial independence to be ensured through a charge budget allocated by the parliament and provisioned in the budget

EC should be empowered to suspend any officer employed on election duty and to remain under the law three months after the result is published in the gazette.

Technical

Introduction of Electronic Voting Machine (EVM). This single introduction would make the Electoral System technically transparent. It would replace paper ballot to electronic ballot and quicker to count. There would be no need for other logistics and 'damaged ballot' would be eliminated. The best part is that counting would be easy.

Note: That partial use has started in local elections yet some opposition is there.

Conclusions

From the above study it is seen that soon after liberation Election Commission was established and electoral law RPO was enacted in

* Many of these recommendations have already been included for further reform of the RPO sent to Law Ministry by Election Commission (2007-2012)

1972. Since then BEC has involved itself in various elections including eight elections to the Parliament up to 2006. Due to political turmoil that the country had gone through, the Election Commission could not be established as an independent institution. Election Commission on the other hand could not deliver either due to lack of confidence or political apathy towards the institution. After every election defeated party singled out Election Commission for their defeat. The blame game continued and became the focal issue of political tumult in 2006. On the Other hand favouritism, partisan behaviour marred the reputation of the Election Commission in most cases.

Under such circumstances the very appointment of the Commission remained questionable. Lack of confidence and political apathy towards Election Commission did not provide enough time and space for the Election Commission to take up timely initiative to take up the issue of the electoral process reform which should have been a continuous process. Politicisation of civil administration, lack of will power to implement the law by the Commission stigmatised the conduct of election.

Due to lack of political will and Election Commission's lackluster approach, past endeavour of electoral reform turned into failure. Existing political culture did not support growth of an independent Election Commission. On the other hand past reform attempt was neither touched the public nor stakeholders were consulted which became the main causes of failure.

The event of 2006 prior to the failed election to the 9th Parliament that was scheduled in January 22, 2007 brought the emergency and installation of new NCG and provided enough time and space to the freshly constituted Election Commission to initiate a massive electoral reform. Reforms were initiated and BEC could regain confidence of stakeholders to be partner in the reform process. Major reforms were made in preparation of electoral roll, reform in legal structure and structural reform of the BEC. These reforms sustained as these were turned into law by the elected parliament.

Through the reform that was made in 2007-08 brought back public confidence on the BEC. It revolutionised the electoral roll with the introduction of the 'photo electoral roll' which eliminated much of the corrupt practices in the poll. The 'photo electoral roll' became the role model for other regional countries.

For the first time that mandatory political party registration under stringent conditions were accepted by the parties and major parties complied with the registration policy. Elections were held among the registered political parties only. Reformed Code of Conduct brought drastic change in the candidates' behaviour during campaign and changed the campaign pattern. Under these reforms 9th Parliamentary election was held which has been termed to be the best in the history of the country, both by local and foreign observer including the voters. The election and the reform met the international standard.

The participatory methodology that BEC adopted has proved to be the most effective in bringing meaningful reform within short time to meet the ever growing electoral challenges experienced after each general election.

Having a comparative study of the past Election Commission, its structure, laws, regulation and organisation whereas BEC stood weaker than the major regional countries' Election Commissions but with reforms of 2007-08 a comparison with India shows BEC stands, as of to-day, stronger than ECI. Some areas of comparison between ECI and BEC are at Annexure N.

The success and sustainability was much due to BEC's firm resolve and evolved consultative or participatory methodology. In comparative study, as it stands today, BEC has gone farther ahead than most of the regional countries, including India.

However, what is to be noted that electoral reform is a continuous process. Challenges still remain for future of continuity and maintainability of what have been achieved so far. Having realised that the structural reform of the EMB is a long drawn affair a five

year 'strategic plan' and based on that yearly 'action plan' has been taken in hand to address major issues as this book has put up as suggestions and recommendations.

The study has proved that political will and the Election Commission's firm stand has turned negatives to positives. The study as a whole, particularly the holding of national elections to the 9th Parliament and other local elections, provided the answer to the question, intended and unintended impacts of the reform'. Electoral reform of 2007-2008 has added a new vista in electoral culture of the country.

Annexure

National Assembly Elections 1973-2008

Annexure A

Election date	Number of polling stations	Number of polling officials
7 Mar 1973	15,084	192,423
28 Feb 1979	21,905	223,355
7 May 1986	23,279	292,727
3 Mar 1988	N/A	283,237
27 Feb 1991	24,154	360,985
15 Feb 1996	21,106	314,480
12 Jun 1996	25,957	370,204
1 Oct 2001	29,978	477,842
29 Dec 2008	35,263	567,196