

Article 118 of the Constitution provides for the establishment of an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time direct. The appointment of the Chief Election Commissioner and other Election Commissioners (if any) is made by the President. When the Election Commission consists of more than one person, the Chief Election Commissioner is to act as its Chairman. Under the Constitution the term of office of any Election Commissioner is five years from the date on which he enters upon office. A person who has held office as Chief Election Commissioner is not eligible for appointment in the service of the Republic. Any other Election Commissioner is, on ceasing to hold such office, eligible for appointment as Chief Election Commissioner, but is not eligible for appointment in the service of the Republic. Powers of Election Commission (Article 118(4) and 126 of the Constitution, read with Article 4 of the Representation of the People Order, 1972): The Election Commission is an independent constitutional body in the exercise of its functions and subject only to the Constitution and any other law. The Commission may authorize its Chairman or any of its members or any of its officers to exercise and perform all or any of its powers and functions under the law. Article 126 of the Constitution and Articles 4 and 5 of the Representation of the People Order,



Electoral Reform in Bangladesh 1972-2008
Brig. Gen. M. Sakhawat Hussain, *Mphil, ndc, psc, (retd.)*



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Election Commissioner 2007-2012





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He was Election Commissioner for 5 years from 2007-12 and acknowledged as one of the prim-mover of Electoral Reforms of 2008 that changed Electoral Culture in Bangladesh.

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Palok Publishers

Published by
Forkan Ahmad *BA (Hon.); MA*
Proprietor-Palok Publishers
179/3, Fakirerpool
G.P.O Box No. 415, Dhaka-1000
Phone : 9345816, 01720308861
E-mail : palokpublishers2011@gmail.com
palokpublishers@yahoo.com

Fisrt Published
February 2012

Second Edition
May 2012

Copy Right @ Author

Cover Designed
M. Shafaq Hussain

Printed by
Mati Ar Manush
179/3, Fokirerpool
Dhaka-1000, Bangladesh

Price : **Tk. 370.00**
US \$ 15.00

ELECTORAL REFORM IN BANGLADESH 1972-2008 By Brigadier
General M. Sakhawat Hussain, *MPhil, ndc, psc, (retd.)*. Published by
Forkan Ahmad, Proprietor, Palok Publishers, Cover designed by M. Shafaq
Hussain. Second Edition May 2012, Price Taka : 370.00 / US \$ 15.00

ISBN 978 984 445 067 078 3

Dedicated
to all democracy lover

Acknowledgement

This book is basically based on my research paper for M.Phil degree on the titled subject. Since I had the first hand knowledge in the capacity of one of the Election Commissioners of a three-member Bangladesh Election Commission (BEC) under the chairmanship of Dr. ATM Shamsul Huda, it was easy for me to use institutional memory and primary sources as references. I also had added advantage being one of the key players in bringing all these reforms, enumerated in the book, which had a salutary effect on election campaign and enrichment of the Electoral culture.

While carrying out this research, the study and converting the same in to book form I received invaluable support, unconditional assistance and precious guidance from various persons. I received tremendous support and guidance from Dr. Salahuddin Aminuzzaman of Dhaka University who has been my supervisor. His guidance and time to time advice has put me in the right track without which I could not have comprehended the issues those needed to be looked at in depth.

I must gratefully acknowledge the laborious and painstaking efforts of Dr. Tanvir A Khan of Independent University, Bangladesh who has been my guide and acted as co-supervisor. He took pains in critically commenting on my Thesis proposal, during my writing stage and subsequently editing this book in his valuable spare time.

Most assistance that I received was from my own organization, Bangladesh Election Commission (BEC), for the sustained study of electoral system, past references of reforms and the required documents as and when needed. I must also gratefully acknowledge the contribution made by the Chief Election Commissioner of Bangladesh, Dr. Shamsul Huda who responded to my questionnaire which enriched this study. It would be a failure on my part if I do

not acknowledge the contribution made by two of the Bangladesh Election Commission Secretariat's officials connected with elections and worked with me on electoral reform process of 2007-08, Ms. Jesmin Tuli and Mr. Mihir Sarwar Morshed.

I am particularly grateful to the Asia Foundation, Mr. Kim McQuay and Mr. Shahjahan Kabir for arranging my field trip to India for studying the Indian electoral system, organization and functions of the Election Commission of India.

I am indebted to Mr. S Y Quraishi, present Chief Election Commissioner and Mr. VS Sampath, Election Commissioner of India for their priceless assistance and time they provided me and for allowing the use of their library for research work. I acknowledge with gratitude the assistance provided by the library staff of the Election Commission of India and Bangladesh High Commission, Delhi. At the same time acknowledgement must be made for contribution made by present CEC of Nepal Election Commission Mr. Neelkantha Uprety, in the understanding of the Electoral system in Nepal.

I sincerely acknowledge the hard work that Mr. Forkan Ahmed, owner of Palok Publishers had put in producing this book in time for the readers. I am indebted to my family especially to my spouse Dr. Rehana Khanam who had encouraged me to produce this book ever since I completed my Thesis.

I am extremely grateful to UNDP and Transparency International, Bangladesh for allowing me to take assistance from their reports on 2008 election and on Bangladesh Election Commission respectively. I am thankful to many others who had assisted me in one way or the other.

Finally, I hope that this book would be of great help to researchers and to inquisitive readers who take interest in a country's Electoral System as this is perhaps the first ever analytical book on this subject.

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Abstract

This study has attempted to analyse the contextual examination of Electoral Reform that was carried out since the establishment of the Bangladesh Election Commission (BEC) in 1972 till 2008 which culminated in the most free and fair election of 2008. Study deliberated at some length the earlier reforms their impact in previous elections and the shortfall, past experience and the context as part of massive reform that was undertaken in the wake of growing public demand in the period of last decade. As a result the Election Commission had undertaken massive reform of the electoral process in 2007-08. While the study examined and deliberated the issue, some questions were raised as the main focus of the research. The study raised two fundamental research questions: what are the contextual factors influencing actors that prompted the electoral reforms in Bangladesh? What has been the electoral reform packages offered before 9th parliamentary election and what were the intended and unintended impacts of the reform initiative? The methodology for research were based on content analysis, use of institutional memory, objective assessment of personal experiences and interviews of some key personality of the country, and in regional context, and finally a consultative approach was taken to establish the methodology meet the present and future reforms.

Electoral reform or electoral process reform has been defined in many terms. In simple definitions it includes all activities associated with the election - from announcing the schedule to the gazette notification of the result. Some of the important aspects of electoral reform include preparation, preservation and maintenance of electoral roll which is most vital to the conduct of free and fair election. The other aspects are electoral law, structure of the Election Management Body (EMB) and the conduct of election itself. However, above these reforms the most important factor is public confidence in the EMB. The quality of electoral law determines the levels of reliability of the electoral roll and other infrastructure. If EMB suffers from trust deficit - both from the

public and the political parties, it is difficult to deliver the goods. It is the trust of the public that is the driving force for EMB. Public trust is built through holding free and fair election and to achieve that goal continuous electoral reform has to be initiated by the EMB in the light of the experience that they gather combining with the political will for such reforms.

Since the establishment of BEC as EMB, it has been suffering from lack of trust most of the time due to intermittent disruption of the democratic system, lack of initiative to conduct transparent elections and to initiate electoral reform. The setback BEC had suffered during the period of ostracised democratic eras continued even after the restoration of the democratic process in 1991.

Although the elections conducted by BEC since the reintroduction of the democratic system have generally been acceptable yet they were not without controversy. These controversies were borne much due to the weaknesses of BEC who did not make any analytical studies for rectification or did not identify the areas of electoral process needing reform; it failed to initiate the much needed comprehensive reform processes.

Electoral reform is a continuous process. In Bangladesh too, reform should have been a continuous process as in other democratic countries in general in some of the regional countries in particular.

Regional study indicates that almost all the countries of the region have continued with the process of reforms worth mentioning except that of Bangladesh. The comparative dimension of the study points out the weak areas of BEC that existed in the regional context till reforms were undertaken during 2007-08.

Although some attempts for electoral reforms were made during 1972 - 2001, most failed due to the lack of a political will, BEC's resolute stand and adopted methodology of reform. The most controversial issue throughout the past decades relates to the preparation and maintenance of an electoral roll. The issue of electoral roll became a political conundrum in 2005-06 that produced a tumultuous political event ultimately leading to the postponement of the 9th Parliamentary election. By then people had completely lost faith in BEC. Public and political pressure became increasingly strong asking for overall electoral reform.

Tumultuous political events resulted into an emergency which created time and space for complete electoral process reform through the reconstituted BEC in 2007. Revolutionary steps were taken to make extensive reforms such as in the preparation of electoral roll with the introduction of a digitised photo electoral roll, in the mandatory registration of political parties and in the amendments to the electoral law. The code of conduct and the structure of BEC were also reformed and BEC became an independent organisation.

Unlike past attempts the electoral reforms of 2007-08 adopted a consultative methodology which proved to be the best way to bring about the desired improvements. These reforms brought radical changes to the campaign culture, registration of political parties and in the conduct of the most transparent elections so far.

The electoral reform brought in 2007-08 produced a free, fair and internationally acclaimed 9th Parliamentary election in 2008 and the bye elections to a few seats of the Parliament. The successful electoral reform and the election of 2008 brought back public confidence in BEC and the reformed electoral system of Bangladesh. The study has attempted to prove that electoral reform is a collective effort and stakeholders have to own them. It also proved that it is the public confidence in the EMB that is vital in the conduct of acceptable elections. Consultative methodology evolved during the conceptualisation of the electoral reform during 2007-08 proved to be the best way forward.

Some recommendations were made in the end of the paper on the appointment of Election Commissioners, which is one of the soaring issues of reform remained unattended as it in the realm of political will, and in legal and structural aspect of the reform.

In final conclusion it is argued that the electoral reform has to be based on dynamic methodology to achieve the aim of free and fair election as a stepping stone for establishing a strong democratic culture and the reform should be continuous rather than periodical process.

I have added this abstract in this book form so that readers can get an overview of the subject that this book has referred to with a hope that this may attract readers/researchers for a detailed study.

List of Abbreviation

AL	Awami League
ARO	Assistant Returning Officer
BEC	Bangladesh Election Commission
BNP	Bangladesh Nationalist Party
CA	Constituent Assembly
CEC	Chief Election Commissioner
CPN	Communist Party of Nepal
EC	Election Commissioners
ECB	Election Commission of Bhutan
ECI	Election Commission of India
ECN	Election Commission of Nepal
ECP	Election Commission of Pakistan
EMB	Election Management Body
ERC	Electoral reform Committee
ETI	Electoral Training Institute
EU	European Union
EVM	Electronic Voting machine
FPTP	First Past the Post
GoB	Government of Bangladesh
HC	High Court
JP	Jatiyo Party
NCG	Neutral Caretaker Government
NDI	National Democratic Institute
NGO	Non-government Organisation
NID	National Identity Card
PR	Proportional Representation
RPA	Representation Peoples Act - 1950 (India)
RO	Returning Officer
UNDP	United Nation Development Program

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Preamble

Amidst the tumultuous political events of 2006-07 the distinct and most consensus demand from by and across the social spectrum was Electoral Reform that included the re-construction of the Election Commission of Bangladesh (BEC) i.e. the Electoral Management Body (EMB). Then opposition, 14 party alliance led by Awami League (AL) had put forward 23 point demand of which major thrust on Electoral Reform whatever that might have meant. In those points salient were Electoral roll with photograph, changes in the electoral law, political party registration and reconstruction of the Election Commission with new setup. These were set as precondition for participating in elections that were to be held in January 2007. Of course the other tangible issue that was the of Chief Adviser of the Care taker government as was provided in the Constitution before the current amendment. These demands were however rejected by the then ruling party which led to street violence that could have precipitated into civil strife. However, the confrontational political path that was adopted by the ruling party and the opposition had resulted into bloodletting in street of the capital bringing normal life to a halt. Under such circumstances on January 11, 2007 President of People's Republic of Bangladesh proclaimed emergency under the provision of the constitution. Election was postponed and BEC was reconstituted in February 2007.

The Electoral Reform that was called for by the combined opposition was not out of the cold but for years that civil society raised such demand for the conduct of free and fair impartial elections which would truly reflect the voters choice. Serious doubts were raised on the integrity of the construction of the Commission by the political government without following any principle or best practices for such appointments. Due to such surreptitious appointments most of the BEC lost the credibility to the public. The credibility of the BEC headed by Justice Aziz Ahmed was one such Commission which had hardly any credibility due to its partisan

behavior. The electoral roll that the Commission had prepared was flawed. It was proved while preparing new voter roll with photograph that about 12 million plus spurious voters name were included in the roll. Electoral Law was skewed. No major reforms were brought to the law or to the conduct of the election.

All combined the pressure from below grew for Electoral Reform. In fact apart from political party's demand the pressure group created by the civil society gathered public opinion for reforms through seminars, workshops and most effective of all by the use of media. Numerous recommendations were sent to the BEC to help in desired reform.

Under such circumstances, having carried out in house review of the past initiatives of the BEC undertaken the newly formed BEC set in motion much desired reforms before the rearranged 9th parliamentary stalled elections. Three important areas were identified by the commission, near perfect electoral roll that should not only allow headcount only but actively participate in voter list preparation. In fact a voter active methodology was adopted to prepare voter list, substantial reform of electoral law to support the more elaborate and innovative electoral system and logistics lastly the EMB structure and reestablishing public confidence on the EMB that was seriously lacking over the past few years. The BEC had uphill task before it could arrange for stalled 9th parliamentary elections.

The BEC had close look at the unsuccessful attempt of the past reforms and reasons for failure. A serious review of the past was made before initiating the massive reform in electoral process. The review revealed that past attempts was top down instead of pressured from below. The other factor, but most important, was that the past attempts were taken arbitrarily instead of consultative to make it participatory.

Having reviewed the requirement of the reform and lessons from the past the BEC set to consider the way forward for comprehensive reform. A plan was formulated and a road map with a time frame was set by the BEC. It is needless to say that a free fair and legitimate election is the first step for sustainable democracy.

Chapter 1

Introduction

The foundation of strong democracy, in any type of society, is the process of choosing people's representative who would speak for them in appropriate forum i.e. Parliament and elsewhere. The only process through which people can choose their representatives in a transparent manner and in keeping with the essence of democracy is through election arranged by Electoral Management Body (EMB), commonly known as Election Commission. People have to have confidence in EMB as an institution and the transparency and efficiency of the processes adopted by it. If the popular confidence is lacking both in the electoral processes and in the EMB as an institution, neither the election results would be acceptable to the people nor democracy would flourish in a society, be it developed or developing countries.

Surprisingly little is known about the factors associated with popular confidence in electoral processes. Not much has been researched or analyzed in Bangladesh on the subject apart from periodic political rhetoric or at best comments made by all kind of experts without suggesting means to achieve the goals. While support for other democratic institutions has been fairly analyzed, perceptions of the legitimacy of elections, the lack of confidence in EMB and the factors affecting these pitfalls have generally been given less importance as a topic of study.

Thus the aim of this book is to probe the correlates of confidence in the conduct of elections, in order to determine what accounts for differential perceptions of electoral integrity both within and across the country. The legitimacy of the electoral process is crucial for the establishment and maintenance of a healthy democracy as noted by Bernard Grofman, Arend Lijphart (Bernard, Lijphart: 1986: 1-7)