

Towards an Effective Election Commission: Challenges and Way Out

Executive Summary

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Preface

Transparency International Bangladesh (TIB) has been working with the mission of catalysing a sustained and effective social movement against corruption in Bangladesh. It has been operating its research and advocacy activities on issues that are detrimental to the effectiveness and transparency of institutions that are crucial for the institutionalization of democracy and promoting accountable governance.

In recognition of the critical importance of the institutional capacity of the Election Commission (EC) as one of the key institution of the National Integrity System, TIB released its report arising from a diagnostic research on the EC in November 2006. The report identified a series of limitations in terms of institutional capacity including challenges of its independence and effectiveness, and a number of recommendations were made to mitigate such limitations.

Subsequently, the EC underwent a number of institutional reforms parallel with some significant electoral reforms. It may be noted that from amongst 29 recommendations put forward by TIB in above-mentioned report, 19 have been implemented so far which have contributed to strengthening the EC in terms of holding transparent, free and fair elections. Following upon this effort, TIB conducted a series of other research on different election related issues. The present study is essentially a continuation of the earlier research. In this research, the achievements of the EC, challenges and difficulties it continues to face have been identified, and the way out for overcoming the same have been recommended.

The study has been jointly conducted by Shahzada M Akram and Shadhan Kumar Das, with the research support of Rabiul Islam. Other members of TIB's Research and Policy Division also extended support by providing valuable feedback and suggestions at different stages. We are grateful to a large number of key informants, many distinguished individuals and organizations including the Election Commission itself who helped the study in various stages by sharing valuable information, knowledge and expert opinion. I am also grateful to Advocate Sultana Kamal, Chairperson of the Board of Trustees of TIB for guiding us in the process.

We hope that the Election Commission and other stakeholders would benefit from the study and its recommendations, which in our understanding will further strengthen the institutional capacity and effectiveness of EC and catalyze a conducive environment for more credible elections. TIB would welcome constructive critique and suggestions from readers which would facilitate further enrichment of the study.

Iftekharuzzaman
Executive Director

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Executive Summary

1.1 The Context

To institutionalize democracy, the Election Commission (hereinafter referred to as EC or the Commission in brief) has a significant role in conducting an election which is free, fair and participated in by all. The constitutional role of the EC is to prepare an electoral roll, conduct Presidential, parliamentary and other elections, and delimit constituencies for parliamentary elections.¹ It performs a few other responsibilities that complement its above-mentioned work. Transparency International Bangladesh (TIB) first carried out a research on the EC in 2006, where the capacity and limitations of the EC in conducting free and fair elections were studied. Subsequently, the EC has undergone a number of institutional and electoral reforms. It may be noted that from amongst 29 of TIB's recommendations underscored in its previous study, 19 have been implemented so far which, it is believed, have contributed to strengthening the EC in terms of holding transparent, free and fair elections. Following its initial study, TIB conducted a series of research on different election related issues, which include the tracking of the electoral process (2009), transparency in political finance (2009), and participation of the grassroots in the nomination process in national elections (2010).

The present study is essentially a continuation of the earlier research works.

1.2 Study objectives

The main objective of this research is to identify the achievements of the Commission, challenges and difficulties faced by it, and recommending the ways out for overcoming the challenges.

The specific objectives are to:

1. Review the electoral and institutional laws related to the EC;
2. Review the activities of the EC;
3. Analyze institutional capacity and strength of the EC;
4. Analyze the roles played by the stakeholders; and
5. Recommend measures for addressing the existing challenges.

1.3 Research Method

This is a qualitative study. Necessary data and information for the study were collected both from primary and secondary sources using various qualitative techniques that include key informant interviews, group discussions, field observations, and literature review. The key informants include former Chief Election Commissioner (CEC) and other Election Commissioners, officials of the Commission's Dhaka and field offices, election experts, representatives of major political parties, election observers, candidates and their representatives in different elections, journalists and civil society representatives. Group discussions were held with field level officials of the Commission. Moreover, the research team observed the electoral process of four city corporation elections and one mayor election of a municipality.

Sources of secondary data include the Constitution of Bangladesh, laws and rules related to election and the EC, research reports, journals, books, election observation reports, documents from the EC, news reports and analyses published in newspapers and websites.

The reference period for the current study is from February 2007 to August 2013. Data were collected during October 2011- August 2013.

* Executive summary of the report released on 29 September 2013 through a press conference held in Dhaka.

¹ *The Constitution of Bangladesh*, Article 119.

2. Key findings of the research

2.1 Review of the electoral and institutional laws related to the EC

Following the reconstitution in 2007, the EC undertook a number of reform initiatives. These included the enhancing of the non-eligibility criteria for candidates, making disclosure of personal information of candidates mandatory, making registration of political parties mandatory, fixing a target for women's proportionate representation in committees of registered political parties (33% by 2020) at all levels, making the grassroots' recommendations mandatory for nomination of candidates in parliamentary elections, empowering the EC to change election centers and cancel candidature, limiting the scope for a candidate to contest from five constituencies to three, re-determining the highest limit of campaign expenditure, creating a level playing field through adopting the electoral Code of Conduct, increasing the degree of punitive measures in case of violation of electoral laws and rules, introducing the scope for 'No' vote, etc. Moreover, the Election Commission Secretariat was brought under the EC from the Prime Minister's Office and new recruitment rules for the Secretariat officials and employees were enacted, which enhanced the institutional capacity and independence of the EC.

Despite these positive changes, a number of limitations continue to exist within the EC. For example, no law with regard to the appointment procedure of the Chief Election Commissioner and other Election Commissioners has been enacted. There is delineation of the tenure and name of ministries that may legally operate under the EC during the general election. The EC has no authority to cancel the membership of an MP even if found disqualified under the eligibility criteria. There is no legal provision for scrutinizing the return of electoral expenses of a candidate. There is no provision for the EC to disclose financial statements of political parties. Electoral campaigns before the declaration of election schedule are not expressly prohibited in the electoral laws. There are inconsistencies between the RPO and Electoral Code of Conduct with regard to punitive measures in case of violating the electoral code of conduct. Last but not the least, in the context of the 15th Amendment of the Constitution, there is no mention in the RPO and Electoral Code of Conduct about expected roles of ministers and MPs, which are likely to jeopardize the level playing field. In addition, some of the reforms mentioned above that were undertaken by Presidential Order during 2007-2008 to ensure an election free from influence of power, muscle, and money were changed or dropped during their passage in the 9th Parliament in the form of a bill. For example, the recommendation of grassroots committees that was made mandatory for nomination of a candidate in Parliamentary elections was dropped.

2.2 Review of the activities of the EC

2.2.1 Conducting elections: From 2008 to date the EC has conducted a significant number of elections. These include the 9th Parliamentary Election (300 constituencies), by-elections of the 9th Parliament (16 constituencies), reserved seats of the 9th Parliament (50), President election (2 times), city corporation election (13), municipality election (284), Upazila Parishad election (481), and Union Parishad election (4,431). These various elections were considered acceptable by all stakeholders. The EC deployed its own workforce in conducting these elections and returning officers were designated from among the EC officials.

However, the EC had to depend on the government with regard to conducting the elections of the local government institutions. It has to depend on the government to declare the schedule of local government elections and for administrative support during elections. Post-poll violence occurred in two city corporations, a number of municipalities, and UP elections (2nd phase).

2.2.2 Electoral Code of Conduct and its application: The EC brought some qualitative changes in the Electoral Code of Conduct and modified it for the elections of local government institutions of every tier. Political parties and candidates have by and large tended to follow the Electoral Code of Conduct except in certain cases. Violations of the Code of Conduct have been found in respect of the use of government circuit houses and vehicles during electoral campaigns, the use of colored billboards, the organizing of public meetings on the streets, the setting up of campaign offices in excess of the permissible number, the erection of gates, the use of religious sentiments in campaigns, vote-buying, and the rendering of support by MPs and ministers to respective local candidates. Although the EC

issued show-cause and alert notices and imposed fines against many during the recent city corporation elections, the EC has been slack in taking strong actions for violation of the Code of Conduct.

2.2.3 Voter list: The EC prepared a new voters' list with photographs before the 9th Parliamentary election, which is being regularly updated. Around 70 million new voters have been included in the updated voter list of 2013. Currently, the total number of voters is 9,21,29,852 (male 4,62,01,871; female 4,59,27,981). While the voter's list has been generally accepted by both the ruling and opposition parties, there have been some allegations of irregularities pertaining to, for example, the failure to visit every household in specific areas, the lengthy time spent on the updating process, etc.

2.2.4 Delimitation of electoral constituencies: Another significant achievement of the EC is the delimitation of electoral constituencies before the 9th and 10th Parliamentary elections respectively. Prior to the 9th parliamentary election in 2008, 133 constituencies were identified for public hearing, out of which 84 were delimited. This year, 84 constituencies have been identified for public hearing, out of which 53 have been delimited. However, allegations of biasness by the EC in the delimitation process have been raised by potential candidates in a few constituencies. Moreover, discrepancies continue to exist with regard to the actual number of voters. For instance, in 24 constituencies the number of voters is above 400,000, while in 14 constituencies the number of voters is less than 200,000.

2.2.5 Redressing electoral disputes: Following only four cases out of 19 electoral disputes have been resolved after the 9th Parliamentary election. The memberships of three MPs out of five have been cancelled on the ground of concealment of information. Around two thousand cases have been filed after local government elections, of which only two have so far been resolved.

2.2.6 Scrutinizing expenditure statements of candidates and parties: The EC disclosed the personal, financial, criminal cases and loan related information provided through affidavit by the candidates in different elections. It also disclosed information on expenditure of electoral campaigns by the candidates as well as the parties. Although the EC filed cases against 144 candidates who did not submit the expenditure return,² it did not disclose the total number of defaulters who failed to submit the expenditure return. Similarly, while the political parties submitted their annual financial statements to the EC, it did not disclose details of such statements publicly.

2.3 Analysis of institutional capacity and strength of the EC

Changes have been made in the human resource management of the EC Secretariat to strengthen the EC. The 'Election Commission (Officials and Employees) Recruitment Rules, 2009' were adopted, through which a unified human resource system was introduced to remove the gaps between the central and field offices. A combined seniority list was prepared following which 61 employees (including nine from the field) were promoted. New posts were created (154 first class, 5 second class, 151 third class and 117 fourth class posts) up to June 2012; nine posts at the divisional level and 19 posts at the district level were upgraded. Moreover, up to June 2012, new recruitment was made against 174 first class and 40 third class positions. However, problems still exist in respect of recruitment and promotion. Cases were filed challenging promotions on the basis of the new seniority list. A total of 85 positions of Upazila Election Officer are still vacant as the cases challenging the recruitment are pending before the High Court Division of the Supreme Court.

Infrastructural development including land allocation for a permanent building, and the construction of server stations to preserve and update the voter list at the local level taken place. Despite existing bottlenecks, significant progress has been made in EC's financial management. However, the above processes were delayed largely due to administrative bottlenecks. The allocation for office maintenance and field investigations is also inadequate.

The EC has increased the use of technology in official and electoral activities. These include the use of translucent ballot boxes, electronic voting machines (EVM) and web cameras, SMS, and intranet in central and field offices. Although the EC has launched a Bangla website it does not contain many

² Updated up to 7 October 2009.

information, such as, information on recent elections, list of delimited constituencies with updated the voter list, information on electoral disputes and local government elections, monitoring and evaluation reports of projects implemented by the EC, and financial reports of the EC.

2.4 Analysis of roles played by the stakeholders

A quick scrutiny of the roles of different stakeholders in the electoral process revealed that the government (caretaker and elected), political parties and candidates proactively assisted the EC by enacting and amending relevant laws and providing necessary administrative support. However, the government has not been as active in the context of considering proposals for legal reform, the enactment of a law for the appointment of the CEC and other Election Commissioners and refraining from exerting influence on local government elections. In addition, the pace of settling election related disputes has been very slow. The media, civil society organizations and other stakeholders including the development partners have supported the EC in many ways, albeit indirectly. While the media has always been open with regard to the EC and vice versa, the civil society actors have contributed to strengthening the EC by proposing legal and organizational reforms and initiating changes in the electoral culture. It may however be noted that the role of the development partners in supporting the EC has sometimes been construed as interference.

The fact that the EC has from time to time faced non-cooperation from various political parties including the major opposition party, demonstrate a certain degree of mistrust towards the EC.

2.5 Achievements and Challenges of the EC

2.5.1 Achievements

The capacity of the EC has significantly developed owing to different electoral and institutional reforms that have been undertaken primary amongst which are the relocation of the EC Secretariat directly under it, enhanced financial independence, and a unified human resource management system. The improvements in the EC's capacity has been reflected in the manner recent elections have been conducted, the use of its own manpower during elections, the utilization of modern technology, improved coordination between central and field levels and the trend in disclosure of information and engaging all stakeholders in the electoral reform process.

A qualitative change is also visible with respect to the electoral culture and the regulation of election campaigns which has brought political parties under an accountability structure to be monitored by the EC.

2.5.2 Challenges

Although the capacity of the Commission has increased during recent years as a result of various reform measures, the EC continues to be confronted with a number of external and internal challenges which it needs to overcome in order to ensure free and fair elections:

- **Ensuring level playing field for all during the 10th Parliamentary election:** A number of factors might impede the EC's work in ensuring a level playing field for all parties in the upcoming general election. For instance, the EC would have to resolve the dilemma regarding the election date in view of the constitutional amendments. The EC would face difficulties in controlling the potential influence of the ministers and MPs if the election is held without first dissolving the parliament. Despite improvements in its capacity, the EC's dependence on the administration in conducting elections is manifest in its decision to appoint Deputy Commissioners as Returning Officers in the 10th Parliamentary election. Recent reshuffling of administrative officers have reinforced the risk of partisan influence in the upcoming election. In addition, the maintenance of law and order, control of black money and 'muscle power', and ensuring strict compliance with the Code of Conduct are deemed as serious challenges to ensuring level playing field for all.
- **Gaining trust of major political parties:** Some activities and initiatives of the EC have eroded the trust of political parties, for example. Dissention with BNP on leadership issue, willingness to grant registration to Bangladesh Nationalist Front (BNF) registration³, attempts to give ministers and MPs

³ It may be noted that BNF was primarily considered for registration among 41 political parties that applied. BNF applied for the symbols 'sheaf of paddy', or 'sheaf of wheat' or 'stick of night queen', all very close of

privileges in electoral campaigns, its recommendation to cancel the clause (91-E of the RPO 1972) pertaining to EC's authority to cancel candidature and reduce punitive measure for violating the Code of Conduct, debates over the declaration of the date of the 10th Parliamentary election. The debate over the deployment of armed forces and the use of EVM in elections has had an adverse impact on the trust of the main opposition party.

- **Partisan influence in local government elections:** In recent years the involvement of political parties in the local government elections has become more flagrant making it difficult for the EC to control. The EC is also dependent on the government in conducting these elections. In some cases the EC has failed to declare election schedules independently thereby stalling the election, for example, Dhaka City Corporation election.
- **Legal reforms:** The EC operates within the legal framework prescribed in the Constitution and/or Acts of Parliament. The absence of enabling laws ensuring its independence and neutrality pose a major challenge for the EC in conducting free and fair elections. Legal reforms are imperative in the context of the appointment of the Chief and other Election Commissioners, EC's control over some of the relevant ministries and departments during election, determination of the start of electoral campaigns, and the scrutiny of campaign expenditures.
- **Implementation of electoral laws:** Another important challenge of the EC lies in ensuring that strong steps are taken against any violation of the Electoral Code of Conduct and preventing campaign expenditure beyond the prescribed limit.
- **Continuing institutional development:** It is important for the EC to carry on the institutional development process in terms of transparency in recruitment, transfer and promotion, financial management, and performance of regular activities such as voter list updating and delimitation of constituencies.

Finally, the most important challenge of the EC is to gain the trust of the common people.

3. Conclusion and Recommendations

Recognising that the activities of the EC are a continuous process, the challenges of the Commission can be divided into two categories – external and internal. While the EC can deal with its internal challenges (e.g., gaining confidence of all political parties, ensuring preparations for election, implementing electoral laws strictly, ensuring institutional development etc.) on its own, it has virtually no control over the external challenges (e.g. government structure during election, government influence on setting election schedule, dependence on the government for law reform and for conducting election)

Recommendations

A. Role of the EC

1. **Gaining trust of all political parties:** To gain trust of all political parties and to establish its neutrality, the EC should take the following initiatives:
 - No controversial initiatives should be taken which may disempower the EC; rather, to make it strong and effective, positive initiatives should be taken with the involvement of different stakeholders;
 - The EC must ensure that the application of electoral laws and rules is free from partisan influence;
 - The EC should create space for all political parties to engage and contribute to its reform initiatives and salient activities with respect to conducting an election.
 - The EC should try to create a level playing field for all political parties in the 10th Parliamentary election by reviewing the Code of Conduct.
2. **Using Commission's own manpower in conducting election:** The, EC's own manpower should be used to conduct Parliamentary elections. Officers of the EC should be appointed as Returning Officers. Measures should be taken, if necessary, to increase the number and skill of its manpower for this purpose.

BNP's electoral symbol. However, the Chief Election Commissioner informed that the EC was considering to include 'sheaf of wheat' in the list of electoral symbols (source: *Daily Prothom Alo*, 25 August 2013).

3. **Making elections more technology-based:** The use of technology, for example, EVMs, close circuit cameras, etc. in conducting elections should be increased.
4. **Performing regular activities of the Commission:** The regular activities of the Commission such as, the updating of voter roll, delimitation of constituencies etc. should be carried out in according to the law. Drawing from the success and failures of the preceding EC, the present Commission should adopt and implement its strategy and work plan. A five-year electoral calendar should be developed and followed.
5. **Information disclosure:** In addition to the information already disclosed, the EC should disclose information on the annual financial reports of political parties, voter roll for each of the of delimited constituencies, information about cases of election disputes, proceedings of dialogues organized by the Commission, information of local government elections, monitoring and evaluation report of projects implemented by the Commission, and detailed budget and all financial documents.

B. Role of the Government

6. **Enactment of law regarding the appointment of the Chief and other Election Commissioners:** Pursuant to constitutional provisions, a law should be enacted, after consultation with relevant stakeholders, delineating the appointment procedure of the Chief and other Election Commissioners. The Act should contain in detail the qualification, process of appointment, number, and grounds for the removal of the Chief and other Election Commissioners.
7. **Legal reform to remove limitations of existing electoral laws.**
 - In case of posting and transfer of Cabinet Division, Home, Public Administration, Local Government and other concerned ministries, the approval of the EC should be mandatory;
 - Designated officers against whom election related complaints have been lodged should be retained under the EC for an additional three months following the announcement of election results;
 - The authority of the EC should be increased with regard to cancellation of candidature, cancellation of membership of the Parliament, decision to use EVM etc;
 - Nomination of candidates from amongst those proposed by the local committee for contesting in national elections should be made mandatory;
 - Amendments should be made to the electoral law in the light of the amended Constitution;
 - Verification of return of election expenditure of the candidate should be included in the law;
 - A clause should be included regarding the disclosure of financial statements of political parties;
 - Inconsistencies in the law relating to the punishment for the violation of the Code of Conduct should be removed;
 - The election tribunal must resolve complaints, including appeal, within next six months;
 - An enabling environment should be ensured to increase the participation of women, minorities and persons with disabilities in national elections and in political parties;
 - 'No' vote should be re-introduced.

C. Role of Political Party

8. **Disclosing financial information of MPs:** The financial statements of MPs must be submitted to the EC on annual basis for public disclosure.
9. **Disclosure of financial information by political parties:** The annual report of all political parties and the updated information of income, expenditure, and assets should be published on their respective websites;
10. **Practising proper democratic culture:** Political parties should increase internal democratic practices. They should follow a democratic, bottom-up process in nominating candidates and nominate candidates who are honest, involved in public welfare, non-sectarian, and politically experienced. On the other hand, they should refrain from nominating people who are known to be corrupt, or deals in black money or is associated with terrorist activities.
11. **Ensuring non-partisan local government election:** The local government elections should be kept out of the party influences.

D. Role of the civil society organisations

12. Monitoring the activities of the Commission: In addition to the usual election and electoral process observation activities, the civil society organisations monitor the activities of the Commission, its funding and expenditure on a regular basis, and ensure that its activities are in conformity with the the law and are implemeneted in a transparent manner.

E. Role of the media

13. Disclosing electoral information: The media can play an important role in disseminating electoral information for increased transparency in the electoral process. It should publish in-depth investigative reports relating to personal and financial information of candidates, violation of the election code of conduct, electoral expenditure, etc.