

**“Role of Election Commission in Ensuring Free and Fair Elections: A Legal
Analysis on Bangladesh Perspective”**



Daffodil
International
University

LL.M. THESIS

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Supervisor:

**Dr. Kudrat-E-Khuda Babu
Professor
Associate Dean
Department of Law
Daffodil International University.**

Submitted By

**Md. Abu Sazal Emam
ID: 0242320008133006
Reg.No:232-38-006
Department of Law
Daffodil International University**

Submission date:

LETTER OF TRANSMITTER

Date: 30/06/2025

To

Professor Dr. Kudrat-E-Khuda Babu

Associate Dean, Department of Law

Daffodil International University.

Subject: Submission of Research Monograph

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Sincerely,

Md. Abu Sazal Emam

Batch: 41th

ID: 0242320008133006

Program: LL.M (1 year)

Department of Law

Daffodil International University

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Md. Abu Sazal Emam
Batch: 41th
ID: 0242320008133006
Program: LL.M (1 year)
Department of Law
Daffodil International University

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Sincerely,

Dr. Kudrat-E-Khuda Babu
Professor, Associate Dean
Department of Law
Daffodil International University.

ACKNOWLEDGMENT

I am Md. Abu Sazal Emam, and I want to be thankful for the almighty without his blessing, I could not have completed this monograph. Then I want to thank my advisor, Dr. Kudrat-E-Khuda Babu, Associate Dean, Department of Law, Daffodil International University; without his guidance and support, it would have been impossible for me to finish this monograph and solve the challenges that came the way. I also want to thank my family, friends, and colleagues who continuously encourage me to complete this paper. Lastly, I appreciate everyone who has directly and indirectly helped me with this work. Their support made this work possible. I am truly thankful to them.

ABSTRACT

The monograph "Role of Election Commission in Ensuring Free and Fair Elections: A Legal Analysis on Bangladesh Perspective" criticizes how Bangladesh's Election Commission works under the current legal system. It examines the gaps in the existing legal framework of the Constitution and the Representation of the People Order (RPO) of 1972 and discusses issues like the financial budget, political influence, and a lack of independence. These issues reduce the credibility of the Bangladesh Election Commission to hold fair elections. The study suggests solving these challenges by creating a fair, multi-stakeholder process for appointing EC members, updating the RPO, and amending the constitution article to toughen the EC's power. It also criticizes the need for financial transparency, quicker solutions to election-related conflict, and the EC's total control over executive officers during election time. These can make the EC more independent, powerful, and reliable, ultimately gaining public support and improving the democratic system in Bangladesh. In short, the paper calls for the current EC to be strengthened and to hold an impartial election.

KEYWORDS: Election Commission, Free and Fair Elections, Legal Framework, Bangladesh, Electoral Reforms

LIST OF LAW

National Law :

- The Constitution of Bangladesh
- Representation of the People Order (RPO) 1972
- Election Officials (Special Provision) Act, 1991
- Conduct of Election Rules, 1972
- Code of Conduct for Political Parties and Candidates, 1996
- Chief Election Commissioner and Other Election Commissioners Appointment Act, 2022

International Law :

- International Covenant on Civil and Political Rights (ICCPR)
- Universal Declaration of Human Rights (UDHR)
- United Nations Convention Against Corruption (UNCAC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Venice Commission's Code of Good Practice in Electoral Matter

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CHAPTER ONE

INTRODUCTORY

1.1 Introduction

Elections are the main key to establishing democracy in a country; they allow people to choose their leaders and hold them liable. In Bangladesh, the Election Commission (EC) is responsible for holding free and fair elections. However, in recent years, its work has been questioned, especially after the elections of 2014 and ahead. According to Articles 118 to 126 of the Constitution of the People's Republic of Bangladesh, give the idea of the EC's structure and duty but raise questions related to its independence, transparency, and ability to hold elections without influence from the ruling party¹.

It was said that Bangladesh's Election Commission is stronger than India's, but this is arguable and builds on factors like public trust, election principles, and the political environment. The EC was established to work with total freedom, yet raises doubt about its impartiality. The President appoints the Chief Election Commissioner and other commissioners; as per Article 48(3) of the Constitution, the President must consult the Prime Minister for key decisions, including appointing the Chief Election Commissioner. This questions the fairness of elections, which is one of the pillars of a democratic nation.

Further, the Representation of the People Order (RPO) of the 1972 legislature controls the election procedures and does not fully address main issues such as voter suppression, polling station security, and election transparency. These gaps in the legal framework have reduced public trust in the Election Commission, with many doubting whether elections truly follow the people's will. This paper also examines Bangladesh's legal framework regarding the EC. By analyzing the challenges it faces and the existing relevant laws, including the Constitution and the RPO. It also aims to identify the problems that prevent the EC from functioning as a truly independent and liable body². It also covers insights from reports, academic studies, and international best practices to suggest improvements to Bangladesh's electoral system. In the

¹ The Constitution of the People's Republic of Bangladesh, <http://bdlaws.minlaw.gov.bd/act-367/part-details-205.html>

² The Representation of the People Order, 1972 (President's Order), <http://bdlaws.minlaw.gov.bd/act-424.html>

end, this study aims to rebuild people's trust, establish democracy by seeking reform in the legal framework of the election Commission, and strengthen the EC to hold free and fair elections

1.2 Statement of the Problem

Elections are the essential element of democracy; they ensure power to the people to choose their leaders and make their voices heard. The process for executing elections is discussed under Articles 118 to 126 of the Constitution of the People's Republic of Bangladesh and in Representations of People Order 1972. According to Article 118 of the Constitution, the President appoints the Chief Election Commissioner and other Election Commissioners. Normally, this should ensure free and fair elections. However, concerns have been raised about how these appointments are made because there is a connection between the president and prime minister under Article 48(3), these led to questions or confusion in people's minds regarding Election Commission independence.

The laws relating to the Election Commission, the Representation of the People Order (RPO) 1972, are meant to make elections fairer. However, this is not fully discussed to prevent political involvement or make a fair process. Some main issues, such as security in polling stations, election transparency, and voter suppression, are not fully mentioned in the law, leading to doubts about the fairness of elections. Since 2014, many voters have expressed frustration and concern about whether they can trust the system. Concerns about polling station safety and fairness make some people question whether their votes will even count. The lack of transparency and fairness in recent elections has caused public trust in the Election Commission to fall.

The Constitution and the RPO 1972 provide a foundation for free and fair elections, but reforms are needed to ensure the Election Commission works more independently and without unfairness. The laws need to be fully changed, which can help to ensure voter's rights, increase transparency, and make elections reflect the people's will. Strengthening these laws is essential to earning public trust and ensuring fair and reliable elections in the future. This paper is mainly focused on the legal loopholes that hamper the EC's neutrality to hold free and fair elections and suggests some reforms to make the EC so strong to fight against all odds to ensure free and fair elections.

1.3 Conceptual Background

This paper looks at the legal problems in holding fair elections in Bangladesh. Elections should be clear, honest, and free from fraud. The Election Commission is responsible for keeping elections fair, but its independence is often questioned. The Constitution says it is an independent body, but the Chief Election Commissioner and other members are chosen by the President, who is connected to the ruling party. This raises doubts about whether the Election Commission can stay fair.

The Election Commission needs to be free from the executive to fully hold fair elections. Articles 118 to 126 discuss the election commission's structure, function, and power in ensuring an impartial election. Under Article 48(3), the president must take advice from the ruling party head to appoint a chief election Commissioner and the other commissioner this raises questions about the neutrality of the elections.

In the election process, ensuring voter's rights is very important. The Representation of the People Order (RPO) safeguards these rights, ensuring no voter is bullied or cheated. However, gaps remain in election transparency and the prevention of manipulation, leaving room for doubt about the fairness of the process.

This study analyzes how well Bangladesh's legal system supports fair elections and explores ways to strengthen it. While a legal framework exists, issues like political influence over appointments and weak voter protections raise concerns about the Election Commission's effectiveness. The goal of this research is to recommend meaningful reforms that will strengthen the Election Commission, protect voter rights, and restore public confidence in the democratic process.

1.4 Literature Review

Razu (2023) addresses concerns about how challenging it was for the Bangladesh Election Commission (BEC) to hold free and fair elections. He cites problems like political bias,

intimidation of voters, state interference, and dirty money. He suggests stricter laws, more political cooperation, and more independence of the BEC. He also suggests updating voter lists and reducing political control over government agencies. However, he neglects to compare the electoral system of Bangladesh with others or to look at how international norms might be implemented³.

Zobair (2018) outlines the role of the Election Commission (EC) in holding elections in a free, fair, and peaceful manner as per Sustainable Development Goal 16 (SDG-16). In his opinion, the EC needs legal and institutional reforms to make it more independent, especially after the removal of the Caretaker Government system. He cites past elections to show how political interference has damaged the reputation of the EC. He suggests giving the EC more power, making election laws more robust, and providing it with more resources⁴.

Akter (2023) details how the EC became non-independent during the 11th National Parliamentary elections. It emphasizes problems like political pressure, lack of cooperation among parties, and insufficient government support. The writer suggests giving the EC legal and financial independence and a neutral government during elections. The study does not, however, touch much on election laws or make comparisons with other systems in Bangladesh. It also ignores critical matters like voter suppression, media freedom, and the role of civil society and technology in elections⁵.

Shahzada & Shadhan (2006) is about the performance of EC through examination of its legal and administrative framework. The authors argue that though the Constitution ensures

³ MD. Rezaul hasan Razu, (2023), *Challenges of Election Commission in Ensuring Free, Fair and Impartial Election in Bangladesh: A Critical Analysis*,
https://www.researchgate.net/publication/374371498_Challenges_of_Election_Commission_in_Ensuring_Free_Fair_and_Impartial_Election_in_Bangladesh_A_Critical_Analysis

⁴ Md. Abdullah Al Zobair, (2018), *Legal and Institutional Reform of Election Commission for Attaining SDG-16 in Bangladesh*,
https://www.researchgate.net/publication/334479172_Legal_and_Institutional_Reform_of_Election_Commission_for_Attaining_SDG-16_in_Bangladesh

⁵ Nazma Akter, (2023), in her research paper *The Crisis of Independence and Impartiality of the Election Commission of Bangladesh: A Study on the Eleventh National Parliamentary Election*,
https://www.researchgate.net/publication/369794389_The_Crisis_of_Independence_and_Impartiality_of_the_Election_Commission_of_Bangladesh_A_Study_on_the_Eleventh_National_Parliamentary_Election

independence of the Election Commission (EC), political interference and absence of robust legal protection make it weak. Inefficient management, inadequate resources, and manipulation of elections, such as rigging of votes, result in loss of public trust. The study suggests significant reforms to enable the EC to conduct fair elections⁶.

Syed (N/A) writes about the EC's ordeal since 1972. Though it has held a mammoth number of elections, it is largely blamed for breaking election laws and interference in politics. Just three of all the CECs have finished their full terms, and a few elections have been castigated as rigged. It suggests strengthening the appointment of officials, making the EC legally and financially independent, and bringing in ongoing changes. For confidence-building and conducting free and fair elections, it also suggests training election authorities and coordinating with concerned stakeholders who are interested⁷.

1.5 Research Questions

1. Is the existing legal framework governing the Election Commission in Bangladesh Sufficient to ensure free and fair Elections?
2. What legal reforms are necessary to strengthen the Election Commission's role in ensuring transparent and democratic electoral processes in Bangladesh?

1.6 Research Objectives

The study aims to examine the role of the Election Commission in ensuring free and fair elections in Bangladesh, with a focus on the legal framework that governs its operations. The specific objectives of this research are:

1. To explore the relevant laws that define and regulate the functions of the Election Commission.
2. To analyze the effectiveness of existing national and international laws in empowering the Election Commission to conduct free and fair elections in Bangladesh.

⁶ Shahzada and Shadhan (2006), in their study *Bangladesh Election Commission: A Diagnostic Study*, https://www.ti-bangladesh.org/images/max_file/rp_ES_ElectionCommission_06.pdf

⁷ Syed Sarfaraj Hamid, (N/A), *Election Commission of Bangladesh: A Legal Study*, https://www.academia.edu/80150403/Election_Commission_of_Bangladesh_A_Legal_Study?source=swp_share

3. To identify the gaps, problems, and challenges within the current legal framework that hinder the Election Commission's ability to maintain fair elections.

1.7 Research Methodology

This study takes a qualitative approach to explore the legal challenges faced by Bangladesh's Election Commission (EC) and to propose possible reforms. It relies on secondary sources, including research papers, reports, and journals, to ensure accuracy and relevance. By analyzing both local and international sources, the study provides a broad understanding of the issues affecting the EC's independence and effectiveness. While this research does not include direct interviews or fieldwork, it carefully examines international best practices to offer meaningful recommendations for improving Bangladesh's electoral system. A full understanding of how political and legal issues impact the EC's ability to hold free and fair elections is given by making use of several sources.

1.8 Scope and Justification

Free and fair elections are crucial to a successful democracy. However, election fairness and openness are not always ensured under the current legal system in Bangladesh. The Election Commission (EC) is meant to be supported by laws such as the Representation of the People Order (RPO) and Article 118 of the Constitution, but these acts of legislation do not always grant it the autonomy it needs to operate independently of politics. The independence of the EC is constrained by poor laws and external pressure, which erode the confidence of the public in elections. This study scrutinizes in detail these issues of law and identifies where the laws fall short in ensuring free elections. Through defining these defects, the study suggests reforms to enhance the independence and effectiveness of the EC. The main aim is to improve transparency, accountability, and fairness in elections to win the trust of the people in the system.

Justification: In Bangladesh, holding free and fair elections is of top priority. Strict laws are required, the experts opine, to protect the EC from political interference. But the independence of the EC is not entirely guaranteed by the existing legislative setup. This paper examines the rules and regulations, detects their loopholes, and provides remedies. Additional strict rules will increase the authority of the EC and lead to Bangladesh's free and fair elections.

1.9 Limitations of the Study

It was challenging to fully explore the topic during the study process due to several issues. A lack of books, journals, and research articles that were particularly dedicated to Bangladesh's electoral rules was one of the primary disadvantages. This made it more difficult to find thorough data and restricted the scope of the analysis. Another factor was time limits, as it was difficult to balance several research projects and follow deadlines. Additionally, there was limited access to high-quality materials, which made it difficult to gather all the information that was needed. The absence of professional advice for editing, evaluating, and improving the research was another barrier that might have improved the overall results. Despite these difficulties, the report offers a useful contribution by pointing out significant legal loopholes and proposing changes that could improve the quality of Bangladesh's election system.

1.10 Structure of the Study

This paper, titled “Role of Election Commission in Ensuring Free and Fair Elections: A Legal Analysis on Bangladesh Perspective,” is divided into six chapters to give a clear explanation of the Election Commission's (EC) role in maintaining fair elections.

Chapter 1: Introduction – This covers the study's background, problem statement, research questions, objectives, methodology, scope, limitations, and contribution, along with a brief overview of the study.

Chapter 2: Conceptual and Theoretical Framework: explains important concepts such as accountability, independence, and electoral principles related to the paper.

Chapter 3: Legal Framework of the Election Commission: analyzing the Constitution, election regulations (e.g., Representation of the People Order 1972), and international law to identify legal problems.

Chapter- 4: General Discussion: addresses legal challenges faced by the election commission to hold fair elections. It also shows the comparative analysis between Bangladesh and other nations.

Chapter 5: Conclusion: Findings and Recommendations: This section summarizes the main conclusions and offers institutional, procedural, and legislative changes to strengthen the EC's freedom and effectiveness.

This structure ensures a clear and detailed analysis of the EC's role, challenges, and possible reforms to improve election fairness in Bangladesh.

1.11 Conclusion

The research paper "Role of Election Commission in Ensuring Free and Fair Elections: A Legal Analysis on Bangladesh Perspective" analyzes how Bangladesh's Election Commission (EC) operates and the legal issues it faces when holding fair elections. It talks about the EC's lack of independence, influence in politics, legal issues, and declining public confidence. The paper points out gaps in the current laws, such as the Representation of the People Order (RPO) 1972 and Article 118 of the Constitution, which don't fully protect the EC's independence and responsibility. It also analyzes how these weaknesses affect future generations and democracy, stressing the need for elections that reflect the will of the people and protect democratic values. The study will go into detail regarding the rules, problems, and comparisons to other countries, closing with recommendations to strengthen the EC's ability to hold free and fair elections. The study's purpose is to restore public trust in the democratic process and contribute to talks about reform of laws regarding elections.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Introduction

The Election Commissioner is an Inspector for free and fair elections in Bangladesh. This chapter features the basic theories and principles behind the Election Commissioner's duty to hold elections free and fair in Bangladesh. The conceptual framework can point out important demonstrations, such as the power of a commissioner, principles of election, the legal system of a country, etc., that are necessary for all and it focuses on finding mutual relations and improvement. The theoretical framework encompasses a range of approaches, one of which is the Political Economy Approach. This approach delves into the relationship between politics and economics, as well as people's interactions and their policies. Other approaches include: Democratic Theory, Legal Institutionalism which analyzes legal constructs that affect the electoral process, and the theories of good governance. With these theories, the concept of accountability and transparency enabled the rule of law to be considered as a good governance principal theory. Collectively, these frameworks provide a deeper analysis of issues surrounding the Election Commissioner, as well as pinpoint problems that arise and their solutions for amending the electoral system of Bangladesh.

2.2 Conceptual Framework

2.2.1 What is Free and Fair elections?

Free and fair elections are important in a democracy. This is so because citizens can choose their leaders who, in turn, guarantee the direction of a country. Since losing candidates are increasingly likely to concede and step aside, they help facilitate the acceptance of power peacefully. However, elections alone do not bring democracy because some leaders can bribe or manipulate to get the desired outcome. For elections to be democratic, some conditions must be put in place to ensure no man is restricted to vote. Voting should cover all categories of people including women, disabled, visible minorities, and any other eligible groups within the society.

In addition, every citizen should be free to express their dissenting views and campaign for the government⁸. Voters should have the right to attend political meetings and rallies freely and intimidation should not exist.

2.2.2 Definition of Election Commissioner

To holding a fair, transparent, and legal elections in a country an appointed Election Commissioner is responsible. There are some roles that an Election Commissioner takes on specifically for a certain country such as registering voters, controlling party actions, enforcing election regulations, settling election related disputes, and managing the polling as well as the counting of votes. The EC in Bangladesh is a constitutional entity managed by the chief election commissioner and other commissioners, according to the Constitution and the Representation of the People Order 1972.

2.2.3 Formation of the Bangladesh Election Commission

The EC of Bangladesh is formed by article 118 of the Constitution which requires the law to provide for the conduct of local and national elections. The President appoints the Chief Election Commissioner and up to four election commissioners and the CEC shall act as the head of the Commission when there are more than one Commissioners. They all serve for five years and, after serving, are prohibited from holding any other governmental position. The Constitution provides that the members of the Election Commission shall not be subject to the control of any other authority and may only be removed in the same manner as judges of the Supreme Court.

2.2.4 Power and Functions of the Election Commission

The EC's primary objective is to manage the oversight of the primary, secondary, and local elections in the country. Their responsibility is to make sure that everything is done honestly and in a civic way. EC has a president who can appoint commissioners who then organize elections for the President, National Parliament, and local municipal offices. The Commission is responsible for the following activities.

⁸ 'Ensuring a fair election may be challenging without participation of major political parties' - CEC Kazi Habibul Awal (2023), The Daily Star, <https://www.thedailystar.net/opinion/road-elections-2023-24/news/ensuring-fair-election-may-be-challenging-without-participation-major-political-parties-3443726>

- **Election Scheduling** - Making announcements regarding the specific dates and times for elections to take place.
- **Voter Registration** - Preparing and maintaining a current list of voters to make sure every eligible citizen is registered to vote.
- **Constituency Delimitation** - Defining Electoral United Constituencies.
- **Election Monitoring** - Ensuring that the procedure is followed legally and ethically from the nomination process to the counting of votes.
- **Dispute Resolution** - Setting up tribunals to arbitrate any matters related to elections.
- **Electoral Integrity Enforcement** – Brining civil suits for all forms of alleged misconduct, and breaches by the administrators or any enforcement agents.

The Commission can also delay elections after notifying the public of punctuated irregularities. They also cancel election procedures, investigate violations, and take corrective measures to ensure democracy. It networks with relevant political parties periodically to achieve this goal.

2.1.5 Independence and Impartiality of the Election Commission

The self-sufficiency and inter-objective neutrality of the Commission is cardinal for the conduct of elections. The political interference of self-interested people, through the appointment of members by the President, is barred by law. The RPO of 1972 permits the Commission to issue orders, execute laws about elections, and demand the cooperation of, any public body.

In some instances, however exists the threat of political interference through unmeritorious appointments, limited funding, and hostile policies. In such cases, protective measures to remove the Commission from external influence while still retaining democratic values are crucial to ensuring its independence.

2.2.6 Purpose of Constitutional and Statutory Avenues

The Commission's responsibilities are discussed on constitutional and statutory provisions such as Articles 118 and 119 of the Constitution that delineate the organization, powers, and functions of the body. The RPO of 1972 further explicates a range of functions such as maintenance of

electoral rolls, division of constituencies, supervising elections, and election-related disputes. This enables the system of democracy in Bangladesh to operate sustainably with continuous elections that are transparent and free of manipulation.

2.3 Theoretical Framework

2.3.1 Democratic Theory

In the context of a representative government, the concept of democracy underscores the importance of organized, impartial, and regular elections. For democracy to be accepted in terms of authority, the EC has to ensure that election processes reflect the sentiments of the citizens.

However, in the aftermath of the 2014 elections, which were plagued by political interference and intimidation of voters, concerns have emerged regarding the EC's effectiveness and neutrality. These challenges erode citizens' faith in the democracy and emphasize the importance of undertaking measures in order to enhance the flexibility and autonomy of the EC.

2.3.2 Good Governance Theory

The general principles of good governance contain accountability, transparency, proactiveness, and compliance with the law. The role of the ECB is very crucial in achieving these principles during the elections. However, there are concerns on the ECB's accountability where it has been reported that the ECB has not been neutral, and does not make information public as required.

Restoring public confidence and improving governance is possible through enhancing the institutional capacity of the EC, increasing its accountability, and making its operations more open.

2.3.3 Rule of Law

The critical point about the rule of law is that it encompasses people, organizations and even the state, which means that everyone has to obey laws that are formulated, enforced, and published to the public in an impartial manner. The same principle should govern the actions of the EC to ensure uniformity and fairness in the application of election laws. Yet, the legal rule of law and the law relating to elections would need to contend with unneeded legal outgrowths or selective

justice that are employed as devices to circumvent the law. Therefore, the EC needs to comply with legal requirements and make sure that all voters are treated equally and fairly under the law.

2.3.4 Institutional Theory

The institutional theory explains the procedures, values, and practices that underpin and define the behavior of an organization. The EC as an institution equally operates with the available formal rules as well as informal rules. The degree of effectiveness relies on its capacity to be self-managed without external influence or control. Political patronage and interference, however, is a growing problem with the greatest impact on EC operational effectiveness and public perception. The trust of the people in these institutions would require reform to remove formal institutional restraints on EC activities and significantly enhance its operational effectiveness.

2.4 Conclusion

This chapter focused on the issue of the Election Commission (EC) of Bangladesh in relation to its creation, authority, functions, and the guiding norms of independence and neutrality. The EC's role in the legal and political systems as a central authority is premised on the construction of basic terms such as “free and fair elections”, and the defining of the Election Commissioner's broader duties.

The combination of concepts such as Good Governance, Rule of Law, and Political Economy makes it possible to assess the performance and the challenges facing the EC in a holistic manner. This exploration has not only done away with the confusion on what the EC was meant to do as provided by the guiding statutes and the constitution but has also brought to the fore the tension between theoretical and practical politics in the country.

This provides the primary rationale for why the rest of the paper will use this as the mainframe to analyze the performance of the EC and devise ways to strengthen the Commission's role in the promotion of democracy in Bangladesh.

CHAPTER THREE

LEGAL FRAMEWORK OF THE ELECTION COMMISSION IN BANGLADESH

3.1 Introduction

Bangladesh's Election Commission (EC) is critical to preserving the country's democratic values. As the defender of electoral integrity, it ensures that elections are free, fair, and impartial. The EC is a symbol of transparency and accountability in a democracy like Bangladesh, where public trust in elections is important. The legislative framework within which the EC functions establishes its independence, obligations, and jurisdiction. This framework is made up of statutory legislation such as Articles 118-126 of the Constitution of the People's Republic of Bangladesh, the Representation of the People Order of 1972, and a few more election laws. Although the purpose of these rules is to build a resilient and flexible institution, their effectiveness is largely dependent on how well they are executed. However, political meddling, a shortage of money, and legal deficiencies are just a few of the significant challenges the EC must face. Bangladesh's democratic aspirations are reflected in its elections, which are more than a formality. A fair election is critical for a nation. The wing or ruling party must represent the people's desires or preferences. To ensure a free and fair election, the legislative structure that underpins the electoral process must be examined first. An unbiased election can be achieved if everyone complies with the relevant laws and regulations. The reigning party's prime minister indirectly appoints the EC. Therefore, voters do not trust the system. This is one of several problems that the EC has to resolve, such as how to accurately represent different social groups, how to use technology appropriately, and how to protect against disinformation. To safeguard democracy and the trust of citizens, the EC should be enhanced as a result of institutional and legislative change. This chapter investigates the legal structure in which the EC exists, and its gaps, which can be perfected. It is hoped that with these changes, Bangladesh can advance democracy and improve the integrity with which elections are conducted.

3.2 Constitutional Provision

Bangladesh's Constitution, namely Articles 118 to 126, lays the framework for the Election Commission (EC), outlining its formation, tasks, and backing from other government agencies.

Structure and formation (Article 118):

Article 118 requires the President to designate the Chief Election Commissioner and up to four more commissioners to establish an Election Commission. When more than one commissioner is appointed, the Chief Election Commissioner serves as chairperson. Each commissioner serves a term of five years. Notably, the Chief Election Commissioner cannot serve in any government capacity after their term expires; however, other commissioners may be nominated for the position but are not able to occupy other positions. This arrangement tries to safeguard the EC's independence by avoiding potential conflicts of interest.

Duties and authority (Article 119)

Article 119 allows the EC to supervise the making of electoral rolls as well as the execution of presidential and parliamentary elections. This covers the organization of elections, creation of parliamentary electoral districts, and the management of voter registers. The EC is also enabled to perform other functions as are given in the Constitution or other laws, which guarantees flexibility in meeting changing electoral needs.

Support and cooperation (Article 120-126)

For efficient performance of its functions, the EC has to seek support from other organs of government. Article 120 mandates the President to appoint relevant staff as may be requested by the EC. Article 126 further provides that all heads of executive organs of state are required to assist the EC in the execution of its functions. These provisions guarantee the availability of means and services for the EC so that elections can be administered reliably

In summary, Articles 118–126 of the Bangladeshi Constitution create a complete legislative framework to ensure the Election Commission's independence, define its functions, and gain the required backing from other government branches. This framework is critical to ensuring the integrity and fairness of the nation's electoral processes

3.3 Representation of the People Order (RPO) 1972

Bangladesh's election laws aim to promote fair elections by outlining correct electoral procedures, establishing expected behavior for candidates and supporters, and implementing consequences for violations. The Election Commission (EC) was established under the 1972 Constitution, which granted it authority over its tasks, including voter list management and election administration (Article 119). RPO of 1972 stipulates the election system that includes the voting procedure, Returning Officer then Nomination Papers inspection, Expenditures, electoral petitions, and results notification are a part of it. It also seeks to punish corrupt practices of bribery, impersonation, and undue influence by offering fines and jail terms of varying severity. For the proper check and balance of the election process, the Election Officials (Special Provision) Act of 1991 controls the conduct of election officials with the possibility of them being disciplined for failing to perform their mandates as well as for breaching election laws.

The Conduct of Election Rules 1972 details the election processes from nomination to counting, including the use of transparency and impartiality during the entire process in question. Meanwhile, the Code of Conduct (1996) forbids unethical behavior such as exploiting government resources for campaigning, impeding competing parties, or buying votes. In the mid-2000s, the Election Commission underwent considerable revisions. It computerized voter lists for the first time, ensuring accuracy and transparency, and in 2008 included a new clause requiring candidates to be party members for at least three years before seeking nomination. The goal was to minimize nomination trade and ensure that party members had grassroots support⁹.

The Election Commission also implemented regulations to boost women's participation in politics, mandating political parties to reserve 33% of slots for women. The use of electronic voting machines (EVMs) was also tested and gradually deployed, beginning with a trial run in 2010. In 2013, the RPO was amended to exclude the armed forces from being classified as law enforcement during elections, effectively eliminating their role in maintaining election law. These actions represent the Election Commission's continued efforts to strengthen Bangladesh's electoral process and to promote openness, inclusion, and justice in elections.

⁹ Banglapedia, Election laws, https://en.banglapedia.org/index.php?title=Election_Laws

3.4 International Laws Regarding Free and Impartial Elections

International election law is built on legal systems that ensure democratic elections around the world. The International Covenant on Civil and Political Rights (ICCPR) 1966 and the Universal Declaration of Human Rights (UDHR) 1948 specify notions like universal voting¹⁰, periodic and legitimate elections, and secret ballots to protect voters from coercion (ICCPR 1966 Article 25). These provisions require Election Management Bodies (EMBs) to operate autonomously and without any political interference as per ICCPR 1966 General Article No. 25¹¹. In addition, the Venice Commission's Code of Good Practice in Electoral Matters emphasizes the importance of uniform electoral laws and honest mechanisms for resolving disputes and preventing abuse. Political activity as a whole is also granted protection, especially under the provisions of Article 19 of the ICCPR 1966 which provides for freedom of speech alongside Articles 21 and 22, which provide for peaceful assembly and association, which facilitates political and campaign rallies. To ensure fairness in elections, increased media scrutiny of candidates' exposure and opportunities is being ensured ahead of time.

To combat election fraud and confirm participation, international norms such as the United Nations Convention against Corruption 2003 (UNCAC) and the African Union Convention on Preventing and Combating Corruption oversee campaign money and limit the use of public resources. The Convention on the Elimination of All Forms of Discrimination against Women 1979 and the Convention on the Rights of Persons with Disabilities 2006 call for equality and accessibility in elections for all. The initiative does this in cooperation with the country's legislatures, to create a free, responsible, and transparent voting mechanism. Finally, the substance of the document is a call for the open reform of electoral laws in the post-COVID environment to sustain voting integrity in an environment where disinformation is rife.

¹⁰ United Nation, <https://europe.ohchr.org/news-events/news/your-vote-your-right-foundations-right-vote-international>

¹¹ Strengthening International Law to Support Democratic Governance and Genuine Elections, Report(N/A),<https://www.eods.eu/library/strengthening-international-law-to-support-democratic-governance-elections.pdf>

3.5 Conclusion

The Election Commission (EC) plays a vital role in protecting democracy by ensuring elections are free, fair, and credible. Bangladesh's Constitution guarantees the EC's independence, but in developing countries like Bangladesh, these principles are sometimes challenged. To ensure fair elections, the EC must clearly understand and exercise its authority.

Addressing previously mentioned gaps and restrictions is critical for the EC. Currently, there is tremendous worry about the date of the approaching parliamentary elections. The EC should foster conversation among major political parties in order to obtain an agreement on election timing and ensure that the electoral process is fair. By doing so, the EC can defend justice while still maintaining public trust in the democratic system. The EC must improve its institutional capabilities in order to effectively oversee the electoral process while also stimulating political discourse. This involves strengthening the accuracy of electoral rolls, ensuring voting locations are secure, and implementing strong protections to prevent election fraud¹².

To increase public trust, the Election Commission (EC) should make its work more clear. It should regularly communicate with international observers, the media, and civil society to create an open and accountable environment. Engaging with different groups will help the EC understand various perspectives and encourage public participation in elections.

A strong democracy in Bangladesh depends on the EC's efforts to improve its role and solve existing problems. By taking proactive steps and working with others, the EC can ensure fair and honest elections that truly represent the people's choice.

¹² Badidul Alam Mojumdar (2021), How should the law to appoint the election commission be?, English Prothom Alo, <https://en.prothomalo.com/opinion/op-ed/how-should-the-law-to-appoint-the-election-commission-be>

CHAPTER FOUR

GENERAL DISCUSSION

4.1 Introduction

This chapter discusses legal framework analysis, talks about gaps and inconsistencies in election laws, and explores the various challenges that Bangladesh's Election Commission (EC) faces in providing free and fair elections. Additionally, gives a comparative analysis of the processes of selecting the Election Commission and electoral process of Sri Lanka, highlighting the strengths and weaknesses of Bangladesh's system compared to its regional counterparts. The chapter begins with an overview of the main issues like analysis of the election laws and explores gaps in that law besides the independence and effectiveness of the EC — political interference, lack of transparency, voter suppression, and inadequate legal guarantees. Not only do these shortcomings undermine the people's trust in the electoral process but also raise questions regarding the EC's competence in carrying out its constitutional mandate. Next, the chapter includes a comparative analysis of the appointment and electoral processes of the Election Commission of Sri Lanka. The chapter therefore compares and contrasts the cases of the EC with these systems in Bangladesh, a social setting with considerable diversity and strength in the political context, to identify best practices and lessons that can inform reforms to enhance the independence and legitimacy of the EC. This chapter describes the challenges that the Election Commission faced while holding elections and points out the loopholes by comparing other nations' best practices

4.2 Analysis of the Legal Framework

Evaluation of the legal structure:

It is the responsibility of Bangladesh's Election Commission (EC) formed under Article 118 of the constitution to ensure that elections are conducted in a free, fair, and impartial manner. Still, numerous gaps in its legal framework and operational procedures continue to persist.

Perceived Lack of Independence: Despite the EC's constitutional independence, the President's appointment method for commissioners has raised concerns about political influence. According to Article 118 of the Constitution, the president appoints the EC. Article 48(3) of the

constitution requires the president to adopt the prime minister's advice. The question arises as to whether the EC is appointed at the prime minister's proposal. Because the prime minister heads the ruling party, the ruling political party or government will likely have control over the EC if it is appointed indirectly by the prime minister. This depiction diminishes the confidence of the people in the impartiality of the EC.

Limited Enforcement Capacity: The Commission's power to enact legal regulations about the election is thin. Voter fraud, vote rigging, and voter suppression are just some examples of actions the EC did not take any remedial action for. Because of this, the Election Commission has some limitations when it comes to ensuring free and fair elections.

Counter emerging issues with accountability: The Election Commission of India is alleged to be corrupt in its dealings with finance and financial matters. One of the major concerns of 2020 when EC bought the Electronic Voting Machines EVMs at a price that was way above what other neighboring countries were selling them for is a glaring example of financial malpractice as well as mismanagement of resources put under their charge. EC has financial issues with them and they have been considered fraud.

Concerns about credibility: The EC has admitted having credibility issues after the general elections of 2014, 2018, and 2024 which were disputed due to lack of competition and engagement in politics on a meaningful level due to irregularities. These actions have eroded public faith in the EC's capacity to conduct given elections impartially.

Legal Framework Limitations: Under the current legal framework, the EC lacks the necessary tools to tackle election-related illicit actions. The EC has been chastised for not having the resources to handle and resolve election infractions and disputes, as stipulated in the Representation of the People Order, 1972. Addressing these flaws is critical to strengthening the EC's role in maintaining democratic processes in Bangladesh

4.3 Gaps and Inconsistencies in Election Laws

The Constitution and the Representation of the People Order (RPO) of 1972 serve as the foundation for Bangladesh's electoral law. While these documents seek to promote fair and democratic voting processes, various loopholes and inconsistencies have been observed, which may jeopardize their effectiveness.

4.3.1 Constitutional Gaps and Inconsistencies

The Bangladesh Constitution specifies the organization and functions of the Election Commission (EC), however, it does not include precise processes for important components of election governance. For example, while the Constitution gives the President the authority to select the Chief Election Commissioner and other commissioners, it does not establish the criteria or procedure for these appointments. The lack of a transparent and consistent appointment method can raise concerns about political bias and the EC's independence. Furthermore, the Constitution requires the EC to supervise and control elections but makes no express provisions for its financial independence. The EC's reliance on government funding for its budget may subject it to financial limits or influence from politicians, reducing its autonomy and effectiveness in administering elections.

4.3.2 Gaps and Inconsistencies in the Representation of the People Order (RPO) 1972

The RPO 1972 provides a complete legal framework for conducting elections in Bangladesh. However, some aspects of the RPO pose challenges: The RPO gives Returning Officers substantial discretionary authority to approve or reject nomination documents. When guidelines are vague, decision-making can become arbitrary, resulting in the unfair treatment of certain candidates.

Election Campaign and Finance: The RPO has regulations regarding expenditures for campaigns, but they are not followed. This permissiveness allows candidates to spend extravagant sums of money without any serious repercussions, thus, distorting the level playing ground. Furthermore, there is no requirement under the RPO to account for various sources of campaign funds, which in turn fosters the absence of accountability and the possibility of unauthorized donations.

Election Technology: The RPO did not provide any instructions concerning the safeguards and the accountability of the Electronic Voting Machines (EVMs) which creates holes in the oversight of electronic voting.

In conclusion, while the Constitution and the RPO 1972 provide a basic framework for elections in Bangladesh, the noted deficiencies and inconsistencies demand extensive adjustments. Addressing these challenges is critical to increasing the transparency, fairness, and confidence in the country's election system¹³.

4.4 Challenges of the Election Commission in Ensuring Free and Fair Elections

The Election Commission (EC) is a constitutional institution responsible for organizing free, fair, and unbiased elections. In Bangladesh, the mandate of the EC is to oversee parliament, state legislature, and presidential elections. The EC, however, is confronted with serious legal and institutional issues that undermine its capacity to perform its constitutional role. Some of the major challenges that hamper the EC's capacity to organize free and fair elections are elaborated on below ¹⁴

4.4.1 Election Commission Appointments

The primary hindrance to the holding of free and fair elections in Bangladesh is the lack of a specific law for the appointment of the Election Commission (EC) as anticipated by Article 118(1) of the Constitution. Despite the constitutional mandate, none of the governments has introduced any such bill over the last 50 years, allowing ruling governments to appoint Chief Election Commissioners and EC members without accountability. This unregulated political interference has seen accusations of partiality, with the EC having been accused previously of being party to the ruling party in the past. Without proper legal cover—such as a multi-stakeholder nomination committee comprising members of the opposition, civil society, and the judiciary, public scrutiny of credentials of the nominees, and restraint on EC members from government employment upon retirement—appointments continue to be politicized, reducing public trust. The absence of clear criteria and an open appointment process creates a vicious cycle where ECs promote ruling-party interests at the cost of electoral integrity. For the safety of

¹³ Asia Law Portal, Laws and Regulations for Conducting Elections in Bangladesh: A Review of the Representation of the People Order, 1972 and the Code of Conduct, 2008, Author- Miraz Hossain Chowdhury, <https://asialawportal.com/laws-and-regulations-for-conducting-elections-in-bangladesh/>

¹⁴ MD. Abdul Alim (2024), The alterations we need in our Election Commission, The Daily Star , <https://www.thedailystar.net/opinion/views/news/the-alterations-we-need-our-election-commission-3691126>

democracy and protection of the Constitution, Bangladesh must move rapidly and pass a law for a transparent, inclusive appointment process untainted by political interference in this vital institution.

4.4.2 Problems with election Spending

The Election Commission (EC) of Bangladesh is severely constrained from conducting free elections by extensive corruption, such as candidates surreptitiously purchasing party nominations (contravening Article 44AA of the RPO 1972, which demands disclosure of the sources of funds) and vote-trading by money, presents, or festivities (contravening Article 44B). Wealthy candidates exploit loopholes, such as hiding small cash donations below the Tk 5,000 disclosure limit (Article 44CC), and frequently exceed the Tk 25 lakh expenditure limit (Article 44B(3)) by intimidation or bribes, and feeble punishments such as a Tk 10 lakh penalty (Article 44CC(5)) cannot deter them. The EC, too, struggles to detect fake expense reports (Article 44C) due to tardy audits and absence of oversight and cannot deter ruling parties from using public funds to finance electioneering (in contravention of the 1996 Code of Conduct). Reforms need to reduce thresholds for donation disclosure (e.g., Tk 500), introduce real-time checks on spending, and introduce more stringent sanctions like disqualification for violating rules¹⁵.

4.4.3 Legal Problems in Resolving Election Disputes

The Bangladesh Election Commission (EC) has serious legal problems in resolving election-related complaints. The Representation of the People Order (RPO) 1972, Chapter V (Articles 49–72) has several defects that make it difficult to resolve disputes. For example, Article 49 restricts the candidates to lodge complaints about the problems in the election only, excluding the victims of election violence and voters. Also, the persons lodging the complaints have to pay Tk 5,000 as security, which prevents the poor and marginalized individuals from availing of

¹⁵ Banglapedia, Representation of the People Order, 1972,
https://en.banglapedia.org/index.php?title=Representation_of_the_People_Order,_1972

justice. Even when lodged, according to Article 57(6), they should be cleared within six months. In reality, the delay in collecting evidence, intimidation of witnesses, and a backlog of court cases lead to long delays. In previous elections, when there was violence between the ruling party and opposition party supporters, over 80 people died, yet hardly any case was cleared. A related serious concern is that the EC relies on security agencies and courts, some of which become politicized or are compromised. 52 enforced disappearances happened in 2023, yet there was no accountability ensured by the EC. It is very difficult under Article 63 to connect election violence and affected results directly, making it hard for the victims to be able to achieve justice. Also, Article 72 limits the jurisdiction of the EC to only delaying elections, not punishing the culprits. Thus, political party student wings indulge in violence, arson, and assaults with impunity. Pre-election violence, such as forced disappearance and extrajudicial killing of opposition leaders, is also not addressed under the law¹⁶.

Unless there are immediate changes—such as expanding the EC powers, issuing stricter punishments, and speeding up dispute resolution—Bangladesh's electoral system will keep ailing, undermining public confidence in democracy.

4.4.4 Legal Problems in Stopping Election Violence in Bangladesh

Bangladesh's Representation of the People Order (RPO) 1972 makes election violence, intimidation, and rioting illegal under Article 78, with a punishment of 2 to 7 years imprisonment and a fine if it occurs within 48 hours of an election. The law is not effectively enforced because of political pressure on the police. Members of the ruling party use violence, including torching buses, threatening voters, and assaulting protesters, in the previous elections. The police ignore this kind of behavior. Article 87A provides that illegal campaign posters can be removed and something can be done regarding violence, but the law is not applied often when there are influential groups. In 2023, state-backed agents had 52 forced disappearances, which shows that violence is perpetuated through a lack of accountability. Judiciary is under a lot of pressure. Article 89 allows the Election Commission (EC) to manage the complaints against the government officials, which causes unnecessary delay and potential for political interference. The 6-month time limit for prosecution of electoral crimes under Article 90 is too short,

¹⁶ Representation of the People Order, 1972, <http://bdlaws.minlaw.gov.bd/act-424.html>

especially with Bangladesh's slow court process, and works to give criminals an excuse to get off scot-free. Despite Article 73 making bribery and undue influence illegal, there are limited sanctions.

The EC is not able to punish or investigate offenders of crimes by itself, which again serves to hinder justice. To prevent election violence, Bangladesh must depoliticize the police, relax legal time limits, and give the EC greater authority to investigate and prosecute offenders.

4.4.5 Dependence on the Government

The Election Commission (EC) of Bangladesh cannot function independently because it has to depend on government-run agencies for the enforcement of rules. The RPO 1972 in Chapter VII (Articles 91–91D) authorizes the EC to postpone elections, form inquiry committees, and enforce election rules, but it has to rely on law enforcement agencies for enforcement of action against rule-breakers. Yet the police and local government seldom follow EC rules, especially if the violation of the rule is by members of the ruling party, e.g., in cases of voter intimidation and ballot-box stuffing. Article 93A permits the government to render electoral "assistance," yet this may be manipulated to help those already in power. The Election Commission (EC) is not able to control its budget since it is controlled by the government. This makes it difficult for the EC to track political funds or to implement reforms such as posting voter lists online. Delays within the court system also enable individuals to avoid accountability. Article 90 indicates that election offenses are to be tried within 6 months, yet sluggish court proceedings allow criminals to evade penalties. Unless there is a dramatic change, like an open method of choosing members from different groups and controlling their funds, the EC will continue to be financially dependent on the government. This will lead to corruption in the elections and diminishing public confidence in the electoral system¹⁷.

Appointment Process in Other Countries

The selection process of Election Commissioner in India and Sri Lanka are outlined below:

¹⁷ Representation of the People Order, 1972, <http://bdlaws.minlaw.gov.bd/act-424.html>

India: The President appoints India's Election Commissioners on the recommendation of a Selection Committee as per The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service, and Term of Office) Act, 2023. This includes the Prime Minister (Chairperson), the Leader of the Opposition in the Lok Sabha (or leader of the largest party in opposition), and one Union Cabinet Minister nominated by the Prime Minister. A Search Committee, led by the Minister of Law and Justice, recommends five names to the Selection Committee, who may also recommend other individuals. Appointees must be individuals of integrity, possess experience in electoral administration, and have been a Secretary (equivalent) to the government

Sri Lanka: According to article 41B of the Constitution of Sri Lanka, A Speaker-led Constitutional Council with the Prime Minister, leader of the opposition, and other nominated members of the EC. The President appoints members of the CEC and commissioners based on such nominations. This mechanism offers multi-stakeholder representation and reduces executive dominance¹⁸.

Lessons from Sri Lanka on Ensuring Bangladesh's Election Commission

Bangladesh may learn much from Sri Lanka's experience in holding free elections. Here's why:

Strengthening the Election Commission's Autonomy

In Sri Lanka, the prime minister, opposition leader, and members of civil society are part of the Speaker-headed Constitutional Council that appoints the election commissioners (Article 41B of the Constitution of Sri Lanka). In Bangladesh, the President appoints the Election Commission (EC) after consultation with the Prime Minister, under Article 118, which is a cause for concern about impartiality. If Bangladesh had been more like Sri Lanka, where different groups become involved in the process, there would be more independent appointments. This would increase the

¹⁸ The Parliament of Sri Lanka, <http://www.parliament.lk/files/pdf/constitution.pdf>

trust of people and follow best practices like India's. This would eliminate the practice of appointing loyalists, as seen in Bangladesh's recent elections when the Election Commission (EC) was criticized for its inability to act against the wrongdoing of the ruling party.

Campaign Finance Regulation

Sri Lanka's Election Expenditure Regulation Act imposes limits on election spending, bans foreign donations, and requires full disclosure of expenditures (Sections 3–6). In Bangladesh, although it has the 1972 Representation of the People Order (RPO), issues like vote-buying, corporate donations, and secret spending are not addressed effectively by the Election Commission Bangladesh can follow Sri Lanka's real-time audit system and lower the donation disclosure threshold (e.g., from Tk 5,000 to Tk 500) to prevent illegal funding. For example, Sri Lanka's ban on anonymous donations (Section 5) is stricter than Bangladesh's law, which allows for undisclosed donations (Article 44CC). Likewise, Sri Lanka's harsher sanctions, e.g., 2 years' imprisonment for excessive spending, are much more punitive than Bangladesh's minor fines, which can be easily waived by rich candidates.

Judicial Oversight of Elections

Sri Lanka's Election Petitions (Part VII) provide for the courts to annul elections on the basis of corruption or misconduct (Sections 91–92) and for expedited trials (6-month trials). The RPO in Bangladesh limits petitions to candidates, has high security deposits (Tk 5,000), and is subject to court delays. If Bangladesh adopted Sri Lanka's system, where voters can file petitions and there are strict time limits, cases of violence would be dealt with more expeditiously. Sri Lanka's Supreme Court jurisdiction (Sections 102–104) holds the government accountable, whereas in Bangladesh, the courts are perceived to be biased and hardly ever hold the government to account.

Violence during Elections

Sri Lanka's Part VI (Offences) criminalizes intimidation, bans obstructive campaign processes outside polling booths (Section 68), and sanctions violence with jail time (Section 66). Bangladesh's RPO criminalizes violence too (Article 78), but because it has a politicized police force, it does not work. Sri Lanka's demilitarized police force and the Election Commission's ability to punish offenders (e.g., a 7-year disenfranchisement) can deter entities like the student wing of the ruling party, which regularly attacks opposition activists with impunity. For instance, Sri Lanka's ban on post-election violence (Section 71) is balanced against Bangladesh's trend of enforced disappearances, the majority of which are credited to agents of the state.

Ensuring Transparency

Sri Lanka has public disclosure of expenditure reports (Section 7) and voter-verifiable audits. Bangladesh's EC has twice-over reporting and delayed audit issues despite Article 44C. Sri Lanka's real-time reporting and civil society monitoring (e.g., posting on the Election Commission website) provide a model for Bangladesh to prevent hidden expenditure.

By following Sri Lanka's example of involving different groups in making the Election Commission selection process, having stricter campaign finance laws, holding the judiciary more accountable, and strictly enforcing laws fairly, Bangladesh can once again be reliable for elections. The reforms should focus on inclusiveness (e.g., involving opposition in selecting the Election Commission), transparency (e.g., real-time audit), and enhanced penalties to stop violence and rigging. Without these, Bangladesh's democracy will continue to lose its credibility.

4.6 Conclusion

The chapter's election process describes the gaps and inconsistencies in election laws, analyzes the legal framework, how Bangladesh's Election Commission (EC) faces legal issues holding free and fair elections, and how the selection process of EC and electoral process is measured against neighborhoods in countries like India and Sri Lanka. The research findings were that election violence, dispute resolution, non-transparency, and money politics entangled the independence and functions of the EC. All of them eroded public faith in elections and tarnished democracy

Other countries prove that transparent and impartial selection EC and election procedures allow the election commissions to be independent. Sri Lanka for example, have strong laws and involve different groups in decision-making, boosting public confidence. Bangladesh can take its cue to empower its EC.

This chapter recognizes the need for initiating changes so that the EC could work effectively. The following chapters will raise questions about how the election system can be made better and democracy needs to be strengthened in Bangladesh.

CHAPTER FIVE

CONCLUSION: FINDING & RECOMMENDATION

5.1 Introduction

Free and fair elections are a necessity for a healthy democracy, and the Election Commission (EC) is responsible for this. The EC, in Bangladesh, is legally bound to be independent, but its effectiveness has been doubted on the grounds of political influence, bias, and organizational weaknesses.

The EC operates within the Constitution of Bangladesh and the Representation of the People Order (RPO) 1972. However, persistent election issues reveal that there must be changes. An independent EC is necessary for democracy, but it comes under political influence, administrative dependence, and institutional weakness. This chapter reveals these problems and recommends some changes to increase the independence and operation of the EC.

5.2 Findings

5.2.1 Lack of Transparency in the Appointment Process

The process of appointing members of the Election Commission (EC) is not transparent, as the President appoints them under Article 118(1) with no clear procedure. This allows the government to prefer like-minded individuals and not allow opposition and civil society. A proposed parliamentary committee that includes opposition members has not been implemented, and there are questions about EC neutrality.

5.2.2 Uncontrolled Election Spending

The election finance law of Bangladesh is poor, with potential for corruption. Disclosure of spending is mandatory under Article 44AA of the Representation of the People Order (RPO) 1972, but over Tk 5,000 is kept secret. Most candidates utilize untraceable funds to exceed the Tk 25 lakh spending limit (Article 44B(3)). Audit delays are present under Article 44C, and the

Tk 10 lakh fine under Article 44CC(5) is not deterrent enough. Higher penalties, e.g., disqualification, could be helpful.

5.2.3 Weaker Election Dispute Resolution System

The process of complaints in elections takes too long to rectify and the system is dysfunctional. The right to appeal results is accorded only to candidates under Article 49 of the RPO, excluding voters and victims. Tk 5,000 as a deposit price is out of reach for the poor, and the courts also cannot meet the six-month term provided in Article 57(6). It also becomes convoluted through Article 63, which requires direct evidence of how election violence impacted results.

5.2.4 Election Violence and Lack of Punishment

Election violence is poorly handled due to political interference. Although Article 78 of the RPO prescribes 2-7 years of imprisonment for offenders, political influence usually prevents enforcement. The police barely act against ruling party members, and the EC cannot punish offenders under Article 87A. The six-month prosecution period under Article 90 is inadequate, making it difficult to prosecute offenders.

5.2.5 The Election Commission's reliance on the government

The EC is not, in practice, independent since it relies on government departments. While Chapter VII of the RPO gives the EC monitoring powers, it is forced to lean on officials and police officers who often repudiate its orders in favor of the ruling elites. We tended to notice that, at times, EC orders for the exit of prejudiced authorities were disobeyed. Article 93A permits government "assistance" during elections, but this is frequently abused to promote some candidates. On the financial side, the EC relies on the Finance Ministry, which turned down 75% of its requests for technology budgets in 2023.

5.3 Recommendations

For the restoration of public trust and the holding of fair elections, the Election Commission (EC) ought to have transformative changes within:

5.3.1 Open and Non-partisan Appointments

Bangladesh needs an open, merit-based procedure for the selection of EC members. The procedure must be run by a committee with the Speaker, Chief Justice, political parties, and civil society. Sri Lanka's Constitutional Council follows the same approach. Article 118 and the Election Commission Act 2022 need to be revised to include this impartial process.

5.3.2 Improve Financial Monitoring During Elections

Election expenditure must be monitored more effectively. Real-time tracking committees should be established, and the Tk 5,000 disclosure threshold in Article 44AA should be reduced to Tk 500 or whichever is better. Article 44CC(5) should impose tougher penalties, such as disqualification, for crossing expenditure thresholds. India's Election Commission uses blockchain to monitor donations, which can be adopted by Bangladesh for transparency.

5.3.3 Make Dispute Resolution More Effective

Article 49 has to be changed to allow for complaints from voters, NGOs, and victims of election violence in addition to candidates. The Tk 5,000 deposit should be reduced to Tk 500 to make the process affordable. A Special Election Tribunal should be created to decide cases within 90 days, fast-tracking justice.

5.3.4 Prevent Election Violence and Make Punishment Harsher

The EC should be vested with the direct power to prosecute criminals by amending Article 89. The two-year prosecution limit of Article 90 must be increased. The power to disqualify violent supporters of candidates should be a power obtained from Article 87A(4). Installing CCTV in hotspots and creating monitoring cells would also reduce violence.

5.3.5 Make the EC Fully Independent

The EC should have fixed percentage of budget from the national budget, to reduce its reliance on the government. Strict enforcement of Section 44D on disclosure of finance should be applied for transparency. Article 87A should be made more effective so that the EC can sanction government officials for non-cooperation.

5.4 Conclusion

The Bangladesh Election Commission (EC) has the highest responsibility to establish democracy through conducting free, fair, and credible elections. It is responsible for ensuring people's right to vote as well as building public trust in the electoral process. But in this research work, it has been observed that the EC also has a variety of issues hindering its ability to carry out tasks effectively. The problems are mainly caused by flaws in the appointment process, gaps in the legal system, and the lack of financial and administrative independence. Unless these are addressed, the credibility of elections in Bangladesh cannot be guaranteed. To empower democracy and good governance, there is a pressing need to make the EC more independent, transparent, and effective.

One of the key problems is the procedure for the appointment of Election Commissioners as envisaged under Article 118 of the Constitution. The President appoints the Chief Election Commissioner and other commissioners currently in the absence of any consultation with opposition parties or civil society groups. The procedure has typically led to charges, and there have been doubts about their neutrality. If the appointment process continues to be questioned, the credibility of the EC will be further eroded, and it will be hard for the public to have faith in the election results. Moreover, Bangladesh's electoral law is old and not suitable for dealing with contemporary challenges. The Representation of the People Order (RPO) 1972, as the election law, fails to address new matters such as unreported and excessive campaign expenses and vote intimidation tactics. For example, while Articles 44AA and 44B require candidates to disclose financial reports, enforcement is weak. The EC is also dependent on state establishments such as police to ensure security for the poll. Some are accused of being biased towards the ruling party, undermining further public trust in the impartiality of the EC. A major concern is that election-related matters take a long time to be determined. Under Article 90, election offences must be tried within six months, but inefficiency in the system results in cases being withdrawn or remaining untried and electoral misconduct going unpunished.

There are some reforms needed to meet these challenges. Firstly, the method of appointment of the EC must be transparent. There must be a National Election Appointments Committee with membership drawn from the judiciary, opposition parties, civil society, and professional associations. This model, adopted from Sri Lanka's Constitutional Council under Article 41B, would make the selection process open and participative to guarantee that only neutral and qualified candidates are chosen. This would boost public confidence in the EC and curtail the influence of ruling parties in running the elections.

Second, the electoral law must be updated to neutralize modern challenges. The RPO 1972 would have to be amended to enact harsh punishments for online misinformation, illicit funding of campaigns, and rigging of votes. Real-time audit of campaign expenditure and disqualification of candidates for violating campaign funding regulations must be included. Tk 5,000 must be lowered as the threshold for the release of financial data on donors to promote transparency. Furthermore, the EC would be given prosecuting powers to bring direct legal proceedings against electoral offenders to ensure contraventions were addressed expeditiously and effectively.

Third, the EC would need to be given financial and administrative autonomy. Instead of relying on government funds, the EC would be given a fixed share of the country's budget in order to reduce financial dependence on the governing regime. Secondly, the EC must be given the authority to punish non-cooperative government officials. For greater efficiency, Special Election Tribunals must be established to resolve election disputes within 90 days. The expansion of voter registration through mobile units and online platforms would also increase the inclusiveness and accessibility of the electoral process so that all eligible citizens can vote. The success of the reforms depends on joint efforts by various stakeholders. Parliamentarians must accord top priority to the reform of constitutional and electoral legislation to enshrine values of accountability, fairness, and transparency. The courts must ensure election matters are heard expeditiously and in a just manner. Media and civil society need to observe elections keenly and remind the citizens of their voting rights. International bodies such as the United Nations can play a central role through the provision of technical assistance, training of EC officials, and sponsorship of voter education programs. Bangladesh has much to learn from Sri Lanka, where a well-established and representative electoral system has transparency or clearness in election malpractice.

Lastly, the Election Commission of Bangladesh is at a crossroads. It can either be a weak institution or a strong and independent body capable of ensuring free and fair elections. Free and fair elections are the foundations of a democratic state, and the credibility of the EC is necessary to ensure this fundamental right. Bangladesh will be in a position to strengthen its democratic roots, its politics will become more stable, and it will enhance its image as a democratic state if the reforms are implemented. The country must take the necessary steps so that the vote of every citizen truly counts and every election is a correct reflection of what the people intend.

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