

# The Crisis of Independence and Impartiality of the Election Commission of Bangladesh: A Study on the Eleventh National Parliamentary Election

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## ABSTRACT

An unbiased and independent election commission is the only option available for holding free, fair, and credible elections. The objectives of this study are to identify the specific causal factors of the independence and impartiality of election commission of Bangladesh and to assess the potential solutions to the Election Commission of Bangladesh apparent problems with independence and impartiality, as well as to uncover the evident reasons for such problems. This research has been carried out by using qualitative research methodology. According to the findings of this study, there is a significant gap between political parties and stakeholders in terms of electoral government. The Election Commission had to face many obstacles in organizing the 11<sup>th</sup> National Parliamentary elections. On the other hand, questions have been raised about the independence and impartiality of the Election Commission of Bangladesh. In arranging elections, political parties have generally shown a lack of cooperation. In some cases, the electoral system is being questioned due to the insufficient role of the government during the election. In addition, this study has reviewed various solutions to deal with the crisis of independence and impartiality facing the Election Commission of Bangladesh. Legal and economic autonomy need to prioritize as components of fair elections. Legal and economic autonomy have been prioritized as components of credible elections. On the other hand, the matter of giving priority to the formation of a neutral and accountable government in the formation of the Election Commission and the government during the election has been discussed.

**Keywords:** Election Commission of Bangladesh, Independence, Neutrality, 11<sup>th</sup> National Parliament Election

## INTRODUCTION

A free, fair, and credible election is the most important component of political culture to development of democracy. Elections are a formal process through which the people choose qualified representatives and entrust them with governance. Democracy not only functions through the electoral system but also through elections, which have become the regulator of democracy. Neutral elections are essential for the establishment of democracy. If elections are fair, the electorate can freely exercise their right to vote. Otherwise, it will have a great impact on the whole country and its people as well as the government system. A special election is not a novel concept. Elections have been practiced in Greece and Rome since ancient times. In the Middle Ages, elections were held to elect Roman emperors and popes (Staveley, 1972). However, in early medieval Bengal, elections were practiced among the Pala kings' regime by electing Gopala (Altekar, 2002).

The electoral process is a gauge of democracy in a nation. Through fair, and neutral elections, public opinion is reflected, and a government trusted by the people can be established. The electoral body in Bangladesh is the Election Commission. The Election Commission has been constituted as a constitutional institution by giving more importance to people's participation in the elections. A parliamentary system of government exists in Bangladesh. Therefore, national parliament elections are held after a certain period of

time to form the government. The Constitution has instruction for the formation of the Election Commission. The Election Commission conducts both national and local elections. Bangladesh has an independent and impartial Election Commission to conduct elections. The electoral system of Bangladesh is constitutionally prioritized. Articles (118) to (126) of the seventh part of the constitution provide instructions on the constitution and functions of the Election Commission. The full-time cooperation of the government to make the elections fair and impartial is also constitutionally guaranteed. The Election Commission of Bangladesh is an independent and impartial institution (Election Commission, 2021). The President constituted the Election Commission and appointed the Commissioners as per the Constitution.

The primary responsibility of the Election Commission is to conduct both national and local elections in an impartial manner. But there are positive and negative views about the role of the Election Commission in Bangladesh. Although the Election Commission has been constitutionally recognized as an independent institution, its independence and neutral role are questionable in recent day. Bangladesh has been experienced a democratic, military, and presidential democracy in the last 50 years since independence. Again, the governance system has alternated between parliamentary and democratic systems of government. Therefore, elections are conducted in a fair and desirable manner through various political channels, but the management of the governance system cannot be reached (CPD, 2012). The parliamentary democratic system and the conditions for free, fair, and credible elections are not fully realized in Bangladesh. From the National parliamentary elections to the local level election, no level of election was held with proper discipline or specific rules being fully followed (Kalerkantha, 2021). This is why parliamentary democracy and elections are naturally riddled with questions of irregularity and chaos. The idea of a national parliament came to Bangladesh from the British Parliament. The Legislative Council of Bengal was formed in 1861 (Ahmed, 2001), and after three amendments to the Government of India Act in 1909, 1919, and 1935, the Bengal Legislative Assembly was formed in 1937 through elections. Its first session was held in Calcutta on 7 April, 1937 with 250 members. The first session of the Constituent Assembly began on April 10, 1972, with 169 members of the National Assembly of Pakistan and 300 members of the East Pakistan Legislative Council elected from East Pakistan in the general elections held in December 1970 and January 1971 (Haque, 2007).

Since independence, various types of elections, including national and local, have been held at regular intervals in Bangladesh. Since independence, 12 election commissions have been formed and 11 parliamentary elections have been held. Furthermore, local government elections at various levels have been held at various times, including three presidential elections (1978, 1981, and 1986) and three referendums by popular vote (1977, 1985, and 1991) (Choudhury, 2018). Sometimes elections in Bangladesh are unpredictable, neither expected nor acceptable by political parties or the general public, and both the elections themselves and the political climate there are in flux, mainly because extraordinary parliamentary elections have raised a number of issues with Bangladesh's electoral system. The objectives of this discussions are to identify the specific causal factors of the independence and impartiality of election commission. To assess the potential solutions to the Election Commission of Bangladesh's apparent problems with independence and impartiality, as well as to uncover the evident reasons for such problems.

### **Election Commission in Bangladesh: Historical Background**

The first national parliamentary elections in post-independence Bangladesh were held on March 7, 1973. The Idris Commission held the first national parliamentary election. The first Chief Election Commissioner was Justice M Idris. After its chairman's name, this commission is known as the Idris Commission. The term of this commission was from July 7, 1972, to July 7, 1977. The second national parliament election in Bangladesh was held on February 18, 1979. The election was held under Justice AKM Nurul Islam. He is the longest serving Chief Election Commissioner in the history of Bangladesh. He assumed office on July 8, 1977, and resigned on February 17, 1985. He served for eight years (Chaudhury, 2018). Justice Chowdhury A.T.M Masud assumed office on February 17, 1985. He completed his term of five years on February 16,

1990. During Ershad's tenure, the third national parliament election was held on May 7, 1986, and the fourth election was held on March 3, 1988. That is, the second through fourth elections were held under military rule (Firoj, 2013).

After the re-establishment of democratic governance, Justice Sultan Hussain Khan took charge of the CEC on February 17, 1990, but he served only for ten months. He was in charge until December 24. The 5th, 7th, 8th, and 9th National Assembly elections were held under non-partisan caretaker governments (Haque, 2007). The 5th National Parliament election was held on February 27, 1991. After Justice Sultan Hussain Khan, Justice Mohammad Abdur Rauf was appointed as CEC. The National elections of 1991 were held to restore democracy. His commission conducted the election. He was in office until April 18, 1995. Justice AKM Sadek was appointed Chief Election Commissioner on April 27, 1995.

It was under his commission that the much-discussed and controversial Parliament election was held on February 15, 1996 in 6th National Parliamentary Election. The term of this commission was until April 6, 1996 (Gain, 2006). Former bureaucrat Muhammad Abu Hena took charge of the CEC on April 9, 1996, amid political turmoil surrounding the February 15 election. This is the first time a bureaucrat has been appointed to the post of Chief Election Commissioner. Seventh National Assembly elections were held under him on June 12, 1996. He served until May 8, 2000. M. A Sayeed took over as the eighth CEC on May 23, 2000. He was in office until May 22, 2005. On October 1, 2001, the 8th National Assembly election was held under this commission. The Aziz Commission is one of the most discussed commissions in the history of Bangladesh. Justice M.A. Aziz assumed command of the CEC on May 22, 2005. The schedule announced for the 9th National Assembly election on January 22, 2007; during a period of widespread political unrests. Later, the army-backed caretaker government chief, Fakhruddin Ahmad, canceled the schedule. M.A. Aziz resigned on January 21. During the army-backed caretaker government, Shamsul Huda was appointed as the new election commissioner. Under this commission, the ninth national parliamentary election was held on December 29, 2008. The term of this commission was from 5 February 2007 to 5 February 2012. On June 30, 2001, the Fifteenth Amendment Bill of the Constitution was passed by the National Assembly, abolishing the caretaker government system. Due to this, the 10th National Assembly elections were held under a party government. On February 9, 2012, the Rakibuddin Commission assumed responsibility. This former secretary was appointed by the then president, Zillur Rahman (Gain, 2006). Under the ruling Awami League government, this commission conducted the election of January 5, 2014, where 153 members of parliament were elected unopposed. Rakibuddin was relieved of duty on February 09, 2017, after the completion of five years. The Nurul Huda Commission is appointed as Bangladesh's twelfth commission. Former secretary K.M Nurul Huda was appointed as CEC on February 15, 2017. The other four election commissioners are Md. Rafiqul Islam, Mahbub Talukder, Kavita Khanam, and Shahadat Hossain Chowdhury. This is the first time a woman has been appointed as an election commissioner in Bangladesh. The last parliamentary election was held under this commission. Since independence, 13 election commissions have been formed in Bangladesh. Currently, Kazi Habibul Awal is appointed as Election Commissioner. The other four election commissioners are Brigadier General Md. Ahsan Habib Khan (ret), Begum Rasheda Sultan, Md. Alamgir, and Md. Anisur Rahman. This commission became effective on February 27, 2022.

On December 30, 2018, the 11th national parliament election was held under the 12th Election Commission. This is the last national election under the supervision of the Nurul Huda Commission. As the BNP and other political parties participated in this election, the election was not held uncontested in any seat. However, even before the start of the elections, there were complaints of irregularities, starting with the stuffing of ballot boxes. In a report prepared by the US State Department on March 11, 2020, on the human rights situation in Bangladesh, it was commented that the elections on December 30, 2018, were not free and fair (Samakal, 2020). In recent years, only two approaches have emerged in electoral democracy: increasing the number of uncontested elections, or controlling the votes of certain parties to ensure victory (The Business Standard, 2021). Moreover, presidential elections, city corporation elections, district council elections, upazila council elections, municipal elections, and union parishad elections are held under this commission. These local and national level elections have not been accepted as free, fair, and unanimous,

and the crisis of impartiality is noticeable. Except for a handful of commissions in the history of Bangladesh, including the 12th Election Commissioner K.M Nurul Huda Commission, almost everyone was not seen to be effective due to internal weakness, government influence, and other reasons. Although the Election Commission of Bangladesh is fully independent from the point of view of the law, it is not possible for the Election Commission to work independently if it does not get full cooperation from the main partners, especially the party government, in conducting fair, free, and acceptable elections. In order to protect the independence of the Election Commission, the role of the government is necessary, as is the active cooperation of other organizations. Any power needs an inflexible commissioner who is competent, impartial and uncompromising. Only the Constitution will guarantee the Election Commission's independence, and impartiality if it is unable to make and carry out decisions and actions independently and impartially. Then it won't be able to work in practice.

## THEORETICAL FRAMEWORK

In this study, the Election Commission of Bangladesh is understood as the Election Commission of Bangladesh. Independence and neutrality are defined in the following table and figure. In addition, the crisis of independence and impartiality refers to the obstacles and challenges in organizing fair, transparent, and credible elections. On the other hand, the role of the Election Commission has been analyzed in the 11<sup>th</sup> National Assembly election, which was held on December 30, 2018.

Three Levels of Electoral Governance	
Levels	Elements
<p>Rule-making: To select some basic rules or regulations and define it.</p> <p>1.1 Rules and regulations of the electoral competitions.</p>	<ul style="list-style-type: none"> <li>-Formula</li> <li>-District Magnitude</li> <li>-District areas</li> <li>-Size of the assembly</li> <li>-Timetable of the election</li> <li>-Voting rights (Franchise)</li> </ul>
<p>1.2 Rules and regulations of Electoral Governance.</p>	<ul style="list-style-type: none"> <li>-Voter registration</li> <li>- Deposition of party and candidate</li> <li>-Campaigning, financing, and regulation</li> <li>-Election monitoring</li> <li>-Ballot design</li> <li>-Polling station</li> <li>-Voting, Counting and Tabulating</li> <li>-Election Management Authority</li> <li>-Dispute Resolution Authority</li> </ul>
<p>2. Implementation of rules/rules</p> <p>Organization of Electronic Games</p>	<ul style="list-style-type: none"> <li>-Voter, candidate, party registration</li> <li>-Registration of election invigilators</li> <li>- Voter education</li> <li>-Electoral organizing</li> <li>- Voting, counting and reporting</li> </ul>
<p>3. Rule Adjudication</p> <p>Interpreting and analyzing election results and conflict resolution</p>	<ul style="list-style-type: none"> <li>-complaint formulation</li> <li>-Case processing</li> <li>- Publication and enforcement of judgments or rulings.</li> </ul>

<b>Autonomy of the Election Commission</b>	
a. Legislative Autonomy	<ul style="list-style-type: none"> <li>-From the executive branch of government and institutional autonomy.</li> <li>-Security will be ensured through various constitutional</li> </ul>
b. Economic autonomy	<ul style="list-style-type: none"> <li>-Economic autonomy needs to impose a uniform budget that will be approved by the legislature</li> <li>-Investment in designated sectors and prudent management of own resources</li> </ul>
C. An Independent Electoral Commission	<ul style="list-style-type: none"> <li>-It can be named by a group of members, the names of whom are suggested by neutral individuals and will be determined from the outside.</li> <li>-The members of the committee shall be non-partisan and impartial so that independence is preserved.</li> <li>-There may be representatives nominated by various political parties.</li> </ul>
Sources: Mozaffar, S., & Schedler, A., 2002; Amundsen, 2013.	

The Independence and impartiality of the Election Commission are protected in various countries. In their research work on electoral governance, Shaheen Mozaffar and Andreas Schedler (2002) elaborated on credible elections, electoral institutions, and democratization and highlighted the independence and impartiality of election commissions in different countries. Their discussion of 2000 in the United States, although revolving around presidential elections, shows that their model of three-level electoral governance is relevant to other democratic states. According to them, elections involve many things besides voting. Electoral governance revolves around an institutional framework that includes rule making, rule application, and rule adjudication. On the other hand, Inge Amundsen (2013) has completed a research paper on the checks and balances of election-centered institutions, which he has chosen as a case study of the African country of Angola. Independent Electoral Commissions have become essential for the organization of African opposition political parties after the transition to the third stage of democracy. Different countries have different models for election commissions. Sometimes it is run by a government, sometimes by a non-partisan caretaker government, and sometimes by a mixed system of commissions. Independence of the Election Commission generally refers to its independence from the executive branch and its constitutional basis to operate independently in matters of manpower, finance, and legal affairs.

## RESEARCH METHODOLOGY

In the present study, qualitative research methods were followed in the content analysis. Primary and secondary sources of information and data were collected in the research analysis. In the study, information and data were collected from key informants' interview to collect data from primary sources. Data were collected in the Key Information Interviews from concerned officials of the Bangladesh Election Commission Secretariat, as well as from general information and general voters in the country. Also, information and data have been collected from domestic and foreign sources such as domestic and foreign books, research papers, articles, books, periodicals, reports, media (printed newspapers, and visual media), internet, and websites, etc. for secondary sources.



## LITERATURE REVIEW

Elections are a very important element in consolidating democracy, regardless where it is developed or underdeveloped, in the East or the West. And the election process is a universally accepted custom and an essential part of a democratic system. At present, the formation of a new Election Commission to hold a Parliamentary election and held a participatory election by resolving the existing election-centric crisis in Bangladesh, further strengthening the Election Commission, and ensuring the neutrality of the election-time government are topic of discussion. However, significant research has not been observed on determining the crisis and analyzing the ways out of it to ensure the independence and neutrality of the Election Commission. Therefore, a kind of theoretical vacuum can be observed on this subject. Even in the context of Bangladesh, there is almost no direct book or essay on this subject. For this reason, some of the research

works, books, and essays that have been focused on determining the crisis and analyzing the ways to overcome it. In order to ensure the neutrality and independence of the Election Commission directly and indirectly, this has been reviewed.

In this study, edited by Al-Masud-Hasanuzzaman (2018), he pointed out that there is no alternative to legitimizing governance and holding elections in a peaceful transfer of power. Expression of public choice through regular, fair, and competitive and multi-party elections happened. This directly affects the social and political process. In the study, he added that elections are prerequisites for social cohesion, participatory behavior, and political institutionalization. The electoral system in the developing world, including Bangladesh, faces multi-dimensional problems and challenges. He mentioned that each article of this research will help reader to understand all the problems and challenges related to the election (Hasanujjaman,2018).

Dr. Nazmul Ahsan Kalimullah and Dr. Saber Ahmed Chowdhury (2020) completed their research work focusing on democracy, elections, and the Election Commission in South Asia. The researchers pointed out that the contrast in the electoral system in democratic countries is visible in south Asian countries. Although the majority-based electoral system is dominant in the region, proportional representation and mixed systems are the most common. This research paper reviews various aspects of elections and electioncommissions in eight South Asian countries (Kalimullah et al, 2020).

Islam Mahmudul (2012), in his study, highlighted the role, powers, and effectiveness of the Election Commission. It has been mentioned in this study that the Election Commission plays an important role in preserving democracy and implementing the legislature. Although the researcher pointed out various limitations in the election commission's neutral role, he did not provide any clear explanation or analysis on how the election commission can complete a Parliament election by ensuring independence and neutrality (Mahmudul, 2012).

Mahmud AHakim, (1993). Bangladesh Politics: The Shahabuddin Interregnum, in this study, the researchers emphasize elections under the dictatorship of Bangladesh. He made constructive criticisms of the rise and fall of autocracy, the movement for the establishment of democracy, elections for the establishment of democratic government, and various aspects of elections under a caretaker government. Here, the researcher presents the existing crisis of the political party system in the context of Bangladesh, the various limitations existing to ensure fair elections, and finally, the case for holding credible elections under the caretaker government. In the study, researchers analyzed the political culture and problems of Bangladesh in recent times (Hakim, 1993).

Badruddin Umar, (2009) presented various realities in this study that criticized the conduct of fair, and neutral elections by a caretaker government under military rule. However, the study did not discuss how to pave the way for the establishment of democracy through neutral elections. In this study, the researcher has highlighted the importance of military interference in politics in the context of our country, doubts among political parties, a lack of democratic practices within political parties, etc. (Umar, (2009).

1. Hassan Sarowardy, (2010), in this research the researcher emphasized the importance of elections in maintaining democracy in our country, particularly the Election Commission. In this study, he mentioned another thing, which is the declining participation or low rate of participation of the people in the elections, which he mentioned is a cause for great concern (Sarowardy, 2010).

Reviewing the above research works, it can be seen in the discussion, explanation, and analysis related to the Election Commission of Bangladesh that, although the problems or crises of the Election Commission are discussed and researched, there is a specific place in Bangladesh. In this context, no research has been carried out on the challenges faced by the Election Commission in conducting the elections while ensuring independence and neutrality in the 11th national election. The study assesses the crisis of the Election Commission and how to facilitate the establishment of democracy through free and fair elections under a transparent and effective Election Commission. It will play an important role.

### **The specific causal factors of the independence and impartiality of Election Commission**

#### **Obstacles in the 11<sup>th</sup> parliamentary elections**

The 11<sup>th</sup> parliamentary election of Bangladesh was held on December 30, 2018. Bangladesh Awami League exclusively won the election (Prothom Alo, 31 December 2018). On November 8, 2018, Chief Election Commissioner of the Election Commission K.M Nurul Huda announced the schedule for the 11<sup>th</sup> parliamentary elections. The election date was fixed on 23 December, 2018 after the announcement of the schedule, but it was postponed to 30 December, 2018 due to the rescheduling of November 12 (BBC Bangla, November 12, 2018).

A total of thirty-nine registered parties in Bangladesh, including the two major parties in Bangladesh, the Grand Alliance led by the Bangladesh Awami League and the Bangladesh Nationalist Party (BNP), and the Jatiya Oikyafront alliance, took part in the election. A total of one thousand, eight hundred forty-eight candidates contested the election, of which one hundred twenty-eight were independents (Bangladesh Election Commission). Besides, the Election Commission postponed the voting in Gaibandha-3 constituency due to the death of Oikyafront nominated candidate Fazle Rabbi Chowdhury on the eve of the election on December 19, 2018, and announced the rescheduling of voting in the constituency on 27 January, 2019 (Daily Star, December 29, 2018).

The total number of voters across the country in the election was ten billion, forty-one lakh, ninety thousand, four hundred eighty of which five billion, twenty-five lakhs, forty-seven thousand, three hundred twenty-nine are men and five billion, sixteen lakhs, forty-three thousand, one hundred fifty-one are women voters (Election Commission of Bangladesh). Voters exercised their franchise at forty thousand, one hundred and ninety-nine polling stations. For the first time in Bangladesh, voting was held entirely with EVMs (Electronic Voting Machines) in six constituencies. The seats used are Dhaka-6, Dhaka-13, Chattogram-9, Rangpur-3, Khulna-2, and Satkhira-2. As many as twenty-two candidates of Bangladesh Jamaat-e-Islami took part in the election under the symbol of 'Dhaner Shish', as they were not registered as a political party. However, on the day of the election, Jamaat-e-Islami boycotted the election. Independent candidate Salma Islam, and the BJP's Andaleeb Rahman also boycotted the vote (Prothom Alo, December 30, 2018).

Between December 9 and 12, 2018, there were forty-seven incidents of violence, according to various reports, in which eight people were killed and five hundred sixty injured. According to information provided by the BNP office, the opposition till December 26, 2018, a total of twelve thousand, nine hundred twenty-three people were killed in the two thousand eight hundred thirty-three attacks on the oppositions (most of whom are leaders and activists of BNP, Jatiya Oikyafront and Twenty-party alliance) injured (Dhaka Tribune, December 21, 2018). From November 8 to November 25, BNP leaders and activists have been from

December 10 to 28, fifty-six candidates (most of them from the BNP) contesting the election were attacked, one- thousand one hundred ninety were injured, and eight hundred BNP-Jamaat leaders and activists were arrested. In the 11<sup>th</sup> national election, fifteen people were killed in different districts in violence (BBC Bangla, December 30, 2018).

On 29 December, 2018 the Bangladesh Telecommunication Regulatory Commission ordered the suspension of 3G and 4G services on mobile internet, which will remain in force until 31 December, 2018 (Ittefaq, December 29, 2018). Later, on 29 December, 2018 at 11 pm. Bangladesh time, another directive was given to completely stop the mobile internet service (Prothom Alo, December 29, 2018).

On 11 March, 2020, a report prepared by the US State Department on the human rights situation in Bangladesh commented that the 30 December, 2018 election was not free and fair (Samakal, March 13, 2020). Awami League declares that, the report is one-sided and unacceptable (Jugantor, March 3, 2020).

After independence, a total of 11 parliamentary elections were held, including the 11<sup>th</sup> parliamentary elections. In the 11 parliamentary elections of independent Bangladesh, three political parties came to power in a circular manner. In the meantime, Awami League and BNP came to power four times, but Awami League formed the government for the fifth time with the victory in the 11<sup>th</sup> parliamentary elections. But there has been a lack of doubt, confidence, and participation in the minds of the people regarding the 11<sup>th</sup> parliamentary election. Moreover, all political parties played on the same unlevel playing field, which was unfavorable. The need of the hour is to form a new Election Commission to hold a credible, and participatory election to resolve the existing crisis in Bangladesh and to further strengthen the Election Commission and ensure the neutrality of the election-time government.

#### Crisis of independence and neutrality of the Election Commission

In order to further strengthen the Election Commission and ensure the neutrality of the election-time government, articles 118–126 of the Constitution of Bangladesh provide guidelines for the formation of the Election Commission for conducting all the activities related to the conduct of elections, as well as rules and regulations for determining its powers and scope. The current political crisis in Bangladesh has accelerated some crisis due to the failure of the existing Election Commission to hold participatory elections in a neutral manner. In order to resolve this crisis, it has become imperative to have a permanent system for holding free, fair, credible, and participatory elections that are acceptable to all, whether through an election-time neutral government or an independent election commission. The number of elections to local government institutions held in a fair manner in the last decade is also very low. The Constitution of Bangladesh, the (RPO) Representation of the People Order 1972, and various regulations have given our EC enough power to hold a fair election. According to many, Bangladesh's EC is stronger than India's EC in terms legal power (Hessen, 2014). Nevertheless, the EC of Bangladesh is not able to play an effective role in the smooth conduct of the parliamentary elections and the elections of local government institutions. 1st, 2nd, 3rd, 4th, 6th, 10<sup>th</sup>, and 11th national governments in power played a major role in conducting the elections. The EC's role in this regard was secondary. In these elections, especially in the 10th and 11th national elections, there is reluctance in the participation of the people, and irregularities affect the local government elections. Therefore, the people lose faith in the elections, which is a warning sign for democracy (Prothom Alo, 14 February, 2022). The main reasons for the EC not being able to play an effective role in the elections are the interference of party governments in the elections, the failure of the EC to believe in the ideology of the party in preventing and showing firmness in conducting free and fair elections (Hossain, 2014).

Besides, according to the Constitution of Bangladesh, the appointment of the Election Commissioner is vested in the President. Naturally, the Election Commission is facing big crisis in creating the freedom and neutrality of the election. However, the government has taken the initiative to make the Election Commission, the Chief Election Commissioner and other Election Commissioners fully regulated by the Enforcement Act, 2022. The act was passed by the National Parliament of Bangladesh on January 27, 2022.



In this Act, provisions have been made for the appointment of the Chief Election Commissioner and other Election Commissioners, as mentioned in Article 118 (1) of the Constitution of the People's Republic of Bangladesh. This is the first such law since independence (EC Recruitment Bill Gazette, Election Commission of Bangladesh). Even if the new bill is passed, the commission has been kept dependent on the executive department.

According to Articles 88 (2), (3), 7 (1), (2) and 16 of the Constitution of Bangladesh, the Election Commission is structurally and financially independent (Constitution of Bangladesh). But operationally, the Election Commission does not have independence and its dependency on the executive department can be seen, which creates a crisis in the creation of freedom and neutrality in the election.

The government's cooperation and the independence of the Election Commission are closely linked. Because the Election Commission has to rely completely on government officials and law enforcement agencies to conduct the election. For this reason, the role of the government and the Election Commission in conducting the elections should be complementary. Therefore, the electoral culture of this country and holding fair elections are largely dependent on the goodwill of the government, which is an obstacle to the creation of freedom of election and neutrality.

There is a long scholarly and political debate about the election crisis in Bangladesh. It is regarded that election is tool of legitimacy. There are constitutional rules and regulations for organizing parliamentary elections every five years. However, since the emergence of democracy in Bangladesh, some parliamentary elections have not been held on time (1973-1991). Sometimes voters did not practice their voting rights, though elections are the key element of a democratic system (Huque & Hakim 1993). One of the most important criteria for elections and democratic governments is legitimacy. But sometimes, it has been seen that it was missing in the election process in Bangladesh. For example, some critics argue that the 10th parliamentary elections were held without maintaining all legal procedures and the legitimacy of the election process. The voter turnout was about 22.66%, and the majority of the parliament members were elected without contesting the election as the opposition party did not attend the election due to a lack of faith in the election process for the interim government and the election system (Abedin, 2020). It has been observed that the 11th Parliamentary election did not also maintain the legitimacy process as per the data and sources, voters' feedbacks, and election observers and researchers.

### **Lack of cooperative attitude among political parties**

A political party is an essential institution of democracy. Political parties are governed by different principles and ideologies. These parties represent the people, set policies and run the government for the welfare of the people (Powell, 2000). But a fair election is essential for proper representation and smooth administration. This type of election is not only possible with an efficient and independent election commission but also will of the government, political parties and the people is very important. Although the Election Commission plays a major role in holding credible election in the democratic process and conducting the election, the cooperation of the political parties and the people is essential. Therefore, the Election Commission will have to complete this work with the cooperation of the executive department, political parties, and the public.

As a constitutional institution, the Election Commission has taken an oath to protect and preserve the provisions of the Constitution in addition to fulfilling the duties constitutionally assigned to them. One of the main responsibilities of the Election Commission of Bangladesh is to closely review the rules relating to the registration of political parties in Bangladesh and to register the parties in a constitutional manner (Haque, 2008). In order to hold the election on a party basis, the concerned party has to be registered with the Election Commission. Registration is required if it is independent. But no party can participate in the election without registration. At present, forty political parties in Bangladesh have been registered with the Election Commission. There are about hundred political parties in Bangladesh. Even in the 11<sup>th</sup>

parliamentary elections, ninety-three political parties contested. Such a large number of parties have participated in the parliamentary elections without the registration of the Commission or will also take part in the 12<sup>th</sup> election in the future. Political leaders and parties are accountable to the people and the Constitution in the elections. The role of the Election Commission is questioned if it does not play a patriotic, responsible, and constructive role in elections, which disrupts freedom and neutrality.

The essential role and vitality of political parties in the exercise of democracy are well known. It is well known that the political system, and multi-dimensional process, and party activities affect the lives of citizens directly and indirectly. The driving force of the democratic system is the political party, which is the main tool of political power. But in this country, the practice of internal party democracy among the major political parties is at a very pathetic stage. Over the years, there have been absences from annual conferences, committee reorganizations, and leadership changes within the parties (Ahmed, 2001). Undemocratic practice influences a culture and the country as a whole. In this case, the role of election is secondary. In the Election Commission, where the elections are held side by side the freedom and neutrality of the election is threatened.

Electoral violence is increasing alarmingly in the political culture in this country. The lack of tolerance among all political parties, including the major political parties, is increasing even as the use of firearms and the loss of life in election violence are going to become almost a regular occurrence (Hasanuzzaman, 2018) between 2013 and 2017, ten thousand one hundred forty five were injured and one hundred forty six people were killed in eight hundred forty five incidents of violence within the Awami League one thousand seven hundred two were injured in one hundred sixty incidents of BNP's internal conflicts between 2018 on 9 to 12 December, 47 incidents of violence was occurred.

Among them, 8 people were killed five hundred sixty were injured. In the 11<sup>th</sup> parliamentary election, which took place from December 10 to December 28, fifty six candidates (most of them from the BNP) who contested the election were attacked. One thousand one hundred ninety people were injured, and eight hundred BNP-Jamaat leaders and activists were arrested. In the 11<sup>th</sup> national election, fifteen people were killed in different districts in violence (BBC Bangla, December 30, 2018). The role of the election is to end electoral violence which is secondary. Therefore, people are losing confidence in political parties and political leaders. As well as creating freedom and neutrality in the elections, there is also a crisis in the field.

### **Lack of effective role of an interim government**

In the present reality of Bangladesh, it is not enough to form a neutral election commission on the basis of consensus for a fair election that is participatory and credible to all political parties. It is not possible to ensure a fair election and the credibility and acceptability of the election without providing all-out administrative and logistical support to the Election Commission and the support and cooperation of the law enforcement agencies, including the defense forces (Prothom Alo, 2013).

Therefore, a neutral and non-partisan government is needed during the election so that the Election Commission can present a fair, acceptable election to the nation by holding credible elections. As a democratic country, the government and the Election Commission should ensure that every political party conducts political activities equally, from the announcement of the election schedule to the publication of the results. Especially in the election campaign, it should be ensured that there is no bias towards the government party or alliance and hostile behavior towards the opposition party or alliance. Therefore, immediately after the formation of the new Election Commission, the government, the nation, and above all, the democracy. It is necessary to play a neutral role in the interest of doing so. Due to the lack of neutral role of the government, the Election Commission is unable to play a strong role. Because, in reality, the Election Commission is dependent on the executive department as well as the government. Therefore, the role of the Election Commission is often questioned as a result of which the Election Commission of Bangladesh there is a lot of discussion and criticism in the academic and political arena about independence and neutrality (Hossain, 2017).

## **ANALYSIS THE WAYS TO RESOLVE THE CRISIS OF INDEPENDENCE AND NEUTRALITY OF THE ELECTION COMMISSION OF BANGLADESH**

1. In order to further strengthen the Election Commission, necessary amendments may be added to the following issues in the existing (RPO) the Representation of the People Order (Kallol, 2022; Majumdar, 2013).
2. to deploy the security forces during the elections and to give them magistracy power.
3. When the ballot box is full during the voting, the filled boxes or other boxes should be kept in the respective booths so that they are visible to the concerned assistant presiding officer and election agents or polling agents.
4. At the end of the vote, only the ballot boxes used in the voting are open for the counting of ballots.
5. No one should leave the polling station without handing signed result sheet of presiding officer over the polling agent to the polling station.
6. The Election Commission of Bangladesh has to form its own secretariat and ensure the financial independence of the Election Commission Secretariat.
7. According to this proposal, the neutrality of all the officers and employees working in the newly formed Election Commission's own secretariat and working at the field level as well as the presiding officers and employees associated with the election process, will have to be ensured.
8. During the election, some important ministries, including the ministries of public administration, home, finance, and information, will have to be forced to take effective measures according to the demands of the Election Commission. The new government elected from the date of announcement of the election-time election schedule is not in charge. Until it is taken, the respective ministries and field-level transfers and postings should be completely under the jurisdiction of the Election Commission.
9. In order to make the national election acceptable, the Election Commission will have to withdraw, the deputy commissioners and superintendents of police working at the field level at the time of the announcement of the election schedule and appoint new officers in their place. Officers who have been serving in that district for the last five years in different capacities cannot be posted as deputy commissioners and superintendents of police in the same district. Similarly, upazilanirbahi officers and officers-in-charge of upazila and thana levels will have to be withdrawn and arrangements should be made to appoint new officers. No officer who was employed in that upazila or police station at any time before the new officer's post can be posted in the same upazila or police station.
10. The boundaries of the JatiyaSangsad constituency should be redrawn. The newly formed Election Commission will take measures to hear complaints related to the demarcation of the boundaries of the constituencies for the national parliament elections raised by the political parties and will redraw the necessary boundaries as per the laws and provisions related to the delimitation of the constituencies.
11. The Voter list should be updated, and new voter registration should be done. Expatriates, political leaders, and activists have to ensure voting rights.
12. During the election, the Election Commission of Bangladesh will have to give judicial or magisterial powers to its own officials. According to the (RPO) the Representation of the People Order of 1972, this power is reserved for the commission officials.
13. Advanced training measures should be taken to enhance the skills of the election officers and employees currently working. The Election Commission will have to arrange training for Upazila and district-level workers of political parties and potential polling agents on election laws and regulations. The capacity of the training institutes under the Election Commission of Bangladesh should be increased. In view of the immediate violation of the election laws and regulations, immediate remedies should be taken, and the actions taken should be made public.
14. At least seven days before the election, the names and identities of the national and local observer agencies and the names and lists of their designated observers, as well as the names and lists of

observers employed by international agencies, foreign observer agencies, and foreign states, must be published.

15. Proper implementation of the law: Although the electoral law of Bangladesh is positive and sustainable compared to other countries, the reluctance and laxity of the concerned authorities in implementing it is often manifest. In this case, proper enforcement of the law is necessary to make the electoral system stronger and more effective. The Election Commission Secretariat Act, 2009, which seeks to strengthen the electoral system, needs to be more sincere in its implementing. Article 7 of the Act guarantees the financial independence of the Election Commission. On the other hand, Article 16 of the Act gives priority to the Election Commission in spending money (BDLAWS, February 24, 2009)

### ***Relevant laws need to be Amended***

The areas of the independence crisis of the Election Commission of Bangladesh are very complex. It's not always in question. The issues of the neutrality crisis of this commission are largely dependent on the election-time government. In order to further increase the independence of the Election Commission of Bangladesh, the concerned authorities should be empowered to decide on legal and financial matters (K. Ahmed[1], personal communication, June 07, 2022).

In order to maintain the neutrality of the Election Commission of Bangladesh, the concerned authorities need to provide the national and international observers with the opportunity of uninterrupted monitoring. In addition, neutrality should be maintained in the enforcement of the law during the election (P. Chowdhury[2], personal communication, June 08, 2022).

There needs to be consensus among political parties to strengthen the Election Commission. In order to strengthen the Election Commission, the government needs to maintain election-time neutrality (M. Bhuiyan [3], personal Contact, June 09, 2022).

According to election experts, the Election Commission of Bangladesh, although stronger than India, is struggling to maintain the independence and neutrality of the commission due to the party government (J. Mandal[4], personal communication, June 10, 2022).

In the formation of the Election Commission, it is necessary to resolve various issues regarding the independence and impartiality of the Commission from the "search committee and legal point of view" (T. Sarkar[5], personal communication, June 11, 2022).

The Election Commission of Bangladesh should have legal autonomy as well as free from political influence, so that the law can be fully implemented. If the economic autonomy of the Election Commission of Bangladesh is ensured, the current problem will be reduced to a great extent (M. Hasan[6], personal communication, June 13, 2022).

The challenges facing the Election Commission of Bangladesh are to not fully implement the existing laws and not to maintain election-time neutrality. The limitations of the Election Commission of Bangladesh are not to maintain neutrality during the elections and to act on behalf of the party government, respectively (J. Ahmed[7], personal communication, June 12, 2022).

## **DISCUSSION AND RESULTS**

Since independence, 11 parliamentary elections have been held in our country so far, and 13 election commissions have been formed to conduct these elections in a free, fair, and neutral manner. These election commissions are different in the political context of our country and conducted national and local elections



at the level best.

Since independence, the history of parliamentary democracy in Bangladesh has been full of systematic changes and protests over the legitimacy of elections. Holding an election acceptable to all rivals and political parties is the first step to institutionalizing democracy (CPD, 2012). But even after 50 years of independence, conducting a free, fair, and credible election for Bangladesh is still a big challenge. Article 119 of the Constitution of Bangladesh mentions the responsibilities of the Election Commission. It is the responsibility of the Election Commission to conduct presidential and parliamentary elections, prepare voter lists for elections, redraw the boundaries of constituencies, and conduct other elections as determined by law. Of these, all local government councils—for example, union parishads, municipalities, city corporations, upazila parishads, zila parishads, and hill district councils—are included. The Election Commission will be independent in the proper performance of its functions and will be subject only to the Constitution and the law. It is the responsibility and duty of all the authorities to assist the Election Commission in discharging its duties in 2021, therefore, there is no disagreement between the government, the opposition political parties, and the voters that the Election Commission's work as an independent institution will organize a participatory and acceptable election. But in our country, there is a lot of debate about the acceptability of the Election Commission, as well as the efficiency and competence of the 12th Commission, or 'Nurul Huda's' commission which has been performing its duties since February 15, 2017 in Bangladesh. The other four are election commissioners. Rafiqul Islam, Mahbub Talukder, Kabita Khanam, and Shahadat Hossain Chowdhury. This commission has completed its term. Whether it has been able to carry out these activities independently according to the constitution. Otherwise, determining why it did not happen in a democratic country like Bangladesh. Because every election in this country is plagued by various protests. At present, the Election Commission has to work under the political government, so the internal weakness of the Election Commission is seen to increase greatly. As a result, when the election management of the Election Commission was completed and the results of the election were published, the opposition party withdrew them and presented allegations of rigging. Even the election has lost its natural acceptance among the political parties and the general public, and there has been indifference or disinterest in the minds of the people in this regard. For this reason, in an emerging democracy like Bangladesh, it is necessary and more logical for the country and the nation to analyze and research the explanation on this issue.

Since independence, 13 election commissions have been formed, ranging from 1973 to 2022. The first national election in independent Bangladesh was held in 1973 under the supervision of the Idris Commission, and later in 2017, the 12th Election Commission was formed. Apart from three of these 12 commissions, nine commissions have conducted 11 parliamentary elections. Elections were held in 1979, 1986, and 1988. Elections were held in 1991 under the non-partisan, neutral caretaker government after the mass upsurge of 1990, with the aim of freeing the Election Commission from the possible influence of the ruling political government under the supervision of military rulers. When the BNP came to power, the February election of that year was held unilaterally under the BNP party government. After this controversial election, in the face of the movement, the constitution was amended to include the system of caretaker government in the constitution. Elections were held under the caretaker government in June of that year, and the Awami League came to power. Then, in 2001, BNP came to power through elections under the caretaker government. The verdict Election observers at home and abroad have opined that the elections held under the caretaker government in 1991, 1996, 2001, and 2008 were free, fair and neutral, and the Election Commission was able to function independently and independently (CPD, 2012). After the Awami League came to power in 2008, the BNP-Jamaat alliance boycotted the elections under the party government in 2014. It scrapped the caretaker government system following a court verdict. They demand elections under a caretaker government. In 2018 too, they demanded elections under a non-party neutral government. But the ruling Awami League rejected the demand and held the 10th parliamentary election in 2014 and the 11th election in 2018 under them, as per the constitution. As a result, there is a lot of debate about the acceptability of this election. Taking a measure regarding the national parliament election



acceptable to all political parties and all the electorates and voters and ensuring the acceptance of the election commission is the present in our country is necessary according to our context. The general public wants to see an independent and reliable Election Commission in the national and local elections, with the participation of all people.

## CONCLUSION

To elevated democracy and uphold the rights of the people there is no alternative free, fair and credible election. The unfortunate truth that, the crisis of independence and neutrality facing the each and every Election therefore Election Commission of Bangladesh has become a debatable topic. Since independence, the Election Commission has been organizing various parliamentary elections. On the transparency, acceptability, and impartiality of this election, there are differences of opinion among voters and concerned quarters. Election Commission, Chief Election Commissioner and election-time government in the electoral system plays an important role.

In this study, there is a difference of opinion among the stakeholders concerned about the Election Commission in the 11<sup>th</sup> parliamentary election. According to a report prepared by the US State Department about the 11<sup>th</sup> parliamentary elections, leaders and activists of opposition political parties are being harassed in Bangladesh. Law enforcement personnel are getting impunity for illegal activities and the government is not taking any effective action in this regard. According to the report, various irregularities, ballot snatching, expulsion of agents, and voters of opposition political parties have been reported around the election of December 30, 2018. At the same time, there are credible reports of threats, harassment, illegal detention and violent attacks on opposition party candidates during the election campaign. Due to the adverse situation, the opposition candidates could not campaign freely and safely (Dhaka Tribune, 2018). International election observers were not given visas and monitoring permits to enter Bangladesh. Of the 22 non-governmental development organizations (NGOs), only seven have been allowed to monitor local elections as observers. Journalists and human rights activists are being detained illegally, and various websites of dissent against the government are being blocked (Prothom Alo, 2018), as can be seen.

Therefore, in this research after reviewing the 11th national election and its crisis, it can be said that the commission, which performed its duties in the currently endangered election system, has not been able to complete an acceptable election despite giving the whole nation the assurance of a participatory, acceptable, neutral election. Seeing the continuous crisis of independence and neutrality of the Election Commission in Bangladesh, the voters are worried about the future of democracy. It will also be difficult to maintain the image of Bangladesh in the democratic world if continuous elections are not acceptable. However, to uphold the democracy, the government should take sincere initiatives. First of all, arrangements should be made to hold the parliamentary elections by discussing and consulting with all the parties to resolve the current crisis. The Election Commission should be given full freedom to conduct elections. In this study, the analysis of potential solutions for the Bangladeshi Election Commission's independence and neutrality dilemma can be stated to be a key component of our declaration of independence, just as the election results of 1970 were. The only thing we can hope for is that every commission will seek to revive that nearly extinct spirit.

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## FOOT NOTES

- [1] Pseudonyms
- [2] Pseudonyms
- [3] Pseudonyms
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