

FOCUS

Law and Our Rights

Election Expenses: Law and Reality

by Dr Borhan Uddin Khan

History of election manipulation by money was initiated by introducing the so called "Basic Democracy" by the military rulers during the Pakistani period. After independence, the legacy of that practice was carried through. Now, it has been deeply ingrained in our political culture and it appears that money is regarded as the most important criteria for obtaining majority support.

THE periodical holding of general elections is the sine qua non of democratic form of government. As democracy essentially implies people's representation in the governance of a country, only free and fair election can ensure good governance. This is reflected in Article 21 of the Universal Declaration of Human Rights of 1948 which reads:

The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The spirit of Universal Declaration of Human Rights has been fully endorsed by the Constitution of Bangladesh. Article 7 of our Constitution declares: All powers in the Republic belong to the people and their exercise on behalf of the people, shall be effected only under, and by the authority of, this Constitution.

Article 11 declares the Republic to be: a democracy... in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

Thus, election is the ultimate exercise of sovereign power by the people to choose representatives.

But election as a means for democratic governance, probably, has not yet fully evolved as a free and fair institution in Bangladesh. Electoral process is often subverted by various mechanisms. Socio-political conditions and the absence of healthy democratic culture are mainly responsible for the subversion of the electoral process. Robert Dahl in his book Who Governs has remarked:

In a political system where nearly every adult may vote but where knowledge, wealth, social position, access to officials and other resources are unequally distributed, who actually governs?

The above statement is applicable to Bangladesh where socio-economic deprivation and lack of minimum degree of political consciousness makes democratic governance difficult. Election, which is an integral part of democracy, is also a reflection of this situation. Democratic governance is facing the challenge of non-transparency, corruption, unaccountability, and practice of excessive use of money. Although free and fair election is fundamental for the democratic process, yet, the electoral culture appears to have often heavily relied on money, musclemen and illegal arms. It is axiomatic that quality of politics and aspirations of people may be vitiated by the excessive use of money in the electoral process.

History of election manipulation by money was initiated by introducing the so called "Basic Democracy" by the military rulers during the Pakistani period. After independence, the legacy of that practice was carried through. Now, it has been deeply ingrained in our political culture and it appears that money is regarded as the most important criteria for obtaining majority support.

It is imperative that for emergence of democracy in the true sense of the term, the evil of money ought to be eradicated. As a matter of fact, over the years, excessive use of money has become a regular feature of the electoral process. Laws permit the candidates to spend only a limited amount of money and impose penalty upon candidates who spend more than the specified amount. Conscious section of the people believe that many

candidates explicitly spend more than the amount specified in the law. A great concern is that a vast amount of money is used in general election by the candidates to subvert the electoral process which amounts to total negation of voting right. Although violation of election expense regime is a reality, yet nobody has so far been prosecuted for such violations.

Role of Money in Election Process

There is no denying the fact that campaign plays a vital role in the whole election process. In fact, it stands at the heart of the entire election process as its brings the candidates into close public contact. Election campaign is a process by which a candidate or a political party exposes herself/himself/itself to the voters at large and draws their opinion and sympathy in her/his/its favour. In many ways, it is a form of political advertisement where the competing parties enter the electoral market to sell their respective issue-products. Clearly, a party which is better funded than its rivals has a considerable advantage at general elections. The more money a political party has at its disposal, the more advantages it can obtain in organising and administering the election campaign.

The methods of exposing to and entering the electoral market are alike, in the bulk, for most candidates. Ordinarily this advertisement takes place in the form of:

Posters, leaflets
Portraits, symbols, placards
Caps, badges
Banners
Camps

Processions, rallies, meetings
Miking
Door to door communication
Press advertisement etc.

All these forms of campaign are prevalent in our country and are permitted by law, to a certain extent. Almost all the candidates resort to these common forms of campaign which entail spending a huge amount of money. Thus, rule of money in campaign can hardly be denied. But the problem lies in the excessive use of money. When the election campaign reaches its peak, most of the candidates are no longer within the limit of law regarding forms of campaign. At this stage, they rush in endless competition in varying forms and innovating new manners of campaign all of which require outlay of increasingly larger sums of money. At the same time expenditure are incurred for activities which is clearly beyond the limits said by the law. These illegal forms of expenditure may include provisions for:

Donation to clubs, samitis, market committees, various charitable, religious and social organizations in cash or in kind;
Employment of musclemen, masts;
Use of illegal arms and other instruments to intimidate and coerce voters;
Purchasing votes;
Gifts, loans;
Pre-poll promises/commitments etc.

Thus, election campaign which is usually considered as a measure of persuasion may become a matter of coercion and pressure with tricks and traps to mould public opinion and to manipulate electorate on a parochial and partisan lines.

In this way elections have become increasingly costly in our country. As a matter of fact, use of money starts with the very attempt of a nomination seeker from a particular politi-

cal party. In view of the fact that money is of crucial importance to the election campaigning efforts, a qualitative change has recently been made by the political parties in case of selecting candidates for general election. Thus, political parties have shown a new trend of granting nominations on the basis of pecuniary powers of the respective candidates. Instead of political commitments, ideological identity, patriotism, nature of wealth, appears to have become the dominant criterion for securing nomination from major political parties.

However, expending a huge quantity of money do not ensure the desired electoral outcome if the millionaire candidate is not contesting as a member of one of the leading political parties. This buying of party nomination often takes place in the form of contribution or donation to the political parties and this contribution or donation forms a part of the fund for election expenditure of a political party which is later distributed amongst other candidates as 'help funds'.

In some cases, an ill-competition begins among political parties to give nomination to one candidate having significant money power. This increasingly significant role of money is probably due to moving away of political parties from their traditional service-centric role to a more power-centric role. Thirst for power instead of public service may conceivably derail our democracy which is still in its infancy.

IMPACT OF EXCESSIVE USE OF MONEY IN ELECTION

Unlimited flow of money during the election period creates a vested interest group, social touts and fake agents. Innocent young generation is attracted by money to election campaigning and violence. In the last parliamentary election children were also used in various purposes.

Impact of illegal use of money on democratic politics is self-evident. Relationship between participation and fiscal equality of the candidates is an important issue. In any democratic system each citizen's ability to influence government should be equal, so that differences in personal resources do not work against the poor or otherwise disadvantaged candidates. But the illegal use of money destroys this basic relationship between participation and equality. As a result, qualitative change in politics has been experienced in recent years. Businessmen, retired bureaucrats and army personnel's with little political evident in the past Parliamentary Elections:

NATIONAL AND PROVINCIAL COUNCIL ELECTION OF 1970: PROFESSIONAL GROUPS

PROFESSIONS	NUMBER SEATS	% OF SEATS
Lawyers	79	29.47
Businessmen/Industrialists	72	26.86
Agriculture	34	12.67
Teachers	25	9.32
Doctors	20	7.46
Others	19	7.06
Landlord	12	4.46
Service holder	7	2.60
Total	368	100

In the election of 1970 the members of Parliament mostly hailed from middle class families. According to Professor Rehman Sobhan and Mozaffar Ahmed, annual income of the fathers of the 60% members of the Parliament was nearly ten thousand taka. The annual income of the 76% members of parliament was below thirty thousand taka which was nearing the income of a middle class family.

5TH PARLIAMENT OF 1991: PROFESSIONAL GROUPS

PROFESSIONS	NUMBER SEATS	% OF SEATS
Businessmen/Industrialists	145	48.3
Lawyers	53	18
Agriculturist	11	3.7
Teachers/Researchers	20	6.6
Journalists	4	1.3
Doctors	7	2.3
Retired Army officials	16	5.3
Politicians	7	2.3
Student leader	1	.3
Retired Bureaucrats	8	3
Others	28	9.3
Total	300	100

Data on professional affiliations of Members of the 6th Parliament is not available. However, data on profession affiliation of candidates for election to the current i.e., the 7th Parliament is depicted in the following table:

7TH PARLIAMENTARY ELECTION OF 1996: PROFESSIONAL GROUPS OF CANDIDATES

PROFESSIONS	NUMBER OF CANDIDATES	% OF CANDIDATES
Businessmen/Industrialists	667	74
Lawyers	93	10
Politicians	71	7
Teachers/Researchers	27	3
Doctors	22	2
Agriculturists	9	1
Journalists	7	0.77
Engineers	4	0.44
TOTAL	900	98.21

From the above data, it can be seen that a fundamental shift has occurred in the pattern of professional representation. The over all impact of such changes has already been seen in our political culture. Politicians and professionals with political commitment are often neglected within their respective party. As a result, frustration and dissatisfaction is growing among the genuine and dedicated political activists.

Offering nomination to rich people has disappointed and dissatisfied many genuine and committed politicians of all the major political parties in the last Parliamentary election. An opportunity of being nominated for Parliamentary election is the greatest reward for a dedicated activist and in some instances, this reward is snatched away by a millionaire just a few days before the poll. One the other hand, activist with real dedication are not being properly evaluated and, on other hand, millionaires are easily obtaining nomination from leading political parties. Rich men are replacing the honest and dedicated activists. Gressum's law which propagates that bad elements drives away the good one is now relevant for our political culture.

AN OVER VIEW OF EXISTING LAWS REGARDING ELECTION EXPENSES

Parliamentary election is regulated and, on other hand, millionaires are easily obtaining nomination from leading political parties. Rich men are replacing the honest and dedicated activists. Gressum's law which propagates that bad elements drives away the good one is now relevant for our political culture.

tion expense to the Returning Officer within seven days next following the withdrawal day. Such statement shall also be accompanied by a statement of the contesting candidate's assets and liabilities and his annual income and expenditure.

Article 44B clearly provides that payment towards the election expenses of a candidate shall be made only to the election agent of such candidate and election expenses of such candidate shall be incurred only by his election agent.

The most fundamental provision regarding the election expenses law is Article 44B (3) which fixes the election expenses of a contesting candidate. Art. 44B (3) provides that election expenses must not exceed Taka three lakh. Then, clause (3A) of Article 44B enumerates negatively the field in which such money shall not be utilized.

The combined effect of existing law and code of conduct makes it clear that a candidate is under a strict legal obligation regarding the permissible election expenses. It may be mentioned that violation of any provision of the Code of Conduct shall be deemed to be a pre-poll irregularity within the meaning of article 91A.

As mentioned earlier, the existing law provides that the election expenses of a contesting candidate shall not exceed Taka three lakh. But in the existing socio-economic reality, it needs to be examined whether this amount is reasonable and practicable one. Again, the election expenses vary from metropolitan constituency to remote constituency, so the question arises whether the Election Commission should be empowered to determine election expenses for different constituencies.

To regular election expenses strictly, a new provision has been inserted in 1995. The inserted article 44BB requires every election agent or the contesting candidate to open or separate account with a scheduled bank for the purpose of making payments by the election agent and all payments towards the election expense will be made from that account.

... no case has ever been filed to any criminal court for the violation of election expense law. The question arises the right to file cases have not been practiced. One reason for the absence of such cases may well be that since only candidates themselves can file such cases, they are reluctant to do so because of their own complicity in violating these provisions.

RETURN OF ELECTION EXPENSES

For ensuring compliance with existing laws regarding election expenses, article 44C provides that every election agent of a contesting candidate shall submit to the Returning Officer a return of election expenses within fifteen days after the holding of election.

To maintain the propriety of the return statement Article 44 (C) 2 requires that the such statement shall be accompanied by an affidavit sworn severally by the contesting candidate and his election agent. This provision is made for upholding the solemnity of the return statement. But there is a wide gap between law and reality.

Since the submission of such statement is mandatory, indeed, every return statement is submitted showing the amount of expenses below Taka three lakhs, although the actual expenses may be higher than that as prescribed by law. As a result, this provision becomes meaningless and ineffective as there is no mechanism in the hands of the Election Commission to verify the correctness of the return statement.

REMEDY FOR THE VIOLATION OF ELECTION EXPENSE LAW

Under the RPO 1972 there are three kinds of remedy for the violation of election expense law.

ELECTION TRIBUNAL

For the settlement of all disputes regarding election, Article, 53 provides for the establishment of Election Tribunal which shall be consisted of a person who is or has been a District and Sessions Judge or as Additional District and Sessions Judge. According to Article 59 (1) the Tribunal shall have powers of a Civil Court trying a suit under the Code of Civil Procedure.

Under Article 63 of RPO of 1972, the Tribunal has been empowered to declare an election to be void if it is satisfied, inter alia that the candidate has spent more money than what is allowed by the law. According to Article, 49, jurisdiction of the Election Tribunal can be invoked by a candidate and individuals. As a matter of fact, in spite of the existence of such a provision, to our knowledge, no petition has yet been made before the Tribunal by a candidate for violation of election expense.

CRIMINAL LIABILITY

Violation of election expense law also give rise to criminal liability. Article 73 of the RPO provides that a person is guilty of corrupt practice punishable with rigorous imprisonment which may extend from two to seven years and also with fine if he has met any election expenses from any source other than sources specified by the law and for the exceeding the limit of election expense under clause 3 of Article 44B.

Failure to submit statement regarding sources of funds and expenses of election shall also give rise to criminal liability under Article 74. Such candidate shall be guilty of illegal practice and may be punished with rigorous imprisonment of two to seven years and also with fine. But, to the best of our knowledge, no case has ever been filed to any criminal court for the violation of election expense law.

The question arises the right to file cases have not been practiced. One reason for the absence of such cases may well be that since only candidates themselves can file such cases, they are reluctant to do so because of their own complicity in violating these provisions.

ELECTORAL ENQUIRY COMMITTEE

Under Article 91A, to ensure the prevention and control of pre-poll irregularities, the Commission shall establish an Electoral Enquiry Committee.

The Committee shall inquire into any matter or situation which in its view may constitute irregularities. It shall inquire into:

(a) on the basis of information received

(b) on the basis of complaints made of it and

(c) on its own initiative.

The committee's jurisdiction has also been extended to offense relating to election expenses. But the power and function of such Committee is very much limited. It is observed from the past experience that such electoral committee could not function effectively. Its power and function is limited to inquiry and making recommendation to the Election Commission. It can not impose any punishment for violating election expense on its initiative. From our past experience we have seen that for each district one electoral Committee was established to inquire into pre-poll irregularities. In the last parliamentary election, such Committee consisted of only two to three members covering two or more constituencies (for example, one for thirteen constituencies of Dhaka district) and naturally, it failed to inquire into many pre-poll irregularities. Again the whole procedure before the Commission for settlement of pre-poll irregularities is complicated and lengthy.

PUBLIC INSPECTION

Since election is a part of democratic process, people have vital interest to see that election is conducted in a free and fair manner. So Article 44D provides that the statement, return and document relating to election expenses shall be open to public inspection and collection on payment of prescribed fee within one year of the submission of the return. This provision is very important for initiating legal action by the ordinary people but this scope of legal action has not yet been practiced.

PROVISION REGARDING LOAN DEFAULTERS

Article 12 of the RPO which deals with personal qualification of a candidate to be elected as a member of the parliament. It has been amended in 1995 by inserting a new proviso debaring a bank defaulter from participating in an election.

Under Article 12, a loanee who has defaulted in repaying on the day of submission of nomination paper any loan or installment thereof taken by him from a bank, shall be disqualified from being elected as a member of parliament. But in absence of any clarified definition of the term "loanee," this provision has become ineffective as we observed that in the last Parliamentary Election many all alleged defaulters had participated.

So far as law is concerned,

we can conclude that the existing law is reasonably comprehensive and exhaustive. But lack of transparency and excessive use of money is the reality which can hardly be denied. Lack of proper and enforcement mechanism in the hands of the Election Commission has made the existing law ineffective to a great extent.

The writer, an Assistant Professor of Law, University of Dhaka, is the Project Coordinator of the Legislative Advocacy and Participation of the Society Project of Bangladesh Legal Aid and Services Trust (BLAST). This paper was presented at a seminar on Election Expenses: Law and Reality on 10th June, 1997 in Dhaka.

Metropolitan

Import duty on raw cotton, machinery

Production cost of local yarn to rise by 50 pc, say textile assocs

By Staff Correspondent

Bangladesh Textile Mills Association (BTMA) and Bangladesh Specialised Textile Mills and Power Loom Industries Association (BSTMPI) in separate statements expressed concern on imposition of import duty on textile machineries and raw cotton.

The organisations urged the government to withdraw the 2.5 per cent import duty on raw cotton and 7.5 per cent duty on textile machinery, over and above the 2.5 infrastructure surcharge on all imports.

The BTMA said the raw cotton will be subject to a total of 20 per cent duty and tax including VAT and machineries will come under 25 per cent duty and tax.

The BTMA held a special general meeting to review the budget on Friday. It noted that import duty on cotton yarn has remained unchanged at 7.5 per cent. Production cost of local yarn will go up by a total of 50 per cent due to imposition of this 20 per cent new taxes.

Bangladesh yarn will not be able to compete with smuggled Indian yarn and imported ones with minimal duty, forcing local spinning mills out of production. It will also hamper

backward-linkage, robbing it of competitive edge and prevent attaining the goal of self-sufficiency in textiles, a press release of BTMA issued by its Chairman Mohammad Shah-jahan said.

Krishak Dal's demonstration today

By Staff Correspondent

The Jatiyatabadi Krishak Dal (JKD), the peasant wing of BNP, will hold demonstrations across the country today protesting the 'anti-people' budget for 1997-98 fiscal year and increase in the prices of fertiliser.

As part of the countrywide programme, the Dhaka district unit of JKD will hold a rally, to be followed by a procession, in front of the BNP centre office in the city at 5 pm, according to a press release issued last night. Meanwhile, a joint meeting of central and city units of Jatiyatabadi Mahila Dal, the BNP's female front, will be held at the party central office at 3 pm today.

BSTMPI president Manzoor Mursheed expressed his fear that the new taxes and duties on import of textile machineries and raw cotton would have adverse impact on the survival of the textile sector.

Bangladesh Electrical Association (BEA) Chairman Siddikur Rahman in a statement yesterday strongly demanded withdrawal of the VAT to the tune of Tk 70 crore at whole sale and retail levels that he feared would trigger a price hike of electric fans between Tk 250 to Tk 300.

"We strongly protest imposition of such unbearable tax burden on the businesses and people under pressure without carrying out political and administrative reforms. It would have adverse effect on economy," he said.

Bangladesh Dokan Malik Samity Chairman Amir Hossain Khan and General Secretary SA. Kader in their reaction to the budget said the small business with low-capital would bear the brunt of the new tax loads like returns for telephone, rise in turnover tax from two per cent to two and half-a-per cent and VAT at retail level.



Prime Minister Sheikh Hasina being seen off by her Cabinet colleagues at the Zia International Airport yesterday prior to her departure for Istanbul to attend the D-8 summit, scheduled for today.

Orientation programme of AL MPs begins

Speaker Humayun Rashid Chowdhury said country's economic uplift would be possible if the government and the opposition MPs work unitedly with specific targets for overall development and wellbeing of the nation, reports UNB.

He was inaugurating a two-day orientation programme for members of parliament from the ruling party at Sangsard Bhawan yesterday.

achieving desired economic growth in a poor and overpopulated country like Bangladesh. "But we can achieve it by taking appropriate measures."

He said like other countries in the globe, Bangladesh would also have to prepare for facing the challenges of next millennium.

In many cases, a lot of differences in opinion and outlook about economic problems were found between the politicians and the economists, the Speaker said, adding the gap

should be bridged to take steps on the basis of consensus.

Presided over by Prime Minister's Adviser on Parliamentary Affairs Suranjit Sengupta, the inaugural ceremony of the orientation programme was also addressed by Finance Minister Shah AMS Kibria and noted economist Prof Wahid Uddin Mahmud.

Some members of the Cabinet and the treasury bench of Parliament were present, said a handout.

Media's role in eliminating women trafficking stressed

By Staff Correspondent

The speakers at a discussion meeting in the city yesterday said that the print and the electronic media could together play a vital role in eliminating the trafficking of women and children from the country.

A dialogue on "Combating trafficking in women and children: Role of Media in creating awareness" was organised by the Centre for Women and Children Studies (CWCS).

A group of academicians, journalists and experts on women and children issues taking part in the dialogue said, the media could help create public awareness against this social malaise.

They termed trafficking as a 'contemporary form of slavery' while the CWCS narrated the miseries of the innocent women and children smuggled out of Bangladesh for sex trade in different countries.

Prof Ishrat Shamim, president of CWCS and a teacher of the Department of Sociology at Dhaka University presided over the day-long dialogue organised as part of the CWCS's ongoing campaign against trafficking in women and children.

The Centre's executive director Shrin Hassan and member Farah Kabir, moderated the dialogue.

Narrating her experiences, Ishrat Shamim said the unfortunate women and children were used in sexual exploitation like bride trade, sex tourism, pornography and prostitution. The well-organised network of traffickers, most of whom could rarely be traced and touched, was spread in different countries from the Middle East to Japan.

According to the organisers, the Traffic Watch, the forum of 36 NGOs, had prepared a document for submission to Prime Minister Sheikh Hasina demanding action against the traffickers.

A paper prepared for the dialogue by the CWCS says: at least 13,220 children had been smuggled out of whom only 4,700 had been rescued over the last five years. A total of 200,000 women and girls between the age group of 12 and 30 had been taken to Pakistan in last ten years.

According to the CWCS document, the Indian Social Welfare Board and the Bangladesh National Women Lawyers' Association have said there are more than two lakh Bangladeshi women in Indian brothels.