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Birds of a Feather ...

From the *Alternatives Desk*

INTERNATIONAL Centre for Ethnic Studies, Colombo and Nepal South Asia Centre, Kathmandu jointly organized the Second South Asian Chief Election Commissioners Conference in Kathmandu on 11-12 February 1999. The first conference was held in Colombo in 1995. Amongst the invitees this time, only the Bangladesh Chief Election Commissioner and later his representative, the Election Commissioner, could not attend the conference. The latter declined at the last moment citing 'unavoidable circumstances! Bangladesh, therefore, ended up being represented by none, at least at the official level. As for the Country paper writer (the lone representative from Bangladesh), he claimed no representation. He simply participated as a concerned citizen of Bangladesh. I guess the same could be said of the other paper writers from other South Asian countries as well. This issue includes in abridged form the four of the five Country papers produced in the said conference. The Nepal paper could not be accommodated, again for unavoidable circumstances.

Two things struck me at the conference. Firstly, despite dissimilar political developments, there is a remarkable similarity amongst the South Asian countries when it comes to election and the electoral process. Secondly, all those who participated in the conference, including the Chief Election Commissioners or their representatives, collectively felt that there was an urgent need for a fresh look at the electoral process in all of the South Asian countries. Put differently, the electoral process in South Asia needs to be reinvented and reworked. This issue is a pointer in that direction.



Voters' queue at a polling booth.

— Star photo by Mohsin

Electoral Process in Bangladesh

Rationales for Reforms

by Imtiaz Ahmed

LET me begin with an observation and two incidents, all of which I had a chance to experience while on a trip to Comilla as a local coordinator of SAARC-NGO Election Observation Team assigned to observe and report on the fairness of the 12 June 1996 election. First the observation.

The Posters

There has been a qualitative change in the content of election posters, sadly less for bettering the cause of democracy or reproducing democratic ideals at the time of election. In the past, particularly in the pre-Bangladesh 1969 election and also to some extent in the post-Bangladesh 1973 election, election posters carried mainly the photograph of the candidate and the election symbol of the political party (or where the case demanded, the election symbol of the independent candidate). Little attention or space was given to the 'leader' (dead or alive) of the political party. But now, as it was found in the June 1996 election more than ever, a greater space is given to the party leader (with some political parties, even the dead ones), with the photograph of the actual candidate and the election symbol getting much less space in the election poster.

If anything, it reflected the heritization (or where the case may be, the heritization) of political parties with the corresponding tendency of the latter becoming less and less democratic. Put differently, political parties in Bangladesh are beset with a unique contradiction: with little or no democratic norms within, they champion the cause of democracy without. I will have more to say about this later. Let me now turn to the two incidents.

The Expenses

As per the responsibility of the Observation Team, we visited the house of a candidate to interview the person the day before the election. As we entered the candidate's house, I must say that I was bit surprised seeing nearly a hundred party cadres all sitting down on the floor of the living room and (what seemed to me then) guarding him with many things more than knives and sticks. We were escorted to a bedroom where we found him waiting and quite eager to talk to us. After the usual exchange on the management of things and if he had any complaints, I could not help asking about his election expenses, indeed, not forgetting to mention that nearly a hundred people (those seen guarding him in the living room) needed to be looked after! Once finding

out that it was in lakhs (I believe, he said something like Taka 30 lakhs or so), I asked him how was he going to recover all that money?

His answer I will never forget: 'ekbar jitey parley, shob hoyey!' (Once I am able to win, everything will be possible!). Possibly, nothing could be far from the truth, but then, who would bear the burden of his election expenses or as he had confidently hoped, his post-victory financial recovery? More importantly, does a candidate have a choice when it comes to election expenses? More on this shortly.

The Non-Quitters

On the Election Day we came across a bizarre scenario. On a trip to a polling centre not far from downtown Comilla we found that suddenly almost all the male voters were running helter-skelter with some armed police chasing them. On enquiry we found that cadres of two political parties clashed at the polling centre and that the armed police were called in to tackle the situation. But interestingly in the midst of all that chaos the female voters refused to quit. They all stood firmly in line, one holding the other, unwilling to leave the place of voting. I could not hide my curiosity and asked them without any introduction: 'how come you are all standing here not afraid of all the violence around?' Almost in unison they replied: 'Shahib, cholla geyley to amago vote shob chheler diye diboy.' (Sir, if we leave now, the men will simply cast all our votes). The supposedly feminist statement otherwise signaled a remarkably new dimension in the Bangladesh election, with no mean consequences to both the electoral system and the electoral process. I will return to this issue shortly.

The changing nature of the election posters, the somewhat non-electoral pressure for increased election expenses, the growing power of the non-quitters (in this case, women voters) all these point to two critical things. Firstly, the process through which a person is elected to the parliament in Bangladesh (and this is possibly true for the rest of South Asia) is far more complex than is evident, indeed, having to do less with what is formally and legally set out in the country's electoral process. Secondly, given the complex relationship between power, societal composition and election, no reform of the electoral process will be effective unless due consideration is given to things both electoral and non-electoral, particu-

larly those of the latter that go on to shape and reproduce the former. A closer exposition of things related to election will make this clear.

For the sake of convenience, if not for conveniently putting forward my contentions, I will divide my paper into four sections. The first section will examine issues that are directly related to the voter. A particular emphasis will be given to the changing nature in the composition of the voters, taking into consideration both demography and gender, with a critical assessment of the things to expect from such a change. The second section will examine issues that are directly related to the person voted, that is, those who contest the election to become representatives of the general population in the parliament. The third section will examine (what I would like to call) the engineering of elections, with particular focus on the power of the government and the relative powerlessness of the Election Commission. The last section will deal with reforms, some concrete and short-term, others suggestive and long-term.

The Voter

Part VII, Articles 118-126, of the Bangladesh Constitution deals with elections. The key figure in the election and (I would contend) in the reproduction of democracy - the voter - appears for the first time and that again only once, in Article 122. Clause 2 of the said article deals with voter's qualifications. Although the criteria for qualification may sound reasonable and look quite innocent, it is beset with certain critical problems.

According to Article 122 Clause 2, a person can be a voter if s/he:

- is a citizen of Bangladesh;
- is not less than eighteen years of age;
- does not stand declared by a competent court to be of unsound mind; and
- is or is deemed by law to be a resident of that constituency.

Let me first point out that this is the text that currently stands. One particular, and no less politically significant, sub-clause was omitted by the Second Proclamation Order No. IV of 1978. In fact, in the original Constitution of 1972, there was a fifth criteria for voter's qualification and that was, 'he has not been convicted of any of-

fense under the Bangladesh Collaborators (Special Tribunals) Order 1972.' Although only one person (I believe) was actually convicted under this Order, the omission of the sub-clause, while opening up space for many alleged and known collaborators to become voters, did contribute to the polarization of the society whose repercussions are often found at the time of the election.

More problematic, however, is sub-clause (d). Two could easily be identified. Firstly, it formally disallows 'the floating population and also those living abroad from becoming voters. This obviously runs against the current trend. Not only do we find an increasing number of Bangladeshis going abroad and settling there but also, given the rise in the number of natural disasters in the country, more and more people are joining the ranks of floating population as internal or environmental refugees. This could easily be rectified, as FEMA (a local election monitoring group) has recommended, by making provisions in the law and including the said categories of people as voters.

Secondly, it gives an impression that once the content of this sub-clause is respected and voters' identity cards are issued on the basis of their residence elections will become free and fair. In fact, the Election Commission with active support from the government is trying to issue identity cards to all the voters in the country at the earliest possible time. However commendable may be the task, it is based on an erroneous position. Although the voter having an identity card can be justified on several grounds, there is no reason to think that it would ipso facto lead to free and fair elections. In this context, more important is to find ways and means to contain what is popularly referred to in Bangla as 'vote dakait' (i.e., organized looting of votes). Let me explain what this stands for.

In any polling centre it is not the casting of votes by fictitious or fictional people but rather voting by proxy that is rotting the system of free and fair elections. And this is accomplished by a candidate by way of organizing hegemony (both consensual and coercive) over those given the task of conducting elections at the polling centre. I know of several instances

where polling agents of competing parties at several polling centres were simply bought off by the hegemonic candidate. Even if the latter manages to organize such a thing in one-third of the polling centres with the rest of the centres in the constituency remaining 'stable' the outcome will surely be in his/her favour. Put simply, a voter's identity card is no panacea for the ills the elections are facing in Bangladesh. Problems are more acute and fundamental.

On the basis of population and the number of voters in Bangladesh, a Member of Parliament (MP) represents on the average hundreds and thousands of citizens. The following is the representation situation in terms of population, voters and actual vote cast in the June 1996 election:

Several issues are critical here. Firstly, the inclusion of non-voting citizens (children and minors) makes representation far more numerous and consequently far less practical. Indeed, in terms of the actual vote cast a Bangladesh MP represents on the average some 143,000 people, while in terms of population s/he represents nearly 400,000 people. If the former figure is already too high, the latter figure puts the MP in an odd situation of not being able to meet in person or even shake hands with those s/he is supposedly representing. Such is the irony of the current state of representation in Bangladesh (and this is also true for the whole of South Asia!)

Secondly, the current system of representation, particularly in the light of the actual vote cast, is structured towards delegating powers to a person who, while representing only a minority section of the people, decides the fate of the majority section of the people. While this may be true for all democracies, including those of the West, the situation in Bangladesh has

reached a pathetic level. That is, an MP, while getting only a part of the votes of the actual number of vote cast (average, 143,000 in 1996) is given the power to decide the fate of nearly 400,000 people on the average. Put differently, representation is structured to reproduce the power of the dismally few over the excessively large.

Lastly, the greater the gap between the representatives and the represented the more sinister is the power of corruption in representation. In fact, largely as a result of this gap 'intermediaries' (ranging from *mastans*, corrupt officials, hired goons, and the like) end up having the real power as both MPs and the people, albeit for different reasons, become dependent on them. Representation must reckon with the fact

and that again, not necessarily of the government, women could be mobilized to safeguard their interests, including participating more forcefully and in greater numbers in elections. Put differently, non-governmental agencies play a critical role in the election of a government. I will have more to say about this in Section III.

The Voted
If a person in order to become a voter requires by fact or law to be a 'resident' of a particular constituency, no such qualification is required of the voted, i.e., the candidate seeking election to the Parliament. This has critical implications in so far as representation is concerned. A closer exposition of Article 66 of the Bangladesh Constitution will make this clear.

Two of the clauses of the said article are important in this context:

1. A person shall subject to the provisions of clause (2), be qualified to be elected as, and

Representation in the Parliament

Country	Member of Parliament (MP)	Total Population (1995) (million)	Number of Voters (June 1996)	Number of vote cast (June 1996)	MP's representation in terms of total pop (average)	MP's representation in terms of voters (average)	MP's representation in terms of vote cast (average)
Bangladesh	300	119	56,716,935	42,902,481	396,666	189,056	143,008

that it is neither MP's nor the people but self-seeking intermediaries who do the representing! Unless a way is found to correct this situation, governments will always suffer from *misrepresentation*. But that is not all.

Misrepresentation is particularly acute when it comes to the issue of women. In fact, in Bangladesh, women, although constituting 48.59 percent of the population (1989 figure), have only 10.3 percent representation in the parliament. Even this percentage is partly illusory, since women representation here is based on reservation or nomination, more specifically for having 30 reserved seats in the parliament. Without the reserved seats, women representation in Bangladesh comes down to barely 1.3 percent (1991). This is far below the 30 percent target set by the Economic and Social Commission of the United Nations, and that again, by the year 1995!

Indeed, the under-representation of women in Bangladesh is somewhat of an irony, par-

ticularly in the backdrop of the fact that both the Prime Minister and the Leader of the Opposition are women. There is a general impression that both of them became leaders because of family connection, that is, because their husband or father got killed. While there is some merit to this argument, it is also true that both of them rose to prominence through sheer hard work and political ingenuity of their own. Moreover, even if we take that family connection was responsible in their becoming leaders, it does not save them from the criticism (particularly with all the power at their disposal) as to why they would fall in the task of broadening women representation in the parliament. But then, all is not gloomy and unrectifiable.

More and more women now, as we indicated before, come to polling stations to vote. This is based on subjective assessments and pre-polling surveys, for there is no official record of the actual vote cast on the basis

of gender. Lack of such account, however, is somewhat surprising for women always vote in separate booths and is therefore not a difficult task to perform. I strongly feel that a separately for women will considerably reduce the (predominant male) practice of *voting by proxy*. At this point, the contradiction remains quite obvious: In the midst of *under-representation* of women in the parliament there is a *steady growth* in the number of women actually casting their votes!

Two things need to be emphasized here. Firstly, given women's demographic position (almost 50%) and a considerable rise in women's participation in elections, there is an obvious need to increase women representation in the parliament. I will have more to say about this later. Secondly, much of the credit for raising women's awareness, including matters related to elections, goes interestingly not to the government but to various non-governmental organizations. What this implies is that given proper scope and instrument,

- (a) is declared by a competent court to be of unsound mind;
- (b) is an undischarged insolvent;
- (c) acquires the citizenship of, or affirms or acknowledges allegiance to, a foreign state;
- (d) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release;
- (dd) holds any office of profit in the service of the Republic other than an office which is declared by law not to disqualify its holders; or
- (g) is disqualified for such election by or under any law.

In addressing the issue of qualification, critics have already pointed out that the candidate seeking election to the

Continued on page 7

Electoral Reforms in India

by Sanjay Kumar

CONCERN for electoral reforms has been expressed almost all formal and informal sections of society in India during past few years. In this perspective, the relevant context for thinking about the challenge of electoral reforms lies in the real life functioning of the system and not merely in the legal-constitutional framework of the electoral system. Not only has India managed to retain democracy, it has also managed to retain certain dynamism in its electoral process. The past decade has been marked by a democratic upsurge of the lower classes of the Indian electorate. The increasing number of contestants is another indicator of greater participation of the people. What is note worthy is that the process of democratization has a subaltern character, relatively more among the deprived as compared to other sections of society. The turnout has increased enormously in the rural constituencies and among women voters all over the country. The participation of the activists, the Scheduled Tribes has jumped up in the last decade.

During the recent past various changes have been brought about with context to election rules and procedures:

1. The ceiling limit of expenditure for contesting election has been raised to Rs. 15 lakhs in case of Lok Sabha election and to Rs. 6 lakhs in case of the Vidhan Sabha election.

2. The security deposit for contesting Lok Sabha election has been raised to Rs. 10,000 in case of general candidates and Rs. 5,000 in case of SC & ST candidates. Similarly security deposit for contesting Vidhan Sabha election has been raised to Rs. 5,000 in case of general candidates and Rs. 2,500 in case of SC & ST candidates.
3. Under the revised rules, restrictions have been imposed on a candidate on contesting election for more than two constituency at one time.
4. As per the changed rules, an election can be only terminated on the death of a party candidate and election process is not to be hampered on the death of an independent candidate.
5. The campaigning days for an election has been reduced to two weeks from the earlier three weeks.
6. As per the rules modified, now a person convicted by the trial court attracts disqualification and even those who are released on bail during the pendency of their appeals against their convictions are disqualified for contesting elections.

Changes Recommended by other Committees
Besides these changes there are several other changes recommended by various committees appointed by the government from time to time. Some of the recommendations of the

Law Commission, Election Commission and Indrajit Gupta Committee need to be given a paper thinking. There is virtually an unanimity on curbing election expenses which goes beyond the ornamental legislations of the recent past by including certain provisions in the existing law:

The Election Commission
An amendment in the constitution to implement the suggestions of the Tarkunde and the Goswami Committees for the Election Commission:

- a) Appointment of CEC and the ECs by a constitutional Committee comprising the PM, the leader of the opposition and the CJ of Supreme Court
- b) A ban on all post-retirement governmental appointments, including the post of governor, for the members of the EC

Delimitation of constituencies
1. The recommendations of the Delimitation Commission should be open to public debate before these are finally accepted
2. The principle of rotation of seats reserved for Scheduled Castes every decade should be included in the constitution

The role of money power
1. It should be made manda-

tory for every candidate to declare one's property and income at the time of nomination; the declaration should be made public and false declaration should be made punishable
2. The legal provisions regarding the ceiling on electoral expenses should be modified to provide for:

- a) upward revision of the ceiling to allow for expenditure @ Rs 2 per elector in the constituency and regular revision of this ceiling
- b) all expenditure, including that of parties and friends should be included in calculating the expenditure; the 1974 amendment to section 77 should be annulled
- c) publicity of the returns filed by the candidates in the local press and their regular verification and auditing should be made mandatory

3. A National Election Fund should be created out of the consolidated fund of India in order specifically to subsidise electoral expenses and more generally to support legitimate political activity. Its provisions should include:
 - a) each party that secures over 2% votes in any state or any candidate who gets over 5% votes in any constituency should be paid @ Rs 10 for every vote polled by it
 - b) it should be compulsory to spend at least half of this amount on election campaign

and to get audited the accounts for the entire sum
c) parties which fail to hold regular democratic elections to its highest decision making body and office bearers should be ineligible for state subvention

Basic regulations
1. The procedure for enrolment, amendment, appeal, etc. related to the inclusion in electoral rolls should be simplified; greater publicity should be insisted upon; the possession of phruse should not be made compulsory for voting
2. It should be mandatory to hold by-election within six months of a seat falling vacant
3. The recent changes in electoral law which systematically privilege the existing national/recognized parties over other parties and independents should be withdrawn
4. The provision of the RPA 1951 that requires all political parties to declare adherence to the principles of socialism, secularism, democracy, etc. should be done away with
5. The Code of Conduct outlined by the EC should be incorporated in the law
6. The duration of the campaign should be restored to the original three weeks in order to give a fair chance to smaller parties and candidates short of resources; unnecessary restrictions on the timing and mode of

campaign should be removed.
7. The legal provision regarding the quick disposal of election petitions should be effectively implemented
8. The Election Commission should have greater legal power to deal with cases of mass rigging

Social and political initiative for democratic consolidation
The challenge of improving the quality of representation cannot be met by any legislation, however comprehensive and well intentioned it might be. A good deal of electoral malpractice originate in the fact that intermediary political institutions, and the institutions of the civil society fail to perform their functions and as a result the institution of election has acquired a centrality it must not have in a healthy democracy. Legislative acts of electoral reforms can become meaningful and effective only if they become a part of a wider movement of democratic consolidation in the arena of civil society and politics.

Party institutionalisation
Pressure must be exerted inside every political party to ensure that:

1. The local party unit has a decisive say in the selection of party candidate
2. No person is eligible for party ticket without a mini-

duration of party membership and record of political work
3. There are well laid out conventions and rules about career mobility of workers inside a party as well as about age of retirement
4. Modalities for institutionalising 'white' money are evolved in the party
5. Non-legal forms of summary inquiry are evolved by the party to look into charges related to corruption and criminal behaviour of its members

Institutions of civil society
Non-party and non-political organisations and movements in society need to develop public opinion and maintain constant external pressure on political actors so that:

1. Election-time promises are first scrutinised and then remembered
2. There is greater publicity of electoral malpractice of any kind
3. Supra-party citizens' organisations are formed to examine the candidates' background
4. The access of media and civil liberty organisations is expanded to non-metropolitan sectors of society
5. Representatives are accountable to the electorate between two elections

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