

The new EC law leaves a lot to be desired



PARtha PRATIM BHATTACHARJEE

Partha Pratim Bhattacharjee is the chief reporter of The Daily Star.

ONE could say that the Awami League government deserves plaudits for passing a law on the formation of Election Commission—even if it is 50 years too late to fulfil a constitutional obligation. But has it fulfilled the desire and aspiration of the people to have a truly independent Election Commission? Drafted and passed at a speed that beats even a 100-metre sprint, the law has left us with more questions than answers.

Let us see what the new law contains and what it leaves out.

According to the law, the Search Committee must be transparent and impartial when imparting its responsibilities, and that the committee must judiciously vet the eligibility, ineligibility, experience, skill set and reputation of a candidate before recommending names for the posts of chief election commissioner (CEC) and election commissioners. The Search Committee would recommend two candidates each for the posts of the CEC and other commissioners. These names must be finalised and suggested to the president within 15 working days of the formation of the committee.

The law states that the committee can seek names from different political parties and professional bodies. It also states that the Search Committee will comprise six members and will be chaired by a justice of the Appellate Division, nominated by the chief justice himself.

The other members of the committee will include another judge from the High Court bench—also to be nominated by the chief justice, the comptroller and auditor general (CAG), the chairman of Bangladesh Public Service Commission (BPSC), and two eminent citizens, including a woman, chosen by the president.

Three members of a committee will make a quorum, says the law. The Cabinet Division would be assisting the committee to carry out its secretarial duties.

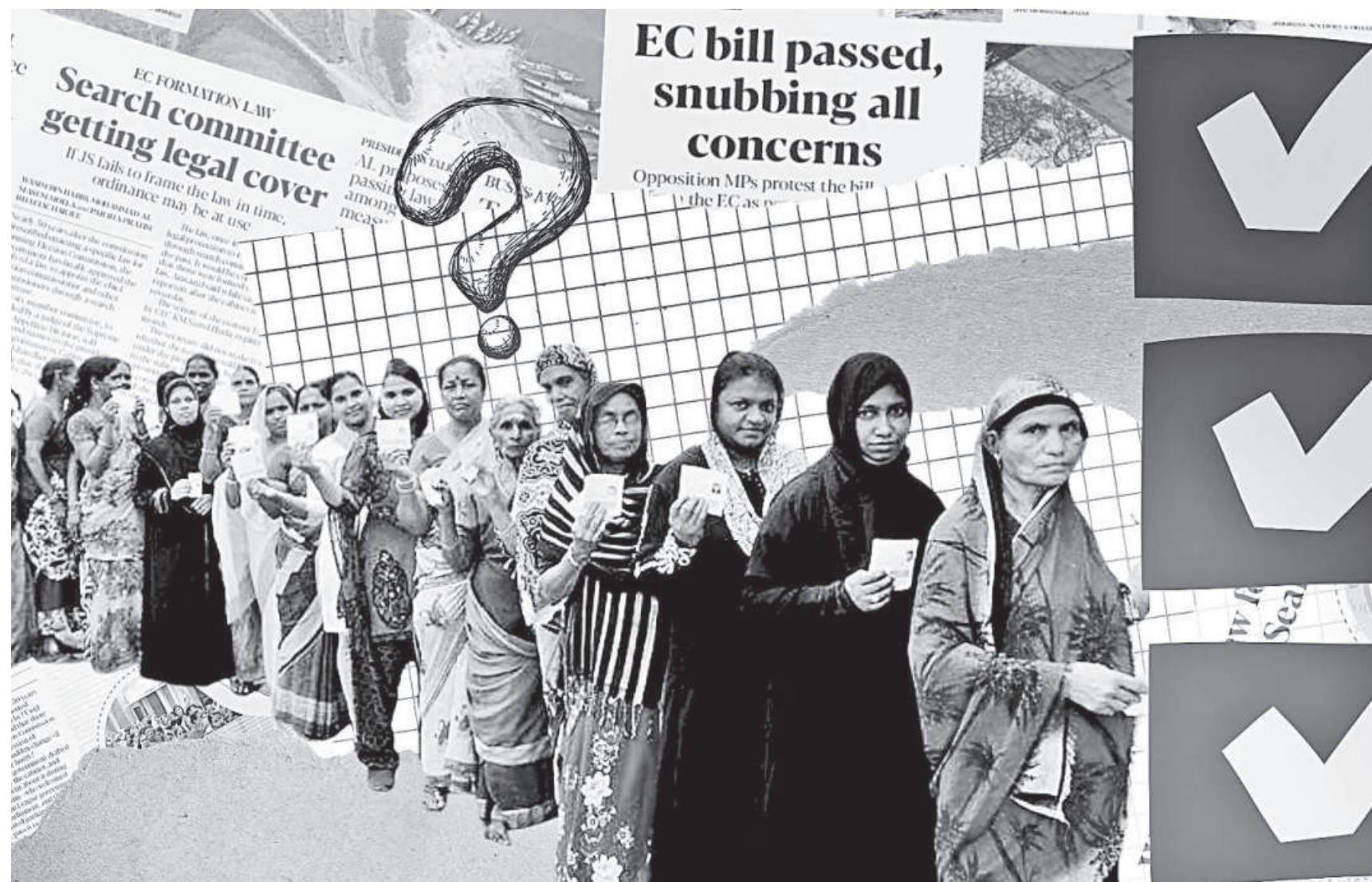
On January 25, 2017, President Abdul Hamid promulgated a gazette decreeing that a Search Committee would form the Election Commission ahead of the 11th parliamentary elections.

The criteria for the eligibility of the candidates mentioned in the 2017 gazette are verbatim to that stipulated in the new law. In fact, the language of the gazette to form the Search Committee in 2012 was not much different from the one in 2017 either.

On December 30, 2021, Law Minister Anisul Huq said at a programme in the National Press Club that there was no way a new law could be passed for the formation of the Election Commission. The incumbent commission's tenure will end on February 14, 2022, and a law which is of crucial public importance cannot be passed "overnight," he had said.

The law minister had further added that the Search Committee was akin to a law, so there was no need to enact a new law.

The minister provided the audience with a description of the lengthy nitty-gritty of getting a law passed. "Before a bill is placed in the parliament, it must be drafted, sent to the cabinet meeting



for approval, and then circulated online to gather public feedback. Judging by the importance of the law, all these steps must be maintained judiciously," he had said.

Less than three weeks later, the Cabinet Division approved the draft of this law, and within a further six days, the law was placed in parliament.

A day after all this, the law minister said they were not being hasty or secretive about passing the law.

Why would a law that had not been passed in 50 years be approved by the cabinet within a week and placed in parliament? What is the purpose of this law? These questions do arise.

In addition, nowhere in the process of formulating and passing this law was gathering public opinion on the draft included.

On January 2, the law minister himself had said, "The law must be such that it is acceptable to all quarters. If the law is only acceptable to one political party, it is not a universal law." All opposition lawmakers, while taking part in the discussion at parliament during the passage of the law on Thursday, opposed it.

Inferring from the law minister's own words, seeing that so many groups and parties are opposing the law right now, could one say that the new Election Commission law is for the masses?

Taking a look at the law, one would notice a provision that would provide legal cover to previous Election Commissions that were formed following the recommendations of Search Committees. Clause 9 of the law states,

"The Search Committees formed by the president in the past for the purpose of choosing the CECs and election commissioners, the activities they carried out, and the CECs appointed based on the recommendations of said Search Committees, will be considered legal, and cannot be questioned in any court."

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For the sake of argument, let's presume that they would nominate wholly impartial candidates—even then, what is the guarantee that the final appointment will be made from their short list, since the law does not mandate that the recommended names be made public?

Should we then presume that this law was passed so hastily simply to give legal cover for the current and past Election Commissions, the Search Committees, and their activities?

There are several loopholes in the new law.

In the political system of Bangladesh, the president is elected politically, and the chief justice has historically always been a favourite of the ruling party. In the last two terms, the chief justice chosen superseded the queue.

Hence, whoever the chief justice selects from the Appellate Division and the High Court bench will never go beyond the ideology of the ruling party. Those with ambitions of becoming chief justice in the future will not risk falling out of favour with the government.

On the other hand, the posts of CAG and the BPSC chairman have always been held by people who are government favourites. Similarly, the two other citizen members chosen by the president will likely be personal picks.

When the entire system is set up for six pro-ruling party members to be appointed to form the Search Committee, how will this committee nominate an impartial CEC and other election commissioners?

For the sake of argument, let's presume that they would nominate wholly impartial candidates—even then, what is the guarantee that the final appointment will be made from their short list, since the law does not mandate that the recommended names be made public?

According to Article 48 of the constitution, the president has to abide by the advice of the prime minister for all recommendations, other than the appointment of the prime minister and the chief justice. When such a pre-condition is given, how would the president appoint an impartial individual when it is the end goal of all political

parties to come to or remain in power?

Our neighbour India has not been able to pass a law for the formation of EC in 74 years. But questions of bias and partiality cannot be raised there, because the president can make independent appointments, and do not have to abide by the recommendations of the prime minister.

Our constitution also states that whatever recommendation is made by the prime minister to the president cannot be questioned in court—it cannot even be questioned whether any recommendation was made or not.

According to the Right to Information Act, 2009, all citizens are armed with the right to obtain any information. Is this very right not being violated by denying them information crucial for the good of the general public?

In no part of the law is there any transparency about the appointment of the CEC or the other election commissioners. The law does not make a dent in the existing process of making these appointments.

The government hurriedly completed the process to enact the law. It took only 10 days to pass the law since January 17, 2022, when the draft was approved by the cabinet. Such a hurry by the government to frame the law will most likely compel the Search Committee to work rapidly to recommend the names for the CEC and other commissioners, as according to the law, the Search committee will get 15 working days to complete their work.

If the president forms a Search Committee on Sunday, the committee will get only 11 working days till February 14, when the tenure of the current commission expires.

One could wonder whether this law was only formed as a consolation prize to the political parties, who engaged in dialogues with the president and demanded the law. Is it a move to get a political mileage?

BY MORT WALKER

BEETLE BAILEY



QUOTEABLE
Quote



(1875 - 1926)
Austrian poet

Perhaps everything
terrible is in its
deepest being
something helpless
that wants help
from us.

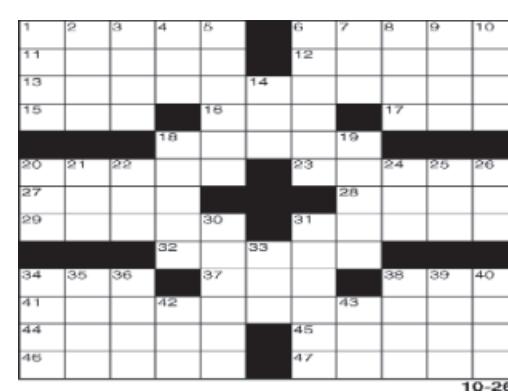
CROSSWORD BY THOMAS JOSEPH

ACROSS
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17 Cereal bit
18 Diploma
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23 Make law
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replacement
28 Gets older
29 Don Draper,
for one
31 Frighten
32 Stately
34 Wedding
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37 Letter before
upsilon
38 Letter before
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DOWN
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souvenir
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6 Halloween
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7 Quarterback
Manning
8 Pixar film set
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Dead
9 Singer Paul
10 High home
14 Dam building
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18 Haunted

house sound
19 Professor at
Hogwarts
20 Mermaid's
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21 Cow's chew
22 Sleeve filler
24 In the past
25 Co. bigwig
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flier
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36 Fairy tale
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animal
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sea
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THURSDAY'S ANSWERS



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