

Chapter 2

The Electoral Framework and Preparations for the Elections

Constitution

The 12 June 1996 Parliamentary elections were conducted under the Constitution of the People's Republic of Bangladesh, as amended. This includes provision for a non-party Caretaker Government to govern for a 90 day period while a general election is held.

Subject to the provisions made in the Constitution (Thirteenth Amendment) Act, 1996, referred to below, executive power is exercised by the Prime Minister in a system where the Cabinet is responsible to Parliament. The Prime Minister must resign if he/she loses the support of the majority of the Members of Parliament. In such a situation the President shall dissolve Parliament, unless he/she is satisfied that another Member of Parliament commands the support of the majority of the members.

The Constitution provides for a single-chamber Parliament consisting of 300 popularly elected Members of Parliament and, until the year 2000, 30 women members elected by the 300 members. The former are elected for single member constituencies by a simple majority of votes. The voting age is 18. Citizens of over 25 years, male or female, may be candidates unless otherwise disqualified and may stand for election in up to five constituencies, but may represent only one if they win more. By-elections must be held for seats vacated in these circumstances. The parliamentary term is five years. The Constitution states that a general election 'shall be held within ninety days after Parliament is dissolved'. It provides for the protection of fundamental rights enforceable by an independent judiciary, and may only be amended by a two-thirds majority of all the Members of Parliament.

Caretaker Government

The Constitution was amended in March 1996 by the Constitution (Thirteenth Amendment) Act, which was the sole legislation of the Sixth Parliament elected in February 1996. This made provision for a Caretaker Government with a limited life and limited functions. It would govern the country in the period after the dissolution of each Parliament and before the formation of the new government following the general election. The primary function of the Caretaker Government would be to:

give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament peacefully, fairly and impartially.

The Constitution stipulates that the Caretaker Government may undertake 'routine functions', but will take no policy decisions except as required by such functions.

Administrative Structure

The country is divided for administrative purposes into six Divisions: Dhaka, Chittagong, Rajshahi, Khulna, Sylhet and Barisal. Each Division is in turn divided into Districts, of which there are 64 in total. The districts are then sub-divided into smaller units called 'thanas', each based on the area covered by a particular police station.

For the June 1996 and all previous elections, the parliamentary constituencies would be smaller than the Districts but larger than the thanas: there would be several parliamentary constituencies in the area covered by each District and each constituency would itself cover several thanas.

At election time the Deputy Commissioners (who run the Districts) become Returning

Officers for the constituencies in their Districts and are responsible to the Election Commission for all aspects of election arrangements. They are supported by Assistant Returning Officers at thana level.

Election Commission

The Constitution states that the authority immediately responsible for the preparation and conduct of national elections in Bangladesh shall be an Election Commission comprising a Chief Election Commissioner and such number of Election Commissioners as the President may from time to time direct. Each Election Commissioner, including the Chief Election Commissioner, serves for a period of five years.

The Election Commission is required to be independent in the exercise of its functions and subject only to the Constitution and the law. It does not have the power to recruit its own staff: instead, the Constitution provides that the President shall, when so requested by the Election Commission, make available to it such staff as may be necessary for the discharge of its functions.

Article 126 provides that it shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions. The principal electoral law relating to the conduct of parliamentary elections is the Representation of the People Order, 1972 (see below) but much of the electoral framework is set out in administrative circulars issued by the Commission dealing with, for example:

- dates for filing nominations;
- election expenses;
- principles for setting up and publishing lists of polling centres;
- the allocation of symbols to candidates and parties; and
- the appointment of election agents and polling agents.

After the Election Commission had set a date for the poll, in consultation with all major parties, it had 63 days to make arrangements for the elections. Its tasks included:

- supplementary voter registration;
- the issuing of voter numbers;
- voter education;
- arrangements for the nomination of candidates;
- allocation of symbols to political parties;
- procurement of election materials;
- identification of polling centres.

Thus, in less than two months it had to undertake all the preparations necessary to ensure that those entitled to vote would have the vote, would know where and how to exercise it and would thereby be able to express their will effectively. The scale of the task was vast and the time-frame provided was daunting.

The Armed Forces

The Constitution (Thirteenth Amendment) Act, 1996, vested all executive powers in the Caretaker Government – except control of the armed forces and the powers to declare a state of emergency and to suspend the enforcement by the courts of the fundamental rights contained in Part III of the Constitution. The interpretation placed on this by the President was that the critical security powers resided exclusively in his hands and that he could discharge his functions in this respect without necessarily having the agreement of the Chief Adviser. Thus a partial diarchy was created.

As noted earlier, the President exercised these powers on 20 May 1996 when he dismissed and ordered the arrest of the Chief of the Army Staff. Control of the armed forces was perceived to be in the hands of an authority other than the Caretaker Government.



Congratulations ... Observer Group Chairman Tan Sri (Dr) Mohd Ghazali Shafie (left) meets Chief Election Commissioner Mr Mohammad Abu Hena: the Observer Group was later to congratulate the Election Commission for its 'remarkable performance'

The Caretaker Government and the Election Commission subsequently sought to provide clarity regarding the role of the armed forces in the context of the elections. A directive made clear that once they were deployed to provide support for the civil authorities conducting the elections they would act only with the authority and under the direction of electoral officials and specially appointed magistrates.

The Representation of the People Order, 1972

This Order lays down in detail the essential powers for the administration and conduct of elections. These include the power, through the President, to issue directions.

By the Order, the Election Commission has the power to designate Returning Officers and Presiding Officers from among personnel made available by the Government. The Election Commission is also empowered to publish the election schedule. The power of receiving and scrutinising nominations, staffing polling centres, and counting, are functions devolved by the Order to Returning Officers and Presiding Officers.

The Order also provides the Election Commission with the power to hold fresh elections where polling is interrupted or obstructed. This is provided by Article 24 which also states that the Presiding Officer of a polling centre shall stop the poll and inform the Returning Officer that this has been done if:

- (a) the poll at the polling centre is, at any time, so interrupted or obstructed for reason beyond the control of the Presiding Officer that it cannot be resumed during the polling hours fixed under Article 25; or
- (b) any ballot box used at the polling centre is unlawfully taken out of the custody of the

Presiding Officer, or is accidentally or intentionally destroyed or lost or is damaged or tampered with to such an extent that the result of the poll at the polling centre cannot be ascertained.

If the election is so stopped the Commission may, upon receiving a report from the Returning Officer, direct a fresh poll at that polling centre unless it is satisfied that the result of that polling centre would not materially affect the result of the election.

The Election Commission is empowered to receive election returns from the Returning Officers and, on receipt of these, the Order provides that the Commission shall publish in the Official Gazette the names of the returned candidates.

Monitoring and Enforcement

Machinery was set up to deal with breaches of the rules and the Code of Conduct (see below), and thereby to strengthen the credibility of the electoral system. The Order makes provision for the prevention and control of pre-poll and polling irregularities by persons, including officials. It also establishes a system to monitor irregularities in the form of Electoral Enquiry Committees, headed by judicial officers not otherwise involved in the conduct of the elections. Considerable emphasis was placed upon the role of such Committees by the Commission and upon the inquiries which they could conduct during the elections. This machinery was designed to provide a summary response to complaints or to perceived irregularities at a Committee's own initiative. On this basis, a Committee may conduct an inquiry and must inform the Commission within three days of the completion and of any recommendations it may have. The Commission may make an order or directive based on the recommendations. Failure to comply with such an order incurs a fine of Tk 5,000, and the Commission shall also publish details of the acts in question. In addition, a range of standard electoral offences are created by the Order. These may be the subject of prosecution, and on conviction, punishment by imprisonment and a fine. The Order does not provide for candidate or party disqualification as a sanction or for summary trial during the elections.

Restructured Election Machinery and Other Confidence-Building Measures

As part of its efforts to provide for a credible election the new Caretaker Government made important changes to Bangladesh's election machinery. Following the appointment of Mr Hena as Chief Election Commissioner the Commission was completely overhauled. For its part, the Government transferred key staff – not only those at the most senior level in the government bureaucracy but also those at the Divisional, District and thana levels at which the elections would actually be organised. Similarly, the police transferred a number of senior officers.

To further encourage confidence, credibility and security the Caretaker Government also ordered the arrest of those with illegal arms. By election day a substantial number of illegal weapons had been recovered and thousands arrested throughout the country.

Observers

Provision was made to allow the election process to be watched by international and domestic observers and to co-ordinate, facilitate and accredit their presence.

The provisions of Article 36(3) of the Order prohibited the presence of observers at the count. The Caretaker Government felt that this should only be amended by an elected government. The problem was dealt with by the Commission, which decided (under Article 91(c) of the Order) to allow such attendance by 'some observers'. In addition, the Commission published guidelines and other information for the conduct of electoral observation (see *Annex IX*).

Registration

Registration was carried out in May and June 1995. In contrast to the registration exercise which preceded the 1991 elections, which had allowed the registration of voters by heads of household

and had required voters to present themselves for registration, this time the Commission sent registration officers out to the voters and registered each voter individually.

A period for supplementary registration and challenge to the lists was declared by the new Chief Election Commissioner shortly after his appointment and resulted in the addition of a further 500,000 names and, Mr Hena believed, a more accurate list. The Commission was requested to provide votes for citizens living overseas, who had not had this right before, but regarded this as impossible in the time available.

Nomination

An amendment to the Representation of the People Order, made in 1996 prior to the February 1996 elections (Section 12(1)(b)) extended to national elections the rule, previously applicable only in local government elections, that bank loan defaulters would be disqualified as candidates. This provision was applied during the nomination stage and was also raised in litigation prior to polling.

Litigation

Apart from the judicial activity associated with the work of the Electoral Enquiry Committees there was considerable pre-polling litigation between parties and involving the Caretaker Government. This included an application by one party leader, who was in custody pending trial and appeals, for an order to allow his speech to the electorate to be broadcast. The High Court granted an order to allow this, but this was suspended by the Supreme Court until a date after the campaign ended.

Training

The Election Commission established a programme to train not only the senior electoral officials at central and divisional levels but also, on a training of trainers basis, all others involved in the election process. We were informed that the Commission's training programme was more comprehensive than any previously undertaken in Bangladesh. In addition, training on the electoral system was provided to the police.

In this context we also took note of the considerable assistance provided by the UNDP and domestic NGOs.

Voter Education

The Commission also organised an information and voter education campaign, with the assistance of the national broadcasting system. This included information on the voting system and on the Code of Conduct for political parties and candidates. A number of NGOs also organised voter education, using not only leaflets, posters and meetings but also street-theatre.

Political Parties

The Code of Conduct for Political Parties and Contesting Candidates was drawn up by the Election Commission following discussion with the political parties. As in many elections it was an important normative pillar in the electoral structure. It set out both the privileges and the prohibitions applicable to the political parties and candidates during the campaign, polling and prior to the declaration of the results. The Code, which was gazetted by the Commission on 27 May 1996, is appended as *Annex X*.