

Inclusive Elections: Ways to Overcome the Challenges of Democratic Good Governance¹

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Elections are of immense importance in maintaining the continuity of democratic governance in a country, the basic condition of which is that the institutions concerned are governed by democratic norms in their own internal affairs and in their interactions with others². Through elections, people get the opportunity to choose their representatives. The slogan "I myself will cast my vote, I will give it to whomever I want" reflects this belief that the people will enjoy the freedom to elect the representatives of their choice through the free exercise of their franchise. If we review the history of the past days in the context of the National Assembly elections in Bangladesh, we find that in the recent past in 2008 an acceptable fair, free and inclusive election was held which was recognized and appreciated by all quarters nationally and internationally. The entire people of Bangladesh at that time came to the realization that through the election of the National Parliament, they were able to send the real representatives of their choice to the Parliament. They became hopeful that they would be able to continue exercising their franchise in the same way in the future. But after the abolition of the caretaker government system through the fifteenth amendment of the constitution, in 2013, the coalition led by the then main opposition party chose the path of movement to demand a caretaker government and completely boycotted the National Parliament election, as a result of which the election became one-party. As a result, the enthusiasm of the people to exercise their right to vote is reduced on the one hand, and on the other hand, those who are in power through the election got the opportunity of a kind of single-party hegemony in determining national policies and conducting governance activities. Later in the 2018 elections, the opposition parties returned as a collective coalition but did not show the desired success, which was attributed to the absence of the 'level playing field' required for free and fair elections, including the controversial role of the EC and other related institutions, especially the administration and Law enforcement agencies. There have also been serious allegations of repression of opposition parties during the election campaign, obstructing the presence and placement of representatives in booths during elections and vote counting, and illegal voting in the dark of night. As a result, the extent to which voters have been successful in exercising their right to vote in this election

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² [Democratic governance | OSCE](#)

itself remains questionable. On the other hand, a feature of post-2013 Bangladeshi politics is that various key institutions for upholding democracy have continued to weaken, and the opposition camp has not yet gained the mass base and organizational strength to play an effective role as a political force in ensuring a free and fair electoral processes.

It is in the above context that the 12th National Parliament election is slowly approaching before us. Making this election fair, free, impartial, acceptable and above all an inclusive one is a major challenge in the continuation of democratic governance in Bangladesh. All stakeholders have an important role to play in overcoming this challenge. In this regard, apart from the constitutional special responsibility given to the Election Commission, the electoral government and its administrative apparatus, especially the administration and law enforcement agencies, ruling and opposition political parties, civil society and the media all have important roles. The Hon'ble Prime Minister and Leader of the 11th Parliament herself has very clearly expressed her party and government's will in this regard very recently. In a question-and-answer session in Parliament, she mentioned 11 steps, including the preparation of voter lists with photographs taken, by her government to make the 12th Parliament elections to be held in 2023 more participatory. Referring to the Article 118 (4) of the Constitution, the Prime Minister specifically emphasized that the Election Commission shall be independent in the conduct of its activities and it is the responsibility of the Government and the executive authorities to assist in the conduct of its (i.e. Election Commission or EC's) activities. She mentioned that the government led by her party Awami League is playing a sincere and positive role in creating a congenial environment for free, fair and acceptable elections.

In view of all these hope-inciting statements made by the Hon'ble Prime Minister in the Parliament, we can only say that we hope that her government will give utmost importance to ensuring a level playing field for all the aspirant political parties during the elections, including providing opportunities for voters to come to the polling stations and cast their votes freely. Photo voter lists, transparent ballot boxes or the use of EVMs all become meaningless if there is no fair, free competition for all political parties and the voter goes to the polling station to only find that her vote has already been cast, (in some cases) fear among voters is instilled, attendance of party representatives is not ensured and their presence during counting of votes is also not guaranteed. These allegations were widely reported during the 11th National Assembly elections, the empirical research data also supported them, and they still remain a central element of election-focused concerns.

Another important issue is the election laws and regulations. All relevant laws and regulations should also be such as to ensure a level playing field for all aspirant parties. Transparency International Bangladesh (TIB) strongly emphasized during both the 10th and 11th parliamentary elections that having one sitting member of parliament in each constituency creates an opportunity and risk of bias or influence in the election process of new members of parliament. A recent example of this can be seen in the Comilla City Corporation elections where controversially the incumbent mayor was declared elected by late declaration of results in some centres. Therefore, with the aim of creating an environment conducive to equality between the competing candidates, the relevant section of the Fifteenth Amendment should be repealed and returned to its original status. Among the other measures aimed at creating this equal position, the most important aspect is to ensure the neutral position of the Election Commission and to limit the activities of the government during the election period to routine works through legal reforms.

It is important to remember that the steps required to make an election effectively fair, free and inclusive are not limited to election day only. It is very important to follow the rules of electoral conduct especially that the government party limits its campaign to official campaign schedule (i.e. as per the *Tafsil* as announced by the Commission). Nominations should reflect grassroots views and “nomination trading” (the practice of illegal fund raising by granting nomination to a candidate who offers huge sum of money) should end. In the case of 2018 elections, there have been allegations of running nomination trade worth crores of money even while sitting abroad. If the candidate is nominated in exchange for money, then the issue of representing the people in the parliament becomes irrelevant and the possibility of those who can actually represent the people, their inclusion in the electoral competition is destroyed in the beginning. There are also allegations of widespread irregularities in keeping the expenditure within statutory limits in the election campaign process. Those elected who spend huge sums of money on nominations and campaigns can hardly represent the people. As a result, a situation arises where 'representatives are representing themselves' instead of 'representing the people'.

Therefore, if elections are to be meaningful and effective in terms of representativeness of the people, electoral nominations must be made free of corruption to reflect the hopes and aspirations of the people at the grassroots level. In this regard, the civil society has demanded the re-introduction of the provision made by the then caretaker government in the law in 2007. The people have the opportunity to exercise their right to vote on election day, but elected members of parliament remain under no legal obligation to be accountable to the people until the next election. As a result, the voters do not get any opportunity to effectively monitoring whether the elected representatives are representing the voters for a period of five years. In many countries of the world, in this regard, there is an opportunity to withdraw elected representatives during the interim stage of the two parliamentary elections. TIB has been recommending the creation of similar legal opportunities for voters in Bangladesh to make Parliament more effective in terms of public representation. A suffrage exercise once every five years is not sufficient to effectively incorporate the people into parliamentary governance. In addition, TIB has also previously discussed the limitations of the conventional method of election to implement parliamentary democracy. In the current system, there is an opportunity, as well as actual precedence, for a constituency-based majority party to form a government despite a low percentage of the total vote, which is one of the factors in creating a 'winner-takes-all' situation. This creates the risk of uncompromising violence between opposition parties in the run-up to national elections. The risk of such violence can be reduced by introducing 'proportional representation system'

Undoubtedly, the Election Commission is the most important constitutional institution bestowed with the responsibility of making the next 12th National Parliament elections fair, free and inclusive. However, since assuming office, the new commission has failed to take a clear stand on what to do in bringing all the parties to the polls³. TIB has made its position clear from the beginning. TIB feels that if any legal changes/reforms are required to bring all the parties to the polls by building confidence then

³ Recently an Election Commissioner clearly mentioned that it is not the job of the Election Commission to bring all the parties to the polls. Source: The Daily Star Online, Friday August 26, 2022, <https://www.thedailystar.net/news/bangladesh/politics/news/not-ecs-job-make-all-parties-join-polls-3103256>; Chief Election Commissioner (CEC) Kazi Habibul Awal said, “The Election Commission (EC) wants active participatory voting. But the EC will not bring anyone to the election by hand.” Source: Prothom Alo, 5 September 2022, [ইসি কাউকে ধরে-বৈধে ভোট আনবে না: সিইসি | প্রথম আলো \(prothomalo.com\)](http://www.prothomalo.com)

the Election Commission should clearly inform the government about it. It falls within the institutional and moral responsibilities of the Election Commission to recommend to the government to remove the various deficiencies in the existing legal framework, which also hinder the capacity building of the Election Commission in conducting fair, free and inclusive elections. It is unfortunate that without taking any such initiative what has been said by the Election Commission in this regard is completely contrary to the confidence of all the parties. Similarly, the Commission's decision regarding EVMs is playing a negative role in creating confidence among the relevant stakeholders. The Election Commission has already announced that EVMs will be used in maximum 150 constituencies for polling. However, this decision has been criticized from various quarters and many consider it a serious negative step in building public confidence in the new Election Commission. After the Election Commission took charge, it held a series of opinion exchange meeting with representatives of political parties and civil society. During these discussions, most political organizations and civil society representatives opposed the use of EVMs. Those who did not attend the exchange meetings also expressed their disbelief about the use of EVMs through media or in their speeches. In this context, TIB finds the EC's decision highly controversial that has completely ignored the concerns of relevant stakeholders, including a significant number of political parties, civil society, political and independent election commentators, and credible technology experts. The EC has not adequately explained the reasons and rationale for this decision, so naturally the question may arise as to whether it was a predetermined decision. TIB also feels that taking into account the opposition of a large number of stakeholders against the use of EVMs and in view of the current financial crisis, the EC should objectively analyze the political, financial and technical pros and cons of the use of EVMs and present them in a transparent manner. Voters of the country have the right to know what concrete contribution this decision to use EVMs will make to ensure a free, fair and inclusive elections.

On the other hand, the opposition party is still talking about boycotting this election. It should be noted that their objections are not just EVM-centric. If effective steps are taken to ensure a level playing field, and an impartial role of the electoral government, law and order agencies and the administration, it is hoped that they will not take rigid steps like in 2013 and will be willing to participate in the elections instead of boycotting it. It is also expected that they would soon present the necessary implementable demands to fulfill their aspirations for a free, fair and impartial election. There are realistic reasons to fear that if they persist in agitating for the fall of the government and the demand for a caretaker government, the political crisis will likely deepen. In fact, both the ruling party and the opposition need to come to a balanced state through negotiations and concessions, prioritizing the interests of the country and the people, where both parties will see enough reason to be optimistic about the elections. Based on research conducted by TIB at various times, some specific recommendations considered as acceptable to all stakeholders including government and opposition parties, election commission, civil society, media, and other stakeholders are presented below that would be helpful in achieving a state, where both parties can be optimistic about participation in elections.

1. Necessary action on the part of political parties

- Ahead of the 12th National Assembly elections, all political parties must be responsible and sincere in making the election effective as a process of peaceful transfer of power.
- The government party shall take necessary steps to ensure the confidence of all other parties, including effective dialogue with all parties, highlighting the steps taken by the government,

actively considering the demands of opposition parties and taking necessary steps to ensure that elections are fair, free and inclusive, and to ensure all possible cooperation in the independent functioning of the Election Commission.

- Instead of taking an adamant stand on the part of the opposition parties/alliances, they should present feasible demands before the nation to make the elections fair, free and participatory, and for this purpose, discussions with the government and the Election Commission should be held.

2. Legal Reforms

Necessary legal reforms should be made to facilitate the implementation of fair, free and inclusive elections. Especially if the ruling ministers and members of parliament take the opportunity to go to the elections without resigning, it is not possible to ensure a level playing field with other candidates, so necessary legal reforms should be taken in this case. In addition, necessary legal reforms should be undertaken in the following areas:

- Making it mandatory to obtain the approval of the Election Commission for the appointment and transfer of the Cabinet Department, Home Affairs, Public Administration, Local Government and other related ministries during the election period;
- To keep the election officials (against whom allegations have been made) under the commission for three months after the declaration of election results;
- Mandatory donation of nominations from grassroots nominated candidates;
- Eliminating all inconsistencies in the law regarding punishments for violations of the code of conduct (such as the Representation of the People Order Act 1972 and the Electoral Code of Conduct still provide for disparate measures for similar offences); and implementation of electoral laws without any bias;
- Mandatory publication of financial statements of political parties;
- Inclusion of clauses in the Electoral Act regarding the mechanism for scrutiny of election expenditure returns of candidates and political parties;
- Ensuring enabling environment by amending applicable laws to increase the participation of women, minorities and the disabled in elections with a view to making national elections more inclusive. At present their participation is not guaranteed in any law.

3. Use of EVM

The controversial decision to use EVM in up to 150 seats should be withdrawn and before any decision is taken again, the political, financial and technical positive and negative aspects of using EVM should be objectively analyzed and the possible gains and risks due to the use of EVM should be clearly presented before the people of the country.

4. Various Necessary Measures During Election and Post-Election Period

- The Election Commission should regularly monitor the cases of violation of election campaign expenditure and conduct rules by candidates and take action as per law and rules. If necessary, the power to nullify elections irrespective of candidates and parties should be shown through impartial investigation.
- Ensure equal opportunity for all parties to hold meetings;
- Strictly impartial role played by EC in preventing and remedying repression of opposition leaders and activists;
- Ensure equal opportunity for all parties and candidates to campaign and ensure equal security of candidates and leaders and workers of all parties;
- To prevent unwanted interference/influence/use of force/conflict and fake voting in polling stations/booths, CC cameras should be installed in all polling stations and ensure that they are operational during polling.
- In the interest of healthy, safe, acceptable and participatory elections, all domestic and international organizations interested in election monitoring should be ensured free and completely free of influence. For this purpose, appropriate reforms should be made in the relevant approval process.
- Ensure free environment for election observers, researchers and mass media to gather information. No restrictions or restrictions can be imposed on election observers and media, such as reducing internet speed during elections, shutting down 4G and 3G networks for mobile phones, banning the movement of motorized vehicles except for emergency purposes, etc.
- Political parties should be encouraged to lodge complaints with the Election Tribunal in cases of undue interference/influence/use of force/conflicts and fraudulent voting in polling stations/booths.
- Grievance settlement process including appeal should be completed within six months after filing of complaint under Election Tribunal.
- Scrutiny of election expenditure returns of candidates should be made mandatory.
- The Election Commission should take necessary steps to make the election expenses of the candidates and political parties open to the public.

5. Other

- In the interest of free and fair elections, political parties should encourage their candidates to campaign in accordance with the electoral code of conduct.
- Investigative reports on election expenses of candidates should be published in media.
- Civil society and organizations experienced in election related work should speak out against violations of election rules by candidates.

- The Election Commission should take initiatives to increase the awareness of the candidates and voters about the electoral conduct rules and the penalties for violating them.
- In the long term, electoral system should be changed and Proportional Representation system and Recall method should be introduced

Only yesterday, the Election Commission announced a roadmap on what to do by identifying 14 challenges in making the upcoming parliamentary elections "free, fair, impartial, acceptable and participatory". In the press conference on this occasion, the Election Commission has openly admitted that it faces many questions and lacks credibility⁴. The challenges they identified to make the twelfth national election free, fair, impartial, acceptable and participatory are no different from the challenges discussed in this article. The main issue is how successful the EC going to be in overcoming these challenges before the election. TIB feels that the EC's identification of these challenges is timely, but all stakeholders, especially the government, have a critical role to play in overcoming the challenges.

On the occasion of which this press conference has been convened, the International Democracy Day is meant for highlighting and upholding the democratic principles. Free, fair, impartial, acceptable and inclusive elections are one of the tools to promote democratic principles. The twelfth parliamentary election is going to present us with the challenge of implementing such an election, by ensuring which all stakeholders must do their best to maintain the continuity of democratic governance. By playing their respective roles properly, every stakeholder should hold the national elections as desired and maintain the continuity of democratic good governance in the country.

Supporting references and research reports

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⁴ [আমরা অনেক প্রশ্নের সম্মুখীন: ইসি | প্রথম আলো \(prothomalo.com\)](http://prothomalo.com)

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