

Enforcing Party Finance Laws: Role of the Election Commission

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Introduction:

State is a unique setup of diversified institutions or organs and political parties. Necessity of political parties in modern liberal representative constitutional democracy cannot be overemphasized. Political parties secure harmony of action among the various organs of the state.¹ Political parties in democratic system establish representative government and representative institution and it creates a bridge between government and people. Whereas political parties are part and parcel of democracy, so is the responsibility of the political parties to improve intra-party governance and funding rules, demonstrate transparency and accountability to the people. The Election commission is the constitutionally-empowered institution responsible for regulating and monitoring political finance. Though there are adequate rules and regulations for monitoring of political finance, those are not enforced practically and remain ineffective. This article deals with financial accountability of the policies parties in Bangladesh in light of good practices across the world. It seeks to establish legal grounds for political finance control. Apart from investigating into the poor or almost non-enforcement of these laws, the article attempts to suggest some enforcement mechanism that may help tackling the polluted political finance.

Accountability in Political Parties:

Generally, accountability provides information about an individuals or organizational activities. Financial accountability is concerned on tracking and reporting on allocation, disbursement and utilization of financial resources by using the tools of auditing, budgeting and accounting.² In our country, there is lack of accountability and inter-party democracy within political parties. Accountability in political finance helps to control the influence of money in politics, scrutinize whether the information submitted by parties is completed, accurate and in accordance with the law and ensures citizens right to know about the ties between their representative and those who lend them financial support. Political accountability includes publishing of all account of income and expenditure by keeping proper books and accounts, besides discloser donations and election expenditures.

Unethical Financing in Political Parties:

In 30 years of our political history, major political parties have become one-(wo)man-show. They possess little consultative process or collective decision making. All major political parties are run by dynasties.³ Key decisions are often taken by party chief.⁴ When

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¹Ahmad, Zulfiquar, Principles of Political Theory, Shams Publications, Dhaka, 1st Edition 2015, p 497

²Brinkerhoff, Derrick. January 2003. Accountability and Health Systems: Overview, Framework, and Strategies. Bethesda, MD: The Partners for Health

ReformplusProject, Abt Associates In. Available at: www.PHRplus.org.pdf

³Centre for Policy Dialogue (CPD), Dhaka, Press Reports on Political Parties and Democracy in Bangladesh, 17 May, 2014. Available at: cpd.org.bd/index.php/press-reports-political-parties-democracy-in-Bangladesh-cpd-dialogue. Accessed on: 10.10.2017

party in opposition, passing its awful time, the chiefs are found fully financially facilitated and sheltered in home and abroad with the help of political cohorts. This trend, on the one hand, creates obligation on the parties and the party leaders to offer undue favors to the financiers.⁵ There is also a lack of accountability in party's resource of funds and their expenditures. Transparency in the mobilization of funds by the political parties mostly remain undocumented. Frequently built upon undisclosed black money, political funding process build collusive ties between politicians and business elites and thus leads to corruption.⁶ Also mainstream political forces are in race to grab public fund and depend on muscle power which criminalizes the political process. Money has become most important factor in securing nomination and winning elections. In a recent survey of *Transparency International Bangladesh* shows that 88 candidates spent Tk 4,420,979 on an average during the legal time frame for election campaign in 2008. With the highest estimated expenditure of Tk 28,100,000, the candidates overspend Tk 3,105,859 on an average.⁷ This is a clear violation of electoral expenditure law and the Election Commission is appearing as a toothless tiger.

Global Good Practices:

In many democratic countries in the world, political parties are seen to be made accountable in a serious fashion. Matters such as candidate selection, party fund raising and leadership selection must conform to specific party laws. Under the German Political Parties Act, 1996 (as amended in 2004) all political parties must have written statute and party must contain provisions on: joining and leaving the party; right and duties of members admission, voting, decisions on expulsion of party members; permissible sanctions against members and regional and local branches and their exclusion from the party; the composition and powers of the Executive Committee for nomination of candidate and of other bodies.⁸

In Bulgaria, Estonia, France, Latvia, Lithuania, Poland, Portugal, Slovakia and Spain all contributions to political parties must be disclosed. In other countries such as Belgium, Denmark, Germany, Ireland, Italy, Romania, Slovenia and the UK, disclosure is only necessary above a certain threshold.⁹

Countries such as Argentina, Armenia, Belgium, Canada, Estonia, France, Georgia, Hungary, Israel, Mali, Mexico, Poland, Portugal and Romania¹⁰ have a complete ban on corporate donations to the political party in place. In Canada, besides a ban on legal

⁴*Ibid*

⁵Shantanu Majumder, Democracy in Bangladesh, Available at: <https://www.scribd.com/document/51455496/Shantanu-Majumder> Accessed on: 14.10.2017

⁶*Ibid*

⁷Transparency International Bangladesh. 2009, *Transparency in Political Finance in Bangladesh*. Available at: http://www.ti-bangladesh.org/research/Crinis_Report_251009_full%5Be%5D2.pdf Accessed on: 16.10.2017

⁸Transparency International Bangladesh. 2013, Political Party Accountability: Intra-Party Democracy, Funding and Minimum Standards For Candidates, Available at: https://www.transparency.org/whatwedo/answer/political_party_accountability_intra_party_democracy_funding_and_minimal_st Accessed on: 20.10.2017

⁹Transparency International, 2012, Money, Politics, Power: Corruption Risks in Europe, Available at: https://www.transparency.org/whatwedo/publication/money_politics_and_power_corruption_risks_in_europe Accessed on: 20.10.2017

¹⁰International IDEA, 2012. Political Finance Database. Available: <http://www.idea.int/political-finance/> Accessed on: 22.10.2017

entities donations to political parties, candidates and third parties since 2007, individuals have been limited to donating no more than a total of C\$1,100 (US\$741) per year to political parties.¹¹ And also election expense limits for political parties and candidates are considered as the “cornerstone of Canadian democracy”. They have been established to address the issue of undue influence and to guarantee accessibility and fairness in the political process.¹²

Bangladeshi Laws Relating to Political Finance:

Scope of regulation, monitoring and disclosure of political financing is provided by the 2008 Amendment of the Representations of the People Ordinance 1972¹³ (herein after ROP 2008) and the Political Party Registration Rules 2008. According to the RPO 2008 every candidate must submit possible source of his election fund. Election expenses have to be incurred only by election agent. Candidates are obliged to include income reports and name, date and value of donation and must have separate bank accounts operated by agent/candidate. Political parties’ election expenses shall not exceed Tk 1,500,000 and top amount of spending is Tk 45 million. The election funds and expenses of parties must be operated through separate bank account. In case of personal donation, a party can receive Tk 500,000 or property or service equivalent to it in a year. Under *RPO 2008*, Article 90F(a) In case of corporate donation, a party can receive Tk 2.5 million or property or service equivalent to it in a year. Under *RPO 2008*, Article 90F, *ROP 2008*, a registered political party shall be entitled to receive donation or grants from any person, company, group of companies.

Passive Role of the Election Commission:

Although the EC have adequate rules and regulations for maintaining accountability of political finance, so far it has failed to enforce the law related to political financing.

Under the law, parties and candidates need to submit expenditure returns showing names and amounts of donations, types of expenditure etc. At the time of submitting nomination paper the candidate shows the unverified name and account of the donor and their own-funding is never disclosed by the candidate. It is a matter of sorrow that those are not audited by the EC. For non-abidingness of disclosing information to public. Political parties and donors never disclose such information proactively or on demand of the citizen because of the culture of “winners have all power” in politics. In 2008 for the first time, the EC included the provisions of discloser of electoral finance in its website but in due date the EC neither disclosed the information on its website nor made it open in any other form for the public.¹⁴

Yearly auditing of party accounts is mandatory for registration of a political party. Hardly any income and expenditure record is accurately maintained by the parties. Though they maintain the register book, none of the parties has any registry of property and not any kind of income of such as donations in cash and kind are recorded in the register book.

¹¹ The Canada Elections Act 2000, Available: <http://laws.justice.gc.ca/eng/acts/E-2.01/index.html> Accessed on: 24.10.2017

¹² *Supra Note 8*

¹³ It must be mentioned that the Representation of Peoples Order was amended by the military backed caretaker government on 12 November 2008. That Ordinance of 2008 was repealed by the Representation of the Peoples Order (Amendment) Act, 2009 (Act No.13 of 2009).

¹⁴ *Supra Note 8*

Only the top position holding persons are the custodian of the register book and none of the parties has any paid staff to this purpose.

Under the *ROP*, prior to the submission of both the party and candidates electoral accounting report, EC must arrange auditing by an independent audit firm. The candidates must show the probable and actual source of election expenses. Though the candidate follows the rules, there is a wide believe that only by maintaining this rule, they show a meager expenditure, actual expenditure being much higher. Unfortunately, there is no effective mechanism to check the electoral accounting report. In very few cases, the EC launched investigation based on complaints and returned the expenditure report on election campaign for ratification or took any other action. After 2008 election, though most of the candidates submit electoral report of accounting to EC, these were not externally audited.¹⁵ It shows the incapacity or unwillingness of the EC to pursue the political finance laws faithfully.

Recommendations:

Considering the lackluster commitment of the Election Commission and Political Parties to the norms of accountable political financing, following suggestions are worth consideration:

1. Establishing the “monitoring and auditing mechanism” for tackling the upper limits of electoral expenses during election.
2. Introducing a provision of allowing rebate on the income tax of private companies for giving donation to the political parties which will entertain private companies to donate the political parties while also in the process increasing the level of transparency.
3. Register book should be open for all members, not only to the top leaders and an accountant must be recruited for entering the data.
4. Ensuring reporting of electoral finance in the political culture. EC and every political party should disclose all financial information annually through yearly reports and websites.
5. EC should have the capacity for stringent implementation of electoral laws and rules without any fear and biasedness. Verifying all the information provided by the candidate during submission of nomination is a must and in addition they should scrutinize the audited reports and statements of expenditure by the parties. EC should take lawful actions for any anomaly
6. All political parties must have written statute and must contain provisions on: - rule for joining and leaving the party; the rights and duties of members including the compensation and power of Executive committee for the nomination of candidates and of other bodies.

Conclusion

However, in last few years we saw a noteworthy wind of changes in respect of transparency and accountability in political and electoral financing. The Election Commission and Caretaker Government’s endeavor to bring the financing of the political party’s expenses under the inquiry and monitoring to set of new laws and rules and under the amended *ROP* and other relevant rules. In reality, EC has the lack of capacity to make the law obligatory. The above recommendations help to make the political finance in Bangladesh more transparent and accountable.

¹⁵*Ibid*