

Regulatory Framework of Political Party Finance in Bangladesh: Some Issues and Observations

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Abstract

No democracy in the world that functions without political parties; and the parties cannot work and survive without money. Therefore, the parties require money during elections for campaign and between elections for running political programs. But, due to non-transparency, political finance is a concern around the globe as it promotes political corruption by the electoral and political stakeholders when there is no legal provision of effective disclosure and sanctions. Moreover, use of unlimited and unequalled money by the candidates and parties in elections hampers the credibility of elections. Hence, an equitable system of political funding is a key to ensure transparency that helps promoting genuine democratic elections. Although, there is no universally accepted model of political finance, there are, however, internationally accepted guidelines and several best practices. This paper presents an analysis of the political finance regulatory framework of Bangladesh 2018 with the objectives to identify the gaps between international guidelines and that of Bangladesh's law; and finally, to highlight the shortcomings with the objective to improve those.

Keywords: Money in politics, Political finance, Election campaign funding, Non-election party funding, Donation, Regulatory framework

1. Introduction

There is no democracy in the world that functions without political parties, and without money political parties cannot operate. Parties need to generate money not only to meet their electoral costs but also to conduct political programs between elections. Considering the importance of money in politics, it is called the 'mother's milk of politics'¹.

Despite its indispensability in politics, the "relationship between money and politics has always been a concern throughout the globe due to non-transparency in political as well as in election finance".

James Kerr Pollock stated that "the relation between money and politics has come to be one of the greatest problems of democratic government. Healthy political life is not possible as long as the use of money is unrestrained."² "Since the influence of money in political arena is incontrovertible, any absence of transparency or accountability in financial transactions may lead to corruption and irresponsible practices. It cannot be denied that undisclosed money and corruption significantly harm the economic and political system of a country distorting the performance of politicians, diminishing public confidence in the democratic form, and ultimately undermining national development"³. Therefore, the quality and efficiency of government and functioning of democracy is questioned when there is absence of transparency and ambiguity in political and electoral finance which eventually

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undermines the credibility of elections. Therefore, a transparent, equitable and healthy political finance is a pre-condition for improving internal democracy of parties and genuine democratic elections.

Like many other countries of the world, abuse of money in politics and elections is a major concern in Bangladesh. Although, compared with many of them, the legal framework on political finance in Bangladesh is stronger, there still exist a few issues which need to be addressed to bring further transparency in political finance. This paper is mainly an assessment of the current political finance regulatory framework of Bangladesh; this includes the Representation of People Order (RPO) 1972 (amended in 2018), Political Party Registration Regulations 2008 (amended in 2012) and Gazette notification on the constituency-wise expenditure limit. Also, the website of the Bangladesh Election Commission (BEC) and few other studies are used as secondary sources.

2. Objectives

The general objective of this paper is to review the political finance regulations in Bangladesh in line with the international frameworks. The specific objectives are to:

- Review the legal framework of political finance of Bangladesh,
- Identify the gaps of political finance laws and regulations,
- Observe and identify the shortcomings for further improvement of the political finance regulatory framework in Bangladesh.

3. Literature Review

Although studies in the context of Bangladesh discuss the political finance and political corruption issues under a broader topic, there is no exclusive study that reviews and analyzes the political finance regulatory framework in Bangladesh. Akhter (2001)⁴ focuses on the significance of elections in Bangladesh and portrays how electoral corruption has affected the process of democratic consolidation; he proposes a set of suggestions for combating corruption in the electoral process. Akram and Das (2009) conducted a study on the postponed 22nd January 2007 Parliamentary election which revealed that even before the commencement of legally permissible campaign period, the candidates spent on an average more than three hundred thousand taka which was illegal⁵. Haque and Ahmed (2006) observed that “party corruption was widespread in Bangladesh and this was particularly bad for the country when political and economic institutions were still in their infancy”. They also found that “political parties in Bangladesh were perceived as actors who manipulate their powerful positions to extort bribes, offer members and followers rewarding positions in the public sector, or channel public resources into the hands of party leaders or supporters”.⁶

Hasanuzzaman (2011) revealed that “in the absence of any clear-cut and transparent party financing system, political parties resorted to obtaining funds through improper and unethical means”. The party activities were normally conducted in a “non-transparent manner” and central-level functionaries collect fund from supporters, business-people, expatriate Bangladeshis etc. He observed that due to the “absence of any clear-cut and transparent party financing system, parties obtained fund from improper and unethical sources”.⁷ Hussain (2012) similarly observed that the “use of money and muscle power had become

the main element of distorting the voting result”⁸ .

4. Basic Concepts of Political Funding

“Political funding is both an object and a result of political processes”⁹. It not only comprises all income and expenditure related to election campaigning, but also includes all funds that are collected and spent for political activities. Political funding can be divided into two broad categories:

- A. Election campaign funding; and
- B. Non-election party funding

Election campaign funding, which is exclusively related to elections, covers the total income and expenditure made by the political parties as well as political candidates after the announcement of election schedule¹⁰. Candidates and parties raise these funds to cover the election expenses such as setting up election camps, printing and publishing campaign posters, leaflets and other materials, organizing public meetings and rallies, advertising on the media etc. The analysis of election campaign funding practiced around the world shows three types: (a) exclusively public funding, (b) exclusively private funding, and (c) mixed funding- the combination of (a) and (b).

When parties and candidates conduct election campaign using public funds only is called exclusively public funding for election campaign; such funding does not allow any other sources. The public funding is disbursed to the political parties and candidates in two ways: (i) direct funding and (ii) indirect funding. The direct public funding is given straight-forwardly “to the parties/candidates in the form of cash, bonds or loans to meet the campaign-related expenditure e.g. Uzbekistan. The indirect funding is given in the forms of tax exemption/benefits e.g. Australia, free access to media e.g. New Zealand and India, free transport e.g. Moldova, printing/distribution of materials e.g. Spain, use of government property e.g. Hungary, and free party offices e.g. Italy”¹¹.

The exclusively private funding for election campaign is raised from various private sources. These funds are mainly donated in small amounts by individual supporters of parties and candidates; however, it could be a big amount. The main sources of private funding are: (a) membership subscriptions; (b) voluntary donations by the party members- the additional money except the membership dues paid by the party members as voluntary contribution; (c) donations from non-political interest groups or business houses (e.g. business institutions, corporations, associations of businessman, labour organizations); (d) credit; and (e) various fund-raising activities organized by the parties. Countries such as Afghanistan, Bahamas, Ghana are the examples which have only private funding¹².

The mixed funding is the combination of public funding and private funding. In some countries like UK, Italy, US, Australia and Egypt private funding dominates, although at the same time there exists public funding. On the other hand, public funding dominates in countries like Austria, Sweden and Mexico, and the sources of private funding are strictly regulated in such countries.

Except the election campaign finance, political parties need money for other purposes- this

includes office space rent, utility bills, staff salary, daily expenses including stationary, tea and snacks, organization of various party programs etc. These expenditures are known as non-election party finance. “Although it is difficult to make a clear demarcation between election campaign funding and non-election party funding, the latter is simply the income and expenditure by the parties between the elections. As of election campaign funding, the non-election party funding can be divided into three categories: (a) exclusively public funding, (b) exclusively private funding, and (c) a combination of these two options”¹³.

As per International IDEA Political Finance Database, there are few countries where public funding dominates the election campaign, but it is very uncommon that a country which has the legal provision of public funding only to meet non-election expenditure by the political parties between two elections¹⁴. However, Argentina is such an example that has the provision of non-election public funding to political parties (this fund is a Permanent Party Fund which is known as *Fondo Partidario Permanente*—FPP); this fund is distributed annually among the political parties along with provisions of controlled private funding¹⁵.

5. International Norms and Standards in Political Funding

Although there is no universally accepted way or best way for political funding that could be followed as an ideal model, there are some guiding principles to ensure transparency to political funding. In 2004, Casals and Associates carried out a survey and found that “each of the four countries examined represents a different model of political-party finance and a different rationale for putting into place legal and regulatory frameworks for controlling the flow of private and public contributions”¹⁶. However, various international communities such as United Nations, European Union, and Transparency International have agreed upon different standards related to political funding. Article 7.3 of the UN Convention Against Corruption stipulates that “each state party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidates for elected public office and where applicable, the funding of political parties.” Like the international conventions, few regional conventions also address this issue and put emphasis to ensure transparency to political finance. The African Union Convention on Preventing and Combating Corruption specifies that “each party shall adopt legislative and other measures to prescribe the use of funds acquired through illegal and corrupt practices to finance political parties and incorporate the principles of transparency into funding of political parties”¹⁷. *In the Code of Good Practices in Electoral Matters*, The European Commission for Democracy (Article 2.3) stipulates that “equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, especially with the election campaign, coverage by the publicly owned media and public funding of parties and campaigns”.

International and regional communities develop and use some tools to realize the level of transparency in political finance. Developed by Transparency International and Carter Center jointly in 2009, CRINIS¹⁸ is one of such tools. There are also other common tools, but CRINIS is the mostly accepted and widely used tool among the election experts. Analysis of this tool shows following ten dimensions for assessing and understanding the level

of transparency to political finance:¹⁹

- *Internal bookkeeping:* Bookkeeping includes recording, storing and retrieving of all kinds of income and expenditure. This is a very simple mechanism to enhance transparency to political finance which could be ensured either by internal party rules or government's regulations. Internal party rules on bookkeeping are totally voluntary initiatives that depend on a party's managerial capacity and will, while government regulations depend on the will of the government itself.
- *Reporting to the electoral management body:* A reporting mechanism on income and expenditure is critical for further transparency and fight political corruption. Such reporting could be annual, bi-annual or on quarterly basis and generally, is made to the election management body (EMB). However, government's regulation is a must for such reporting.
- *Disclosure of information to the citizens:* Citizens' access to the political funding is critical for improving transparency; such access should be given to media, academia, and civil society organizations for wide circulation among the people. The government's regulations are mandatory for this practice.
- *Comprehensiveness of reporting:* The financial report submitted to the EMB must contain detailed and reliable information of all donations including the donors' names, amount donated, mode of donations, in-kind donations etc. Similarly, detailed expenditure along with mode and purpose of payment should be included in the report.
- *Audit:* The political finance law should have the provision of audits of income and expenditure including campaign expenditure. Such audit should be conducted by an independent audit firm. The legal framework should also have a provision to request additional information or further explanation if it is required by the EMB. However, if government regulations are not in place, the audit could be initiated by the party itself voluntarily.
- *Investigation:* The political finance law should have the provision to "investigate potential reporting irregularities, errors or fraud, and potential violations of the law"²⁰. This investigation should allow the EMB to verify the invoices and other records including bank statement and testimony of candidates, party agents, party leaders and donors.
- *Negotiation:* The government's regulatory framework is required to incorporate two issues, i.e. scope of negotiation of compliance and alternative dispute resolution.
- *Administrative penalties:* The legal framework should have the provision to impose some kinds of sanctions in the form of "strict liability"; this includes cancelation of candidacy, stopping the candidates to conduct campaign for a certain period, monetary penalties etc.
- *Civil action:* If negotiation and administrative penalties do not work, civil action is required to address the irregularities. This could be ensured either by a general court or by a specialized one.

- *Criminal prosecution:* “The legal framework is expected to seek prosecution of potential criminal violations of political finance laws”²¹.

6. Political Finance Regulatory Framework of Bangladesh

The legal provisions related to political funding both for parties and candidates in Bangladesh are described on the RPO- the main piece of electoral legal framework of the country. Its first version was promulgated in 1972. It did not contain any specific chapter related to political or electoral finance. However, it had been revised several times; and through a revision in 1985, a new chapter, “Chapter IIIA – Election Expenses,” was incorporated- which is directly linked with election-related income and expenditure of political parties and candidates. However, in 1991 and then in 2001, this chapter was revised with a view to ensuring further transparency and accountability in election campaign funding both by parties and candidates. In 2008, before the 9th parliamentary election, non-election party funding was included for the first time in the legal framework. An analytical synopsis of the latest version (updated before the 11th parliamentary election held in December 2018) of the political finance regulatory framework of Bangladesh is given below.

6.1 Non-electoral party finance

Sources of fund: The legal framework does not contain any provision of public funding to political parties in Bangladesh ²²; however, it allows political parties to collect fund from various private sources. Article 90F(2) of the RPO states that “a registered political party shall be entitled to receive donation or grants from any person, company, group of companies or non-governmental organization”²³ as well as “from any candidate or any person seeking nomination or from any other person or source giving their names and addresses and the amount received from each of them and the mode of receipt”²⁴. However, the law is silent whether a party can take loans.

Limit of donation: In the case of a person, the amount of donation or grant in a year must not exceed BDT 1,000,000 (Approximately USD 12,350) as “cash or property or service equivalent to it”; while the limit of donation is BDT 5,000,000 “in the case of a company or organization”²⁵.

Mode of donation: Article 44CC(4) of the RPO stipulates that political parties can receive donation as cash amounting below BDT 25,000; but if this amount is more than BDT 25,000, it has to be received through bank cheque.

Ban on foreign donation: Article 90F(2) of the RPO has made a prohibition on the registered parties to “receive any gift, donation, grant or money from any other country, or non-government organization assisted by foreign aid or from any person who is not a Bangladeshi by birth or any organization established or maintained by such person”.

Internal bookkeeping/ Bank accounts: Every registered political party has to keep records of the donations and spending made by the “candidate or any person seeking nomination or from any other person or source with their names and addresses and the amount received from each of them and the mode of receipt”²⁶. Moreover, the funds received by the party must “be deposited and maintained in any scheduled bank”²⁷.

Disclosure: Every registered political party has to disclose its yearly income and expenditure by submitting an audited report to the BEC by 31 July of the following year. This audit is required to be conducted by a government-approved chartered accounting firm.²⁸ However, these reports, in general, are not made public through BEC's website or in any other forms; but BEC provides these reports to any person upon request.

Scrutiny, sanctions and punishment: A registered political party that "fails to provide any information" asked by the BEC including failure of submission of audited report for three consecutive years, may lose its registration with the BEC²⁹.

6.2 Electoral Finance

6.2.1 Income and expenditure by the party chief and disclosure

The party chief of the registered political party, during the campaign period of parliamentary election, travels to various constituencies and asks for vote for his/her party in the public rally and other types of campaign. However, as per RPO, the expenditure made for this travel and campaign by the party chief is unlimited and is not included on the expenditure report prepared and submitted by the party.³⁰ The source of this money spent by the party chief is not defined in the RPO; moreover, there is no legal provision on the disclosure of the expenditure made by the party chief³¹.

6.3 Party finance

Opening Bank Account: The law clearly defines that "every political party setting up any candidates for election shall maintain proper account of all its income and expenditure for the election period"³². To maintain this income and expenditure, the party setting up candidates must open a bank account in a scheduled bank. The law also states that the said bank account must "show clearly the amount by it as donation above taka five thousand from a candidate or any person seeking nomination or from any other person or source giving their names and addresses and the amount received from each of them and the mode of receipt"³³.

Expenditure Limit: The amount of election expenditure made by the party varies on the number of candidates nominated by that party. If a party nominates more than 200 candidates, it can spend up to BDT 450,00,000. This amount shrinks to BDT 300,00,000 for the parties which nominates more than one hundred but fewer than two hundred candidates. For the parties that nominate more than 50 but fewer than 100 candidates can spend up to BDT 150,00,000. In the case where a party nominates less than 50 candidates is allowed to spend BDT 75,00,000. However, these expenditure limits do not include the expenditure incurred by the party chief of that party for travelling to various constituencies for the purpose of election campaign.³⁴

Record keeping during campaign period: The law defines that the parties have to submit "expenditure statement giving details of the expenses incurred or authorized by it in connection of its candidates"³⁵. Through this legal provision has made a "mandatory provision for the parties to keep records of all expenditure".

Disclosure after election: The regulatory framework provides “that every political party nominating any candidate for election has to submit an expenditure statement” to the BEC giving details of the expenses “incurred or authorized by it in connection with the election of its candidates within 90 days of the completion of election”. This statement must be “certified to be correct and complete by the secretary to the party, showing the opening balance and the closing balance of the party funds on the date of completion of election in all constituencies and the total amount received by the party from institutions or individuals, as donation or otherwise, during the period between the said two dates”. The statement must include, to be shown separately, “expenditure incurred on general propagation of the manifesto, policy, aims and objects of the party and expenditure incurred or authorized in connection with the election of each of its contesting candidates”³⁶.

Scrutiny, punishment/sanction: If a political party contravenes any provision pertinent to maintain election expenditure and spend beyond the limit, it “shall be punishable with fine which may extend” to BDT 1000,000.³⁷ The regulatory framework has authorized the BEC to scrutiny election contribution and expenditure statements submitted by the parties. “If any registered political party fails to submit its expenditure statement” within the time specified on the legal framework, the BEC can issue “a notice of warning directing it to submit the statement within thirty days and if the concerned registered political party fails to submit it within that period of time”, the BEC may, “subject to payment of a fine of taka ten thousand (approximately USD 123), extend the time for another fifteen days, and if such registered political party fails to submit its statement within that extended time, the BEC may cancel its registration”³⁸.

Public access to statement: The statement submitted by the candidate is to be kept by the Returning Officer or the BEC, “as the case may be, in his or its office or at such other convenient place as he or it may think fit for one year from the date of receipt, be open for inspection by any person on payment of the prescribed fees”³⁹. Moreover, the BEC, “on an application made in this behalf and on payment of the prescribed fees, give any person copies of any statement”⁴⁰. Additionally, the copies of the statements are published on the BEC’s website.⁴¹

6.4 Candidates’ Finance

Probable sources of election expenditure: Every contesting candidate, while submitting the nomination paper, must submit a statement to the Returning Officer describing the “probable sources of fund” to meet his/her election expenditure. This submission has to be made on the prescribed form prepared by the BEC and if any candidate does not submit it, his nomination has to be cancelled. The prescribed form contains the following five sources :⁴²

- a. “the sum to be provided by him from his own income and the sources of such income,
- b. the sum to be borrowed, or received as voluntary contribution, from his relations ⁴³ and the sources of their income,
- c. the sum to be borrowed, or received as voluntary contribution, from any other person,
- d. the sum to be received as voluntary contribution from any political party, organization or association,
- e. the sum to be received from any other source.”

Asset and liabilities: While submitting nomination paper, every contesting candidate must submit his “assets and liabilities and his annual income and expenditure” as well as his last income tax return if he is an income tax assessee.⁴⁴

Expenditure limit: The highest expenditure limit for an individual candidate for a constituency is BDT 2500,000 “including the expenditure incurred for him and by the political party which has nominated him as its candidate”. However, this limit is calculated as per cost of per voter. For example, in the 2018 parliamentary election, the cost was defined BDT 10 which means that a candidate cannot spend this highest amount having 200,000 voters in his constituency.⁴⁵

Separate Bank Account: As per law, every candidate or his election agent, on behalf of him, has to open a “bank account with a scheduled bank for the purpose of making payments of the election expense, other than personal expenditure”⁴⁶. This account is a separate one from candidate’s regular account and the details of this bank account are required to submit to the returning officer during the submission of nomination paper.

Categories of expenditure: The law has specified the categories of expenditure to be made by the candidates which includes printing of one colour posters; setting up a pandal; payment for stationery, postage, telegram and other petty expenses; employing or using (not more than three) microphones or loudspeakers; setting up of election camp or office and display of a symbol. The BEC has prepared code of conduct that clearly guides the candidates on how to conduct campaign using money. The regulatory framework has also made provisions that the money cannot be used for “using any vehicle or vessel such as, truck, bus, car, taxi, motor cycle and speed-boat, for taking out any procession; hiring or using any vehicle or vessel of any kind for conveying electors to or from any polling stations”; making any banner by using any cloth; entertainment of voters in any manner; “illumination by use of electricity in any form; using symbol or portrait of a candidate with more than one colour; writing in ink or paint or in any manner; and operating camps on the polling day”⁴⁷.

Record keeping during campaign period: Although, the candidate (or his/her agent on his/her behalf) does not require to reveal his/her expenditure during the campaign period on daily or weekly basis, he/she has to “keep records of all payments of each day together with all the bills and receipts”⁴⁸.

Disclosure after election: As per RPO, every candidate or his/her election agent, within thirty days after the publication of the name of the returned candidate through official gazette, has to submit a return of his election expenses to the returning officer in the prescribed form; the form contains: “(a) a statement of all payments made by him each day together with all the bill and receipts; (b) a statement certified by the scheduled bank in reference with the bill and payments as well as showing the amount deposited in and withdrawn from the account opened under that clause; (c) a statement of the amount of personal expenditure, if any, incurred by the contesting candidate; (d) a statement of all disputed claims of which the election agent is aware; (e) a statement of all unpaid claims, if any, of which the election agent is aware; (f) a statement of all sums received from any sources, together with evidence of such receipts, for the purpose of election expenses,

specifying the name of every such source⁴⁹. The BEC, after receiving these statements, publishes the scanned copies on its website⁵⁰.

Scrutinization, punishment/sanctions: The RPO has the provision for “rigorous punishment for a term which may extend to seven years and shall not be less than two years, and also fine” for violating the legal provisions related to funding. This punishment is applicable for 3 breaches: (i) if the contesting candidate (or his/her agent) does not mention (in his/her statement) the election expenses received/spent from any sources other than the specified sources in the law; (ii) “spend more than the expenditure limit or spend for illegal activities”; and (iii) “fails to submit probable sources of election expenditure or submission of election expenditure statement in compliance with the law”⁵¹.

No-disclosure/inspection during campaign: During the campaign period, in Bangladesh, “there is no provision for disclosure of election campaign expenditure” on daily or weekly basis to the BEC or any other entity. Also, the BEC does not conduct any monitoring or inspection of the election funding made by the candidates/parties.

7. Issues and Observations

7.1 Questionable Legal Framework

Unrealistic Spending Limits: As stated, the spending limits in Bangladesh are low, and it is unlikely that candidates and political parties can run effective campaigns while still respecting these limits. In addition to general problems regarding reasonability and compliance with legislation, this can also result in decreased accuracy of financial reports, given that political parties’ candidates will under report their spending to avoid possible sanctions. Such unrealistic limits may undermine “confidence in the entire system of political finance regulation.”

Incoherent Regulations of Political Party and Candidate Finance: There are certain areas where the regulation of political party and candidate finance is not coherent. The main issue concerns the existence of donation limited to political parties but not to candidates, meaning supporters of a party can avoid the limit by giving donations directly to the candidates of that party. There are discrepancies regarding allowed sources of income- in particular, foreign donations, which are banned for political parties but not mentioned for candidates, and small anonymous contributions, which can be accepted only by political parties if they are under Taka 5,000.

Unlimited expenditure with no disclosure by the party: An uneven field always hampers the credibility of elections; and any kind of unlimited and non-transparent spending by anybody during election campaigns one of the key causes of destroying fair electoral competition. As stated earlier, the current legal framework that allows the party chiefs to make unlimited expenditure with anonymous sources is dangerous for free and fair elections. This allows the big parties to spend huge amount of money to change the election outcome⁵².

Lack of clarity on the BEC’s enforcement role: The RPO is silent on the BEC’s role as regulator of political finance, and there is little guidance in the RPO regarding the BEC’s investigative powers in this area. There was wide agreement among those consulted during

this assessment that political finance rules are not enforced. The perception is that the BEC does little in terms of monitoring, auditing or taking any other action with regard to expenditure returns, which led some to question the political commitment, courage and will of commissioners to enforce the law. However, interviewees acknowledged the BEC's political finance function which was not clear in the legislation. There was general support for clarifying the BEC's responsibilities and for ensuring it was equipped to fulfill this function.

However, the RPO does set out a series of criminal penalties for corrupt and illegal practices arising from failure to comply with election finance requirements. The penalties include "rigorous imprisonment for a term, which may extend to seven years and shall not be less than two years"⁵³ which is better than that of many other Commonwealth countries. Moreover, for violation of legal provisions, for a few cases, the law covers administrative sanctions.

However, the appropriateness of a regulatory scheme based entirely on criminal sanctions has been subject to debate, and in the UK, the law was changed in 2009 to provide the electoral commission with a wider range of sanctions. It was recognized that a more graduated suite of sanctions would allow for more proportional enforcement action and provide a more effective deterrent to non-compliance. This approach was endorsed by all those consulted for this assessment.

Lack of public funding: Public funding in election campaign offers more equitable conditions among candidates and other political actors. It also helps to ensure greater transparency which not only mitigates high level political corruption but also guarantees the level-playing field for all. Use of public funding works as a means to curtail and even avoid the influence of private interest groups on the election outcome and defacto powers in the performance of party functions, especially when used in conjunction with other regulations such as spending limits. Unfortunately, Bangladesh does not have public funding although in 2010, the BEC proposed a legal framework on this that was not considered by the government⁵⁴.

Private donations and the sources are not made public: Pertinent to donations to the political parties, although article 44CC(2) stipulates a provision to reveal the name of the donors, amount of donations, mode of donation and date of donation, neither the political parties nor the donors do so. Disclosing all the relevant information is key to improving the role of money in politics as well as a best practice worldwide. Moreover, in a few countries, along with parties, the donors need to submit a report to the EMB to ensure check and balance. Also, in Bangladesh, there is no legal provision that prohibit the parties to collect donations from business houses with government contracts, which goes against the best practice.

Law on vote-buying is not comprehensive: Even though there are legislative bans on vote-buying, these practices are not unknown in Bangladesh and the legal framework is not comprehensive to control vote-buying.

Lack of clear regulations: The political finance regulatory framework in Bangladesh is a

part of the RPO, the main electoral legal framework. Although, there is a specific chapter on this, few other chapters of the RPO are also relevant to the political finance. In Bangladesh, similar to many other countries, regulations are promulgated by the BEC to properly implement the provisions of the key legal framework. Unfortunately, the regulations/guidelines to implement the legal framework is not comprehensive.

7.2 Activities of the BEC

Lack of meaningful reporting: Political finance reports are being submitted in Bangladesh-inclusive of pre-election reports submitted by candidates during the nomination period. These reports and post-election reports, in most cases, are required for a person to become duly nominated.

The main problem lies not with missing reports, but with the quality of the information provided. During meetings for this assessment, election expenditure returns were described as “meaningless” and not worth the paper they are written on.” Candidates and political parties submit the required returns to meet their statutory obligation, knowing the sums provided will not be verified or audited. The figures are said to bear little relationship to what is actually spent, particularly given widespread vote-buying practices and the sale of candidate nominations by political parties.

As a solution, some believe that the spending limits should be raised and then enforced, while others want the law to be enforced as it now exists. However, all agree with the fact that without any monitoring or auditing mechanism in place, there will be no deterrent to fictitious reporting. Initiating reviews of submitted reports is essential if the BEC is to be effective in the area of political finance oversight.

A recent study conducted by Transparency International Bangladesh (TIB) has noted that political parties do not see financial book keeping and reporting as a major priority and found none of the political parties “has any professional accountant assigned to maintain the [party] account.” TIB also reported that, “almost all the candidates spent a much higher amount but submitted the accounting reports showing expenses within the prescribed limit.⁵⁵” Similarly, Election Working Group (EWG) observed that “although disclosure of expenditure is made by the candidates, the level of disclosure is unreliable as there is no scrutinization and effective sanction.⁵⁶”

The situation is not helped when there are unclear provisions in the provided reporting forms (Form 20, 21 and 22), as well as limited information available in the Conduct of Election Rules 2008 to provide guidance. Potential candidates should report their probable income through Form 20, which is relatively straightforward. However, there is an issue in how potential candidates can be expected to accurately estimate their income before the start of the campaign. Candidates must fill out a statement of their total assets and liabilities, as well as their annual earnings-expenses in Form 21, which seems to be clear. However, there is an issue in how anymore can give an accurate estimate of their “total annual expenses.” Unfortunately, Form 21 only calls for the total amount of annual earnings. It would also be valuable if potential candidates were asked to report on income per source, above a reasonable threshold to avoid placing an undue burden on those required to report.

It is also unclear what the relation is between Form 21 and Form 1, the affidavit to the candidate nomination form. Form 1 also requires information regarding the income, assets and liabilities of candidates, and her or his family, but uses different categories than Form 21.

Form 22 is used for candidates in their post-election reporting. This includes spending by class, such as “publicity” or “transport,” as well as information about individual expenses. Since candidates are not required to note the class to which individual expenses have been assigned, the information in the summary form and the breakdown cannot be compared. Part F of form includes information regarding received amounts, requiring the date and amount of the funds received- although there is no definition of “donation”—as well as the account or check number used. The “objective” of the amount being given to the candidate should also be recorded, although no information is available about what this means in practice.

Form 23 includes little information. Parties are required to include spending by category, and the form states that, “description of expenses in different areas to be enclosed herewith separately.” This presumably refers to individual expenses. Surprisingly, Form 23 includes no space for parties to report on their campaign income, as required by law. Neither Form 22 nor 23 includes space for candidates or political parties to report on in-kind donations, which may be in line with silence regarding this issue in the legislation but is potentially a problematic aspect of the reporting process.

Lack of audit of election expenditure: Although, as per legal framework, all registered political parties submit audited annual income-expenditure report to the BEC, the expenditure report submitted by the parties and candidates after the elections are not audited; the scanned copies of these reports, once submitted to the BEC, are published on the BEC’s website. And to date, there is no evidence that the BEC has ever investigated or challenged a candidate’s financial statement or the accuracy of any election expenditure return. Currently, five staff in the Election Operation Branch deal with these along with their other duties, but there is no staff member dedicated to political finance issues. This is in spite of the fact that 40 political parties are currently obliged to submit annual reports and in the 2008 parliamentary elections there were 2,454 nominated candidates (1,552 candidates appeared on the ballot papers), while the number of candidates submitted nomination in the 2014 elections were 1,107 and in 2018 this figure was 1,861. To make the reporting meaningful, the first of these options would require legal reform in Bangladesh regarding campaign finance reports (note that the annual reports by political parties already have to be audited before submission). The second option could be a way forward given the current limited capacity of the BEC. However, the success of this option depends on access to a significant number of credible auditors.

Insufficient public access to the disclosure of expenditure returns: As dictated by the RPO, the BEC receives candidate nomination statements and election expenditure returns from political parties and candidates. By law, these documents must be available for public inspection, and the BEC is obliged to publish copies on its website. Although BEC publishes the scanned copies of election campaign expenditure reports on its website, there is no systematic disclosure under the RPO. This information is not even searchable. Transparen-

cy is an essential tool for building trust in the electoral process and in guarding against undue influence. It is essential that the public have access to these documents, as required by law, to ensure transparency in political finance.

Lack of disclosure by the parties and candidates during election campaign: The level of transparency to political and electoral finance is critical for a free and fair election. When the level of transparency is higher and voters receive all information about their party and the candidates including funding, it not only helps voters to make voting decision, but also protects donors from political pressure, and conversely, politicians from private interest groups. It is therefore important to establish a comprehensive mechanism for accountability and disclosure by the political parties. Income and expenditure reporting in the middle of election is one of the best ways to do so. But, in Bangladesh, there is no legal provision to make any mandatory provision of disclosure of election campaign expenditure by the candidates and parties during the middle of election campaign.

8. Conclusion

The paper has outlined several areas of potential legal reform in political finance in Bangladesh. The BEC is presented with an excellent opportunity to develop how it regulates party and election finance, building on the feedback from stakeholders and upon the experience of other nations.

Bangladesh has adopted United Nations Convention Against Corruption (UNCAC); article 7(3) of this Convention stipulates that “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.” Hence, Bangladesh should take administrative and legislative measures to enhance transparency in political finance to make all future elections credible.

Endnotes and References

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- ¹⁰Alim, Md. Abdul. 2014. *Electoral Governance and Political Parties: Bangladesh Perspectives*, PhD Dissertation, Jahangirnagar University, Dhaka. Page: 107.
- ¹¹Ibid, Page: 109
- ¹²Ibid, Page: 108
- ¹³Ibid, Page: 110
- ¹⁴Political finance database of International IDEA; available at: <http://www.idea.int/political-finance/bans-and-limits-on-private-income.cfm>; assessed on July 15, 2015
- ¹⁵ibid
- ¹⁶Casals & Associates. 2004. *Political-Party Finance in Argentina, Chile, Costa Rica and Mexico: Lessons for Latin America*. Virginia: Kwik Kopy Printing. Page: 6
- ¹⁷African Union Convention on Preventing and combating corruption, 2003, Page: 4; available at: https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf; assessed on July 16, 2019
- ¹⁸CRINIS is a Latin word which means 'ray of light'.
- ¹⁹This part of analysis has been made based on the TI/CRINIS model and ACE knowledge Network.
- ²⁰ibid
- ²¹ibid
- ²²There are practice and legal provision of indirect public funding which includes allowing party chiefs to address in the state-owned electronic media during elections.
- ²³Article 90F(1) of the RPO
- ²⁴Article 44CC(1) of the RPO
- ²⁵Article 90F(1) of the RPO
- ²⁶Article 44CC(1) of the RPO
- ²⁷Article 44CC(2) of the RPO
- ²⁸Article 9 of the Political Party Registration Regulations, 2008
- ²⁹Article 90H of the RPO
- ³⁰Article 44CC(3)(d) of the RPO

³¹ibid

³²Article 44CC(1) of the RPO

³³Article 44CC(1) of the RPO

³⁴Article 44CC(1)(d) of the RPO

³⁵Article 44CCC(1) of the RPO

³⁶Article 44CCC(1), (2), (3) of the RPO and Article 9 of the Political Party Regulations, 2008

³⁷Article 44CC(5) of the RPO

³⁸Article 44CCC(3) and (5) of the RPO

³⁹Article 44CCC(3) and (5) of the RPO

⁴⁰Article 44CCC(3) and (5) of the RPO

⁴¹Article 44D(2) of the RPO

⁴²44AA.(1) of the RPO

⁴³As per legal framework (RPO) “relations” mean spouse, parents, sons, daughters, brothers and sisters.

⁴⁴Article 44AA(2) of the RPO

⁴⁵Article 44B(3) of the RPO

⁴⁶Article 44BB of the RPO

⁴⁷Article 44B(3A) of the RPO

⁴⁸Article 44C(1)(a) of the RPO

⁴⁹Article 44C(1) of the RPO

⁵⁰Article 44D(3) of the RPO

⁵¹Article 73 and 74 of the RPO

⁵²Walecki, Marcin. 2009. “Practical Solutions for Spending Limits in Ohman, Magnus and Zaunbulbai, Hani (eds), Political Finance Regulation: The Global Experience. IFES, Washington, page-48.

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