

Briefing Paper

Elections Act, 2017 Polling Day and Result Consolidation Process



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Consolidating
Democracy
in Pakistan **تعمیر**

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Preface

Political Parties are an essential component of any democratic system and the foundation of a strong parliament. A very limited work has been done for the development of political parties in Pakistan. To optimise another successful democratic transition in 2018, political parties must be supported and strengthened.

Tabeer-Consolidating Democracy in Pakistan (CDIP) is working to support the democratic processes in Pakistan by strengthening the capacity of the country's institutions to be more effective, accountable and responsive to the needs of Pakistani people. The programme will achieve this by focusing on four inter-related areas: Elections, Parliament, Political Parties and Democratic Space.

To evaluate the current context for the provision of support, the CDIP team conducted an assessment of the needs of political parties in Pakistan and carried out analysis of recent political party programmes in order to learn lessons and to focus on the gaps left. The assessment was aimed at examining the current state of major political parties – identifying areas in which the parties have begun to adopt reform measures and areas where further efforts are needed. During this exercise, CDIP project team realised the need for improving the understanding of Political Party Officials on the Election Laws especially after the parliament passed a new Election Act, 2017.

The team reached out to 13 selected political parties and briefed them on CDIP's objectives. Responding to the need identified by political parties, CDIP has planned to develop a series of Background Papers on various aspects of the Elections Act, 2017 and organise roundtables and briefing-cum-training sessions for political parties officials in a multi-party setting. This Briefing Paper sheds light on the Polling Day and Result Consolidation Process under the Elections Act, 2017 for use by party leaders, candidates, polling agents and party workers. Using this paper, party officials will be briefed at a structured Briefing cum Training Session before the General Election due by August 2018.

Disclaimer

The views expressed in this paper belong to the author and do not necessarily represent the views of Pakistan Institute of Legislative Development and Transparency (PILDAT) and Tabeer-Consolidating Democracy in Pakistan.

April 2018

ABOUT THE AUTHOR



Mr. Shahid Hamid was the Governor of the Punjab Province from March 1997 to August 1999. Previously he was the Federal Minister of Defence, Establishment and Law in the Caretaker Government of President Farooq Leghari and Prime Minister Meraj Khalid.

Mr. Shahid Hamid is presently practicing law as the senior partner of Hamid Law Associates. He is one of 300 Senior Advocates of the Supreme Court of Pakistan. Mr. Shahid Hamid holds an M. A. Economics degree from Cambridge University and is a Barrister-at-Law of the Honourable Society of the Inner Temple London. He joined the Civil Service of Pakistan in 1964 and served in East Pakistan also from 1967 to 1969.

He was Acting Finance Secretary Punjab and Secretary to Chief Minister Punjab. He was Director-General Lahore Development Authority from 1976 to 1978

Background

As per section 57 of the Elections Act, 2017 (**the Act**) it is the President of Pakistan who has to announce the date or dates of general elections after consultation with the Election Commission of Pakistan (“**ECP**”). Thereafter, within seven days of the President's announcement, the ECP is to issue a notification calling upon voters to elect their representatives in accordance with ECP's Election Programme, which shall stipulate:-

- (a) the last date for making nominations which shall be the sixth day after the date of publication of the notification;
- (b) the last date for publication of names of the nominated candidates, which shall be the day following the last date of filing of nomination papers;
- (c) the last date for the scrutiny of nominations which shall be the eighth day immediately following the last date for making nominations;
- (d) the last date for filing of appeals against acceptance or rejection of nominations which shall be the fourth day following the last date for the scrutiny of nominations;
- (e) the last date for decision of appeals which shall be the seventh day following the last date for filing of appeals;
- (f) the last date for publication of the revised list of candidates, which shall be the day following the last date for decision of appeals;
- (g) the last date for the withdrawal of candidature which shall be the day following the last date of publication of revised list of candidates;
- (h) the date for allocation of symbols to contesting candidates and publication of list of contesting candidates which shall be the day following the last date for withdrawal of candidature; and
- (i) the date or dates on which a poll shall, if necessary, be taken which shall be a date not earlier than the twenty-eighth day after the publication of the revised list of candidates.

Role and Functions of the ECP

The ECP has the constitutional and legal responsibility to complete the delimitation of constituencies and the preparation of the electoral

rolls prior to the date announced by the President as per section 57 of the Act. The election process commences with the ECP notification calling upon the voters to elect their representatives and ends with the announcement, and notification of the election results.

For purposes of the general elections the ECP is required to appoint District Returning Officers for each district and Returning Officers along with Assistant Returning Officers for each constituency. The Returning Officers, in their turn, are to appoint Presiding Officers along with Assistant Presiding Officers for each polling station. Within one week after appointment of the Returning Officers the ECP is to provide lists of proposed polling stations for each constituency to the concerned Returning Officers. As far as practicable, not more than 1200 voters are to be assigned to a polling station and within each polling station not more than 300 voters to each polling booth. The Returning Officer is to publish a preliminary list of polling stations and, after dealing with such objections as may be received by him, the District Returning Officer is to finalize and notify the final list of polling stations for each constituency.

Pursuant to finalization of the list of polling stations, the ECP is to determine the constituency-wise requirement of ballot papers based on the formula that the number of ballot papers per polling station is to be rounded off to the next hundred. In other words if the number of voters at a polling station is between 1201 to 1299 the requirement of ballot papers for that polling station will be 1300. It is the responsibility of the ECP to ensure the printing of the required number of ballot papers through printing presses of the Printing Corporation of Pakistan or such other presses as are owned and operated by any authority under the control of the Federal or a Provincial Government.

The Returning Officer is responsible for providing to each Presiding Officer such number of ballot boxes as may be necessary. Not more than one ballot box is to be used at a time for the purposes of the poll at any polling station, or where there are more than one polling booth, at each polling booth.

The ECP is responsible for providing to the Returning Officers copies of the final electoral rolls for their constituencies, and the Returning Officers in their turn have the responsibility of providing the Presiding Officers with copies of the final electoral rolls containing the names of the voters entitled to vote at their polling station. The ECP is also to

provide the Returning Officers with requisite number of ballot papers, and the Returning Officers have to ensure that the requisite number of ballot papers are provided to the Presiding Officers.

Casting of Votes

It is a constitutional requirement that the elections are held by secret ballot. It is the primary duty of the Presiding Officer to ensure that every voter is able to secretly mark his ballot paper and insert it in the ballot box. On the day of the poll it is the duty of the Presiding Officer to regulate the number of voters to be admitted to the polling station at one time. He must exclude from the polling station all others except persons on duty in connection with the election, the contesting candidates, their election agents and polling agents, and such other persons e.g. observers as may be specifically permitted by the ECP. The Presiding Officer has the duty to ensure law and order at the polling station and may remove any person who misconducts himself or fails to obey the lawful orders of the Presiding Officer. All officials of law enforcing agencies are mandated to extend their full cooperation to the Presiding Officer for maintenance of order and for ensuring uninterrupted voting at the polling station.

When a voter presents himself at the polling station, the Presiding Officer is to issue him a ballot paper after satisfying himself about his identity and shall, for this purpose, require him to produce his original National Identity Card issued by NADRA. Before the ballot paper is issued to a voter:-

- (a) the number and name of the voter as entered in the electoral roll shall be called out;
- (b) the entry relating to the voter on the electoral roll shall be struck off to indicate that a ballot paper has been issued to him;
- (c) he shall be required to receive a personal mark, made with indelible ink, on any finger or thumb of either hand as indicated by the ECP;
- (d) the ballot paper shall be stamped on its back with the official mark and signed by the Presiding Officer;
- (e) the Presiding Officer shall record on the counterfoil of the ballot paper the number of the voter on the electoral roll, the number of the National Identity Card of

the voter, stamp it with the official mark, sign it and obtain on it the thumb impression of the voter; and

- (f) the Polling Officer shall obtain the thumb impression of the voter on the space provided on the electoral roll for the purpose against the photograph of the voter.

On receiving the ballot paper the voter shall forthwith proceed to the place reserved for marking the ballot paper, put the prescribed mark on the ballot paper at any place within the space containing the name and symbol of the contesting candidate for whom he wishes to vote and then fold and insert the ballot paper in the ballot box. The voter is then to leave the polling station without further ado.

Sections 85, 86 and 87 of the Act detail the procedure to be followed by the Presiding Officer with reference to tendered ballot papers, challenge of voters and spoilt ballot papers. Challenge of a voter by a candidate or his polling agent requires a cash deposit of Rs.100/- with the Presiding Officer.

In case the polling is interrupted or obstructed for reasons beyond the control of the Presiding Officer and/or any ballot box used at the polling station is unlawfully taken out of the custody of the Presiding Officer or destroyed or damaged or tampered with to the extent that the result of the poll cannot be ascertained, the Presiding Officer shall stop the poll and inform the Returning Officer that he has done so. The Returning Officer in his turn shall immediately report the circumstances to the ECP and the ECP shall direct a fresh poll at that polling station unless it is satisfied that the result of the election has been determined by the polling that has already taken place at that polling station, along with the result of the polling at other polling stations in the same constituency.

Counting of Votes

On expiry of the time fixed for poll the Presiding Officer shall not issue any ballot paper to any voter except those persons who are already present within the enclosure of the polling station and still waiting to vote. Immediately after close of the poll, and in the presence of such of the contesting candidates, election agents, polling agents and authorized observers as may be present the Presiding Officer shall:-

- (a) open the used ballot box or ballot boxes and count the entire lot of ballot papers

- taken out therefrom;
- (b) open the packets bearing the labels "Tendered Ballot Papers" and "Challenged Ballot Papers" and count them; and
- (c) count, in such manner as may be prescribed, the votes cast in favour of each contesting candidate excluding from the count the Spoilt Ballot Papers and the ballot papers which bear—
- (i) no official mark and signature of the Presiding Officer;
- (ii) any writing or any mark other than the official mark, the signature of the Presiding Officer and the prescribed mark or to which a piece of paper or any other object of any kind has been attached;
- (iii) no prescribed mark to indicate the contesting candidate for whom the voter has voted; or
- (iv) any mark from which it is not clear for whom the voter has voted.

The Presiding Officer may recount the votes if he considers it necessary either of his own motion or upon the request of a contesting candidate or an election agent or a polling agent present at the time of the count. The Presiding Officer shall thereafter prepare a Result of the Count in the prescribed form showing the number of valid votes polled by each contesting candidate and the ballot papers excluded from the Count.

The valid ballot papers cast in favour of each contesting candidates are to be put in separate packets and each such packet is to be sealed and shall contain a certificate as to the number, both in letters and figures, of the ballot papers put in it and shall also bear the name and symbol of the contesting candidate to whom the packet relates. The ballot papers excluded from the count are to be put in separate packets. All the packets containing the valid and invalid votes are then to be put in a principal packet which is to be sealed by the Presiding Officer.

Immediately after the count the Presiding Officer is to prepare a Ballot Paper Account in the prescribed form showing the number of ballot papers entrusted to him, the number of un-issued ballot papers, the number of ballot papers taken out of the ballot boxes and counted, the number of tendered ballot papers, the number of challenged

ballot papers and the number of spoilt ballot papers. He is to sign both the Result of the Count and the Ballot Paper Account and to obtain thereon the signatures of the accredited observers and the candidates and their election and polling agents as may be present. If any of them refuse to sign, the Presiding Officer is to record a note to that effect on the Result of the Count and the Ballot Papers Account. The Presiding Officer is also to give a copy of the signed and stamped Result of the Count and Ballot Paper Account to the candidates and their election and polling agents as may be present. Thereafter he is to publish the Result of the Count and Ballot Paper Account, signed by him and others, by affixing copies at a conspicuous place at the polling station for public inspection.

The Presiding Officer is to seal in separate packets:-

- (a) the un-issued ballot papers;
- (b) the Tendered Ballot Papers;
- (c) the Tendered Votes List;
- (d) the Challenged Ballot Papers held to be valid and counted by the Presiding Officer;
- (e) the Challenged Ballot Papers considered doubtful and excluded from the count by the Presiding Officer;
- (f) the Challenged Votes List;
- (g) the Spoilt Ballot Papers;
- (h) the marked copies of the electoral rolls;
- (i) the counterfoils of used ballot papers; and
- (j) such other papers as the ECP or Returning Officer may direct.

The packets, the Result of the Count and the Ballot Paper Account are to be dispatched by the Presiding Officer to the Returning Officer in accordance with such instructions as may be given by the ECP.

In addition to above the Presiding Officer is required to prepare a gender disaggregated statement of voters showing total number of votes cast by men and women voters at the polling station and the total votes cast by the men and women voters. This statement is also to be communicated by the President Officer to the Returning Officer and onward to the ECP.

Results of the Count

On receipt of the Results of the Count from all Presiding Officers of a constituency, the Returning Officer shall forthwith prepare and announce provisional Consolidated Statement of Results of the Count of the constituency excluding postal ballots in the presence of such contesting candidates, their election agents or authorized observers as may be present and to affix a copy of the provisional results at a conspicuous place in the office and send a copy to the ECP. Immediately after announcement of the provisional results the Returning Officer is to give the contesting candidates a written notice of the day, time and place fixed for consolidation of the results. On the given day the Returning Officer shall examine the ballot papers excluded from the count by the Presiding Officer and if he finds that any such ballot paper should not have been so excluded, he is to count it as a valid ballot paper cast in favour of the concerned candidate. He is also to count the ballot papers received by him by post and include the same in the consolidated statement. Before commencement of the consolidation proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if written challenge to this effect is made to him by any contesting candidate and the margin of victory is less than five percent of the total votes polled in the constituency or ten thousand votes, whichever is less, or if the Returning Officer considers such request as not unreasonable.

Consolidated statement of the Results

Within twenty four hours after the consolidation proceedings, the Returning Officer shall send to the ECP signed copies of the consolidated statement of the Results of the Count and final consolidated result together with Results of the Count and the Ballot Paper Account received by him from the Presiding Officers, and shall retain copies of these documents for his record. On receipt of these documents the ECP shall within fourteen days from the date of the poll, publish the documents on its website. Also, on receipt of final consolidated results from the Returning Officer the ECP shall within fourteen days from the date of the poll publish in the official Gazette the name of the candidate who has received the highest number of votes and stands elected.

The Returning Officer shall seal in the tamper-evident bags provided to him the following documents:-

(a) the packets containing the ballot papers

each of which shall be sealed with the seal of the Presiding Officer or, if opened by the Returning Officer, with the seal of the Returning Officer;

- (b) the packets containing the counterfoils of issued ballot papers;
- (c) the packets containing the marked copies of the electoral rolls used in the poll;
- (d) the packets containing the Ballot Paper Accounts;
- (e) the packets containing the Tendered Ballot Papers included in the count; the Tendered Ballot Papers excluded from the count; the Tendered Votes List, and the Challenged Ballot Papers included in the count; the Challenged Ballot Papers excluded from the count; the Challenged Votes List; and the Spoilt Ballot Papers; and
- (f) such other papers as the ECP may direct.

Tamper-evident bag means a specially designed bag approved by the ECP which if breached can reasonably be expected to provide visible evidence that tampering has occurred. The ECP is mandated to arrange storage space under its control at appropriate places for safe custody of the tamper-evident sealed bags containing the documents pertaining to all constituencies. The documents retained by the ECP shall be open to public inspection except for the ballot papers.

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