

Briefing Paper

Responsibilities of Political Parties and Candidates in Election Process



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PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

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Consolidating
Democracy
in Pakistan **تعمیر**

DAI-CDIP - Pakistan

Office: 1st Floor, 94-W, Din Pavilion (Ex City Bank Plaza),
Main Blue Area, Islamabad, Pakistan Phone: +92-51-8449401-2

CONTENTS

<i>Preface</i>	05
<i>About the Author</i>	07
Background	09
Formation of Political Parties	09
Party Constitutions	09
Registration of Political Parties	09
Party Funding	10
Suspension of party members	10
Selection of candidates	10
Party elections	10
Party's financial statements	10
Dissolution of a political party	10
Code of Conduct for political parties	11
Monitoring the election campaign	11
Conclusion	12

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 Background Paper sheds light on the Responsibilities of Political Parties and Candidates 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

The Elections Act 2017 (“**2017 Act**”) has, amongst other laws, repealed, the Political Parties Order 2002 (Chief Executive's Order No.7 of 2002). The salient provisions of the repealed Order relating to Political Parties have been reproduced, with some modifications in Chapter XI Sections 200 to 213 of the 2017 Act.

The right to form a political party is a fundamental right guaranteed by Article 17 of the Constitution of the Islamic Republic of Pakistan 1973. Article 17 ibid is reproduced below:-

“ 17. Freedom of association.-(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law.”

Formation of Political Parties

Section 200 of the 2017 Act provides for the formation of political parties in line with the provisions of Article 17. It prescribes that every political party shall have a distinct name and a distinct identity of its structures at the national, provincial and local levels. The restrictions imposed on every political party are that it shall not:-

- “(a) *propagate any opinion, or act in a manner prejudicial to the fundamental principles enshrined in the Constitution;*
- “(b) *undermine the sovereignty or integrity of Pakistan, public order or public morality or indulge in terrorism;*

- “(c) *promote sectarian, regional or provincial hatred or, animosity;*
- “(d) *bear a name as a militant group or section or assign appointment titles to its leaders or office-bearers which connote leadership of armed groups;*
- “(e) *impart any military or para-military training to its members or other persons; or*
- “(f) *be formed, organized, set-up or convened as a foreign-aided political party.”*

Party Constitutions

Section 201 of the 2017 Act requires that the constitution of each political party must include its aims and objectives, its organizational structure, its membership fees, the designation and tenure of its office-bearers, the criteria for receipt and collection of funds and the procedures for election of office-bearers, exercise of powers by its office-bearers, selection of party candidates for elections, resolution of disputes including suspension and expulsion of members and manner of amendments to its constitution.

Registration of Political Parties

Section 202 of the 2017 Act prescribes that a political party has to be registered with the Election Commission of Pakistan (“**ECP**”). The application for registration has to be accompanied with a copy of the party's constitution, certificates and information required under sections 201 and 209 of the 2017 Act, a copy of its consolidated statement of accounts and a list of at least 2000 members with their signatures or thumb impressions together with copies of their National Identity Cards. Fee for registration has been fixed as Rs.200,000/-. If the ECP refuses registration the aggrieved party has a right of appeal to the Supreme Court.

In a case where a political party has been formed and is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government has been empowered under subsection (7) of section 202 of the 2017 Act to issue a declaration to this effect and to refer the matter to the Supreme Court for affirmation of this declaration.

Section 203 of the 2017 Act repeats the fundamental right of every citizen of Pakistan, not

being a person in the service of Pakistan, to form or be a member of a political party inclusive of the right to be elected as an office-bearer. This provision came up for adjudication before the Supreme Court in a number of cases including CP 37 of 2017 Zulfiqar Ahmed Bhutta vs. Federation of Pakistan. The Supreme Court held that in case of a party head the provisions of Articles 62, 63 and 63A have to be read into the provisions of section 203 ibid and consequently a person who has been disqualified from membership of Parliament cannot be the party head, by whatever name called, of a registered political party.

Party Funding

Section 204 of the 2017 Act requires a political party to keep a record of all fees, contributions and donations received by it, and prohibits the receiving of any contribution or donation, whether directly or indirectly, from any foreign source. The words 'foreign source' includes a foreign government, multinational or public or private company, firm, trade or professional association or individual. However, overseas Pakistanis holding a National Identity Card issued by NADRA are excluded.

Suspension of party members

Section 205 of the 2017 Act requires that a member shall not be suspended or expelled except in accordance with the procedure prescribed by the party's constitution, and only after being provided with a reasonable opportunity of being heard and of showing cause against the proposed action.

Selection of candidates

Section 206 of the 2017 Act requires each political party to follow a transparent and democratic procedure in selection of candidates for elective offices, and further requires that there has to be at least 5% representation of women candidates on general seats.

Party Elections

Sections 207 and 208 of the 2017 Act prescribe that every political party shall have an elected general council at the Federal, provincial and local levels, and shall convene a general meeting at

each of these three levels at least once in each year. Further that the office bearers of a political party shall be elected periodically for a term as prescribed in the party's constitution but not to exceed five years. The members of a political party shall constitute the Electoral College. After completion of the intra party elections each political party is required to submit to the ECP a certificate signed by an office-bearer authorized by the party head that the elections have been held in accordance with party's constitution and giving all required information in this behalf.

Party's Financial Statements

Within 60 days from the close of a financial year every political party is required to submit a consolidated statement of its accounts audited by a Chartered Accountant and containing details of its annual income and expenses, sources of its funds and its assets and liabilities. The statement is to be accompanied by a certificate that no funds have been received from any prohibited source. The political party is also to furnish to the ECP a list of contributors who have donated or contributed an amount equal to or more than Rs.100,000/- for election campaign expenses.

Dissolution of a Political Party

Section 212 of the 2017 Act amplifies the earlier provisions in regard to declaration of a political party operating in a manner prejudicial to the sovereignty or integrity of Pakistan. Such a party is to stand dissolved on affirmation by the Supreme Court of the declaration made by the Federal Government in this behalf. Section 212 ibid explains that a foreign aided political party is one which:-

- “(a) *has been formed or organized at the instance of any foreign government or political party of a foreign country; or*
- “(b) *is affiliated to or associated with any foreign government or political party of a foreign country; or*
- “(c) *receives any aid, financial or otherwise, from any foreign government or political party of a foreign country, or any portion of its funds from foreign nationals.”*

Section 213 of the 2017 Act prescribes that where a political party has been dissolved all members of that party who are members of Parliament or a Provincial Assembly or a local government shall

be disqualified for the remaining terms of such assemblies.

Code of conduct for political parties

Section 233 of the 2017 Act has empowered the ECP, in consultation with political parties, to frame a code of conduct for the political parties, contesting candidates, election agents and polling agents. The ECP is also empowered to frame a code of conduct for security personnel, media and election observers. The codes of conduct are to be published in the official Gazette and on the website of the ECP.

Monitoring the election campaign

Section 234 of the 2017 Act requires the ECP to constitute a monitoring team to monitor the election campaign of the candidates and the political parties. Report of violations of the ECP code are to be reported to an officer nominated by the ECP who can, after holding a summary inquiry, punish a proved violation with a fine not exceeding fifty thousand rupees. On commission of a second offence by a candidate or a political party the matter is to be referred to the ECP who may disqualify the candidate.

The code of conduct for the coming 2018 general elections is yet to be issued. It is likely that the 2018 code of conduct will be similar to the one issued for the conduct of the 2013 general elections.

The overriding provisions of the 2013 code are reproduced below:-

- (1) *The political parties and candidates shall not propagate any opinion, or act in any manner prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, as provided under Article 63 of the Constitution.*
- (2) *The parties and candidates shall abide by all the laws, rules, regulations and directions issued by the Commission, from time to time, relating to smooth conduct of elections and the maintenance of public order*
- (3) *The political parties and candidates shall*

at all times uphold the rights and freedom of the people of Pakistan as guaranteed by the Constitution and law.

- (4) *All contesting candidates and their supporters shall avoid scrupulously all activities which are offences under the election laws, such as bribing of voters, intimidation and personation, canvassing within 400 yards of a polling station including setting up of camps, and holding public meetings during the period of 48 hours ending at midnight following the conclusion of the poll for an election in the constituency, etc.”*

Contesting candidates were prohibited from canvassing or soliciting for votes within a radius of 400 yards of the polling station. They were also restrained from displaying any notice, sign, banner or flag within a radius of 100 yards of the polling station. They were enjoined to avoid all incitements of violence and not to use language that might lead to violence. They were also restrained from procuring the support or assistance of any person in the service of Pakistan.

The list of prohibitions included hoisting of party flags on any public property, wall chalking, use of loudspeakers except at election meetings, affixation of posters, hoardings or banners larger than the prescribed size, offering of gifts or gratifications to other candidates not to stand or to stand, donations to any institution within the Halqa, speeches calculated to arouse parochial or sectarian sentiments, dissemination of false and malicious information about other candidates, provision of transport to and from polling stations, restraining voters from casting their votes on the basis of their gender or religion or caste or ethnicity, illegal agreements to stop women from voting and transaction of election expenses through means other than the declared accounts. The candidates were bound to cooperate with election officials on polling day and restrained from using properties of private individuals for their election campaigns except with the permission of the owners of such property. There was a total ban on carriage or display of weapons. The candidates were restrained from taking down the posters, hoardings and banners displayed by other parties and their candidates.

The 2013 code of conduct also restrained the President, Prime Minister, Chairman and Deputy Chairman Senate, Speaker and Deputy Speakers of Assemblies, Federal Ministers, Ministers of

State, Governors, Chief Ministers, Advisors to the Prime Minister and the Chief Ministers, and other public office holders, including such dignitaries in the Care Taker set ups, from participating in the election campaign in any manner whatsoever. All Government functionaries including local government officers were also restrained from announcing any development schemes or doing anything that could influence the results of elections.

The political parties and their candidates were allowed to hold public rallies and processions but only on routes specified for the purpose as agreed with the local administrations. The schedule for such rallies and processions was to be fixed at least 3 days in advance. These prescriptions were made to ensure that there were no blockage or hindrance to traffic.

On polling day the candidates were enjoined to cooperate with the officers on election duty, to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise. Candidates were also required to supply badges or identity cards to their authorized polling agents. Only the candidates or their duly authorized polling agents were allowed to enter polling stations or polling booths.

Conclusion

As stated earlier, it is likely that, with some modifications, the 2013 code will be repeated for the 2018 general elections. In 2018 the elections authorities will also have the statutory power to punish violations including disqualification of a repeater violator. However, it is open for debate how effectively the ECP will be able to enforce the code.

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Main Blue Area, Islamabad, Pakistan Phone: +92-51-8449401-2