

BRIEFING PAPER



THE ELECTIONS ACT, 2017 POWERS AND RESPONSIBILITIES OF THE ELECTION COMMISSION OF PAKISTAN

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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 and beyond 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 Elections 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 is a part of series of such Briefing Papers and sheds light on the Powers, Role and Responsibilities of the Election Commission of Pakistan under the Elections Act, 2017 for use by party leaders, party office-bearers, 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.

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

Mr. Shahid Hamid is a member of the Citizens Group on Electoral Process (CGEP) convened by PILDAT.

Background

The Election Commission of Pakistan (“ECP”) is a constitutional authority and empowered under Articles 213 to 221 of the Constitution for the primary purpose of holding and conducting elections to the Senate, the National Assembly, the four Provincial Assemblies and such other public offices as may be specified by law and for preparing electoral rolls for such elections. The ECP is also to conduct elections for the office of the President of Pakistan as per provisions of the Second Schedule to the Constitution. Further under Article 140A, inserted into the Constitution in 2010 through the Eighteenth Amendment, elections to all local governments throughout Pakistan are to be held by the ECP.

The ECP consists of a Chief Election Commissioner and four members, one from each Province. The Chief Election Commissioner has to be either a retired judge of the Supreme Court or a retired BPS-22 civil servant or a technocrat (16 years of education, 20 years of experience, record of achievements at the national and international level) and, in each case, not more than 68 years of age. A member has to be either a retired judge of a High Court or a retired BPS-22 civil servant or a technocrat and, in each case, not more than 65 years of age. The Chief Election Commissioner and the four members are appointed by the President on the basis of selections made by a 12 Member Parliamentary Committee (8 MNAs, 4 Senators – half Treasury, half Opposition Parties) from a panel of 3 names jointly recommended for each of the 5 posts by the Prime Minister and the Leader of the Opposition in the National Assembly. In the case of no consensus between the Prime Minister and the Leader of the Opposition, both are to send separate lists to the Parliamentary Committee. The term of office of the Chief Election Commissioner and the members is 5 years from the date they enter on their office. At present, the Chief Election Commissioner and three members are retired judges while one member is a retired civil servant.

The Structure of ECP

The composition of the ECP and the manner of appointment of its members and their tenure was quite different when the Constitution was first enacted in 1973. At that time the Chief Election Commissioner was to be appointed by the President and had to be either a judge of the Supreme Court or a retired Supreme Court judge or retired judge of a High Court but qualified to be a judge of the Supreme Court. The tenure was three years. For the purpose of general election to the National Assembly or Provincial Assembly the ECP was to consist of the Chief Election Commissioner as Chairman and two other serving High Court judges appointed by the President after consultation with the Chief Justices of the respective High Courts and the Chief Election Commissioner. The two members were thus temporary, and not permanent, appointments for

the purpose of conducting general elections, which appointments terminated on the conclusion of these elections.

The case of India

In India the office of a Chief Election Commissioner was created through Article 324 of the Indian Constitution to prepare electoral rolls and to conduct elections to the Indian Parliament and to the legislatures of each State and to the offices of President and Vice President. Provision was made for adding members to the Commission if so required. Through the Election Commission Amendment Act 1989 the Commission was made a multi-member body and a 3-member Commission has been functioning since then with decisions being made by majority vote. The Chief Election Commissioner and the two members are usually retired Indian Administrative Services (IAS) officers and draw salaries and allowances at par with judges of the Indian Supreme Court. The tenure of the Chief Election Commissioner and the members is fixed by law.

Removal of the Election Commissioners

Once appointed the Chief Election Commissioner of Pakistan and the four ECP members cannot be removed from office except in the manner prescribed by Article 209 of the Constitution for removal from office of Superior Courts judges. Article 209 prescribes removal only on grounds of proven misconduct or incapacity to perform the duties of office by reasons of physical or mental disability.

Bar on holding another office of profit

The Chief Election Commissioner and the four members cannot hold any other office of profit in the Service of Pakistan. Further, even after relinquishing office they cannot hold any other office of profit in the Service of Pakistan before the expiry of two years from the aforesaid date of relinquishment.

Mandate of the ECP

The primary constitutional mandate of the ECP is contained in Article 218(3) of the Constitution which reads “*It shall be the duty of the Election Commission to organize and conduct the election and make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corruption practices are guarded against*”. This is the same mandate as that prescribed at the time of the initial enactment of the Constitution in 1973.

As per Article 219 of the Constitution the mandate of the ECP also includes the duty of preparing electoral rolls

for elections to the National Assembly and the Provincial Assemblies and revising such rolls annually, organizing and conducting elections to fill casual vacancies in the Parliament and the Provincial Assemblies, and appointing Election Tribunals.

All executive authorities in the Federation and the Provinces are constitutionally bound, in terms of Article 220 of the Constitution, to assist the Chief Election Commissioner and the ECP in the discharge of their duties. The ECP is also empowered to make rules for appointment of officers and servants for performance of its functions.

ECP under the new Election Law

Through Election Act 2017 the Parliament has repealed the Electoral Rolls Act 1974, the Delimitation of Constituencies Act 1974, the Senate Elections Act 1975, the Representation of People Act 1976, the Election Commission Order 2002, the Conduct of General Elections Order 2002, the Political Parties Order 2002, and the allocation of Symbol Order 2002, and consolidated the salient provisions of these repealed Acts in the aforesaid Elections Act 2017. Insofar as the ECP is concerned its powers and responsibilities are set out in Chapter-II (sections 3 to 16) Election Commission of Pakistan, Chapter-III (sections 17 to 22) delimitation of constituencies, Chapter-IV (sections 23 to 49) electoral rolls, Chapter-V (sections 50 to 103) conduct elections to the Assemblies, Chapter-VI (section 104) elections to reserved seats in the Assemblies, Chapter-VII (sections 105 to 131) conduct elections to the Senate, Chapter-VIII (sections 132 to 138) election expenditures and statements of assets and liabilities, Chapter-IX (sections 139 to 166) election disputes, Chapter-XI (sections 200 to 213) political parties, Chapter-XII (sections 214 to 218) allocation of symbols, Chapter-XIII (sections 219 to 229) conduct of elections to local governments, Chapter-XIV (sections 230) care taker governments and Chapter-XV (sections 231 to 240) miscellaneous.

Powers and Functions of the ECP

Under the Elections Act 2017 the ECP is empowered to regulate its own procedure for the purpose of performing its functions and duties. It can act notwithstanding any vacancy in its ranks (chapter 1, section 2). In case of difference of opinion the decision of the majority prevails. The ECP has power to issue such directions as may be necessary for the performance of its functions, and these directions are enforceable throughout Pakistan as if they had been issued by a High Court. The ECP can seek assistance from any person or authority. It can delegate its powers to any member or to any officer. It has power to requisition property. It has powers to pass whatever orders may be necessary to ensure fair elections and to

declare a poll void on account of grave illegalities. It has also power to punish for contempt as per provisions of the Contempt of Courts Ordinance 2003.

All expenditure of the ECP including remuneration paid to the Chief Election Commissioner and the four members of the ECP and other officers and staff and all administrative and other expenses are charged expenditure on the Federal Consolidated Fund within the meaning of Article 81 of the Constitution. This means that these expenditures can be discussed in the Assembly but not voted upon. The Chief Election Commissioner also has full financial powers to sanction and incur expenditure within the approved budget including creation of posts. In this manner the ECP has complete financial autonomy.

The ECP has the responsibility to take measures for training election officials and creating public awareness and establishing a result management system. Four months prior to the general elections the ECP is to prepare a comprehensive action plan specifying the legal and administrative measures that have been or will be taken for, amongst other things, delimitation of constituencies, revision of electoral rolls, enlistment of political parties, allocation of symbols, appointment of officers for conduct of elections, preparation of lists of polling stations, printing of ballot papers, appointment of appellate and election tribunals, arrangements for election observers, security measures and monitoring mechanisms. The ECP is required to prepare an annual report of its activities and send such reports to the Federal and Provincial Governments for laying before the Parliament and the Provincial Assemblies.

Delimitation

The ECP is mandated to delimit the constituencies and to prepare electoral rolls in accordance with detailed provisions set out in sections 17 to 22 and 23 to 49 of the Elections Act 2017.

Appointment of election officials

In regard to the conduct of elections the ECP is empowered to appoint returning officers and assistant returning officers. The returning officers in their turn are to appoint presiding officers, assistant presiding officers and polling officers. The ECP has the power to take disciplinary proceedings against any officer appointed for conduct of polls.

Announcement of Election Schedule

The President is to announce the date or dates of the general elections after consultation with the ECP. Within seven days of such announcement the ECP is to notify the election programme. The elections commence with the notification of the election programme. Appeals

against decisions of the returning officers accepting or rejecting nomination papers of candidates are to be decided by appellate tribunals comprising the High Court judges appointed by the ECP in consultation with the Chief Justice of the concerned High Court. After the result is consolidated and declared by the returning officers the ECP is publish the same in the official Gazette.

Election Documents

All documents relating to the election including ballot papers, counter foils of ballot papers, electoral rolls, ballot paper accounts, etc are required to be retained by the ECP at appropriate places for safe custody in tamper-proof evident sealed bags. The ECP can allow any member of the public to inspect these documents on payment of prescribed fees except for the ballot papers.

Election Expenses

Each candidate is required to restrict his/her expenditure on elections within the limit prescribed by section 132 of the Elections Act 2017 and to submit a return of election expenses to the ECP. The ECP has power to order an inquiry into the return submitted by a candidate. The return submitted to the ECP is open to public inspection on payment of prescribed fees. All members of the Parliament and the Provincial Assemblies are further required to submit their statements of assets and liabilities as on 31st December each year and the ECP has power to suspend the membership of those Parliamentarians who fail to do so.

Election Disputes

Challenges to the elections of a returned candidate are to be decided by the Election Tribunals as mandated by Article 225 of the Constitution. Election Tribunals are appointed by the ECP.

Enlistment of Political Parties

Political parties are enlisted by the ECP. Every enlisted political party is bound to conduct intra-party elections periodically in accordance with their constitutions provided that period between two elections cannot exceed five years. Further, each political party is required to convene a general meeting at least once a year. Each political party is also required to submit a consolidated statement of its audited accounts to the ECP every year. These accounts must include information about the list of contributors who have donated or contributed an amount equal to or more than Rs.100,000/-. The ECP has power to make a Reference to the Federal Government for dissolution of a political party if it is found that such party is foreign aided or is working in a manner prejudicial to the sovereignty and

integrity of Pakistan or is indulging in terrorism. If a political party is so dissolved then each of its Parliamentarians stands disqualified for the remaining term of their respective assemblies.

The ECP has power to prescribe a list of election symbols and to allocate them to the political parties and their candidates.

Conduct of Elections

The powers of the ECP with respect to conduct of elections for local governments are analogous with ECP powers relating to conduct of elections to the Parliament and the Provincial Assemblies.

It is the duty of caretaker governments at the Federal and Provincial levels to assist the ECP in the conduct of elections. The ECP is required, in consultation with the political parties, to frame a code of conduct for the holding of elections, as also a code of conduct for security personnel, media and election observers. The ECP is further required to constitute teams for monitoring the election campaigns and to ensure compliance of the codes of conduct framed by it.

As per provisions of section 239 of the Elections Act 2017 the ECP may, by notification in the official Gazette and publication on its website, make rules for carrying out the purposes of the Elections Act. Under the provisions of the repealed Representation of People Act the ECP could frame rules only with the approval of the President but this restriction now stands removed under the current law.

Conclusion

The ECP is vested with all required legal and administrative powers to fulfill the mandate set out in Article 218(3) of the Constitution viz to organize and conduct elections honestly, justly, fairly and in accordance with law and to ensure that there are no corrupt practices. The ECP has complete financial autonomy and can call upon all executive organs of State to assist the ECP in the discharge of its functions. Its powers are certainly equal to, in fact more than, the powers of the Election Commission of India. What will be seen in the middle part of the current calendar year is whether the ECP will be able to fulfill its constitutional mandate and the hopes and expectations of the People of Pakistan.

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