

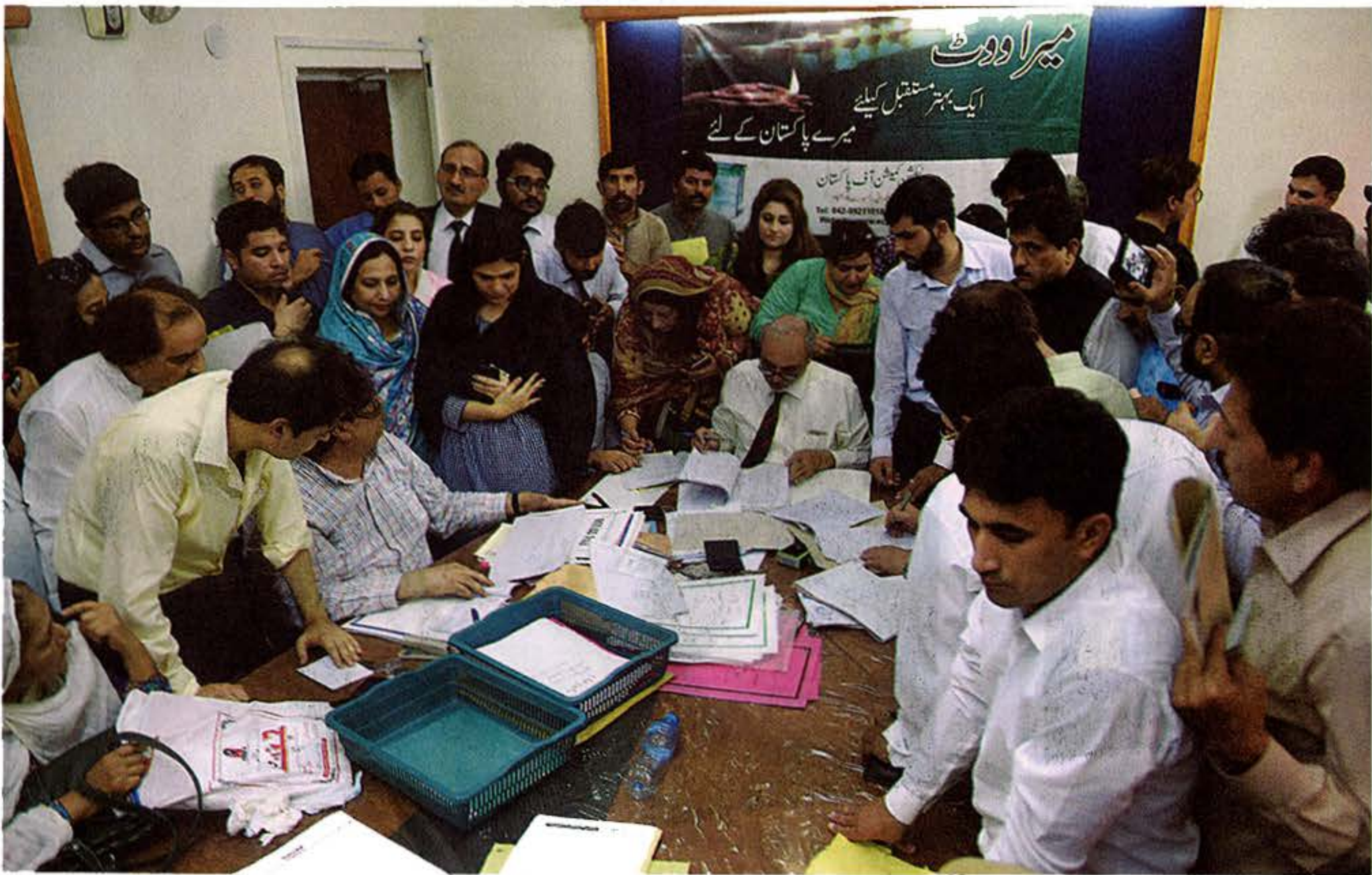


| ANALYSIS |

FULL DISCLOSURE

What makes scrutiny of election candidates controversial

BY AHMED BILAL MEHBOOB



Candidates submit their nomination papers to the returning officer at an election commission office | PHOTO BY ARIF ALI, WHITE STAR

Every election season, some people are very surprised when they come to know through the media that a returning officer (RO) has asked a candidate for a National Assembly or provincial assembly seat to read out from some chapter of the Holy Quran. In other instances, the candidates have been told to recite a particular prayer (often it is the *dua-e-qanoot*) from memory. Sometimes, ROs even ask candidates how many times a day they go to the mosque to pray.

No matter how bizarre all these questions may appear, ROs are in fact trying, in accordance with constitutional provisions, to make sure that candidates meet the criterion of having “adequate knowledge of Islamic teachings” and are practicing the “obligatory duties prescribed by

Islam”. The problem is that there is no law or rule that clearly lays down how to judge a candidate on the basis of these parameters. ROs, therefore, keep applying their own methods for the scrutiny of nomination papers submitted by candidates.

This scrutiny is an integral but quite contentious part of the electoral process. Its objective is to establish that a candidate conforms to the qualifications prescribed in Article 62 of the Constitution. It is also meant to ascertain whether a candidate is disqualified from becoming a member of the national or provincial legislatures as per the provisions laid out in Article 63 of the Constitution.

There are a total of seven qualifications listed in Article 62 that a prospective member of a national or provincial

assembly is required to possess. Four of these are specific and, therefore, relatively easy to establish: a candidate must be a Pakistani citizen; he or she must have attained a minimum age of 25 years; he or she must be enrolled as a voter; and, most critically, there must be no adverse ruling against him or her as far as honesty and integrity are concerned.

This last provision has been a subject of great controversy. In recent times, former prime minister Nawaz Sharif and former secretary general of the Pakistan Tehreek-e-Insaf (PTI), Jahangir Tareen, both have been disqualified by the Supreme Court from being members of a legislature under this particular provision. PTI chief Imran Khan and former federal minister Sheikh Rasheed Ahmed, on the other hand, have escaped disqualification after petitions were heard by the apex court on allegations that they, too, had violated this provision.

The other qualifications are rather difficult to establish. These include: to be "of good character and ... not commonly known as one who violates Islamic injunctions"; to have "adequate knowledge of Islamic teachings"; to be practicing the "obligatory duties prescribed by Islam"; to have abstained from "major sins"; and to have not "after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan".

It is generally these non-specific provisions that place ROs, election tribunals and superior courts in a rather difficult position during the scrutiny of election candidates.

Article 63 lists 16 parameters that disqualify a person from being a member of the national and provincial assemblies. Almost all of these are specific and thus possible to establish.

The above-mentioned qualifications and disqualifications primarily set the scope of scrutiny by ROs, who are usually taken from the district-level judiciary and guided in the scrutiny process by Section 62 of the Election Act, 2017. Appeals against their decisions are lodged at appellate tribunals that work under Section 63 of the same law and consist of high court judges.

The process of scrutiny commences as soon as an RO receives nomination papers but, over the years, it has become a multipronged process. At one level, ROs undertake the scrutiny themselves to the extent they can manage. In addition, they seek input from a number of state entities through the Election Commission of Pakistan — a process that has been rather haphazard in the past. This time, however, it is being managed through a specially prepared online computer application that helps ROs share a candidate's personal information with various entities of the state and receives their feedback through the scrutiny cell of the election commission within the deadlines set by the election schedule announced by the Election Commission of Pakistan. The online application has also ensured relatively better accuracy of the information exchanged.

The online scrutiny was undertaken in four steps. Firstly, ROs transmitted information about candidates in a specific format to the online scrutiny cell of the Election

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Commission of Pakistan via email or fax on a daily basis. Secondly, the online scrutiny cell fed the received information into a purpose-built software and shared it with various relevant state entities for verification and feedback. The third step required different entities such as the National Database and Registration Authority (NADRA), Federal Board of Revenue (FBR), National Accountability Bureau (NAB), Federal Investigation Agency (FIA), State Bank of Pakistan (SBP) and gas and electricity companies to cross-check the information with their own records and then share their feedback with the election commission that, as the fourth step, sent this feedback to the ROs.

This entire process kicked off on June 4 when ROs started receiving nomination papers and continued till June 19, the last designated date for scrutiny. ROs around the country received a total of 21,482 nomination papers. Out of these, 5,473 were filed for the 272 general constituencies of the National Assembly – with an average of slightly over 20 nominations per constituency – and 13,693 were received for the 577 constituencies of the four provincial assemblies – with an average of slightly less than 24 nominations per constituency.

Various entities flagged 15,176 nomination papers for various problems: the FBR pointed out that 6,817 nominees were not registered under the Income Tax Ordinance, 2001, and 5,971 had not filed their income tax returns; the FIA reported 123 candidates to be dual nationals; the SBP stated that 383 of them had defaulted on their bank loans; and phone and gas companies reported that 1,823 nominees were their defaulters.

Still, everything did not go smoothly. Some of the information the state entities provided was not updated. Former Sindh chief minister Murad Ali Shah and former PTI member Fauzia Kasuri had relinquished their dual citizenship long ago but their names were still included in the FIA list. Many other candidates who were stated to have defaulted on loans and reported to have unpaid utility bills were later able to prove otherwise and were, thus, allowed to run for election — the most famous case being that of former National Assembly speaker Dr Fehmida Mirza and her spouse Dr Zulfiqar Mirza.

The third prong of scrutiny was carried out based on the objections raised by voters about candidates. To facilitate this, the contents of each nomination paper and its attachments (such as statements of assets and liabilities) were made public at RO offices in each district.

QUALIFICATIONS FOR MEMBERSHIP TO NATIONAL AND PROVINCIAL ASSEMBLIES

No.	Article in Constitution	Description of the qualification	Relevant institution to assist ROs in scrutiny and establishing qualification or otherwise	Specificity
1	62(1)(a)	Citizen of Pakistan	NADRA / FIA	Specific; easy to establish
2	62(1)(b)	Age not less than 25 years	NADRA	Specific; easy to establish
3	62(1)(d)	Good character and doesn't violate Islamic injunctions	None	Vague; difficult to establish
4	62(1)(e)	Adequate knowledge of Islamic teachings; practices obligatory duties; abstains from major sins	None	Vague; difficult to establish
5	62(1)(f)	Sagacious; righteous; non-profligate; honest; ameen; there being no declaration against the country	A court of law with the jurisdiction	Vague; RO can establish in light of court judgments
6	62(1)(g)	Has not worked against the integrity of Pakistan; has not opposed the ideology of Pakistan	None	Vague; difficult to establish

The nomination papers made public included 19 different declarations about things such as educational qualifications, occupation, businesses owned, total income and taxes paid in the past three years, pending criminal offence cases, details of foreign travel during the past three years, donations made to or received from a political party and names of spouses and dependents.

Originally, the Election Act, 2017 exempted election candidates from having to submit these declarations, but they were restored partly due to criticism by the media and civil society and ultimately on the orders of the Supreme Court. The declarations were submitted through a separate affidavit attached to the nomination papers, rather than as part of the nomination papers themselves as was the case in previous elections.

Some of these declarations contain information that can be critical for voters to make up their mind about a candidate. The details disclosed in these declarations, therefore, have generated a lot of interest. For instance, it was the first time that people came to know that many known politicians have two or more wives.

Although none of this information in itself constitutes a reason for qualification or disqualification, misdeclaring it has led to serious consequences for many candidates.

Consider the case of educational qualifications. There is no minimum education requirement for an election candidate, but if he or she states to have a certain qualification then he or she has to substantiate the statement by showing a degree issued by a government-recognised institution. This perhaps explains why television show host Aamir Liaquat Husain stated that his qualification was a BA only, not mentioning the doctorate degree that he is reported to have obtained

from an unrecognised university. A provincial assembly candidate of the Pakistan Peoples Party (PPP) in Badin district, Yasmin Shah, was not allowed to run for election because in a previous election she had submitted an educational certificate that was found to be fake.

In the true spirit of transparency, nomination forms and their attachments, including the affidavits, should be uploaded to the website of the election commission as soon as they are submitted, so that voters can gain access to the information about candidates and raise objections within the time allocated by the election schedule for scrutiny. This uploading is also important because constituencies in Pakistan are quite large — an average National Assembly constituency has a population of around 780,000, with voters alone numbering around 390,000. It is very difficult for such a large population to have physical access to information about candidates. Not every voter will be able to reach the office of an RO to have a look at the nomination papers and other declarations contained there.

This time around, the information *did* become available online but after a lot of delay — and that too because of the hue and cry in the media. A number of candidates and influential politicians resisted its availability as much as they could on the grounds that this information should be brought online only once a candidate has already been given the official go-ahead to contest elections. The counterargument is that the scrutiny period would be over by then, and voters would not be able to raise objections *before* elections.

Statements of assets and liabilities submitted by candidates also generated a great deal of interest. This is because they offer a rare peep into the lifestyle of the aspiring and elected legislators. Choice agricultural land,

DISQUALIFICATIONS FOR MEMBERSHIP TO NATIONAL AND PROVINCIAL ASSEMBLIES

No.	Article in Constitution	Description of the qualification	Relevant institution to assist ROs in scrutiny and establishing qualification or otherwise	Specificity
1	63(1)(a)	Unsound mind	Competent Court	Specific; easy to establish
2	63(1)(b)	Undischarged insolvent		Specific; easy to establish
3	63(1)(c)	Acquired foreign citizenship; ceases to be a citizen of Pakistan	NADRA/FIA	Specific; easy to establish
4	63(1)(d)	Holds office of profit in the service of Pakistan	Establishment Division; provincial governments	Specific; easy to establish in light of various constitutional provisions
5	63(1)(e)	In service of a government-owned statutory body		Specific; easy to establish in light of various constitutional provisions
6	63(1)(f)	Is disqualified under AJK law from being elected as MLA		Specific; easy to establish
7	63(1)(g)	Convicted by a court for acting against ideology of Pakistan or independence of judiciary or defames judiciary or armed forces (unless 5 years elapsed)		Specific; easy to establish
8	63(1)(h)	Convicted for moral turpitude and sentenced to not less than 2 years (unless 5 years elapsed)		Specific; easy to establish
9	63(1)(i)	Dismissed from service of Pakistan (unless 5 years elapsed)	Establishment Division; provincial governments	Specific; easy to establish
10	63(1)(j)	Removed or compulsorily retired from service of Pakistan (unless 3 years elapsed)	Establishment Division; provincial governments	Specific; easy to establish

residences spread over hundreds of square metres, luxury vehicles, foreign properties, gold and cash owned by candidates and their immediate family — all this suddenly becomes public knowledge. The statements also highlight discrepancies in cases where the opulent lifestyle of a candidate does not seem to match his or her income. The famous instance of a party chief always seen riding in an expensive vehicle, but stating to have not owned it, has been one of the most talked about topics during the scrutiny process this election cycle.

A major issue that has made these statements rather confusing is the failure to lay down an unambiguous rule for evaluating the price and cost of assets and liabilities. Before the passage of the Election Act, 2017, these statements had two columns: one indicated the original price of an asset (which may be its purchase or transfer price); the other showed the present value of an asset.

The revised statements under the current law contain only one column that requires mentioning the "Cost of the Asset". Legal experts generally regard the term 'cost' as the original purchasing price of an asset but different candidates have interpreted it differently.

This explains why Bilawal House, the residence of PPP chief Bilawal Bhutto-Zardari, is stated to have a value of only three million rupees though its market value may be 100 times more. Bilawal's nomination papers, however, were accepted without any election forum objecting to the stated value of his property.

A different view was taken in a different case.

An appellate tribunal judge rejected the nomination papers of former prime minister Shahid Khaqan Abbasi for a National Assembly seat in Islamabad. The judge disqualified Abbasi for life for misstating the value of a home in the federal capital that he had inherited from his father.

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Many lawyers believe the statements have a sound format as far as purchased assets are concerned. A candidate can provide the purchase value of an asset, showing proof as to when it was purchased and at what price. But the forms leave it to candidates to evaluate their inherited assets. In the latter case, all given values can be arbitrary and discretionary unless a government agency assesses the assets and certifies their values.

This confusion could have been avoided by adding an explicit and clear definition of the 'cost' of an asset in the declarations. A well-staffed political finance division within the Election Commission of Pakistan under the guidance of a professional chartered accountant/auditor would have also made it easy to carry out a meaningful analysis of the statements of assets and liabilities. This division could have scrutinised not only the statements submitted by election candidates but also those filed by elected legislators every year.

The performance of ROs during scrutiny was better for this election than for previous elections. At times, however, it appeared that they needed to be better familiar with the Election Act, 2017 and its specific provisions related to scrutiny. One RO in Lahore was heard on video asking Maryam Nawaz Sharif if she had any solution for the water crisis facing Pakistan. This was certainly a case of stretching the process beyond its legal scope. Members of the appellate tribunals would also have been better informed if they had received a quick training. That could have prevented a tribunal from disqualifying Shahid Khaqan Abbasi for life since the authority to do so cannot be justifiably exercised during the scrutiny process.

Time was certainly a major factor contributing to why an efficient scrutiny could not take place. The election schedule allotted a maximum of 15 days for scrutiny but that time period would shrink to eight days for nomination papers submitted at the last moment. It was certainly not feasible to seek and receive input from a range of state institutions and utility agencies and then undertake a meaningful scrutiny on the basis of the information received within such a short time. The duration of pre-election scrutiny, therefore, needed to be increased to at least three and preferably four weeks if some degree of justice was to be infused into the process.

The process of appeals against the decisions made by ROs to accept or reject nomination forms also suffered

due to the shortage of time. For the upcoming election, 21 appellate tribunals were formed to exclusively deal with the appeals against ROs' decisions. (These tribunals should not be confused with election tribunals, which are formed to deal with election petitions *after* an election.) Only five days were available to appellate tribunals to decide appeals.

Most appeals were filed by candidates against the rejection of their papers. Several others were filed by opposing candidates and voters against the acceptance of the nomination papers of a certain candidate, increasing the workload of the tribunals further.

Though the process of accepting or rejecting nomination papers normally ends with the decisions of appellate tribunals, writ petitions against their decisions are sometimes also filed before high courts. Shahid Khaqan Abbasi took this route to have the tribunal's decision against him overturned in order to run from his Islamabad constituency.

A few cases even made it to the Supreme Court. Just to quote one example, PTI's Balochistan chief, Yar Mohammad Rind, moved the apex court against the rejection of his nomination papers and was finally allowed to contest the election, only 20 days before the polling.

India, a country that has a much longer history of conducting elections than Pakistan, does not allow appeals against decisions made by ROs. Even superior Indian courts normally do not entertain an appeal regarding the electoral system once the election schedule is announced. Pakistan, on the other hand, is extremely generous to its election candidates. This generosity only places an extra burden on the already overworked electoral and legal institutions.

Though the legal framework governing Pakistan's electoral system is very elaborate and has ample inbuilt provisions for the scrutiny of a candidate's credentials, some improvements in the execution of laws are still required. Most important of these is the need to either omit or specify certain vague qualification requirements to be a member of a legislature, as listed in Article 62 of the Constitution. This change will help ROs easily adjudicate on these requirements without causing public embarrassment to candidates over their religious knowledge — or lack thereof.

Additionally, awareness about electoral laws is rather limited even among the political class and the media. Concerted efforts are needed to enhance this awareness for the effective implementation of these laws and for offering their informed critique when so warranted.

Reform and refinement in any electoral system, however, is a gradual and ongoing process. We have come a long way since 2008 when the current electoral system was born, after having replaced many rules and procedures laid down in 2002 under the control and supervision of a military government. If our democratic and electoral systems continue to function unhindered, their defects will be addressed in the due course of time and refinements will be introduced to them gradually. ■