

Consolidating
Democracy
in Pakistan



Background Paper

**The Elections Act, 2017
An Overview**

February 2018



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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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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. Tabeeer-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 Tabeeer 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, Tabeeer 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 Acts, 2017.

The team reached out to 13 selected political parties and briefed them on Tabeeer's objectives. Responding to the need identified by political parties, Tabeeer 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 the first in the series of such Briefing Papers and presents an overview of the Election Acts, 2017 for use by party leaders, candidates, polling agents and party workers. Using this paper, party officials will be briefed at a structured Roundtable Session before the General Election due by August 2018. Key source of this paper is '*The Report of the Parliamentary Committee on Electoral Reforms on The Elections Bill, 2017*' and '*The Elections Act, 2017*'.

This overview is not meant to be an exhaustive document of all changes or reforms brought about through the Election Act, 2017 but only the key changes/reforms. Readers are encouraged to point out if there are other key changes in the law that should be included in this paper.

Acknowledgement

This Background Paper benefits from research carried out by *Ms. Amna Kausar*, Projects Manager PILDAT under the overall guidance of *Mr. Ahmed Bilal Mehboob*, President PILDAT.

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Disclaimer

The Tabeeer team has made every effort to ensure accuracy of the publicly available data, which formed the basis of this paper. Any omission, or error, therefore, is not deliberate.

Context

Political parties in Pakistan have time and again demanded reform of the electoral framework, and particularly since 2013. As a result, a Parliamentary Committee on Electoral Reforms (PCER) was constituted on July 25, 2014 with representation from parties that hold seats in the National Assembly and the Senate. The committee reviewed all election-related laws, removed duplication by combining some sections and replaced archaic provisions with the new ones to make the electoral process more fair, competitive and peaceful.

Eight laws have been merged in the Election Acts, 2017 and new election rules covering 15 chapters have been formulated, including rules to pave the way for the financial and administrative autonomy of the Election Commission of Pakistan (ECP). Whether the new law succeeds in closing loopholes completely and making the process immune to rigging will only be known after the 2018 General Election. Meanwhile, political parties have identified the need for training and education of their party officials on the proposed reforms to better prepare them for the upcoming elections.

Box 1: Eight laws merged into the new law

- The Electoral Rolls Act, 1974
- The Delimitation of Constituencies act, 1974
 - The Senate Election Act, 1975
- The Representation of the People Act, 1976
 - The Election Commission Order, 2002
- The Conduct of General Elections Order, 2002
 - The Political Parties Order 2002
 - The Allocation of Symbols Order, 2002

Introduction to the Election Acts, 2017

The electoral system contained in various election laws did not see any major reform during the last forty years except for certain Constitutional amendments relating to the Election Commission of Pakistan enacted through the Constitution (Eighteenth Amendment) Act, 2010 and some acts of parliament amending certain aspects of the election laws. For the past several years, almost all political parties have forcefully expressed the perceived need to carry out electoral reforms to ensure that elections are conducted honestly, justly, fairly and transparently.

The PCER invited proposals for electoral reforms from civil society organizations, lawyers (including Pakistan Bar Councils and Provincial Bar Councils, Supreme Courts and High Courts Bar Associations) and the general public through a Notice in print and electronic media in August-September, 2014.

After detailed deliberations extending over about two years, the following Electoral Reforms Package was put forth by the PCER to the Parliament for approval:

1. Draft Elections Bill, 2017
2. Draft Election Rules, 2017
3. Draft Constitution (Twenty Seventh Amendment) Bill

Table 1: Timeline of the passage of the Elections Act, 2017

| Date | Episode |
|--------------------|--|
| August 07, 2017 | The Elections Bill, 2017 was introduced as a Government Bill in the National Assembly of Pakistan |
| August 22, 2017 | The Elections Bill, 2017 was passed by the National Assembly of Pakistan replacing the original "I solemnly swear" in the old law with the words "I believe" in a clause relating to a candidate's belief in the finality of the prophethood of Prophet Muhammad (Peace Be Upon Him) – the Khatm-e-Nabuwwat oath |
| September 22, 2017 | The Senate of Pakistan made a small amendment to Election Bills 2017, and passed the bill. Senator Hafiz Hamdullah of Jamiat-Ulema-e-Islam (F) pointed out changes in the Nomination form of the candidates and sought to reinstate the old form, but the House rejected the move by the Senator. The amended bill went back to the National Assembly for consideration. |
| October 02, 2017 | The Elections Bill 2017 was passed by the National Assembly. President Mamnoon Hussain signed the Bill into Act the same day. |
| October 05, 2017 | After raucous by politicians and media, The Elections (Amendment) Act 2017 was passed by the National Assembly after restoring Khatm-e-Nabuwwat oath to its original form ("I solemnly swear"). |
| October 06, 2017 | The Senate passed the Elections (Amendment) Act, 2017 |

Key Amendments in the election laws as contained in the Elections Act, 2017

The Election Commission of Pakistan:

The ECP has been strengthened in the following ways:

1. The ECP has been empowered to issue specific directions for performance of its duties, which shall be enforced throughout Pakistan in the same manner as if these have been issued by a High Court (Chapter II, Section 4).
2. The ECP will have full administrative powers to control transfer of election officials during elections and take disciplinary action against them for misconduct (Chapter II, Section 5 (4)).
3. The Commissioner will have full financial powers, including power to create posts within its approved budgetary allocations (Chapter II, Section 11(2)). All expenditure of ECP will be charged upon the Federal Consolidated Fund within the meaning of Article 81 of the Constitution (Chapter II, Section 11).
4. As per the previous law, the Election Commission Order, 2002, Section 9E, approval of the President had to be sought to make Rules. Now, ECP has been empowered to make Rules without prior approval of the President or the Government. Rules will be subject to prior publication, seeking suggestions etc. within 15 days of such publication (Chapter XV, Section 239).
5. The ECP shall prepare a comprehensive Action Plan four months before the elections specifying all legal and administrative measures that have been taken or are required to be taken (Chapter III, Section 14). There was no such provision in the previous law.
6. The ECP has been authorized to redress complaints/grievances during various stages of the election process (other than challenge to the election itself under Article 225). Its decisions will be appealable to the Supreme Court of Pakistan (Chapter II, Section 15).
7. The ECP shall establish a transparent Results Management System for expeditious counting, compilation and dissemination of election results (Chapter II, Section 13).
8. The ECP has been empowered to delegate its functions to its members and

- officials (Chapter II, Section 6).
9. The ECP shall conduct training programs for election officials and take measures to promote public awareness regarding laws and best practices (Chapter II, Section 6).
 10. The ECP shall upload on its website list of constituencies, election results and decisions on complaints etc.
 11. Some degree of accountability of the ECP has also been built into the Elections Act, 2017; the ECP is now required to submit an annual report within 90 days after the end of every calendar year that will be laid in each house of the parliament and each provincial assembly (Chapter II, Section 16). A post-election review of the implementation of the Action Plan shall be included in the next annual report (Chapter II, Section 14 (2) and (3)). There was no such provision in the previous law.

Delimitation:

1. ECP shall delimit constituencies after every census (Chapter III, Section 17 (2)).
2. Variation of population amongst constituencies in the same Assembly from the same province or territory has been restricted to 10% (Chapter III, Section 20 (3)). There was no such provision in the previous law.

Electoral Rolls:

1. NADRA shall transmit relevant data of every CNIC issued by it to the ECP so that every citizen who obtains a CNIC from NADRA can automatically be enrolled as a voter at his permanent or temporary address on the basis of his option in the

- application for issuance of CNIC (Chapter IV, Section 25).
2. On the application of a candidate or his election agent, the District Election Commissioner or any officer authorized in this behalf by the ECP shall provide to a candidate or an election agent a hard and searchable soft copy on a universal serial bus (USB) in portable document format (PDF) or any other tamper-proof format of the final electoral roll with photographs of the voters and shall ensure that the copy is the same as provided to the Returning Officer and Presiding Officers (Chapter V, Section 79 (3)). This is a new and more pro-candidates provision

Conduct of Election:

1. An election official shall, before the commencement of his election duty, make an oath, in such form and manner as may be prescribed, that he shall act strictly in accordance with the provisions of the Elections Act, 2017, Rules and directions of the ECP (Chapter V, Section 56).
2. As far as practicable, the distance between a polling station and the voters assigned to it shall not exceed one kilometer (Chapter V, Section 59 (2)). There was no such specific provision in the previous law.
3. Nomination Forms have been consolidated and the same form has now been prescribed for candidates for all seats.
4. Deposit with the nomination papers of National Assembly, Provincial Assemblies (Chapter V, Section 61(1)) and Senate (Chapter VII, Section 111(1a)) has been changed as follows:

| Legislature | Deposit with Nomination Paper | |
|---------------------|-------------------------------|----------------------------------|
| | Old | (New as per Elections Act, 2017) |
| National Assembly | Rs. 4000 | Rs. 30,000 |
| Provincial Assembly | Rs. 2000 | Rs. 20,000 |
| Senate | Rs. 4000 | Rs. 20,000 |

5. While scrutinising a nomination paper, the Returning Officer shall not ask any question which has no nexus to the information, supplied or received or objections raised by any person, or tangible material on record (Chapter V, Section 62 (7) (8)).
6. In case of any default on payment of taxes, loans, utility expenses or other Government duties, a candidate may clear the default at the time of scrutiny of the nomination papers, except in the cases of wilful concealment (Chapter V, Section 62(10)).
7. A person with any physical disability who is unable to travel and holds a National Identity Card with a logo for physical disability issued by the National Database and Registration Authority may be able to cast their votes now by postal ballot (Chapter V, Section 93 (c)). In the previous law, there was no such provision for disabled persons.
8. Deletions in the Declaration and Oath by the Person Nominated in the Nomination Form: The following declarations which were a part of the Nomination Forms in the previous law have now been omitted:
 - a. Declaration on Outstanding loans from any bank, financial institution, cooperative society or corporate body in the candidate's name or in the name of his/her spouse or any dependants
 - b. Declaration on Default in payment of government dues or utility charges
 - c. List containing names of spouse(s) and dependants
 - d. Declaration about companies owned by the candidate or his/her spouse and dependants
 - e. Declaration of Pending cases of criminal offences
 - f. Declaration of Educational Qualification
 - g. Declaration of Present Occupation
 - h. National Tax Number
 - i. Declaration of Income Tax paid during the last 3 years (along with Total Income and Source of Income)
 - j. Declaration of Travel abroad during last 3 years
 - k. Declaration of Agricultural income tax paid (along with Land holding and Agricultural income)
 - l. Declaration of Important contribution made by the candidate for the benefit of candidate's constituency if elected previously
 - m. Declaration of Sum paid to any political party that awarded the ticket to candidate
 - n. Declaration of Sum received from any political party that awarded the ticket
 - o. Declaration to abide by the code of conduct issued by ECP
 - p. Declaration of Net assets of current financial year and previous year; and difference in the net assets (only current financial year's value of assets and liabilities has to be provided)
 - q. Declaration of Foreign passport detail from statement of Assets
 - r. Declaration of Personal expenditure detail from statement of Liabilities
 - s. Statement on oath that the candidate is a citizen of Pakistan and does not carry any other nationality
9. ECP may conduct pilot projects for utilization of **electronic voting machines (EVMs)** and **biometric voters' identification system** in bye-elections in addition to the existing manual procedures for voter verification, casting and counting of votes to assess their technical efficacy, secrecy, security and financial feasibility (Chapter V, Section 103).
10. ECP may also undertake pilot projects for **voting by Overseas Pakistanis** (Chapter V, Section 94).
11. All election-related documents including Statements of Count and Ballot Paper Accounts, except the ballot papers, shall be public documents and may be inspected or copies thereof obtained (Chapter V, Section 100).
12. ECP shall retain election-related documents in tamper-evident sealed bags in storage space under its control at appropriate places (Chapter V, Section 99). This is a new provision.
13. If the victory margin between the returned candidate and runner-up candidate is less than 5% of the total votes polled or 10,000 votes, whichever is less, the Returning Officer shall recount all the votes on the request of a contesting candidate before

commencement of the consolidation of the results (Chapter V, Section 95 (5)). This is a modified provision of the previous law (The Representation of the People Act, 1976).

14. In case of equality of votes between two candidates, both will be declared returned candidates and each shall become Member for half of the term of the Assembly. The candidate who will be Member for the first half of the term will be determined by draw of lots. In case of equality of votes between three or more candidates, there shall be re-election in the constituency (Chapter V, Section 97). As per the previous law (the Representation of the People Act, 1976), in case of equality of votes, drawing of lots was to take place to decide which candidate would be elected Member of the Assembly.
15. ECP shall prepare a gender disaggregated statement of voters showing the total number of votes cast by men and women voters at the polling station. (Chapter V, Section 91)
16. If a candidate, not being the returned candidate, obtains less than one-fourth of the total votes polled in the constituency, the sum deposited by him or on his behalf shall stand forfeited in favour of the Government (Chapter V, Section 61(4)). Previously, the threshold was one-eighth.

Code of Conduct

1. The ECP may, in consultation with political parties, frame a Code of Conduct for political parties, contesting candidates, election agents and polling agents. The Commission may also frame a Code of Conduct for security personnel, media and election observers (Chapter XV, Section 233). Although the ECP did issue code of conduct in the past, there was no legal provision for it in the previous laws.

Election Expenses:

1. Election expenses for a contesting candidate have the following limits:
2. District Monitoring Teams of the ECP shall monitor election expenses. ECP may impose fines in case of violation of the Act or the Rules (Chapter XV, Section 234).
3. Return of election expenses shall be scrutinized by the ECP (Chapter VIII, Section 136). In case of failure to file the return, the ECP may direct prosecution of the defaulting candidate for the offence of illegal practice (Chapter X, Section 174 and 183).

Election Disputes:

1. A candidate may file an election petition directly with the Election Tribunal (Chapter IX, Section 142 (1)).

Political Parties:

1. To check mushroom growth of political parties, conditions for enlistment of a new political party with the ECP will include, in addition to the existing requirements, minimum two thousand members and Rs. 200,000 enlistment fee. (Chapter XI, Section 202 (2))
2. A political party shall submit to the ECP annual financial statement and list of donors who have donated Rs. 100,000 and above to the political party. (Chapter XI, Section 211)
3. Symbols allocated to the political parties and candidates should be visibly different from each other. (Chapter XII, Section 217 (5))
4. If an enlisted political party fails to comply with the provisions of the Act, it will be disqualified for allocation of symbol for the election. (Chapter XII, Section 215 (4))
5. The office-bearers of a political party at the federal, provincial and local levels shall be elected periodically provided that

| Legislature | Spending Limit | |
|---------------------|-----------------|-----------------|
| | Old | New |
| National Assembly | Rs. 1.5 million | Rs. 4 million |
| Provincial Assembly | Rs. 1 million | Rs. 2 million |
| Senate | Rs. 1 million | Rs. 1.5 million |

a period, not exceeding five years, shall intervene between any two elections. (Chapter XI, Section 208 (1) Previous law (Political Parties Order, 2002) allowed a period of up to 4 years between any two intra-party elections.

Special Measures for Women:

Following are some of the special measures included in the Elections Act, 2017 to encourage participation of women in the electoral process, including registration of women voters and actual voting on polling day include:

1. ECP shall conduct awareness/media campaigns for registration of women voters and their participation in elections (Chapter II, Section 12 c).
2. If the variation in the number of men and women voters in a constituency is more than 10% special measures will be taken by ECP to reduce such variation (Chapter IV, Section 47 (2)).
3. ECP shall annually publish disaggregated data of registered men and women voters in each National Assembly and Provincial Assembly constituency highlighting the difference in number of registered men and women voters (Chapter IV, Section 47 (1)).
4. If the turnout of women voters is less than 10% of the total votes polled in the constituency, ECP may presume that women have been restrained through an agreement from casting their votes and may declare polling at one or more polling stations, or election in the whole constituency void (Chapter II, Section 9 (1)).
5. Political parties shall encourage women membership (Chapter XI, Section 203 (4)) and award at least 5% party tickets to women candidates on general seats (Chapter XI, Section 206).

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