

**ELECTION MANAGEMENT AUTONOMY: THE CASE OF
ELECTION COMMISSION OF PAKISTAN**



SUBMITTED BY

AMAD UD DIN

SUPERVISED BY

DR KARIM KHAN

PIDE SCHOOL OF PUBLIC POLICY

PAKISTAN INSTITUTE OF DEVELOPMENT ECONOMICS

ISLAMABAD PAKISTAN

2018



ABSTRACT

CERTIFICATE

This is to certify that this thesis entitled: “**Election Management Autonomy: The Case of Election Commission of Pakistan**” submitted by Mr. Amad ud Din is accepted in its present form by the School of Public Policy, Pakistan Institute of Development Economics (PIDE), Islamabad as satisfying the requirements for partial fulfillment of the degree in Master of Philosophy in Public Policy.

Supervisor:

Dr. Karim Khan
Assistant Professor,
Pakistan Institute of Development Economics,
Islamabad.

External Examiner:

Dr. Faiz ur Rehman,
Assistant Professor,
Quaid-e-Azam University (QAU),
Islamabad.

Head,
PIDE School of Public Policy:

Dr. Iftikhar Ahmad
Assistant Professor,
Pakistan Institute of Development Economics,
Islamabad.

ABSTRACT

Elections, an organized exercise to obtain will of people, are conducted by specialized election management bodies. This study aims at studying the autonomy of Election Commission of Pakistan and to highlight the constrains ECP is facing in election management. It has been organized into two sections. First part consists of document analysis in which constitutional provisions of Constitution of Pakistan are compared with that of selected SAARC countries i.e. India, Bangladesh, and SriLanka. Secondly, in-depth interviews are conducted from both employees of the commission as well as from people expert in election management. Autonomy of ECP is further categorized into four themes, namely, institutional, personal, financial and functional autonomy. ECP, despite its strong constitutional backing, has been criticized for its poor performance. Institutionally and personally ECP has been given considerable autonomy except for the fact that courts are not restricted to interfere in election related matters during election cycle. Financial autonomy of the commission is not guaranteed by any concrete piece of legislation. ECP does not have much autonomy to perform its duties in a desirable way. Considering these issues, this study highlights the need of a comprehensive legislation addressing financial and institutional flaws in legal framework of ECP. To ensure operational autonomy, ECP should be empowered in terms of both human as well as material resources.

Key words: Elections, Election management bodies, Election Commission of Pakistan, Autonom

TO PAKISTANI VOTER...

*WHO, DESPITE ALL ITS FLAWS, HAS PUT HIS FAITH IN THE
ELECTORAL SYSTEM OF THE STATE.*

ACKNOWLEDGMENT

This thesis would not have been possible without the inspiration and support of a number of wonderful individuals. I would first like to thank my thesis supervisor Dr. Karim Khan, Assistant Professor at the Pakistan Institute of Development Economics. Without his enthusiasm, encouragement, support and continuous optimism this thesis would hardly have been completed.

I would also like to acknowledge Omer Saddique, Research Economist at the Pakistan Institute of Development Economics for his very valuable comments on my research proposal.

Valuable guidance of Dr Idess Khawaja, Dean Management Sciences, Air University is also acknowledged in this statement at early stages of this research.

I would like to thank Dr Iftikhar Ahmed, Head of Department, PIDE School of Public Policy for his co-operation and support. Thanks to Department Coordinator Mr Asad Hussain for always being there for his assistance.

I am also grateful to my research participants for providing me with in-depth and detailed information, again, without them this study would not have completed.

Here, I would like to express my profound gratitude to my family, especially my father, despite his poor health, for providing me with unfailing support and continuous encouragement throughout my years of study and through the process of researching and writing this thesis. This accomplishment would not have been possible without them.

Last but not the least, my fellow companions are worth mentioning here. It would not be possible here to mention every name. All I understand is that their cooperation counts and it counts a lot.

Thank you all, my dear fellows.

TABLE OF CONTENTS

CHAPTER 1	1
INTRODUCTION	1
1.2 PROBLEM STATEMENT	2
1.4 RESEARCH QUESTIONS	2
1.5 RESEARCH OBJECTIVES	2
1.6. SIGNIFICANCE OF THE STUDY	2
CHAPTER 2	4
ELECTION MANAGEMENT IN PAKISTAN	4
2.1 A BRIEF HISTORY OF ECP	4
2.2 ELECTORAL INSTITUTIONS, LAWS AND PROCESSES	4
2.3 COMPOSITION OF ECP	5
2.4 LEGAL AND ELECTORAL FRAMEWORK	6
2.5. WHY ELECTORAL REFORMS ARE REQUIRED?	7
2.6. Financial and administrative autonomy	8
CHAPTER 3	11
LITERATURE REVIEW	11
3.1 ELECTIONS.....	11
3.2 ELECTION MANAGEMENT	11
3.3 ELECTION MANAGEMENT BODY (EMB)	12
3.4 MODELS OF EMBs	12
3.5 ELECTION MANAGEMENT AUTONOMY	16
3.6. CONCLUSION	19
CHAPTER 4	20
METHODOLOGY AND DATA COLLECTION	20
4.1 DOCUMENT ANALYSIS	20
4.2 IN- DEPTH INTERVIEWS	20
4.3 SAMPLING	22
4.4. DATA ANALYSIS	23
CHAPTER 5	24
Document Analysis	24

5.1	INTRODUCTION	24
5.2.	ELIGIBILITY CRITERIA OF MEMBERS OF ECP	24
5.3.	COMPARISON OF ELECTION COMMISSIONS AND ELECTION PRACTICES OF SELECTED SOUTH ASIAN COUNTRIES	26
5.4	CONCLUSION.....	36
CHAPTER 6		39
DATA ANALYSIS AND DISCUSSIONS		39
6.1.	DATA COLLECTION	39
6.2.	DIFFICULTIES IN DATA COLLECTION.....	41
6.3.	DATA ANALYSIS TECHNIQUES	41
6.4.	ANALYSIS AND DISCUSSIONS	42
6.4.1	INSTITUTIONAL AUTONOMY.....	43
6.4.2.	PERSONAL AUTONOMY.....	46
6.4.3	FINANCIAL AUTONOMY	48
6.4.4	FUNCTIONAL AUTONOMY	49
6.5.	CONCLUSION.....	51
CHAPTER 7		54
KEY FINDINGS AND POLICY RECOMMENDATIONS.....		54
7.1.	KEY FINDINGS.....	54
7.2	POLICY RECOMMENDATIONS	56
7.3	Avenues for future research	57
REFERENCES		58
ANNEX-A		61

LIST OF ABBREVIATIONS

1	Bangladesh Election Commission	BEC
2	Chief Election Commissioner	CEC
3	Computerized Nation Identity Card	CNIC
4	District Returning Officers	DRO
5	Election Commission of India	ECI
6	Election Commission of Pakistan	ECP
7	Election Management Bodies	EMBs
8	Free and Fair Election Network	FAFEN
9	International foundation for electoral system	IFES
10	International Institute for Democracy and Electoral Assistance	IDEA
11	Legal Framework Order	LFO
12	Ministry of Finance	MoF
13	Movement for Free and Fair Elections	MFFE
14	National Database and Registration Authority,	NADRA
15	Pakistan Institute of Legislative Development and Transparency	PILDAT
16	Pakistan Tehreek I Insaf	PTI
17	Returning Officers	RO
18	South Asian Association of Regional Cooperation	SAARC
19	The People's Action for Free and Fair Elections	PAFFREL
20	United NationDevelopment Program	UNDP
21	United Nations	UN

CHAPTER 1

INTRODUCTION

Free and fair elections are a cornerstone of all forms of democracy. An election is a formal decision making process by which a population chooses an individual to hold public office. These are mostly known as an evolutionary process that brings about peaceful changes in the society (Goodwin, 2006). In diverse societies like Pakistan which are facing conflict they become even more crucial, as they can lead to manage the conflicts and to squeeze down the differences (PILDAT 2011). These referred to as the key component to equal justice and rulings and are designed to create a government that is balanced and "For the People." Goodwin defines it as, "in any State the authority of the government can only be derived from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage" (Goodwin, 2006).

Pakistan has a poor electoral history and has witnessed ten general elections since its independence. However, most national and international observers hold strong reservations about the neutrality and transparency of those elections. Free and fair and credible elections depend on things like enabling legislative framework, impartial and neutral practices of election administrators, free media, forces that maintain law and order and acceptance of the competitive electoral process by all the political forces in the country. For conducting elections in the country, a constitutional institution exists in Pakistan. Election commission of Pakistan (ECP) was established under 1956 constitution. Election commission was charged with the duties of preparing electoral rolls, their annual revision and organizing and conducting elections to the assemblies. There was a lack of confidence among election stakeholders in the independence and performance of ECP (FAFEN,2017). The ECP lacked transparency in the key areas of its working practices, and did not formally consult with political parties and other stakeholders.

Election commission is strongly criticized for its poor performance in elections management. As it is the utilization of constitutional and legal powers that make all difference so the ECP must be empowered to improve election process in Pakistan. This research will be conducted to develop a relationship between 'autonomy of election management body (EBM)'

and ‘clean elections’. It will apply the framework developed by Van Aaken (2009) to measure autonomy of EMBs under dimensions including institutional, personal, financial and functional autonomy (Van Aaken, A. 2009).

1.2 PROBLEM STATEMENT

ECP has been criticized for the poor performance in fulfilling its duties every now and then. The making of General Election Inquiry Commission 2013 to probe the inadequacies in the General Elections of 2013, is the formal admission of the fact that negligence has been committed on the part of ECP during elections. Dependence of ECP on executive branch of government to carry out its functions is one of the biggest hurdles in conducting ‘cleaner election’ in the country. Judicial activism in election related matters is also a worrisome issue for ECP during election cycle.

1.4 RESEARCH QUESTIONS

The following questions will be studied in this research.

1. What is the level of autonomy of Election Commission of Pakistan (ECP) to hold free and fair elections in Pakistan?
2. What factors contribute to restrain the institutional, functional, financial and personal autonomies of Election Commission of Pakistan?

1.5 RESEARCH OBJECTIVES

Main objectives of the study are:

1. To understand the operational mechanism and institutional standing of Election Commission of Pakistan.
2. To study ECP as an organization and highlight the grey areas, if any.
3. To offer workable recommendations based on this research to improve the performance of ECP.

1.6. SIGNIFICANCE OF THE STUDY

Election is the fountain head from where all forms of power precipitate in the democratic regimes. It is a highly complex and technical process which requires, both, institutional as well as personal capabilities for efficient management of elections. Unfortunately, there has been very

little research conducted on the topic of election management in Pakistan. The issues in ECP are seen only through political dimensions. No doubt, political economy has a significant role on reforms required in ECP. However, there is much more mess in this plethora. This study aims to focus on the constraints that are limiting autonomy of ECP. This is not linked to any of political ideology and it's a pure academic study of this organization. The timing of the study further enhance the significance of this research as major electoral reforms are underway in power corridors of this country. The knowledge generated as a result of this study will help the academia and the authorities to design election management processes which are align to international standards of election management.

CHAPTER 2

ELECTION MANAGEMENT IN PAKISTAN

2.1 A BRIEF HISTORY OF ECP

The second Constituent Assembly succeeded in framing and adopting the first Constitution of Islamic Republic of Pakistan in 1956, nine (9) years after independence and six (6) years after Constitution of India was adopted in 1950. This Constitution provided framework for elections to national and provincial assemblies on the adult franchise basis. The Election Commission was established under the 1956 Constitution comprising Chief Election Commissioner/Chairman of the Commission and such number of Election Commissioners as may be determined by the President of Pakistan. In 1958, Martial Law was imposed and the Constitution was abrogated. Consequently, the Election Commission also ceased to exist. Another Constitution was adopted in 1962, which provided for elections of members of National and Provincial Assemblies through electoral college consisting of 80,000 Basic Democracy Members. The National Assembly unanimously adopted the present Constitution in 1973. It provided for an Election Commission consisting of one (1) Chairman/Chief Election Commissioner and two (2) Members, who were to be the Judges of High Courts. The number of Members of the Election Commission was later raised to four (4) by the Election Commission Order, 2002, which later became a part of the Constitution through the seventeenth amendment (LFO, 2002).

2.2 ELECTORAL INSTITUTIONS, LAWS AND PROCESSES

Election Commission of Pakistan (ECP) is mandated by the constitution of the state to conduct elections for national and provincial assemblies as well as for local governments. Presidential elections are also the mandate of ECP. A Judge, retire or serving, could be selected as Chief Election Commissioner (CEC). CEC was assisted by two ECP members from high court benches of any province until 2002. In Election Commission Order 2002, the number was raised to four, one from each province. According to the books of law, ECP followed the independent model of EMBs.

The Constitution demands in Article 218 to establish a permanent, autonomous, and independent commission to carryout election to the Parliament (National Assembly and the

Senate), the four provincial assemblies, and local governments within each province. The agency is required to make sure that elections are conducted “honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against”. In a sub clause of same article, ECP is, also, asked to conduct elections to “other public offices as may be specified by law”, for instance, office of President. Article 220 bounds all executive authorities, central or provincial, in the federation and in the provinces to support ECP in executing its functions. Furthermore, Representation of the People Act (1976) authorizes the commission to request any property, including “any such vehicle, vessel or animal”, for the purpose of transportation of election material including staff and ballot boxes. Article 219 of Constitution (1973) has tasked the commission to prepare electoral rolls for all kind of elections and their annual revision; conducting by-elections to fill casual vacancies; and to settle electoral complaints by appointing tribunals.

2.3 COMPOSITION OF ECP

Article 213 of constitution (1973) explains the composition of ECP. ECP is headed by a chief election commissioner (CEC), and four members, one from each province. Previously, there was a compulsion that members of ECP as well as CEC must be from the higher judiciary. However, in 2016, the Parliament had enacted 22nd constitutional amendment which allowed the technocrats and top bureaucrats to be appointed as members as well as CEC of ECP.

The ECP has its headquarters in Islamabad, and has offices in each provincial capital as well as at divisional and district level units across the country. Final Report of ECP (2010) has mentioned that ECP has more than 1,800 officials; most of them are long-term employees (ECP report, 2010). The ECP has four joint secretaries that manage four wings (Strategic plan 2010-14):

1. Election operations
2. Training, research and evaluation human resource
3. Administration
4. Budget and finance.

The report shows that there are also two directorates – for information technology (director-general as its head) and public relations (a director as its head).

2.4 LEGAL AND ELECTORAL FRAMEWORK

All the electoral laws are not encapsulated into a single piece of legislation. The whole legal framework covering elections is dispersed in a number of laws, ordinances and rules. The operative framework includes:

- The powers and functions of the CEC, the composition of the ECP, and the conduct of elections are covered in articles 213-226 of 1973 Constitution of Pakistan.
- The Representation of the People Act, 1976, governing the conduct of elections to the National Assembly and Provincial Assemblies so as to guard against corrupt and illegal practices and other offenses at or in connection with such elections and for the determination of doubts and disputes arising out of or in connection with such elections.
- The Representation of the People (Conduct of Election) Rules, 1977, frames the code of conduct of elections.
- The Election Commission Order, 2002, has changed the composition of ECP and has included one member from each province in ECP.
- Elections to the Senate are held according to the Senate (Election) Act, 1975; the Senate (Election) Rules, 1975; and the Senate (Members from Federal Capital) Order, 1985.
- The Electoral Rolls Act, 1974 and related rules address the preparation, annual revision, amendment and maintenance of the list of eligible voters.
- The Delimitation of Constituencies Act, 1974 governs delimitation of constituencies for the National Assembly and the four provincial assemblies.
- Clauses of 18th amendments relating to appointment of CEC and other members of ECP.
- 22nd amendment to the constitution and Election Act 2017.
- Election Bill, 2017.

2.5. WHY ELECTORAL REFORMS ARE REQUIRED?

Pakistan has held ten national and provincial general elections on the basis of adult franchise since its coming into existence in 1947. Nine of these General Elections have been held after the 1973 Constitution was passed. In general, these elections have suffered from a low voter turn-out which has been steadily going down since 1970 election. The highest recorded voter turn-out was 63.4% in 1970. The lowest turnout was 35.4% recorded in 1997. The situation only marginally improved during the latest general election in 2013 when the voter turn-out was 55 % (PILDAT, 2015). The average voter turn-out for the last nine general elections (excluding 1977 election which was largely believed to be rigged) works out to be 45.9 % which makes Pakistan a country with the lowest voter turn-out among the countries of South Asia and sixth from the bottom among 169 countries whose average voter turn- out statistics were compiled by IDEA, an international inter-government organization based in Sweden (PILDAT, 2015).

One of the possible explanations for this low voter turn-out is the voters' lack of trust in the electoral system (UNDP, 2014). This weak credibility of the electoral system in general and the Election Commission of Pakistan in particular is at the heart of the weak political system in the country. In addition, electoral rolls are generally not trusted by voters, political parties and the candidates. Multiple voter registration is common and a large number of bogus votes are also included in the rolls. Powers of the Election Commission and limiting the selection of CEC and the Election Commissioners to retired judges are some of the other issues which is needed to be addressed and reformed.

Inability of the Election Commission to enforce the election expenses limits is a major problem and a discouraging factor for the participation of a person of modest means in the electoral process. Election disputes resolution process is very lengthy and complicated and fails to discourage candidates to commit electoral irregularities. Questions are also raised about the impartiality and competence of Polling Staff. Senior government officials including Prime Ministers and Ministers generally use government resources to influence voters' choice in favor of their favorite candidates during by-elections. In view of these key issues, electoral reforms are critical for democracy and peace of Pakistan. If credibility of electoral process is destroyed, it strengthens undemocratic forces and encourages extremism and violence (FAFEN,2017).

True that the ECP has had to bear the brunt of judicial and executive inquest and constant interference by the other departments in its work, it failed to institutionalize an effective system of legal response (PILDAT, 2011). The issue has found further credence in the words by the Honorable CEC who was quoted as saying that the “High Courts should avoid interfering in the matters of the Election Commission of Pakistan and lawyers should come to the ECP, instead of relying on verdicts from the High Courts” (Pakistan today, 2015). The same goes for other departments and agencies of the executive branch.

However, the ECP has the option to deal with this differently. In the case of the NA-122 by- election and Lahore High Court's relief to the PTI's petition allowing elected representatives to campaign, and the subsequent loud and clear violations of codes and laws by the sitting Government and other parties, the dignified route available to the ECP should have been to call-off the by-election. The ECP has caused irreparable damage to its credibility by not cancelling this specific by-election. One of the ECP's greatest weaknesses has been its inability to have an effective strategy to deal with the Courts.

2.6. FINANCIAL AND ADMINISTRATIVE AUTONOMY

Financial and administrative autonomy is an important strategic issue for election management bodies and largely determines their degree of independence from the Government. As a constitutionally independent body, the ECP receives its required operational funding from the annual federal budget through the Ministry of Finance. Apart from its regular expenses, the ECP also has a supplementary budget for electoral activities and special projects, including conduct of elections, preparation/revision of electoral rolls, IT infrastructure etc. The ECP can re-appropriate its allotted funds as it sees fit. At its given state, the ECP has financial autonomy to a certain extent but the ECP feels it needs greater financial autonomy. The current financial autonomy that the ECP enjoys is based on an Office Memorandum of the Finance Division, but no concrete legislation is in place (IFES, 2014). Even the share in revenues generated during the GE-2013 through SMS service 8300 was transferred to the national kitty which the ECP would like to be allowed to be kept with the ECP like some other autonomous state organizations such as the NADRA (FAFEN, 2017).

The Election Commission has the power to upgrade or re-designate any post and promote its staff. However, it does not have the power to create new or abolish existing posts. New posts are created by the Finance Division and sometimes require the approval of the Prime Minister. The ECP establishes a committee under the chairmanship of the CEC comprised of representatives of the Finance, Establishment and other divisions to recommend the creation of new ECP posts. Their recommendations are then approved by the government. This is a cumbersome process and it calls for dependence of ECP on executive.

Another very important issue which has been discussed in reforms debates is the appointments of Returning officers (RO) and District returning officers (DRO). According to the reports of ECP, in election of 2013, judicial model was employed (PILDAT, 2015). According to this model, DROs were deployed from judiciary. However, this model did not go much effective. In local government elections, these posts were filled by applying provincial model. Under provincial model, RO and DROs were deployed from bureaucracies of provincial governments (PILDAT, 2015). Both these model had been criticized as these officers did not have to report to ECP. Secondly, they had to work under the command of their parent organization and ECP couldn't punish or penalize the violators.

Human Resource is another important assets for any organization. Organizations are judged by the actions of those people who are working for it. Their personal abilities, their selection criteria and process, retirement age and tenure period are the foremost issues which count for the status of personal autonomy of any EMB. In case of ECP, this is the most discussed issue related to electoral reforms. Internationally, various countries have adopted different types of criteria for selection of members of election commissions.

Previously, only serving or retired judge could become the member of ECP. However, recently passed 22nd amendment to the Constitution of Pakistan has allowed much scope to the selection criteria. Now the top professional from senior bureaucracy and technical experts can also become its members. Having said this, the effects of this amendment are yet to observed as not a single election has been managed by these new members. Secondly, retirement age is also very important. Currently, law is silent about this issue, unlike India, where maximum age for retirement is 65 years. The example of ex-CEC Fakhur ud Din Ibrahim is worth mentioning here.

The said CEC, who also administered general elections of 2013, was so old that he was unable to travel to Islamabad where ECP headquarter is located. He used to manage all activities from Karachi.

When we talk about institutional autonomy of election commission, the case Indian election commission is best available example to us. In India, the law allows election commission to over rule even supreme court and forbade it to interfere in the matters of commission when election cycle has started. ECI has powerfully used this clause to keep the election management body independent. However, in Pakistan their is no such thing available to the election commission. ECP, even, do not use its existing powers to ensure its autonomy. Above mentioned example of by-election in NA-122 is evident in this case. Law allows ECP to cancel any by election if there are violations of code of conduct or misuse of state resources by ruling party. Media has reported gross violation of code of conduct and complains have been launched to ECP but ECP have not taken any action to these allegations.

Violation of code of conduct, use of executive machinery to support ruling party are very much in fashion in by-elections. ECP, despite having clear authority to cancel such elections, has not used it powers in the said matter. As discussed above, CEC has criticized high courts for interfering in the matters of ECP. However, ECP has been terribly failed to mobilize public opinion in an effective manner and, hence, public trust in election management has received a severe blow. This trust deficiency results in lowering voter's turnout and not representing genuine will of the electorate. ECP has to win public trust to make this organization more credible and trustworthy. Media campaigns may be launched to establish a good will in public eye so the end clients of ECP, i.e. voters, find it a credible institution working on there behalf. It should not appear as a toothless organization serving interest of ruling party and not the political system as a whole.

CHAPTER 3

LITERATURE REVIEW

3.1 ELECTIONS

According to the Article 21 of universal declaration of human rights the authority of government must be based on the will of people. Only periodic and genuine elections can obtain the will of people through secret and equivalent vote. Legal Dictionary defines election as a mean of appointments by vote, balloting, representation or vote casting (legal dictionary, 2013). In democracies, the consent of the people forms the basis of the authority of a government and this consent is obtained by elections. Some of the electoral studies have been conducted in the America and Britain in 1940s and 50s, and after that it is a field of specialization in social science. The study of 'elections' has been described as 'psephology' as the term was coined by Professor R.B.McCallum in connection with the Nuffield studies of British general elections (Akhter, 2012). Professor W.J.M.Mackenzie described elections as complicated political processes which were analyzed within the context of political and social system (Mackenzie, 1958). V.O.Key,Jr wrote that election was a formal act of collective decision that occurred in a stream of connected antecedents and subsequent behavior (Key, 1955).

3.2 ELECTION MANAGEMENT

Election management involves the facilitation of voting and the management of elections at all levels, from local to the federal. It includes the organization of election agencies, the behavior and characteristics of state and local election officials, the process of conducting elections, and the implementation of election policies. Election management includes conducting elections on the Election Day, as well as all pre and post-election activities, such as maintaining voter registration lists, drawing precincts, selecting polling place sites, procuring equipment, recruiting and training poll workers, canvassing the votes, and evaluating and implementing improvements to the process itself. On the state level, election management ranges from the maintenance of the state-wide voter registration file and the implementation of federal and state laws and policies concerning elections, to the preparation and printing of the Voter Information Guide or Ballot Pamphlet for state-wide offices and initiatives.

3.3 ELECTION MANAGEMENT BODY (EMB)

The complexity and special skills necessary for electoral management require that an institution(s) be responsible for electoral activities. Such bodies have a variety of shapes and sizes, with a wide range of titles to match, which include ‘Election Commission’, ‘Department of Elections’, ‘Electoral Council’, ‘Election Unit’, or ‘Electoral Board’. The term ‘electoral management body’ or EMB has been coined as a name to refer to the body or bodies responsible for electoral management whatever wider institutional framework is in place.

An EMB is an organization or body which has the sole purpose of, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections and of direct democracy instruments – such as referendums, citizens’ initiatives and recall votes – if those are part of the legal framework.

The essential (or core) elements, as defined by International Institute for Democracy and Electoral Assistance (IDEA) are as follows (Wall at al, NA):

- a. Determining who is eligible to vote;
- b. Receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates);
- c. Conducting polling;
- d. Counting the votes; and
- e. Tabulating the votes.

3.4 MODELS OF EMBs

A holistic design process shapes a country’s electoral management process. Also, the state’s indigenous administrative setup remains at the core of electoral management. Colonial patterns of administration may be observed prominently in electoral management in post-colonial era. Despite a lot number of variations of details, three broad types or models of electoral management has been identified by IDEA – the Independent, Governmental and Mixed Models (Wall at al, NA).

1. THE INDEPENDENT MODEL OF EMB

The Independent Model of electoral management exists in those countries where elections are organized and managed by an EMB which is institutionally independent and autonomous from the executive branch of government, and which has and manages its own budget (Wall at al, NA). Under the Independent Model, an EMB is not accountable to a government ministry or department.

It may be accountable to the legislature, the judiciary, or the head of state. EMBs under the Independent Model may enjoy varying degrees of financial autonomy and accountability, as well as varying levels of performance accountability. They are composed of members who are outside the executive while in EMB office. Many new and emerging democracies have chosen the Independent Model of electoral management. International Institute for Democracy and Electoral Assistance (IDEA) has mentioned the EMBs under the Independent Model including Armenia, Australia, Bosnia and Herzegovina, Burkina Faso, Canada, Costa Rica, Estonia, Georgia, India, Indonesia, Liberia, Mauritius, Nigeria, Poland, Pakistan, South Africa, Thailand and Uruguay (Cart, 2014).

2. THE GOVERNMENTAL MODEL OF EMB

The Governmental Model of electoral management exists in those countries where elections are organized and managed by the executive branch through a ministry (such as the Ministry of the Interior) and/or through local authorities. Where EMBs under the Governmental Model exist at national level, they are led by a minister or civil servant and are answerable to a Cabinet minister (Wall at al, NA). With very few exceptions they have no 'members'. Their budget falls within a government ministry and/or under local authorities.

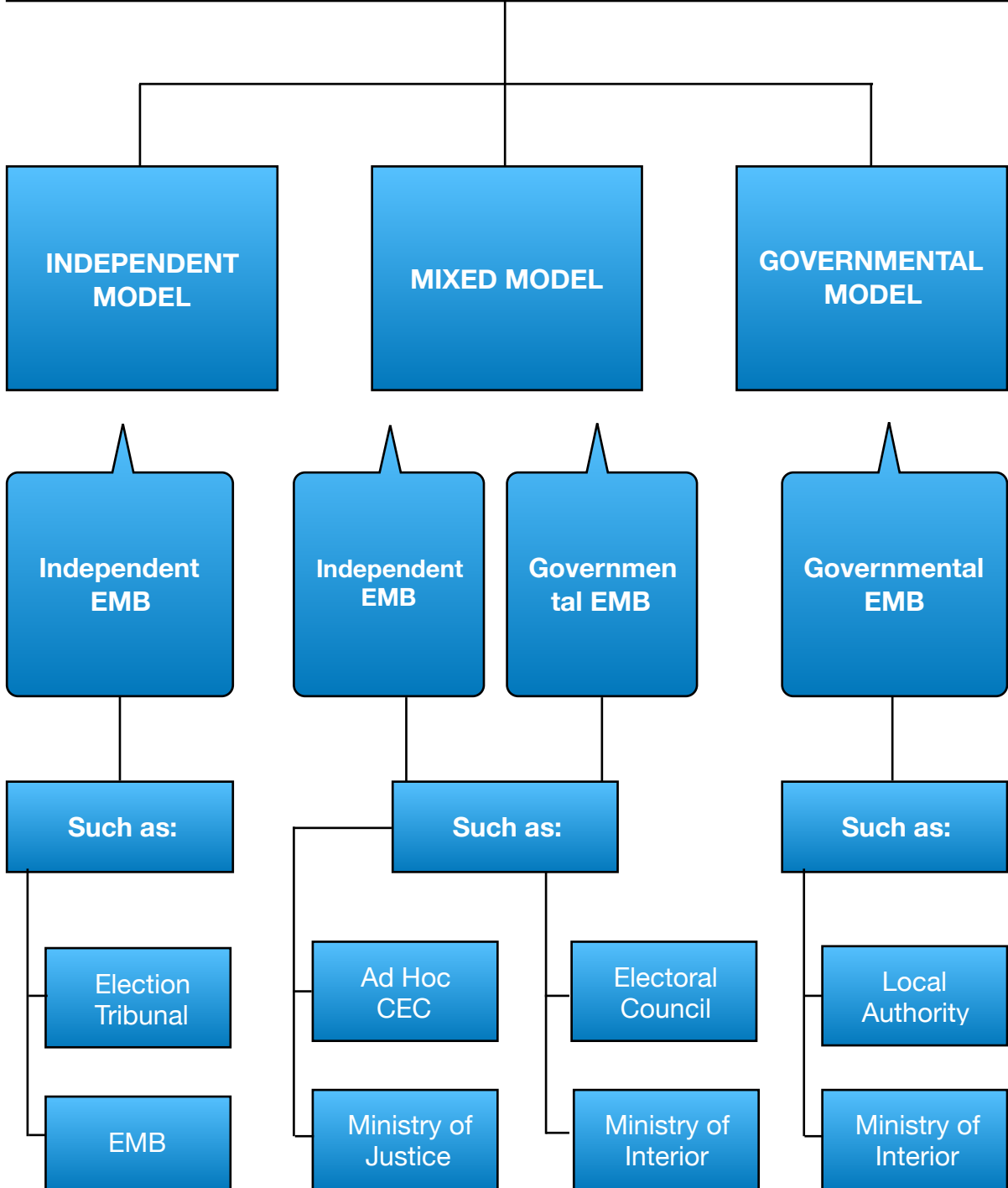
Countries whose EMBs fall into this model include Denmark, New Zealand, Singapore, Switzerland, Tunisia, the UK (for elections but not referendums) and the United States. In Sweden, Switzerland, the UK and the United States, elections are implemented by local authorities. In Sweden and Switzerland the central EMB assumes a policy coordinating role (Cart, 2014).

3. THE MIXED MODEL OF EMB

In the Mixed Model of electoral management, there are usually two component EMBs, and dual structures exist: a policy, monitoring or supervisory EMB that is independent of the executive branch of government (like an EMB under the Independent Model) and an implementation EMB located within a department of state and/or local government (like an EMB under the Governmental Model) (Wall at al, NA).

Under the Mixed Model, elections are organized by the component governmental EMB, with some level of oversight provided by the component independent EMB. The Mixed Model is used in France, Japan, Spain and many former French colonies, especially in West Africa, for example Mali, Senegal and Togo (Cart, 2014). Figure 3.1 illustrates all the three models of election management bodies. It shows that in case of independent bodies, agencies like independent election tribals exists to solve the disputes. While taking into consideration, figure 3.1 shows two EMBs side by side. One is governmental while other is independent like electoral council. In governmental model, EMBs are usually under Ministry of Interior.

THREE MODELS OF ELECTORAL MANAGEMENT



3.5 ELECTION MANAGEMENT AUTONOMY

Election management bodies, depending on their characteristics, are able to prevent intentional rigging and or administrative inadequacies. As pointed out by A.V. Aken, “Whereas independent central banks or audit courts control special issue areas of politics, EMBs control the moment of the set-up of government—the election; a crucial moment as the de facto accountability of governments depends on it (Aken, 2009).” In his paper, he has built an argument that EMBs institutional framework and their independence from executive branch of government is one of the most important variables affecting the quality of fairness of election in a country. He has referred them, the EMBs, as the outsourcing agencies for free and fair elections. In modern democracies, elections are considered as matter of routine. An independent EMB is less needed in such states where bureaucracy is perceived as neutral, efficient and trusted. Aken argued that a completely flawless election is impossible to occur. Counting errors, incomplete registration of voters and small inadequacies may occur quite often. However, till the time these errors occur randomly, they can be accommodated and credibility of elections is not at stake. These are minor administrative issues and are not intentional. The scale of potential administrative fraud is quite small in an independent system.

To measure the autonomy of an EMB, Aken has hypothesized a conceptual framework which separate autonomy in four heads, namely:

- i. Institutional Autonomy
- ii. Financial Autonomy
- iii. Personal Autonomy
- iv. Functional Autonomy

3.5.1. INSTITUTIONAL AUTONOMY

Independence is an essential characteristic of any institution responsible for conducting elections. While the structure of election commissions varies from country to country, those commissions are considered the most successful that offer both a perceived and real tradition of impartiality at all levels of the organization. “To establish the integrity and credibility of electoral processes and promote the widespread acceptance of election results, it is critical that an [election commission] not only conducts electoral events in a fearlessly independent manner, but that it is impartial in

its actions,” states Allan Wall in International IDEA's important publication on this topic (Wall 2005).

The United Nations has stated clearly that in every country provisions of law should ensure that an “objective, unbiased, independent and effective administrative structure [for conducting elections] is in place.” In achieving this end, careful attention must be given to those provisions focusing on appointment, remuneration, duties and powers, qualifications, and reporting structures in the context of election administration (UN 1994).

As discussed earlier in the literature review, IDEA has distinguished EMBs into three models; independent, semi-governmental and governmental agencies. In its 2006 survey, IDEA studied 214 electoral management agencies round the globe and showed that 55% followed independent model, 26% have employed governmental model and 15% have setup mixed model EMB (Cart, 2014).

3.5.2. FINANCIAL AUTONOMY

A. State or Public Funding

Electoral events are a core function of a democratic state. The state thus remains the primary source of funding for the core costs of most EMBs. The electoral budget forms part of the consolidated annual national budget, yet different models of EMBs may receive their funding by different methods and routes from the budget (Election Management, 2011). These methods are discussed here in detail.

B. Method of Disbursing State Funding

Funding for many EMBs under the Independent Model, for example in Albania, Ghana and Kosovo, is a separate line item in the national budget, released directly to the EMB by the treasury. For others, the EMB budget is released through a government ministry (Election Management, 2011).

Budgets for EMBs under the Governmental Model are usually part of the budget of the government ministry responsible for implementing electoral processes, as in Cook Islands, Denmark and Singapore. Where the Mixed Model is used, the budget of the component independent EMB may be channelled through a line ministry, such as the Ministry of the Interior in France (Election Management, 2011).

C. Integrated or Distributed Electoral Budgets

An electoral budget may be a single integrated item in the national budget, or may consist of many components that are spread across the budgets of various government agencies. National, regional and local governments' budgets may each provide funds to EMBs. In the unitary state of Indonesia, the national budget fully funds the EMB to conduct presidential elections and elections to national and regional legislatures, but regional and local authorities provide most of the funding for elections for provincial governors and local mayors. Such arrangements are more common in federal states (Election Management, 2011).

Funding for the EMB in Bosnia and Herzegovina is provided by all four levels of government; their respective shares vary according to the type of elections being held. In India and Mexico, the national government funds the EMB to conduct national elections, but regional governments contribute funds when their elections coincide with national ones. Some EMBs receive income in the form of nomination fees, lost deposits, or fine imposed following breaches of electoral campaigning or other regulations.

EMBs may also receive funds and donations in kind from large corporations, the business community and philanthropists. EMBs need to be careful that the manner of raising funds from the corporate sector does not affect perceptions of their fine probity, impartiality or credibility. Some EMBs, as in Australia, raise some funds through the administration of elections on behalf of bodies such as professional associations or trade unions. Others, as in Mauritius, charge a fee to recover the costs of printing copies of the electoral register that are distributed to political parties.

3.5.3. PERSONAL AUTONOMY

Election Commissions are composed of experts from different fields and their appointment, retirement, removal and eligibility criteria are studied under personal independence. In case of governmental model, personal autonomy is confiscated and it all relies on government discretion. However, mixed and independent models enjoy considerable independence from executive branch.

3.5.4. FUNCTIONAL AUTONOMY

Functional autonomy is the most important yet most difficult kind of autonomy. EMBs have to operate in a governance structure and many a time they have to hire people from bureaucracy for short term assignments especially in election seasons. This dependence on executive curtails the independence of EMBs. International IDEA has distinguished the functions carried out by EMBs into active and passive decisions. For example, EMB has to register voters and conduct election. These are its active function while the decision on who will vote and how to vote is not direct domain of EMBs and these are its passive functions.

3.6. CONCLUSION

After reviewing the literature and studying legal documents of ECP, four key areas of election management are identified. These are: institutional, financial, personal and functional management. All the dynamics of election process revolve around these four key areas. Documents of ECP are studied and summarized in this section to present an image of the organization. All these areas are inter-linked. Financial independence is very important but it all depends on legislative setup of the state. However, personal capacity of those performing these functions depends on selection criterion of members of ECP embedded in electoral laws as well as logistics available at the disposal of election management body. Literature has also highlighted three different models of EMBs. One is totally dependent on executive branch of government, other is totally independent while a recent model is a hybrid one. It is a mixture of both dependent and independent models of EMBs. However, there is a consensus in the point that model of EMB does not really matter. All the three models have proven effective when implemented with good intentions.

It is unfortunate to mention that vast literature on the process of election management is not available, especially with reference to Pakistan. Publications of PILDAT are an enriching resource for understanding electoral process in the country. However, academic studies are mostly a description of facts and figures about election held in Pakistan. They argue that the lower turnout is evident in almost all elections in the country, but mostly unable to dig deep the reasons to this lower turnout. Voter's behavior and social realities are much discussed in policy debates, however, ECP as an institution is hardly studied.

CHAPTER 4

METHODOLOGY AND DATA COLLECTION

Keeping in view, the above written conceptual framework and nature of research topic, pure qualitative research techniques are employed to this study. For data collection, the research has chiefly relied on primary methods. However, secondary data like documents of ECP and elections related legislations are also used to establish informed results . Following methods are employed to collect data.

1. Document Analysis
2. In- depth Interviews

4.1 DOCUMENT ANALYSIS

As the conceptual framework explains, three dimensions of study are relying upon document analysis. These include institutional, financial and personal autonomy. Constitution of Pakistan and other electoral documents enlisted in literature review are consulted for this purpose. Chief source of providing institutional and financial autonomy to EMBs are constitutional provisions covering electoral system.

Article 213-226 of the Constitution of Pakistan provides for the establishment of electoral setup in the country. These provisions are studied in detail to analyze the constitutional standing of ECP. Moreover, 22nd Amendments Act and provisions of 18th amendments relating to appointment of chief election commissioner are also analyzed in this study. An attempt is made to compare the legal provision of ECP with that of selected South Asian states i.e. India, Sri Lanka and Bangladesh.

4.2 IN- DEPTH INTERVIEWS

The second and chief method that are used for the collection of data is in-depth interviews of various participants. These are face to face discussion with selected people. For this study, both the expert and field interviews are conducted. As the nature of study is a bit technical, therefore, specialists of electoral systems are identified and contacted to get opinion on the technical matters. Themes and sub-themes are listed below to funnel down the scope of the study.

TABLE 1:THEMES AND SUB-THEMES

INDICATORS	THEMES AND SUB THEMES
INSTITUTIONAL AUTONOMY	<ol style="list-style-type: none"> 1. Model of EMB <ul style="list-style-type: none"> • Strengths and weakness of that particular model 2. Analysis of legal framework of ECP with special focus on the institutions that may be a reason of dependence ECP on Executive Branch of government. 3. Accountability mechanism <ul style="list-style-type: none"> • Legislature • Executive judicial 4. Reform process
PERSONAL AUTONOMY	<ol style="list-style-type: none"> 1. Selection criteria of Chief Election Commissioner and members of ECP. 2. Selection process 3. Removal mechanism 4. Security of tenure.
FINANCIAL AUTONOMY	<ol style="list-style-type: none"> 1. Determination of Budget <ul style="list-style-type: none"> • Executive • Legislature 2. Expenditure Control
FUNCTIONAL AUTONOMY	<ol style="list-style-type: none"> 1. Voter registry 2. Ballot Counting and recounting 3. Electoral boundary demarcation 4. Electoral dispute resolution 5. Political finance and election expenditure control 6. Voter education/awareness campaigns

4.3 SAMPLING

Purposive sampling technique is used to select participants of the study. In the development process of purposive sampling techniques “researchers use their special knowledge or expertise about some group to select subjects who represent this population”. Apart from using my own expertise of the subject matter, key informant interviews and informal discussions with a number of people are made to select participants. Election management chain and organizational structure are followed to select the participants of the interviews. Following table explains the size and composition of sample for this study.

TABLE 2: SUMMARY RESPONDENTS

S. No	Participants	Planned Interviews	Selection Criteria
1	Member ECP	2	Serving or Ex
2	ECP Secretariat <ol style="list-style-type: none"> 1. Secretary ECP 2. Officer from Admin wing 3. Officer from Budget wing 4. Officer from Training, Research & Evaluation wing 	2 2 2 2	Serving or Ex BSP 19 and above BSP 19 and above BSP 19 and above
3	Expert in the field of election management <ul style="list-style-type: none"> • Researchers • Academia • Politicians • Civil Society 	10 10 10 10	Ph D, University faculty At least 15 exp in politics At least 15 exp in his field
	Total	40	

4.4. DATA ANALYSIS

To analyze the qualitative data that is collected for this research, ‘thematic analysis’ technique is used. Braun and Clarke (2006) have defined this technique as, ‘A method for identifying, analyzing, and reporting patterns within data.

Thematic analysis goes through following six stages:

1. Familiarizing oneself with the data
2. Generating initial codes
3. Searching for the themes
4. Reviewing the themes
5. Defining and naming themes
6. Producing the report

Thematic analysis is selected as it provides much needed flexibility which is required to view issue from different angles and perspectives. It is a best suited technique to move from broad reading of the data towards the discovering of recurrent patterns and key themes within the data.

CHAPTER 5

DOCUMENT ANALYSIS

5.1 INTRODUCTION

Constitution of 1973 of Pakistan is an elaborated document and speaks about almost every important pillar of state. It's Part eight (VIII) from article 213 to article 226 covers all aspect of elections. It has two chapters. First one is about Election Commission and Chief Election Commissioner (CEC) while second talks about electoral laws and conduct of elections. According to the constitution, there shall be a CEC and four members (one from each province). After the historic 18th amendment passed in 2010, the process of appointment of CEC has become more democratic as it has shifted the authority of appointment of CEC from President to the Parliament. The PM along with consultation of Leader of opposition forwards three name to the Parliamentary committee constituted by Speaker National Assembly. The parliamentary committee is appointed specially for selection of CEC. Half of members of this committee shall be from treasury while the other half shall be from opposition benches and comprise of total of twelve members. In case, PM and Leader of opposition fail to agree upon three name list for CEC, both the fore mentioned persons shall forward separated lists containing three names each. The parliamentary committee shall decide on the matter by simple majority. The same process shall be followed at provincial level to appoint the member for a particular province.

In the appointment process of CEC, constitution has taken the concept of federation with it. One-third of total strength of parliamentary committee form appointment of CEC shall be from Senate of Pakistan. No other democracy in South Asia has adopted such elaborated process for appointment of CEC. In India, Bangladesh and Sri Lanka the election commissioner is appointed by the president of the state.

5.2. ELIGIBILITY CRITERIA OF MEMBERS OF ECP

The original document of the Constitution had limited the eligibility criteria of members of ECP, including CEC. It only had allowed the persons from high level judiciary to be appointed as members of ECP. However, there was a consensus among the policy discussions that the job of a

member of election commission is purely administrative and not legal. Even in the constitutions of South Asian States, there was no such limitation.

Realizing the need for the reforms, legislature of Pakistan has incorporated 22nd amendment act in early 2017. According to this amendment, a person who has served in grade 22 and above or a technocrat and not more than sixty-eight year of age can be appointed as a member election commission. This is a very encouraging effort to reform electoral process. However, looking deep into it, one realize it as a double edge sword. On one hand it empowers ECP with the people who are expert in the field of election management or have experience serving as top officers in civil bureaucracy. While, on the other hand it may affect the autonomy of election commission as the person it has allowed to be the members of ECP would be from executive branch of government. Autonomy of ECP may be compromised by importing a retired person with a bureaucratic mind set into the hierarchy of the commission. The connections, the affiliations and the biases are still there to influence the working of a person as a member of election commission.

However, taking into consideration the achievements of election commission of India, such doubts can be put behind the back. India has one of the most effective election commission round the globe and it is usually headed by the person from Indian Administrative Service. Oath of CEC shall be made before Chief Justice of Pakistan while the members shall make it before the CEC. According to the constitution. The term of office of members and CEC shall be five years. 22nd amendment has also revised the term of office of ECP. According to the amendment, half of members of commission shall retire after completion of two and half years while rest half shall be retired after another two and half year term. This will follow the pattern of Senate of Pakistan in this process.

Law has given considerable job security to the office of CEC. He can't be removed by ordinary process and shall only be removed by adopting the process written in the constitution for removal of a judge of supreme court. A complain to be launched in supreme judicial council of Pakistan against the said member. The council shall inquire the matter thoroughly, and then decide. In case of a vacancy, the seat shall be filled within 45 days. A member can't hold any office of the profit while in office. Further, if CEC is unable to hold its office due to any reason,

the most senior person in age from among the members of commission shall serve as acting chief commissioner.

The constitution has listed down the duties ECP has to perform. It calls on all executive authorities to assist commission in discharge of its duties. However, on the issues relating to interference of courts in election related matters, law is silent. The constitution of India bars all courts to interfere in all election related matters when an election cycle starts. Even Supreme Court does not interfere in matters in election commission. Indian commission is authorized to supervise all officers belonging to any executive authority. They can suspend and inquire any office who violates code of conduct in elections. However, the electoral framework of Pakistan is silent on these matters. Courts have shown a considerable activism in election related matters. In recent years there are a number of example when Supreme Court has to interfere and asked ECP to perform its constitutional duties. ECP has been portrayed a toothless organization which is unable to take stand against those who should stay away from the matters of the institution.

5.3. COMPARISON OF ELECTION COMMISSIONS AND ELECTION PRACTICES OF SELECTED SOUTH ASIAN COUNTRIES

Here is a comparison of electoral systems, seeks to examine election practices in Pakistan, India, Bangladesh and Sri Lanka with specific reference to constitutional provisions regarding their respective Election Commissions and their independence. This part has two sections. Section I comprises of comparison of constitutional provisions of election commissions of selected SAARC countries, while section II contains practical examples from current status of these elections management bodies.

I. A Comparison Of Constitutional Provisions Regarding The Election Commissions

A. Pakistan

According to the Article 218(3) of Constitution of Pakistan, it is the duty of the Election Commission to organize and conduct elections and to ensure that elections are carried out “honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against”. The Election Commission in Pakistan consists of the Chief Election Commissioner (CEC), and four Election Commissioners. Previously, the CEC was appointed by the President.

However, after the incorporation of historic 18th amendment to the constitution of Pakistan, appointment was made by the consultation Prime Minister and leader of opposition.

In case of disagreement, PM and leader of opposition shall send nominees to a parliamentary committee, who shall appoint CEC by simple majority rule. According to 22nd amendment, the CEC can be a person, who is, or has been, a judge of the Supreme Court or a technocrat or a senior civil servant retired in grade 22 and above. The term of the Chief Election Commissioner is five years from the day he enters upon office.

B. India

Article 324 (1) of the Indian Constitution prescribes that the “superintendence, direction and control of the electoral rolls for, and the conduct of all elections to Parliament and to the Legislature of every state and of elections to the office of the President and Vice President shall be vested in the Election Commission.” According to the Indian Constitution , the “Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix”. The appointments of the Chief Election Commissioner and Election Commissioners are made by the President; however the Constitution states that this is “subject to the provisions of any law made in that behalf by the Parliament”. The Constitution does not fix the tenure for the Chief Election Commissioner and the Election Commissioners, neither does it provide criteria for eligibility. However Chief Election Commissioner and Election Commissioner Conditions of Service Order, 1993 fixed the terms of service at six years, or up to the age of 65 years, whichever is earlier.

C. Bangladesh

Similarly, the responsibility of organizing and holding elections in Bangladesh are vested with the Election Commission is given in the Article 118(1) of the constitution of Bangladesh. The Commission is responsible for conducting elections for the President and members of Parliament, establishing constituency boundaries and preparing electoral rolls. The Constitution of Bangladesh provides for an Election Commission consisting of a Chief Election Commissioner and “such number of other Election Commissioners, if any, as the President from

time to time direct”. The appointment of the Chief Election Commissioner and Election Commissioners are made by the President subject to any law passed by the Parliament, as the case is in India. The tenure of an Election Commissioner is five years. The Constitution of Bangladesh provides for an Election Commission consisting of a Chief Election Commissioner and “such number of other Election Commissioners, if any, as the President from time to time direct”. The appointment of the Chief Election Commissioner and Election Commissioners are made by the President subject to any law passed by the Parliament, as the case is in India. The tenure of an Election Commissioner is five years.

D. Sri Lanka

In Sri Lanka, the 17th Amendment (2002), provided for the establishment of an Election Commission vested with the responsibility to conduct elections. Prior to the amendment, the constitution vested the responsibility of holding elections with the Commissioner of Elections who was appointed by the President. The Commission is entrusted with the responsibility of organizing and conducting elections to the Parliament, provincial councils, local authorities and the office of the President, as well as preparing and maintaining registers of electors.

According to the Constitution of Sri Lanka, the Election Commission consists of five members, appointed by the President on the recommendation of the Constitutional Council. The Constitutional Council was also established through the 17th Amendment. It consists of the following members:

- The Prime Minister
- The Speaker of National Assembly
- The Leader of Opposition
- One person appointed by the President
- Five persons appointed by the President, on the nomination of both the Prime Minister, the Leader of the Opposition

- One person nominated upon agreement by the majority of the Members of Parliament belonging to political parties or independent groups other than the respective political parties or independent groups to which the Prime Minister and the Leader of the Opposition belongs and appointed by the President. The Speaker is the Chairman of the Council.

A Commissioner can be selected “from amongst persons who have distinguished themselves in any profession or in the fields of administration or education”. The Constitution of Pakistan is the only one amongst those reviewed that requires the Chief Election Commissioner to be an acting or retired judge or senior civil servant or technocrat. The Constitutions of Bangladesh and India do not provide any criteria for eligibility. The Constitution of Sri Lanka states that the Commissioner may be someone who has distinguished himself in any profession.

The constitutions of all four states provide specific provisions to secure the independence of their respective Election Commissions. They prescribe that an Election Commissioner cannot be removed from office except in the manner provided for the removal of a judge. The Indian Constitution adds that the “conditions of his service shall not be varied to his disadvantage after his appointment”.

The Constitution of Pakistan stipulates that “a person who has held office as Commissioner shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office” Furthermore, the Parliament cannot legislate to either abridge or take away powers of the Commission or the Commissioner granted by the Constitution. Going beyond the two year restriction in Pakistan, the Constitution of Bangladesh states that a person who has held office as Chief Election Commissioner would not be eligible for appointment in the service of the Republic. The Constitution also clearly states that “the Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law”. The Constitutions of India and Bangladesh stipulate that the President shall select the Chief Election Commissioner and other Election Commissioners, subject to any law made by the Parliament in that regard. The Constitution of Sri Lanka secures

the independence of the Election Commissioners by stipulating that their appointments by the President be made on recommendation by the Constitutional Council.

II. AUTONOMY OF THE FOUR ELECTION COMMISSIONS IN PRACTICE

A) India

In practice, the independence of an Election Commission depends on the extent to which it is able to invoke the powers vested in it. Amartya Sen, Development Economist and Nobel Laureate, has argued that if India takes stock of its achievements, the holding of free, fair and credible elections in the face of tremendous odds will be at the top of the list. The Election Commission of India has played a critical role in the success of electoral democracy in the country. The powers and functions of the Commission are drawn from the Constitution as well as Acts of Parliament such as Representation of People Act, 1950, Presidential and Vice-Presidential Act, 1952, Government of Union Territories Act, 1963, Government of National Capital Authority of Delhi Act, 1991, and the Rules and Orders under them. The Commission is not dependent on the government for funding; its expenses are derived from the Consolidated Fund of India.

The independence of the Indian Election Commission has been built over time. There are clauses in the Constitution that provide a broad measure of empowerment to the Election Commission to supervise, direct and control the electoral processes. T.N. Seshan was the first Election Commissioner to enforce the Commission's constitutional mandate. In doing so, he transformed the position and authority of the Commission in the Indian political system. According to Mr. Seshan, “the Government was trying to throttle the Commission and reduce it to a mockery of its Constitutional position”. He moved the matter to the Supreme Court, which in its interim order confirmed the Commission's constitutional right to choose the dates for elections and reiterated its constitutional authority to oversee free and fair elections.

The courts have consistently held that, subject to the provisions of the Constitution, the Election Commission is fully competent to take any decisions with respect to the conduct of elections. The Supreme Court of India has held that where the enacted laws are silent or make

insufficient provisions to deal with a given situation in the conduct of elections, the Election Commission has residuary powers under the Constitution to act in an appropriate manner.

A very interesting report was published in dawn on 14th may, 2014. ECI allowed government to go ahead with the appointment of army chief of the country. Does the ECI has any role in appointment process? No, not at all, but there is no uncertainty in any mind here that the constitutional body becomes the supreme de facto government of the country as soon as elections are announced.

The commission in India does not only have all the powers that it needs to organize this biggest electoral exercise in the world, it is willing and ready to use it as well. The size of electorate in India is a colossal 810 million, ten times the one in Pakistan and multiplying it with the geographical, linguistic and other diversity factors, the sheer mechanics of the exercise become mind boggling. Yet, the commission comes out victorious from this labyrinth as the participants generally do not contest its impartiality or capacity.

The credibility of India's electoral system was evident from the ease at which governments changed after the elections in May 2004. Despite the unexpected results, no one questioned the integrity of the elections. Upon hearing the results of the elections, Prime Minister Atal Behari Vajpayee (2004) said that he had accepted the people's verdict. He said “my party and alliance may have lost but India has won”.

B) Bangladesh

Bangladesh's political history is marked by confrontational politics, boycotts, strikes, and accusations of electoral rigging. In 1996, the Parliament passed an amendment to the constitution which provided for setting up a temporary caretaker government to oversee elections. Article 58 D (2) of the constitution prescribes that the “non-partisan Caretaker Government shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament peacefully, fairly and impartially”. BEC is a constitutional body set up under Article 118 stipulates that: (1) The BEC shall be consisted of the Chief Election Commissioner (CEC) and not more than four Election Commissioners, and they shall be

made by the President. (3) Subject to the provisions of this Constitution the term of office of an Election Commissioner shall be five years from the date on which he enters upon his office.

The EC shall be independent in the exercise of its functions. Power and Functions of the BEC: Institutionally BEC is much enriched having vast powers and functions. Article-119 of the Constitution of Bangladesh deals with the functions of BEC.

Article 119(1):

- (a) Hold elections to the office of President;
- (b) Hold elections of members of Parliament;
- (c) Delimit the constituencies for the purpose of elections to Parliament; and
- (d) Prepare electoral rules for the elections to the office of President and Parliament.

Article 119(2): The Election Commission shall perform such functions, in addition to those specified in the preceding clauses, as may be prescribed by this Constitution or by any other law. The Representation of Peoples Order, 1972 outlines the elaborate powers of the Election Commission. It is empowered to: Appoint of Recruiting officers to supervise all work in the district in connection with the conduct of elections, withdraw any officer performing any duty in connection with an election, fixation of the date of submission of nomination papers, scrutiny of nomination and withdrawal of nomination paper and date of the poll Regulating and monitor the registration of the political parties.

Bangladesh has had two general elections since the constitutional amendment in 1996 (June 1996 and October 2001). According to Transparency International, this transition has enhanced the credibility of the electoral process in Bangladesh. The report confirms that in 2001, non-party caretaker government administered the country for three months preceding elections and oversaw the conduct of peaceful and fair elections (Transparency International, 2002). According to the European Election Observer Mission Report on the general elections in 2001, “the Election Commission carried out its duties in an objective way, even though it was working

under pressure from certain political parties” (EUEOM,2001). The elections of 1996 were also considered to be free and fair by both domestic and international observers. Political parties, however, disputed the results of both the elections. In 1996, the Bangladesh National Party (BNP) accused the Awami League of vote rigging. In 2001, the Awami League accused BNP of rigging the election.

Although the ability of the Election Commission to conduct free and fair elections has been recognized by international observers with respect to the most recent elections, its credibility has often been questioned by political parties.

During the 2001 elections, Election Commission members were accused by political parties of partisanship. Bangladesh has had nine Election Commissioners until now, out of which six have had to resign due to accusations of partisanship by political parties. Although Mr. M.A Syed (Chief Election Commissioner from May 2000 to May 2005) completed his tenure, his appointment as Chief Election Commissioner was not without opposition. His nomination was contested on the grounds that political parties had not been consulted in the selection process.

C) Sri Lanka

Although the 17th Constitutional Amendment, 2002 provides for the establishment of an independent Election Commission, it was not created until 2005. Until it was constituted, the person holding the office of the Commissioner of Elections exercises and performs the powers and functions of the Commission. EUEOM report on the elections in 2004 stated:

“Despite the fact that 17th Amendment to the Constitution has not been fully implemented, the Commissioner of Elections has been able to exercise some of the powers vested in him by this amendment compared to previous elections. Strengthened by these powers and his already established commitment to conducting a "free and fair election" the Commissioner of Elections earned the respect of Sri Lanka's diverse political community. His consensual approach and the way he involved representatives of the political parties instilled confidence in and respect for the election administration”.

The People's Action for Free and Fair Elections (PAFFREL) report (2004) said, since the Election Commission had not been set up, the Supreme Court ruled that some of the powers vested in this body could be used at this election by the existing Commissioner. Under this ruling, the Election Commissioner was empowered to annul the poll at any station where the poll could not be conducted in accordance with the election law. He was also empowered to call for a fresh election in any polling station where there were major violations of election laws. According to the report on Parliamentary Election (2004) by PAFFREL and the Movement for Free and Fair Elections (MFFE), the 2004 General Election was the most peaceful and the freest Sri Lanka has undertaken in recent history. The European Union Election Observation Mission (EUEOM) reported that previous missions had witnessed major violence and serious electoral abuse in the 2000 and 2001 elections. The Mission concluded that the 2004 elections were largely conducted in a democratic manner, apart from the incidents in the North and East.

D) Pakistan

The independence of the Election Commission and the Chief Election Commissioner of Pakistan has been questioned repeatedly by political parties, the media, political analysts and election observers. The Commission has often been accused of allowing the government to interfere with the election process and not taking necessary action against incidents and complaints of rigging. For example, in an interim report on the elections in 2002, the HRCP specifically noted that the Election Commission failed to take notice of complaints regarding the seizure of a polling station by a police officer in Sanghar who threw the polling staff out and proceeded to stamp ballot papers himself. The EUEOM report on elections in 2002 expressed serious reservations regarding the independence of the Election Commission.

According to the report, “one of the more worrying developments was the ECP's failure to curb the authorities' misuse of state resources in favor of political parties, in particular, but not exclusively, for the PML (Q)”. The report claims that the “the failure by the ECP to protect an area clearly within its mandate from interference by state authorities cast serious doubts over the ECP's independence.”

Various other incidents have adversely affected the credibility of the Election Commission as an independent institution. In the 2002 elections, the Election Commission issued a notification barring active Ministers from contesting without resigning from their offices. The notification was withdrawn on July 8, 2004 to allow Mr. Shaukat Aziz to retain his Ministerial office and run for the National Assembly. However, it is important to mention that the Election Commission of Pakistan took a number of positive steps to improve the electoral process for the General Elections. The Election Commission has a long way to go before it establishes itself as an effective and independent institution. A strong prerequisite for this transition is complete transfer of power to civilian institutions and supremacy of the Parliament in the political system.

Moving on from 2002, general elections of 2008 and 2013 were conducted by ECP. No doubt, things improved and voter's turn out was better enough to call elections fairer. However, the episode of sit-in after announcement on election results was a big question mark on the abilities of ECP. These protests highlighted the irregularities that messed up in general elections of 2013. To control the situation, Supreme Court had to step in and Inquiry Commission on General Election was constituted. The report of this commission declared that the proof of intentional rigging were not found however, massive irregularities had taken place in election management. Realizing the need of election reforms, Parliamentary Committee on Election Reforms was created in 2015. The report of this committee is yet published.

TABLE 3: A COMPARISON OF EMBS OF SELECTED SAARC COUNTRIES

	PAKISTAN	INDIA	Bangladesh	SIR LANKA
Composition	Chief election commissioner and four members.	President may fix the number from time to time.	Chief election commissioner and not more than four members.	Five members and a CEC from amongst them.
Appointing authority	Prime Minister in consultation with Leader of Opposition.	President, subject to any law passed by the Parliament.	President, subject to any law passed by the Parliament.	President
Eligibility Criteria	Retired judge, senior civil servant or technocrats.	Not specified (Generally from Indian Administrative Services)	Not specified	Not specified
Term of office	Five years, half of them retire after two and half years. on the pattern of Senate.	Not fixed	Five years	Five years
Distinction				PM, Speaker, Leader of Opposition, one person appointed by President and one person nominated by Parliament.
Total No of CEC.	18	21	12	NA
Age limit of CEC.	68	65	NA	NA

5.4 CONCLUSION

The constitution of Pakistan asks for establishment of a permanent election commission for the purpose of holding election to both houses of Majlis-e-Shoora, Provincial Assemblies and for election to other public office as may be specified by law. As of today, ECP has strong constitutional backing. It has gone through a long evolutionary process to reach at this point. It

has, now, representation from all four provinces. Senior civil servants (retired) and technocrats, along with the people from higher judiciary are eligible to become its members. Clouds of uncertainty, that emerged on the horizon after the political hue and cry after the general elections of May, 2013 has cleared. Election Act 2017 has been passed by the legislature of the country. It is a very big step in unification of electoral laws in a single piece of legislation as well as in reforming election commission of Pakistan. Things are moving in a favorable direction, no doubt, but at a snail pace. There are miles to go to establish an effective, independent and efficient election commission.

Judicial activism in election related matters in one the biggest hurdle that stands in the way. There is no provision in the constitution which bars supreme judiciary from interfering in matters of election commission, especially when an election cycle is in progress. On the contrary, in India, this has been done in 1958 when Supreme Court of India gave ruling in favor of ECI dismissing a petition on the grounds that the said matter is under consideration by ECI. In Pakistan, some time vested interest and on a number of times non-seriousness of sitting government forces judiciary to intervene on matters of ECP. Two recent examples are worthy to quote in this regards. First is the appoint of CEC in 2014 after the resignation of ex-CEC, Fakhar-ud-din Jee Ibrahim. The constitutional office of CEC remained vacant almost a year and new CEC was appointed when Supreme Court warned government against the matter. Similar, the matter of delimitation of boundaries was taken up by courts and then ECP started working on it.

No piece of legislation covers financial autonomy of ECP. Current financial setup makes ECP totally dependent of Ministry of Finance. Again, comparison with India revealed that in India the budget of ECI is a charged expenditure in budget document. It can only be discussed in the Parliament but does not put for voting. In Pakistan, there is no such arrangements. Although, ECP's budget can be mentioned in budget as charged expenditure on the pattern followed for the budget of National Assembly and Senate.

Appointment process, revised in 18th amendment 2010, made ECP as one of the most democratically established election commission in South Asia. No other chief election commissioner as well as members in any of the South Asian states are appointed by the

Parliament. The appointing authority in all almost all of these states is President. However, the commission has failed to mobilized much of public opinion in its favor. These developments are not cashed by ECP to portray it as an independent organization. ECP is, certainly, unable to establish it writ and force its authority.

Another potential reasons for ECP's poor performance is that it has been loaded with a number of non-core functions. According to law, main function of ECP is to conduct election. However, the electoral framework assign a number of more election related functions like delimitation of boundaries, registration of political parties, checking source of fundings of political parties, voters registration etc. There are a number of success stories in international practices where non-core functions may be assigned to another organization. For instance, in India and Sri Lanka the Delimitation Commission are separate from election commissions of both states. ECP is already under staffed to carry out its functions. Such extra responsibilities result in losing focus of election management body over its core functions.

CHAPTER 6

DATA ANALYSIS AND DISCUSSIONS

6.1. DATA COLLECTION

As the nature of research was purely qualitative, in-depth interview method was selected as an appropriate tool for gathering data from the field. Qualitative interviews are the most widely employed method in qualitative research (Bryman 2014). A questionnaire (see Annex A) was designed and given to the participants to collect required information from them. Keeping in view, the topic of research, questionnaire was designed in such a way to avoid technicalities, political affiliations and other personal biases. The questionnaire proved to be a beneficial tool for conducting interviews as it helped to collect detailed information about the topic. Secondly, it also helped in discussion to keep them on the track. Otherwise, the political dimensions of the topic would have pushed the arguments in political context. Flow of interview and focus of discussion was maintained with the help of this questionnaire.

As there were two type of respondents, i.e. staff of election commission and civil society activists, the questionnaire was piloted and finalized after pre field work visits and time to time consultation with supervisor. Estimated time of an interview was 25-35 mints. However, currency of topic made them more interesting and some time it went beyond an hour.

To get an better understanding of operations of ECP, I have tried to use the technique of ‘participant observation’. Under this method, the researcher lives in concerned community, participate in routine activities of the community, learn the language and then interpret the situation which he observes. During my data collection, I have done a six week internship with the office of District Election Commissioner Manshera. During this internship, I have volunteered my services as an election observer for by-elections for local government in a few union councils of the said district. It was an enriching experience and helped a lot in understanding of operations of ECP.

Table no 04 presents the detail summary of interviews both planned and additionally conducted. Initially regional and returning officers are not included in list of respondents. However, after going into the field and consulting a number of respondents, regional offices were visited and

officers were interviewed to get a better insight of operations of ECP. Public office holders including members of provincial and national assembly were also interviewed. District Nazim of Manshera was also interviewed additionally to better understand the role of ECP in conducting local government elections.

TABLE 4: SUMMARY OF RESPONDENTS

Participants	Planned	Missed	Additional	Total
Member ECP (Serving or Ex)	2	2		
ECP Staff				
1. Secretary ECP (Serving or Ex)	2	1		1
2. Officers from Admin wing	2			2
3. Officers from Budget wing	2	1		1
4. Officers from Training, R & E wing	2		1	3
5. Regional officers			3	3
6. Returning officers (ROs)			3	3
Total				12
Expert in the field of election management:				
• Researchers	10	4		6
• Academia	10	2		8
• Politicians				
• MNAs	4	2		2
• MPAs	4			4
• Senator	1			1
• District Nazim	1			1
• Civil Society(Mostly Lawyers)	10	5		5
Total	50			38

6.2. DIFFICULTIES IN DATA COLLECTION

First and foremost hurdle interviewer had faced in field work was accessibility. A letter was obtained from the department of interviewer to be shown to the participant to break the ice. Despite this, staff of election commission was some how reluctant to give time and discuss the matters of ECP. They claimed that they were bound by the service code of conduct and couldn't speak out their heart openly. However, key participants were approached by different sources to collect data for the study. Retired personals were snowballed to over come this obstacle. They had plenty of time and experience to enlighten the interviewer. Politicians were more accessible and delighted in discussions. However, to keep intact the focus of interview with a politician was a mountainous challenge. Separating facts from their party stance was very difficult task and was given considerable attention.

This research offered complete anonymity and confidentiality to its research participants. Respondent's contact details and there identification was not revealed at any stage of the study. Respondent's consent was obtained before making an audio recording if he was comfortable with it or not. Overall this whole exercise was full of learning and adventure.

6.3. DATA ANALYSIS TECHNIQUES

Bryman (2012), termed thematic analysis as one of the most common approaches to analyze qualitative data which can be applied in relation to different kinds of orientation to qualitative data analysis. A theme is defined as a category identified by the analyst through his/her data relating to research questions. It than builds codes identified in transcripts and/or field notes (p. 580, 164). The analysis of transcripts was carried out as follows:

- Data Management: Reviewing raw data, leveling, sorting and synthesis, (the first stage of data management).
- Descriptive accounts: Researcher used ordered data to identify key dimensions and diversity of each phenomena, (the second stage of data management).

The basic rules of interpreting qualitative data were carefully followed. Bryman (2012), suggested criteria for judging or evaluating qualitative studies terming two primary criterions: (1) trustworthiness and (2) authenticity. The four criterions of trustworthiness are:

- credibility (whether there is a good match between researcher's observation and theoretical ideas)
- transferability (degree to which findings can be generalized across social settings)
- dependability (adopting an "auditing approach" to establish merit of research keeping complete record of all phases of research)
- conformability (not to allow personal values or theoretical inclination to strictly meet research objectives)

The criterions of authenticity are:

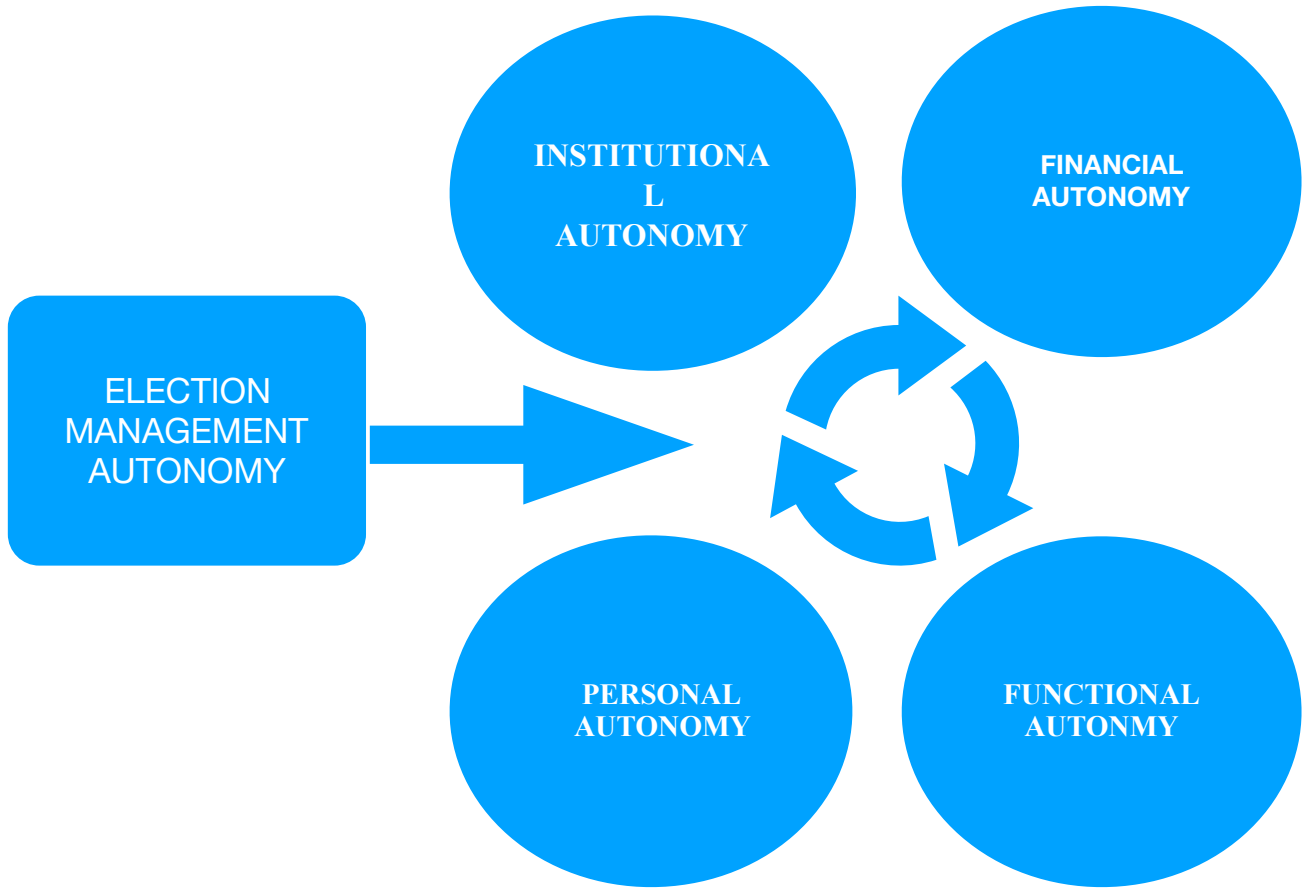
- fairness (fair representation of different viewpoints among members of social setting)
- ontological authenticity (does the research help members of society to understand a social milieu?)

The above-mentioned rules were carefully implied while analyzing the data from in-depth interviews. Themes and sub-themes were separated for each potential participant. Eg: autonomy--> functional autonomy--> voter registry.

6.4. ANALYSIS AND DISCUSSIONS

This section presents the findings and discussions focused on the autonomy of election commission of Pakistan and its position as a constitutional institution. As discussed earlier, two different tools were used to study ECP. One was document analysis and other was in-depth interviews. Constitutional provision relating to the election commission from Article 213 to 226 were studied in detail. Clauses of 18th amendment relation to selection process of CEC and text of 22nd amendment to the constitution were also studied for document analysis. An attempt was made to study the election management bodies of selected SAARC countries, i.e. India, Bangladesh and Sri Lanka.

In-depth interview were conducted to study the perceptions of civil society as well as the personals directly involved in elections and election management. As mentioned in methodology, four themes have been identified. These are: institutional, personal, financial and functional autonomy. In this section, detailed discussion on all the fore mentioned themes is presented. These themes are summarized in semantic diagram below:



6.4.1 INSTITUTIONAL AUTONOMY

Independence is an essential characteristic of any institution responsible for conducting elections. While the structure of election commissions varies from country to country, those commissions are considered most successful that offer both a perceived and real tradition of impartiality at all levels of the organization. An exercise in strengthening the independence of an election commission is, unquestionably, a fundamental and essential starting point toward enhancing

public confidence while offering greater assurances among both voters and candidates that their fundamental human rights are being protected.

Without a foundation of independence and unless election administrators are regarded as genuinely as fair arbiters, neither voters nor candidates can be entirely certain that the 'rules of the game' have been followed and that candidates selected by the people have won an election after all the ballots have been counted.

Research participants were asked to share their views regarding institutional standing of ECP. In discussions with participants, this was the most repeated theme and constitutional provisions were very clear about the status of this constitutional body. As per law, ECP followed the independent model in its organizational structure. It was not the part of any branch of government and performed its constitutional duties on its own. Respondents seemed to be very much clear about institutional structure. About the constitutional position of ECP, respondents showed considerable satisfaction upon the fact that, “ECP is not a functionary of executive branch of government, nor is it in any direct relation with the judiciary”.

All, the executive machinery, was bound by law to assist ECP in execution of its functions. They could not reject any summary forwarded by the commission. The commission was given the authority to summon any of executive agency upon negligence. However, respondents were of view that practically things are not as smooth as they were written in books of law.

One of the major findings of this section of discussion was that law did not bar courts from interference in matters of election commission. Contrary to that, in the constitution of India it was explicitly mentioned that “during an election cycle, no authority including supreme court of India can interfere in a matter which is under consideration of election commission of India”. Courts, from late 1950s had made a precedent which dismissed an election petition on the grounds that matter was under consideration by ECI.

Further, Law did not allow any transfers in civil administration without prior permission of ECI. The case of appointment of Army Chief of India was well known and is quoted by one of the retired members of election commission. During the last election cycle in 2013, national government solicited twice the position of ECI on appointment of army chief.

The case of ECP, however, was very weak in this regards. Respondents were of the view that judicial activism in election related matters has made ECP a toothless organization. They seemed convinced that ECP had failed to establish its constitutionally mandated position. Majority of respondents believed that poor image of the organization mobilized the public opinion against ECP in the crisis emerged on political screen after the general election on 2013.

While discussing the matter with a lawyer, he rightly pointed out that, “calling of a sit-in and establishment of inquiry commission to prob allegation made on general election is in itself an acceptance that ECP has not performed its legal duties in the desired way”. The report of inquiry commission on general election re-enforced this perception. Report said, “Taking into account all the evidence on record, notwithstanding the *shortcomings of the ECP* as mentioned earlier in this report, the 2013 general elections were in large part organized and conducted fairly and in accordance with the law”.

As pointed out by Alan et al, most of the respondents are of the view that not all type of autonomies are good for a public office. It is a double edge sword as too much restrictions limited the scope of organization while too much freedom increase the scope of discretion in decision making. Respondents perceive that law has given considerable autonomy to election commission for its operation with a few limitations. Among others, the most important in not restricting the courts from interfering in the election management matters.

Constitution of Pakistan has been time and again amended to give ECP required freedom and authority to perform its duties. Respondents, however, seemed convinced that ECP was unable to build good will and hence lack credibility. No efforts by the commission were put in to mobilize public opinion in favor of election commission. One retired employee of the commission said, “even the inquiry report of the commission acknowledged that despite administrative flaws in election management, it can not be said on evidence that elections were not a true and fair reflection of the mandate given by the electorate”. He added, “this should be the strongest point to build credibility of election commission. However, it is failure on the part of ECP to not highlight such things. Media (mass, social & print) has not been used to establish strong position of ECP.

6.4.2. PERSONAL AUTONOMY

No organization is capable to perform its duties in an efficient and effective manner, unless it possess the required administratively and technically skilled human resource. Keeping in view this reality and reviewing international literature on election management, this theme was added in the methodology. Respondents were asked about selection procedure, eligibility criteria, term of tenure and removal mechanism.

Document analysis has revealed that election commission, initially, consisted of two members and a CEC to be appointed by the president of Pakistan. President had the discretion to appoint any of serving or retired judge of supreme court or high court to be the member of election commission. Back in 2002, General retired Pervez Musharraf, in election order 2002, increased the number of members from two to four, each from one province. In the efforts to make election commission more democratic and to minimize the discretionary powers of president in appointment process, certain clauses were added in the historic 18th amendment in 2010. Appointment procedure of CEC was revised and the authority was shifted from president to the Parliament. Speaker of the National Assembly appoint a parliamentary committee consisting of twelve members. One third of this committee should be drawn from Senate of Pakistan. Half of the members of this committee must come from opposition benches. Prime Minister in consultation with Leader of Opposition forward three names to this parliamentary committee and the committee decide on one name for CEC by applying simple majority rule. In case, if PM and leader of opposition don't agree on single list of three names for CEC, both will send separate lists of three name each to the parliamentary committee. The same process is repeated at provincial level to select provincial member of the commission in each province.

When compared to selected SAARC countries, the selection process in Pakistan is more democratic and involves Parliament. In India, Bangladesh and Sri Lanka this appointment is made by the President of given state. In India the constitution do not fix the numbers of members of commission. Same is the case with election commission of Bangladesh. Constitution of Sri Lanka is an exception to that. Although, the appointing authority is president there too, however, from among the members CEC will be the one who is distinguished himself from others in field

of administration and education. It is only in Pakistan that appointment process is democratic and through Parliament House.

Respondents showed their confidence in the clauses of 18th amendment. However, some participants were of the view that exercise of appointment is a bit cumbersome. They maintained that agreement between PM and leader of opposition on one name is very rare. Detailed discussion was made on the topic and some interesting facts very highlighted. Appointment of current CEC was delayed for more than a year. Justice (retired) Fakharuddin G Ibrahim had resigned from the post in July 2013 and next CEC was appointed on 04 Dec, 2014. Although there were many other factors responsible for the delay in appointment of CEC, however, the main reason was disturbed political landscape of the country. Opposition was on roads to protest against alleged riggings in general elections. Secondly, again the apex court had to step in to ask government to make appointment. Interestingly, the appointment was made just a day before final deadline supreme court had given to government.

Eligibility criteria for a person to be a member of election commission remained an issue in electoral politics. Earlier in the constitution there was an obligation that member of an election commission must be a serving or retired judge of Supreme Court. Respondents agreed upon the fact that job of a member of ECP was purely administrative and not legal. Realizing the need of the day, earlier this year, 22nd amendment was incorporated into the constitution.

By this amendment, law has permitted technocrats as well as senior civil servant not more than 68 years of age to be appointed as member ECP. Respondents welcomed all clauses of amendment including revision of term of tenure for a member. 22nd amendment had fixed the term of office as five years. It further said that half of members of ECP will retire after completion of first two and half years and other two will retire after completion of other half term. Prior to this amendment, all the four members used to retire at the same time, leaving this constitutional office vacant till new appointments.

Respondents believed that now the post of CEC, which is purely an administrative post will execute its functions in a better way. There were no such restrictions in legal provisions of any commission from selected SAARC countries. In India, CEC usually came from Indian Administrative Services. Indian example was quoted by a number of respondents. One respondent

quoted Amartya Sen, a Development Economist and Nobel Laureate. He said, “if India takes stock of its achievements, the holding of free, fair and credible elections in the face of tremendous odds will be at the top of the list”.

6.4.3 FINANCIAL AUTONOMY

Financial autonomy is an important strategic issue for election management bodies and largely determines their degree of independence from the Government. As a constitutionally independent body, the ECP receives its required operational funding from the annual federal budget through the Ministry of Finance. Apart from its regular expenses, the ECP also has a supplementary budget for electoral activities and special projects, including conduct of elections, preparation/revision of electoral rolls, IT infrastructure etc. The ECP can re-appropriate its allotted funds as it sees fit. The current financial autonomy that the ECP enjoys is based on an Office Memorandum of the Finance Division, but no concrete legislation is in place. A respondent from the budget wing told the interviewer that MoF had issued a notification with a section officer as its undersigned which allows ECP to transfer funds from one head to another head of expenses and that all.

No other concrete piece of legislation had been enacted by the legislature which could deal with financial matters. He added, “the position of ECP has been compromised on many occasions due to this interference of MoF in financial matters of ECP”.

The Election Commission has the power to upgrade or re-designate any post and promote its staff. However, it does not have the power to create new or abolish existing posts as its needs change. New posts are created by the Finance Division and sometimes require the approval of the Prime Minister. The ECP establish a committee under the chairmanship of the CEC comprised of representatives of the Finance, Establishment and other divisions to recommend the creation of new ECP posts. Their recommendations are then approved by the government.

Another serious issue came up during discussions with the officer from budget wing of ECP. He informed the researcher that election commission had raised another very important issue with government a number of times but did not get any reasonable response. Commission was of the view that it should be entitled to a portion from its incomes like nominations papers fee, sms charges to find polling stations and votes etc.

However, government had not decided on the matter. Resultantly, all the money ECP receive in any form had to be deposited in federal consolidated fund. When probed about the sources of fundings of ECP, respondent highlighted an interesting example in this regards. He told the researcher that ECP in collaboration with NADRA started checking of voter registration by sending CNIC number to 8300. This service earned money in millions as the rate of one SMS sent to 8300 was charged @ Rs. 2 plus tax. ECP did not get its share from this income as MoF did not take decision on the matter.

In discussions on financial matters, it came up that previously ECP was not a 'charged expenditure'. According to law, in Pakistan budget making process, a charged expenditure (also known as Authorized Expenditure) was the one discussed in the Parliament but not presented for voting. However, in a recent move to reform ECP, the office of Chief Election Commissioner and election commission were included in budget as 'Authorized Expenditure'. Respondents welcomed the move and emphasized on its importance.

6.4.4 FUNCTIONAL AUTONOMY

Primary function of election commission of Pakistan, under the constitution, is to conduct free, fair and credible elections in the country. Under legal framework ECP is also responsible for some of the potential non-core functions, for example, political party registration and electoral boundary delimitation etc. The constitution of Pakistan explicitly ask every executive agency to assist ECP in performing its duties. It has the power to summon any administrative agency to help performing its functions.

In interviews, general view of respondents was that functional side of ECP was more flawed than its legal and electoral framework. The personals of ECP admitted the problem but shifted the blame to executing agencies. They also had highlighted the weak electoral framework in this regards. "Operations of the commission", said a respondent, "are flawed and delayed because these involved a number of other agencies and department which are beyond the scope of election commission".

Issues in accountability mechanism had compromised the performance of ECP. During elections, ECP hired the lower level staff from various departments for election duties. Most of

these department were now under control of provincial government after 18th amendment. The staff from these provincial departments already new that election duty last for a day or two but their services in the parent organization are permanent. Their promotions, transfers and appraisals were dependent on provincial government especially MPAs. On the other hand, ECP did not any have any control on them. At maximum, ECP would suspend there election duty and wrote to parent organization to inquire the suspect. ECP did not have any authority to suspend him from service or to inquire him at its own.

In India, the commission enjoys absolute autonomy in this matters. In a recent interview, the spokesperson of ECI told press that even on suspicion of phone calls from candidates to staff on election duty, ECI took action against the suspect. ECI had been authorized by law to suspend from service and charge the convict after conducting inquiry. ECI had worked on a number of such cases to set strong precedents to establish its constitutional position.

However, in Pakistan no legislation allows ECP to work against suspects and election results become controversial. This is the main point the critics of ECP have used to highlight the point that the commission has been unable to stop the use of state machinery by influential parties and candidates.

During the fieldwork, various regional and district offices of ECP were visit to conduct interviews. Four out of four district offices were established in rented residential buildings. The working conditions were extremely poor and places were in shabby conditions. ECP offices did not posses even the basic infrastructure. They were short of printers, scanners and photocopier machines. Space at offices were very small and rooms were over crowded to accommodate staff. There were 4-5 employees per room.

District election commissioner from Abbottabad told the interviewer that they did not have enough staff even for routine matters, how could they manage a huge exercise like general elections with such low numbers. International foundation for electoral system (IFES) published a brief on ECP (IFES,2014). It stated that as of 11 May 2013, total number of people working with ECP were 2,228 out of which only 1.8% were women. It means that only 42 women were working with election commission of Pakistan which highlighted the wide gender inequality in working environment of ECP. There was no single women in senior management of ECP.

In the interviews, respondents were asked about core functions as well as non core functions of the commission. It came up in the discussions that in international practice, there were some success stories in which non-core function to be assigned to some other institution. Non-core activities included boundary delimitation, voter registration, the registration and funding of political parties, electoral dispute resolution, the certification and announcement of election results, and voter education and information.

Former secretary ECP briefed in detail about the advantages and disadvantages of non-core functions to be performed by some institution other than ECP. He said that performing these activities by another organization might insulate ECP from potential political involvements in matters like boundary delimitation and helped ECP concentrate on its core functions. Allowing third party to work on these activities might helped ECP to keep check and balance on other institution and vice versa. He said that ECP did not possess enough funds for these activities. Another institution might successfully bid funds for these activities as ECP found it difficult to manage.

However, there were potential risks associated to these kind of delegation of functions. The biggest question mark on such delegations was of credibility. The other organization might not enjoyed such credibility as required to take such an exercise. Conflict of interest, lack of coordination and organization's own priorities with different agenda might cause hurdles in operations. Cost effectiveness was always there as an issue.

Comparison of selected SAARC countries revealed that in India and Sri Lanka functions like delimitation of boundaries were performed by delimitation commission of those states. In Pakistan all election related activities including non-core functions were performed by election commission itself.

6.5. CONCLUSION

The aim of this study has been to take up the case of Election Commission of Pakistan and study its every aspect with respect to its autonomy. Design and internationally recognized standard practices of election management are studied in detail. Review of literature and models of EMBs showed that there were no hard and fast rules for election management. Various states have adopted different models and are very successful. One of the key elements in establishing such

an EMBs is autonomy. Political event happened in the country after general elections of 2013 have raised various questions on the credibility of ECP.

Acknowledging the currency of topic and its importance, this research studied ECP in detail. A section of this study was based on document analysis. In this section, constitutional provisions regarding election management of selected SAARC countries i.e. India, Pakistan, Bangladesh and Sri Lanka were studied in detail. This comparison highlighted various flaws in electoral framework of Pakistan. Judicial activism in matters of ECP is one of the biggest hurdles in election management autonomy. Financial position of ECP has been compromised because there is no solid piece of legislation in place. ECP do not have powers to hold returning officers accountable. Infrastructure and human resource deficiency made ECP a toothless organization. There exists a strong perception that ECP has been unable to mobilize public opinion in its favor. This has led the organization to face bitter criticism on various forums. Efforts to reform ECP are not given due importance as many actors see these efforts as non-serious and politically motivated.

As mentioned in introduction of this chapter, to get a better insight regarding the operations of ECP, researcher did a six week internship with District Election Commission Manshera. During this period, by-elections for few seats of local government were held in the district. During this by-election the process of ECP were observed closely. The staff for election duty were hired from education department. ECP did not have any authority to force its orders even in a small scale exercise. The staff was informed of election duty almost a week earlier by dispatching letters as well as by telephonic confirmation. Despite the confirmation, a number of female teachers did not showed up to collect election material a day before polling. ECP asked the education department to provide substitutes on the emergency basis. When inquired by the polling staff about her absence, she informed the researcher that polling station was at a very distant place. She confessed, 'she will submit a fake medical certificate for her absence as such a practice is matter of routine in education department'.

The latest legislation enacted by the Parliament, the Election Act 2017, is an important document in electoral framework. It is a very serious attempt to reform election commission as well as in unification of electoral framework in one concrete piece of legislation. However, both

national and international observers still have reservations about this legislation. It do not give enough authority to ECP on the accountability issues of returning officers. All that ECP can do is to suspend them from election duty and ask the parent organization to inquire the suspect. It can't do any action against him at its own. Secondly, the matter of judicial activism is also not settled in this piece of legislation.

According to the statistics of 2013, total employees of ECP are 2228 people. Offices are mostly established in rented buildings and are not in reach of common man. These offices are short of even the basic needs like printers, photocopiers and scanners. These non issues have become the biggest hurdles in effectiveness and efficiency of ECP. To represent the true mandate and ensure the incorporation of genuine will of people in political process, ECP has to come up on the screen as the forerunner of the institution of democracy. It is the fountain head from where all kind of powers generates in a political system. No actor in a democracy can undermine its importance. And if we really want to keep this process of inclusiveness of every single voter intact, we have to make election commission one of the strongest institution in the polity.

CHAPTER 7

KEY FINDINGS AND POLICY RECOMMENDATIONS

7.1. KEY FINDINGS

Key findings of both sections i.e. document analysis and in-depth interviews conducted for this study are mentioned below.

INSTITUTIONAL AUTONOMY: According to law, ECP follows independent model of election management bodies. It is a constitutional body created solely to conduct elections of both houses of Parliament, Provincial Assemblies and any other office as may be specified by law. All executives agencies are bound by law to assist ECP in performing its activities. ECP is not bound to take influence from any branch of government. However, law do not bars courts to interfere in matters of ECP once an election cycle is started. No constitutional provision covers this aspect of institutional autonomy of the commission. Resultantly, working of ECP is considerably affected due to judicial activism in its matters during election cycle.

PERSONAL AUTONOMY: 18th Amendment to the Constitution of Pakistan has shifted the power to appoint CEC from the President to the Parliament. Similarly, at provincial level provincial assemblies are empowered to appoint provincial members of election commission. This is a highly appreciated step towards democratization of the commission. No other election commission in South Asia follows this pattern for appointment of election commission. Secondly, 22nd Amendment passed in early 2017 has revised eligibility criteria for a person to be a member of the commission. This amendment has allowed retired senior civil servants and technocrats to be the members of ECP along with judges from superior judiciary. Term of tenure and age brackets are also revised in the same amendment. These significant changes have increased the overall image of ECP and are considered as a huge step towards an autonomous election management body.

FINANCIAL AUTONOMY: Financial autonomy of ECP is not guaranteed by any legal document in Pakistan. Although ECP is allowed to transfer funds from one head to another head as per its need and it can upgrade and re-designate any post or promote its staff. However, all these powers are given to ECP by a memorandum issued by Ministry of Finance. Further, this constitutional body is not allowed to create new posts or abolish existing posts. It requires permission of MoF and sometime of Prime Minister to act. ECP is not authorized to devise its own budget. It is not a charged expenditure in the Budget document. Even the budgets of National Assembly and Senate are charged expenditure in the Budget. A charged expenditure is the one which is discussed in the assembly but can not be voted upon. Election commission of India enjoys this kind of freedom. Election commission is not entitled to its income and all revenue generated by its operation are deposited in the Federal consolidated fund.

FUNCTIONAL AUTONOMY: According to law, all executive agencies are bound to comply with the direction of ECP and to assist the commission to carry out its functions. Still, the legal framework is facing the challenges on the matter of accountability of Returning Officers and seconded staff. ECP is not allowed to suspend and inquire the suspect in an event of establishment of corrupt or illegal practices on part of any staff not fulfilling the obligations of the position without referring their case to their parent department.

Small pool of officers and staff makes ECP vulnerable to the judiciary involvement and the potential institutional and individual conflict of interest in occurrence of legal recourse by any petitioner against election staff including ROs. The main reason behind the dilemma is that usually ROs are hired from lower scale judiciary. ECP is highly deficient in human as well as material resources. Regional offices are under-staffed and they lack even basic technological equipments like printers, scanners and photocopier machines. Further more, ECP can't prosecute any government or state functionary during or after the election period for misconduct, corrupt or illegal practices. There is a need of detail research on the issue of core and non-core functions of election commission. This study highlights that there is a huge potential that if an EMB is allocated much of non-core election related matters, it is less likely to focus on its core functions. The concentration dilutes and oversight of such functions may be compromised.

7.2 POLICY RECOMMENDATIONS

In the light of findings and suggestions taken from document analysis of constitutional provisions of selected SAARC countries (India, Pakistan, Sri Lanka and Bangladesh) and in-depth interviews conducted, this study makes following recommendations.

- A concrete piece of legislation should be enacted to bar courts from involvement in matters of election commission during election cycle.
- The financial autonomy of the Election Commission should be guaranteed in law, including that authority over approval of its own budget, the maintenance of accounts, the creation of posts, and authority over supplementary grants.
- The budget of ECP should be included in charged expenditures in budget document.
- As a measure to ensure the Election Commission's insulation from the judiciary and the potential institutional and individual conflict of interest the Election Commission should be allowed to appoint ROs/AROs not only from state or semi-state institutions, but also from autonomous public institutions and corporations as well as from amongst the general public and individuals with established personal and managerial integrity.
- The Election Commission must legally be authorized to take action and penalize any seconded (hired) staff during or after the elections in the event of establishment of corrupt or illegal practices on part of any staff not fulfilling the obligations of the position without referring their case to their parent department.
- Similar to the seconded staff, the Election Commission should be authorized to prosecute any government or state functionary during or after the election period for misconduct, corrupt or illegal practices.
- The Commission should be empowered to issue binding orders to government entities with regard to their assistance to the electoral process and suspend any public functionary who, during an election, fails to comply with its directives.
- Given the widespread abuse of state resources, any transfers or postings in state/ semi-state and state-owned autonomous bodies and corporations should be subject to the approval of the Election Commission for the duration of the election.

- Being a constitutional body, ECP should be empowered with sufficient human and material resources. It should be provided with its own buildings for offices, at-least, at district level.
- Allocation of non-core functions to ECP needs deliberation and research. Policy research, on this subject, should be conducted by the competent authority to reach on a informed decision in this regards.

7.3 AVENUES FOR FUTURE RESEARCH

This research has studied the constitutional provisions covering election commission and election related matters, provisions of 18th amendments referring to the appointment of CEC and text of 22nd amendment. By the time, data collection for this study was being done, another milestone in electoral history of Pakistan was achieved. Election Bill 2017 was passed by the Parliament in recent months. Addressing the highly echoed demand of electoral reforms, this act is considered most important document. This study has not studied this document in detail. It needs rigorous research in future. Secondly, the issue of core and non-core functions in an election management bodies is touched slightly. This area requires further deliberations and international practices can be considered to improve performance of Election Commission of Pakistan.

REFERENCES

- Alan Wall, et al., The International IDEA,. Electoral Management Design. Handbook of the International IDEA. pp.391.
- Andrew James Klassen, (). Electoral Management Autonomy: A Cross-National Analysis from Latin America, School of Politics and International Relations, Australian National University.
- Antonio Spinelli, (October 2011). Strategic Planning for Effective Electoral Management. Strategic Planning Guide.
- Article 213-216, Constitution of Pakistan, 1973.
- Birch, S. 2008. 'Electoral institutions and popular confidence in electoral processes: A cross-national analysis.' Electoral Studies 27(2): 305-320.
- Clause 4(2), Election Commission Order, 2002. Constitution of Pakistan, 1973.
- ECP (2010), Final Report and Recommendations, <http://aceproject.org/ero-en/regions/asia/PK/pakistan-final-report-of-the-committee-on-the-use>.
- Election Management, Ace Project, 2011. <http://aceproject.org/ace-en/2011>.
- Election commission (2010). Five year strategic plan 2010-2014 [online] available at: www.ecp.gov.pk/sp/downloads.html
- FAFEN (2017). FAFEN's review and recommendations. Election bill 2017. [online] Islamabad, p.2. Available at: <http://www.fafen.org> [Accessed 3 Oct. 2017].
- Free and fair election. [ONLINE] Available at: the free dictionary, <http://legaldictionary.thefreedictionary.com/free-and-fair-election>. [Last Accessed 20 MAR 2017].
- Gilgit Baltistan (Empowerment and Self-Government) Order, 2009. Extra Ordinary of Gazette of Pakistan, part II.
- Goodwin-gill, (2006). free and fair election. 6th ed. all soul college: oxford
- Halena Cart, et al., Electoral Management Design., International IDEA. www.idea.int/sites/default/files/publications/electoral-management-design-2014.pdf
- IFES (2014). Pakistan Fact sheet, ECP. Supporting Electoral Reforms in Pakistan. [online] pp. 3-6. Available at: <http://www.IFES.org> [Accessed 3 Oct. 2017].
- Lust-Okar,(2001). Electoral Malpractice. oxford University Press

M. Javaid Akhtar, (2012). Elections of Pakistan and Response of Social Scientists: A Historiographical Survey of Theoretical Perceptions. Pakistan Journal of Social Sciences (PJSS). 32 (2).

PILDAT (2011). STATE OF ELECTORAL REFORMS IN PAKISTAN. Citizens Monitoring Report on the Implementation of the ECP 5-Year Strategic Plan. [online] Islamabad. Available at: <http://www.pildat.org> [Accessed 3 Oct. 2017].

PILDAT (2015). Election Commission of Pakistan. [online] Islamabad. Available at: <http://WWW.PILDAT.ORG> [Accessed 3 Oct. 2017].

PILDAT (2015). Electoral reforms in Pakistan. 6th Youth Parliament Pakistan. [online] PILDAT, p.15. Available at: <http://www.pildat.org>. [Accessed 3 Oct. 2017].

Pildat. (feb 2008). How independent is the election commission in Pakistan. 1st ed. Islamabad.

Psephos is a Greek word which means pebble and it was the mode in which ancient Athenians cast their vote

Remarks made by the CEC on November 17, 2015 during the hearing of various election petitions. For details, please see: <http://www.pakistantoday.com.pk/2015/11/17/national/cec-doesnt-approve-of-judges-meddling-in-ecp-affairs>

Rosas, G. 2010. 'Trust in Elections and the Institutional Design of Electoral Authorities: Evidence from Latin America.' Electoral Studies 29(1): 74-90.

Section 11 (1) (a-g). (1976). Representation of the people act. Section 11 (1). (1976). Representation of the people act. Section 6 (1). (1976). Representation of the people act.

Text of the eighteenth amendment to the constitution. [online] available at: www.na.gov.pk/passe_bill/passed_bill_2010/constitution_eighteenth_amendment_act2010_080410 [last accessed 20 may, 2013].

United Nations, Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, Professional Training Series, No. 2 (United Nations Centre for Human Rights, New York 1994), para 101.

UNDP (2014). Electoral reforms in Pakistan. Pakistan Development Advocate. [online] Islamabad. Available at: <http://www.pk.undp.org> [Accessed 3 Oct. 2017].

Universal declaration of human rights. [online] available at: <http://www.udhr.org/udhr/default.htm>.

Universal Declaration of Human Rights. [ONLINE] Available at: <http://www.udhr.org/udhr/default.htm>. [Last Accessed 24 April 2013].

V. Aaken, (2009). Independent electoral management bodies and international election observer missions: Any impact on the observed, Constitutional Political Economy. <https://www.researchgate.net/publication/227451149>.

V. O. Key, Jr., (feb 1955). A Theory of Critical Elections. The Journal of Politics,. 17 (2), pp. 3-18.

V. O. Key, jr., (feb 1955). A theory of critical elections. The journal of politics,. 17 (2), pp.3-18.

Van Aaken, A. 2009. 'Independent electoral management bodies and international election observer missions: any impact on the observed level of democracy? A conceptual framework.' Constitutional Political Economy 20(3): 296-322.

Wall, A., A. Ellis, A. Ayoub, C.W. Dundas, J. Rukambe, and S. Staino. 2006. *Electoral Management Design: The International IDEA Handbook*. International IDEA Handbook Series. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance.

**ELECTION MANAGEMENT AUTONOMY: THE CASE OF
ELECTION COMMISSION OF PAKISTAN**

INTERVIEW GUIDE

RESPONDENT'S INFORMATION:

Name: _____

Organization/
institution: _____

Designation: _____

Interview
Location: _____

INTERVIEWER INFORMATION:

Date of interview (DD/MM/
YY): _____

Interview
timing: _____

Data collection method: ____ (01) Audio
Recording

(02) field Notes
(03) Both



**SCHOOL OF PUBLIC POLICY
PAKISTAN INSTITUTE OF DEVELOPMENT ECONOMICS
ISLAMABAD, PAKISTAN
www.pide.org.pk**

Dear Sir/Madam, I am conducting this study for the partial fulfillment of my degree requirement. I am student of M.Phil Public Policy, from PIDE school of Public Policy. The topic of my thesis is 'Election Management Autonomy-The Case of Election Commission of Pakistan(ECP)'. Election provides the platform to express genuine will of people of state. It is the fountainhead from where all form of powers emerge in democratic regime. ECP is the constitutional body responsible for conducting free, fair and just election in the country. However, its performance has not been very remarkable. This research intends to study the electoral process in Pakistan and to find out the factors that results in dependence of ECP on executive branch. Independence of ECP actually means independence from government i.e. executive. This is something very technical, and therefore, requires your co-operation to spare sometime for a personal interview in connection with my research project.

QUESTIONS:

- Q1.** According to law, election commission is an autonomous organization (independent from executive branch) created to conduct free, fair and credible elections. What are your views about the organization (in context of autonomy).
- Q2.** 18th amendment has transferred the authority to appoint Chief Election Commissioner (CEC) from the President to the Parliament. How do you see this step with regards to the empowerment of ECP?
- Q3.** 22nd amendment in the constitution has allowed senior civil servants and technocrats along with the judges to be the member of the commission. What is take on this amendment?
- Q4.** What is your take on involvement of courts in election related matters during an election cycle?

- Q5.** How do you see the financial autonomy of election commission?
- Q6.** How the functional autonomy of election commission has been compromised by the issues in accountability mechanism of Returning Officers (ROs) to ECP?
- Q7.** Optimum infrastructure and human resources are the basic requirements for efficient operations of any organization. How do you see ECP as an organization in this regards?
- Q8.** Under the electoral framework, ECP is also assigned some of the potential non core functions (e.g. political party registration, electoral boundary delimitation). What is your take on this matter as in international practice such functions may be assigned to any other institution?