

**THE ELECTION ACT, 2017 - A POLICY  
REVIEW**



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**CERTIFICATE**

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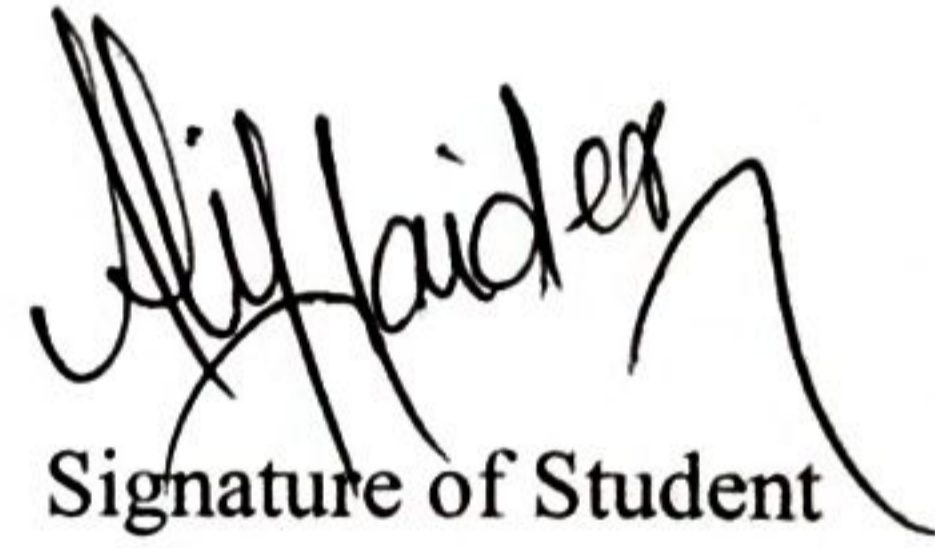


## Author's Declaration

I, Ali Haider, hereby state that my MPhil thesis titled, "The Election Act, 2017 A Policy Review" is my own work and has not been submitted previously by me for taking any degree from the "Pakistan Institute of Development Economics (PIDE)" or anywhere else in the country/world.

At any time if my statement is found to be incorrect even after my Graduation the university has the right to withdraw my MPhil degree.

Date: 22-09-2022



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***Dedication***

*This thesis is wholeheartedly dedicated to my parents who have been a constant support in every thick and thin of my life.*

## **Acknowledgments**

We have the pearl of our eyes to admire the blessing of the compassionate and omnipotent because the words are bound, knowledge is limited, and time is short to express His dignity. It is one of the infinite blessings of Almighty Allah that He bestowed me with the potential and ability to complete the present work and make a material contribution to the deep oceans of knowledge. I avail myself of this opportunity to bow my head before Allah in humility who has given me the wisdom and perseverance for completing this piece of report. I invoke peace for Holy Prophet Muhammad (peace be upon him) who is forever torch. I feel highly privileged to ascribe the most ever-burning flame of my gratitude to Ms. Lubna Hasan who gave me the guidance to do my work in the best possible way.

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Love and prayers for all.

## ABSTRACT

Elections are the backbone of the democratic process of any country. For the promotion of democracy and rule of law, it is declared worldwide that elections must be transparent, and the government must be formed according to the will of the public. Hence, for legitimate governance, democratic elections are a prerequisite. The political and legal framework is attached to the democratic process under some principles. To attend such kind of framework, Pakistan has come up with the Election Act 2017. The policy under the act was an attempt to make the process more vigilant, transparent, and progressive. It has also been observed that over the period, a certain level of ignorance has been noticed towards the policy along with some theoretical amendments or reforms that were tried to be institutionalized.

This piece of work highlights the obstacles that create hurdles in the applicability of the implementation of the Election Act 2017. In addition to that, it also brings out the reasons for electoral reforms that were to be implemented but were being ignored. For that matter, interviews with experts were conducted to gain their opinion and draw some policy implications out of the collected viewpoints. Through thematic content analysis, it is drawn that the election process in Pakistan needs some abrupt but precise reforms. The findings show that the election act 2017 is mostly a written document and the implementation failed due to lack of proper channeling. Similarly, reforms are necessary as with time it is important to look into the changing environment and the concurrency of implement laws with them. This is not just for the sake of elections being held properly but also for the stakeholders involved like the Election Commission of Pakistan, political parties along with the general public as well.

Keywords:

Election Act 2017, Amendments, General Elections, Policy making, Policy Implementation, Electoral Reforms

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# Chapter 1

## INTRODUCTION

### 1.1 Background of the Thesis

Elections are the policy setup that leads toward electing the leadership of the country by following the principle of democracy. A State consists of four elements which are territory, population, government, and sovereignty. All these four elements play a significant role in the conduct of the elections. The population elects its representatives to form a government that ultimately is responsible for ensuring the peace and security of its masses by exercising the principles of sovereignty of a particular territory. Elections are nothing more than a uniform and expressed intent of the public opinion. Before we dig into the deeper analysis of the elections as the responsive process of public opinion, we must know what an individual opinion is or what its significance is. Public opinion is a collective outcome of an individual's opinion.

An individual opinion is an expressed idea or attitude of an individual on an issue confronting the group of which he or she is a member. The expression is necessary, for an unexpressed idea or an attitude cannot be an opinion. A German sociologist says: "Whatever may come to be considered a public opinion, it confronts an individual with an opinion which is in part an extraneous power." It can be inferred from this famous quote that an individual opinion is very significant in constructing public opinion and a strong and staunch public opinion is a promise of the golden principle of democracy (Birch, 2005). The elections and their outcome are loud expressions of public opinion. This public opinion needs a channel of its expression and one of the ways the expression of the public opinion is through the elections. The history of policymaking on the electoral process was traceless since the inception of Pakistan. The first-ever direct elections of National and Provincial Assemblies were held in 1970.

The election process is always alleged to be rigged, changed, coerced, and corrupted in Pakistan. The previous government had made a lot of criticism regarding the general elections of 2018 had been rigged, the sanctity of the vote had been destroyed, and people's mandate had been stolen blatantly. It is alleged that despite numerous efforts, the electoral process is subjected to colonial influence. There is no transparency in the appointment of the election staff. The election staff is highly politicized and is accused of changing the polls by illicit and illegal means.

The general elections of 1970 are the only general elections that are regarded as the most transparent, free, and fair elections in Pakistan's electoral history. Due to the ongoing political turmoil, the process could not attain the success, and it ended up in the dismemberment of the country. Political instability took over the country again when the opposition parties came out on the roads alleging the mass rigging in the 1977 general elections and eventually that ended up in martial law. The opposition parties accused the election commission of rigging the polls. Then the country remained under dictatorship for more than ten years, and under the same dictatorial rule, the party-less elections were announced in 1985. The political set-up could not survive its full term because the president dissolved the assembly. The political process had been re-instated and general elections were held in 1988. After that, the elections were held in 1990 in the wake of the dissolution of the assembly by the then-president. Thus, the political turmoil carried on with the course, and the electoral process has been contaminated ever since. Not a result of any election has been accepted than the general election of 1970. So, political parties evolved, and with their political maturity, they ended up bringing reforms in the electoral process. Therefore, the election act 2017 passed to make the election commission more autonomous in its functions. Implementation of this act in letter and spirit is the biggest challenge so far. Even after the promulgation of this act, the general elections held in 2018 are disputed and no political party has accepted its transparency. Such is the case of dispute when it comes to the electoral process in Pakistan.

The Election Act of 2017 is regarded as the first biggest electoral reform to enforce an electoral policy for the country. The election act 2017 provides a strict monitoring and evaluation mechanism, a result management system (RMS), ensures women's participation in the electoral process, holds accountable the candidate under its political finance wing as well as empowers the commission to initiate disciplinary actions against the civil servants involved in malpractices in the electoral process. The laws which were promulgated before the election act of 2017 were The Electoral Rules Rolls act, 1974, The Electoral Rolls Rules, 1974, and The Election Commissioner Order, 2002 (Waseem, 1998). The Election Act of 2017 was needed to upgrade and update the prior laws of election which were not meeting the contemporary standards as a new policy to be enforced throughout the whole of Pakistan. This new law received a severe backlash from the opposition and religious political parties and many political unrests were seen opposing the Act. A few diehard people are trying to stop the reforms. But keeping in view the contemporary standards of democracy, the laws need to be upgraded and updated to lay the country on the trail of progress and prosperity. As in the words of Maleeha



Lodhi, the transformational change in the apparatus of the government is imperative, not a choice (Lodhi, 2001).

The government's main agenda is comprised of introducing the Electronic Voting Machines (EVMs), changing the formula for the delimitation of the constituencies, imposing the condition of 10,000 party members for the registration of the political party, opening the ballots for the Senate polls, and bringing the transparency in the appointment of the election staff. The research would also deliberate as to why there is a need for the presentation of new electoral reforms to the civil society organizations, All Pakistan Newspapers Society, bar councils, bar associations, and press clubs. In the end, it will propose appropriate suggestions and recommendations that would ultimately lead to possible solutions for the implementation of the electoral reforms. It is imperative to implement the Election Act 2017 in the letter and spirit, and it must be analyzed how the amendments in the constitution and election act would lead toward a prosperous elections reform policy.

## **1.2 Problem Statement**

The election process is always alleged to be rigged, changed, coerced, and corrupted. The previous government had raised criticism that the general elections of 2018 had been rigged, the sanctity of the vote had been destroyed, and people's mandate had been stolen blatantly. It is alleged that despite numerous efforts, the electoral process is subjected to colonial influence. There is no transparency in the appointment of the election staff. The election staff is highly politicized and is accused of changing the polls by illicit and illegal means. This means there is a lack of implementation of the election act 2017. Therefore, the act must be revised through reforms.

## **1.3 Research Objective**

The objective of the research is to have a comprehensive analysis of the Election Act, of 2017, to have a deep insight into the status of the current electoral reforms, to investigate the reasons for the failure of the implementation of the Act, and to have a critical understanding of the election process. This research also seeks to understand why there lies a contradiction between the provinces in implementing the election rules while the election is being carried out. The research also revolves around the significance of public opinion in the election process and how the election should be a clear depiction of the public stance. This study purpose has been achieved by extracting the information through secondary sources as well as getting primary qualitative data by conducting interviews with experts.

## **1.4 Research Questions**

1. What are the obstacles to the applicability or the implementation of the Election Act of 2017?
2. Why there is a need for electoral reforms to meet contemporary standards?
3. How will the introduction of the new reforms impact the election process?

## **1.5 Significance of the Research**

The research is of great significance as it encapsulates the current status of the electoral reforms which are soon to be enforced before the general elections of 2023. The paper also digs deep to gain insight into the factors and reasons which are behind the lack of implementation of the Election Act 2017. The research revolves around primary and secondary information for an in-depth analysis of the motives and modus operandi of the legislators, policy makers, and policy advisors. The proposed electoral reforms have generated much within the Parliament, but the government vows to implement them despite a staunch disagreement from the opposition parties.

The government's main proposal includes 1) the introduction of the Electronic Voting Machines (EVMs), 2) change of formula for the delimitation of the constituencies, 3) condition of 10,000 party members for the registration of the political party, 4) open ballots for the Senate polls, and 5) transparency in the appointment of the election staff. The research would also deliberate as to why there is a need for the presentation of new electoral reforms to the civil society organizations, All Pakistan Newspapers Society, bar councils, bar associations, and press clubs. In the end, it will propose appropriate suggestions and recommendations that would ultimately lead to possible solutions for the implementation of the electoral reforms. The outcome of the study contributes to the academic literature towards a better understanding of the Election Act 2017 in the letter and spirit, and how the amendments in the constitution and election act would lead toward a prosperous elections reform policy

## **1.6 Organization of the Study**

The study is divided and organized according to the research requirement. Following is the pathway followed to state the research:

- Firstly, the conceptual framework is explained to give a detailed structural process to the research which leads to the overview of the evolution of the policy act under study.
- Next included the dissection of the Election Act, 2019 which shows all the details of the election act.

- Interviews have been conducted with experts on the elections, the policy, and its implementation. The targeted audience included all those who are related to the election process or are being impacted by the policy.
- Lastly, a detailed analysis is produced through thematic analysis which follows policy recommendations according to the experts' opinions.

The research is ended with a conclusion where a wholesome characterization of the research can be gauged.

### **1.7 Observations of the Interviewee**

While interviewing, different sorts of behavior from the Respondents were observed. It was found that mostly people were reluctant to give their open opinion. The politicians were difficult to be approached. Three MNAs and three MPAs were interviewed. The answers given by the politicians were not much satisfactory. Free and fair elections and the transparency of elections were the points usually raised by them. It was observed in thematic analysis that there was a repetition of phrases like transparent elections and free and fair elections. In addition to that, five people from the Election Commission of Pakistan were interviewed. All of the ECP members were cooperative and responded well. The workings and suggestions of these members were well expressed and discussed in detail. Five academics were also interviewed who are supposed to be experts in public policy and research in political science. The academic experts have mentioned a number of problems among which the themes repetitively occurred were knowledge and awareness to general public, the rights and duties of political parties and candidates and especially usage of technology was raised. While interviewing students, the most repetitive theme was legality of the act. It was observed that people generally had no knowledge about the election act. Mostly were given briefs and some like students have read the act priory and later responded.

### **1.8 List of the Respondents**

1. Politicians are three MNAs and two MPAs of Punjab.
2. Five officials of The Election Commission of Pakistan.
3. Five academic experts of different universities.
4. Five from general public, graduated youth.



## Chapter 2

### LITERATURE REVIEW

#### 2.1 Theoretical Framework

The policy framework adopted for this particular research is based upon the ‘Science of Action’ which establishes a diagnostic approach that constructs the analysis of the factors that are regarded as either good or bad in the policy evaluation keeping in view the public administration production concerning their efficiency and outcome. This specific framework find its roots back in the Frankfurt School of thought and in the academic works of Crozier and Friedberg (Crozier and Friedberg, 1980; Crozier and Friedberg, 1995; Crozier, 1963, 1991; Friedberg, 1993) both are strongly influenced by the neo-Marxism. The Frankfurt School of thought comprised by the German political scientists and sociologists of the 1970s. This framework encapsulates the identification of actors, their networks, and modus operandi by indicating the systemic forces.

This theoretical framework focuses on describing, understanding, and explaining the workings of the policy administrators and their interactions with the consequences of the policy at the public at large. This approach is based upon the ‘reasoning or logic’ gained by the public response which facilitates the public administrators to formulate the public policies by resolving the public problems. The sagacious reasoning is applied by the policy makers within the framework of the action of sciences. The research work has been broadly analyzed through the lens of this particular theoretical framework.

Science of Action is an established diagnostic that was constructed for the analysis of factors to achieve the level of efficiency or outcome of a policy provided by the public administration. This Framework belongs to the Frankfurt school of thought and from the academic work of Crozier and Friedberg. The Frankfurt school is also inspired by the idea of social theory which is critical for the emancipation of society and individuals from harmful social structures. Thus, the social agendas whether economic, political, administrative, etc. are all part of it. This framework is chosen based on its Diagnostic approach that elucidates the functioning of the public policy. It explains the factors that illustrate the good and the bad in terms of public administration production and concerning the efficiency of policy and its outcome.

This analytical framework ultimately leads to understanding and explaining the working principle of the political administration system as a whole. In addition to that, it will coordinate the understanding with its interaction with private actors as well. Therefore, the approach is explanatory, and it describes the product and services provided by the Republic administration which will lead to its outputs. These outputs are based on the inputs which are produced by the impacts, or the effects of these services provided to the social groups. It is mentioned above that the policies are also formulated on the cause or a collective problem. For that matter, the effect of it can also be gauged from the particular section of the society having the problem. In terms of election acts or election-related policies, the general public, government officials, political parties, institutions, private groups, etc. are all involved. To get the outcome of these policies as input, all these people must be involved in the process of calculating it.

The action sciences framework belongs to the intellectual reasoning to resolve public problems by looking into the logic of public actions. The reconstruction of the hypothesis on which public authorities base their thinking is understood to resolve the collective issues. Most of the issues that refer to this concept are related to social organizations (*Centre de Sociologie des Organisations*) as it also belongs to the work of social and political scientists of the 1970s (Crozier and Friedberg 2017). In that specific period, social and political scientists were quite influenced by the new Marxism. Nonetheless, this influence was limited to the individuals and their contributions particularly related to this framework. The systemic forces are being favored by these authors in their approach as it is part of the interest and behavior of the actors involved. Especially, when they are connected through Institution or resources. Empiricism can be observed in the institutional framework which makes it fact driven. In addition to that, the reasoning resembles actor-centric institutionalism as it would reflect the outcome which is directly coming from the Institutions and the actors involved (Scharpf, 1997).

The public policy concept is adopted from the work of German social scientists carried out at the *Deutsche Forschungsgemeinschaft*. The text specified public policy implementation and the comparison of public policies. The influence of this work was particularly in terms of international comparison when it comes to the comparative approach of common analytical frames that are applicable in different countries or institutions. The science of action is regulated and constituted on the essentials given by the German Institute. The approach is to find out the public policy results and also a comparative approach that is leading in different institutions through a specific analytical frame.

The approach of science of action can be characterized in the following ways:

1. The starting point is to look into the arena of political Administration and social actors. These actors interact in a defined sector where there can be policy input. It is then; through the action, logic can be tackled. When a policy is enacted, the process of it can be observed and practically detected if working properly, thus helping in finding out the outcome.
2. The behavior of actors being influenced by the institutions is integrated through the approach. The institutional variables are not being neglected as they had been for a very long time. Thus, the substantive result of public action can be observed.
3. Resources that are mobilized by these involved actors to attain their interests or objective are given particular and important attention. For the fact, that it facilitates the combination of policy analysis and public management.

These are the ways through which the policy can be best evaluated in terms of its input and output both. The science of action is an approach that is essentially differentiated from many other approaches to policy analysis. This approach is based on the retractable interpretation of empirical data which differentiates it from other research approaches. Following are the ways through which this approach can be differentiated and must be used for public policy analysis.

Firstly, Neo-Weberianism supposes that the actors that are involved in policymaking are required to be rigid in their ideas to get a certain amount of income at the cost of the content of policies. These actors are responsible for such content in administrative structures and rules.

The second is Neo-Marxism, which claims that there is primary democratic legitimacy but also justifies the secondary legitimacy on the approach of quality. The quality is directly linked with the powerful actors who are having more resources and interpret the secondary legitimacy as the act of domination of one social group over the other. Therefore, the policy cannot be equally implemented if there is a social class difference. The state policies are reduced to the instrument of sovereignty and repression which is regulated by a smaller group or faction of the society that is more powerful than the others. On the other hand, the science of action believes in public actors. It gives liberty to all on equality basis. Not impacting others' choices but every actor has given similar kinds of choices to pursue and has a certain kind of margin in their choices.

Thirdly, rational choice theories like public choice and Game Theory assume that political parties and bureaucracy consider the value of policies as the value of the currency, meaning thereby, there is an appropriation of personal advantages. Many argue that these theories are



reductionist approaches. The reason for this is that these theories reduced the complex data into very simple forms. For instance, difficult subjectivity is considered objectivity, and the complex life sciences are seen in terms of laws.

In addition to that, Network theory suggests that the influence of sectoral groups on the political-administrative apparatus is resulting in the inability of the state to develop redistributive involvement. Due to this these non-organized social groups are unfortunately and unintentionally left behind. The neo-corporatism theory also suggests quite similar to what network theory indicates.

To achieve a systematic and social approach and refrain from subscribing to practical concepts, the science of action is an approach that justifies the best among others. It has been completely opened to different hypotheses with empiricism. This model remains neutral concerning different theories and it puts up a wide range of theories developed with time as explained above. A researcher can take the concepts by basic dimensions proposed by empirical field testing. Through which standardized and organized data can be obtained as an outcome.

## **2.2 The Electoral Process in Pakistan**

The majority election system (non-presidential and non-proportional representation system) is a method of state election and provincial elections in Pakistan. President as head of state, elected by national 6 assembly/ federal parliaments while prime minister acts as head of government who always elected by the federal parliament. Chief Ministers are elected by provincial assemblies of each province. Unlike Australia, the Pakistani election is based on the first-past-the-post voting method instead of preferential voting (Arsalan, 2017).

The PILDAT's review of the role and responsibilities of the caretaker set up sheds light on the subject in detail and it has taken the example of New Zealand for comparison. The caretaker setup is supposed to take responsibility for the day-to-day business of the state, help the election commission to conduct elections, and strictly restrict itself to the most urgent which are the non-controversial business of the state that might not affect the future setup of government and stay non-partisan and impartial to everyone. It also illustrates what is not to be followed by the caretaker setup. It gives the example of New Zealand that how the caretaker setup functions there. In New Zealand, if the government lost its confidence, it shall declare that it would continue to operate as a caretaker until the political mayhem is resolved. This is followed by the incumbent government, and it restricts itself only to day-to-day business and exercises the executive authority of the state. It suggests that Pakistan must rethink and should follow the

line of established democracies where the existing government continues as a caretaker instead of installing the whole setup for an interim term (PILDAT, 2018).

Rigged elections and distortions of the process by military regimes or military-controlled governments have left the ECP in an advanced state of institutional decay. If the next elections are to result in the smooth transfer of power from one elected government to another and be widely perceived as legitimate and democratic by all stakeholders, the ECP must be truly independent, impartial, and effective. (ICG, 2012) Regulations for electoral campaigns are another inadequately defined area in the local government laws. The autonomous and empowered ECP is vital for the democratization of Pakistan. With the kind of mistrust, it carries from the public it is imperative to invent the ECP on the foundations of fairness, transparency, and independence (Bari, 2020).

Although it was said earlier that international standards do not provide elaborate benchmarks for campaigns, international law does require a level playing field for campaigns. At the same time, the standards also require public disclosure of resources spent on campaigns. But laws do not require any transparency in campaign finance provisions. There are also no safeguards against the misuse of state resources. (Mirbahar, 2015)

The 12 points of the Charter of Pakistan include Supremacy of the Constitution, Autonomy of the Parliament, Elimination of the role of establishment and intelligence agencies from politics, Establishment of an independent judiciary, Reforms for free, independent, and fair elections, Protection of human democratic rights of the people, Protection of rights of the provinces and the 18th Constitutional Amendment, Effective Local Government system, Security of freedom of expression and media, Elimination of extremism and terrorism and implementation of the National Action Plan, Emergency Economic Plan, End to inflation, unemployment and poverty alleviation and Protection of Islamic Provisions of the constitution (News, 2020).

Free and Fair Election Network (FAFEN) urged the Parliament to address critical weaknesses in the proposed Elections Bill, 2017 to enhance the independence and authority of the Election Commission of Pakistan (ECP), repeal regressive measures to curb transparency, improve the procedure of the appointment of caretaker governments and dilute monopolies of a few families on political organization. (FAFEN, 2017). The elections are required to be meeting high standards of transparency, and fairness, and are free from political clout. Indeed, it is a tough task, but the network aimed at ensuring and implementing the same to the best of its efficiency and effectiveness.

The Elections Act, 2017 as well as the election rules and codes of conduct emphasize the need for special measures to enable voters belonging to marginalized groups to exercise their right to choose representatives. Similarly, the law allows voters with special needs to seek assistance from a person of their choice in casting their votes. Moreover, the Code of Conduct for Security Officials for General Election 2018 contained unambiguous directions to afford preferential treatment to persons with disabilities (PWDs), transgender persons, and women (especially pregnant women or those with infants) (FAFEN, 2018).

The Election Commission of Pakistan (ECP) says the right to vote to overseas Pakistanis cannot be given till the required legislation is done by the parliament regarding various practical aspects including whether they should have extra seats in the assembly, what kind of procedure should be adopted for them to vote, etc. ECP says the use of EVMs cannot be adopted till it is determined whether these machines are capable of conducting free and fair elections; whether they can operate in conditions of hot weather, load shedding, etc. how the accuracy, secrecy, and transparency of votes can be ensured; and whether without proper testing the ECP can ensure free and fair elections with these machines. The backlash is not just to resist the use of EVMs but also there are instances where the use of EVMs is discouraged even in developed nations i.e., US, Canada, Norway, and Germany. The global leader of EVM, India, is also facing a serious backlash from the opposition parties, particularly due to the rise of the BJP. So, the use of technology is highly disputed due to its proneness to be hacked (Husain, 2021).

The military establishment, which the opposition has accused of meddling in politics, remained largely on the sidelines for the Senate elections, observed United States Institute of Peace (USIP). This perceived neutrality will help the establishment avoid being the subject of the upcoming opposition march. Additionally, the government's inability to control its parliamentarians reinforced that while establishment support is important for a government's longevity, the ruling party cannot abandon day-to-day political management to the establishment. The meddling of the establishment in the elections is inevitable in Pakistan. The political process itself is so much fragile that it cannot stand alone without the help of the establishment. The political activities in Pakistan started with the consent of the establishment. The pre-poll rigging in Pakistan has been the most challenging part of the electoral process in Pakistan (USIP, 2021).

### **2.3 The Elections Act 2017**

The Elections Act, of 2017 strengthened the election laws in Pakistan by introducing significant amendments. The Election Commission of Pakistan is empowered immensely in the Act. The Election Commission of Pakistan has been given the same powers as that of the High Court as it can issue the directions which are to be specifically performed throughout the country. The 8 institutions will have complete administrative powers to transfer the election officers during the elections and can conduct disciplinary action against the officials. The Chief Election Commissioner has full financial power of budget allocation and expenditure rationalism. ECP now has the political finance wing to audit the assets of politicians, but it needs capacity-building rights to implement its regulations in letter and spirit. The monitoring and evaluation wing is added to ECP under this act. The other significant addition to ECP is that it prepares its strategic plan to implement over the years. So, ECP has just to implement the Election Act 2017 in letter and spirit to get its results accordingly.

NADRA is directed to provide relevant data of every CNIC so that a vote has been created in the permanent or temporary address of the voter of his option. The ECP is empowered to make its by-laws for the conduct of the elections. The ECP can listen to the complaints and petitions of the voters, political party leaders, or the election staff and make tribunals and can decide on the matter. The Election Act, of 2017 also establishes the citizen observers' rights and duties to observe the elections in Pakistan. The ECP can conduct the pilot projects for utilizing the EVMs, biometric voter's identification system, and voting by overseas Pakistanis. The ECP is entitled to carry out awareness and mass media campaigns for the registration of women voters in the constituency. The ECP is asked to advise the political parties to increase women's membership and to encourage women in the general seats.

### **2.4 Research Gap**

It is impertinent to mention that despite the need and significance of the election reforms, very little work had been done on election-related issues. There is very limited information available to the public at large in this regard as it is one of the most neglected areas to have worked upon. There is also very restricted legislation on this matter. This particular research is incepted with the intent to fulfill this gap. It will not only look into the deeper consideration of the institutions which are involved in the policymaking of the election process but also indulge in a better understanding of the current scenario of the electoral reforms which are soon to be implemented in the next coming elections. This research focuses on official reports, documents,

legislation, academic writings, research literature, statistics, data analysis, and a systematic collection of numbers and figures. It is very important to identify the problem from its deep roots and lead toward the problem-solving strategies and mechanisms fulfilling the research gap.

## **Chapter 3**

### **METHODOLOGY**

#### **3.1 Research Methodology**

Research methodology refers to the procedure and techniques that are to be followed to identify processes and analyses of the information taken during the research. This research is based on interviews to select the primary data which requires a particular procedure to create an understanding of the subject matter. The methodology makes the research valid and reliable for the reader.

This chapter explains the methodological framework that guides this research. This chapter focuses on the research approach, sampling techniques, data collection methods, analysis technique, the credibility of the research, and ethical consideration for this research.

#### **3.2 Research Approach**

This study is explanatory and elaborative. Thus, a qualitative approach has been applied to research. Apart from the official discourse, the most important discourse to consider is the critical analysis of the official discourse. It has helped to identify the changes brought about in the official discourses or responses given in those discourses under the influence of divergent views.

Critical aspects of the subject have been included in the discourse by including the provisions of electoral aspects. This research takes the qualitative descriptive approach by not only reviewing the most relevant and recent literature as the secondary data analysis but also the primary data has been collected through the interviews of the election officers, retired election personnel, election commissioner, pressure and opposition groups being conducted in the line of purposive sampling belonging to the federal, provincial and district level policy experts. The educational expertise along with the public opinion from the voters and election participants would also be considered duly.

#### **3.2 Sampling**

Purposive sampling is a non-probability sampling that includes variables being chosen by the researcher for a sample population. This is also called subjective sampling where the sampling process depends upon the researcher's knowledge of the content. For the systematic investigation, a sample of a population was taken which was based on specified people who



were related to the targeted content. The variables are chosen to provide meaning to the responses taken from the participants.

It is a method where the researcher depends on their knowledge to choose the population. A population that may best fit the process of gaining data which helps in saving time. The population of interest provides data that is relevant and valuable in its outcome. The basic reason to which is that this population has got the knowledge, experience, and on-ground data. This awareness and understanding benefit in regulating the process of data collection and data production. In this method, qualitative responses are collected leading to finding the insight which is precise and deeply relevant for a particular context and purpose. Niche demographic observers are taken for the study for specified data collection which helps the researcher to be on track and focused. This sort of sampling decreases the margin of errors in the data collection process, collected data, and finally in the contextual understanding and stipulation of policy outputs and results.

### **3.3 Analysis Technique**

The analysis technique for the collected responses includes Thematic Content Analysis. This process of analysis is based on narrative analysis. Narrative analysis refers to analytical methods for interpreting text and visual data that have been collected in any form. Through the narrative method, all the data given by the people are organized and functionalized according to the selected study to give purposeful meanings and induce results. This technique involves the understanding of common patterns across the collected data through interviews which tends to identify the issues resonating with the researcher's problem statement. Thematic analysis means the analysis of data while looking into the pattern of themes (Voxco, undated). It is a method where qualitative data analysis is produced. Thus, the data would be non-numeric, and it can be in the form of audio, video or text etc. In the thematic analysis, the researcher would go through the entire transcript and look at the meanings or meaningful patterns in themes according to the data. These patterns can be analyzed by repetition of the data where a population of the sample at different points are giving similar kinds of views about a variable.

The variables of the study are entities of different values but are interconnected with each other through some specified process. Therefore, in any research, these variables are supposed to define the study area. To produce a thematic analysis, these variables are established and analyzed based on a survey and the opinion of the experts. After conducting interviews most commonly and repeatedly ideas are joined with the variables that are being selected to explain

those variables and give meanings to those variables in a set condition. These common patterns towards a variable generate a justification and detailed examination of the ground realities. These realities get precision through that data and also get counter-checked.

### **3.4 Credibility of Research**

All the aspects included in the research are the most commonly and strictly related to the study area. The research is the outcome of document analysis produced based on interviews held with experts on the study subject. Therefore, the research is credible in its structure and analysis.

### **3.5 Ethical Considerations**

This research has observed all the ethical considerations. The principle of informed consent has been followed when the interviews were being conducted. Similarly, principles of confidentiality, anonymity, and privacy have been observed too. Minimization of self-biases throughout the research project has been observed. Further, the research has adhered to intellectual property rights and has avoided plagiarism. While collecting data, all interviewees participated in the study only when they understood its purpose and showed their consent. Personal autonomy, dignity, and privacy were respected.

## CHAPTER 4

### THE ELECTION ACT, 2017: A REVIEW

#### 4.1 Understanding Election System in Pakistan

Since the inception of Pakistan in 1947, the state had a federal parliamentary democratic republic. It functions through bicameral legislation, which is the parliament of Pakistan, consisting of a lower and an upper house. The lower house is called National Assembly and the upper house is the Senate which is comprised of chosen provincial legislators. Then, it has provincial assemblies and around five thousand local government bodies. The head of government is the Prime Minister, and the head of state is the President. The Prime Minister is elected by the National Assembly whereas the President is elected by the Electoral College comprised of both houses and the provincial assemblies.

Like any other state, elections in Pakistan are always under the spotlight and thus, have been organized with a proper management system. The election management bodies are divided into three basic categories: independent from government, dependent or under government control, and semi-autonomous body. The Election Commission of Pakistan is one independent body, having powers like the Supreme Court but the change in election rules is approved by the President. The members of the commission are selected by the parliamentary committee, but the finances and decision-making are all done independently by it.

It is pertinent to mention that there is a mandate of the election commission to which it works systematically. According to the constitution of Pakistan, the election commission conducts the elections with honest, just, and fair manners. The election commission processes under the law and takes steps to guard the electoral process against corruption or corrupt practices. Different responsibilities are being included for the election commission of Pakistan. These includes: the preparation of electoral rolls for all the assemblies and local government, delimitation of the constituencies, holding general elections of the assemblies and the local government, conducting elections of the senate and by-elections to fill vacancies, election tribunals, and the election for the President office.

18<sup>th</sup> amendment in the constitution has changed the process of appointment of members. Before the amendment, members were appointed at the discretion of the president but later on, the members are now selected through a consultative process between the government and the

opposition. Still, the final decision for the approval belongs to the President. The parliamentary committee is constituted by the assembly speakers on the nominations of leaders of political parties. It has 12 members of parliament; half of them is designated by the government and the other half by the opposition. In the case of the national assembly and the senate being a party, four members from the Senate are necessary but if the national assembly is dissolved all the members will come from the senate. In case of vacant space, the prime minister and opposition leader extend three names to the parliamentary committee and if the prime minister and the opposition leader fail to agree, both can send their separate list of names to the parliamentary committee for consideration. The parliamentary committee makes the selection by simple majority voting. Later, the agreed-upon name is sent to the President for the appointment. Similarly, in case of a vacant seat of the Chief election commission, for instance, he is absent or unable to perform his functions, the chief justice of Pakistan can nominate one judge from the Supreme Court. Until the process of appointment completes, or the regular CEC comes back into the office, the nominated Supreme Court judge will act as acting chief election commission ECP. (Undated) a.

As there is a consideration of management bodies, financial and administrative autonomy is one important strategic issue that infers the standing and independence of an election commission. The constitution gives independence to the election commission of Pakistan to receive an annual budget from the ministry of finance. Not only this, but the election commission of Pakistan receives a budget as the supplementary budget for the electoral process and if some special projects are going on including the elections or the electoral rolls, IT, infrastructure, etc. The election commission of Pakistan is independent in taking the decisions for the allotment of funds and also, it enjoys the office Memorandum of Finance division. Being an independent body, the election commission of Pakistan can upgrade or designate its staff, however, it cannot create a new position or abolish any existing position as it requires alteration. Under the chairmanship of the chief election commission, a committee is established for the recommendation of new posts in ECP divisions. These recommendations can only function after the approval of the government.

The strategic plan was introduced by the election division of Pakistan for the first 5 years from 2010 to 2014. A proper consultation was taken between the voters, political parties, civil society, and international stakeholders working for the support of the election group. 15 distinguished goals were established that may cover the aspects of electoral operations and procedures, internal organizational reforms, stakeholder outreach, legal reforms, capacity

building, etc., (BTI, 2018). According to the assessment report produced by different organizations, the election commission of Pakistan has been working with a greater acceleration which has made it to achieve approximately 80% of the five years strategic plan only until 2012.

The election commission of Pakistan has also worked by striking the gender imbalance. They have not just accepted but addressed the imbalance under their strategic plan. Under objective 7 at least 10% of the representation should be increased by the ECP. The target was implemented in the general election of 2013 when 31 new female employees were recruited, and the total number of female staff was increased to 42. Still, this account was only 1.8% of the ECP's total employees and no women employee has got a senior management position. In terms of the organizational structure of the ECP, the election offices are at the ECP secretariat. The five-person team under the election commission of ECP have got the legal and constitutional power to conduct the election. These people have the power to control the appointments of people in different positions and to run the organization in general.

#### **4.2 The Election Act, 2017**

The electoral system and election laws did not change majorly in the last 40 years. Still, some changes had been formulated under the constitutional amendments relating to the election commission Pakistan by acting on the 18th Amendment Act, 2010. In addition to that, some of the laws were amended through the acts of parliament. All the political parties have been verbally and forcefully expressing their demands on the electoral reforms for just and honest elections for the past many years. It has been the agenda of all the political parties to conduct the elections transparently and fairly (van Ham, 2015). The opposition party has always seen accusing the ruling party of corruption after the general elections and it is a legacy of the opposition parties to dig out the unfair areas or the grey areas in the conduction of elections. In 2014, the PCER invited a proposal for the reforms. These reforms were extended to the Civil Society lawyers of Supreme Court, High Court, provincial bar councils, and federal bar councils of Pakistan and the general public through a notice in print and electronic media. After detailed discussions and deliberations for around 2 years, the electoral Reform package was introduced by the PCER to the Parliament for approval. This election act of 2017 became part of the constitution of the 27th Amendment Bill.

Taking the timeline of the Election Act 2017 into consideration, several events were passed before its ratification. The Bill was introduced as a Government Bill in the National Assembly

of Pakistan. Where it brought some lingual changes before passing, like from 'I solemnly swear' to 'I believe' in the clause of the finality of Prophet hood. Then it was brought to the Senate, where an amendment in the nomination form of the candidate was reinstated in the old form but the House rejected the change produced by the Senator. Again, the bill reached the National Assembly where it was passed and presented to the then President, Mr. Mamnoon Hussain who signed the Bill into an Act. The change brought by the NA was put back as 'I solemnly swear' for the pressure caused by politicians and media. The Act passed under the name, Election (Amendment) Act, 2017.

Going into the detail of the Election Act, 2017, almost eight previous laws were merged to form the act. In the electoral rolls act 1974, a total of 31 clauses were mentioned which have given a prominent definition of the authorities, their appointments, their claims and objectives, inquiry, corrections, final publications, the annual revision, and many others were included to give the election a clear shape (ECP, undated, c). The delimitation of constituencies Act 1974 contained 11 clauses (ECP, undated, d. It gives the record on the principles of constituency delimitations, the procedure of the commission, a delegation of power, seats in the national assembly and their allocation, the power of the commission to make amendments or modifications in the list of constituencies, etc. This delimitation of the constituencies Act 1974 was also amended in 2014. The senate election act 1975 included 9 chapters and 88 clauses which makes it a huge election act (ECP, undated, e). This act was provided for the conduction of elections to the senate and the matters related to the senate elections.

In addition to that, the Representation of the People Act 1976 was made to provide the conduction of elections of the national assembly and the provincial assemblies (ECP, undated, f). It was also regulated to guard the elections against corruption and illegal practices, or other offenses directly or indirectly connected to the elections. It had 10 chapters and 109 clauses which also included previous sections in the election act. The election commission order, 2002 was also included which was announced for the restoration of democracy electoral rolls and in persons of the proclamation of emergency (ECP, 2002 b). The political parties order, 2002 was brought to enhance the meaning of representation of women in the political process and the political parties, Parliament, provisional assemblies, and local government (ECP, 2002 c). It was the shortest, including 2 clauses and 2 amendments. And lastly, the Allocation of Symbols Order, 2002, was commenced to allot symbols, classification of symbols, application of symbols, and the principle of allocation of symbols to the parties or a group of parties and



independent candidates (ECP, 2002, a). The collection of all these laws succeeded the new act which reflected them all in a more systematic and precise manner.

Followings are important points that are included in the election act 2017. These are explained and further analyzed on the basis of international electoral standards (International Electoral Standards,2001) which is the guideline for reviewing the legal framework of elections:

#### **4.2.1 ECP powers**

The following methods of fortification have been utilized for reinforcing the powers of ECP (ECP, 2017a, 2017b, 2017c):

- 1) Specialized directives fall within the rubric of ECP empowerment for the execution of its duties. This initiative will be implemented throughout Pakistan and will have a parallel impact on the functioning of the High Court (Chapter II, Section 4).
- 2) Within the ambit of its administrative powers, the ECP now has the power to regulate the movement of election officials during the process of election and perform punitive measures against these officials in case of their delinquency (Chapter II, Section 5 (4)).
- 3) The following directives fall within the authority of the Commissioner: regulating financial matters, and authority to create vacant positions as per the permitted budget allocated (Chapter II, Section 11 (2)). The Federal Consolidated Fund will provide for all the expenditures incurred by the ECP, according to the defined meaning, provided in Article 81 of the Constitution (Chapter II Section 11).
- 4) The rule-making process will occur as mentioned in the superseding law (the Election Commission Order 2022, Section 9E) along with the mandatory approval of the President. Although the ECP has now been granted the power to formulate rules in the absence of Presidential or governmental level approval. All made regulations require prior subjugation to publication, seeking a recommendation, etc. within 15 days of such publication (Chapter XV, Section 239).
- 5) Before the election activity, the ECP shall prepare a comprehensive roadmap within four months mentioning all the legal and administrative actions that have been implemented or are required for further implementation (Chapter III, Section 14). Such a provision is not mentioned in the superseding law.
- 6) Throughout the various phases of the election, the ECP has been empowered with the redress authority of complaints/grievances apart from the challenges to the election

mentioned in Article 225. The decisions of the ECP will be applied in the Supreme Court of Pakistan (Chapter II, Section 15).

- 7) All elections result will be managed through the Result Management System of the ECP. This System will ensure the transparent calculation, compilation, and dissemination of the results (Chapter II, Section 13).
- 8) The ECP has the power to delegate its responsibilities to its members and official when required (Chapter II, Section 6).
- 9) For proper functioning, the ECP has been allotted the responsibility to train election officials through training programs and execute measures for public awareness through the dissemination of information about laws and best practices (Chapter II, Section 6).
- 10) Regular developments (lists of constituencies, election results, decisions on complaints) should be uploaded on the website of ECP.
- 11) The Elections Act of 2017 has also set benchmarks for holding the ECP accountable on various stances. The ECP is required to submit an annual report within 90 days preceding the end of every calendar year which will be presented in each house of the Parliament and every provincial assembly (Chapter II, Section 16). Post-election scrutiny of the implementation of the roadmap shall be included within the next annual report to be presented (Chapter II, Section 14 (2) and (3)). Such provision has been absent from the previous law (Mirbahar and Simm, 2018).

### **Analysis:**

The international standards explains that powers should be distinguished between the institutions and governmental bodies. Powers of the institutions or electoral management bodies are being identified as necessary. These must be clearly defined, and it is quite important to mention that the election act 2017, although identifies the duties but these regulations are not placed under the obligations specified organizations.

### **4.2.2 Delimitation**

1. Concerning the demarcation of constituencies, the ECP will demarcate them after every census. (Chapter III, Section 17 (2)).
2. There remains a ten percent benchmark for variant populations whether falling within the constituencies in the same Assembly from the same province or territory (Chapter III, Section 20 (3)). Such provision has remained absent from the previously practiced law.

### **4.2.3 Electoral Rolls**

1. NADRA has issued CNIC for the transmission of data to the ECP for the identification of voters and their automatic enrollment either on their permanent or temporary address (based on their option in the application for the issuance of a CNIC) (Chapter IV, Section 25).
2. As per the mentions in the application of a candidate or their election agent, the District Election Commissioner or concerned authorized officer has the power by the regards of the ECP to provide the candidate or their respective election agent with a hard or a soft copy on a universal serial bus (USB), a portable document format (PDF) or any other tamper-proof formal of the final electoral roll with all the photographs of the voters. They shall also ensure that the copy provided matches with those held by the Returning Officer and Presiding Officers (Chapter V, Section 79 (3)). This provision remains novel and runs in favor of the candidates.

### **4.2.4 Conduct of Election**

1. Before the initiation/commencement of election duties, all the election officials are to take a mandatory oath. These individuals shall strictly abide by and work following the provisions mentioned in the Election Act of 2017 and the regulations, and directives provided to them by ECP (Chapter V, Section 56).
2. As far as the distance between the polling station and voters is concerned, it shall not exceed a limit of one kilometer (Chapter V, Section 59 (2)). There was no such provision in the previous law.
3. All forms for nomination have been consolidated and they have also been allocated to the candidates for all seats.
4. The candidates shall deposit their nomination papers for the National Assembly, Provincial Assemblies (Chapter V, Section 61(1)), and Senate (Chapter VII, Section 111(1a)) that have been amended likewise for NA, increasing from 4000 to 30000 and for the provincial assembly an increase is visible from 2000 to 20,000.
5. While examining the nomination papers, the Returning Officers are not to inquire about matters that have no concern with the information that has been provided or received or any object that has been raised by any person. They are also not to question any tangible material or record present (Chapter V, Section 62 (7) (8)).
6. In the case where defaults exist in regard to the payment of taxes, loans, utility expenditures, or any other governmental duties, the candidate may clear such expenses

at the time of the examination of their nomination papers, except in cases where willful concealment exists (Chapter V, Section 62(10)).

7. In cases where candidates with physical disabilities face difficulties in traveling or where any individual holds a CNIC depicting his/her physical disability issued by NADRA, they are allowed to cast their votes by the provision of a postal ballot (Chapter V, Section 93 (c)). There was no such provision for disabled persons in the previous law.
8. Where an instance occurs for the deletion of the declaration and oath by the person nominated in the nomination paper. There has been an omission of the following declarations that were a part of the nomination papers in the previously abided law:
9. Declaration in the form of loans from any bank, financial institution, cooperative society, or corporate body in the candidate's name or the name of his/her spouse or any dependents.
10. A declaration for the default in expenditures concerning government use or utility payments.
11. A list that will contain the names of husband and wife and those dependent on them.
12. Declaration on the business owned by the candidate his or her spouse and their children.
13. Declaration of all the criminal fences and the pending cases related to them
14. Declaration for the education qualification and detail
15. Declaration for the current occupation details of the national tax number
16. Declaration for the income tax paid during the past 3 years which will include total income and the source of income
17. Declaration about the details of traveling abroad for the past 3 years
18. Declaration of the income tax paid on agriculture including the land holding and the production income
19. Declaration for important contributions for instance the benefits provided by the candidates to their constituencies if selected and served in the previous term
20. Declaration on the tickets provided to the candidate and their sums paid to any political party
21. Declaration to avoid by the code of conducts provided by the election commission of Pakistan
22. Declaration of total assets of the grand financial year previous year and the difference in the net asset where only the values of assets and liabilities for the current financial year should be provided

23. Declaration on the statement of fourth that the candidate is a citizen of Pakistan and does not hold any other nationality
24. Declaration on the statements of Assets of foreign passports details declaration of detail of statement of liabilities and individual expenses
25. Declaration on the conduct of pilot projects by the Election Commission of Pakistan (ECP) for the utilization of electronic voting machines and biometric voting system in by-elections and in addition to the already provided manual procedures for the verification of voters, casting of votes, and counting of votes, and to assess their technical efficiency, privacy, safety and financial feasibility (Chapter V, Section 103)
26. The Pilot projects for the voting of overseas Pakistani by the election commission of Pakistan may be held (Chapter V, Section 94)
27. The election-related documents comprising the statements of count and ballot papers are all considered as the public manuscript and may be evaluated or traced to obtain (Chapter V, Section 100) A new provision was based on the sealed bags of election-related documents that must be retained by the election commission of Pakistan under their control and at the secretive and appropriate place (Chapter 5, Section 99)
28. There is a modification in this provision than that of the old one. The declaration on the recounting of all the votes on the request of contesting candidates can be done, only in case of less margin between the two candidates. For instance, if the victory margin between the returned candidate and the runner-up candidate is less than 5% of the total votes polled or 10,000 votes which is less in terms of total votes polled, the request can be extended before the commencement of the result consolidation (Chapter V, Section 95 (5)). It is called the Representation of the People Act, 1976.
29. The declaration on the equality of votes between the two candidates that candidates will be declared as return candidates and will be members of the assembly for half of that term. The drawing lots will determine the one who will first take the seat for the first half. The equality of words is among three or more three candidates the voting will be considered null and void and there will be an election in the constituency (Chapter V, Section 97). This declaration was completely amended as per the old one where in case of equality of votes, the member of the Assembly was decided through the drawing of lots.
30. The election commission of Pakistan shall formulate a statement of voters that will be gender-disaggregated and exhibit the total number of votes cast by women and men at

a particular polling station to calculate the percentage of men and women votes polled (Chapter V, Section 91)

31. The declaration amended about the candidate if not being the returned candidate has obtained less than fourth which was previously one-eighth of the total votes polled in the constituency, the amount deposited by them shall stand sacrificed in favor of the government (Chapter V, Section 61(4)).

#### **4.2.5 Code of Conduct**

The ECP may draught a code of conduct for political parties, contending candidates, election agents, and polling agents in conjunction with political parties. A code of conduct for security workers, the media, and election observers may also be established by the Commission (Chapter XV, Section 233).

#### **Analysis:**

Although the ECP has issued a code of conduct in the past, the previous laws did not have a legal provision for it. The international standards for electoral legislations ask for clear cut residual powers, the powers that may issue instructions on Election Day and in emergency times. Formal and informal codes of conduct must be set of ethical principles. These codes engage the staff and electoral observers in their particulars according to the jurisdictions.

#### **4.2.6 Election Expenses**

A contesting candidate's election expenses are limited to the following:

1. The ECP's district monitoring teams will keep track of election expenses. In case of violations of the Act or rules, the ECP may impose fines (Chapter XV, Section 234).
2. The ECP would review the return of election expenditures (Chapter VIII, Section 136).
3. The ECP has the authority to penalize defaulting candidates directly if they fail to file a return (Chapter X, Section 174 and 183).

#### **Analysis:**

The expenses of elections either on the campaigns on the behalf of candidates or the political parties must be controlled. There is a need to have a legal framework in order to attain the equality of freedom. The international standards call for equal chance of success. This may only be achieved by limiting the finances at a certain level which may vary according to the posts like presidential, legislative or locals etc. and also, according to the geographic and demographic or material costs.



#### **4.2.7 Election Disputes**

1. An election petition may be filed directly with the Election Tribunal (Chapter IX, Section 142 (1)).

#### **Analysis:**

The procedure and mechanisms related to the legality of disputes should be processed under a framework. For that matter, the neutrality and transparency must be the two core ideals for fairness. The process of mediation in this regard is given huge importance by the international standards. This way disputes can be resolve with in less time and less electoral violence. Other than that, it is acknowledged that the disputes of some kinds are raised to resolve only through the election petition. Thus, to realize it on time is necessary and must be resolved accordingly.

#### **4.2.8 Political Parties**

1. To prevent political parties from mushrooming, new political parties would be required to enlist with the ECP, in addition to the existing standards, to have a minimum of two thousand members and pay a PKR 200,000 enlistment fee. (Chapter XI, Section 202)

2. Political parties must provide annual financial records to the ECP, as well as a list of contributors who have given PKR 100,000 or more to the party. (Chapter XI, Section 211)

3. Symbols for political parties and candidates should be distinguishable from one another. (Chapter XII, Section 217 (5))

4. An enlisted political party shall be denied symbol allocation for the election if it fails to comply with the Act's conditions. (Chapter XII, Section 215 (4))

5. A political party's office-bearers at the federal, provincial, and local levels shall be elected regularly, with a period of not more than five years between elections. (Chapter XI, Section 208 (1) the previous law (Political Parties Order, 2002) stipulated that any two intra-party elections could be separated by up to four years.

#### **Analysis:**

There must be a code of conduct for political parties. The international standards call for the regulatory bodies or non-governmental organizations that may act as observers to the elections. The behavior of political parties during the campaign must be controlled and under the legal framework. This way all parties and the non-party candidates may get equally opportunity of

winning the seat. Similarly, parties must stay under the set boundaries and all the parties must be given equitable access to the process of elections.

#### **4.2.9 Special Measures for Women**

The Elections Act of 2017 includes the following particular provisions to encourage women's involvement in the electoral process, including voter registration and actual voting on Election Day:

1. The ECP will conduct public awareness/media initiatives to encourage women to vote, register, and participate in elections (Chapter II, Section 12 c).
2. If the number of women and men voters in a constituency differs by more than ten percent, the ECP will take specific efforts to reduce the difference (Chapter IV, Section 47 (2)).
3. Every year, the ECP will publish disaggregated data on registered women and men voters in each National Assembly and provincial assembly constituency, noting the disparity in numbers. (Chapter IV, Section 47 (1)).
4. If women voters account for less than 10% of total votes cast in the constituency, the ECP may assume that women have been prevented from voting by an agreement and declare polling at one or more polling stations, or the election in the entire constituency, unlawful (Chapter II, Section 9).
5. Political parties must encourage women to join (Chapter XI, Section 203 (4)) and give women at least 5% of party tickets for general seats (Chapter XI, Section 206).

#### **Analysis:**

In the international standards, the 1952 Convention on The Political Rights of Women is mentioned to promote the legality for women where the right to vote, publically elected women candidates, women holding offices without any discrimination and right and duties of all. Other United Nations Resolutions are also included for the endorsement of equal and full rights in the electoral process.

#### **4.3 Election Act Amendments, 2021**

The election amendment reforms were thought to be brought in 2020 when it was intended by the government and political parties. A view that said there is still a lack of transparency in the electoral rolls and the unavailability of overseas Pakistani and dual nationalities in the elections bound the government to look into the issue. With this intention electoral reforms were

introduced in the country to ensure transparency in the democratic process and to give the level of playing field for all the parties' equality. Before introducing it formally the Federal minister of information and Broadcasting explain 49 different sections in the election act 2017 which were thought to be amended (Dawn, 2021a). It was also expressed that those sections can be deleted or omitted or substituted and there is a possibility of introduction of new sections as well. It was also explicit that the vision of the prime minister is to introduce electronic voting machines (EVM) in the elections will also be included to avoid any kind of rigging in future elections. The discussion was about the bringing of some technology for elections (The News, 2022).

Following the Legacy of the world, electronic voting was thought to be done. The inclusion of Technology would make the process more transparent. Besides that, there was a vision to include overseas Pakistanis as it was a big demand from overseas and thus, would have been great reform on the part of the government (Ali, 2021). Another thing that was felt missing in the process was the provision of complaints about the polling staff and the officers. It was also advised to deliver a provision that would allow the right to challenge the appointment within 15 days. About the electoral rolls and Nadra was another important provision advised to avoid illicit or fake means on the part of the general public (Dawn, 2021b).

The general election reforms have always been the agenda of political parties. For that matter, different bills with the space of different times were brought to the table. A committee on the demand of political parties was formulated on January 28, 2020, which gave the bill for electoral reforms. In 2021, the bill on the use of electronic voting machines was deferred at the request of the advisor to the Prime Minister on parliamentary affairs. The bill later was out for the voting and passed to form an election amendment act 2021. Forty-six amendment clauses, one insertion, and one omission of sections clause were brought via the Act. The main purpose or objective was to restrict senate elections from manipulation and to bring transparency to avoid any conflict as happened in the past. In addition to that, to bring overseas Pakistanis to the table for easy voting. The amendments belong to cover Senate elections, women, minorities, overseas Pakistanis, and dual national elections.

The first clause like any other was based on the title and the commencement of the amendment act. The followings are the details of the clauses according to the division of Amendment, Omission, substitution, and Insertion in the previously adopted act.

### **4.3.1 Amendment Clauses**

Amendments are the changes brought in different sections of the election act according to the new knowledge and experience. The Amendments started from the second clause and ended on the last clause 49 except for three other sorts of clauses. The sections 8, 9, 11 to 15, 17, 20, 21, 23, 25, 43, 53, 59, 61, 64, 66, 68, 71, 72, 76, 79, 84, 86, 90, 92, 94, 95, 99, 104, 122, 137, 138, 140, 144, 158, 167, 172, 195, 202, 203, 213, 221, 231 are being amended from the Election Act, 2017. The amendments are done for the sub-sections as well and the explanations are also provided under clauses. These clauses include substitution, omissions, and addition of phrases or words within the already given sections of the previous act.

### **4.3.2 Omission Clause**

One clause was added under the subtitle of omission clause where several sections from the Election Act, 2017 were held omitted or excluded. The Omission clause is 14, containing a deletion of sections. These are 24, 26, 28 to 34, 36, and 44. These sections are mostly giving details on the electoral rolls.

### **4.3.3 Substitution Clause**

The act of substitution refers to the replacement of one with the other. The substitution clause is 16 of the Election Amendment Act, 2021, and section 35 was substituted. It was based on the surety of entry of all eligible NICs on the electoral rolls. The citizens must be part of it to assure their participation in the general elections.

### **4.3.4 Insertion Cause**

Insertion is the addition of language or phrase in the already typed or written document. The Insertion of the new section is present in the Election Amendment Act, 2021. It is mentioned in clause 47. A new section 213 A is included with the subtitle ‘political parties to hold annual convention’.

### **Analysis:**

According to government officials, the electoral reforms had not created any constitutional crisis. It was a rather constitutional institutional crisis. The reason for this is that people are not ready to trust the Institutions. The officials emphasized that it is more important to build the trust and confidence of people than that of building land. It was also asserted that these reforms would be the improvement of the parliamentary system of Pakistan and also bring clarity in front of Civil Society. For political and democratic development, there is a need to bring reforms now and then. As they are for the betterment of elections. The reforms are according

to new ideas, learning, knowledge, and modern experiences. The bill was passed with the agenda to complete the aforesaid objectives as a priority and to make them easy to achieve with transparency.

#### 4.4 Timeline of the Election Act and Amendments

Following is the timeline showing the amendments in the act and rules of the elections after the commencement of The Election Act, 2017:

*Table 1: Timeline of Amendments in the Election Act*

Title of Amendment	Main Amendment Introduced	Date
First Amendment	In Form A, “Declaration by candidate” is replaced by “Declaration and oath by the person nominated”	18 <sup>th</sup> October, 2017
Second Amendment	1) Insertion of section 48A, “Status of Ahmadis etc. to remain unchanged”	22 <sup>nd</sup> November, 2017
Election (first amendment) Bill 2021	1) Amendment in section 84. Facilitating physically impaired voters. 2) Amendment in section 213A. Political Parties to hold annual conventions. 3) Amendment in section 202. A registered political party to have strength of 10,000 members with 20% women members 4) Amendment in section 203. Inclusion of persons with disabilities and transgender.	10 <sup>th</sup> June, 2021
Election (second amendment) Bill 2021	1) Amendment in section 93, to “enable overseas Pakistanis to exercise their right to vote during the general elections in their country of residence”	10 <sup>th</sup> June, 2021

	2) Amendment in section 103 to “procure Electronic Voting Machines (EVMs) for casting of votes in the general election”.	
The Election Rules, 2017		
First Amendment	Insertion of Chapter VIIA “Special Procedures for Voting and Counting” <sup>1</sup>	2 <sup>nd</sup> March, 2018
Second Amendment	Proviso of sub-rule 3 of rule 49 <sup>2</sup>	21 <sup>st</sup> May, 2018
Third Amendment	Amendment in rules relating to 1) voters with disability and 2) nomination papers of a candidate for election to the reserved seat for women or non-Muslims.	22 <sup>nd</sup> June, 2018
Fourth Amendment	Insertion of new rule 84A regarding “Registration Procedure for voting by overseas Pakistanis”	28 <sup>th</sup> September, 2018
Fifth Amendment	Amendment in Form-48 to add a new row for total overseas votes recorded for the constituency.	8 <sup>th</sup> October, 2018
Sixth Amendment	Amendment in rule 93 sub-rule 2 & 3 allowing for refund of deposit by a candidate for the seat reserved for women or non-Muslims.	29 <sup>th</sup> May, 2019
Seventh Amendment	Omission of election symbol namely “Road Roller”	24 <sup>th</sup> February, 2020
Eighth Amendment	Insertion of sub-rule 2A in rule 39 relating to free of cost transmission of data from NADRA to the Election Commission.	14 <sup>th</sup> June, 2021
Ninth Amendment	Form 45 (result of the count) and 46 (Ballot paper account) amended	23 <sup>rd</sup> November, 2021

<sup>1</sup> Election of member of the Senate by the members of the Federally Administered Tribal Area in the National Assembly.

<sup>2</sup> Relating to the oath administered to the polling staff at the polling station.

## CHAPTER 5

### SURVEY AND FINDINGS

A total of 20 interviews were conducted with the policymakers, officials of the election commission of Pakistan, the practitioners, academia, and the public. Meaningful information was extracted through this exercise as people who were interviewed were directly or indirectly connected to the process of election. The electoral process in Pakistan is always rife with allegations of corruption and maladministration by the parties who lose election. The Election Act 2017 aimed to improve the electoral system. The interviews were conducted with the relevant stakeholders, as mentioned above, to extract maximum information from them. A thematic analysis was used to identify common themes emerging from the information collected. These are the issues that have always left the policies as grey areas and the need for amendments became frequent.

#### **5.1 Malpractices, Mistrust, and Apathy of Election Commission**

Misconduct of the election emerged as a major concern in this research. Some laws were found flawed as the electoral process has grey areas that are filled by the political parties due to their domination to an extent where the maneuvering has also been done in the past. The political parties guide elections according to their requirements and hidden agendas. The election results are contested by them if not found to be in their favor. This has generated a wave of mistrust among the public for the elections. It results in a low voter's turnout as people find it useless to spend time and energy on casting votes. Different reasons were shared by interviewees among which the most voiced was the failure of the legal system to break down the elements of the electoral process and prescribe them according to the sections of law. Some others are the disappointment they face on the environment of polling stations, theft of votes, fabrication of votes, unexpected results among others.

It was pointed out that malpractice is a reality and it happened everywhere but mostly in far-flung places. The most common abuse in the remote areas is the non-secrecy of the vote, suffrage inequality, lack of voting rights, lack of remedies for any corruption and violation, negligible women voters' turnout, carrying out election campaigns beyond the allocated time, and unchecked spending on the election campaigns. This grey area is the responsibility of the election commission of Pakistan under the law, which it has repeatedly failed to address.

Whether it is about the provinces or the capital, the commission is responsible for preparing the action plan with specification of all the legal and administrative measures that needed to be taken care of wherever the polling station exists. It has been endorsed in the literature that changing the results of elections has ripple effect which causes mistrust among the public for the elections, and it loses the credibility and importance in a such a way that voters turnout declines. (Birch, 2010).

Of the many malpractices observed regarding elections, it is the legal lacunas that have had the most influence on the conduct of election. It makes or breaks the policy or act that has to be implemented. Previous work on elections has identified that malpractice and manipulated results were a grim reality in Pakistan's election that persist till today. More susceptible are the remote regions, where unequal power structures weaken the bargaining power of the voters<sup>3</sup>. Weak law enforcement adds to problem as legal vigil of the election is minimal (Mirbahar 2019). Fafen (2018) also identified weak enforcement of election rules as problematic even after the enactment of the Election Law 2017. Research on electoral systems has identified vague voting process, unevenness in electoral gains, lack of antidote for corruption and violations at the root of misconduct of the elections. The obligation to cover this grey area is duty of the election commission of Pakistan under the law (Birch, 2007).

## **5.2 Non-transparency and Limited Access to Information**

Transparency of the elections, or lack of it thereof, emerged as an important theme. The consensus was that the process was opaque as there are no formal publications from the election commission for public scrutiny and clarification. Transparency is ensured if the election commission and other political parties disclose their documents publicly. Anyone, at any time, may be able to get access to these and their counter check procedures must also be identified and posted on the official site of election commission. As per law, the documents are for public satisfaction but there are no such periodicals present, especially when it comes to the decisions taken by the main personnel during polling periods. Also, about the whole process of election and the periodicals related to the spending or of a monetary value.

Mostly the documents are preserved with the election commission of Pakistan and the public cannot get access even if they ask for it. This secrecy creates suspicion towards all the stake holders involved in the political process and the responsibility of it directly incumbent upon

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<sup>3</sup> See Mohmand, S (2019) for an excellent expose of how landless tenants have acquired bargaining power for their votes in the Central Punjab region of Sargodha.



the election commission. These documents are important because they contain the details of the constituencies. Like those which were delimited, the disqualification of the candidates, the decision of the courts about the inspection of candidates or the appointments of the candidates for a reserved seat, the information about the women for the reserved seats or the minorities, etc. Although by sharing information openly, transparency and accountability can be achieved. But the election commission is not providing the information which leaves a blurred area for the law and the intentions of the commission.

The previous writings about elections confirm the fact that information sharing and showing transparency during and after elections would create a stability in public and keep their sentiments at place. But the election commission is not providing the information which leaves a blurred region for the law and the discretions of the commission stays ambiguous. (Alihodzic and Asplund, 2013)

### **5.3 Elite Capture of the Election Process**

Unfortunate events were pointed out during interviews about the polling stations either being present on paper only and not in reality, or the polling stations are set just to give the impression of elections, whereas, in fact, the polling stations are in the hands of the powerful people or their plotted people. The secrecy is being compromised in Sindh and Balochistan by the show of hands in local government elections as pointed out in the research studies. This way, the violations become easy as the voting process becomes cumbersome and the principle of equality in suffrage is also jeopardized. To make it a fair decision, the legal stipulations must be taken into account strictly and followed by the secret team of the Commission.

The literature express that elections are mere formality. The outcome is always taken under strict secrecy. It is being compromised in two provinces, Sindh and Baluchistan. The local government elections are always neglected especially due to their unattended procedures in terms of lack of coordination and lack of checks and balance (Mirbahar, 2019).

### **5.4 Legal Lacunas**

The ambiguity is in law and the unintended consequences were part of the election act 2017. The respondents have also mentioned and focused largely on the law making and the implementation. Eight different sections were being targeted as pitfalls for the election act during the interviews. Among these sections are; the issues on the delimitation rules for the women and minorities, issues mentioning the disabilities, the secrecy of voters being compromised, no legal requirements for the returning officer, the issue of no formal provision

made against the disciplinary action for the public servants, lack of a formal procedure for scrutiny of candidates, absence of a formal procedure for candidates failing financial requirements, and lastly, said the independence of the Election Commission being compromised if a consultation is required from the provisional governments.

The rules for minorities and especially for women voter turnout even if formed are not being properly implemented. The far flung areas specially fail to reach the set women voter turnout. In addition to that, issues regarding physically disables are being either ignored or taken a great time to be resolved. The delayed justice is more or less equal to the non provision of legal requirements. The action can only be possible if the mechanism for work is taken vigilantly and giving dire importance to all the possible options for the resolution of legal conflicts. The laws are necessary to be strictly followed for the elections to be on trail of betterment. As in literature, the issue was not just identified in the FAFEN report but also endorsed by Maleeha Lodhi. According to her, the government has power to change the system productively. This act can be ensured if the government show its will imperatively.

Some of the shortcomings given by the free and fair election Network (FAFEN) have also been mentioned where there were certain loopholes in the election act 2017 (Khan, 2018). Many different units were identified as traps for the election act. Among these areas are the issues on the rules for women and other minorities, issues related to the disabled person, the secret of voters being compromised, and others being ignored. These are the questions raised time and again by the affecters. For all these issues the departmental work is long enough to create agitation among the masses. Like, asking for the specific issues from federal would not be enough, the provincial government would also be in loop and taken under the process. This sounds valuable but can only be important if procedures are performed in time and without creating hurdles for public (King and Barnes, 2019)

### **5.5 Lack of Knowledge about the Election Process**

In collecting data from the officials of the Election Commission of Pakistan, some observations were collected in terms of the process and mechanism of elections. According to them, the election act being a law has to be changed with sociological, political and economical alterations. The issue in this way is traced as lack of knowledge in general public and also in other stakeholders, lack of coordination between institutions whether issues within an institution or in relation between two institutions, lack of definition of task assigned to the institutions, the limitation of every institute, fluctuating financial legislations, monitoring

problem, accountability issues due to the ignorance towards election procedures etc. Similarly, another problem is related to the general public which is termed as being least interested in knowing the policy itself and the laws.

Mostly public looks upon the matters through the lens of different political parties for maybe different political views expressed by the media. Considering the issue of EVM machines, the pros and cons are necessary to be learned. It has many technicalities joint. Firstly, there is a lack of consensus between political parties and institutions regarding their installments. Then, there are financial constraints, storage issues, illiteracy problems, and the programming of EVM according to the data saved in NADRA. Lack of trust in the system and heavy one-day polling that can all go in vain if fails to respond properly. It was also endorsed in the article recently published where the suspicions related EVM was raised on the basis of such lines where the trust on a system would be even difficult than to trust a person and also hacking could be possible and taming data would be much easier (Express Tribune, 2022).

### **5.6 The Debilitated State Apparatus**

In terms of reforms, according to ECP officials, they cannot survive without consensus and the election act 2017 was all built by taking the institutions in the loop. This has resulted in several queries raised by different stakeholders. According to them. Reforms are important as a continuous process to update the state apparatus as it gets rotten with time. However, some prerequisites are important to be taken into account and researched thoroughly before coming up with a new policy. In addition to that, the election commission officials mentioned that there are many problems within this autonomous state institute, the Election Commission of Pakistan.

There are financial constraints, capacity-building issues, lacking reform, problems related to meritocracy, etc. It was also mentioned by them that people are now quite aware and so the institution is also vigilant in performing like people disputes resolution on merit, working on technology intervention, PAV unit is constructed in the ECP, and it is being connected with different fibers of Pakistan, etc.

Financially the state has been under severe stress and that is leading to several issues related to capacity achievement. The reforms also require a monetary budget and if the budget is received, several other issues are faced. Like, such as the distribution of budget or allocation of it in different departments according to merit and need. It is also mentioned in the literature that people have got awareness and knowledge which exposed the system and institution. For

that, the working procedures are needed to be fast and clear. In addition to that, the staff working during and after the elections must be attentive and watchful of their acts. People's resolution of disputes must be on merit. Similarly, working on technology is needed to be guarded and guided by the strict actions of authorities. (Van Ham, 2015).

## Chapter 6

### CONCLUSION AND POLICY IMPLICATIONS

The election act 2017 was passed to regulate the election process in Pakistan. Theoretically however it has covered almost all the areas successfully but practically it has been ignored by the institutions. The political tensions in Pakistan have always been observed during the election season. This period at least starts before elections and elongates even after elections. The election commission of Pakistan receives a lot of applications regarding issues faced by for example the general public, candidates, political parties, institutions, etc. For the elections in 2018, it was positive step that the parties will represent themselves in a more managed manner according to the electoral law as being emerged in 2017. Similarly, it was thought that the election act would significantly improve the functionality of the Electoral Commission. Unfortunately, the case was not as such. During and after the elections chaos was observed with a similar intensity compared to the time before the act was enacted. This resulted in bringing up a question mark on the election act.

Therefore, it has been highlighted that the election act got some flaws in the design primarily and mostly on the implementation side. The policy however was produced according to the sociological and political challenges but hurdles to implementing the policy took it to the failure of its complete execution. After the election in 2017 reforms were observed one after another but were not being passed by the institutions. The issues are engraved in the electoral process due to which the political transition has also never been stable. The responsibility lies not only upon the political parties, institutions, lawmakers, and institutions but also on the general public. Still, the policy implementation according to law is the responsibility of Institutions. The reason for this is that if the law is strengthened enough people would automatically be following it. This flowchart then drops down to the lawmakers. Meaning thereby, that if the policy is made by strict rules and laws, it will not be ignored. Also, o, after becoming a law no political party would try to influence or manipulate it for its own sake. Also, this way the election commission of Pakistan would be more empowered and will have the strength to take action against the perpetrators who may adversely impact the election process and political transition.

The research has dug out through interviews and thematic analysis how the obstacles at a social and political level have made the implementation process fragile. It has also highlighted some policy implications that are needed to be implemented on the ground to make the election

process more transparent and to implement the reforms that come with the change of time and scenarios. In addition to that, a democratic state needs to have a political transition in a more clear, fair and managed way. For that matter, the election act 2017 is required to be reformed and implemented in a manner that if not all, mostly the stakeholders may find the process credible.

### **6.1 Policy Implications**

Policy dysfunction hampers democratic development, political stability, and the rule of law. To strengthen the democratic transition this fragility needs to be effectively countered through reforms. The experts during interviews have also come up with some policy implications which are important to be aware of. Those policy implications are as follows:

- According to research academia, the commission needs to work in a managed way where the resources must be utilized pragmatically, and staff should be trained. The failure of recruitment policies and Limited promotion prospects in the Election Commission of Pakistan being necessary to be tackled.
- According to these election commission officials, it is important to facilitate the general public and for that matter, there is a need to spread awareness and update it accordingly among people.
- For fair elections, ECP must be more empowered socially, politically, and especially financially as the commission officials find it a hurdle when different institutions try to impact and influence the body.
- The manipulation of polling procedures must be urgently stopped and confronted with more accountability mechanisms for the candidates and political parties. It is important to maintain the electoral code of conduct to protect the electoral process from disenfranchisement.
- Some internal weaknesses like dysfunctional election tribunals, corruption, and prolonged delays in resolving post-election disputes are needed to be restricted to ensure credible elections and orderly political transition.
- Political parties, which always influence the whole process, should make the process more transparent through ECP. As to ensure transparency, the involvement of political parties to make the process more vigilant and corruption-free is necessary.
- Similarly, other state institutions should consider the ECP as the sole manager of elections and must not intervene whether directly or indirectly. This way, not just the

ECP would work more keenly but also the results will be all upon the institutions. Also, in case of any issue or problem, ECP would be responsible for it alone and would not find any scapegoat.

- The view political parties express is that credible elections require more than just structural reforms as there is a need to improve the laws that are discriminatory, easily manipulated, or do not include good character.

## **Conclusion**

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strength to take action against the perpetrators who may adversely impact the election process and political transition.

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