

The Role of Election and Election Commission of Pakistan in the Development of Democracy in Pakistan

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Abstract

Democracy is the best government system in the world. In this system, the peoples are independent to choose their own representatives and therefore it is called representative government as opposed to the dictatorship wherein no one is allowed to elect their governments – the voice of the people is suppressed. UK democracy is the oldest in the modern world and democracy is also developed in the US and European Union, where peoples’ voice is heard and given weightage. Whereas in the third world either democracy is not flourish at par with the developed world, or it is time and again derailed by the military dictators particularly in Pakistan. Since, in democracy, the representatives are elected by the peoples through elections; therefore, the fair, impartial and transparent election is the most important aspect in developing the democracy. Imagine, the election is the main gate of democracy and if it is not done fairly, impartially, and transparently, how real representatives will be sent out to Parliament. The Part VIII having two Chapters and spanning Articles from 213 to 226 of the Constitution 1973 entrusts the task to Election Commission of Pakistan to conduct fair, impartial, and transparent elections in the country – a noble and gigantic responsibility has been entrusted to the ECP. Apart from Constitutional and Election Act 2017 provisions; the superior courts in Pakistan have pronounced a plethora of cases wherein the ECP is declared duty-bound to conduct elections fairly, impartially, and transparently and made responsible for all the ancillary issues. Unfortunately, the ECP has failed in discharging its duty to conduct fair, impartial, and transparent elections in the country. Therefore, it is necessary that ECP asserts and fulfill its constitutional and legal duty to conduct fair, impartial, and transparent

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election in the country enabling the peoples Pakistan to elect their representatives as per their wishes in the true sense of democracy.

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1. Introduction

The election is the process by which people choose their representatives for a public office and Law-making in a democratic dispensation. Representative democracy is the most suitable form of government in modern day life. The election,⁵ is important because people, through their choice, choose or elect their leader for a specific period for the purpose of making law and governing. By virtue of election, peoples are free to choose and if they are not satisfied by their chosen political leadership, they can change their leadership,⁶ as per the prescribed procedure.⁷ The election and democracy are inseparable, and elections play a significant role in shaping democracy and the right to vote is backbone of democracy.⁸ The right to vote is a fundamental right and responsibility of the people who can freely choose their representatives and if elections are not held freely in any country, then democracy cannot flourish, and it will not be a genuine democracy. The Election Commission of Pakistan (ECP) has been entrusted this gigantic task to conduct fair, honest, impartial, and transparent election in Pakistan by the Constitution itself.⁹

⁵ The word “election” is narrowly defined in Section 2 (ix) ‘mean election to a seat of a member held under this Act (ROPA), 1976.

⁶ Report on General Election 2013, Volume-I, Justice (Retd) Sardar Muhammad Raza Khan, the then Chairman Election of Pakistan, <https://www.ecp.gov.pk/Documents/General%20Elections%202013%20report/Election%20Report%202013%20Volume-I.pdf>

⁷ Polyas Election Glossary. Available at <https://www.polyas.com/election-glossary/elections>

⁸ Report on the General Election, 2013. Published by Election Commission of Pakistan; Available at ECP website <file:///D:/D%20Drive-M%20Imran-4%20Oct%2022/Muhammad%20Imran/Publication%20of%20Maryam%20Qasim/Role%20of%20Election/Election%20Report%202013%20Volume-I.pdf>

⁹ Ibid.

The answer of the question, *as to who is eligible to cast vote?* is given through the Constitution; a person who is a citizen of Pakistan can vote if he is not less than 21 years of age and if his name is registered in the voter list in the consequences where he resides and also he is not declared unsound minded by a court of competent jurisdiction.¹⁰ Further, by Section 29 of Representatives of Peoples Act (ROPA), 1976 and subsection 5 of section 7 of Election Act 1974, a person who is detained in prison or in any other custody can cast his vote through Postal Ballot. The reason behind ensuring the casting vote of a prisoner is further emphasizing the importance of casting vote is as under:

At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil marking a little cross on a little bit of paper – no amount of rhetoric or voluminous discusses can possibly diminish the overwhelming importance of the point.¹¹

The election is defined narrowly in Representatives of Peoples Act, 1976 (ROPA), as election means “election to a seat of number held under this Act.¹² To conduct free, fair, honest, impartial and transparent election is the constitutional obligation of the Election Commission of Pakistan (ECP) and before the 22nd Amendment 2016, the Chief Election Commissioner was to be appointed from the Superior Judiciary but now a 22-Grade retired civil servant,¹³ or a technocrat can also be appointed.

¹⁰ Section 26 (2) of Election Act 2017.

¹¹ Sir Winston Churchill made speech in Cabinet Speech on October 31, 194.

¹² Section 2(ix) ROPA, 1975.

¹³ The current Chairman, Election Commission of Pakistan Mr. Sikander Sultan Raja, is a retired civil servant of Pakistan of grade-22.
<https://www.ecp.gov.pk/frnGenericPage.aspx?PageID=22>

The elections in Pakistan have always been marred by rigging allegations except 1971 election.¹⁴ The Election Commission of Pakistan has been entrusted the tasks to conduct fair, free, honest, impartial, and transparent election and to materialize this, all other ancillary measures are to be taken by the ECP viz; delimitation of constituencies, updating voter lists, arrange to hear election petitions. In a democratic step, the ECP has the most crucial task to conduct elections as per the law and Constitution, where peoples have freedom to elect their leaders without any influence and duress, fear, or favor. The election is the gate way of democracy thus fair election has become more important in the growth of the democracy and democratic institutions.¹⁵ The ECP, to cope up with the difficult task, has devised multi-year strategic plan, to start deliberation by all the stakeholders and participatory rounds, the First Strategic Plan was started in 2010-2014 and after completion of this plan the second was initiated in 2014-2018 and consequently the Election Act 2017 was enacted. This Act brought reform in electoral practice and through this enactment, women's 10% voting was assured and ECP was empowered, voting if less than 10% women voting was experienced. By virtue of this Act 2017, the ECP was financially empowered to Registration of votes, for women, minorities and of transgender. These steps are to ensure the election process transparent and fairly held to the growth of democracy.¹⁶ The relevant portion of Faqir Hussain article is as under:

The founding fathers who formulated the Objectives Resolution which was adopted as a preamble to every successive constitution and later on added to the substantive part of the present (1973) Constitution conceived Pakistan to be a democratic polity, governed through the "chosen representatives of the people". The

¹⁴ Abbas, M. [2020 January 26]: 'How elections are Rigged'. *The News on Sunday*. <https://www.thenews.com.pk/tns/detail/603482-how-elections-are-rigged>.

¹⁵ 3rd Strategic Plan 2019-2023, Election Commission of Pakistan. Available at www.ecp.gov.pk

¹⁶ Ibid.

Resolution provides that the State shall use its authority as a “sacred trust” on behalf of and for the welfare of the people. This phraseology indeed furnishes the “normative moorings” of our Constitution, namely that the system of governance must be democratic and representative one, based on the consent of the peoples.”¹⁷

The ECP has chalked out a comprehensive program through the 3rd Strategic Plan of 2019-2023. The ECP has expressed that for fair election it should be remained independent and impartial. The ECP accountability and integrity are important and are the factors to get trust of the most important stakeholder i.e., peoples of Pakistan and their trust on ECP is important for election. The ECP ensured that money, time, and human resources of ECP be efficiently utilized for the benefit of voters and democracy. The ECP is under constitutional command to conduct transparently, freely, fairly, and impartially thus 3rd Strategic Plan of 2019-2023, it was obligated on ECP to conduct election of every tier, whether National, Provincial, Senate and Local government. The ECP, has also ensured to give appropriate role of Women in ECP Staff and all the ECP staff is imparted training for overseeing the election related issues.¹⁸

Pakistan is a member of Commonwealth, and it requires its members to observes true democratic values and norms. To its democratic commitment, whenever military take over Pakistani government, the Commonwealth suspends the membership of Paksitan and revived once democratic and constitutional rule is restored. In 1993 election in Pakistan, on the invitation of the then Caretaker government of Moeen Qureshi, Commonwealth sent its delegation under leadership of Sir Anthony Siaguru Deputy Secretary General (Political).¹⁹ By Terms of References (ToRs), the Group is only to observe independently and assess whether

¹⁷ Ibid at footnote No.39.

¹⁸ Ibid.

¹⁹ The National Assembly Election in Pakistan, 6th October 1993. The Report of Commonwealth Observer Group. Commonwealth Secretariat.

election are held in accordance with the legal framework of Pakistan and in free and fair manners. The Observer Group required to submit its report/findings to Government of Pakistan through Commonwealth. The Observer Group did not mean to supervise the election but only to observe its overall authenticity, impartiality, and fairness and freedom of peoples to choose their representatives without any external pressure.²⁰ The Observe Group after narrating the political skirmishes in the country and successive use of the then Article 58(2)(b) which had in the past, dismantled the democratic governments. The Observe Group concluded its report that the election was transparent, honest, and free and all the main political parties expressed their satisfaction with the arrangements of ECP. The electoral rolls were updated and on polling day except showing is ID cards created minor problem but was ignorable. The role of Armed Forces was exemplary. The Armed Forces presence inside and outside the polling stations ensured peaceful electioneering of polling day and Observer Group foreseen/wished that one day ECP would be able to conduct election without the Armed Forces, efficiently and robustly. Similar deplorable questions were posed in editorial of DAWN of 24th March 2023 but this time on postponing the election by the ECP.²¹ All the political parties in the country participated in the election of 1993 except MQM, they did not accede to the counselling of all other parties and Observer Group as well failed to convince them.²²

2. Historical Background of Elections in Pakistan

Elections in Pakistan have been marred by allegations of *rigging of prepoll, on-poll day and post polling*. The first election in 1951 under the Prime Minister Khan Liaquat Ali Khan, was allegedly rigged by Mumtaz Daultana and the election of East Bengal were considered free and fair, wherein ruling party was lost the election and the election scheduled for 1959, were never held because under the

²⁰ Ibid.

²¹ DAWN, Editorial “Delayed Polls” 24th March 2023 and Controversial Postponement, by Malik Muhammad Ashraf, The News 27th March 2023 at <https://www.thenews.com.pk/print/1054329-a-controversial-postponement>

²² Ibid.

Martial Law of 1958. Two, general elections and one Presidential election between General Ayub and Mohtarma Fatima Jinnah, were held by General Ayub, in 1962 and 1965 respectively through *electoral colleges* of Basic Democrats comprising about 600 and 300 for National Assembly and Provincial Assembly respective and these were rigged with full might of dictator Ayub and he defeated Mohtarma Fatima Jinnah, through these rigged polls – a systemic rigging process was started in these election which is still haunting this nation.²³

The general elections 1970 universally recognized fair and impartial and Bhutto came to power but unfortunately the next elections were held under Bhutto regime were widely alleged rigged, resultantly Pakistan National Alliances (PNA) launched anti-Bhutto movement that culminated in the form of Zia Martial Law. Under Zia military regime, in 1985, non-party basis elections were held, and they were also widely dubbed as rigged and malpractices were registered.²⁴ The elections from 1990 to 2018 after Gen Zia were also rigged and even in one of the elections, the Supreme Court of Pakistan has decided a case of Air Marshal Asghar Khan wherein allegation of involvement by Intelligence Agencies and of establishment was proved.²⁵ The elections of 2013 and 2018 are recent examples of rigging and SC constituted a judicial commission on the election of 2013 which gave a mixed findings.²⁶

Rigging elections in Pakistan is a common phenomenon and it takes place before election, on the polling day, and after completing polling process. As the election is said to be the process of free choice by the people to choose their representatives; conversely the rigging keeps away the true representatives by employing different illegal methods to deprive the peoples to choose their genuine

²³ Ibid at Page 781. Hamid Khan's book.

²⁴ How an Elections was are Stolen: The PDA White Paper on the Pakistan Election 1990, Midasia 1991. Issued by Pakistan Democratic Alliance.

²⁵ Muhammad Asghar Khan v Mirza Aslam Baig – PLD 2013 SC 1.

²⁶ SC form Judicial Commission to probe alleged rigging in 2013 polls. Tribune April 20, 2013. <https://tribune.com.pk/story/866444/judicial-commission-formed-to-probe-alleged-rigging-in-2013-polls>

representatives. Every election in Pakistan has been tainted with grossly abusing the process. In the 1990 election IJI was brought to power with support of the establishment and elections were stolen at massive level. The Pakistan Democratic Alliance (PDA) has levelled allegations countrywide and issued White Paper with proof attached as Appendix with White Papers.²⁷

In Pakistan, administrative machinery of every nature and cadre was used against PDA. One of these machineries was the highest office of Pakistan i.e. Head of the State – the President. PDA pointed out almost nine situations/actions of the President to rigging are includes as, dissolution of Assemblies. In 2018, SC disqualified Muhammad Nawaz Sharif by invoking article 184 (3) and PMLN leaders equated this action as rigging the polls of 2018, appointment of partial caretaker governments, anti-PDA speeches on TV and Press, establishment of Election Cell to monitor and manipulate the election and the controversial Cell was headed by General (Retd) Razaqat, who managed Referendum of Gen Zia, Appointment of acting Judges to the Courts, controversial appointments of Election Commission like Chaudhry Shaukat Ali and Humayun Khan as Secretary and Additional Secretary respectively of ECP, during partial and one sided accountability against PDA members, particularly Benazir Bhutto, the role of President and powerful intelligence agencies in keeping IJI alliance intact and lastly President's office used for arm-twisting of PPP candidates with the threat of accountability. All these tactics were used to rig the election in Pakistan and these tactics are still in the vogue in one or other form.²⁸

Hamid Khan, Senior Advocate Supreme Court, has enlisted some of reasons to rig the polls in the country as; use of government administrative machinery, The government supported candidates are provided every kind of support, provided the transportation, and police show the leniency and Deputy Commissioners provide

²⁷ Ibid footnote No.18.

²⁸ Ibid. Naveed Malik advisor to Prime Minister Nawaz Sharif. The News August 14, 1991, Page 12.

them every kind of support. These are provided before and on polling day rigging. Presiding officers are appointed from the bureaucracy, though RO and DROs are appointed from district judiciary. The presiding officers are directly ordered by DCs and thus they do change the result sheets. The officers are to get pat and benefits from the government, so they cannot deny their illegal orders and thus they deny the voters their true and genuine representation.²⁹ Before establishment of permanent election commission, the government had upper hand of appointing election members, at the time of election and these members are always ready to tow the governments. Now a permanent election commission has been established and tenure of CEC/Members are protected under the Constitution under Article 225, in the manner of superior courts judges, now CEC/members cannot be removed without invoking Article 209 i.e., through Supreme Judicial Council. Still, they are not discharged from their duties as per the law and Constitution. State print and electronic media and private media are hired for running the campaign and thus there is truly little chance for honest and poor candidates to compete with billionaires' candidates and government/establishment supported candidates have leverage over opponent partis candidates.³⁰

3. Legal Framework on Election Commission of Pakistan (ECP) – Article 213

The election is important enough that the ECP has been sanctioned the responsibility in the Constitution of Pakistan 1973. There is a separate Part-VIII consisting of two Chapters where all the matters relating to the elections are to be dealt with in accordance with the law and Constitution. That means the ECP cannot take any action which is not mandated by law and any provisions of the Constitution. In this part, all the matters related, are enlisted.

²⁹ Khan, H. [2022]. '*Constitutional and political history of Pakistan*'. 2nd Edition, Oxford University Press, Karachi – Lahore, page 782-3.

³⁰ Ibid at footnote No.23. And Muhammad Asghar Khan v Mirza Aslam Baig supra.

The Article 213 provides that there shall be an Election Commissioner, who shall be appointed by the President on the recommendation of Prime Minister and Opposition Leader. The original Constitution of Pakistan 1973 provided the President in consultation with Prime Minister but through 8th Amendment, which was brought by General Zia, President assumed the power to appoint in his discretion. The 13th Amendment removed the power to appoint the Chairman, Chief of Staff Committee but the power to appoint Chief Election Commissioner was left to remain. Then by 18th Amendment of 2010,³¹ this power of President was linked to the recommendations of Prime Minister and Opposition Leader in the National Assembly. The Speaker must constitute twelve members of the Parliamentary Committee, comprising 50% from the Treasury and Opposition each. The Prime Minister and Opposition Leader are required to send 3 names, to be chosen by the Parliamentary Committee. The 9 members shall be taken from the Senate and in case of dissolution of assembly, then all the members shall be taken from Senate. The Commissioner shall have to power and functions which are commanded by the law and Constitution.³² To differentiate the presidential discretionary powers. The Supreme Court answered the Presidential Reference in PLD 2013 SC 279. The SC sifted the discretionary power. In case of Commissioner, ECP, It is no more discretionary powers of President to appoint or return for reconsideration, but he has only one option to appoint as recommended and finalized by the Parliamentary Committee. The SC equated this Parliamentary Committee with the Parliamentary Committee set for appointing the Judges of Superior Courts, whose recommendations are binding on President, meaning Presidential discretionary powers are ousted and he does not have any choice other than to appoint the Commissioner and members of Election Commission, considering the recommendation of PC.³³

³¹ This Amendment was passed by all major political parties with an exhaustive deliberation – all parties consensus Amendment which amended more than one hundred Articles of the Constitution, including scrapping the infamous 17th Amendment made by General Pervaiz Musharraf.

³² Rizvi, S.S.R, [2022]: *The Readings: The Constitution of Pakistan 1973*. Volume 4. Published by Manzoor Law Book, 2nd Edition.

³³ Presidential Reference No.01 of 2012 - PLD 2013 SC 279, Para 31.

4. Oath, Terms & Conditions, Protection of CEC/Members and their Removal – Article 214 to 215

Articles 214 and 215 discuss the oath and terms of CEC and members of ECP, respectively. By Article 214, the CEC shall take the oath of his office before the Chief Justice of Pakistan, as mentioned in the Third Schedule and all other members of ECP shall take oath before CEC. Under article 215, the terms of CEC and all members have been fixed for five years and the Constitutional protection has been given at par with the judges of superior courts. The CEC or any member cannot be removed from his office except in the manners provided in Article 209, meaning he can only be removed from office, by the Supreme Judicial Council (SJC)'s findings. The CEC or any members of Commission can resign by writing under his hand and in case of any vacancy is occurred then the most senior in age shall be appointed as Acting CEC and that vacancy shall be filled within forty-five days.³⁴

5. CEC/Members EC Not to hold Office of Profit and Acting CEC Controversy – Articles 216 to 217

The Article 216 requires that CEC member of ECP cannot hold any office of profit and in any office in service of Pakistan which enable them to draw remuneration. According to subclause 2 of Article 216, even he cannot work after completing two years of retirement from ECP. Therefore, they cannot only hold office of profit during the tenure of their ECP but also, they are barred to hold office before completing two years. Article 217 provides for the appointment of Acting CEC; in case of vacancy of CEC, the most senior in age amongst the members shall be appointed as Acting CEC. This provision was amended by the Twentieth-Second Amendment of 2016. Before this amendment in this Article, the President was competent to appoint any Sitting Judge of the Supreme Court of Pakistan as Acting

³⁴ 20th Amendment of the Constitution.

CEC. Mr. Justice Mushtaq Hussain was given additional charge of Acting CEC and this appointment was challenged in *ZAB v The State* case.³⁵ The SC after discussing precedents and Articles 207 and 216 reached the conclusion that there is difference between a permanent appointment and acting (temporary) appointment and it was held that a sitting Judge after completing tenure as Acting CEC, can resume his judicial work and sub-clause 2 of article 216 does not attract in his case.³⁶

6. Establishment of a Permanent EC and Its Core Duties – Articles 218 to 219

The Article 218 as amended of today provides the establishment of a permanent Election Commission having a Chairman (Chief Election Commissioner) and four members for each Province. The qualifications for Chief Commissioner are given in article 213 and for members he should be a retired Judge of High Court, or a retired civil servant of grade-22 as mentioned in Article 213. The article also dictates the prime duty of the ECP, who is to organize and conduct free, fair, and honest elections and safeguard the corrupt practices in connection with the election. The significant aspect of the Article 218 is, it has established a permanent election commission and now one man show of CEC has been over. All the decisions are taken collectively and democratically.³⁷ Article 219 as amended as of today, the members of ECP are under constitutional obligations to prepare the electoral rolls for the election of National, Provincial Assemblies and of Local Governments and to revise periodically but annually.³⁸ To organize and conduct the election of the Senate or if any vacancy is occurred in the National or Provincial Assembly.³⁹ Apart from

³⁵ *Zulfiqar Ali Bhutto v State* - PLD 1978 SC 40.

³⁶ *Ibid.*

³⁷ *Aftab Shaban Mirani v Muhammad Ibrahim* - PLD 2008 SC 779.

³⁸ Sections 26 (1) and 36 of Election Act 2017.

³⁹ *Arshad Mahmood v Commissioner/Delimitation Authority, Gujranwala* - PLD 2014 Lah.

these duties, ECP is also duty-bound to appoint an Election Tribunal,⁴⁰ for disposing of the election related disputes.⁴¹

Every person or officer who is involved in conducting election is to perform in accordance with the law. The Returning Officer (RO) is one of them, who is appointed under section 7 of ROPA, 1976. By section 14 of the ROPA, he is not merely a silent spectator, waiting for anybody to object, but can also act himself and inquire about the qualification and disqualification at the time of nomination paper and can keep check and balance on future leadership. He enjoys enough powers and functions to check corrupt leadership to bar leader of this nation.⁴² The duty of ECP is not only apple-polishing, toying on Government or establishment, and giving fancy briefing before and after election. Rather, it is legally obliged wide duty and powers to exercise. In Workers' Party Pakistan case,⁴³ the SC quoted Javid Hashmi case and ruled that ECP is to play a very significant and meaningful role *before, on and after polling* and dubbed the electioneering a very important aspect of democracy.⁴⁴ By virtue of 18th and 20th Amendments, the strength, powers and independence of ECP, has been enhanced by seeking the role assigned to ECP in a democratic set-up – a foundation role in developing democracy⁴⁵ in the Pakistan.⁴⁶ The followings are the some of the functions of the ECP:

a) **Delimitation of Constituencies**

If we carefully examine the provisions of Part-VIII with precedents, it would be clear that the ECP is not, and cannot be treated as an attached department of

⁴⁰ Section 140 of Election Act 2017.

⁴¹ Section 139 of Election Act 2017 and 2004 YLR 1459.

⁴² Nawabzada Iftikhar Ahmad Khan v Election Commission of Pakistan – PLD 2010 SC 817.

⁴³ Workers' Party Pakistan v Federation of Pakistan – PLD 2012 SC 681.

⁴⁴ Ibid.

⁴⁵ Hussain, Faqir [1994]: 'Access to Justice'. In: PLD 1994 Journal section pp.10-23.

⁴⁶ Ibid at footnote No.37.

Government but it is an autonomous and fully independent Institution and it does not subservient to any Government (Executive Authorities) but conversely all Executive Authorities are placed under the constitutional command to assist the ECP in discharging its noble cause of conducting and organizing fair, free, honest, impartial, transparent election in accordance with the law.⁴⁷

b) Non-Supply of Voter List

The SC held that non-supply of voter list to the election staff and casting bogus votes is disfranchising of voters right and it is violative of Article 218 of the Constitution wherein ECP has been obligated to conduct election justly, fairly, justly and corrupt practices guarded against,⁴⁸ and with bogus electoral list cannot be called genuine and is violative of Constitution.⁴⁹

c) The Voter List Case under Article 219

The ECP is under obligation by Article 219 to prepare electoral rolls for election and it is also under obligation to revise and update the electoral roll annually. The SC on the petition of Imran Khan, it was contended/alleged the electoral rolls of Karachi are not correct and 693 voters are registered in a house of 120 sq. ft, and there are numerous votes which are disfranchised and dislocated from one city or Province to another city or Province. The SC directed the ECP to correct the electoral rolls enabling the electorate to exercise their right to vote and elect their representative with free will. It is pertinent to mention here that SC did not accept the contention of ECP that law and order situation is not conducive for preparing electoral roll, but SC directed ECP for door-to-door counting the voters and executive authorities including Armed Forces of Pakistan re directed to accompany the ECP

⁴⁷ Commentary on Constitution of Pakistan 1973, M. Mahmood, Volume-II, published Al-Qanoon Publishers, Lahore, edition 2017, at Page 1716.

⁴⁸ Muhammad Siddique Baloch v Jahangir Khan Tareen – PLD 2016 SC 97, Para 9.

⁴⁹ Imran Khan v Election Commission of Pakistan - 2012 SCMR 448.

staff for door-to-door counting and correcting the voters lists. The relevant para of SC judgment is reproduced herein under:

“In view of the peculiar security situation in Karachi highlighted hereinabove such verification must be carried out by the Election Commission with the help and assistance of Pakistan Army and FC.”⁵⁰

7. All Executive Authorities and Hiring of Officers and Staff of ECP – Article 220 to 221

Fair and free elections are so important in a democratic system that the Constitution has granted every necessary power to the ECP for this purpose. People send their representatives by their votes, who make laws for the country whether statutory or constitutional. Thus, the importance of ECP be placed upon. The SC while deciding different cases has equated the Article 229 with Article 190, by which all executives and judicial authorities to aid Supreme Court and similarly to assist or to aid ECP in discharging its constitutional duty to conduct election of Houses, Provincial Assemblies and Local Governments, fair, justly, honestly, and impartially and in accordance with law. The ECP is independent to recruit officers and staff for ECP to conduct the purpose and functions of the commission i.e., conducting and organizing the election in the country. The ECP can hire officers and staff with the approval of President of Paksitan.⁵¹

8. Electoral Laws and Conduct of Election – Articles 222 to 226

Chapter 2 of Part-VIII with its title “Electoral Law and Conduct of Election” empowers ECP to allocate Seats and delimitation of National, Provincial Assemblies,

⁵⁰ Imran Khan v Election Commission of Pakistan – PLD 2013 SC 279, Paras 139-140. Syed Shabbar Raza Rizvi, in his Readings: The Constitution of Pakistan 1973, has pointed out that objection that plain reading of the Constitutional provision that “not more than sixty-eight years of age” was escaped by the SC.

⁵¹ Section 5 of ROPA, 1976.

including Local Governments. To prepare electoral rolls and address the objections to the electoral rolls.⁵² The election commission is responsible for conducting the election and appointing Election Tribunals for deciding the election disputes. The ECP is independent to take steps for guarding against corrupt practices that are committed in connection with the election and all other necessary steps that are ancillary to election process before, on and after the election polls. The Parliament, through enactments has made ECP so independent that no one can take away or abridge the powers of the ECP. This is constitutionally prescribed.

On the postponement of election by ECP for October 2023, Dawn editorial of 24th March 2023, delaying of polls as betrayal by ECP and all other department that are concerned.⁵³ The flimsy excuse of non-provisions of security, the editorial posed very meaningful questions as to when the situation will be clear for free, fair, honestly and impartially? And the more important question, when ECP will become in a position to conduct polls without the security establishment? The delaying of poll is blatant slap on Constitution and Supreme Court whose order for conducting polls within ninety-days days is being defied in broad-daylight.⁵⁴ The delaying of poll is

⁵² Hussain, Faqir [1994]. 'Electoral System of Pakistan – Suggestions for Reform'. In: PLD 1994 Journal section pp.86-94.

⁵³ Declaring ECP decision unconstitutional, SC order poll of Punjab on 14 May. The Nation at <https://www.nation.com.pk/05-Apr-2023/declaring-ecp-decision-unconstitutional-sc-orders-punjab-polls-on-may-14#:~:text=ISLAMABAD%20%2D%20Declaring%20the%20Election%20Commission,assembly%20elections%20on%20May%2014>. And Election or Else, The Editorial of DAWN, 5th April 2023 at <https://www.dawn.com/news/1745961/elections-or-else> and On a Collision Course, Zahid Hussain DAWN 5th April 2023 at <https://www.dawn.com/news/1745968/on-a-collision-course>

⁵⁴ Delayed Polls, Editorial, DAWN 24th March 2023 available at <https://www.dawn.com/news/1743931>. Pakistan Bar Council Summons Meeting on Monday to take Stock of “Murky” Political Situation available at <https://www.dawn.com/news/1743864>; Legal Questions, Political Realities, Arifa Noor available at <https://www.dawn.com/news/1743923>; SCBA Slams ECP Move to Postpone Punjab Polls, The News available at <https://www.thenews.com.pk/print/1053359-scba-slams-ecp-move-to-postpone-punjab-polls>; PTI Move SC against election postpone: Imran, The News, at <https://www.thenews.com.pk/print/1053223-pti-to-move-sc-against-election-postponement-imran>, Bad Precedent: Editorial of The News, at <https://thehimalayantimes.com/opinion/editorial-bad-precedent>; Sheikh Rashid Ahmad Moves SC against ECP over Punjab Poll Delay, The News at <https://www.thenews.com.pk/print/1053398-sheikh-rashid-moves-sc-against-ecp-over-punjab-polls-delay>; and Postponing of Poll Unacceptable. Siraj, The News at <https://www.thenews.com.pk/print/1053306-postponing-of-polls-unacceptable-siraj>.

the practice of dictators as General Zia regime in 1977 was reluctant to conduct polls because the popularity of Bhutto was exponentially increasing and was uncontrollable. Zia by any means convinced the PNA leadership and PNA was also confused to conduct election and this Zia postponed election for suitable time.⁵⁵ The most relevant portion of the editorial is reproduced herein below:

So, what will it take for Paksitan to once again be ‘safe enough’ for democracy to prevail? Who will make that call? Will it be the same people who, at the moment, are refusing to provide security to the poll exercise? When did this country make decision-making regarding the electoral process officially dependent on the whims of the security establishment? What happens if, come October, they once again refuse to ‘greenlight’ the poll exercise?⁵⁶

Constitutionally, it is now clear that a member of any House cannot hold more than one seat of any House, let say that of National Assembly, Provincial Assembly or Senate. But Article 223 does not embargo for contesting election for more than one seat but once he is elected, he has to retain only one seat of any House and he has to retain the last winning seat. Articles 224 and 224A are extensions of each other. There are two ways of pronouncing the date of election; firstly, is that once Assembly completes its tenure of five years and secondly if it is dissolved in terms of Articles 58 and 112, National and Provincial Assembly, respectively. In case of completion of tenure, the President or Governor as the case may be, shall give the date for holding election in sixty-days and if the National or Provincial Assembly is dissolved sooner, then the President or the Governor, shall give the date of holding election with ninety-days. In either case, the date is to be given by the President or Governor for National

⁵⁵ Postponement of Elections. Hamid Khan, Constitutional and Political History of Pakistan, Page 447-448. 2nd Edition, Oxford University Press. Karachi-Lahore.

⁵⁶ Ibid. Delayed Polls; DAWN.

and Provincial Assembly respectively and shall appoint the Caretaker governments in Federation and Provincials, respectively.⁵⁷

It is pertinent to mention that by Supreme Court's successive precedents, the mandate of Caretaker governments is very limited to run the day-to-day affairs of the government⁵⁸ and provide every kind of help to ECP for conducting and organizing free, fair, just, and impartial election and nothing else and to leave the government after 90 days or 60 days. The Caretakers are also under restriction that no immediate family members of theirs can contest the election going to be held immediately and the immediate family member has been explained in the Constitution that their spouse and children. Now another controversy has been resolved by the Constitution that who will appoint the Caretaker Prime and Chief Ministers? The article 224A, has resolved this as; in first stage PM and Opposition Leader has to give the name for appointment, but if they fail to reach consensus, then the Parliamentary Committee that is immediately constituted by the Speaker will receive two names from each PM and Opposition Leader and even if it is failed to appoint then the two from each shall be forwarded to the Commissioner ECP and he will finalize the name within two days. The following issues related to ECP are discussed briefly:

a) **Election Tribunal**

The establishment of Election Tribunal has briefly discussed as one of the functions of elections of ECP in Article 219 (C) but a separate article 225 is dedicated for the role of Election Tribunal. By virtue of that article no one challenges the election of Senate, NA, and Provincial assemblies, before any court of law except Election Tribunal. The election Tribunal, and all other steps, shall be taken by the ECP in accordance with the law, meaning that without any enactment of the Parliament, ECP cannot do anything. The nutshell of all the precedents of superior

⁵⁷ Imtiaz Ahmad Kaifi v Government of Punjab - PLD 2013 Lah. 598.

⁵⁸ Syed Hafeezuddin v Province of Sindh through Chief Secretary - PLD 2016 Sindh 63. Section 230 (2) of Election Act, 2017 by which Caretaker shall not take policy decision except on urgent matters.

courts, is that Election Tribunal has exclusive jurisdiction in election petitions, at intermediate stage because interference of courts at this stage, can cause the delay of election process. Since the election is a sacred duty and the right to vote is vital for developing democracy in the any country. The general election has been made by a secret ballot, but the election of Prime Minister and Chief Ministers shall be conducted openly, without a secret ballot.⁵⁹ In this article, it is categorically mentioned that all elections by Constitution shall be held through secret ballot and local bodies lection cannot be excluded from the ambit of this article. The election of two offices has already been excluded expressly by this Article i.e., of PM and CMs. In the Workers' Watan Party case, it has been held:

b) Caretaker Government

The issue of installing Caretaker Governments is resolved now by the Constitution itself. Now, the Prime Minister and Opposition Leader in NA, required to give two names to Parliamentary Committee that is constituted by the Speaker. If PC fails to decide within the stipulated period, then the matter shall be referred to CEC to finalize the names sent by PC and CEC must finalize within two days. In our democratic setup, most of the appointment have been referred to CEC.⁶⁰

9. Recommendation and Conclusion:

If we read all the provisions of Law and Constitution with help of judgments pronounced by the Supreme Court f Pakistan; it is evident that now Election Commission of Pakistan has become independent enough that can discharge its duty to conduct fair, honest, transparent, and impartial election in the country of National

⁵⁹ Muhammad Akram Baloch v Akbar Aksani – 2014 CLC 878.

⁶⁰ Khawaja Muhammad Asif v Federation of Pakistan – 2013 SCMR 1205 and Nemat Ullah Khan v Chairman Governing Body, Workers Welfare Boards/Secretary to Government of KPK Labour Department – 2016 SCMR 1299. Sections 230 & 230 (1) of Election Act, 2017 Caretaker Governments are to assist ECP, and its activities are restricted to day-to-day function.

& Provincial Assemblies, Senate, and Local Bodies. The ECP has been empowered to take all necessary steps to conduct elections in the country and for this noble cause all the Executives Authorities in the country have been placed under the disposal of ECP.

Since, the Pakistani Constitution, through its Preamble and other provisions of it, provides the parliamentary government and Sovereignty over entire University is belongs to Almighty Allah alone this authority shall be exercised by the chosen representatives and for genuine representation, the fair, honest, transparent, and impartial and most important continued election in the country is necessary for the true democracy. The ECP is under legally and constitutionally, obligation to conduct elections in the country.

The Election Commission of Pakistan needs to update voter/electoral list and do proper delimitation and remain impartial and take whatever steps that is necessary for conducting election because ECP is not subservient to any department or is not attached with any department of the country – it is an independent and thus cast a constitutional duty to conduct fair, free, transparent and impartial election in the country so that peoples can send their chosen representatives in the parliament for the betterment of the country and development of democracy.
