An Assessment Of Electoral Reforms In Pakistan (2018-2022)

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Abstract

Free, fair and transparent electoral processes strengthen democratic norms and institutions in a state. Since 2008, Pakistan has held three elections (2008, 2013, 2018), in which power has been successfully transferred from one civilian government to another. However, in recent years, issues regarding electoral reforms in Pakistan have increasingly become divisive and prominent. Serious differences that emerged between Pakistan Tehreek-e-Insaf (PTI) led Government and opposition on electoral reforms raised two major questions? One; why Election Commission of Pakistan raised observations on the use of technology in upcoming general elections? Two; what is the stance of government and opposition on electoral reforms and how it impacts democratic norms? The study is done mostly on the principle of mix methodology. Primary and secondary sources have been critically analysed to understand viewpoints of political elites and examine different obstacles in the way of effective performance of ECP. The article will conclude with the recommendations for smooth and fair implementation of electoral reforms.

Key Words: Elections, Electoral Processes, Election Commission, Electronic Voting Machine, Ivoting

Introduction

In Democratic World, elections which provide the citizens a legal opportunity to elect their representatives through free and fair procedures, are the responsibility of a state. The whole process of elections is conducted within constitutional and administrative framework. The organization or institution entrusted with the responsibility to conduct free and fair election is required to be autonomous, efficient, unbiased and effective. It has to ensure that the electoral processes are conducted in a manner consistent with state election laws framed in

light of the constitutional guidelines. Free and fair elections not only ensure the confidence of public in democracy but also strengthen political and democratic structures. Presently 'electoral reforms' is a subject of heated discussion at all forums between the government and opposition in Pakistan.

The Election Reforms Act 2017 was passed by the National Assembly in August 2017, which was considered a landmark achievement. Section 103 and Section 94 of the new Act mentioned Electronic Voting Machines (EVMs) and internet voting (I-Voting) for

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overseas Pakistanis respectively and legally sanctioned the ECP for pilot testing of the technological devices in the bye-elections (Bari, 2022). The ECP used the Results Transmission System (RTS)—a new electronic mechanism—to relay the results of the General Elections 2018. Almost all political parties complained of "irregularities" during the elections criticising the failure of RTS behind the delay in the release of election results. The ECP maintained that fault in the RTS was a "technological failure" ("Elections Were Transparent," 2018). By the end of 2020, a sharp divergence of views on the use of technology has come to the fore between Pakistan Tehreek-e-Insaf (PTI) led Federal government and the opposition parties which have deepened with the passage of the Elections (Amendment) Act, 2021; and the Elections (Second Amendment) Act, 2021 in a joint session of the Parliament and further intensified since the PTI government has been ousted in April 2022 (Bari, 2022).

The PTI government (2018-2022)recommended about 50 broad amendments through a bill first introduced in 2020 which was passed by the National Assembly, to the existing Election Act 2017 (EA-2017); some of these invited harsh criticism from opposition and even Election Commission of Pakistan (ECP). These recommendations covered wide of amendments to the EA-2017; range however, the most important of these are right of voting to the oversees Pakistanis, use of EVM, delimitation of constituencies, making of electoral rolls, correction to the electoral rolls, political parties registration, inclusion of 20 percent women in the required list of members for enlistment of political parties, inclusion of marginalized class in election in various aspects of electoral process, uploading of election results on ECP website immediately and uploading of legislators assets and liabilities details on ECP website etc. Nevertheless, the use of EVM and I-Voting in general election generated maximum excitement, controversy and news. This also caused fiercest and harshest criticism from opposition as well as concerns from ECP (Mehboob, 2021a). Nevertheless, PTI government took the stance-that the proposed recommendations will be implemented at all costs (Khan & Ansari, 2022).

Literature Review

Electoral reform is a broad concept that covers "improving the responsiveness of electoral processes to public desires and expectations" (Electoral Management, n.d.). Electoral reform processes almost inevitably involve politicians and the greater part of reforms involve elite imposition. Two types of elite-imposed reform are relevant to mention here. In elite majority imposition, politicians prefer the electoral system that will advantage them (Renwick, 2011) where an electoral system is a set of rules governing an election (Electoral Management, n.d.). In elite bargain, politicians reform the electoral system through bargain but those politicians primarily consider their selfinterests (Renwick, 2011). Electoral reforms are the product of negotiations between incumbents and opposition, each of whom aims maximising their seats. Accordingly, electoral reforms are more likely when a political party or a coalition anticipates securing more legislative seats by changing the electoral system. The electoral system is a "product of party politics" and based on three assumptions: the primary actor in electoral systems is political party; each political party is a "unitary actor"; all parties aim to win elections and secure more seats (Díez, 2001). Political parties introduce electoral reforms because the existing electoral system fails to deliver free and fair elections or creates conflicts resulting from disputed elections. In Pakistan, it was lack of trust, transparency and capacity in the electoral system and institutions resulting in disputed elections that triggered electoral reforms. The mainstream parties, PTI, Pakistan Muslim League-Nawaz Faction (PML-N) and Pakistan Peoples Party (PPP) all are "organizationally weak" and periodic and

selective co-option by Pakistan's powerful establishment particularly military has long shaped party politics. It is argued that militarybureaucracy nexus is a "permanent feature" of the party politics defining the goals and means of parties, even engineering elections and shaping media. In this context, an analyst "establishmentarian" refers Pakistan as democracy (Waseem, 2020, p. 272). Review of literature and the proposed recommendations of Federal Government to the Election Act 2017 itself reveal that huge controversy exists between the government and opposition. The ECP has serious reservations regarding these proposed recommendations, some of which according to ECP will undermine its constitutional status. Free and Fair Election Network (FAFEN) is of the opinion that efforts to amend the Election Act 2017 "without a larger political consensus will bring into question the legitimacy of future elections" and may lead to political destabilization that "can potentially reverse the process of democratic consolidation in Pakistan" ("FAFEN Warns," 2021).

Results and Discussion

Election Commission of Pakistan

Article 218 (1) of the Constitution of Islamic Republic of Pakistan, 1973, prescribes the establishment of "permanent Commission" which provides "for the purpose of election to both the houses of Parliament, provincial assemblies and for election to such other public offices as may be specified by the law." The mandate of the Commission as per Clause (2A) and (2B) of Article 213 of the Constitution is to "organize and to conduct elections" of the National Assembly, Provincial Assemblies, the Senate and local bodies "honestly, justly, fairly and in accordance with law." It is also duty of Election Commission to guard against corrupt practices, political interference in elections, to make election rules by the approval of the President of Pakistan; to prepare electoral rolls & rules as to residence of the candidate in the constituency (Article 220 of the Constitution). The Election Commission consists of Chief Election Commissioner and four Commissioners The executive authorities of Federation as well as of provinces are constitutionally bound to assist the Election Commission in the discharging of its functions. Chief Election Commissioner is appointed with the mutual consultation of Prime Minister and Leader of Opposition in the National Assembly, and he holds office for a term of 5 years (Election Commission of Pakistan, n.d.). It is a constitutional requirement that Chief Election Commissioner should be a retired judge/bureaucrat or technocrat. (Saeed et al., 2021).

Elections History of Pakistan: In Pakistan up till now total 12 elections have been held from 1962 to 2018. In first 15 years no elections were held. First elections were held in 1962 and the other 11 elections were held in 1965, 1970, 1977, 1985, 1988, 1990, 1993, 1997, 2002, 2008, 2013 and 2018 respectively. The elections held in 1970 are believed to be the fairest elections of Pakistan. Unfortunately, all other elections brought controversy either in one form or another (Richter, 2019).

Election Reforms before 2018

In 2014, PML-N government decided to initiate the electoral reform process. A Parliamentary Committee on Electoral Reforms (PCER) was constituted under the chairmanship of the then Finance Minister Mr. Ishaq Dar consisting of 34 members from all parliamentary parties. The PCER submitted two interim reports in May and December 2016 to the Parliament (Ali, 2016). The first report proposed the necessary constitutional amendment for appointment of new election commission and second report along with the draft Election Bill 2017, proposed unification of primary legislation governing Pakistan Elections into one Act. The election bill was presented on August 7, 2017 and President of Pakistan signed the bill on October 2, 2017 which became law (Rehman, 2017).

Election Act 2017 (EA-2017)

The Election Act 2017 unified eight different election laws and empowered the Election Commission to operate independently. Further, EA-2017 improved the mechanism for voter registration, campaign and political finance. The ECP issued codes of conduct for contesting candidates, political parties, security personnel, media and observers. The bill envisaged that citizens getting Computerized Notional Identity Card (CNIC) from National Database and Registration Authority (NADRA) would automatically be voters. The Act also contains enabling provisions for Election Commission to conduct pilot project for utilization of EVM, biometric verification and I-Voting by overseas Pakistanis (Khan & Ansari, 2022).

This law rationalized maximum expenses of elections. New limit of expenses is 1.5 million Rupees for election to a seat of Senate, four million for a seat of National Assembly and two million rupees for a seat of Provincial Assembly. Under the Act, functions of caretaker government confined to day-to-day routine matters so that it cannot influence the elections in any form. Political parties were required to allot at least 5 percent tickets against general seats to women candidates ("Election Bill 2017," 2017).

The law also provided for delimitation of constituencies after each census, a speedy dispute resolution system, special measures for enrolment of Women and non-Muslim voters, transgenders, postal ballot for people with disabilities and installation of surveillance cameras in polling stations. The ECP also authorised to summon services of any institution to probe irregularities in asset details. The ECP got powers to set up a transparent 'Results Management System' for swift counting, compiling and dissemination of the election results ("Electoral Reforms Bill," 2017)

Electoral Reforms after 2018

Elections in Pakistan have always been controversial due to allegations and counter allegations of stealing mandate, rigging and manipulation. The losing parties always cry foul and accuse the winning side of tempering with results. In the process, other institutions are also blamed for meddling in favour of a particular party. Successive governments have tried to introduce electoral reforms to address the issues but unfortunately their efforts mostly failed. The 2018 elections are no exception to this. Since then, opposition parties called the incumbent government 'selected' rather than 'elected'. The PTI government tried to incorporate massive electoral reforms to the Elections Act 2017 in order to eliminate the existing loopholes and ensure transparency in the forthcoming elections. However, some of these proposals invited harshest criticism both from the opposition parties as well as ECP. A total of 49 amendments in the existing Amended Election Act 2017 have been proposed. Some of these proposals will have major legal and financial repercussions. Those amendments which have created controversy, excitement and debate among the various stakeholders are mentioned here (Government Unveils," 2021; Yazdani, 2021):

- i. "Article 226 of the Constitution will be amended to hold Senate polls through open ballot."
- ii. Section 11(2) gives more financial autonomy to the Election Commissioner.
- iii. Sections (17 and 20) provides for delimitation of constituencies based on the basis of registered voters instead of population.
- iv. Section 21(5) elaborates that any person aggrieved from delimitation list may file appeal to the Supreme Court.
- v. Sections 24, 26, 28, 34, 36, 42 and 44 dealing with development and maintenance of electoral rolls by ECP be omitted.

- vi. Section 25 states that electoral roll will be the same as registration of NADRA ID data.
- vii. Section 53 mentions that official working within the territorial jurisdiction of respective constituency or tehsil shall not be appointed as polling staff for that constituency and tehsil.
- viii. Section 61 allows increase in nomination fee from Rs.30000 to Rs.50000 for National Assembly and from Rs. 20000 to Rs. 30000 for Provincial Assembly candidate.
 - ix. Section 72 (A) refers to vacation of seat of a returned candidate if oath is not taken within 60 days after first sitting.
 - x. Section 76 (1) relates to appointment of one polling agent for a polling booth not polling station.
 - xi. Section 94 authorises the ECP to ensure voting rights for overseas Pakistanis.
- xii. Section 103 relates to use of Electronic Voting Machine in elections.
- xiii. Section 202 relates to enlistment of political parties based on 10000 members (instead of 2000) including 20 percent women.
- xiv. Section 213 (A) provides for annual convention by political parties.

PTI-Government Stance on Electoral Reforms

The government and the opposition had consistently taken completely different positions on two amendments related to the use of EVMs in future elections and the right to electronic voting to overseas Pakistanis in EA-2017. Pakistan Tehreek-e-Insaf (PTI) led government (2018-2022) was staunch advocate of EVM and insisted upon its use in the election eliminate forthcoming to the possibility of rigging. According to Mr. Fawad Chaudhary, PTI Minister for Information and Broadcasting, enabling the use of EVM in the election to resolve the issue of rigging will be

the first biggest reforms in the history of Pakistan in line with the vision of the then Prime Minister, Imran Khan. Mr. Fawad Chaudhry and Mr. Babar Awan, the Adviser to the Prime Minister on Parliamentary Affairs, presented the prototype of EVM at the Parliament House, Islamabad on May 19, 2021. But a senior official of the ECP claimed that the EVM presented to the Premier was nine years old and "unreliable" (Mohammad, 2021). Similarly, giving voting rights to the overseas Pakistanis was one of the long-standing demands of expat community. Government was of the view that democracy should be seen in the political parties and for this purpose all political parties are required to hold annual conventions and provide opportunity to the members of that party to express their opinion openly at that forum. Mr. Babar Awan said that after coming into power, the PTI government "bore the torch of electoral reforms in the electoral process" ("Government Proposes," 2021). Government also wanted Senate Election by open ballot and stated that for this purpose constitution would be amended accordingly (Giné & Mansuri, 2018).

Opposition Political Parties' Stance

Both mainstream political parties of opposition strongly resisted the use of EVM in forthcoming election. The then Leader of the Opposition from PML-N, Mr. Shehbaz Sharif, **EVMs** "evil termed as and vicious machines" (Mehboob, 2021). The PML-N Secretary Information Marriyum Aurangzeb said her party has rejected the testing of the machine "behind the closed doors without any consultation with the opposition" ("Government, Opposition," 2021). Pakistan Peoples Party also opposed the amendments. Senator Sherry Rehman from PPP accused the government for trying to prepare grounds for pre-poll rigging (Khan, 2021b). Both major political parties raised objections on the right of vote to overseas Pakistanis. Zubair Ahmad of PML-N and former Governor Sindh, asked that how political parties reach out to the overseas

Pakistanis when they are spread around the globe. He further questioned the mechanism of conducting elections for overseas Pakistanis, and appointment of presiding officers and polling agents. Jamaat-e-Islami's Maulana Abdul Akbar Chitrali also opposed the bill ("NA Amends," 2022)

The PML- N also opposed the proposal of delimitation of the constituencies based on registered votes instead of population, for being against the spirit of Article 51 of the Constitution. Mr Zahid Hamid of PML-N argued that delimitation of constituencies based on registered voters will result in disparities as it will be lopsided towards over-populated urban areas. He proposed that the RTS should remain under the exclusive control of the ECP. Security of polling stations should be fortified with installation of surveillance cameras and presence of security officers outside the polling stations. He suggested that political consensus is necessary for electoral reforms to restore the confidence of political parties as well as public (Mahmood & Chawala, 2021).

The ECP Concerns over Electoral Reforms

The ECP has raised serious concerns over the Election Act 2021 and has assessed that many provisions in the bill may dilute its constitutional mandate. Some of the noteworthy observations of ECP are as follow:

- a. Proper legislation is required by the Parliament regarding various practical aspects of giving overseas Pakistanis right to vote e.g., dealing the question of separate seats for them in National Assembly and the kind of voting procedure required.
- b. ECP raised serious observations regarding EVM (i) whether EVM be capable of conducting free and fair elections (ii) whether EVM be operated in various kind of weather and load shedding (iii) how

- transparency, secrecy and accuracy would be ensured and (iv) whether without proper testing, ECP would be able to conduct free and fair elections.
- c. The ECP strongly opposed the delimitation of constituencies based on registered votes not on population as (i) it is against the spirit of the Article 51 (5) of the Constitution which requires delimitation on the basis of population and (ii) it will also increase the number of seats in cities due to temporary address of the people.
- d. The ECP says it will not support the omitting of some sections of the EA-2017 and handing over the responsibility of preparation of electoral roll to NADRA as it is under the control of Federal government and not an independent body.
- e. Election Commission of Pakistan says that under Article 219, registration of voters is the exclusive domain of ECP and the proposed amendments under which the electoral roll will be the same as registration identification data of NADRA will lead to the shifting of power of registration to NADRA (Hussain, 2021).
- f. The ECP says the proposed amendments give powers to NADRA to correct the electoral roll, though it is the constitutional responsibility of election commission to make any correction in the rolls as and when required (Khawaja & Hasan 2016).
- g. The ECP also disagrees with the amendment that increases the number of members from 2000 to 10000 for the enlistment of a political party. It claims that parties from smaller provinces and those functioning in less populated areas may be unable to obtain these figures, which would be discriminatory, although freedom of association should be supported (Hussain, 2021).

h. On overseas voting, four options were proposed by ECP including internet-based voting, postal balloting, online voting at Pakistani missions abroad and postal e-voting. The reserved seats and a separate electoral college for overseas Pakistanis was also proposed (Dilshad, 2022).

The ECP Special Secretary Zafar Iqbal Hussain argued that the Election Commission supports use of technology, "but it must be secured and tested." He suggested that "EVM must not be introduced in undue haste." According to ECP, EVM could not prevent low voters' turnout including, low women's turnout, misuse of state resources and state authority, vote buying, electronic ballot stuffing, the law-and-order situation, unfair polling staff and widespread political and electoral violence (Khan, 2021a).

Elections (Amendment) Act 2022

The PML-N led coalition government after coming to power in April 2022, introduced two amendments in the Elections (Amendment) Act 2022 to revive the Elections Act 2017, thereby removing the use of EVMs and effectively barring overseas Pakistanis from I-voting in the next general elections ("NA Amends," 2022). The National Assembly passed the Elections (Amendment) Act 2022 on May 26 citing that the ECP "faces technical difficulties to embark upon conducting elections as per amended provisions" in EA-2021 for using I-voting and EVMs. The Bill proposed "conducting more pilot projects before using I-voting and EVMs in general elections" ("Electoral Reforms," 2022). Minister for Law and Justice Senator Azam Nazeer Tarar from ruling PML-N said the use of EVMs without pilot projects, was a great "risk" as it required public awareness to use them, additional finances and training of thousands of election staff, steady internet connection and electricity supply in several parts of Pakistan ("NA Amends," 2022). On the right to I-voting for overseas Pakistanis, Mr. Tarar argued that "the government wanted active participation of overseas Pakistanis" and considering a proposal to give them representation, using the party platforms to contest in elections ("Electoral Reforms," 2022).

Election Observers' Opinion

For FAFEN, the differences between the PTI and other political parties will counterproductive for democratic traditions and practices. It was against the political norms to pass the laws in 2021 without any debate in National Assembly. It was also observed that EA-2017 was passed after lengthy discussion and deliberation of almost three years despite political fragmentation. Moreover, FAFEN observed that Election Act 2021 has some major and noticeable amendments, however, political discourse had only been focused on EVM and voting of overseas Pakistanis. The government and political parties should not shift responsibility on the ECP through elusive legislation. Dragging ECP into controversies will undermine the credibility of future election and its outcome. It was also observed that unnecessary criticism of the ECP for giving independent opinion under its constitutional mandate as provided by Article 218 (3) of the constitution is tantamount to disrespecting to the constitution. Concern also arises of the aggressive push of PTI government for introduction of EVM and Overseas voting without adequate legislation, which create complex issues (Rahman et al., 2021).

Pakistan Institute of Legislative Development and Transparency (PILDAT) is also of the opinion that political consensus is crucial for reforms (PILDAT Panel Discussion, 2021). The President of PILDAT, Mr. Ahmed Bilal Mehboob noted that 221 votes were cast in favour and 203 against the motion to move the Elections (Second Amendment) Act, 2021 in the joint sitting of Parliament "indicates a sharp divide not only in parliament but also in society" (Mehboob, 2021). Describing the politics of I-voting, the National Coordinator of Pattan Development Organisation Mr. Sarwar Bari said, it is determined by "who will benefit more from its use?" PTI wants to translate its popularity amongst overseas Pakistanis into a vote bank by providing them with the facility of I-voting. Conversely, for the same reason, the PML-N led coalition government "wants to deprive PTI of this advantage" (Bari, 2022).

Future of Democracy in Pakistan

Pakistan is a functioning democracy in which political parties operate as "contenders of power." There is no democracy without political parties (Waseem, 2020, p. 272). Flawed elections undermine not only civilian governments, but also democratic norms and political parties. Out of 12 elections held so far except the elections of 1970, no election has been recognized as free and fair election. Vast disagreement had prevailed after each election. There has been allegation of rigging, distortion of election process, election engineering, stealing of mandate and Election Commission role was questioned. Along with other multiple

factors, the absence of free and fair elections process is also responsible for weakening of democracy in Pakistan which provides the chance to non-democratic actors to interfere with elections process and manipulate them. Absence of free and fair elections process not only weakens the confidence of the public but also undermines political institutions and democratic culture. Pakistan was classified as "hybrid regime" and placed at the 104th spot among 167 states under The Economist's Democracy Index for 2021. It scored 5.67 in the category of electoral process and pluralism; 3.33 on political participation, 5.36 on the functioning of government and 2.50 on political culture (Piracha, 2022).

The future of democracy depends upon the fair electoral process which provides the citizens a fair opportunity to elect their representatives without fear and increases their confidence on electoral system. Fair election process will eliminate the chances of election engineering and manipulation and foul play of non-political actors. In fact, transfer of power through free and fair elections would facilitate democratic consolidation following the return to civilian rule in 2008. Strengthening of Election Commission, fair electoral reforms with consultation of all major political parties, ECP, civil society and election observers is required to be placed for thorough discussion before the Parliament. The ECP should be strengthened to extent that it can implement its decisions regarding conducting and regulating of election. One fair election will set the course for full fledge democracy and will get rid of this concept of "hybrid" or "establishmentarian" democracy. In this regard, maturity of political parties, particularly of their leaders and positive approach towards democratic culture development and resolving political issues through democratic ways will play a vital role.

Conclusion

The preceding paras show that there are serious differences amongst political parties on the issue of electoral reforms. PTI government

brought the amendments through joint session of Parliament in 2021 without thorough debate and consultation which weakens democratic norms. Similarly, though the Election Act 2022 has been passed by National Assembly but still no consensus seems to be developed on some major issues included in the proposed election reforms. Government is adamant to its stance of bringing these amendments while PTI, now major opposition party has serious observations over some clauses of important nature. If the situation is not handled wisely, it will not bode well for future of democracy in Pakistan.

Recommendations

- Keeping in view the far-reaching consequences of electoral reforms, government should come forward to build political consensus over the package of amendments to ensure credibility of election reforms and future electoral process.
- ii. Political parties should develop the consensus as to whether the current bill should be placed before all provincial assemblies for discussion or need further deliberation.
- iii. The government as well as political parties should avoid dragging the ECP into controversies.

 Unnecessary criticism by politicians which tantamount to disrespecting of ECP should be dealt in according with the law.
- iv. Matters need to be resolved at parliament level should not be settled at the platform of media.
- v. Political parties should support amendments like political parties' registration, election to the Senate by open poll after proper legislation and strengthening of ECP.

vi. Separate and proper legislation may be carried out for introduction of EVM and I-voting for overseas Pakistanis.

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