



Introduction

Power belongs to the people-a truism that lies at the very foundation of any democracy. The will of the people must, therefore, prevail. This is the basis and also the regulating and sanctioning force behind functioning of a democratic state.

In a modern democracy, the will of the people is realized and ensured through the instrument of elections so as to make certain its genuine reflection in the composition of all law making bodies and other offices and institutions.

It is not difficult to understand, therefore, that truly representative legislatures, parliament, all other elective bodies, offices, institutions etc. must come into existence following free, fair, impartial and totally transparent elections. It is a well-acknowledged and universally accepted principle that genuine elections are an essential pre requisite_ a sine qua non_of a viable democracy.

Needless to say that the absence of fairness and transparency in elections not only deprives the people of their choice of representatives but in the garb of democracy tends to promote and protect authoritarian and monopolistic systems representing some vested interest. In the long run, as a natural result, tampering and manipulation of elections, strengthens vested interest leading gradually to the creation of social, economic and political inequalities. In fact it gives rise to a general belief that elections are engineered or stolen to maintain and perpetuate such inequalities. A scenario like this usually leads to a more harmful consequence- a general apathy, distrust in the system that can ultimately lead to lack of confidence and interest in democratic institutions. This, indeed, could be fatalistic to the vitality and growth of democracy-slow poisoning if one may add.

Conditions in Pakistan, prevailing so far have not been very encouraging in this regard. The first general election in Pakistan, held on the basis of universal adult suffrage, through direct participation of the people of Pakistan was held in 1970. It was, and is still regarded, as the fairest and the most transparent elections ever held. The 1970 elections won accolades and admiration from its participants and also observers including foreign media.

However, general elections held after 1970 failed to impress and inspire. None of these elections (seven in all) is regarded as a replay of 1970. In fact, the reaction of the people is the opposite, by and large. Instead of attracting any compliment, elections held in Pakistan after 1970 have remained controversial or to say the least failed to inspire any belief as to their credibility.

Cognizant of the importance, sensitivity and seriousness of this problem, the Peoples Institute of Democracy (PID)- a branch organization of Shaheed Bhutto Foundation with its head office in Peshawar-undertook the task of examining this matter and prepared this booklet.

Important features of this exercise include a survey of constitutional and legal framework governing elections in Pakistan. It briefly examines various malpractices through which elections have been stolen in the past at different stages; namely:

- i) Pre-poll rigging
- ii) Mid-poll rigging; and
- iii) Post-poll rigging.

Lastly, in the light of past experience some suggestions have been offered on how to prevent the stealing of elections and manipulating the will of the people.

This exercise is by no means fully comprehensive but is a step in the right direction to generate public debate in an election year. The purpose of the PID would have

been achieved if it generates a lively public debate that leads to suitable changes in the election laws for making the electoral process truly credible and acceptable to the people.

Professor Abdul Ghafoor

Former Vice Chancellor
University of Peshawar
Pakistan.
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Imperatives of Free and Fair Elections

Fair elections are critical for institutionalising democracy. People lose faith in the system when elections are stolen and power transfer is manipulated. Indeed the most critical political problem faced by the country is how to stop manipulated power transfer.

The electoral system of a country therefore must be such designed so as to organize free, fair and impartial elections without any illegality at any stage of the polling. Polling must not only be free and fair but also must be perceived as such.

Stable democratic systems are ensured by fair elections. Countries that fail to make certain free and fair elections often fail to establish stable democratic systems and are engulfed in political turmoil. As a matter of fact it is a self sustaining cycle; fair elections help keep a democratic system based on strong institutions in place which in turn help sustain the democratic system itself. In all fair elections candidates must compete in the electoral contest, without restraint and coercion, on a level-playing ground, on the basis of adult franchise and without any discrimination against any particular party or group.

Fair elections require democratic institutions to begin with. Four democratic institutions that play a crucial role in free and fair elections can be identified as follows;

1. Democratic Constitution
2. Independent judiciary
3. Independent Election Commission
4. Strong literate civil society, organized political parties and vibrant media.

The motivation or capacity of any government to manipulate or rig elections will be considerably weakened if these democratic institutions are strong and

are functioning properly as required or expected of them.

Elections have often been manipulated and rigged through what may be called system or institutional rigging.

A system rigging has been achieved through;

- Suspending constitutional framework
- Curbing the right to vote
- Curtailing the independence of judiciary
- Denying parties to participate in polls (party less elections)
- Banning political parties from political activities
- Slashing the powers and autonomy of the Election Commission.

The strains of one or more of these system rigging devices can be seen in the electoral history of Pakistan.

But system rigging is not the only form of manipulating the will of the people. There are also the pre-poll rigging, the polling day rigging and the post-poll rigging in the elections. In the pre-poll rigging the administration seeks to influence the outcome of elections through means that do not always appear to be violating the law.

The pre-poll rigging tactics include the following;

1. Arrest and intimidation of opposition leaders on unrelated charges.
2. Disqualifying opposition candidates through the use of discriminatory accountability.
3. Use of state resources by announcing development schemes in constituencies of preferred candidates.
4. Overt use of state machinery in favor of a particular group as witnessed in 1988 elections

with the formation of IJI using state resources and machinery. (The case is pending before the Supreme Court).

5. Delimitation of constituencies in an arbitrary manner that favors a certain individual, group or Party to the obvious disadvantage of the other.
6. Breaking up of the districts and tehsils disregarding the provisions of the Local Government Ordinance as was witnessed in the last LB polls when the bifurcation of Rawalpindi, Sibbi and Ghotki were declared null and void by the respective High Courts.
7. Use of public media to white wash the official candidates and paint black the opponents.
8. Shuffling of state's officials to ensure that pliant ones are posted in critical areas.
9. Making of bogus identity cards of ineligible or non-existing voters for possible use on Election Day.
10. Manipulations in preparation of electoral rolls and allotment of election symbols. Instances have not been uncommon where the presiding officers are given old lists while the candidates given the new lists. Through this manipulation millions have been left out from voting.
11. Open Violation of the Code of Conduct and the perception that the Election commission has not been able to stop it.

Polling day rigging

It is often achieved by use of force, intimidation and even downright fraud.

The measures adopted often include;

1. Harassment and intimidation of polling agents.
2. Obstructing the workers of the opposition.
3. Ejecting the agents from polling stations.
4. Casting bogus votes with the help of conniving officials.

5. Delayed polling.
6. Shifting of polling stations.
7. Go slow tactics followed by armed gangs forcibly occupying the polling stations at the end of the day.
8. Forcibly keeping the disadvantaged groups such as women and minorities from voting as happened in parts of Frontier (in case of women) and in Sukkur in Sindh (in case of minority voters).

Eminent social scientist Dr. Inayatullah in his book 'State and Democracy in Pakistan' classifies the Election Day malpractices into two broad categories; those based on fraud and those based on coercion.

The first includes casting bogus votes by using fake identity cards and multiple casting, providing a supplementary list of voters to the polling staff and agents of one candidate but not to the other, shifting polling stations from their usual sites without informing the Opposition and its voters, creating in some constituencies "ghost" polling stations not known to anyone except a particular candidate or his agents where, with the connivance of official machinery, the agents of one candidate would stuff the ballot boxes in his favour.

In the second category force is used to create insecure conditions so that the voters of opposing candidates are prevented from reaching the polling stations. The polling stations are forcibly occupied and taken over; ballot papers are snatched from the polling staff and stamped in favour of the particular candidate. Sometimes the polling staff forces the voters to stamp ballots in their presence in favour of a particular candidate. It also includes resort to arrests, kidnapping and forcibly evicting polling agents or candidates of the Opposition party, particularly at the time of vote-counting in an atmosphere of no check during the casting and counting of bogus votes.

Post-poll rigging

It is based on pure fraud and include;

1. Stuffing the ballot boxes with bogus votes either at the polling station or during transit of the boxes from the Polling officer to the Returning Officer.
2. Manipulation in postal ballots.
3. Withholding the polls results.
4. Local officials declaring a preferred result even without a proper count.

Free and fair elections in a country also depend on the level of democratic development in the society. Fair elections become all the more difficult when the structural and cultural roots of democracy are weak in a society. Persistent failure to hold fair elections further weakens democracy that further diminishes prospects for fair and free elections.

Constitutional and Legal Framework for Elections

Part VIII of the Constitution comprising of two chapters and fourteen Articles (from 213 to 226) deal with the Chief Election Commissioner the Election Commissions and the Electoral Laws and conduct of elections. It is significant to note that while the Parliament has powers to make laws for the conduct of elections and election petitions, it is barred under Article 222 from making laws which shall have the effect of taking away or abridging any of the powers of the Chief Election Commissioner or any Election Commission. Thus even the Parliament cannot make laws with respect to subjects mentioned that seek to curtail the powers of CEC.

Article 6 of the Election Commission Order, 2002 has empowered the Commission to issue such directions and orders as may be necessary for the performance of its

functions and duties, including an order doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any documents. The orders and directions of the Commission were enforceable throughout Pakistan and were to be executed as if these had been issued by the High Court.

The following are the Constitutional provisions covering the Chief Election commissioner and the conduct of elections.

Constitutional Provisions:

Part VIII

Elections

Chapter 1. —Chief Election Commissioner

And Election Commissions

213. (1) There shall be a Chief Election Commissioner (In this Part referred to as the Commissioner), who shall be appointed by the President [in his discretion].

(2) No person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified under paragraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court.

(3) The Commissioner shall have such powers and functions as are conferred on him by the Constitution and law.

214. Before entering upon office, the Commissioner shall make before the Chief Justice of Pakistan oath in the form setout in the Third Schedule.

215. (1) The Commissioner shall, subject to this Article, hold office for a term of three years from the day he enters upon his office:

Provided that the National Assembly may by resolution extend the term of the Commissioner by a period not exceeding one year.

(2) The Commissioner shall not be removed from office except in the manner prescribed in Article 209 for the removal from office of a Judge and, in the application of the Article for the purposes of this clause, any reference in that Article to a Judge shall be construed as a reference to the Commissioner.

(3) The Commissioner may, by writing under his hand addressed to the President, resign his office.

216. (1) The Commissioner shall not-

(a) Hold any other office of profit in the service of Pakistan; or

(b) Occupy any other position carrying the right to remuneration for the rendering of services.

(2) A person who has held office as Commissioner shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office:

Provided that-

- (a) This clause shall not be construed as preventing a person who was a Judge of the Supreme Court or of a High Court immediately before his appointment as Commissioner from resuming his duties as such Judge on the expiration of his term as Commissioner; and
- (b) A person who has held office as Commissioner may, with the concurrence of both Houses, be reappointed to that office before the expiration of two years after he has ceased to hold that office.

217. At any time when-

- (a) The office of Commissioner is vacant, or
- (b) The Commissioner is absent or is unable to perform the functions of his office due to any other cause,

a Judge of the Supreme Court nominated by the Chief Justice of Pakistan shall act as Commissioner.

218. [(1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election of such other public offices as may be specified by law or until such law is made by the Majlis-e-Shoora (Parliament) by Order of the President, a permanent Election Commission shall be constituted in accordance with this Article.]

(2) The Election Commission shall consist of-

- (a) The Commissioner who shall be Chairman of the Commission; and

(b) [Four] members, each of whom shall be a Judge of a High Court [from each Province], appointed by the President after consultation with the Chief Justice of the High Court concerned and with the Commissioner.

(3) It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

219. The Commissioner shall be charged with the duty of-

- (a) Preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually;
- (b) Organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly; and
- (c) Appointing Election Tribunals.

220. It shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions.

221. Until [Majlis-e-Shoora (Parliament)] by law otherwise provides, the Commissioner may, with the approval of the President, make rules providing for the appointment by the Commissioner of officers and servants to be employed in connection with the functions of the Commissioner or an Election Commission and for their terms and conditions of employment.

Chapter 2. —Electoral Laws and Conduct of Elections

222. Subject to the Constitution, [Majlis-e-Shoora (Parliament)] may by law provide for-

- (a) The allocation of seats in the National Assembly as required by clauses (3) and (4) of Article 51;
- (b) The delimitation of constituencies by the Election Commission;
- (c) The preparation of electoral rolls, the requirements as to residence in a constituency, the determination of objections pertaining to and the commencement of electoral rolls;
- (d) The conduct of elections and election petitions, the decision of doubts and disputes arising in connection with elections;
- (e) Matters relating to corrupt practices and other offences in connection with elections; and
- (f) All other matters necessary for the due constitution of the two Houses and the Provincial Assemblies;

But no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or an Election Commission under this Part.

223. (1) No person shall, at the same time, be a member of,

- (a) Both Houses; or

- (b) A House and a Provincial Assembly; or
- (c) The Assemblies of two or more Provinces;
or
- (d) A House or a Provincial Assembly in respect of more than one seat.

(2) Nothing in clause (1) shall prevent a person from being a candidate for two or more seats at the same time, whether in the same body or in different bodies, but if he is elected to more than one seat he shall, within a period of thirty days after the declaration of the result for the last such seat, resign all but one of his seats, and if he does not so resign, all the seats to which he has been elected shall become vacant at the expiration of the said period of thirty days except the seat to which he has been elected last or, if he has been elected to more than one seat on the same day, the seat for election to which his nomination was filed last.

Explanation: - In this clause, "body," means either House or a Provincial Assembly.

(3) A person to whom clause (2) applies shall not take a seat in either House or the Provincial Assembly to which he has been elected until he has resigned all but one of his seats.

(4) Subject to clause (2), if a member of either House or of a Provincial Assembly becomes a candidate for a second seat, which, in accordance with clause (1), he may not hold concurrently with his first seat, then his first seat shall become vacant as soon as he is elected to the second seat.

224. (1) A general election to the National Assembly or a Provincial Assembly shall be held within a

period of sixty days immediately [following] the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and the results of the election shall be declared not later than fourteen days before that day [:]

[Provided that on dissolution of an Assembly on completion of its term, the President, in his discretion, or, as the case may be, the Governor, in his discretion but with the previous approval of the President, shall appoint a care-taker Cabinet.]

(2) When the National Assembly or a Provincial Assembly is dissolved, a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the results of the election shall be declared not later than fourteen days after the conclusion of the polls.

(3) An election to fill the seats in the Senate which are to become vacant on the expiration of the term of the members of the Senate shall be held not earlier than thirty days immediately preceding the day on which the vacancies are due to occur.

(4) When, except by dissolution of the National Assembly or a [general] seat in any such Assembly has become vacant not later than one hundred and twenty days before the term of that Assembly is due to expire, an election to fill the seat shall be held within sixty days from the occurrence of the vacancy.

(5) When a seat in the Senate has become vacant, an election to fill the seat shall be held within thirty days from the occurrence of the vacancy.

[(6) When a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant, for death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates submitted to the Election Commission for the last general election by the political party whose member has vacated such seat.

(7) When a care-taker Cabinet is appointed, on dissolution of the National Assembly under Article 58 or a Provincial Assembly under Article 112, or on dissolution of any such Assembly on completion of its term, the Prime Minister or, as the case may be, the Chief Minister of the care-taker Cabinet shall not be eligible to contest the immediately following election of such Assembly.]

225. No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of [Majlis-e- Shoora (Parliament)].

226. All elections under the Constitution shall be by secret ballot.

Legal Framework

The legal framework for elections to the Parliament and the Provincial Assemblies held in 2002-2003 differed in many ways from the legal framework of general elections held previously. It was different because the 2002 elections were held when the Constitution had been held in abeyance and a Legal Framework Order (LFO) was put in place.

The following are the various laws and orders that governed the conduct of general elections in 2002 and which have since been indemnified at the time of adoption of the 17th Constitutional Amendment.

**The Election Commission Order, 2002
(Chief Executive's Order No. 1 of 2002)**

1. Promulgated on 16th January 2002 this order provided for the appointment of the Chief Election Commissioner and the formation of Election Commission. As the Constitution had been held in abeyance since 1999, the appointment of the Chief Election Commissioner and Members of the Election Commission were made under this law.

**The Conduct of General Elections Order, 2002
(Chief Executive's Order No. 7 of 2002)**

2. Promulgated on 27th February 2002 this was the basic law for holding of General Elections, 2002-2003. The Conduct of General Elections Order, 2002, also contemplated under section 8G of the Order that the elections held under this Order were deemed to have been held under the Constitution.
3. The number of seats in the National Assembly, four provincial Assemblies and the Senate were increased under this order. The seats for Women and Non-Muslims in the National Assembly and the four Provincial Assemblies were also reserved as well as four seats for Women in the Senate from each Province.
4. The provision of joint electorate for elections to the National Assembly and Provincial Assemblies as

against system of separate electorate and reducing minimum age of voter from twenty-one to eighteen years was made under Order.

5. The qualifications and disqualifications of members of Parliament and Provincial Assemblies were provided under Article 8D of the Order. Under Article 8A, inserted vide Chief Executive's Order No. 17 of 2002, dated 24th June, 2002, a person was not qualified to be elected or chosen as member of Parliament or a Provincial Assembly unless he/she had a bachelor degree (B.A) in any discipline or any degree recognized as equivalent by the University Grants Commission under the University Grants Commission Act, 1974 (XXIII of 1974) or any other law for the time being in force.
6. The Political Parties Act, 1962 and the Political Parties Rules, 1986 were repealed by the Political Parties Order, 2002 and the Political Parties Rules, 2002, respectively.

The following are the various election related laws that served as the legal basis for the conduct of General Elections, 2002-2003:

1. The Electoral Rolls Act, 1974 (Act. No. XXI 1974)
2. The Delimitation of Constituencies Act, 1974 (Act No. XXXIV of 1974)
3. The Election Commission Order, 2002. (Chief Executive's Order No. 1 of 2002)
4. The Conduct of General Elections Order, 2002. (Chief Executive's Order No. 7 of 2002)
5. The Political Parties Order, 2002 (Chief Executive's Order No. 18 of 2002)

6. The Political Parties Rules, 2002
7. The Representation of the People Act, 1976 (LXXXV of 1976) as amended Vide Ordinance No. XXXVI of 2002, dated 31st July, 2002
8. The Representation of the People (Conduct of Election) Rules, 1977 as amended vide Ordinance No XXXVI of 2002, dated 31st July 2002.
9. The Allocation of Symbols Order, 2002
10. The National Assembly and Provincial Assemblies Allocation of Reserved Seats for Women and Non-Muslim (Procedure) Rules, 2002
11. The Senate (Election) Act, 1975 (No. LI of 1975)
12. The Senate (Election of Members from the Federal Capital) Order, 1988 (P.O No. 3 of 1988)
13. The Senate (Election of Members from the Federally Administered Tribal Areas) Order, 2002 (Chief Executive's Order No. 40 of 2002)
14. The Senate (Election) Act, 1975 (No. LI of 1975) as made applicable to the Federally Administered Tribal Areas vide Notification No. S.R.O. 746(1)/75, dated 7.7.1975
15. The Senate (Election) Rules, 1975
16. The Senate (Election) Rules, 1975, as made applicable to the Federally

Administered Tribal Areas vide Notification SRO747 (1)/75, dated 7.7.1975

17. The Election Commission Order, 2002 was amended on 27th February, 2002 vide Chief Executive's Order No. 8 of 2002. Article 7A was added which provided that all electoral laws, orders, Acts, Ordinances and Regulations, Rules, Notifications and Instructions issued there under for the time being in force and amended from time to time shall form part of the Election Commission Order, 2002. Similarly, Article 7B regarding officers and servants of the Commission and Articles 9A to 9F were also added, providing delegation of powers by the Commission, directions of Commission in certain matters, bar of jurisdiction of the Courts against the Election Commission, protection of actions taken in good faith, etc.
18. Article 8E of the Order provides that any person or authority may object to the candidature of a person, who has submitted nomination papers or whose name has been included in the party list submitted by a political party for election to a seat in the Majlis-e-Shoora (Parliament) or a Provincial Assembly, before the Returning Officer within the period specified by the Election Commission for scrutiny of nomination papers of candidates contesting elections.
19. CE Order # 19 of 2002 (Qualifications to hold Public Office Order)

Critical Issue

The critical issue is making the electoral process transparent is not just the powers of the Election Commission but also to enable and let it use its powers already available to it.

Since 1957 the EC's powers have expanded continuously. In 1977 its directives were made enforceable throughout Pakistan as if these were issued by High Courts. In October 1988 it was given powers to suspend public official who obstructed fair elections. During the 1997 elections it empowered the Tribunals for hearing election petitions with suo moto powers to debar a candidate for concealing information that enabled him to get his nomination papers accepted.

The issue really is not the powers of the Commission but the manipulation of laws and not letting the EC exercise its powers. Some recent examples of how laws have been manipulated are;

- a. An order called the CE Order # 19 of 2002 (Qualifications to hold Public Office Order) had been issued providing for the qualifications to hold certain public offices. It read:

"2. Qualifications to hold certain public office; Notwithstanding anything contained in the Constitution or any other law for the time being in force, a person who has, at any time, held the office of the Prime Minister, or that of a Chief Minister of a Province or a combination of such offices for two terms, irrespective of whether any one of the two or both the terms of office were completed or not, shall not be qualified to hold the office of the Prime Minister or that of a Chief Minister".

However, when this Order stood in the way of Mir Zafullah Khan Jamali to be elected as the Prime Minister, a way was found to circumvent its provisions enabling Jamali to contest and get elected as the Prime Minister.

- b. On August 13, 2002 the Election Commission issued a notification based on sub clause 3 of Article 218 of the Constitution and Article 6 of the EC Order 2002. It stated that:

"The EC is pleased to issue directions to the Returning Officers that Nomination Forms of the sitting Governor of any Province, Federal Ministers or Provincial Minister should not be accepted for elections to any National Assembly or a Provincial Assembly Constituency or the Senate of Pakistan unless and until they relinquish the charge of their offices".

However, on July 8, 2004 it issued another notification declaring that the notification of August 13, 2002 has become inoperative. It has been criticised because it was done just a day before the last date of nomination for Attock bye election that enabled Shaukat Aziz to contest elections while still a sitting federal minister. The basis for rescinding the notification was given out to be that the law, which governs the conduct of elections, is the Constitution, conduct of General Elections Order 2002 and the Representation of the Peoples Act, 1976.

- c. In December 2004 section 9 of the PPO was deleted.

Its stated objective was: "To remove restrictions on holders of elected public offices, problems and complications for the smooth working of the political parties and in strengthening the democratic process".

Critics say that it was done to enable the sitting chief ministers also hold party offices.

- d. Under the Qualifications of Holders of Public Office Order 2000 whereby a person who is convicted in absentia was debarred from becoming a head of political party and also under article 63 (p) of the Constitution debarred from contesting elections. People termed it **Opposition Specific**.
- e. The Article 63 (A) called the 'disqualification on grounds of defection' **was held in abeyance** till the parties were broken and defections encouraged.
- f. It is ironic that in the run up to the Grand Deal 2003 validating the take over and the new constitutional dispensation the need for an independent EC was not even considered.

Electoral Reforms Package

Following are some suggestions for electoral reforms.

1. Caretaker government

The present regime that has assumed all embracing powers through the 17th Amendment cannot be expected to hold free and fair elections. It has been announced that the next elections will be held under a caretaker set up which is better than holding elections under the present dispensation but it is not the same as elections under an interim set up of **national consensus**.

Elections need to be held under an interim government of national consensus as in Bangladesh.

In Bangladesh an interim government is formed comprising of the Chief Justice and other retired judges to hold elections and hand over power to the majority party. No member of this caretaker government, which may only hold office for 90 days, can contest the general election.

2. No Role for Intelligence Agencies:

State agencies in the past have played a major role in manipulating elections. How a premier intelligence agency was involved in making and unmaking political alliances during the 1988 elections using public funds to keep a certain political party in check has now been admitted by the then head of the Agency himself in an affidavit that is before the Supreme Court.

All intelligence agencies must be barred by law from meddling in elections, making and breaking of political alliances and declaring it a criminal offence, triable in a Court of Law, for any agency or military official found so involved.

The political wing in the ISI should be disbanded.

The Election Commission should have the powers to pay surprise visits to all monitoring centres set up by military and agencies which should also be open to scrutiny and monitoring by civil society organizations.

3. Election Commission of Pakistan:

The Election Commission has been entrusted with the responsibility under the Constitution to conduct elections, " honestly, justly, fairly and in accordance with the law and [ensure] that corrupt practices are guarded against". However it has not only been disallowed to perform its functions but it appears

that at times it was made to collude with the state's objective of manipulating election.

To ensure free and fair elections:

- a. The members of the Commission should be neutral people not necessarily retired judges of superior courts. Members of the Election Commission may preferably be also drawn from the Human Rights Commission of Pakistan, Jurists of repute and other credible representatives of civil society organizations.
- b. The Election Commission must have complete financial and administrative autonomy.
- c. The powers of the President to appoint CEC in his discretion should be done away with. Preferably the candidate for CEC must not have been in active judicial service or has held an office of profit for a period of two years.
- d. Alternatively to make it transparent and automatic the CEC shall be the last retiring Chief Justice of the Supreme Court and his appointment should both be seamless and automatic.
- e. Or, the approval of the appointment of CEC and judges as members of the Commission be given by the Senate.
- f. The CEC and Members should be appointed for a fixed term of four years who may not be eligible for appointment to any other office after expiry of his term.
- g. An Acting CEC should conduct no election.

- h. A candidate for membership of Election Commission must be qualified to serve as a senior judge and not necessarily be a serving judge. He/She need not be a former member of the judiciary and must be free of political controversy if he/she has held public office previously.
- i. In case of members of the Commission from the judiciary they should automatically be the most recently retired chief justices of the high courts as well as the most recently retired presidents of the provincial bar associations from principal seats.
- j. Or, the approval of judges as members of the Election Commission be given by the Senate.

4. Senate Elections:

To prevent horse-trading, the Ballot for Senators' election should be open, or on the principle of priority list of candidates submitted by a Party or group on the basis of the votes credited to the largest fraction.

5. Qualifications Criteria:

The qualification criterion of candidates is one of the methods used to keep key players out of the electoral contest. In the 2002 election candidates were required to be college graduates or certificate holders of certain madrassahs without regard to the standards laid down by the Higher Education Commission, generating controversy.

The academic qualifications criterion needs to be reviewed.

The provision devised for the 2002 election barring candidates that have held Prime Minister's office

twice appears arbitrary, malafide and is a denial of the supremacy of the masses. It ignores the fact that no candidate since 1988 has been allowed to complete full term as Prime Minister.

The provision needs to be repealed.

6. Monitoring:

In view of the contentious nature of elections in Pakistan due to growing state control there is need for a non-partisan monitoring body that can oversee election to all seats.

NGOs, bar bodies and other civil groups should be allowed to witness and monitor the electoral process.

While the Carter Foundation [USA] provides a valuable example for local non-partisan observer groups to model themselves on, a more useful organization to look at might be the Fair Election Monitoring Alliance **[FEMA]** in Bangladesh. FEMA was established in 1995 as a non-partisan coalition of over 200 local development organizations led by prominent citizens to consolidate democracy through; **a)** Election monitoring **b)** Voter education **c)** Election law reform. It has subsequently built a framework of local chapters at each of the 64 administrative districts in the country. It credibly monitored not only the last general election, but also each by-poll and the local government election.

Independent human rights bodies could be tasked to set up such a monitoring infrastructure with international assistance.

7. Simultaneous Poll:

Polls for the National and Provincial Assemblies have been held one after the other, with the result that

the winning party in the NA poll tends to tip the scales in the Provincial election, which is held later.

The elections to the National Assembly and the Provincial Assemblies should be held on the same day.

For this purpose the ballot papers for the NA will have to be in different colour than that of the Provincial Assembly.

8. Multiple Identity Cards:

The requirement of the NIC (National Identity Cards) as the single source of identification has led to abuse of the process. Identity cards forged by impostors leave little option for the real voter to challenge the forgery. NICs have also been seized by powerful mafias and rivals in some constituencies leaving the genuine voters unable to exercise right to vote.

A multiple-identification process needs to be adopted to prove the identity of the voter when challenged. Any form of identification valid under the law, such as driver's license, passbook, passport, and gun license may be accepted.

Also, the renewal condition of the NICs imposes a severe fiscal and mobility burden on poor people. The NIC should have life long validity as has been the case before 1999.

9. Delimitation of Constituencies:

Constituencies should be compact and of a uniform voter-strength. Anomalies detected in the past elections, particularly those related to gerrymandering, must be judicially probed and duly rectified.

The practice of carving up districts in order to break established constituencies of political rivals must be stopped forthwith.

Perhaps a thought can be given to set up a Boundary Commission on the UK model to restore constituencies on a non-ethnic and non-parochial basis.

10. Pre-Poll Rigging:

In the 2002 general election, state resources were deployed on an unprecedented scale to ensure the success of some candidates. Staff cars, offices and other resources of the government were openly pressed into service of the campaign effort of one party.

The Government also announced several concessions and other development plans on the eve of general election and by-election campaign, distorting completely the level playing field expected from a free, fair election.

A strict ban on the use of state resources for election campaigning must be imposed. The CEC must take suo moto notice of abuses and violators be punished immediately. Elections where such obvious rigging has taken place be declared null and void and a re-poll ordered in all such constituencies.

11. Punishments for Electoral Malpractices:

Although provisions in the law exist for punishment of corruption and malpractice by election officials, these have not been implemented, with the result

that election officials have indulged in corrupt practices with impunity.

1. The provisions for severe punishments for Returning Officers [Section 91 of the Peoples Representation Act 1976] who display partiality must be enforced. The provision should be extended to the District Returning Officers and a method be prescribed for giving effect to speedy and summary prosecution in election related malpractices by the election staff.
2. The provisions of the existing Section 91 be enhanced to include Presiding Officers, Asst Presiding Officers, District Returning Officers, Returning Officers, Asst Returning Officers.
3. Disposal of appeals should not take more than three months, after which punitive action against the complainant if found guilty, should automatically set into motion.
4. Special tribunals may be constituted to hear complaints against the Police stamping the ballot papers and other malpractices with powers to punish the guilty ones through suspension or termination from service or entries in the ACR (Annual Confidential Report).

12. Appellate Forums and Tribunals:

Although the constitution provides for election tribunals to decide petitions pertaining to election complaints, the record clearly demonstrates that these tribunals delay decisions for so long that they lose all meaning. Election petitions filed by the opposition remain undecided for several years. This make judicial inaction in election related matters an area that needs to be reformed.

1. Election Tribunals must be bound to give verdicts in a fixed time frame.
2. Disposal of appeals should take not more than three months.
3. Politically neutral people from reputed and independent human rights bodies should be appointed to the election tribunals.
4. A neutral administration needs to be guaranteed by keeping officers out of the election administration duties who have served in agencies like the MI, ISI, IB or NAB during the past five years.
5. Rigging elections is a criminal offence. The response to a complaint should not be limited to merely providing relief. The complainant should also be able to lodge criminal proceedings and the violators duly punished for their crime.

13. Election Campaign:

Past experience has shown that even after the announcement of an election schedule, governments continue to manipulate the playing field for certain opposition parties by imposing Section 144 [PPC] and restricting the fundamental right of association for those it does not want to see winning. The right of association guaranteed under Article 17 of the Constitution is taken away by the imposition of Section 144 in selected areas.

The government also deploys state resources to advertise its candidates, often abusing the government-controlled broadcast media as well. All parties should be given an equal campaign time and not be subject to arbitrary prohibitions on campaigning in specific areas which may be open to certain other parties.

14. Media Coverage:

All contesting parties should be allotted equal time with the government in the state-controlled news bulletins. Restrictions also need to be placed on official advertising and sponsored campaign commercials and advertising on television.

State media including TV, Radio should be under neutral administrations and directed to provide fair and equitable opportunity to all candidates.

A ban on cloth banners, wall-chalking and outsized hoardings must be enforced equally.

15. State Resources:

A mechanism must be devised to disallow misuse of state resources such as helicopters and vehicles by the government for election purposes after the announcement of election schedule. Violations of this rule should amount to a corrupt practice and the violating candidate be suspended.

16. Election Staff:

The number of trained election staff is often an impediment to the process of conducting and micro-managing an electoral exercise.

While the list of polling staff should continue to be drawn as per existing practice, [in accordance with the provision of sub-section 1-5 of Section 9 of the Representation of Peoples Act, 1976]

1. The number of trained polling staff needs to be increased in order to deal with a larger number of polling stations and voters.
2. The staff should comprise of government servants of the Federal and Provincial governments as well as employees of the autonomous bodies. The polling staff shall not be allowed to perform election duties in their home districts.
3. During elections one member of the Commission, not belonging to the province of his domicile, should be stationed in each province to monitor the election process and provide prompt relief to the aggrieved party.

17. Revision of Electoral Rolls:

Accurate electoral rolls are critical to a free and fair election. Unfortunately the electoral rolls have not been revised and updated meticulously with the result that a large number of people have been left disenfranchised.

1. It has also been a convenient method of eliminating opposition votes by simply removing voter's names.
2. Candidates are given one voters list (polling station-wise) making them believe that all names are included on the voter list.
3. Lists given to Presiding Officers are entirely different. There have been instances of a 25% to 30% discrepancy in the two lists with names missing in the list given to the Presiding Officers.
4. As a result many voters are sent back on the polling day running from pillar to post looking for

their names on some correct voters list, which does not exist.

5. Ultimately they are unable to exercise their right to vote, as the candidates' list has them registered at a particular polling station, but their names are missing from the Presiding officer's list at the same polling station.
6. The last date for revision of electoral rolls should be fixed at one month before the elections.
7. Section 20 of the Electoral Rolls Act, 1974, be amended to provide that the Election Commission shall notify the publication and availability of the final/ revised Electoral Roll of the said constituency not later than the date of notification of the contesting candidates.
8. Multiple registrations of voters is the simplistic way of cheating elections and must be looked into. Thousands of illegal voters mainly refugees, registered in multiple constituencies, can cast votes as many as five times on the polling day. Computerization of electoral rolls should be conducted at the District level by the DROs and made freely available.
9. The Election Commission should also make public the mode, procedure and law under which the Electoral Rolls are compiled.
10. Electoral lists should be placed on an easily accessible website and book stalls.
11. Also, the electoral list of 2002 should be used with the addition of new voters since the NADRA registered lists, which were used in the Local Bodies elections, were faulty and inaccurate.

12. Campaigns shall be launched for the registration of women and other marginalized groups of society especially minorities on electoral rolls.

18. Role of Judiciary:

The District and Session Judges/Additional District and Session Judges/Civil Judges should be placed under the control of the Election Commission of Pakistan for election purposes and empowered to entertain complaints and take immediate action against any one found violating the electoral process. The candidate found involved in corrupt practices may be reported for disqualification and the Election Commission should take appropriate action within a stipulated time frame after hearing the concerned parties.

19. Census Preparation:

In view of re-fixing of voting age from 21 to 18 years, a fresh census needs to be immediately undertaken.

20. Polling Stations:

1. Polling stations are often moved or even simply removed by the authorities in order to deprive whole areas and their populations of the right of franchise, particularly in areas where the opposition vote bank is well established and strong.
2. Ghost polling stations are forbidden under law, and yet they appear at the last moment, with no one knowing whether they are real or virtual.

3. It also happens that military forces or Rangers are present inside the polling stations in blatant disregard for their neutrality factor.
4. There relevant election laws that do not permit changing of polling station after announcement and review period must be strictly enforced.
5. EU/Commonwealth and other foreign monitors should be allowed inside the polling stations and the Rangers and military personnel kept out.
6. The list of polling stations should be prepared 45 days before the poll.
7. The draft list should be supplied to all candidates 45 days before and if there are objections, these should be filed before an appropriate Committee of the Election Commission.
8. The Committee must give a decision on the objections within three days.
9. The final list must be notified in the official gazette immediately.
10. No changes shall be made except on genuine exceptional grounds, which shall require the express approval of the CEC.
11. In view of a large increase in the number of voters the number of polling stations should be increased substantially for reasons of logistics as well as to reduce the problem of voter-transportation.
12. Polling Stations must be in government buildings and in populated area.

13. It should be possible to post applications for fresh voter registrations and deletion of wrong names on the website of the Election Commission. The entire operation should be made transparent.
14. The name of the polling station on which a voter has to vote should be given against his name on the website.

21. Vote Count:

1. The counting of votes is an essential component of ensuring a fair election. It should be done at the polling-station level, as in the 1970 election.
1. Over the last four elections, the vote count has gone from the Presiding Officer to the Returning Officers and the computerization of data.
2. This has made it susceptible to hacking into the Election Commission computers leading to spoiling of votes and miscounting, after which winners are announced.
3. The candidates are then asked to go for a recount if they desire, but by then no one takes any interest.
4. We have non-transparent vote counts taking place at the end of polling, where the candidate's agents are often thrown out of the room and the vote-count is announced at a later stage at the district headquarters, by which time the Returning Officer announces a contested vote-count.
5. As soon as voting is over the counting of ballot papers should be conducted transparently in the open.

6. All candidates must be allowed a counting agent who must always be present during vote counting. If he or she is not allowed to witness the vote-count, the same must be declared invalid.
7. The Presiding Officer must write at the back of each ballot the reason for its rejection, in the presence of candidates' counting agents.
8. The Presiding Officers should not force polling agents to sign vote-count statements before the votes have actually been counted. All agents must counter-sign the statement of vote-count once counting is over, and each must be given a certified copy of this vote-count slip.
9. The Presiding Officers should send vote-count statements and other documents to Returning Officers directly in the supervision of the candidates' agents. The R.O shall not treat vote-count statements valid unless it bears the signatures of all contesting candidates' agents.
10. The agents must be allowed to accompany the ballot papers in the same transportation vehicle taking the votes to the Returning Officer.
11. Instructions or demands that the vote-count statements be routed through executive officers, police officers etc must be treated as a corrupt practice.
12. A secure van should take Presiding Officer and Polling Agents securing top three votes to Returning Officer together.
13. No official from the intelligence or administration services should be allowed into the vehicle.

14. Final count must be held at District level by the District Returning Officer and should be indisputable, after having carried out in the manner suggested.
15. The vote count made at the polling stations should also be put on notice boards outside the polling stations.
16. Progressive results based on the counts received from polling stations should be announced on the media as was done in the 1970 elections.
17. The practice of taking the votes to the provincial election commission to feed into computers and send to national election commission be stopped to avoid complaints of computer rigging where virtual votes are cast in virtual polling stations by the rigging cell of the establishment.
18. Some system of parallel vote count may be devised for double check. The system of parallel vote count as adopted in the Philippines can serve as the model.

22. Election Kidnapping:

An effective mechanism to stop the kidnapping or interfering with movements of candidates, their proposers and their seconders needs to be put into place.

Quick and effective relief measures be put in place for addressing complaints of wrongful confinement of candidates, polling agents and voters, and assistance given to them to seek judicial redress.

23. Ballot Boxes:

Ballot boxes are often tampered with in the electoral process, with agents contesting pre-stuffed boxes at several stations. During the process of handing over the election material to the Returning Officers and then to the Presiding Officers, two things can occur:

1. Blank ballot papers are given to favoured candidates who use them for multiple voting.
2. Boxes are filled at the Presiding officer's residence, who then switches the boxes during the count.

Transparent ballot boxes be used to prevent pre-stuffing of the ballot boxes. Prototypes exist in the Mexican Presidential election experience [1994].

Presiding officers on the spot shall give total count of number of ballot boxes and total number of ballot papers in writing to the candidates or their agents.

24. Instruction Manual for the DROs, ROs, AROs:

The manual for Returning Officers at every level appears outdated.

The manual should be revised to include all new decisions taken for the particular election and amendments in the law.

25. Fake ballot papers:

There have been complaints of fake ballot papers pre-stamped and used in some polling stations. Apart from using transparent ballot boxes to ensure that fake pre-stamped ballot papers are not already stuffed in them, a certificate of the print order of ballot papers should also be issued by the printing press printing them.

26. Delay in Announcement of Results:

With each successive election after the 1970 poll, the Election Commission has been delaying the announcement of results. In the 2002 exercise, the Commission announced the first results from the remotest areas of the country well after the close of polling, going suspiciously into the next day with 'revised' results coming out of the central headquarters.

1. The Presiding officer and polling agent of winning/losing candidate should be transported to the Returning Officer's office together, in order to ensure that the Presiding Officer does not go to a safe house to change results.
2. To avoid ghost votes appearing from nowhere in a centralized process, the results should be immediately announced by the District Returning Officer or Returning Officer as was the practice in every election before 1988.
3. These progressive results should continue being announced on television to avoid a centrally rigged or contested count.

4. The process of centralization should be reversed.
5. Election results must be posted in real time on the EC website as well announced on public media as they are received by Returning Officers.

By

Farhatullah Babar
Prof Abdul Ghafoor
Prof Ahmad Ali
Prof Dr Sarfraz Khan
Ghulam Farooq Khan
Dr Kamal