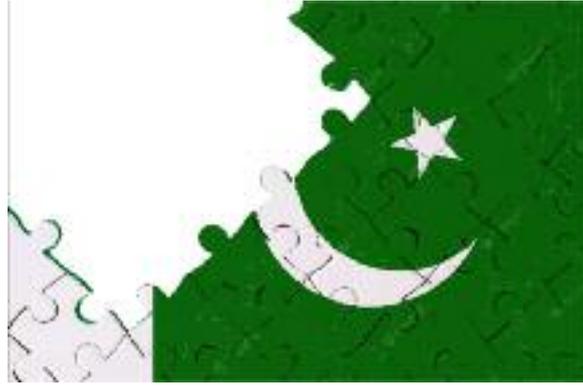
The background of the cover features a photograph of several men in white shirts and dark vests, likely election officials, sitting on the floor and counting stacks of light green ballot papers. The scene is set in a room with white walls and a tiled floor. A large yellow vertical bar is overlaid on the left side of the image, and a black border frames the entire cover.

MAKING ELECTIONS CREDIBLE

**A DISCUSSION PAPER ON
ELECTORAL REFORMS
IN PAKISTAN**



Making Elections Credible

A discussion paper on
electoral reforms in Pakistan

Researched and written by
Tahir Mehdi



Human Rights Commission of Pakistan

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Abbreviations

CCI	Council of Common Interests
CEC	Chief Election Commissioner
DEC	District Election Commissioner
DMO	District Monitoring Officer
ECP	Election Commission of Pakistan
EVM	electronic voting machine
FAFEN	Free and Fair Elections Network
FATA	Federally Administered Tribal Areas
JUI	Jamiat Ulema-e-Islam
KP	Khyber Pakhtunkhwa
MMA	Muttahida Majlis-e-Amal
MNA	Member of the National Assembly
NADRA	National Database and Registration Authority
NIC	national identity card
NICOP	national identity card for Overseas Pakistanis
NMD	Newly Merged Districts
NWFP	North-West Frontier Province
PCER	Parliamentary Committee on Electoral Reform
PDM	Pakistan Democratic Movement
PEI	Perception of Electoral Integrity
PML-N	Pakistan Muslim League Nawaz
PML-Q	Pakistan Muslim League (Quaid-i-Azam)
POC	Pakistan origin card
PPP	Pakistan People's Party
PTI	Pakistan Tehreek-e-Insaaf
REC	Regional Election Commissioner
RMS	Results Management System
RTS	Results Transmission System
TDEA	Trust for Democratic Education and Accountability
TLP	Tehreek-e-Labbaik Pakistan
VVPAT	Voter Verified Paper Audit Trail

Foreword

Elections in Pakistan are a contested subject, with the losing side invariably questioning the election's outcome. The role of undemocratic forces in manipulating the election results has now been established beyond a doubt, putting the integrity of the whole exercise under question. Since elections play a vital role in the strengthening of democracy by letting the people express their will through their votes, this lack of credibility has had serious consequences for the country's political stability.

It would not be incorrect to say that unelected forces in Pakistan consider the electoral system as a mere tool to fulfill the claims of procedural democracy, which effectively does little to change the balance of power in favour of elected people.

The Human Rights Commission of Pakistan (HRCP) has remained committed to the ideals of constitutionalism, democratic governance and the rule of law for decades. Electoral reforms to bring about free and fair elections are hence crucial in fulfilling these ideals. While acknowledging that elections everywhere are in need of constant reform, HRCP feels it imperative to address serious gaps in Pakistan's electoral system, not only with regards to the obvious credibility crisis but also pertaining to how the principle of equal citizenship is compromised in so many ways. It begins with the disenfranchisement of marginalised groups through the non-issuance of national identity cards, leading to an even wider gender gap for women and transgender persons, and continuing with the effective non-representation of minorities in all the electoral schemes devised for them so far. The whole system is further rigged in favour of the elite who, when elected, seem interested in amassing more wealth than in addressing the problems of their constituents.

Certain legalities related to the caretaker governments, independent candidates joining political parties soon after being elected in their independent capacity, discriminatory constitutional clauses like Articles 62 and 63, and other provisions have also seriously affected the fairness of elections.

Add to these certain technological developments, such as internet voting for overseas Pakistanis and the use of electronic voting machines, that have served more as controversies for political gains than subjects of serious research made available to the general public.

Like everywhere else, electoral reforms in Pakistan are a work in progress. At this crucial juncture in our political history, HRCP would like to initiate a dialogue on reforms through a comprehensive discussion paper, which is by no means the final word on the matter but an invitation to chart a path forward. We have been fortunate to be assisted in this task by one of the most credible researchers on the subject, senior political analyst Tahir Mehdi. It is our hope that this paper is carefully considered by all stakeholders in the spirit that it has been prepared, and leads to decisions to achieve free and fair elections that upholds the ideal of equal citizenship as enshrined in the Constitution.

Hina Jilani
Chairperson

Summary

This discussion paper analyses seven areas of Pakistan's electoral system that urgently require reform. Here is a brief overview of these seven thematic areas.

1 No election in Pakistan has ever been free of controversy, with the losing side always contesting the election results. To be fair, their claims have not been baseless. The role of the military establishment in manipulating the electoral process and outcomes is an open secret, compromising the integrity of the whole exercise and posing a significant hurdle to strengthening democracy in the country. The hopes raised by the Charter of Democracy in 2006, the democratic transitions of power in 2008 and 2013, the passage of the 18th Constitutional Amendment and the Elections Act 2017 have all been dashed by the events of the past five years. The provision of a neutral caretaker setup to ensure a smooth transition from one elected government to the other has also not helped matters. Instead, such caretaker setups have opened another avenue for extra-democratic forces to maneuver and achieve their desired election results. Moreover, efforts to strengthen the Election Commission of Pakistan (ECP) — by ensuring the security of its tenure and representation from all provinces — are marred by issues such as delays in appointments.

More recently, independent civil society organisations and foreign missions conducted election observation missions, but these have not really contributed towards making elections more credible; in fact, their reports have selectively been used by parties for political ends.

Social media now also plays a major role, both in shaping the electoral discourse and in popularising narratives about whether an election was credible or not. However, stakeholders of electoral processes appear both clueless and helpless on how to deal with this new influence.

2 The delimitation of constituencies, undertaken after the official 2022 notification of the final results of the population census in 2017, failed to address the major problems associated with this exercise. For instance, Pakistan's constituencies do not follow the principle of equal suffrage: they have widely different populations since electoral constituencies are mandatorily confined within the limits of administrative units

(districts). Since there are no principles and rules for the creation of new districts, this has become an indirect method of influencing, or manipulating, constituency boundaries. A recent amendment in the Elections Act 2017 has enabled the ECP to equalise constituencies, disregarding district boundaries. The ECP is likely to come up with more equal constituencies in the latest delimitations, the process for which has just begun, but the ensuing mismatch in electoral and administrative boundaries may give rise to a new set of problems.

Moreover, the delimitation process does not consider geographical factors that hinder an elector from exercising their political rights, such as difficult terrain or expanse of the constituency. Another serious issue is caused by linking electoral rolls to addresses given in national identity cards (NICs), preventing a substantial number of voters from voting in constituencies they reside in since they are enrolled in constituencies they were born in.

While the delimitation of constituencies becomes mandatory after the notification of a population census' results, censuses have not been held at a set frequency — every ten years — since 1981. This irregularity makes the constituencies less responsive to demographic changes. Thus, while the general elections in 2002, 2008 and 2013 were held under unchanged constituency limits, the delimitation of constituencies is likely to be different in each of the 2018, 2023 and 2028 elections.

3 The linking of the right to vote with the possession of NICs has effectively converted a basic civic right into the citizen's responsibility. The National Database and Registration Authority (NADRA), on the other hand, is not legally obliged to register every citizen. Instead, NADRA is bound to issue a NIC only to those who apply for it, fulfilling the conditions set by the authority, and then also maintain their record in NADRA's database. This subversion has deprived millions of poor and marginalised persons of their right to vote, the vast majority of which are women. Though the ECP and NADRA have made special efforts to bridge the gender gap in electoral rolls over the past few years, the gap still persists with almost 10 million women possibly unrepresented in the electoral rolls. At this pace, it will take the authorities over a decade to register every eligible woman as a voter.

Despite the electoral system being changed from separate to joint electorate in 2002, Ahmadi voters continue to be listed sepa-

rately, forcing them to disclose their identity at polling stations which significantly threatens their lives. This has effectively barred them from exercising their right to vote.

Furthermore, the issue of granting overseas Pakistanis the right to vote has been reduced to a single technical question: whether it is possible to vote electronically or not. This debate has revolved around one political party and how it will benefit from this right, so much so that the chances of developing any consensus on this issue has reduced to zero. However, this debate must move beyond the technical question of electronic voting and address other important questions: should the right of vote be extended to citizens with dual nationalities; which election (national, provincial, local) and which constituency should they be allowed to vote in; should their right to vote be linked to when they migrated; should overseas Pakistanis be allowed to fund political parties; and, above all, what voting methodology should be adopted. This paper offers some insights into the experiences and solutions adopted by various democracies.

4 Currently, independent candidates are allowed to join a political party after defeating the candidate of the same party after an election concludes. This not only violates the basic principle of representation, but it also weakens the development of parties as political institutions. Similarly, one person can contest on as many seats as they please, but after winning on more than one seat, they must vacate all but one. This multi-seat candidacy makes a mockery of people's mandate, wasting resources and facilitating only one person's political ambitions. Moreover, the qualification and disqualification of candidates under Articles 62 and 63 of the Constitution have been deliberated upon to no effect. Used by extra-democratic forces to victimise dissenting politicians and manipulate election outcomes, these provisions are in dire need of a review.

The Elections Act 2017 had made it mandatory for all political parties to award five percent of nomination tickets to women. This paper outlines how political parties have fulfilled this requirement by nominating female candidates in constituencies where the party had little to no chance of winning. The condition has thus failed to have any impact on the women's political participation of women. Since no party fields candidates on every available seat, this requirement can be fulfilled even if the quota

for women's seats is raised to 15 or 20 percent without disturbing the gender status quo within the party's hierarchy and in the electoral arena. This paper then questions the rationale behind setting the limit at five percent and proposes a progressive target that could bridge the gap at the candidate level in a span of five general elections.

5 The gender gap in voter turnout is considerably wide and varies from one constituency to the other. The law currently stipulates checks against any action that pro-actively bars women from exercising their right, but does not mandate any action to ensure or encourage women's participation. This paper proposes that this approach needs to be reversed and cites the example and experiences of countries where voting is a mandatory duty of all citizens.

Electronic voting machines (EVMs) are routinely promoted as a solution to all our electoral problems. This paper discusses the pros and cons of EVMs at length in the light of other countries' experiences, and also delves into the financial cost of moving from paper ballots to machines.

The infamous failure of the Result Transmission System (RTS) after the polling in the 2018 general elections has not been investigated by any government body. This silence has been a boon for conspiracy theorists, significantly damaging the credibility of the ECP and the 2018 general elections. It has also made the ECP wary of any other attempts at innovative solutions to impending problems.

The polling agents can play a vital role in making the polling processes transparent and in holding the election administrators accountable. Though their role has been sufficiently elaborated in the law and rules, they generally lack the capacity to perform optimally. This is an area that needs special attention from political parties.

6 Minority groups have serious reservations about the current system of reserved seats for religious minorities. They complain that the members 'elected' through the system are neither accessible to them nor have the resources and power to address their issues. These members also admit that they reach representative status only because of their personal relationships with party leaders, not because they are well

connected with their communities. This lack of legitimacy results in an adverse relationship between the community and the person who is chosen to represent them, and does little to serve the purpose of minority voices reaching the elected houses. Some leaders of minority groups advocate a return to the separate electorate system, while others demand a double vote for minority members. While neither of these options is practical or desirable, this paper considers the system practiced in India to ensure the representation of Dalits. Under this system, select constituencies are declared minority constituencies where all contesting candidates must belong to the minority community. However, the electorate is not divided along religious or caste lines. In Pakistan's context, one or more constituencies in each division can be reserved for non-Muslims. Constituencies with the largest population of minorities can hence be declared reserved for non-Muslim candidates instead of dividing the electorate along religious lines.

The same criticism holds for female parliamentarians elected to reserved seats. These constituency-less female members are not treated at par with male members elected directly from geographical constituencies by their parties. Despite the fact that women perform better on the floor of the house, they are not given important positions in parties and are never allocated any development funds. The political careers of these nominated female parliamentarians remain at the mercy of the parties' central command. These seats are mostly occupied by female relatives of male members with established strongholds in the party hierarchy. More importantly, after four general elections and a good twenty years (2002-2022), the reserved seats have not had any positive impact on women's participation in elections as voters or as candidates. The system therefore needs a serious review. It is unlikely to empower women's political participation unless the seats are linked to women's votes. This paper discusses new approaches that can be more productive than the current system.

7 This section deals with two main aspects of election financing: election campaign expenses and the requirement to annually submit the parliamentarians' statements of assets and liabilities. Though the Elections Act 2017 has set a limit for the expenses a candidate can incur for their election campaign, another clause provides that a candidate cannot be held responsible for any expenses made by another person without their express permission. The com-

bined effect of these clauses is that there is practically no limit on election-related expenses, preserving the contesting of elections for the ultra-rich elite. While it is understandable that ensuring the implementation of any limits on expenses is an almost impossible task, legalising this systemic weakness is not a solution either. Under the present laws, the political parties have no option but to give nomination tickets to their more affluent members. This approach needs to be reviewed. One way out of this situation is to provide a better legal framework for parties to raise funds centrally and spend more on party campaigns, removing the burden of campaign expenses from their individual candidates.

Parliamentarians are legally bound to submit their statements of assets and liabilities annually to bring the financial status of the elected members under public scrutiny and check if they use their elected status for financial gains. However, the method in which the declaration forms are filled leave much to be desired. For example, the members value their assets themselves, usually below their current market value, and there is no way to verify and correct these estimations. The provisions need improvement to meet their objectives in letter and spirit.

A case for conducting an election audit

Most criticism of the electoral system is usually based less on objective facts and more on political interests and biases. On the other hand, the ECP considers itself duty bound to defend election proceedings even if the ground realities point otherwise. The views and analysis of stakeholders other than the candidates and political parties are skewed by their capacity and resource limitations, or lack of access to correct information.

A thorough and independent audit of a general election can effectively address this lack of objectivity and provide a solid ground for discourse on electoral reforms.

This paper proposes that an audit of an election should be conducted by independent experts under the supervision of a

parliamentary body with representation from across the political spectrum and under terms of reference agreed to by all parties involved.

The audit must analyse all the records and documents of a general election with the objective of identifying the strengths and weaknesses of election management, and ascertaining whether they originate from laws, rules or practices. The terms and conditions of the exercise must be limited to formulating a set of recommendations that shall then set the agenda for reform.

The audit must also analyse whether legal provisions serve their purported objective in reality. Such an exercise can be conducted as and when needed, or following a specific period after each general election.

1

Credibility

The role of undemocratic forces

Pakistan's electoral history is plagued with stories of how the country's establishment managed to manipulate the system to achieve its desired results. At times, the losing parties published 'white papers' listing the irregularities committed in the electoral processes. Although all the evidence they provided may not withstand legal scrutiny, their persistent complaints cannot be brushed aside as mere foul cries of losers. It would not be incorrect to state that elections in Pakistan suffer from a chronic lack of credibility.

Throughout the 1990s, the president enjoyed constitutional powers to send an elected government packing. Each time the government of a party was dismissed, it was as if pre-decided that it would not 'be allowed' to win the next election or form the next government.

When General Pervez Musharraf attempted to reset the whole system after declaring an emergency in 1999, and announced the general elections in 2002, it was a given that his 'king's party' would win and form the government. The party, however, performed below expectation, due to which the general bent all the rules to ensure that the electoral outcome did not disturb his plans. He allowed candidates to join a party after being elected as independents, facilitated party defections and helped form a splinter group in the second largest party, the Pakistan People's Party (PPP).

The Charter of Democracy signed between the two main rival political parties in 2006 had raised hopes that room for manipulation would henceforth shrink, but this optimism vanished with the entry of a third major political party that refused to sit with the older two to agree upon some basic rules of the game.

After the 2013 general elections, the allegations of rigging were loud when the losing party, Pakistan Tehreek-e-Insaf (PTI), was not content with publishing a white paper alone. It took to the streets, staging protests and sit-ins. Political observers had no doubts these protests were sponsored by the establishment, or at least enjoyed its blessings.

Electoral reforms can translate into democratic dividends only if elections are made more credible.

The 2018 general elections were again clouded by allegations of political engineering months before polling. This time, it was alleged that the intervention in electoral processes by the establishment had started at when political parties were selecting candidates, the so-called 'electables'. Innuendos like *khalaee makhlooq* (aliens from outer space) and *mehekma zara'at* (department of agriculture) were commonly used in electoral debates to refer to the clandestine role played by the establishment in setting up the political theatre to its liking. Then the purported failure of the RTS on the night after the polling day served a huge blow to the election's credibility. Many stakeholders are of the view that the RTS had not crashed but was forcibly shut down for making the results consolidation process too efficient and transparent, leaving no space for manipulation by extra-democratic forces.

The Perception of Electoral Integrity (PEI) index calculated for 166 countries for all national elections held between 2012-2018 placed Pakistan among countries with a 'very low' index value of just 38. In comparison, New Zealand, Korea and Japan rank among Asian countries with the highest PEI index values of 79, 78 and 74 respectively, while India and Indonesia rank as countries with moderate values of 55 and 54 respectively.

This perennial crisis of credibility has drained life out of Pakistan's democratic discourse, so much so that any attempt to improve electoral processes seem absurd or of little value. Therefore, the electoral reforms, as discussed in the following pages, can only translate into democratic dividends after the elections are made more credible.

Political parties must find a common ground to discuss the role of extrademocratic forces in shaping and directing the electoral discourse, and agree on some basic principles. Without this, any debate on reforms will remain meaningless. The enhanced role of independent candidates as winners in shaping the electoral discourse also needs special attention in this regard.

Discussion point: How can the manipulation of electoral processes and outcomes by extra-democratic forces be effectively checked? Do we need another Charter of Democracy to ensure the integrity of Pakistan's elections?

Political parties must find a common ground to discuss the role of extra-democratic forces in shaping and directing the electoral discourse.

Caretaker governments: Good for nothing?

The concept of caretaker governments was introduced into Pakistan's democratic setup by the military dictator General Zia-ul-Haq, and then reinforced by General Pervez Musharraf.

It was made a part of their constitutional schemes whereby the president was invested with powers to dismiss an elected government and then install an unelected interim government at his discretion till the next general elections.

Later amendments (see Box 1) in the Constitution made by elected governments abolished the president's powers to dismiss an elected government and dissolve the National Assembly. These amendments, however, did not do away with the caretaker system and instead shifted the power to nominate caretaker governments from the president to both the prime minister and leader of the opposition. Caretaker systems were retained with the intention that the outgoing government should not be able to influence the electoral process in any manner, and the introduction of a nonpartisan interim government would ensure that the election results are credible and acceptable for all.

The first elections under the reformed caretaker government system were held in 2013. The outgoing prime minister and leader of the opposition could not agree on a person to head the government, following which the ECP nominated a caretaker prime minister, as prescribed in the Constitution.

There was ambiguity about the functions of caretaker governments in 2013, and the Supreme Court intervened to nullify all appointments, postings and transfers made by the caretaker setup. The Elections Act 2017 has cleared some air and defined what the caretakers could and could not do in Section 230, but there is still room for maneuver and interpretation. For example, Section 230 (2a) states that the caretaker government cannot 'take major policy decisions except on urgent matters', while (2d) states that the caretaker government cannot 'enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case', without defining major, urgent matters or exceptional cases. Since the caretaker governments are not elected, they are not accountable to the parliament, and these rather vague terms may be subject to widely different interpretations.

The system of installing caretaker governments of nominated persons has not helped make elections credible or democratic transitions any smoother.

This ambiguity was further compromised when the Pakistan Democratic Movement (PDM) government amended the Elections Act 2017 on 7 August 2023, only two days before dissolving the assemblies. While sub-sections 1 and 2 of Section 230 of the Act defines the caretaker government's functions, this amendment to sub-section 2 added that the restrictions 'shall not apply where the caretaker Government has to take actions or decisions regarding existing bilateral or multilateral agreements or the projects already initiated under the Public Private Partnership Authority Act 2017 (VIII of 2017), the Inter-Governmental Commercial Transactions Act 2022 (XXX of 2022) and the Privatization Commission Ordinance 2000 (LII of 2000)'.

The utility of a caretaker system has proven to be quite limited. It may have ensured the optics of fair elections under the guise of being non-partisan, but has hardly contributed to their credibility. In fact, the tenures of the governments elected under caretaker governments, in 2013 and in 2018, have been marked by the most polarising electoral controversies of Pakistan's history. The system has hence failed to serve its purported objective of making elections credible.

The caretaker governments are the weakest possible governments, comprising mostly of retired persons with hardly any stake in political dispensation. While they are thus considered unbiased and nonpartisan, the flip side of this is that they have very little motivation to take a proactive stance in ensuring free and fair elections.

The events of 2023 have amply exposed the inherent weaknesses of the caretaker system. These must be addressed at once.

Caretaker governments in the Constitutional scheme

1: The 1973 Constitution had no concept of caretaker governments. It followed the globally accepted norm of a sitting elected government going into 'caretaker mode' during elections. The Constitution did not grant power to anyone to dissolve a government before the completion of its tenure except the government itself.

2: General Zia-ul-Haq assumed power to dismiss a government and dissolve elected houses as the president, and the change was later made part of the Constitution through the Eighth Amendment on his insistence. He also introduced a system of handpicked caretaker governments installed between the dismissal of one government and the election of

the next government.

3: The government of PML-N removed both of these changes in 1997 through the 13th Amendment.

4: General Musharraf added these again in his Legal Framework Order 2002.

5: The exercise of these powers by the president, however, was made conditional to approval by the Supreme Court in 2003 through the 17th Amendment.

6: Finally, the 18th Amendment drew the curtain over the president's powers to dismiss an elected government. The amendment, however, did not abandon the caretaker setup, and instead made provisions to ensure that caretaker governments stayed non-partisan.

The Bangladesh model

Bangladesh is perhaps the only other country that had a caretaker government system like Pakistan's and its experience was not any different. It started in December 1990 when three of their biggest political parties agreed upon an interim caretaker setup of nominated persons after forcing the military dictator General Hussain Ershad out of power. The caretaker governments handed over power to the government elected in March 1991. The parties decided to adopt this system, managing two more transitions under it though both were marred by controversies. The caretaker government installed in 2007, however, decided to address 'a number of other issues' involved in holding free and fair elections, and extended its tenure to two years by invoking article 58B of the country's constitution. This caretaker government ruled without legitimacy on the behest of the country's military and gave in only to mounting international pressure. Bangladesh shut this window for extra-democratic forces in 2011 by abolishing the caretaker government system.

The political developments of 2023 have exposed the inherent weaknesses of this system and raised important new questions that must be included in any agenda for electoral reforms. The chief ministers of Punjab and Khyber Pakhtunkhwa (KP) dissolved their respective assemblies in January 2023, and caretaker governments were installed according to the law in the same month. Elections to the two assemblies, however, were not held in the constitutionally stipulated time period of 90 days and unelected caretaker setups continued to govern in the two provinces. This was followed by the dissolution of the federal, Balochistan and Sindh assemblies in August 2023, where caretaker governments were put in place under equally murky conditions. Meanwhile, in Punjab and KP, the caretaker setups continue to rule beyond their stipulated period.

This has set a dangerous precedent. An unelected and weak government put in place for a brief period of time provides the perfect ground for clandestine forces to operate behind the facade of caretaker governments.

Most of the democracies around the world do not hand over power to unelected persons for the brief period of time between the dissolution of a parliament and the assumption of power of the next elected government. The undemocratic rule by nominated persons, even briefly, is considered taboo. Instead, sitting governments transition into a caretaker mode, with their powers and functions limited to the day-to-day running of the country.

India, for example, implements this through the Code of Conduct for Political Parties and Candidates issued by their election commission. This code includes specific terms of reference to the government officials in power during the transition.

The ECP has also issued a Code of Conduct that bars political parties, candidates, their supporters, government and local government functionaries, or elected representatives from participating in election campaigns. The code further bars them from using state resources for election campaigning, and from announcing or inaugurating 'development schemes or development work or do anything which tends to influence the results of an election in favour of or against a particular candidate'.

The dissolution of assemblies in Punjab and KP has exposed another problematic situation probably not foreseen by the archi-

tects of Pakistan’s electoral system. Had there been elections to these provincial assemblies within the constitutionally warranted time frame of 90 days (that is, by mid-April 2023), then at the time of elections to the National Assembly in October 2023, there would have been a caretaker government at the federal level but not in these two provinces. Given the rationale behind the caretaker system, such elections to the National Assembly could not have been deemed free and fair.

In the eleven general elections held in the country since 1970, elections to the national and four provincial assemblies have always been held simultaneously. However, since staggered elections are quite common across democracies, Pakistan too should institute legal provisions for future elections to national and provincial assemblies to proceed in a staggered manner. In order for this to take place, the conundrum of caretaker governments must be addressed.

India, where the state and federal elections take place at different times, does not face this dilemma since, instead of installing caretaker governments, the Election Commission of India virtually takes over the state machinery while the sitting elected government operates in a caretaker mode. This can be seen in India’s 2014 general elections when the Indian army chief was due to retire and the prime minister had to appoint his replacement. The India prime minister wrote to the Election Commission of India to specially ask for his permission to make the appointment.

The above facts not only make it evident that the caretaker system has not served its purpose, but that it also entails risks to the democratic system that are now not hard to imagine. This system needs to be revisited and other solutions taken into consideration. For instance, the Senate of Pakistan is the house of federation that remains intact by constitutional design. Its perpetuity, however, has seldom been put to any use.

Can a Senate body representing all the political parties be entrusted with some powers, instead of or in addition to the caretaker governments?

Discussion point: Should the caretaker government scheme be allowed to continue?

Discussion point: Can the Senate be given a role in overseeing elections and transition to the next elected government?

The perpetuity of the Senate has seldom been put to any use. Can the Upper House be tasked with ensuring smooth democratic transitions?

Election Commission of Pakistan: More is less

The 1973 Constitution provided for the appointment of serving or retired judges of the Supreme Court and high courts as the head of the ECP. In 1988, the president then changed the rules to appoint district and session judges as returning officers who play a vital role in the administration of elections.

The ECP has continued to be headed by judges till an amendment in the Constitution in 2016 made room for persons other than judges. The Elections Act 2017 also allowed the ECP to appoint any officers from the executive or judicial branches as returning officers. The ECP had, however, preferred in 2018 to continue with the older practice, making these appointments ‘in consultation with the chief justices’ since.

The purported intention for involving the judiciary, instead of the executive, in election administration was to lend credibility to elections. Needless to say that it has not served its purpose.

In contrast, the Election Commission of India is a completely executive-oriented organisation. The Indian constitution also pro-actively bars the judiciary from intervening in election administration, stipulating this as follows:

Article 329: Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Pakistan’s constitution, however, has limited itself to clause (b) above in the following article:

Article 225: Election dispute

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).

In practice, however, every election dispute is taken up in the high

The ‘judicialisation’ of election administration has not lent it the intended credibility; instead, it has had the contrary effect.

courts. The elected members mostly secure stay orders which invariably last longer than the tenure of their office.

The recent case of Qasim Suri exemplifies this practice. He was elected a member of the National Assembly (MNA) from NA 265 Quetta 2 in the 2018 general elections, and later as the deputy speaker of the house. His election was declared void by an election tribunal in September 2019 that was adjudicating on a petition filed by his opposing candidate. The ECP accordingly de-notified him and announced that by-elections would be held in the constituency. The Supreme Court, however, took up Mr Suri's appeal and suspended the tribunal's decision in October 2019. It also barred the ECP from holding the by-elections and granted stay to Mr Suri. The stay has continued since then while the five-year tenure of members elected in 2018 ended in August 2023.

This is not an isolated case. In fact, no expert can quote even a single example of parliamentarians being dislodged from their seats through an election petition. This practice is detrimental to the authority of the ECP. As reported widely in the media, the Chief Election Commissioner (CEC) wrote a letter to the parliament in April 2023 regarding 'incidents of judicial overbearing, which have diluted the writ of ECP.' The CEC cited two main examples, one related to the by-election in NA 75 Sialkot 4 (Daska tehsil) and the other about ECP's attempt to charge certain members of the PTI in a contempt case.

The ECP had declared a by-election held in NA 75 in February 2021 void after receiving and investigating complaints of large scale rigging. A re-poll was then held in the constituency in April 2021. The ECP also initiated a detailed investigation into rigging allegations and released its findings in November 2021, after which it ordered action against the officials found responsible for irregularities. However, the Lahore High Court set aside the ECP's orders within a month stating that 'once fate of an election is declared, the hiring staff [presiding officers and others] lose their status as election official and the ECP does not enjoy jurisdiction to proceed against them'.

The CEC wrote about the reversal of its orders by the court in his letter to the parliament: 'Consequently, the message that went to the recalcitrant functionaries was that they could hide behind these legal orders despite committing serious level irregularities in discharge of their functions. Thus writ of ECP was severely compromised.'

Similarly, the CEC cited the matter of contempt proceedings against certain politicians initiated by the ECP when 'the CEC and the Com-

The ECP's recent take on 'judicial overbear(ance)' must seriously be attended to and made a part of any agenda for electoral reforms.

mission were subject to life threats and their families were publically harassed' by them. It continued to state: 'Yet again stays were granted even on issuance of show cause notices, although there was no final order against which the stay could be issued. Then the Commission was allowed to continue proceedings but no final order could be passed; in view of restraining order, thus binding its hands in the face of such brazen attacks. As the contemnors sensed the weakening of the writ of ECP, they did not bother to attend the proceedings. Whenailable orders were followed by nonailable orders to enforce attendance, even those were suspended!'

In response to the CEC's letter, the parliament has amended Sections 57 and 58 of the Elections Act 2017 which empowers the ECP, instead of the president, to announce and change the date and schedule for elections.

Discussion point: The matter of judicial overreach in electoral matters must be debated. There is a need to reconsider and draw clear lines between the role and functions of the judiciary in the administration of elections. Such measures will enable the ECP to employ all the powers it has been given under the Constitution and by law.

The 22nd Amendment to the Constitution, passed in June 2016, addressed a number of structural issues that had been affecting the ECP's performance. The amendment provided for appointments in the commission of persons other than retired judges, ensured the ECP's continuity through the staggered retirement of members, and provided for the appointment of its acting chief from among members, ending the earlier practice of a serving judge of the Supreme Court taking the position. The amendment also provided for vacancies in the ECP to be filled within 45 days.

However, the amendment's implementation was lacking in practice. CEC Sardar Ahmed Raza retired on 5 December 2019 and the next CEC, Sikandar Sultan Raja, was appointed a week after the stipulated time. The replacement for commissioners from Balochistan and Sindh who retired in January 2019, however, was delayed for one year as the parliamentary committee, comprising six members each from the ruling and the opposition parties, could not agree on joint nominations. Despite being unconstitutional, the parties responsible for this violation faced no consequences. The appointment procedure must hence be reviewed as such impasses and deadlocks are not an exception.

The provisions to ensure that the ECP remains at full capacity at all times must be further strengthened.

The provision regarding the filling of vacancies within 45 days should also be reconsidered. A better alternative may be to initiate the appointment process before the due date of retirement of the chief or member to ensure that the transition is without a break.

It is important for strengthening this constitutional body that it remains intact and at full capacity at all times, even if it means further amendments and legal changes.

Discussion point: How can we ensure that the composition of the ECP remains intact and maintains its full strength?

Another important aspect of the ECP's functions that must be reviewed is the role of Returning Officers in the administration of elections vis-a-vis that of ECP's own officers.

The ECP appoints officers of BPS 17 and above, mostly from amongst the judicial cadre, as Returning Officers for elections to each constituency, and officers of BPS 18 and above as District Returning Officers for each district. However, the ECP also has a District Election Commissioner (DEC) of BPS 18 in each district of the country as its staff, and a Regional Election Commissioner (REC) of grade 19 for each division. The ECP's website provides contact details of 135 DECs and 31 RECs.

The ECP has appointed its own officers (DECs and RECs) as Returning Officers and District Returning Officers in many by-elections. Most election observers are of the opinion that their quality of election administration is better than those of officers deputed from other departments and branches of the state, which is understandable considering that the DECs and RECs work on electoral matters every day and possess more knowledge and experience than other public officers who take up this role for a few weeks. More importantly, any negligence in performance of duties has direct consequences for DECs and RECs, both in terms of their careers and the credibility of their employing body. This creates a stronger sense of ownership and responsibility among them.

Discussion point: Should the ECP appoint its own officers as Returning Officers and District Returning Officers in general elections?

There are 266 national and 593 provincial constituencies or general elections that are simultaneously held in 859 constituencies. Employing as many officers as permanent ECP staff members does not seem

The role of Returning Officers is central to the administration of elections, and handing it over to seconded officers is a structural problem that requires serious reconsideration.

unreasonable, especially if one considers that it is about ensuring the basic democratic right of over 125 million electors. Administering vital election duties through dedicated permanent staff members from ECP must be seriously considered.

Moreover, all the election duties assigned to officers from other departments and institutions must be reviewed for reassignment or reconceptualisation in order to reduce the role of non-ECP officers. For example, can RECs and DECAs be given a central role in the consolidation of election results?

Election observers: Joining the dots

Section 238 of the Elections Act 2017 provides that ECP facilitates groups of domestic and international election observers to monitor the polling, vote counting and results consolidation processes.

Pakistan's general elections are regularly observed by domestic and international observers, notably by the Free and Fair Elections Network, the Human Rights Commission of Pakistan and missions from the Commonwealth and the European Union. They publish their findings and also make certain recommendations.

Each of these exercises, however, has limitations. International observers are focused on informing their own policy-making hierarchies regarding the health of elections and the state of democracy in the country. Domestic observers struggle with mobilising enough resources to make the exercise comprehensive. They also face challenges regarding their legitimacy as a genuine stakeholder in elections and face pressures from other stakeholders in maintaining a non-partisan character. These observers have played the watchdog role and raised their voices about various weaknesses and shortcomings in the electoral system, yet their linkages with decision makers are casual, undefined and mostly unappreciated. Political parties tend to pick and choose from their findings, and seem more interested in expediently using these observations to strengthen their own political narratives rather than to draw any lessons from the findings and take action to improve the system.

On the other hand, Section 16 of the Elections Act requires the ECP to annually submit to the parliament and publish 'a report of its activities', which must also include a 'post-election review' according to Section 14 (3). However, the review that the ECP submitted after the 2018 general elections was a simple narration of its activities and

only a brief mention of the challenges it faced.

All of the above exercises together cannot be considered a thorough review of a general election that provides an authentic verdict on the credibility of elections. A number of questions are left unanswered which continues to hurt the credibility of elections and therefore the legitimacy of elected governments.

For example, leaders of political parties often claim that a majority of Form 45 (vote tallies by polling stations) of the 2018 elections do not have the mandatory signatures of polling agents, but there is no evidence-based rebuttal of their claim available. There is also a lack of information available regarding how many polling agents had signed Form 42 to ensure they had inspected that ballot boxes were empty before the start of polling. Moreover, the number of invalid votes in the past elections has increased, the reasons for which cannot be ascertained since there is no check on what errors voters make when marking the ballot. There is also no information available about how many of the losing candidates filed their returns of election-related expenses.

Section 234 of the Elections Act 2017 requires the ECP to set up monitoring teams; however, the ECP's mandate is limited to monitoring election campaigns only under its Code of Conduct. In this paper, we propose the introduction of a separate election monitoring body under the supervision of a bipartisan parliamentary committee. The committee would also be authorised to conduct a thorough and detailed audit of the entire electoral process.

The Senate Standing Committee on Interior had attempted in 2018 to monitor 'security, free, fair and transparent elections', and published a report. This exercise may be taken forward by an independent election monitoring body to monitor and audit elections. Such a body would also coordinate and collaborate with domestic and international election observers and collate their findings with its own.

For this purpose, the mandate of the parliamentary committee on electoral reforms may be redefined to include election monitoring and election audits. When the National Assembly stands dissolved, the members of the committee from the Upper House may continue to perform election monitoring work.

A timeframe and terms of reference must be determined to conduct an audit of an election. The body responsible for the job should also be able to commission services from other public departments, civil

Election observation reports by various parties have not served a comprehensive verdict on the credibility of elections acceptable enough to all stakeholders.

A thorough audit of each election can not only put an end to innumerable controversies about various electoral chores, but it can also provide objective grounds for making substantive improvements.

society organisations and corporate bodies.

The objective of the audit would be to identify weaknesses in the electoral system and prepare a set of recommendations for political parties, the ECP, governments and legislatures. The audit would also serve as an authentic verdict on the credibility of elections.

Discussion point: What should be the contours and mandate of an election monitoring body set up to conduct a thorough review or audits of elections?

Social media: Bull in a china shop

Following an old practice, the ECP issued a Code of Conduct for Media before the 2018 elections. The code details the protocols for print and electronic media outlets covering elections and issuing advertisements for political parties and their candidates.

The code, however, does not mention social media.

The truth is that it will be an understatement to say that social media influences the electoral discourse—it actively directs and steers it, propelling political narratives, creating perceptions and shaping opinions. Leaving the use of social media out of electoral discourse does not serve the objective of making elections free, fair and credible. It can only compound confusion by letting disinformation, misinformation and fake news rule the online discourse on elections.

Social media platforms have faced severe criticism across democracies in recent years for their role in elections, forcing these companies to review their policies, engage with stakeholders and institute mechanisms to at least minimise their negative impact on electoral discourse. For example, social media companies have authorised organisations in many countries to run fact-checks on suspicious news items or posts, and if they are found to be fake they are either removed or tagged with a warning for users.

While the effectiveness of such actions may be questioned and discussed, the main point remains that ignoring social media and pretending as if it does not exist cannot be called a strategy. The only way to ensure the ethical coverage of an election is to engage with all stakeholders, including social media platforms, to discover possible solutions and make a plan of action accordingly.

Social media is here to stay. Even if one considers it an 'evil', it is a necessary evil that cannot be wished away. All stakeholders in free and fair elections must work on a strategy to not only counter its neg-

ative impact on elections, but also to reverse the situation and make positive use of it.

It is encouraging that the ECP has finally presented itself on social media. It now needs to work on a code of conduct for social media usage by candidates and political parties.

The challenges posed by social media platforms are not unique to Pakistan but shared by all democracies. We must strive to strike common cause with other countries, and learn lessons from them to make our strategy more comprehensive and to gain leverage when negotiating with global social media platforms.

Pretending that social media does not exist and plays no role in the credibility of elections cannot be called a strategy by any measure.

Changes in sources of information used by households from 1998 to 2017

1 The 1998 census had documented that 51.9 percent of all households used no source of information. This figure decreased to 7.5 percent in the 2017 census.

2 Newspapers were described as a source of information by 21.2 percent of all households in 1998, including those households that were with and without access to any source of information. This dropped to 6.4 percent in the next census. Similarly, the proportion of households using radio as a source of information fell from 23.9 percent to 6.1 percent.

3 Television as a source of information, however, was used by 35.3 percent of households in 1998, a figure which rose to 54.8 percent in 2017.

4 Mobile phones were obviously not included as a source of information in 1998, but a significant 90.6 percent of all households (29 million of

the total 32 million households) identified it as a source of information in 2017.

5 In 2017, 11.6 percent of households also said they had access to computers and internet. This is close to the combined total of those who identified newspapers and radio (12.7 percent) as their sources of information in 2017.

6 Since the last census was conducted five years ago, it is highly likely that these trends have continued in the same direction with the exception of the increased use of television since audiences might have switched to other video-hosting platforms in recent years such as YouTube, Facebook, TikTok and Netflix.

7 Smartphone ownership in Pakistan has also increased at a fast pace during this period, specifically from 13.5 million in 2017 to 40.6 million in 2020.

2

Constituencies

Unequal constituencies or indirect gerrymandering

The process of delimitation of electoral constituencies conducted in 2022 was in conformity with the Elections Act 2017. However, it resulted in unequal constituencies, that is, constituencies with widely different populations. Here are some examples:

- NA 13 Battagram has a population of 476,749 while the neighbouring NA 14 Mansehra has 850,295 inhabitants.
- The two national constituencies of the Abbottabad district, NA 16 and 17, have a combined population of 1,333,089 (666,545 per seat) while the single national constituency of the Haripur district, NA 18, represents 1,001,515 people.
- NA 39 comprising the Bannu district has a population of 1,167,071, while NA 42 comprising the Tank district has just 390,626 inhabitants.

Such inequality is not limited to smaller districts comprising one constituency only.

- The districts of Jacobabad and Kashmor have one national seat

One voter registered in NA 42 Tank has the same electoral value as three voters in neighbouring NA 39 Bannu.

The Elections Act 2017

Chapter III: Delimitation of Constituencies

20. Principles of delimitation.

(1) All constituencies for general seats shall, as far as practicable, be delimited having regard to the distribution of population in geographically compact areas, physical features, existing boundaries of, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies.

(2) For the purpose of delimiting constituencies for the general seats of the National Assembly for the Tribal Areas two or more separate areas may be grouped into one constituency. **(3)** As far as possible, variation in population of constituencies of an Assembly or a local government shall not ordinarily exceed ten percent. **(4)** If the limit of ten percent under sub-section (3) is exceeded in an exceptional case, the Commission shall record reasons thereof in the delimitation order.

each, NA 190 and 191, against populations of 1,007,009 and 1,090,336 respectively. However, the next two seats, NA 192 and 193 of the Shikarpur district, have 623,9236 and 609,837 respectively, or a combined population of 1,233,760.

■ The average population of the two national seats of the Layyah district, NA 181 and NA 182, is 911,998, while that of the three seats of the Rajanpur district—NA 187, NA 188 and NA 189—is 665,346. [Population figures according to the 2017 census; constituencies as notified in 2022]

This means that one vote registered in NA 42 Tank is equal to three votes registered in NA 39 Bannu, and 10 votes registered in NA 13 Battagram carry equal weightage as 18 votes registered in NA 14 Mansehra. This violates the principle of equal suffrage.

These inequalities are dictated solely by one condition followed in the delimitation process: each district must have a whole number of national and provincial seats or, in other words, the boundaries of an electoral constituency must fall within one district. Since each district cannot possibly have a population in exact multiples of the quota calculated for a constituency, the rounding off of fractional parts leads to inequality in the populations of constituencies.

For example, if district A has a population equal to 2.4 times the seat quota and district B 2.6 times that quota, then after rounding off the figures, district A will get two seats while district B will get three. The average size of two constituencies of district A will thus be [2.4 di-

Electoral/political constituencies are forced to fit into the boundaries of administrative units. Should it not be the other way round?

The Elections Rules 2017

10. Draft proposals for delimitation of constituencies

(4) The constituency for an Assembly shall not ordinarily extend to more than one district except in exceptional circumstances for reasons to be recorded by the Delimitation Committee: Provided that a Patwar Circle or, as the case may be, a Tapedar Circle shall be the basic unit for delimitation and it shall not be broken under any circumstances: Provided further that in case of urban areas census circle shall not be broken under any circumstances.

(5) As far as possible, the delimitation of con-

stituencies of an Assembly shall start from the Northern end of the district and then proceed clock-wise in zigzag manner keeping in view that population among the constituencies of an Assembly shall remain as close as may be practicable to the quota: Provided that the quota under this sub-rule shall be determined by dividing total population of the district with the number of seats allocated to that district: Provided further that the variation in population between two or more constituencies shall not ordinarily exceed ten percent and the Delimitation Committee shall record reasons if, in exceptional circumstances, the variation has to exceed the limit.

There are no principles and rules for the creation of new districts and tehsils/talukas. This serves as a window to influence the delimitation of political constituencies.

vided by 2 is equal to] 1.2 times the quota, while those of district B will be [2.6 divided by 3 is equal to] 0.87 times the quota. Therefore, the size of district A's constituencies will exceed the quota by 20 percent, while the size of district B's constituencies will fall behind the quota by 13 percent.

The law allows constituency size to vary from the quota by ten percent at most. The ECP applies this rule on constituencies within one district, hence giving precedence to the rule restricting a constituency within the limits of a district over the rule limiting variation in the size of a constituency.

While district boundaries are not always natural and no set principles are followed for the creation of new districts, the electoral constituencies are forced to fit into these. There is thus no way to give equal suffrage to constituencies without violating the condition of restricting them within district boundaries. In fact, the creation of new districts over the years has influenced the delimitation of electoral constituencies to such an extent that it can be construed as indirect gerrymandering.

An alternate that can be explored is to set the smallest local government constituency as the basic unit, both in administrative and electoral (political) terms, and then define tehsils and districts in terms of these units. In other words, amend district and tehsil boundaries according to equalised electoral constituencies and keep them fixed for a certain period of time.

However, a review of the principles and rules for the creation of new tehsils (or talukas) and districts would still be beneficial.

Discussion point: Should administrative boundaries determine and dictate electoral (political) boundaries, or should it be the other way around?

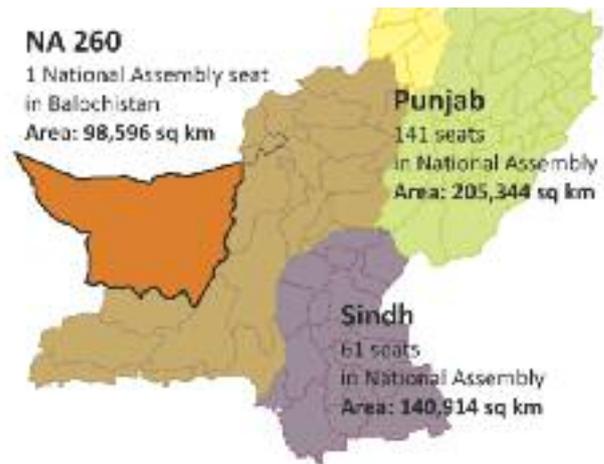
Justice or equality

Geography and the exercise of political rights

Citizens in some areas may find it exceptionally harder than those in other areas to exercise their political rights due to the topography or communication and transport infrastructure in those areas. For example, NA 260 comprises four districts of Balochistan — Washuk, Kharan, Chagai and Nushki — which have a combined area of 98,596 square kilometres with just 743,942 inhabitants, or 7.5 persons per

square kilometre. Compare this with NA 119 Lahore III with 767,666 people living within a few square kilometres. The inhabitants of these two constituencies with similar population sizes obviously cannot exercise their political rights with equal ease.

In fact, the geographical area of NA 260 is close to half the area of the entire province of Punjab (205,344 square kilometres) which has 141 national constituencies. On average, Punjab has 70 national constituencies in the area equivalent to that of one constituency, NA 260, of Balochistan.



Also important is the fact that the communication and transport infrastructure of NA 260 is of very low quality compared with that of other constituencies in other provinces. Hence, numerical equality should not be the sole criteria in deciding the limits of electoral constituencies.

Section 20 of the Elections Act 2017 does mention the ‘physical features’ of an area as well as ‘facilities of communication and public convenience’ as criteria for delimitation, but these factors never seem to receive any attention in the delimitation exercise.

The level of difficulty that voters, candidates and political parties face in exercising their political rights in different areas due to the area’s topography or communication and transport infrastructure must be defined. This factor should then be given a set weightage in the delimitation exercise.

Discussion point: Should the numerical equality of a population be the sole criterion for deciding the boundaries of a constituency?

Discussion point: Should the level of difficulty in exercising political rights be given a certain weightage when delimiting constituencies?

The extent of difficulty that electors in certain constituencies face in exercising their political rights, due to geographical factors or otherwise, must be accorded some weightage in delimitation.

De facto or de jure

Non-resident voters and resident non-voters

The 2017 census counted the population of the country at 207.7 million, but the electoral rolls for the 2018 general elections had 106 million voters; 51 percent of the country’s population were accounted for in the rolls. However, the constituency-wise breakdown of the population-to-voter ratio shows a wide variation, pointing towards an important issue that needs to be addressed.

While linking NICs with electoral rolls appears to have reduced many problems, the problems this has, in turn, created should not be brushed under the rug.

For instance, the 2018 electoral rolls of four national constituencies of the Jhelum and Chakwal districts represented 75.4 percent of the combined population of these districts, but the percentage for six national constituencies of the Muzaffargarh district stood at just 47 percent. This figure fell to 28.9 percent in the case of NA 221 Tharparkar I, and to an abysmally low 19.7 percent for NA 19 Kohistan.

These variations are broadly due to two reasons: 1) the percentage of persons possessing NICs after reaching the eligible age to vote is not the same in all areas; 2) there is a mismatch between the number of eligible voters actually residing in a constituency and the number of persons having the addresses of that constituency on their NICs.

The population census counts persons actually living in a particular locality at the time of census and the delimitation of constituencies is done on the basis of these numbers. The names of all these persons, however, may or may not appear on electoral rolls of that particular locality since their NICs may show addresses from elsewhere. The census and delimitation is hence conducted on a de facto basis, while electoral rolls are prepared on a de jure basis.

To illustrate this paradox: if a person residing in Lahore for over a decade or longer has their permanent and temporary address on their NIC listed as their ancestral residence in Jhelum district, then this person is counted as a Lahore resident during the population census since Lahore's electoral constituencies are delimited on the basis of the same population figures. However, given that the person's NIC carries an address from the Jhelum district, their vote would appear on the electoral rolls of a Jhelum constituency instead of any from Lahore's. This person would be considered a non-voter resident of Lahore as well as a non-resident voter of Jhelum, a practice leading to significant

A change in the meaning of 'resident' between 1974 and 2017 became necessary after the method of developing electoral rolls was changed.

The Electoral Rolls Act 1974

7. Meaning of resident.

— (1) Save as hereinafter provided, a person shall be deemed to be resident in an electoral area if he ordinarily resides, or owns or is in possession of a dwelling house or other immovable property, in that area. (2) Where a

person owns or possesses dwelling houses or other immovable property in more than one electoral area, he may, at his option, be enrolled in any one such area.

The Elections Act 2017

27. Place of residence.

— (1) Save as otherwise provided in this section, a person shall be deemed to be resident in an electoral area if his temporary or permanent address in the National Identity Card issued by the National Database and Registration Authority lies in the said electoral area.

distortions in the population-to-voter ratios of both Lahore and Jhelum. This person is hence effectively disenfranchised, unable to cast their vote as their name does not appear on Lahore's electoral rolls, and unable to vote in Jhelum where their name does appear on electoral rolls unless they travel to exercise this right.

The following cases depict how this paradox unfolds in reality:

NA 58 Rawalpindi 2: A case of out-migration

Population of the constituency in 2017: 776,450

Number of registered voters in 2018: 629,386

Voters as a percentage of the population: 81.1 percent

The national population-to-voter ratio is 51 percent. If this constituency had the same ratio, it would have had 396,125 registered voters, but it had 233,261 more than that. This means that a total of 629,386 persons held NICs carrying addresses of areas from this constituency whereas only 396,125 actually resided there and were counted at the time of population census. 233,261 of the voters in this constituency lived elsewhere in the country and were not counted there during the census.

NA 58 Rawalpindi 2 constituency consists of Gujar Khan tehsil and parts of Kallar Syedan tehsil of the Rawalpindi district, which are known as a recruitment hub for the armed forces. The most plausible explanation for the distortion in this ratio may thus be that a large number of people of this constituency had moved out of this area but had continued to carry the address of this area on their NICs, thus becoming non-resident voters of this constituency.

NA 252 Karachi West 5: A case of in-migration

Population of the constituency in 2017: 758,107

Number of registered voters in 2018: 219,042

Voters as a percentage of the population: 28.9 percent

Had the population-to-voter ratio for this constituency been equal to the national average, it would have had 386,766 registered voters residing within its bounds, but only 219,042 names (57 percent of the estimated total of 386,766) had appeared in the 2018 rolls of this constituency. The names of the remaining 167,724 (43 percent of estimated total) had not. The most plausible explanation for this distortion may be that these 167,724 voters were residing in this constituency, but their NICs had listed addresses that were outside this constituency.

This constituency consists of the Manghopir sub-division and parts of the Mominabad sub-division of Karachi West. The area also has a

The contradiction of one's listed address on the card not reflecting one's actual place of residence may well have disenfranchised a very high number of voters.

It is not about voters' complacency regarding their responsibility; NADRA's limited capacity to perform its duty must also be taken into account.

massive population that had migrated from the Waziristan, Mohmand and Swat districts of KP, and the majority of their NICs still carry addresses of their ancestral hometowns. They are thus resident non-voters of this constituency.

NADRA registers an NIC-holder in the rolls of a constituency corresponding to their permanent address by default. However, anyone can request NADRA to register them in the constituency of their temporary address when issuing the card. The ECP can also be requested to make the same change on the application of a voter.

However, if one's actual place of residence is different from both the permanent and temporary addresses listed on the card, the only way to appear on the rolls of the constituency of actual residence is to change the address on the card.

For a vast majority of the population, this is not practical. The difficulty in managing this change is not just about the personal initiative of the voters; it is also directly linked with NADRA's capacity to handle such changes in an efficient manner. As discussed in the other chapters, there are still close to 10 million people of voting age who have not yet been issued their first NICs.

Our electoral scheme rests on two main principles: one, the defining of territorial constituencies; and two, the people residing in these territorial constituencies electing their representatives. The conflict between the actual place of residence of a voter and of the constituency where one's vote is registered fails this scheme.

And this is not just a technical difficulty. It is central to making the system of political representation responsive to factors such as demographic changes caused by urbanisation and internal migrations. For example, if members belonging to a long-established migrant community wish to vote, their votes are registered in their 'home' districts and not in the city of their residence which disempowers them from participating in the politics of that city. Moreover, since they live outside of their 'home' districts and are highly unlikely to travel back just to cast votes, they have little political value in those districts as well. This associates internal migration with a kind of disenfranchisement. This paradox must be resolved as it not only disenfranchises a large number of voters, but also renders all efforts of equalising constituencies—in terms of population size while conducting delimitation of constituencies—meaningless.

Suggestions to delimit constituencies on the basis of the number of voters instead of the population of districts may help equalise con-

stituencies in terms of the number of voters. However, this will also legitimise the disenfranchisement of migrant communities who will continue to live in the constituency of their residence. It will also legitimise the disenfranchisement of those who are eligible to vote in the constituency of their residence but are unable to obtain an NIC for various reasons, a problem especially common for female voters. In this way, the delimitation of constituencies on the basis of the number of registered voters in each district will go against the fundamental political rights of citizens.

Discussion point: Should a voter be allowed to choose which constituency to register or cast their vote in, or should all the actual residents of a constituency be enrolled to elect their representative?

Elusive consensus on the population census

A major overhaul of the electoral constituencies was carried out in 2002 as the 1998 census had produced new population figures, increasing the total number of seats in the legislature. The number of general seats in the National Assembly was increased from 207 to 272, and the general elections in 2008 and 2013 were held for the same constituencies. The delimitations thus carried out before the general elections in 2008 and 2013 were mostly limited to changes in the names of constituencies which becomes necessary after the creation of new districts and tehsils/talukas.

Therefore, three consecutive elections were held while the limits of the constituencies had remained the same on ground.

A new population census was conducted in 2017. The ECP is bound to delimit constituencies after a notification of the results of a population census is issued.

The Council of Common Interests (CCI) had decided in December 2016 to conduct the population census 18 years after the previous one was conducted in 1998. The census was hence conducted in two phases between March and May 2017, and its provisional results were made public in November of the same year. The results, however, were contested by a number of stakeholders, and the CCI was also divided over the acceptance of results.

Since the 2018 general elections were only months away at the time, the parliament then granted a one-time exception to the ECP

Frequent changes in the limits of constituencies is detrimental to the development of local politics.

It is important to synchronise the schedules for population censuses with the schedules for delimitation of constituencies.

to carry out a delimitation of constituencies on the basis of the provisional, and not final, results of the census. The ECP accordingly completed the exercise and notified the constituencies' delimitation on 3 May 2018.

The 2017 population census had recorded vastly different population growth rates for different areas of the country which had resulted in Punjab losing seven seats in the national legislature while KP had gained four, Balochistan two and Islamabad one. Sindh's share had remained the same, a fact that the Sindh government has vocally criticised since, maintaining that Karachi's population was undercounted. Almost all the political parties in Sindh believe that the province has fewer representatives in the national legislature than due.

The Federally Administered Tribal Areas (FATA) were merged with the province of KP in the same month (May 2018), but after the notification of the new constituencies. The merger plan required that members of the parliament be elected from the Newly Merged Districts (NMDs) in the July 2018 general elections in the pre-merger manner, and that they shall continue till the expiry of their terms. The NMDs were to be delimited later at par with the other areas of the province for the next general elections in 2023. The NMDs were allocated seats in the KP provincial assembly for the first time. Under the merger plan, the first elections to these new provincial seats were to be held a year after the 2018 general elections. The ECP accordingly delimited the NMDs and notified the provincial constituencies in March 2019.

The CCI finally approved the notification of the final results of the 2017 population census in a meeting held in April 2021, despite Sindh's persistent rejection of the results. Though the final results were only marginally (-0.043 percent) different from the provisional results, their notification and merger of the NMDs made it mandatory for the ECP to conduct the delimitation exercise afresh.

The ECP published draft proposals for new national and provincial constituencies in May 2022 and, after adjudicating over objections raised by various stakeholders, published the final list of constituencies on 5 August 2022.

As decided in CCI's meeting in April 2021, the Pakistan Bureau of Statistics planned a new census using digital technology for the first time, and completed the field enumeration by the end of May 2023. The CCI unanimously approved the results of the census on 5 August and the ECP notified the schedule to conduct a fresh delimitation on

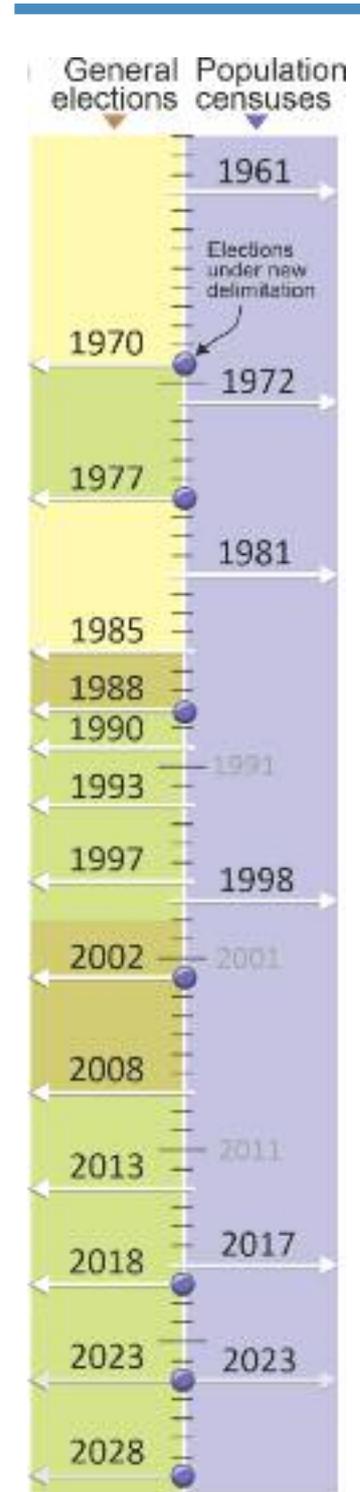
17 August. This has raised many new questions. Can the CCI with two caretaker chief ministers make the important decision of approving the census results? Can the ECP delay the elections beyond the 90-days limit set by the Constitution to follow the other constitutional obligation of conducting a fresh delimitation after the notification of new census results? Can the elections be held immediately after this delimitation exercise considering that the Elections Act 2017 calls for a completion of preparations, including constituency delimitations, four months 'before the general election is due to be held on expiry of the term of an Assembly'?

From an electoral perspective, if the next general elections are held under newly delimited constituencies, then the next three consecutive general elections will be held under different definitions of constituencies as well. Such frequent changes in constituencies do not augur well for the development of electoral politics, and are akin to moving the goalposts every now and then.

Following colonial traditions, Pakistan has held decennial census exercises in years ending with 1, that is, in 1951, 1961, 1972 and 1981—the census due in 1971 was delayed by one year due to the 1971 civil war. The country, however, lost track after 1981 as it failed to resolve the controversies around the exercise, delaying the next census by eight years till 1998. The grievances of stakeholders, however, remained unaddressed, and the next census was held after a gap of 19 years in 2017. Again, the results of this long-delayed census were not acceptable to a number of stakeholders, and the only solution out of this impasse was to conduct the exercise afresh in 2023, six years after the last one.

The allocation of seats in the national legislature on the basis of the population of federating units is another basic principle of our political system and one that our polity has fought hard for. This principle entails periodic adjustments to these allocations in response to demographic changes which can only be noted in a population census. However, the haphazard schedules for conducting the censuses and the resulting frequent changes in constituency boundaries hamper the development of local politics. This makes it vital to build a consensus on matters related to population censuses, including the decision of a new schedule for conducting the censuses on a regular basis.

Discussion point: Should the schedule for conducting population censuses be synchronised with the schedule for conducting general elections and delimitation of constituencies?



Years in which Pakistan's general elections and population censuses took place.

3

Electorate

House of (identity) cards

The state's responsibility to ensure the right to vote

Over the last 40 years, the role of NICs has expanded from identifying voters at the polling station to becoming the basic eligibility criteria for voting. NADRA, however, is under no legal obligation to issue an identity card to each and every citizen. Instead, the authority issues an identity card to applicants only after they fulfil the necessary conditions, failing which the authority has the right to refuse the application. Linking the right to vote with the possession of NICs has effectively turned a basic right of every citizen into their responsibility. In other words, the responsibility of registering voters has been shifted from the ECP to citizens themselves.

NICs were first introduced in the electoral system by former President Ghulam Ishaq Khan in 1988. The president promulgated an ordinance a month before the general elections in 1988, making it mandatory for the voters to produce NICs for their identification at polling stations. A further ordinance issued nine days before the polling date asserted that anyone who refused or failed to produce their NIC at the polling station would not be issued a ballot paper. The Lahore High Court declared the rule void the next day, but the Supreme Court ruled in its favour on 12 November. The polling was then held on 16 November.

The population census conducted a decade after the introduction of

NADRA is not an exhaustive registry of citizens. It was set up as a database of persons who had applied for an identity card and were obliged after meeting the body's terms and conditions.

The Elections Act 2017

(2) A person shall be entitled to be enrolled as a voter in an electoral area if he—

- (a) is a citizen of Pakistan;
- (b) is not less than eighteen years of age;
- (c) possesses a National Identity Card issued by the National Database and Registration Authority at any

time till the last day fixed for inviting claims, objections and applications for preparation, revision or correction of electoral rolls;

- (d) is not declared by a competent court to be of unsound mind; and
- (e) is or is deemed under section 27 to be resident in the electoral area.

this legal condition, that is, in 1998, showed that a third of the country's adult male and half of its female population did not possess NICs. The ordinance was, thus, a blatant attempt to disenfranchise a vast chunk of the population.

However, the electoral rolls at that time did not carry NIC numbers of the voters nor was the polling staff instructed to note down the NIC numbers on the counterfoils of ballot papers. There was hence no way to ascertain if a voter had presented their NIC at the polling station or not, so in practice, the rule was hardly applied and persons without NICs continued to exercise their right.

The ordinance was re-promulgated before the 1990 general elections by President Ghulam Ishaq Khan with the same effect, but not in the next two general elections held in 1993 and 1997.

General Musharraf imposed martial law in October 1999, holding the Constitution in abeyance. Since the laws related to elections were not applicable anymore, he ordered NADRA to prepare electoral rolls for local government elections that were held in 2000 and 2001. NADRA developed the rolls using the data from the population census conducted in 1998. The same rolls were updated by the ECP through a door-to-door revision exercise for the 2002 general elections, and NADRA was entrusted with the task of digitising the rolls. Since then, the development of electoral rolls has become a shared responsibility of both ECP and NADRA.

After the restoration of the Constitution following the 2002 general elections, the ECP attempted to develop the electoral rolls afresh and as per the requirements of the laws that had come into force again. Its collaboration with NADRA had hit many legal and administrative snags. The ECP's own efforts to develop electoral rolls through a traditional door-to-door enumeration exercise, however,

Percentage of persons who were unable to obtain an NIC in 1998 and 2017

Population aged 18 years and above:
 1998: **66,205,930**
 2017: **110,368,790**

Persons not holding an NIC:
 1998: **23,633,405**
 2017: **19,882,050**

Percentage of eligible voters who did not possess the NIC:
 1998
35.7%
 2017
18.0%

The National Database and Registration Authority Ordinance 2000

9. Registration of citizens.

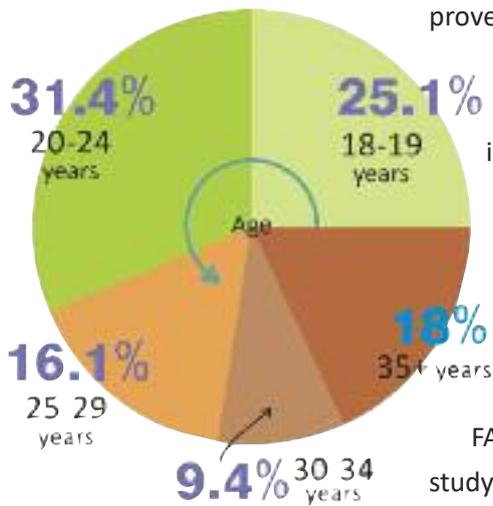
— (1) Every citizen in or out of Pakistan who has attained the age of eighteen years *shall get himself* and a parent or guardian of every citizen who has not attained that age

shall, not later than one month after the birth of such citizen, get such citizen registered in accordance with the provisions of this Ordinance

10. National Identity Cards. —

(1) The Authority shall issue or renew, or cause to be issued or renewed, in such manner and *on terms and conditions,*

subject to every citizen who has attained the age of eighteen years and *got himself registered* under section 9, a card to be called National Identity Card in such form, with such period of validity upon payment of such fee in such form and manner as may be prescribed.



According to the 2017 census, over half of the persons without an NIC are below 25 years of age.

The possession of NICs as a basic qualification for voter enrollment without ensuring that all citizens receive NICs is an act of indirect disenfranchisement.

proved to be a disaster. The new rolls of 2007 put the total strength of voters at 52 million while it was 72 million in the 2002 general elections; all experts had estimated the number of voters in the country to be 80 million at that time. Therefore, a staggering 28 million voters were missing from the rolls prepared by the ECP through the old legal method.

The rolls were challenged in the Supreme Court and, following the court's orders, were revised in haste to 80 million within a few weeks. The revised rolls were faulty. A press release by

FAFEN issued on 19 February 2008 said that the organisation's study revealed that approximately 15 million eligible voters were missing from the rolls, while 7.5 million of the records contained duplicate (or possibly fake) entries.

This was the ECP's last attempt to develop rolls through the traditional method of door-to-door enumeration of voters. This exercise had made it more than evident that the ECP had lost the capacity to undertake the task on its own.

The Electoral Rolls Act 1974 was amended in 2011 to include possession of an NIC issued by the NADRA as a qualification for a voter. This amendment made the development and maintenance of electoral rolls a shared responsibility between the ECP and NADRA. The amendment thus limited voting rights to only those possessing NICs.

When the parliament consolidated and overhauled election laws in the form of the Elections Act 2017, the above condition was made a part of it. The act also defined the role of NADRA in the process of the development of electoral rolls.

It cannot be denied that the persons not possessing an NIC are amongst the most marginalised of citizens, and that linking their right to vote with the possession of NICs has pushed them out of the political arena, exacerbating their marginalisation further.

One can argue that the benefits of such a condition outweighs the problems it has created. This pragmatism, however, cannot be used to legitimise the disenfranchisement of the most marginalised sections of the society.

One way to resolve this would be to change NADRA from 'a database organisation' to a citizens' registry through an amendment in the law. This change would make it mandatory for the authority to register the particulars of every citizen, just as it is mandatory for the Pakistan Bureau of Statistics to count each and every person living in the coun-

try during the population census. NADRA would then not be an office issuing NICs only to those who apply for it under certain terms and conditions; it would instead be responsible for maintaining a registry of all citizens. Only then can its database serve as electoral rolls.

Consider the fact that 11.2 million of the total 19.9 million people (56.6 percent) counted as not possessing an NIC in the 2017 census were below 25 years of age. NADRA is likely to already have the particulars of almost all of these people (as children of persons issued NICs earlier) in its records, but awaits their applications to issue them cards.

The NADRA Ordinance 2000 deserves to be debated upon, particularly whether to change its status from a database of applicants who have been issued NICs to an exhaustive registry of all citizens of Pakistan.

The Elections Act 2017 does include some clauses calling upon the ECP to close the gaps in electoral rolls, but these are put forth as recommendations and do not even set a timeline to address the problem.

Discussion point: Is it not the state's responsibility to ensure that every citizen has the right to vote and that every citizen is issued an NIC?

The provisions of the Elections Act 2017 related to the enrollment of missing voters are put forth as recommendations. They do not set any targets or timeframes for NADRA and the ECP to bridge the gaps.

The Elections Act 2017

47. Special measures for enrolment of women voters.

(1) The Commission shall annually publish disaggregated data of registered men and women voters in each National Assembly and Provincial Assembly constituency highlighting the difference in number of registered men and women voters.

(2) Where the variation in the disaggregated data under sub-section (1) is more than ten percent in a constituency, the Commission shall take special measures to reduce such variation.

(3) The measures referred to in sub-section (2) shall include action to expedite the issuance of National Identity Cards for women of such constituency by National Database and Registration Authority and for their enrolment as voters in the relevant electoral rolls by the Commission.

48. Enrolment of non-Muslims etc.

(1) The Commission shall take special measures for registration of non-Muslims, persons with disabilities and transgender citizens in the electoral rolls as voters.

(2) The measures under sub-

section (1) shall include coordinated action with the National Database and Registration Authority to expedite the issuance of National Identity Cards for non-Muslims, persons with disabilities and transgender citizens.

(3) No activity undertaken in connection with an election by the Commission or National Database and Registration Authority, as the case may be, shall be delayed, postponed or otherwise affected in any manner whatsoever merely on the ground of any measure being taken under this section or section 47.

Number of women per 1000 men in

Adult population	Electoral Rolls
18 to 25 years	
983	587
26 to 35 years	
1052	841
36 to 44 years	
982	913
45 to 54 years	
930	886
55 to 64 years	
897	902
65 years and above	
915	975
All 18 years and above	
982	822

Source: The 2017 census and the November 2021 electoral rolls (an age-wise gender breakdown of the latest rolls is not available on the ECP's website)

Equality delayed is equality denied

How long will it take to bridge the gender gap?

According to the 2017 census, the total male population aged 18 years and above in the country was 55.7 million and the total female population was one million less. In other words, there were 982 women compared to 1,000 men for this age group. In the previous census in 1998, this number was 927, and it was even lower in the censuses before that.

Since the eligible age for voting is 18 years, the electoral rolls should reflect the women-to-men ratio recorded in the population census. However, in the electoral rolls used in the 2018 general elections, there were 789 women per 1000 men. This number has improved in the last four years. It stood at 822 in November 2021, moved to 834 in May 2022, and amounted to 851 in May 2023.

The latest electoral rolls (20 June 2023) available on the ECP's website show the number of registered male voters as 68,099,615. Had the rolls followed the 2017 census, female voters aged 18 years and above would have amounted to 66,847,811 women. These rolls, however, show the number of registered women (possessing an NIC) at 57,967,259, leaving around 8.9 million women eligible to vote out of the electoral rolls of 2023. To add to the disparity, the total number of female voters registered in all 61 national constituencies of the province of Sindh in 2018 was 9.96 million!

Therefore, male voters are 54 percent of the 2023 rolls while female voters account for around 46 percent. While this difference of 8 percentage points shows an improvement of 2.75 percent over the 2018 rolls—with the difference in adult population counted according to the 2017 census standing at 0.93 percentage points—the pace of this improvement in bridging the gender gap in electoral rolls is too slow. If efforts to close this gap continue at this pace, it could take at least 13 more years, or approximately by year 2035, to bring the gender ratio in the rolls at par with the current ratio in the adult population. This is certainly not a desirable situation, and there is a need to consider administrative and legal measures to ensure that the gender gap is bridged sooner.

Looking at the same statistics from a different angle, 9.3 million men and 10.4 million women were issued NICs during the four-year period between 2018 and 2022. If the 2018 gender differential in the issuance of NICs had prevailed till 2022, only 7.4 million women

would have secured their cards during these four years. We can surmise that special efforts to close the gender gap have resulted in an issuance of three million additional cards to women.

However remarkable this achievement may sound, it would still take well over a decade to completely bridge the gender gap, provided that special efforts are continued, at the same pace. It is evident that we need to find better and more efficient solutions to this persistent problem.

It is also evident from this data that women less than 25 years of age make up the largest portion of women who do not possess an NIC. The question then remains why the legal framework governing NADRA cannot be amended to acknowledge the issuance of an NIC as a basic citizenship right, mandating NADRA to issue an NIC to everyone as soon as they reach 18 years of age.

Discussion point: Should we wait for the current systems in place to bridge the gender gap in electoral rolls or demand an amendment in the legal framework governing NADRA to expedite the process?

If the 2022 electoral rolls were to have the same women-to-men ratio as documented in the 2017 census, there would have been 10 million more women voters than there actually are.

Missing male voters

The previous figures estimating the number of women missing from the electoral rolls were made after multiplying the number of registered male voters with the women-to-men ratio in the adult population as documented in the 2017 census. This, however, should not lead to the misconception that all eligible male voters have already

Total	Male	Female	Difference
Population of age group 18 years and above (the 2017 census)			
110,348,379	55,686,538	54,661,841	1,024,697
100%	50.46%	49.54%	0.93
Population of age group 18 years and above holding an NIC (the 2017 census)			
90,472,257	49,920,560	40,551,697	9,368,863
100%	55.18%	44.82%	10.36
Electoral rolls in May 2018			
104,981,940	58,692,167	46,289,773	12,402,394
100%	55.91%	44.09%	11.81
Electoral rolls in May 2022			
124,753,345	68,029,866	56,723,479	11,306,387
100%	54.53%	45.47%	9.06

The 2017 census noted that 10.4 percent of the men aged 18 years and above could not obtain an NIC. Half of them were between 18 to 20 years of age, and another quarter of them were between 20 and 30 years of age.

been documented in the electoral rolls.

In fact, the 2017 census showed that the total male population aged 18 years and above was 55.7 million, while those possessing an NIC was 49.9 million. This means that 5.77 million adult men (10.4 percent of the total adult male population, or every tenth adult man) did not possess the coveted card in 2017, and were thus deprived of the right to vote.

Hypothetically (and optimistically), if the percentage of adult men not possessing an identity card has been halved (from 10.4 percent to 5.2 percent) since the 2017 census, there would still be around four million male voters missing from the rolls.

Needless to say that these men are among the poorest and the most marginalised men in society without their right to citizenship, much less without their right to vote, in place.

[Of all the 55,686,538 adult men counted in the 2017 census, only 265,930 (0.48 percent) were non-Pakistanis and thus would not have been issued an NIC because of their nationality.]

Transgender persons as voters

The population census in 2017 had counted only 20,411 transgender persons aged 18 years and above in the entire country. Notwithstanding the fact that this is a highly contested figure, only 71 percent of them possessed an NIC, which implies that 29 percent of this undercounted minority was disenfranchised for not possessing an NIC. This is the widest gender-related gap in the electoral rolls.

Also of concern: the ECP does not show transgender voters under separate columns in its gender-segregated electoral rolls.

The unending saga

Separate electoral rolls for Ahmadis

Ahmadis are undoubtedly the most persecuted religious minority in Pakistan. Their ordeal began with the passage of the Second Amendment to the Constitution enacted in 1974 which declared them non-Muslims and has been in practice to date. All the electoral systems experimented with since then incorporated special clauses, purportedly to ensure Ahmadi representation in elected houses; in reality, all of them have worked to deny them their basic political rights.

When General Zia-ul-Haq introduced the separate electorate sys-

tem, he reserved one of the ten minority seats for Ahmadis. The Ahmadis refused to register themselves as non-Muslim voters and the seat remained vacant in the first elections held under the new system in 1985. It remained vacant again in the next elections held in 1988. The seat was later filled through a sham by-election for which a total of 2,559 voters were registered as Ahmadis. This practice continued in the next three elections. In 1990, an Ahmadi candidate polling 103 votes of the total 150 polled votes was declared the winner of the reserved seat in the National Assembly. [The average number of polled votes in the National Assembly contests on Muslim seats in 1990 was 103,900 votes.]

The system of separating voters and candidates on the basis of their faith was abandoned in 2002. The new electoral system envisaged one joint electoral roll with no column mentioning the faith of voters. The ECP was hence saved the hassle of maintaining five separate electoral rolls for Muslims, Christians, Hindus and Scheduled Castes, Ahmadis and other faiths. By the time the Conduct of General Elections Order (No 7) was issued on 27 January 2002, the ECP had already completed the exercise of developing electoral rolls with the column for the faith voters as had been the previous practice. However, the ECP found the column of no practical use and omitted it when it started its campaign to update the rolls in 2003.

This invited the anger of groups that champion the witch-hunt of this community. Aalami Majlis Khatam-e-Nabuwat, an Islamic organisation founded in Pakistan in the 1950s, filed a writ petition in the Rawalpindi bench of the Lahore High Court against procedural changes that would have impacted joint electoral rolls. Religious political parties in elected houses not only supported them, but also held meetings with General Pervez Musharraf to exert pressure on the matter. [The alliance of religious political parties, Muttahida Majlis-e-Amal (MMA), had won 46 of 272 national seats and also formed the government of the KP province at the time after securing a simple majority there.]

General Musharraf finally amended the order, requiring the ECP to maintain a separate electoral roll of Ahmadis called a supplementary list of voters. Therefore, while our electoral system became 'joint' in 2002, the ECP continues to separate Ahmadi voters from others. The ECP thus maintained two electoral rolls for each constituency, one for Muslims, Christians, Hindus and voters confessing any other faiths, and a second one for Ahmadis.

Ahmadi population

191,737

Ahmadis are a small minority group: about 0.09 percent of the country's total population.

One in every three Pakistani Ahmadi resides in Chenab Nagar (Rabwa) in Punjab's Chiniot district.

Source: the 2017 census

Maintaining separate rolls for Ahmadi voters in the joint electorate system serves no purpose other than disclosing their identity at the polling stations and putting their security at risk, thereby discouraging them from casting their vote.

The parliament took up the massive task of overhauling the entire electoral system and passed the Elections Act 2017 gazetted on 2 October of the same year. The new law repealed all the previous laws and covered the subject in a comprehensive manner. It obviously saw no practical purpose for maintaining a separate electoral roll for Ahmadis. This infuriated the groups who strongly believe that persecuting Ahmadis shall remain the responsibility of the state of Pakistan. This time it was led by Tehreek-e-Labbaik Pakistan (TLP) which decided to hold a sit-in and block the main artery of the federal capital, Islamabad. The sit-in started on 8 November and continued till the beleaguered government caved in to their demands, restoring the clauses providing for maintaining separate rolls on 23 November 2017.

[TLP registered itself as a political party and contested the general elections in 2018. The party fielded 552 candidates on 272 national and 593 provincial constituencies, winning on two provincial seats in Sindh and securing 2.2 million votes in national contests.]

The separate electoral rolls for Ahmadis seem absurd in a joint electorate system since they have no practical use in the administration of elections. For its proponents, they serve two important purposes. One is more symbolic in nature: the declaration of Ahmadis as non-Muslims and their subsequent persecution and exclusion from politics is considered a major victory by the religious groups whereby they have decisively forced the state of Pakistan to side with them in their century-old theological rivalry with Ahmadis. They do not want to allow the state to budge from this position, and are extremely vigilant and wary of any acts that may even hint at the possibility of reversing the laws and policies regarding Ahmadis. The second is of more practical in nature: a separate list ensures that Ahmadi voters are identified by their faith at the polling stations. In the wake of wide-spread societal intolerance, Ahmadis prefer to hide their religious identity unless it becomes crucially important to disclose it. Exposing their faith at the polling stations certainly puts their personal security at great risk, leaving them with abstention as their only choice. Ahmadis are thus effectively disenfranchised through this separate enrollment.

Discussion point: This brazen act of discrimination on the basis of faith must end. The separate supplementary list for Ahmadi voters must be abolished.

Beyond the wonders of technology

Voting right for overseas Pakistanis

The debate on granting voting rights to overseas Pakistanis has lasted for over a decade. It was discussed by the Parliamentary Committee on Electoral Reform (PCER) formed in July 2014. Comprising members from every major political party, the PCER had submitted its report after scores of meetings and consultations in July 2017.

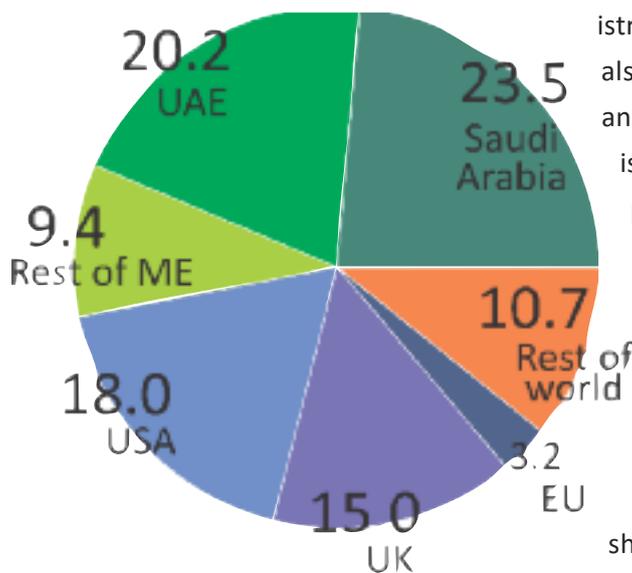
Two of the dissenting notes annexed to the final report were regarding the granting of voting rights to overseas Pakistanis. The note, signed by three members of the PTI, objected that despite 'NADRA's proposal regarding confirmed possibility of holding overseas election through a secure electronic system', one of the PTI's 'core proposals for meaningful reforms remained unaddressed' by the Committee. The second note by the parliamentary leader of the PPP pointed out that 'issues left to be settled' include 'overseas Pakistanis to be facilitated to take part in elections by setting up automatic system at the Pakistan Missions abroad'.

The Elections Act, passed after PCER concluded its work in October 2017, included a clause (94) which is limited to enabling the ECP to 'conduct pilot projects for voting by Overseas Pakistanis, in by-elections to ascertain the technical efficacy, secrecy, security and financial feasibility of such voting'.

PTI is the most vocal advocate of the cause to grant voting right to overseas Pakistanis, holding the firm belief that its support abroad could help it swing many in-land electoral contests in its favour.

Some expatriate Pakistanis filed petitions in the Supreme Court in 2015 requesting they be granted voting rights. PTI chief Imran Khan became a party in the case in January 2018. The court directed the ECP in August 2018 (that is, after the 2018 general elections) to ensure that overseas Pakistanis exercise their right to vote in the upcoming by-elections that were being held on seats vacated by the members elected to more than one seats in the general elections. The ECP accordingly experimented with internet voting (i-voting) using a system developed by NADRA. The ECP later produced a report on it titled Report on I-Voting Pilot Test in 35 Constituencies held on 14th October 2018. NADRA commissioned a third party audit of its internet voting solution as well. The Min-

Unlike other democracies, the discourse on voting rights for overseas citizens in Pakistan has been reduced to a single technological question - the feasibility of internet voting. It completely ignores other crucially important aspects of the matter.



An estimated 9 million Pakistani citizens reside in other countries. Almost half of them are working in the Middle East, with Saudi Arabia alone hosting almost a quarter of all overseas Pakistanis.

Here is a list of the biggest populations of Pakistanis residing abroad:

Saudi Arabia	2,600,000
United Arab Emirates	1,500,000
Rest of Middle East	750,000
United Kingdom	1,170,000
European Union	502,000
United States	530,000
Canada	220,000
Rest of the world	1,728,000

These numbers are quoted from different sources and are from different years.

The pie chart above shows the percentage contribution of different countries or regions in Pakistan's total remittance receipts. (Source: State Bank of Pakistan; 2019-20).

istry of Information Technology and Telecommunication also undertook an exercise regarding the 'analysis, design and implementation of internet voting for overseas Pakistani', and published its report in May 2021. All three reports are available on the ECP's website and point towards multiple problems that should be addressed before granting overseas Pakistanis the right to vote.

Though experts have been unanimous about the risks associated with voting through the internet, the PTI government passed an amendment in the Elections Act in December 2021 providing that 'the Commission shall with the technical assistance of NADRA, any other authority or agency, enable overseas Pakistanis, in prescribed manner, subject to secrecy and security, to exercise their right to vote during general elections in Pakistan'.

The PDM government, formed after dislodging the PTI through a vote of no confidence, reversed the amendment in June 2022 and restored the previous clause limiting the proposed intervention to a pilot project.

Granting voting rights to overseas nationals has become a hotly debated subject across democracies over the past two decades. From the United Kingdom (UK) to Canada and from India to Brazil, think tanks, academia, civil society and political parties are engaged in deliberations on various aspects of this matter that has gained increasing importance in the context of the fast pace of globalisation of economies and societies.

The discourse in Pakistan, however, remains problematic for two main reasons: one, it has been reduced to a technological question, namely whether or not voting through the internet is a possibility, ignoring other aspects of the matter that need to be deliberated upon; two, it has been monopolised by one political party, the PTI, to the extent that the rest of the parties have started considering it a threat to their political standing. They assume that granting this right will squarely favour the PTI, and this has diminished any chances of building consensus on this matter.

The lopsidedness of this discourse needs to be checked by bringing in the following aspects of this important matter to the public and parliamentary fora.

a: Who is an overseas Pakistani?

Pakistani citizens living abroad can be placed into three categories:

1: Pakistani citizens who have moved to another country for work only. They hold an NIC or a national identity card for overseas Pakistanis (NICOP), and a passport with a visa of the country of their current residence. They are unlikely to take up citizenship of the country of their current residence, and will return after their visas and work permits expire. They mainly comprise skilled and semi-skilled Pakistani labour working in Middle Eastern countries.

2: Pakistani citizens who have moved to another country and taken up its citizenship in addition to their original Pakistani citizenship. These citizens are issued a NICOP by NADRA which allows them visa-free travel to Pakistan, besides other citizenship rights. This category mostly comprises Pakistanis who have migrated to Europe, the United States of America (USA), Canada and other rich countries.

3: Persons born abroad to parents who had migrated from Pakistan and taken up citizenship in other countries. These persons are natural citizens of the country of their birth. They are issued Pakistan origin cards (POC) by NADRA which offers them visa-free travel to Pakistan and also affords them most of the citizenship rights, such as buying and selling property, obtaining employment, or opening a bank account.

The Elections Act 2017 embodies the intention to grant voting rights to the first two categories under section 94 clause 2 which defines overseas Pakistanis as those holding a NICOP issued by NADRA. This includes both the persons who are residing in another country without obtaining its citizenship, and those who have taken up another country's citizenship in addition to that of Pakistan.

While Pakistan is among the countries that allow dual citizenship, many others including India, China, Nepal and Kuwait strictly forbid it. The issue of granting voting right is simpler for countries disallowing dual citizenship as they consider it akin to unnecessarily extending a basic right to those who have for reasons, and for the time being, taken up residence outside the boundaries of their country. But for countries that allow dual citizenship, the matter entails additional complexities.

Pakistan strictly forbids dual citizenship for holders of public and political offices. In a recent case, MNA Faisal Vawda from PTI has been unseated by the court for holding dual citizenship (Pakistan and USA)

Pakistanis living abroad

Source: the 2017 census

5,154,218

Province	Numbers	%
KP	1,055,980	18.1
Punjab	2,861,909	55.5
Sindh	1,015,659	19.7
Balochistan	154,813	3.0
Islamabad	65,857	1.3

The difference in estimated and census numbers is due to the different definitions of overseas Pakistanis used by different departments.

The gender ratio in overseas Pakistanis, as defined in the census, is highly skewed. There are only 35 women for every 100 men. This indicates that the majority of these might be of those who are working in the Middle East and hold Pakistani citizenship.

There is no data available in the public domain about the number of NICOPs issued by NADRA.

The Oath of Allegiance

taken by US citizens in naturalisation ceremonies

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen;

... that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;

... that I will bear true faith and allegiance to the same;

... that I will bear arms on behalf of the United States when required by the law;

... that I will perform non-combatant service in the Armed Forces of the United States when required by the law;

... that I will perform work of national importance under civilian direction when required by the law;

and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."

at the time of filing his nomination papers in the 2018 general elections, and only got his USA citizenship cancelled afterwards. The rationale behind this bar is that a person who owes allegiance to another country cannot be entrusted with public responsibilities as it may constitute conflict of interest of grave nature. The question then stands on how a dual national may be entrusted with the responsibility of electing lawmakers and forming governments.

As enshrined in the Constitution, every enrolled voter can contest in general elections as a candidate. Will this hold true for overseas voters as well? The issue of dual nationality hence needs to be revisited from the point of view of their participation in elections.

The main case in favour of granting voting rights to overseas nationals is centered on the potential economic benefits that the country is likely to accrue by extending this 'favour' to its erstwhile resident nationals. This is not specific to Pakistan as the same arguments have been repeated across the globe, including in richer countries and older democracies. Overseas citizens send precious foreign exchange back to their home countries and the governments want to encourage them to send more. They consider granting voting rights to be a bid in strengthening their bond with the country for a longer period.

These governments also aim to encourage overseas citizens to invest in their home country. Since they are accustomed to the local culture and state machinery, and also have a social network in their home country, they are more likely to take risks which other non-national overseas investors prefer to avoid. Many overseas citizens also take keen interest in philanthropic activities in their home countries as a means of paying back that country.

Discussion point: Should all dual citizens be given the right to vote, or should it be restricted to only Pakistani citizens residing abroad?

b: Which elections should overseas Pakistanis vote in?

Most of the countries that allow overseas citizens to participate in elections restrict it to larger, national level elections alone. For example, Denmark gives its overseas citizens the right to vote in parliamentary elections, referenda and elections to European Parliament, but not in local elections. Similarly, Turkey allows non-resident citizens to participate in presidential and parliamentary elections only.

The participation of overseas voters in local government elections is

challenging from an administrative point of view. But more importantly, the main argument against granting voting rights to overseas citizens is that, in the context of local elections, they would wield enormous power to influence and shape laws and policies without having to face the consequences of their choices. Since non-resident absent persons are not considered a party to day-to-day community level matters, which are high on agendas in local elections, they are not allowed to participate in them.

Discussion point: Should overseas Pakistanis be allowed to vote in all elections—national, provincial and local—or should their participation be restricted to national elections only?

c: Which constituency should an overseas Pakistani vote in?

This is a question of utmost importance from the point of view of local candidates contesting in a constituency. While running their election campaigns, they cannot possibly approach and communicate with their non-resident voters in as effective a manner as they can with their resident voters, and yet, these absent (overseas) voters can swing results for or against them.

A study conducted by Dawn and published in February 2022 found out that, according to NADRA's NICOP data, the number of eligible overseas voters exceeded the margin of victory in the 2018 general elections on 186 of the total 272 National Assembly seats. Despite the fact that all eligible overseas voters are unlikely to cast their votes and that their votes are likely to be distributed among various candidates, this finding demonstrates the massive swing in results that overseas voters can potentially cause. Absent overseas voters could thus assume the role of what the study calls 'king makers', necessitating thoughtful and detailed deliberations on the matter.

NADRA generally prints a person's permanent address in Pakistan, as given on their last NIC, on the NICOP issued to overseas Pakistanis. This implies that overseas Pakistanis will be enrolled in the constituencies of their permanent addresses. This will further distort the population to rolls ratio (see De facto or de jure: Non-resident voters and non-voter residents), exacerbating the current inequalities in the sizes of constituencies even further.

In some constituencies where the number of overseas voters is significantly high, the comparative power of resident voters to elect

The case in favour of voting rights for overseas citizens is primarily economic across the globe. They are seen as a precious source of foreign exchange, and are considered potential investors and donors of social and political causes in their home countries.

In most democracies, overseas voters form a miniscule minority of the electorate. In Pakistan's case, they have the potential of overcoming the mandate of local resident voters. Their impact on constituency contests could be profound.

their representative may be diminished and, in extreme cases, become irrelevant. For example, the margin of victory in NA 190 Dera Ghazi Khan II in the 2018 general elections was only 129 votes, and according to ECP's NICOP data (quoted in the aforementioned Dawn study), there are 69,757 eligible overseas voters. In fact, the number of these voters is quite close to the total votes polled by the winning candidate, that is, 72,300. In comparison, a total of 230,000 overseas voters were registered in the UK's general elections in 2019, which formed 0.5 percent of the country's electorate (47.6 million).

It is important to discuss the granting of voting rights to overseas citizens in terms of its impact on constituency politics and on the mandate of local resident voters.

d: Should voting rights be linked to the time of a voter's emigration to another country?

In most countries, voting rights for overseas citizens is associated with a time limit.

In Australia, an overseas voter must express their intention of returning within six years of emigrating. This is to ascertain whether or not the policies of a government elected through their vote would directly impact that voter.

In other countries, the time limit is used as a measure to decide the eligibility of overseas citizens, an issue which has been hotly debated in the UK for the past four decades. The UK granted voting rights to its overseas voters in 1985, but only to those who had migrated during the previous five years. An amendment in 1989 raised this condition to 20 years, which was then reduced to 15 years in 2000. The debate on a specific time limit has centered on the question of how long a person's links with their home country remain alive. The current Conservative Party government has done away with the time limit altogether, giving precedence to the economic argument over perceived emotional ties with one's homeland. The new provision will be in place in spring 2024 after detailed secondary legislation in 2023.

Canada also ended the time limit for overseas voters in 2018, and its Supreme Court declared in January 2019 that all expats are entitled to voting rights in the federal elections no matter how long they have lived outside the country.

Most countries imposing time limits require overseas voters to register in the constituency of their last residence. The ending of the limit complicates this issue though since the means to verify claims of residence in a particular constituency might not be available for voters who had migrated long ago. For example, if an overseas Pakistani migrated 30 years ago when there were no computerised NICs, it would be practically impossible, or too cumbersome, to verify if that person had been a resident of the constituency (listed in their citizenship documents before emigrating abroad) that they want to vote in.

Some countries have attempted to resolve this problem by allowing overseas voters to register in the constituency of their choice. However, this leaves room for political maneuvering as overseas voters may register in those constituencies that could maximise a political party's chances of winning more seats, potentially becoming another form of indirect gerrymandering. For example, when Belgium gave this choice to its overseas voters in 2002, the highest overseas votes were registered and cast in the linguistically sensitive constituency, contested between Dutch and French speakers.

e: Should overseas voters be allowed to fund political parties?

Generally, all countries that grant voting rights to their overseas citizens also permit them to fund political parties. The Elections Act 2017 bars political parties from receiving funds from 'foreign sources', but excludes overseas Pakistanis holding NICOPs from this definition.

Holders of NICOP then, whether Pakistani or dual nationals, can fund political parties as well as vote if granted that right. The combined effect of these two provisions will substantially raise their influence over the political discourse within the country.

One of the dissenting notes annexed to the PCER's report, finalised in July 2017, was written by an MNA from the Jamiat Ulema-e-Islam (JUI) who had objected to the clause allowing the funding of political parties by overseas Pakistanis. The member had apprehended that, with this clause in place, 'all foreign funding to political parties will be routed through NICOP holders.'

This matter also needs careful examination in the context of global regimes on financial frauds.

The question of which constituency overseas citizens' votes should be registered in will only get more complex with the passage of time as their ties with their country of origin will gradually weaken.

Internet voting is not the only method adopted by democracies that grant voting rights to their overseas citizens.

The option to cast votes through postal ballots in Pakistan was available only to service voters. The Elections Act 2017 has expanded its scope to include persons with disabilities and those under custody.

f: Which voting methodology should be adopted?

The following are some of the methods adopted by various countries to enable their overseas citizens to participate in elections. Some countries use only one of these methods, while others use a combination.

1: In-person voting

Some countries require overseas citizens to travel back from the places of their current residence to their assigned polling stations to cast their votes in person, either as a general rule for all overseas voters or under specific circumstances.

India is one of the countries that allows only in-person voting to its overseas voters using EVMs, a system which has obliterated the use of paper ballots and made postal voting impossible. However, the Election Commission of India can neither afford to print all the ballots on paper only for overseas voters, nor can it make EVMs available to each of them abroad, thereby effectively hindering overseas Indians from exercising their right to vote that is legally available to them. India also does not allow dual citizenship, so only those Indian citizens temporarily residing abroad may vote.

Italy is perhaps the only country that facilitates its overseas citizens residing in countries where it has no embassy or mission to travel back to cast their votes in person by reimbursing 75 percent of their travel expenses.

2: Postal ballot

In Pakistan, the Representation of People Act 1976 allowed government employees, and their spouses and children, who were on duty at a place outside their constituency on election day to cast their votes by postal ballot. The Elections Act 2017 has extended this facility to persons detained in prisons or held in custody, as well as to persons with any physical disability who are unable to travel and hold NICs with a logo for physical disability issued by NADRA.

Postal ballots have been used for many years in almost all the democracies to enable service voters to exercise their right. It was extended later by many countries to general voters who have moved abroad and cannot be present in their constituencies on voting day.

This is the main voting option offered to overseas voters in the UK. However, UK's election administrators and voters have reported that the time between finalising the candidates and printing ballot pa-

pers till the final counting of votes is too short for the postal ballots to make the round trip from the office of the election administrator to the country of residence of an overseas voter.

The UK extended the postal ballot facility to all voters, inland and overseas, in 2001. In the last parliamentary elections held in December 2019, 6.7 million (21.4 percent) of the total 31.3 million polled votes were postal ballots.

3: Proxy voting

Some countries allow certain categories of non-resident voters to appoint or authorise another person to cast a vote on their behalf. This facility is mostly made available to military persons or persons with disabilities.

When India switched its electoral system from paper ballot to EVMs, it amended the law to replace postal ballot option for military persons to proxy voting. Proxy voting has also been a part of election systems in some African countries and certain parts of China and Vietnam. The UK offers this facility to all overseas voters as well. The number of voters availing it, however, has never been more than a few thousand.

4: Embassy voting and foreign polling stations

Many countries set up polling stations at their embassies and consulates abroad to help their overseas citizens to cast their votes. This is often supplemented by the provision of postal voting. These countries include Australia, Italy, Japan, South Africa, Spain and many Latin American countries.

Some countries take it further and set up polling stations at places other than their embassies. Poland, for instance, had set up 320 polling stations around the world for its 330,676 overseas voters in their 2019 parliamentary elections, with 54 of them in the UK and 48 in USA.

5: Internet voting

Estonia is the first and, to date, the only country in the world to offer all its voters the option to remotely cast their votes through the internet. In the last Estonian parliamentary elections held in 2019, 43.8 percent of the total votes were polled via the internet.

In their 2015 parliamentary elections, 5.7 percent of the total i-votes were cast by Estonians living in 116 countries across the globe.

Estonia introduced internet voting in 2005 and has continued with

Overseas polling stations

Turkey organised polling at 159 locations in 60 countries for over 6 million registered overseas voters in their 2018 elections

Poland set up 320 polling stations around the world to enable its overseas voters to exercise their right in its parliamentary elections in 2019

Brazil organised polling at 181 locations in 70 countries for its 697,000 overseas voters in its presidential elections held in October 2022

Other countries that organise polling for overseas nationals at their embassies include:

- France
 - Italy
 - Tunisia
 - Poland
 - Singapore
 - Australia
 - Colombia
 - Japan
 - Peru
 - Costa Rica
-

Issues with postal and proxy voting in the UK: Some lessons

The UK allowed postal ballots available on demand to all voters in 2001. This change was made to adapt their electoral system to modern times, whereby frequent travelling renders it impossible for many to vote in person on polling day. Voters have appreciated this convenience as evident in the last parliamentary elections held in December 2019, when one in every five polled votes was a postal ballot. The system, however, has brought to the fore newer kinds of electoral malpractices and crimes.

A report titled *Electoral Fraud in the UK* was published by the Electoral Commission in January 2014 highlighted that, although cases of electoral fraud were not widespread, their incidence was highest in the localities with higher concentrations of people with Pakistani and Bangladeshi origin.

A year later, the Universities of Manchester and Liverpool conducted a research titled *Understanding electoral fraud vulnerability in Pakistani and Bangladeshi origin communities in England*. The researchers identified a number of weaknesses in the postal ballot system that cause or increase the vulnerability of voters from these communities. These findings can serve as a lesson for decision-makers in Pakistan.

One of the problems identified was a low level of (English) literacy, and little to no understanding of how government services operate, especially among women and new immigrants. This enables their husbands or heads of family to apply for postal ballots on their behalf and then cast these on their own as well.

As is typical in South Asian families, the men of the household consider themselves entitled to make important decisions for the entire family, including who to vote for. Even adult children may not be allowed to make independent choices. The postal ballot system

enables these patriarchs to implement their voting decisions in a more effective manner, without leaving a single trace.

Another important issue discussed in the paper relates to strong kinship networks organised around ethnic and linguistic identities in these communities, with elders serving as their heads and possessing significant social power. These elders can utilise their social capital to not only make voting decisions on behalf of the entire community, but also enforce these decisions since the postal ballot, once received at the address of the voter, can be handled, marked and posted back by anyone. This system thus helps them strengthen their traditional social status by enabling them to more effectively convert their social standing into political power. The research also pointed out that political parties find this situation convenient and useful as they only have to deal with a few community elders as middlemen to guarantee success through en bloc voting.

The voting practices in these communities with regards to the UK elections fall under the purview of UK's law enforcement authorities as they can take appropriate actions to check these. But if the same voters are to participate in an election in Pakistan as overseas voters through a similar distant voting system, any such practice will not be actionable for UK's law enforcement.

The postal ballot system is inherently unable to protect a voter from undue influence or even coercion from another person while recording their choice. Once a ballot is delivered to an address, it is up to the receiver to do whatever they wish to do with it, and the actual voter may be unable to complain given the social and cultural pressures surrounding them.

The secrecy of voting is an essential aspect of our electoral system. The postal ballot puts this at risk at a number of stages.

this system despite criticism from international technology experts. It has been updating its system continuously to address technological and legal issues identified by experts, and has held 11 elections between 2005 and 2019 using this system.

[It is important to note that the total population of Estonia is 1.3 million, which is a little less than that of the federal capital territory of Islamabad. The total votes polled in the elections to the 101-member Estonian parliament in 2019 were 561,141 (a turnout of 63.7 percent) while the total votes polled in three national constituencies of Islamabad in the 2018 general elections were 445,827 (a turnout of 58.2 percent).]

Inspired by the potential of internet voting, and encouraged by the Estonian experience, a number of countries have explored and experimented with internet voting systems since the early 2000s. The State of Geneva in Switzerland introduced i-voting in 2003, followed by some other Swiss cantons. However, the share of i-votes remained low at around 2 percent nationwide, and in 2019, i-voting was suspended after discovering security flaws in the voting systems. Norway experimented with internet voting in their elections held in 2011 and 2013, but abandoned the programme amidst fears that vote anonymity was not guaranteed. Internet voting was allowed in the UK's local elections between 2002 and 2007 before being abandoned. France allowed internet voting in legislative elections for overseas territories since 2012, but stopped this practice due to cyber-attack fears in 2017.

Experts believe that no internet-based transaction system can be completely risk free, and the decision to introduce internet voting will always be based on a comparative analysis of risks and benefits. So far, most governments and election administrators have concluded that the risks associated with internet voting outweigh its benefits, with Estonia being an exception.

Besides technological challenges, i-voting poses other problems too that may assume greater significance in the context of certain societies and communities. The following are some challenges that Pakistan must consider for i-voting to take place:

Digital literacy: Internet voting generally comprises many steps which include voter identification and that all i-voters have the requisite digital literacy and/or connectivity. However, ensuring digital literacy for overseas voters is a significant challenge. It would be wrong to assume that the digital divide does not exist among over-

Estonia is the first and the only country in the world to offer the option of internet voting to all its voters. All other countries have either declared it unfeasible or have abandoned it after initial experiments.

The secrecy of ballots is compromised in all remote methods. We must assess the importance of secrecy in our specific context before expanding its scope of any of these methods.

seas Pakistanis; a number of Pakistani labourers in Middle Eastern countries, it was found, are not even literate. Such voters are likely to seek someone else's assistance in the voting process which would not only compromise the secrecy of their vote, but also increase the possibility of voting choices being influenced by others.

Secrecy of ballot: Polling stations may have verifiable proof that in-person voters had voted without possessing knowledge of their voting choice. This is by design so as to check the possibility of vote selling. Maintaining this secrecy would hence become difficult with internet voting as voters can even record their entire voting process.

Influence of others: As experienced in the case of postal voting on demand in the UK (see Box 2), internet voters may not be able to cast their vote in secrecy; family heads or other people with social influence and power may dictate their voting choices.

Organised manipulation: The influence and power of some actors in dictating the choices of others may extend to the community level with tight-knit kinship networks socially organised around ethnic or linguistic identities. Again, as in the case of postal ballots in UK's communities of Pakistani and Bangladeshi origin, this may facilitate communities to trade en bloc votes, through community elders, with political parties offering the best deal.

Consensus among political parties: Though there are no studies available about the party preferences of overseas Pakistanis, it is a common perception that support for PTI among this voting block is stronger than that of other parties. Add to this the fact that the number of overseas citizens is far greater in Pakistan than in most other democracies, to the extent that non-resident voters have the potential of overcoming the mandate of resident voters. This makes the task of building consensus among political parties on i-voting for overseas Pakistanis an impossible task, and without a consensus, this step can only make elections more controversial and less credible.

6: Overseas constituencies and reserved seats

France is one of the few countries that have reserved seats in their legislative assemblies for overseas citizens. Until 2010, French overseas citizens used to cast their votes in constituencies in France like in most other countries, but under a new scheme and fresh delimitation that year, 11 of the total 577 National Assembly seats were allocated to French citizens living abroad. The election authorities accordingly divided the entire world into eleven constituencies in which overseas French citizens directly elected their representatives

for the first time in 2012 and then in 2017, and most recently in June 2022.

Another example is Tunisia where democracy is around just a decade old. The Tunisian parliament has a total of 217 seats, 199 of which are allocated to Tunisia's 27 in-country multi-seat constituencies and 18 seats of which represent six constituencies abroad. Of the 18 seats reserved for deputies representing the Tunisian community abroad, 10 seats are marked for the two constituencies of France, three for Italy, two for Arab countries, one for Germany and two for USA and the rest of the world. For the last parliamentary elections held in 2019, Tunisia had set up 384 polling stations abroad.

Other countries that have overseas constituencies include Italy, Portugal, Algeria, Romania, Lithuania, Ecuador and Colombia.

Overseas constituencies ensure representation for citizens living abroad in the legislatures without impacting elections by resident voters in in-land constituencies. The members thus elected are better able to represent interests and demands of overseas citizens. It also interests the overseas voters more as they elect a candidate from amongst themselves and the one who can run campaigns on issues specific to them. By contrast, the in-land candidates cannot possibly stretch their campaign agendas to include issues of distant and absent voters to canvas them.

This innovation, however, is not free of problems. Canada has not been happy with France and Tunisia declaring it as one of their overseas constituencies, probably apprehending it might have an impact on local politics. For instance, Canada's French-speaking province, Quebec, has a long history of political struggle for becoming a sovereign state. The matter, however, was resolved as the three countries agreed to set up polling stations only within embassies.

The election of a Tunisian member from the overseas constituency of Germany in 2019 was declared void by the election authorities following complaints of malpractices.

This shows that the powers of a country in implementing its electoral laws in a foreign constituency are obviously quite limited which is likely to hurt the credibility of these elections.



Eleven of 577 constituencies of the French parliament are outside its borders. Overseas citizens elect members from these to represent them. The election authorities of France organise these elections in collaboration with the country's embassies.

Image above: Eleven international constituencies of the French parliament and the number of overseas voters registered in each in France's 2012 elections (Source: researchgate.net)

4

Candidates

Horse before the cart

Independents joining political parties

Amjad Farooq Khosa contested in the 2018 general elections from NA 190 Dera Ghazi Khan II as an independent candidate. He polled 72,300 votes, defeating his rival Zulfikar Ali Khosa by a narrow margin of 129 votes. Zulfikar Ali was a candidate of PTI's. Within three days of the notification of his victory, Amjad Farooq joined PTI, the party that he had just defeated. The political party, too, happily welcomed its electoral opponent among its ranks.

Amjad Farooq was not the first or the only elected member to have engaged in this practice, neither is PTI the sole party that embraced this legal loophole in the electoral scheme as a boon.

There were 13 independent winners in the 2018 general elections to the National Assembly, nine of whom joined the PTI after defeating the same party's candidates. In 2013, independent candidates won in 22 constituencies (excluding the NMDs) and all but three joined the Pakistan Muslim League Nawaz (PML-N) party in the same fashion. In 2008, of the 19 winning independents, nine joined the PPP and four the PML-N. In 2002, 16 out of 18 independent winners had helped the Pakistan Muslim League (Quaid-i-Azam) (PML-Q) party swell its ranks.

The electorate in these constituencies where independent candidates won were hence effectively represented in the legislature by a political party that they had chosen not to support. In other words, this practice leads to political parties representing constituencies where they have weak or no electoral support. For example, in the 2013 elections, independent winners from three Balochistan constituencies—NA 265, 266 and 267—had joined PML-N after winning. Securing just 2.6 per cent of the total votes polled, the PML-N party represented this vast area in the national legislature without actually having significant electoral support in these constituencies.

This not only distorts representation, but it also incentivises more independent players in politics as they have the luxury of joining one party or the other, mostly the winning party, at their convenience. In the 2018 general elections, an independent winner from a Punjab As-

From the electorate's point of view, independent winners joining a party is a clear negation of their mandate.

sembly seat (Muhammad Moavia; PP 126 Jhang III) joined Pakistan Rah-e-Haq Party that otherwise had no member elected to any house. This can be extrapolated to a situation where all or any number of candidates can contest as independents and then the winners among them can join a party. This is exactly what had happened in the party-less general elections held under General Zia-ul-Haq in 1985. This legal loophole must be shut down.

More recently, General Pervez Musharraf had amended the Conduct of General Elections Order 2002 on 17 October 2002 seven days after the polling. This amendment provided that an independent winner could join a party within three days of the notification of returned candidates. It also provided that independent candidates joining a party shall be counted as seats won by that party when calculating the party's share in seats reserved for women and minorities. For every nine seats that a political party wins in a general election, it receives two seats from the pool of seats reserved for women. Therefore, when 16 of the 18 independent winners in the 2002 elections had joined PML-Q, the party received four additional seats reserved for women.

The opposition parties had criticised this rule at that time, accusing General Musharraf of bending the rules to help his 'king's party' reach the simple majority mark which it had failed to reach in the constituency-level contests.

The same provision was, however, included in the Elections Rules 2017, approved after the passage of the Elections Act 2017.

This practice of independent winners joining a political party, only days after the elections they contested in, is unthinkable in other

In the 2018 general elections to the Punjab Assembly, an independent winner joined a party that had no member in the house.

The Elections Rules 2017

92. Election to seats reserved for women and non-Muslims

(6) For the purpose of this rule, the expression "total number of general seats won by political party" shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of

the names of the returned candidates:
 Provided that if the independent candidate applies to the leader of a political party for joining his party then the leader of that political party will forthwith inform the Commission of joining of such candidate through a letter to be delivered to the Commission along with consent of that candidate duly attested

by a Notary appointed under the Notaries Ordinance, 1961 (XIX of 1961) or an Oath Commissioner appointed under the Oaths Act, 1873 (X of 1873) or a Government servant in basic pay scale 17 and above: Provided that the consent of the independent candidate so delivered to the Commission shall, in no circumstances, be open to recall or cancellation.

democracies, and actually considered an open form of corruption in politics.

India had barred this practice, along with the defections by elected party members, by adding the Tenth Schedule to its constitution through the 52nd Amendment enacted in March 1985.

“(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.”

Discussion point: Does the rule that allows winning independent candidates to join a party violate the mandate given by the voters?

Discussion point: Is this rule detrimental to the development of political parties in our democratic system?

Hiding behind a mask

The mandatory share for female candidates

The Elections Act 2017 included many provisions to increase women’s participation in elections at different levels. One of these required political parties to award party tickets to at least five per cent of its candidates for elections to a legislature.

The following is a brief analysis of how parties met this requirement in the 2018 elections.

- There were 3,426 candidates on 271 national seats in the 2018 general elections—the election on one seat was postponed due to death of a candidate.
- Of these, only 183 were women, or 5.3 percent of the total. 65 of these candidates were independent, and 118 were nominated by political parties.
- Looking at the same data from another angle, there was no female candidate in the elections to 144 (of 271) national seats.
- On 30 seats, there was only one female candidate contesting independently. Only one of them could poll enough votes to secure the third position, and five stood fourth while all the rest secured positions lower than that.
- On four national constituencies, there were two female candidates each, both contesting independently. Of these eight candi-

The Elections Act 2017

Chapter XI: Political parties

206. Selection for elective offices.—A political party shall make the selection of candidates for elective offices, including membership of the *Majlis-e-Shoora* (Parliament) and Provincial Assemblies, through a transparent and democratic procedure and while making the selection of candidates on general seats shall ensure at least five per cent representation of women candidates.

dates, only Ayesha Nazir was the runner-up for NA 162 Vehari I, while the others could not even secure the third position.

The party-nominated women contested in only 93 (of 271) constituencies. There were 118 female candidates on these seats, with 45 of them nominated by one of the three major political parties—PTI, PML-N and PPP.

PTI fielded 245 candidates in the national contests including 14 women (5.7 percent).

- The party won on 116 seats, including two by its female candidates: Zartaj Gul from NA 191 Dera Ghazi Khan III and Ghulam Bibi from NA 115 Jhang II.
- Another 89 of its candidates, including five women, secured second positions: Firdous Ashiq from NA 72 Sialkot I; Nadia Aziz from NA 90 Sargodha III; Yasmin Rashid from NA 125 Lahore III; Fatima Tahir Cheema from NA 168 Bahawalnagar III; and Khadeeja Aamir from NA 173 Bahawalpur IV.
- 40 PTI candidates including seven women secured the third or lower positions. Of these seven, PTI had fielded five in Sindh, namely Larkana I and II, Kambar Shahdad Kot I, Naushero Feroze I and Malir III.

PML-N fielded candidates in 214 national constituencies with 12 of them being women (5.6 percent).

- 64 of the PML-N candidates won, including one woman: Mehnaz Akbar Aziz from NA 77 Narowal 1.
- 59 others finished as runner-ups, including four women: Shezra Mansab Ali Khan Kharal from NA 118 Nankana Sahib II; Begum Tehmina Doultana from NA 164 Vehari III; Saira Tarar from NA 87 Hafizabad I; and Sumaira Malik from NA 93 Khushab I.
- 91 PML-N candidates secured third or lower positions in the contests which included seven of its female candidates. These seven PML-N women contested from national constituencies in the Charsadda, Peshawar, Matiari, Shaheed Benazirabad, Umerkot, Quetta and Dera Ghazi Khan districts.
- Of these seven, only PML-N's Rahila Durrani contesting from NA 265 Quetta II could poll a reasonable number of votes (9,931) whereas Qasim Khan Suri of PTI stood victorious with 25,979 votes.

A joint tally of PTI, PML-N and PPP

candidates in the 2018 general elections

	Men	Women
Candidates	661	45
Winners	217	6
Runner-ups	157	9
Third or lower	287	30

While every political party fulfilled the legal requirement of nominating female candidates on seats, these nominations had no chance of winning.

The five percent quota for female candidates has failed to serve its purpose, and will remain useless even if the limit is raised to 15-20 percent.

Female candidates who won general seats in the National Assembly 2018

Mehnaz Akbar Aziz
PMLN; NA 77 Narowal 1

Ghulam Bibi
PTI; NA 115 Jhang II

Zartaj Gul
PTI; NA 191 DG Khan III

Nafisa Shah
PPP; NA 208 Khairpur I;

Shazia Marri
PPP; NA 216 Sanghar II

Fehmida Mirza
GDA; NA 230 Badin II

Shams Un Nisa
PPP; NA 232 Thatta

Zubaida Jalal
BAP; NA 271 Kech

All female candidates from major political parties who won or were runner-ups belonged to traditional 'political families', and had contested or won elections in the past as well.

All the other six female candidates from PML-N made no mark in the contests. For example, Neelam Walgi, PML-N candidate from NA 220 Umerkot polled just 5,104 votes, while the winner Yusuf Talpur of PPP polled 164,047 and his rival PTI candidate, Shah Mehmood Qureshi, polled 104,859 votes.

PPP had nominated candidates on 247 national seats which included 19 women (7.7 percent).

- The party won on 43, including three won by women: Nafisa Shah from NA 208 Khairpur I; Shazia Marri from NA 216 Sanghar II and Shams Un Nisa from NA 232 Thatta.

- PPP was the runner-up on 18 other seats which did not include any female candidates.

- The rest of the party's 186 candidates who secured the third or lower positions included 16 of its female candidates. Of these, three were fielded by the party in KP's constituencies, two in Sindh's (Karachi) and the remaining 11 in Punjab's. The highest achieving among them was Natasha Daultana who contested from NA 163 Vehari II and stood fourth in the competition by securing 27,726 votes.

In total, only six female candidates of the abovementioned three political parties could win a national seat, while nine others ended as runner-ups. All 15 women belonged to traditional political families from their respective areas, and had either won a seat or stood second in a previous election.

It is evident from the facts above that in order to meet the new legal requirement of five percent female candidates, political parties had awarded tickets to women in constituencies where the party had the weakest support and knew that it stood no chance of winning. The law has set the bar so low that it failed to pose any challenge to the gender status quo in political parties, and they easily met the requirement without making any substantive effort to increase women's political participation.

Discussion point: Is the five percent tickets requirement for female candidates of any use? Can it be improved to help achieve its objective?

To delve deeper, one must ask why is the requirement set at five percent of total candidates?

Consider these facts. The 2018 general elections were held in 271 national constituencies. Among all the contesting parties, the PTI had nominated candidates on the highest number of seats: the male candidates on 85 percent and female candidates on 5 percent of all the seats being contested. Only 10 percent of seats had no PTI candidate contesting for it. Similarly, the PPP had a male candidate on 84 percent, female on seven percent and none on 9 percent. The PML-N had fielded a male candidate on 79 percent, female on 4 percent and none on 19 percent of the seats being contested. So the PTI, PPP and PML-N did not contest on 10, 9 and 19 percent (26, 24 and 57) of seats in the national constituencies respectively, assessing that they had no chance of winning these.

If the parties continue with the practice of meeting the mandatory female candidates requirement by fielding them in constituencies where they stand no chance, they can even meet the requirement of 15 to 20 percent without ‘disturbing’ the gender status quo within and outside their organisational setups.

In this scenario, the requirement of awarding five percent of party tickets to women seems absurd and of no practical use. It can only help political parties maintain the optics of women’s participation without making any meaningful efforts to actually achieve it.

Considering that the five percent limit is set arbitrarily anyway, the following paragraphs attempt to work out a rationale for setting a new limit.

There are now 266 national constituencies (after the merger in KP). Another 60 are reserved for women and 10 more for religious minorities, bringing the total up to 336. The 60 reserved seats for women thus are 23 percent of the 266 general seats on which elections are held at the constituency level.

These special seats are allocated to political parties in proportion to the general (constituency) seats that they have won. Political parties hence get their nominated female candidates ‘elected’ to these seats without engaging in actual constituency-based contests. In other words, the parties get one seat reserved for female candidates for every four general seats that they win. Political parties are thus legally facilitated to ensure the presence of 23 percent women in their parliamentary parties without making any meaningful effort to increase women’s participation in elections. Should not political parties then be asked to reciprocate the award

The provision for a five percent quota for female candidates is arbitrary, and must be amended to embody the objective of equal participation for women in elections.

Without adopting a progressive approach, the limit set to increase the number of female contestants will gradually become a legal instrument to limit their participation.

Proposed quotas for the minimum number of female candidates:

First election (2023)
23%

2nd election (2028)
30%

3rd election (2033)
37%

4th election (2038)
43%

5th election (2043)
50%

of reserved seats by nominating women on, at least, as many general seats, that is, 23 percent?

It is important to note that the percentage should not be permanently fixed as is the case at present. The law must house the ambition of achieving gender equality within a set timeframe.

The 1973 constitution had provided for 10 seats reserved for women for the next three elections or ten years, whichever comes later, but this formula expired after the 1990 general elections. The reason behind making the reservation time barred was that the reserved seats and indirect elections were considered violations against Pakistan's electoral system which is based on representation from territorial constituencies. Any violation of this could only be allowed as a temporary arrangement for a limited time period till the actual problem is expected to have been addressed and rectified.

Similarly, all provisions related to quotas in jobs and education for marginalised communities are also always time barred. If these provisions are not accompanied by a timeframe and an action plan, they will in fact morph into an act of exclusion or a form of discrimination.

Ideally, women in politics should be able to occupy half of the seats in elected houses as they are half of the adult population which is constitutionally entitled to all political rights. The law should set this as the ultimate goal, and its provisions should embody the ambition to gradually increase women's participation to this level and certainly not limit itself to assisting political parties in maintaining the optics of women's participation.

This paper recommends that political parties must nominate 23 percent female candidates as a starting point which should be increased by seven percentage points in each successive election to reach parity in five general elections or 20 years, whichever comes first. In other words, political parties must be required to award 23, 30, 37, 43 and 50 percent of their nominations to female candidates in five succeeding elections respectively. After the fifth election, the 50 percent limit must be set for thereafter.

Discussion point: Should we let the five percent quota for female candidates continue for, say, the next twenty years? Or should this quota be reviewed and made more progressive?

Mocking the mandate

Multiple seat candidacy

Under the present electoral scheme, a person is allowed to simultaneously contest in as many constituencies, in the same or different houses, as they may wish.

Many political leaders avail this facility either to establish their political stature beyond a single constituency, or to maximise their chances of winning a seat in one or the other house. Many of them win from more than one constituency only to resign from all but one. Historical data trends show that up to 25 national and provincial seats are vacated by winners of multiple seats after every general election, so much so that a ‘mini general election’ is held just weeks after the general elections.

There are two main arguments against this practice. Firstly, it is unfair to the voters of a constituency as the main promise of the candidate with their electors is that they will represent them in the legislature. After electors repose trust in a candidate, the candidate should not be allowed to discard them on the basis of personal political calculations. Why should this breach of trust be permissible for candidates then?

Not surprisingly, voters show little interest in by-elections held to fill the seats vacated by the candidates they had just elected. The turnout on nine national seats, that were then vacated by candidates who won on multiple seats, had dropped from 51.9 percent in the general elections held in July 2018 to just 26.5 percent in the by-elections held months later in October.

This practice is either alien to most democracies around the world or was abandoned long ago. India had amended its law in 1996, which was previously similar to Pakistan’s current law for elections, and restricted the multiple seat candidacy to a maximum of two seats. Indian Prime Minister Narendra Modi had contested from two

The practice of a person contesting from multiple seats is either alien to or unthinkable in most democracies.

Seats vacated by candidates winning from more than one national and/or provincial assembly constituencies

Bye-elections were held on these immediately after general elections

Election	NA	KPA	PA	SA	BA	Total
2002	11	2	13	5	1	32
2008	6	4	12	2	1	25
2013	12	2	11	0	1	26
2018	9	7	10	1	1	28

India had limited the number of seats a person can contest simultaneously to two in 1996, and is now considering limiting it to one.

constituencies in the 2019 Lok Sabha elections.

The Election Commission of India had proposed a further amendment in the law in 2004 providing for a fine of Rs 1 million on candidates who vacated one seat after winning on two to cover the cost of conducting by-elections.

The second argument against multiple seat contestants is that public money should not be spent to facilitate what is ultimately the candidates' personal political choice: by-elections held on their vacated seat(s). One proposed solution is for such candidates to bear the cost of these by-elections themselves. However, this self-financing of elections may be akin to reserving this facility only for rich contestants and not for those who are unable to afford the expenses.

The Supreme Court of India had sought the Election Commission of India's response to a public interest litigation against multiple seats contestants in April 2022; the commission had responded that the law should be amended to allow a candidate to contest from only one seat. The commission is pursuing legislation to this effect, and has held a meeting with the Delhi government for this purpose in June 2022.

Discussion point: Should candidates be allowed to contest elections simultaneously in more than one constituency?

Constitution of Pakistan

223. Bar against double membership.

- (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.

Morals and merits

Qualification and disqualification of candidates

The 1973 Constitution had set clear and ascertainable standards for the qualification and disqualification of candidates, related to citizenship, age, solvency and mental status. However, later amendments to the Constitution enforced by General Zia-ul-Haq added a number of moral and religious benchmarks to these standards.

Besides being moralistic, the main issue with these added clauses of Article 62 (d, e, f and g) and 63 (g and h) is that they are not definitive or legally ascertainable. The clauses require candidates to possess 'good character', 'adequate knowledge of Islamic teachings', be 'sagacious, righteous and non-profligate and honest and ameen' and have a history of non-conviction in crimes involving 'moral turpitude'.

These clauses also provide for the disqualification of candidates and elected representatives on grounds of propagating an opinion 'prejudicial to the Ideology of Pakistan', or being convicted of an offense involving 'moral turpitude'. All of these terms are liable to subjective interpretations, particularly by Returning Officers scrutinising candidates' nomination papers, as well as the judiciary hearing appeals and cases related to electoral matters.

The Returning Officers have only days to finish scrutinising papers, which restricts them to summarily deal with this matter. Many of them develop their own methods to interpret these terms and ascertain that the standards are being met, for example, by asking candidates to recite a particular verse from the Quran to ascertain the 'adequacy of their knowledge of

Islam'. Such acts have served only to ridicule the political class. While the Elections Act 2017 bars Returning Officers from asking candidate any question that has no bearing on the information supplied in the nomination paper [62(7a)], clause 9 empowers the Returning Officers 'on either of his own motion or upon an objection' to reject a nomination paper if they are satisfied that the candidate does not qualify. Here again, the Returning Officers can rely on their own interpretations of the standards set in Article 62 and 63.

The impact of these vague moralistic standards has not been limited to minor frictions at the stage of scrutiny of candidates. In fact, they have been instrumental in the disqualification of two sitting prime ministers and a number of parliamentarians in the recent past.

These clauses remain perpetually in force so that an elected person declared guilty of having violated any of these can be disqualified and unseated at any time. They are a permanent threat to the political class and become handy tools for extra-democratic forces to shape the political discourse as they see fit.

Needless to say, these clauses have not resulted in making the political class 'pious' or 'honest' in popular perception. On the contrary, such assessments can only be made from the perspective of their role in destabilising the democratic discourse.

Ironically, political parties missed the opportunity to undo these at the time of the passage of the 18th Amendment in 2010 and the Elections Act in 2017. Any fresh initiative for reforms must include repealing these clauses.

5

Polling

No news is bad news

The gender gap in turnout

Women's turnout in the 2018 general elections (46.7 percent) was 9 percentage points lower than men's turnout (55.7 percent). This gender differential was the lowest in Punjab (6.75 percentage points) and the highest in KP (18.5), whereas the figure were 8.4 and 8.8 percent for Sindh and Balochistan respectively.

Fewer women of eligible age are registered as voters than men, and of those on the electoral rolls, fewer women cast votes than men. If these two gaps had not been there — that is, were the rolls were reflective of women's actual share in adult population and there was no gender difference in voter turnout — there would have been 10.9 million more votes polled by women than there were in the 2018 general elections. Instead, the winning party in 2018 had polled 16.9 million votes from all over the country, a figure that significantly underscores this problem.

An equal turnout of male and female voters is not an idealistic proposition. Women's turnout was actually marginally higher than men's in 22 national constituencies, and the differential was less than 3 percentage points in another 23 in 2018. For example, in NA 64 Chakwal I, women's turnout was 60.7 percent, a figure that was five percentage points higher than men's turnout. Similarly, in NA 65 Chakwal II, it was 3.2 percentage points higher. However, in the three constituencies of the Swat district, the average turnout for women was 21.4 percent while that for men stood at 55.6 percent.

The Elections Act 2017 did not envisage the objective of increasing women's turnout. There is only one provision in the law that is misconstrued as supportive of increasing women's participation. This provision empowers the ECP to declare the elections void if women have been proactively barred from casting their ballots either at one or more polling stations or in an entire constituency. In the explanation of this provision, the ECP is allowed to conclude that such a bar was in fact placed on women if votes polled by women were less than ten percent of the total polled votes.

Another provision is related to specific polling stations:

91 (3): The Presiding Officer may, at any stage on the polling day dur-

The legal framework for women's turnout in elections must not be restricted to only thwarting attempts to bar women from casting their votes. Instead, it must proactively seek to increase women's turnout and bring it at par with that of men.

ing or after the polling, prepare and send a special report to the Returning Officer and to the Commission if he has reason to believe that women voters have been restrained from exercising their right to vote based on any express or implied agreement.

These provisions were introduced due to the oft-reported clandestine agreements among candidates of certain constituencies, mostly in KP, that none of these candidates would mobilise female voters and that no woman would be allowed to cast her vote. This is against the basic principles of our election system under which no one must be stopped from casting their vote, and was thus declared illegal by the Elections Act 2017. In strictly legal terms, this provision cannot be construed as encouraging women to vote; it only disallows stopping them from casting their vote.

Discussion point: Should the legal framework for elections take a proactive approach in encouraging and ensuring women's participation in elections?

This question can be seen from two angles. The concept of ensuring increased, or even universal, voting through laws is not alien to many parts of the world. In fact, in 27 of 199 countries where elections are held in some form or the other, voting is compulsory for all citizens. The laws in many of these countries also provide for penalties against citizens who fail to perform what is considered to be their 'national duty'. These countries include Turkey, Thailand, Egypt, Singapore, Brazil, Italy, Greece, Belgium and Australia among others. The concept is not new either. It was introduced in Belgium in 1892, in Argentina in 1914, and in Australia in 1924.

The main argument in favour of compulsory voting is that it increases the legitimacy of the elected government and spares candidates and parties the effort to convince people to cast their vote. The argument against this, however, terms obligatory voting is inconsistent with the freedom associated with democracy as electoral rights include the right to refrain from casting vote. Though voting is not compulsory in India, the country's electoral system has attempted to dilute this line of argument by providing voters with the option of voting for none of the candidates in the fray as all ballot papers (EVM panels), listing the names and symbols of contesting candidates, list 'None of the Above (NOTA)' as well. The underlying intention is that everyone must exercise the right to vote, and if they do not consider any candidate worthy of their vote, they shall mark NOTA.

Not all countries with compulsory voting enforce this law or levy penalties on violators, but they still defend these provisions as state-

Twin gaps

Women voters enrolled in the 2018 elections

46,289,773

If electoral rolls were to reflect the same ratio of women-to-men as documented in the 2017 census, the number of female voters would have been:

57,613,290

Enrollment gap

11,323,616

Votes cast by women in 2018 elections:

21,613,263

Had women's turnout been the same as that of men (55.73%), the number of votes cast by women from the above corrected rolls would have been:

32,106,534

Turnout gap

10,493,270

Pakistan is ranked 145th among 146 countries in the Global Gender Gap Index 2022. If this ignominy means anything to our decision-makers, they must urgently take radical measures to close the gap.

The Global Gender Gap Index comprises four sub-indexes: (1) economic participation and opportunity; (2) educational attainment; (3) health and survival and (4) political empowerment. The following list shows the ranks and scores of select countries for the sub-index for political empowerment:

Rank	Country	Score
1	Iceland	0.874
4	New Zealand	0.660
8	Germany	0.550
9	Bangladesh	0.546
24	UK	0.423
48	India	0.267
78	Egypt	0.198
94	Pakistan	0.157
132	Saudi Arabia	0.077
142	Iran	0.036
145	Kuwait	0.023

ments of their objective that voting is a national duty of every citizen. Such a law at least has an impact on voter turnout. For example, in Austria, voting is compulsory in only two regions, with penalties being weakly enforced. However, these regions tend to have a higher turnout than the national average.

This is not to propose compulsory voting as a solution, but to build a case for making legal provisions for proactive actions to increase women’s participation instead of limiting the legal framework to blocking agreements against women’s participation and leaving the matter to ‘their free will’. Low participation is, in fact, not an expression of women exercising ‘their free will’ to not cast their votes. Rather, it is an outcome of age-old agreements, notarised by patriarchal customs and traditions.

The second important point from which this matter must be approached is that Pakistan is not just another country struggling for gender justice. The recently published Global Gender Gap Index 2022 by the World Economic Forum has ranked Pakistan at 145th among 146 countries, only ahead of Afghanistan. Bangladesh is ranked at 70, Sri Lanka at 110 and Saudi Arabia at 127. This lowest of the low positions means that the country needs to take extreme and urgent measures to address gender-based discrimination.

The electoral system thus should not just selectively act to check electoral crimes against women; it should instead play the role of a catalyst and set progressive targets to bring women’s participation at par with that of men.

One possible way of doing this may be to emulate the suggestion given earlier regarding the percentage of female candidates: set the minimum limit for women’s turnout at 23 percent and then raise this limit for successive elections.

Waiting for a miracle Electronic voting machines

India started experimenting with the EVMs in 1982, gradually improving the machines, expanding their use and adapting legal and administrative framework to the new technology, till they finally abandoned paper ballots and the traditional manual vote counting system in 2004. Since then, every election in the world’s largest democracy has successfully been held through EVMs.

The success of EVMs in India has inspired similar initiatives around the world. The ECP set up an EVM Committee in November 2009 to

conduct a feasibility study for introducing EVMs. The Committee, in turn, set up four working groups to assess the use of EVMs from different aspects: 1) An assessment of strengths and weaknesses of the current paper balloting system; 2) An assessment of the benefits of new technologies; 3) An analysis of the cost of paper balloting versus new technologies; and 4) An assessment of the legal implications of using EVMs.

The Committee invited EVM vendors from Pakistan and abroad to demonstrate their products. The events were attended by political parties, civil society and others, after which the Committee published its report in September 2010.

Analysing the merits and demerits of both paper ballots and EVMs, the Committee formulated the key requirements as follows: the system must be an electronic voting system (removing the need for pre-printed paper ballots) with a paper audit trail; the voting machines must be able to run on an alternative power source; the system must be able to handle complex elections with multiple ballots; multiple languages should be displayed; and the system must be robust, secure, easy to use and easy to maintain.

The Committee also concluded that EVMs meeting these requirements may be available in the market, but the use of machines will be more expensive than paper balloting even when calculated over the life-cycle of the machines. The Committee also pointed out the changes required in the legal framework to adapt to the new system, and recommended that pilot projects be conducted to have a deeper understanding of the use of EVMs.

Accordingly, the Elections Act 2017 incorporated a section facilitating the ECP to take the matter to the next stage. Meanwhile, the PTI decided to champion the cause of EVMs to ‘revolutionise’ the country’s electoral system. The party propagated this as a comprehensive solution to all of Pakistan’s electoral woes, and dubbed any opposition to it as an attempt by the ‘corrupt’ old guards to sustain the status quo.

This hijacking of the discourse around EVMs by one party has distorted it, shifting the focus from a careful consideration of EVMs’ merits and demerits to how much political capital can one quickly draw or lose by supporting or opposing ‘the great cause’.

In the midst of the worst political crisis of its life, the PTI government amended the Elections Act 2017 in December 2021 making it mandatory for the ECP to use ‘stand-alone electronic voting machines in general elections’ without even amending the provisions of the law

The Elections Act 2017

103. Electronic voting and biometric verification.

—The Commission may conduct pilot projects for utilization of electronic voting machines and biometric verification system in by-elections in addition to the existing manual procedures for voter verification, casting and counting of votes to assess the technical efficacy, secrecy, security and financial feasibility of the electronic voting machines and biometric verification system and shall share the results with the Government, which shall, within fifteen days from the commencement of a session of a House after the receipt of the report, lay the same before both Houses of Majlis-e-Shoora (Parliament).

Similar to the issue of voting rights for overseas Pakistanis, the discourse on EVMs has been politicised by one political party to the extent that there remains little focus on objectively analysing the merits and demerits of this new voting system.

necessary to make it possible. However, when the PTI government was ousted in April 2022, the next government amended the law again, restoring the earlier provision requiring the ECP to run pilot project(s) and report results to the parliament.

There is enough research available regarding the benefits and drawbacks of EVMs, especially set against the experiences of different countries. This should be studied thoroughly to settle the debate for good.

Here are a few highlights from a literature search on the subject which includes the ECP's reports:

- From a voter's point of view, stamping a ballot or pushing a button on an EVM are not very different experiences. These can both be done with equal ease.
- EVMs eliminate 'invalid votes', that is, paper ballots stamped incorrectly by voters which are thus not included in vote tallies.
- EVMs renders postal voting facility unfeasible. Paper postal ballots are cast by voters who are unable to travel to polling stations on polling day. They may include service voters, people with disabilities and overseas voters.
- EVMs eliminate the process of printing ballot papers
- EVMs require secure and careful transportation between their central site of storage and polling stations, just as paper ballots do.
- Paper ballots can be tampered with at different stages of their transport and usage. This is least likely with EVMs.
- EVMs need uninterrupted power supply or must have an efficient battery backup.
- EVMs can develop errors during use, both in hardware or software, which must be fixed on the spot or a replacement be made readily available. The operators require training for handling the machines and a tech support system has to be in place to deal with any other issues.

In addition to the above, the EVMs can offer two different solutions for the counting of votes. 1) EVMs used at polling stations do not have the technological capacity to count votes. They can only store polled votes, which can only be retrieved and counted when attached to another machine housed at the centralised counting centres. This type of EVM is used in India. 2) EVMs used at polling stations can count votes at the end of polling and print the results on paper. The printed results are then shared with polling agents and also sent to central

election offices via the RTS for the consolidation of results of a constituency. The machines tested by the ECP are of the second type. In summary, these EVMs eliminate the chances of human error in counting votes done by the Presiding Officers.

In the EVM system tested by the ECP, voter identification and verification processes are the same as followed under the present paper ballots system: voters present their NICs at the polling station so that their entries are struck down from the paper copies of electoral rolls after obtaining their thumb impression and marking their thumb with indelible ink.

One major advantage of paper ballots over EVMs is that they remain available for any audit at a later stage. EVMs attempt to solve this by printing a slip for each vote cast which is then automatically stored in a secure compartment attached to the machine. This is called Voter Verified Paper Audit Trail (VVPAT). It is yet to be seen if these slips can be as effective an evidence as stamped ballot papers in situations of disputes.

After usage, the EVMs have to be stored in secured warehouses till the next elections. Their storage has to be dust and damp proof, and will require periodic maintenance as a routine. This means that the ECP has to institute a permanent system to care for these machines and to sustain the capacity to use them whenever required.

Discussion point: The debate on EVMs must be depoliticised, its merits and demerits evaluated and a clear phase-wise plan of action accordingly charted out.

EVMs do offer some ease in the voting and counting processes, but they largely tend to replace an old set of problems with new ones.

The ECP report of problems identified during the pilot test for EVMs

The ECP conducted a pilot test for the use of EVMs during the by-election in NA 4 Peshawar on 26 October 2017. 100 EVMs were placed at 35 polling stations that were used by 12,419 voters in this mock exercise, conducted parallel to voting on paper ballots. The following is a list of issues as reported by the ECP team:

Description of errors/issues and number of incidences	
1: Battery drainage issue (Control Unit + Ballot Unit)	29
2: Paper stuck during printing of Ballot paper	28
3: Voting Pad Sensor	20
4: Software hanging issues	7
5: Diagnostic Issue	6
6: Damaged VGA Cable	2
7: Error during consolidating votes by USB	1

Paper ballots versus EVMs: The financial case

In terms of election expenses, EVMs save the cost of printing ballot papers. Transporting stacks of printed ballots, however, would be replaced by moving boxes of EVMs to and from the same destinations, with more care required than in the case of paper ballots. The current practice is that the ballot papers are carried by the Presiding Officers from the offices of the Returning Officers, to the polling stations along with other polling paraphernalia. The same, however, cannot be continued in the case of EVMs as these would have to be transported to and from all the polling stations through a separate operation. Another added chore specific to the EVMs is their safe and secure storage till the next elections.

The total expenditure of organising a general election includes a number of expenses, from purchasing and transporting the polling material to paying the honoraria due to the polling staff for security arrangements. Printing ballot papers is one of the major expenses which accounted for 39.6 percent (PKR1.875 billion) of the total expenditure of the PKR 4.731 billion incurred during the 2013 general elections. This figure had stood at 28.9 percent of the total expenditure in the 2008 general elections. This information is not available regarding the 2018 elections, but some media reports say that the ECP's total budget allocation for the 2018 general elections was raised to PKR 21 billion.

The price of EVMs varies widely depending upon their features and suppliers, but the most careful estimates place the price of one machine between USD 1,000 and 1,500. The ECP estimates that it would need around 900,000 machines to organise voting at over 100,000 polling stations. This puts the total

estimated cost of replacing paper ballots with EVMs between USD 900 million and USD 1.35 billion, or PKR 200 to 300 billion at the current exchange rate. This is an exorbitant amount compared with a few billion spent on printing ballots in each election.

The counter argument by EVM advocates is that since the machines can be used repeatedly, the cost must be calculated per usage over a longer period. If one set of EVMs can be used to conduct five elections over a period of 10 years, the cost per election will decrease five times. Yet, even by that measure, the machines remain many times costlier than paper ballots. There are no cost estimates available for their storage, security, care, maintenance and replacement over 10 years.

Another enthusiastic take on this matter is that Pakistan can develop and manufacture its own machines. The country may possess the technological capacity and human resource to design the machine, but manufacturing it at large scale — and for a single client — requires another level of expertise. Pakistan does not currently have the industrial base to accomplish this ambition, and it will have to import most of the operational parts, such as processing chips, to assemble the machine locally. This is likely to bring the cost of homemade machines quite close to those imported from abroad.

In summary, the EVMs offer some ease in voting and vote counting processes, but they largely tend to replace the old set of problems with new ones, and that too at a high financial cost.

Vanguard or foot soldiers

Polling agents of candidates

Counting votes at the end of polling and handing over of copies of the statement of count by the Presiding Officers to every candidate's polling agent are crucially important steps to ensure transparency in elections. Not surprisingly, this step has been at the centre of a number of controversies throughout our electoral history. Candidates and parties have often complained that their polling agents are not given copies of vote counts by the Presiding Officers. On the other hand, it is often reported by the Presiding Officers that polling agents do not take their job seriously enough, disappearing as soon as they realise that their candidate has lost.

It was the primary complaint of a political party in the 1990 general elections that the Presiding Officers did not put their authentic signatures on the statements, preventing the statements from being presented in courts of law as evidence. The ECP thus amended the form and added a space for a thumbprint impression of the Presiding Officer.

The Elections Act 2017 has addressed the matter in a comprehensive manner. Besides statements of vote count and ballot count, the Presiding Officers have to secure the signatures of polling agents on each of the 19 different packets in which they pack ballots and other polling paraphernalia at the conclusion of the polling process.

The polling agents thus hold the key to ensuring the transparency and credibility of elections. However, the procedure for the appointment of polling agents is so simplistic that it fails the seemingly fool-proof safeguards instituted by the Elections Act 2017.

Polling agents are appointed by candidates and the Presiding Officers receive and accept their appointment letters to allow them to perform their duties. The Presiding Officers have to note down the particulars of all polling agents, including their signatures and thumbprint impressions on Form 42 after they have inspected the ballot boxes before the start of polling. There is, however, no information available about whether or not these forms are filled in by the Presiding Officers completely and properly.

Political parties have innumerable complaints about their polling agents not being allowed to perform their legal role by the Presiding Officers or the security personnel deputed at the polling stations. These complaints are summarily dismissed by the election authori-

Polling agents not only represent direct stakeholders of the electoral process—the candidates—they are also eyewitnesses of the entire process of the polling and counting of votes.

The Elections Act 2017

77. Polling agent

(1) The contesting candidate or his election agent may, before the commencement of or during the poll, appoint for each polling station as many polling agents as may be prescribed and shall give notice in writing to the Presiding Officer communicating the appointment.

(2) The appointment of a polling agent under subsection (1) may at any time be revoked by the candidate or his election agent and, when it is so revoked or if the polling agent dies, another person may be appointed by the candidate or his election agent as a polling agent and a notice of such appointment shall be given to the Presiding Officer.

The role of polling agents has long been a bone of contention between political parties and election officials. The matter must go beyond allegations and counter allegations and be resolved.

ties as vague or frivolous, and then countered through anecdotes of polling agents being unable or unwilling to perform their duties. This matter needs to be thoroughly investigated and taken beyond anecdotal allegations and counter allegations. The polling agents must be recognised as major stakeholders and their role strengthened through appropriate legal and administrative measures.

Pending such an investigation, it seems pertinent to suggest that the procedure for the appointment of polling agents needs improvement. Instead of a simple issuance of letters of authority by the candidates to their agents on polling day, they should be required to submit a formal list of their agents with the necessary particulars to the election officials days before the polling. They should, in return, be issued official name cards and/or badges.

Political parties and candidates must attend to the quality of the personnel they designate as polling agents and arrange that they be rigorously trained.

Discussion point: A post-election audit would determine if the polling agents have performed their jobs as prescribed and what obstacles they had to face. This could inform a future strategy to improve this important aspect of elections.

Silence is not the answer

Results Transmission System

The RTS came to the limelight when it purportedly failed to perform on the night after polling in the general elections held on 25 July 2018. All sorts of conspiracy theories about its failure have been in circulation since then and have caused considerable damage to the credibility of both the 2018 general elections 2018 and the ECP.

The RTS comprises two parts: one is the application that is downloaded by the Presiding Officers on their phones, and the second is the system by which the ECP receives information from the Presiding Officers and tabulate constituency-wise results by adding up polling station tallies. After completing the manual vote count at the polling stations in 2018, the Presiding Officers were required to fill the number of votes polled by each candidate in the RTS application's online form, and then attach an image of Form 45 (vote count) using their phone's camera. This information was received by the system at the ECP secretariat in Islamabad which kept adding polling station results from each constituency in real time. According to some reports,

the ECP had already received the results from half of the nearly 85,000 polling stations when the ECP announced that the system had crashed and that it had decided to revert to the former manual system of results consolidation.

The political parties lambasted the ECP while other stakeholders suspected foul play. They apprehended that the system was intentionally stopped by extra-democratic forces to gain time to manipulate the results. The system was developed by NADRA and administered by the ECP. There were some reports of one institution blaming the other behind closed doors, but neither issued an official statement on the matter. As pressure mounted on the ECP, it wrote to the Cabinet Division on 2 August to set up an inquiry committee to investigate the matter and determine who is responsible. According to reports, the Cabinet Division excused itself and instead advised the ECP to write directly to the prime minister.

The Senate Standing Committee on Interior, headed by Senator Rehman Malik, prepared a report titled *Report on the Holding of Free, Fair and Transparent Elections/Security of General Elections, 2018*, and presented it in the Senate on 10 October 2018. Among other de-

The purported failure of the RTS on the night after polling in the 2018 general elections has never been investigated. An official silence on the matter has left it to the imagination of stakeholders and analysts.

The Elections Act 2017

13. Establishment of results management system

(1) The Commission shall establish a transparent results management system for expeditious counting, tabulation, compilation, transmission, dissemination and publication of results in the official Gazette and on the website of the Commission.

(2) The Presiding Officer shall immediately take snapshot of the Result of the Count and, as soon as connectivity is available and it is practicable, electronically send it to the Commission and the Returning Officer before sending the original documents under section 90.

(3) The Returning Officer shall compile the provisional results forthwith and, on or before 2.00 a.m. the day immediately following the polling day, communicate these results electronically to the Commission: Provided that if, for any reason, the results are incomplete at that time, the Returning Officer shall communicate to the Commission reasons thereof, listing the polling stations from which results are awaited, and send the complete provisional results as soon as the results are compiled.

(4) The Returning Officer shall electronically send to the Commission— (a) scanned copy of the provisional results compiled under sub-section (3); and (b) scanned copies of

the Consolidated Statement of the Results of the Count, Final Consolidated Result together with Results of the Count and the Ballot Paper Accounts, as received by him from the Presiding Officers under sub-section (18) of section 90.

(5) The Returning Officer shall also send to the Commission original copies of documents mentioned in sub-sections (3) and (4) through special messenger or any other swift means of communication including urgent mail service or courier service, as may be directed by the Commission.

(6) The Commission shall publish the documents received under subsection (3) along with gender disaggregated data of turnout on its website.

The purported failure of RTS and the subsequent controversies have made ECP very reluctant about use of technology. A way must be found to resolve it.

tails, the report pointed at some grey areas in the management of the elections including delays in election results, failure of the RTS kept at NADRA, a forensic audit of a voice message circulated on WhatsApp by the ECP to Presiding Officers to stop using the RTS, issues related to the ECP's Result Management System (RMS), and a shortage or non-provision of Form 45. The senator had earlier in August written a letter to Prime Minister Imran Khan asking him to constitute a technical committee to probe the shutting down of the RTS. The failure of the RTS on the night between 25 and 26 July 2018, however, has not been investigated by any official body. There is no official word available on the matter except for the announcement made by the ECP's secretary on that night. The ECP also evaded this matter in its 2018 annual report. Instead, it provided the following lines in its 'Compendium of Recommendations':

'9b. Results Transmission System

- i. Introduction of new technology should not be mandatory under the law until it becomes fool proof and practicable in the field;
- ii. Keeping in view the on-ground challenges, sub-section (2) and sub-section (3) of section 13 of the Elections Act, 2017 may be omitted.'

Official silence on the matter has left it entirely to surmise. It is not surprising then that conspiracy theorists are to date busy minting 'facts' about what transpired that night. The situation has also raised doubts about the ECP's capacity to adopt modern technologies, denting its credibility.

The RTS is an important part of the RMS which, in turn, is an important measure to ensure transparency and public trust in elections. It must be restored before the next general elections.

Discussion point: How can the damage caused by the failure of the RTS be restored, when abandoning the system altogether can only be deemed as a step backward?

Shifting goalposts

Polling schemes and polling stations

Lists of polling stations for each constituency are prepared by the DECs and handed over to the Returning Officers within a week of their appointment. The Returning Officers are then required to personally verify these polling stations and are authorised to amend as they may deem fit within a period of 15 days. The Returning Officers then dis-

play the lists in their offices, inviting objections from voters. The District Returning Officers adjudicate on the objections and the final lists are published 30 days before the polling date.

The ECP is required to set up, as far as practically possible, one polling station for every twelve hundred voters with one polling booth for every three hundred voters. The average number of voters in 2018, however, was 1,248 per polling station and 429 voters per polling booth.

FAFEN, that has been observing Pakistan's elections for over a decade, estimates that the time taken by a voter in casting their ballot is between three to five minutes. According to FAFEN, a polling booth can only enable 35 voters per hour or 350 voters in a ten-hour spree without a break. This shows that the number of polling booths set up in 2018 could at the most facilitate 80 percent of the voters assigned to them. The average number of polling booths per polling station was 2.9 in 2018. This needs to be raised to four as prescribed in the Elections Act 2017.

An even more problematic part related to the preparation of polling schemes is assigning electoral rolls (voters) to polling stations.

The ECP uses census blocks as the basic units for defining the boundaries of electoral constituencies. In other words, the electoral constituencies are clusters of census blocks as defined by the Pakistan Bureau of Statistics for conducting a population census. The ECP also assigns polling stations to one or more census blocks depending on their population.

The electoral rolls are, however, drawn from the NADRA database of identity cards. The NICs do have two addresses of the voters, permanent and temporary, but there is no method to ascertain which address falls in what census block. Unlike many other countries, street addresses in Pakistan do not follow a regulated and structured format. Likewise, NADRA also records addresses in an unstructured manner or as narrated by applicants.

The ECP thus has to conduct a door-to-door campaign to record NIC numbers of the residents of each census block. This exercise is conducted by the district administrations on the directions of the ECP, who mostly assign it to public school teachers or other government employees of similar cadre. The exercise is never conducted in a comprehensive manner.

To highlight the limitation of door-to-door campaigns, the last door-to-door voter enumeration exercise conducted by the ECP through this

Number of voters

Per polling station	Per booth
Pakhtunkhwa	
1,227	413
Punjab	
1,253	458
Sindh	
1,336	393
Balochistan	
946	349

The number of polling booths in 2018 could at best support on 80 percent turnout.

Census block numbers and names of electoral areas may be important for election officials, but for voters, knowing their polling station is all that matters.

method in 2007, that is, before the electoral rolls were connected to NADRA's database, had registered 52.1 million voters in the entire country while the rolls for the 2002 general elections counted 71.9 million voters. All estimates for 2007 had counted the total strength of electors as over 80 million. Sparking outrage, this matter had then been taken to the Supreme Court.

To keep the rolls updated, the ECP receives particulars of new identity cards from NADRA every month, and as their census blocks cannot be verified through door-to-door campaigns every time, it assigns census blocks to them by estimating which census block the address given on a card falls in.

The rolls thus prepared through door-to-door campaigns and regular updating are periodically put on display by the ECP to invite feedback and requests for changes. After adjudication on these, the rolls are declared final.

The displayed rolls show voters' details and the census block and electoral area assigned to them, but not the polling station since the polling scheme is published only before the elections. Census blocks are long numbers which mean little to voters. Likewise, an electoral area—the name of a neighbourhood or village associated with each

The Elections Act 2017

59. Polling stations.

(1) Within one week after appointment of Returning Officers, the Commission shall provide, in the prescribed format, a list of proposed polling stations for each constituency to the Returning Officer of that constituency indicating the electoral areas assigned to each polling station and publish the list on its website.

(2) The Commission shall, as far as practicable, retain the polling stations established for the preceding election but it may add to or alter the list as may be required to reduce the distance preferably to one kilometer between a polling

station and the voters assigned to it.

(3) As far as practicable, not more than twelve hundred voters shall be assigned to a polling station and not more than three hundred voters shall be assigned to a polling booth, and reasons for any deviation shall be recorded in writing.

(4) Within fifteen days of the receipt of the list of polling stations, the Returning Officer—
(a) shall personally verify the proposed polling stations; (b) may add to or alter the list as he may deem necessary; and (c) shall publish outside his office the preliminary list of polling stations, inviting objections and suggestions, if any,

to be filed within twenty-one days of its publication.

(5) A voter may file an objection or a suggestion with the District Returning Officer, within the specified period, only in connection with the polling station to which he has been assigned.

(6) The District Returning Officer may, after hearing the objections or considering the suggestions, if any filed with him and making such summary enquiry as he may deem necessary, make alterations in the list of polling stations as may be required and shall, at least thirty days before the polling day, publish in the official Gazette and on the website of the Commission the

census block—also mean little to voters as one electoral area can have more than one polling stations in the final polling scheme.

A number of observers have persistently reported how voters are unable to identify the polling station assigned to them on polling day or changes to polling stations compared to previous elections that put the station at too far a distance from their residences. Political parties have also accused the authorities of changing the assignment of voters to certain polling stations to confuse the voters and, thereby, favouring one candidate over the other.

One way of addressing these issues may be to declare certain buildings as permanent polling stations. The identification and designation of such buildings as polling stations may be taken as a secondary part of the delimitation of electoral constituencies. The voters must always know their polling station by availing ECP's 8300 SMS service, or by visiting display centres of electoral rolls.

Election officials can periodically visit these buildings to assess if they require any changes to serve as polling stations and communicate these to the relevant departments. Any changes in the permanent polling scheme must only be allowed in emergencies such as natural disasters.

A permanent polling scheme must be prepared as a secondary part of the process of delimitation.

final list of polling stations of each constituency in the district.

(7) The Commission shall determine the date or dates required for completion of the actions mentioned in this section.

The Election Rules 2017

50. Polling stations.

(1) Within one week after appointment of Returning Officers, the District Election Commissioner shall provide, a list of proposed polling stations referred to in sub-section (1) of section 59 for each constituency to the concerned Returning Officer in Form-28. Provided that the District Election Commissioner shall also

send a copy of list of proposed polling stations, provided to the Returning Officer under this sub-rule, to the Commission which shall be placed on the website of the Commission immediately upon receipt as required under sub-section (1) of section 59.

(2) The District Election Commissioner shall prepare the proposed list of polling stations under sub-rule (1) keeping in view the provisions contained in sub-section (2), sub-section (3), sub-section (10) and sub-section (11) of section 59.

(3) After receipt of Form-28 from District Election Commissioner under sub-rule (1), the Returning Officer shall pro-

ceed according to the relevant provisions of section 59 for preparation and publication of preliminary list of polling stations in Form-28.

(4) The District Returning Officer shall finalize the list of polling stations of each constituency in the district according to the relevant provisions of section 59 and publish the same in Form-28 in the official Gazette. Provided that the District Returning Officer shall also send a copy of the list of polling stations so published to the Commission which shall be placed on the website of the Commission immediately upon receipt as required under subsection (6) of section 59.

6

Reserved seats

A good step in the wrong direction

Reserved seats for religious minorities

The 1973 Constitution of Pakistan had originally reserved seats for religious minorities or non-Muslims in its four provincial assemblies as follows: one for the North-West Frontier Province (NWFP), three for Punjab, two for Sindh and one for Balochistan. Seats were not reserved for this group in the National Assembly. However, the constitution was then amended in November 1975 to add six seats for non-Muslims in the national legislature. The entire country was made one multi-member constituency, and all the members of the elected house served as the electoral college for elections to these seats. The first elections to these were held in March 1977. By this method, the party with a simple majority in the house would win all of the seats, so no other party bothered to even nominate candidates and the majority party won all the seats uncontested.

General Zia-ul-Haq increased the number of non-Muslim seats in the National Assembly to ten and divided these further into four categories, with four seats reserved for Christians, four for the joint group of Hindus and Scheduled Castes, one for Ahmadis and one for all other non-Muslim communities. He also introduced a separate electorate system under which voters of a particular faith could only elect a person of the same faith as their representative. Under this system, non-Muslim voters directly voted for the candidates professing their faith by availing separate ballots provided at all polling stations. The first elections under this system were held in 1985 followed by four more in 1988, 1990, 1993 and 1997.

The entire country was one four-seat constituency for Christians, so Christian voters from across Pakistan were given the same ballot paper to mark one candidate as their representative and the top four Christian candidates with the most votes were declared elected. The same was the case with the Hindu and other non-Muslim seats.

The separate electorate system made it mandatory for the ECP to prepare five separate electoral rolls (Muslims, Christians, Hindus and Scheduled Castes, Ahmadis and others), provide five separate ballot papers to each polling station, and likewise repeat every other task

Seats reserved for non-Muslims and the total strength of elected houses

Non-Muslim	Total
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National Assembly	
10	336

Pakhtunkhwa Assembly	
4	145

Punjab Assembly	
8	371

Sindh Assembly	
9	168

Balochistan Assembly	
3	65

for each faith separately. Besides administrative complications, the system became the most profound expression of faith-based discrimination in political and governance systems. It was opposed by rights groups and by many political players until it was finally abandoned by the next military ruler in 2002. The system that General Pervez Musharraf introduced was later accepted by the next parliament through the passage of the 18th Amendment to the Constitution in 2010 and then the Elections Act 2017. The new system addressed the problem of the majority party winning all the seats from the 1970s system.

Under the new system, a share in total reserved seats is allocated to each political party proportionate to the general seats that it has won in the general elections. The parties submit their lists of candidates for reserved seats in order of priority to the ECP at the time of the nomination of candidates on general seats. After the results of the general elections are compiled, the ECP calculates the share of each party in the reserved seats and declares as many candidates on the party's lists as elected, following the order of priority decided by the party.

The system does ensure the presence of non-Muslim members in the elected houses and also that the majority party does not have a monopoly over the representation of non-Muslims. The debate on representation of religious minorities in legislatures is, however, far from over.

Non-Muslim voters are not happy with the new system at all as they often do not relate with the persons that purportedly represents them in elected houses. In fact, the more vocal among the non-Muslim communities do not hesitate in completely disowning these party nominees as their representatives.

Their primary complaint about these members is that they are not accessible to them and that they do not heed to their problems. On the other hand, as these members are 'elected' from the entire country as their constituency, they cannot possibly be accessible to everyone living in tens of thousands of minority pockets spread across the country. This gap between community expectations and the ground realities of minority members has given rise to a negative relationship between them.

Minority members, including those belonging to ruling parties, are never considered worthy of the 'favours' from the governments that the general constituency members consider as their basic right. For

Increasing the number of seats reserved for non-Muslims will not amplify minorities' voices. It will only help parties put more token members in legislatures.

example, minority members are not allocated development funds or schemes by the governments as they do not represent a specific geographical area. In Pakistan's electoral culture, these 'favours' are important tools that elected members use in forming a relationship with their electors and in nurturing their political careers. The minority members elected to reserved seats are excluded from this system. One of the impacts of this form of discrimination is that these members generally tend to maintain a distance from their communities as an active relationship raises demands and expectations from their communities which they cannot fulfill.

The minority members bring little to no electoral capital to the political parties and their political careers hang by a thread, tied to the decisions of party leaderships. Many of them confess that they are not answerable to their communities as they do not owe their status to the community's votes but to the will and decisions of their party leadership. Therefore, they tend to tow party lines without any resistance and without making any substantial contribution in shaping their policies. For example, non-Muslim members have been hesitant in advocating amendments in marriage and divorce laws for Christians and Hindus, despite this being an important matter for their communities.

Political parties seem content with this situation as it helps them maintain the optics of being inclusive and occasionally claim either secularity or tolerance of all faiths without taking any concrete steps in this regard. Such token members also play a crucial role in the elected houses at times when a few members can make or break governments.

The presence of these members in houses also leads to confusion among communities as they remain unsure who their real representative is: the member whom they had voted for or the member who belongs to their faith. At times, general members use this confusion to divert community demands away from them.

A number of alternate proposals have been actively discussed among various minorities. One is to revert back to the separate electorate system, but this proposal disregards all the demerits of that system and is almost always advocated by minority leaders who used to contest, and win, on minority seats under it. Most of them were not favoured by political parties under the new system which allows them to pick any person from minorities as their candidate.

Another proposal is to give minority groups a double vote, that is,

cast one vote for a general member from their area and a second vote for a member of their community to be elected to the special seat for minorities. The reasoning behind this is the double vote given to Kashmiris settled in Pakistan who cast their votes in elections to the legislative assemblies of both Pakistan and Azad Jammu and Kashmir. [The Azad Jammu and Kashmir Assembly has 33 seats for its resident citizens and 12 for Kashmiri migrants settled in Pakistan.] A double vote, however, is likely to cause more problems than it may possibly solve. For one, the vote for the community's candidate could essentially bring back the entire separate electorate system. There is also no certainty for how the other vote for the general member will play out.

The merits and demerits of the above proposals aside, what is important to note here is that the minority groups are not satisfied with the current arrangement.

The onus of this situation rests mainly on political parties who have not gone beyond giving verbal assurances to their minority constituents, and are content with establishing separate 'minority wings' in their structures. No party currently has a person from a religious minority in its executive council or given any important office to a non-Muslim member. PPP is the only party that had nominated non-Muslim candidates on general seats in Sindh in the 2018 elections and three of them had won from their constituencies.

No other party dares to nominate a non-Muslim as its candidate even though the number of non-Muslim voters in some constituencies is electorally significant. These parties' main fear is that Muslim constituents may not vote for a non-Muslim candidate or that a religious party may exploit the situation to its own electoral advantage. These parties are also mindful of their Islamic credentials in public perception.

The TLP champions hatred against Ahmadis and is the self-appointed guardian of the country's blasphemy laws. It forced the government in 2017 to withdraw the decision to abolish separate electoral rolls for Ahmadis through protests. The TLP registered itself as a political party and contested on 171 out of a total of 272 national constituencies, and 381 out of 593 provincial constituencies. Though the party won only two provincial seats, the PML-N believes that the TLP split its votes and played a major role in its defeat on at least 30 national seats. The TLP campaigned against the PML-N because the convicted murderer of the governor of Punjab Salman Taseer was hanged dur-

Non-Muslim winners of general seats in the 2018 elections

NA 222 Tharparkar II
Mahesh Kumar Malani, PPP

54.3 percent population of this constituency is non-Muslim

PS 47 Mirpurkhas I
Hari Ram, PPP

21.6 percent non-Muslims

PS 81 Jamshoro II
Giyano Mal, PPP

6.9 percent non-Muslim

In Sindh, every tenth voter is non-Muslim. Their population is worth 13 provincial and six national seats.

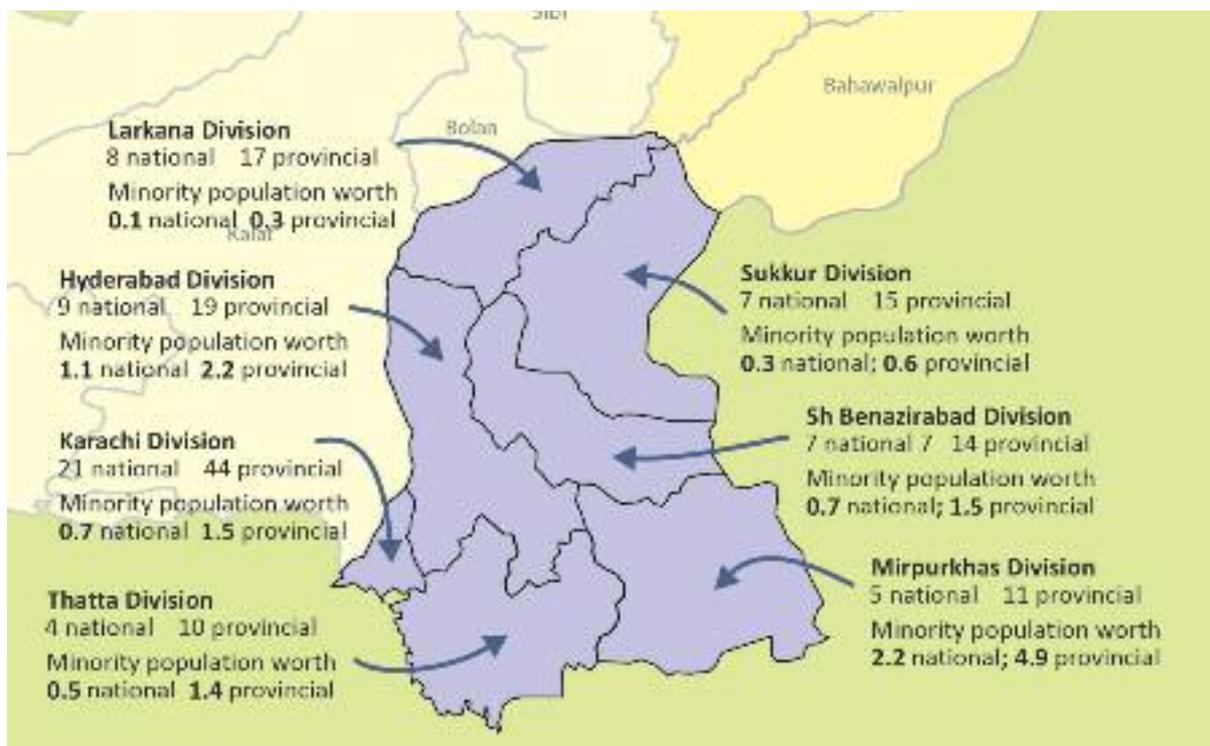
The Indian electoral system reserves constituencies that can be contested by only Dalit and Adivasi candidates. This ensures the presence of members from these communities in the elected houses without dividing the electorate along caste lines.

ing the PML-N's rule. The governor was murdered by his security guard, a TLP supporter, for meeting and expressing his sympathies with a Christian woman accused of blasphemy. Political parties are hence wary of adopting a liberal approach towards the political representation and rights of non-Muslims.

Another important factor is the method that parties follow when selecting a candidate from a certain constituency, preferring those who possess some political capital in their areas. The party then invests its national or regional political capital in them by awarding them party tickets to ensure their victory. With the exception of a few constituencies, no candidate can win solely on their own and, similarly, no party can win a seat while ignoring the personal standing of the individual it nominates as their candidate.

This method ultimately works against the interests of religious minorities. The influence of the few minority leaders who are politically active in their areas is limited to their communities, the actual strength of which are generally spread out in small pockets over vast areas. Moreover, the parties have no grassroots level organisational structures that could help these local actors evolve within their constituencies and gain political stature.

Given this situation, India's system of political representation for Scheduled Castes (Dalits) and scheduled tribes (Adivasis) is worth considering. In the 543-member Indian parliament (Lok Sabha), 84 seats are reserved for Dalits and 47 for Adivasis. All the seats corre-



spond with geographical constituencies that are delimited following uniform rules and procedures, and then as many seats as possible are reserved for constituencies with the highest population of Dalits and Adivasis. Elections in these constituencies are also held under the same one-person-one-vote rule, irrespective of their caste, as in the rest of the constituencies. However, only Dalits or Adivasis can contest in these as candidates.

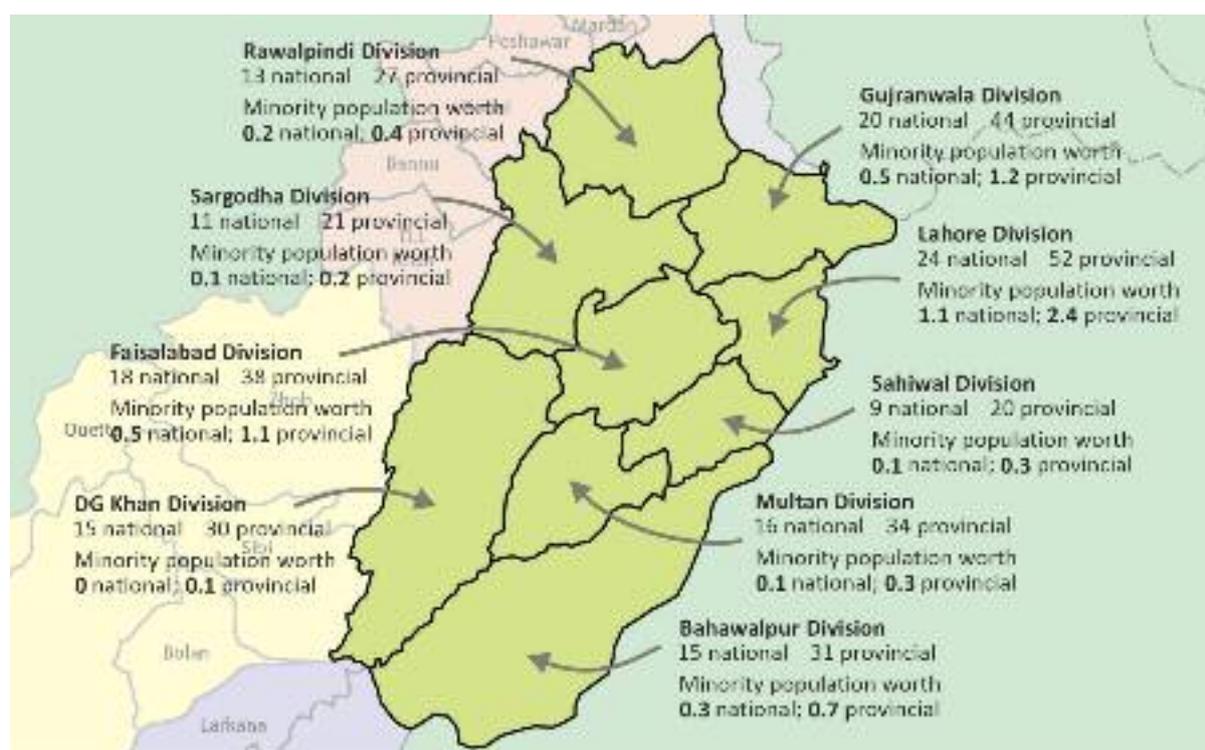
This system ensures the presence of marginalised persons in elected houses without dividing the electorate along caste lines. It also compels political parties to include such persons in their ranks which, in turn, helps these persons cater more meaningfully to their constituencies and develop their own political careers. Finally, this system ensures that voters who do not belong to Dalit or Adivasi communities vote for them.

In Pakistan’s context, one or more seats may be reserved for non-Muslims in each division depending on their population. Constituencies with the highest population of minorities could then be declared reserved, that is, to be contested only by candidates from that minority community.

A time limit may also be imposed on the reservation of seats, say, for two or three consecutive elections, assuming that the minority community’s leaders are able to gain political ground and that the voters in these constituencies also overcome their purported fear of voting for a non-Muslim.

Pakistan could opt to reserve one or more constituencies for non-Muslim candidates in each division.

The maps on these pages show the total number of national and provincial seats in each division of Sindh and Punjab, as well as the estimated number of seats that could be reserved for minorities in each.



Seats reserved for women

Women	Total
National Assembly	
60	336
Pakhtunkhwa Assembly	
11	145
Punjab Assembly	
66	371
Sindh Assembly	
29	168
Balochistan Assembly	
3	65

The practice of reserving seats must be considered within the context of gender inequality in politics. However, it is only feasible as one part of a long-term strategy, and not as a stand-alone 'solution' to gender inequality in politics.

Pyrrhic victory

Reserved seats for women

The 1973 Constitution had initially reserved ten seats for women for a period of ten years or two elections, whichever comes later. Though General Zia-ul-Haq raised the number to 20 in 1985, the seats were declared expired after the 1988 general elections. General Pervez Musharraf then reintroduced these seats in 2002 after substantially raising their number in all the houses. He also changed the method of election to these seats.

This system has been in place now for twenty years, or for four full five-year terms of elected houses. It forms a substantial body of experience that should be analysed from all aspects.

Reservation of seats is an exception made to meet an objective in the short term. It is accompanied by two conditions: first is the time frame and second is a strategy to mitigate the factors that have necessitated this exceptional step.

In the context of women's political participation, patriarchal norms have made it impossible for women to compete with men in the political space on an equal footing. Women thus must be provided with alternatives for fairer representation in the parliament up until the political arena is able to offer women equal opportunities.

The makers of the 1973 Constitution had envisioned ten years as enough time to level the political ground for women, a notion that reflects how this era of revolutionary thinking was marked by an over-confidence in bringing about change in a complex social and political phenomenon.

In contrast, the current arrangement has no set time limit for the seats reserved for women, leaving one to question whether this can be considered a permanent solution to gender inequality in politics. More importantly, is this an acceptable arrangement for women's representation in for the next twenty or thirty years while real electoral politics remains unfavourable and hostile to women's participation?

This system has helped the country and its political parties portray an image of women's political participation without taking any substantial steps to address gender inequality in politics. In fact, it would not be wrong to say that it has made policymakers complacent by giving them a false sense of achievement.

Research suggests that the performance of female parliamentarians on the floors of the houses has exceeded that of their male

counterparts. This subject has been widely studied by many experts and reported on from time to time. Their better performance has, however, not been enough to impress the patriarchy in political parties and hence not contributed towards the women's advancement in their political careers.

While political parties value the performance of their members in their constituencies, what matters the most to them is their members' standing among the people in those constituencies. They evaluate their members in terms of the nature and strength of their relationship with their constituents which is considered as the real essence of politics, or the seed capital for a political career. Political parties and these persons with political seed capital engage in a mutually beneficial relationship to then help each other advance in politics.

Women elected to reserved seats through party nominations do not have a geographical constituency and hence do not possess any seed capital to start a career in politics. They remain completely dependent on their parties for their survival and growth. Their constituency is their party leadership, compelling them to maintain and develop a relationship with their leaders and can only work within the space afforded to them. In this way, they largely serve as toothless extensions of their male-dominated party leaderships, and do not pose any serious threat to the gender status quo within the party's hierarchies and in their policies.

In some instances, women from established political families get elected to reserved seats to develop and sustain their political careers. For example, Nafeesa Shah from Sindh's Khairpur district was elected to a reserved seat in 2008 and 2013, winning on a general seat from the constituency of her ancestral area later in 2018. Her father has been elected from the same area in 1970 and 1977 on a national seat, and for eight consecutive elections between 1988 and 2018 on a provincial seat. He has thrice served as the chief minister of Sindh.

Political parties have also availed this option to provide an avenue for their active female members to participate in the elected houses. For example, prominent PTI leader Shireen Mazari has been elected to the National Assembly on reserved seats in 2013 and 2018. Though she too belongs to a political family, it would have been quite hard for her to build a career by contesting in her ancestral constituency in the Rajanpur district. Another prominent female leg-

Women contesting on general seats

Candidates Party	Winners	
	Ind.	
2002		
38	22	13
2008		
41	30	16
2013		
31	33	5
2018		
118	65	8

Reserving seats is not a panacea. It bypasses discriminatory obstacles without even challenging them. It is evident that, since their inception 20 years ago, reserved seats have failed to have any impact on women's prospects to contest on general seats.

‘On average, each female MNA attended 76 percent Assembly sittings and sponsored eight agenda items whereas each male MNA attended 60 percent sittings and sponsored five agenda items.’

Source: TDEA/FAFEN report based on ten sessions (20th to 29th) of the 15th National Assembly held between 9 March 2020 and 2 March 2021.

islator, PPP’s Sherry Rehman, does not have a geographical constituency to hinge her politics on. She was elected to the National Assembly on her party’s nomination in 2002 and 2008, and then later elected to the upper house where is currently a senator.

This shows that reserved seats has facilitated women’s advancement in their political careers in only a few select instances. There is, however, no instance of a woman graduating to constituency politics after her initiation into politics on reserved seats. The system’s utility thus remains extremely limited in terms of increasing women’s political participation.

It has also failed to have a trickle-down effect on the lower strata of politics as parties have not been encouraged to field more women as candidates in constituency-level contests.

The fact that these members have no constituency takes away the legitimacy from reserved seats, thereby reducing their political value. It is not possible for these members to build a relationship with their electorate, find a foothold in the political arena and negotiate their way through party hierarchies. This system of reserved seats must be reformed to address this weakness.

There can be many possible ways to do that. Since 2018, the ECP records gender-segregated data for the turnout at each polling station. This process can be advanced further to separately count men’s and women’s votes polled by each candidate.

In fact, polling booths at every polling stations are set up separately for male and female voters. This means that men and women insert their marked ballots in separate ballot boxes before the votes are mixed before the counting process. If the Presiding Officers are instructed not to mix them and instead tally them separately, it would be easy to determine how many women’s (and men’s) votes each candidate has polled.

To further ensure that the votes are counted separately, the ballot papers for women can be printed on papers of a different colour. The polling staff has been handling ballots of five different colours with each corresponding to candidates of different faiths during the separate electorate system from 1985 to 1997. Currently, the coloured ballots are also used frequently for local government elections for various types of seats.

The number of votes polled by the candidates of a party can then be linked to its share in the reserved seats. This would incentivise political parties to mobilise more votes from women. The candi-

dates would also have to tailor their election campaigns to include women's demands.

Women's reserved seats could also be delimited as clusters of general constituencies and linked to women's votes polled by the party candidates in that cluster. For example, a cluster of three or four constituencies may be declared as a one-woman-seat constituency so that the party securing the most votes from the women in the cluster could be declared the winner for that seat. The parties could then be required to nominate female candidates in constituency clusters. The candidates for women's reserved seat would thus be campaigning alongside the candidates for three or four other general seats.

Another method may be to emulate India's example and declare certain constituencies as women-only constituencies. Elections in these constituencies would then be contested only by female candidates who are elected by both men and women in that constituency. The constituencies would hence be declared reserved for women for three to four consecutive elections to allow female politicians to develop and nurture their careers. This system of reservation can be moved to other constituencies.

The intent here is not to advocate for one system or the other. It is instead to initiate a discussion on the subject with two main focal points. One, that the current system has not helped improve women's participation in electoral politics. We should accept this failure and try to find ways to amend and improve it. Two, any improvement in the system must link the election of female representatives with the constituency-based direct participation of female electors. Reserved seats should be time-barred with a clear objective of ending the gender gap at every level of politics. It should also set mid-term benchmarks and be flexible enough to improve this strategy if these intermediate objectives are not met.

Discussion points/proposals:

- Women's seats should be linked with women's votes polled by a party
- Clusters of three constituencies should be delimited as a single seat reserved for women
- Certain general constituencies should be declared reserved for women's seats, that is, to be contested only by female candidates

Without linking women's reserved seats with constituency politics and the direct or indirect participation of female voters, we cannot expect to achieve gender equality in politics.

7

Financing

Democracy for the rich by the poor

Election campaign expenses

Analysts and political workers often state that elections are for the rich to contest as no layperson can bear the cost of election campaigns. Considered a major reason behind the elite capture of democracy, this perspective is certainly not misplaced.

Section 132 of the Elections Act 2017, titled ‘Restrictions on election expenses’, allows candidates to the National Assembly to spend up to PKR 4 million on their election campaigns and about half as much for provincial assembly candidates. Its sub-section 5 also provides that a candidate shall not be held responsible for any campaign expenses made by another person without the candidate’s permission. A candidate could thus spend any amount and then simply declare that those expenses in excess of the legal limit were made by others without his/her permission. These provisions not only places elections beyond the reach of candidates from low-income groups, but it also legalises such current practices.

Moreover, there are two aspects of campaign financing that must be considered: one, the financing arrangement between individual candidates and political parties, and two, the scrutiny of the itemised breakdown of costs of an election campaign.

In Pakistan’s political culture, given the country’s turbulent history of democratic development, it is the individual candidate who must bear the entire cost of their election campaign. They are also required to ‘contribute’ substantial amounts to their party’s funds to help finance the party’s overall campaign, generally around the time that they are awarded nomination tickets from those parties. Such campaign financing arrangements limit political participation to only to those who can afford it, preventing any egalitarian objective from being achieved.

To cite a contrasting example, all campaign-related expenses for candidates in the German political system are paid for from the central funds of political parties. The parties raise funds through membership fees, donations and state grants. They also annually submit their accounts to the parliament that are then published on its website for public scrutiny. The parties can thus select candi-

The Elections Act 2017 does not embody the objective of making elections affordable for aspirants who are not ultra-rich. It has, in effect, ended all limits on campaign expenses and provided legal cover to existing practices.

dates on the basis of their political acumen and other qualities without any consideration for their personal wealth.

According to section 204 of the Elections Act 2017, parties are allowed to collect 'fee, contribution or donation made by a member or a supporter' and are only prohibited from receiving funds from a foreign source.

Discussion point: Should political parties be encouraged to raise funds through legal means, share their sources with the public, and bear (fully or partially) the campaign expenses of their candidates?

Another approach is to identify what drives up the costs of election campaigns and then regulate them to keep expenses as minimal as possible. In other words, list down the types of expenses made for a typical campaign, analysing their rationale, utility and legality; then set limits or find better alternatives. This appraisal could provide the basis for the design of appropriate legal framework and monitoring mechanisms to keep these expenses in check.

This approach has been typically preferred by Pakistan's decision-makers. For instance, the ECP had placed a ban on cloth banners, hoardings and posters exceeding three square feet in size in the 1993 elections. In the next elections held in 1997, these items of all sizes were banned. But in the 2002 general elections, the ban was removed. The ECP had included permissible sizes of printed publicity materials in its Code of Conduct in 2018, setting the maximum size of a poster at 18 inches by 23 inches. However, with no limit set on quantity, such measures have little meaning in terms of campaign expenses.

This subject was discussed in a constitutional petition filed in the Supreme Court by the Workers Party Pakistan in 2011. The petition questioned the constitutionality of expenses related to election campaigns, arguing that these obstruct the exercise of political rights by the common people. The Supreme Court sought the views of stakeholders, including all political party representatives in the parliament, and each campaign expense was discussed separately at length.

The petitioners had suggested a complete ban on posters and banners as well as other means of advertisement, but political parties did not agree and the court limited its directions to a ban on wall-chalking and limiting the size of printed materials.

This and many other directions of the Supreme Court given in 2012 were later incorporated in the Elections Act 2017. For example, the act provided for the payment of a candidate's campaign expenses from a dedicated bank account; weekly inspections of accounts

The debate on making elections financially accessible is not settled, and all stakeholders must engage in a dialogue to find creative ways to meet this coveted objective.

Limiting the unit size of publicity materials hardly serves the purpose of containing campaign expenses as no limits are set for their quantity, which are also impossible to monitor.

There is no information in the public domain about how many candidates filed their campaign expense returns in 2018 and if these were scrutinised by the ECP.

during campaigns; and setting polling stations within a reasonable distance to reduce voters' transportation costs that are generally borne by the candidates.

The court had also directed the ECP to run a pilot project to provide transport to voters so they may commute to polling stations since this was identified as a significant campaign bill that wealthier candidates foot to the disadvantage of candidates of lesser means. The act of providing transport to voters on polling day is also considered a primary form of influencing their choices. The ECP conducted the pilot project in a 2012 by-election in Multan, hiring vehicles to transport voters to 29 polling stations, but the proposal was shelved due to its high cost and operational challenges.

The Supreme Court judgment and Elections Act 2017 also provided for the ECP to monitor campaigns. The ECP did set up a monitoring wing in its secretariat, appointing 132 District Monitoring Officers (DMOs) to monitor the 2018 election campaigns, but all it had to say in its annual report about this exercise was the following: 'The monitoring teams reported violations and prompt actions were taken by DMOs thus monitoring of election campaign process of candidates and political parties was successfully carried out.'

Similarly, the ECP is also responsible for scrutinising the returns of election expenses submitted by the candidates after the declaration of results. There is, however, no information available regarding how many of the 2018 candidates had submitted their returns and whether the ECP had scrutinised these returns. Unofficial reports suggest that only a third of the candidates submitted their returns, and the ECP does not have the capacity to scrutinise these. The exercise thus remained futile and, in practice, there is no restriction on how much a candidate or a party spends on their election campaign.

Discussion point: Does this not mean that our laws have accepted that only the wealthy can contest elections and reach the legislatures? The legal provisions regarding election expenses must urgently be revisited from this point of view.

Juggling with the numbers

Assets and liabilities of elected members

Section 137 of the Elections Act 2017 provides for all elected representatives to declare their assets and liabilities by the last day of each year, failing which their membership is suspended 'till he files

the statement'. Section 138 tasks the ECP to make these declaration public, which it has been doing by publishing these on its website.

Despite appearing to be a commendable act of transparency, this exercise leaves much to be desired. In their declarations, the members value their assets themselves which is in most cases ridiculously below their current market value. More importantly, the declarations are not scrutinised as the ECP is neither required to nor does it have the capacity to conduct financial analyses or audits. Without any meaningful processing of the raw information submitted by elected members, the declarations do not serve the purpose of transparency and maintaining voters' trust in an electoral democracy. They instead serve as invitations for targeted media trials of members, and occasionally leading to court cases which are dubbed by the members as persecution by their political opponents.

In the end, the declarations have not contributed towards transparency or electoral integrity. Some experts also raise concerns that public declarations infringe members' privacy and compromise their competitiveness in the business sectors they work in.

The objectives of this system must be reviewed and modified to ensure that elected representatives do not use their status for personal financial gains, and that their personal financial engagements do not constitute conflicts of interest with their legislative and policymaking responsibilities. To do so, a member's net worth, annual income and sources of income for the year(s) preceding their election, and then for each successive year in office, must be assessed in depth. A cell with the requisite capacity and experience could be set up under the ECP for this purpose, drawing assistance from other bodies such as the Federal Board of Revenue, the State Bank of Pakistan and Auditor General of Pakistan, to assess and scrutinise the finances of elected members. The cell should then annually publish a standardised assessment report of each member, and be authorised to secure records from any other institution or conduct audits if the assessments detect any violations of preset principles.

Discussion point: What is the objective of receiving and making public statements of assets and liabilities of parliamentarians? This must be clearly defined and the system modified accordingly.

Without systematically processing the information related to the assets and liabilities of members, it is just a pile of papers with no impact on the integrity of elections and democracy.

Discussion points

1. How can the manipulation of electoral processes and outcomes by extra-democratic forces be effectively checked? Do we need another Charter of Democracy to ensure the integrity of Pakistan's elections?

2. Has the caretaker government scheme served its purpose of making elections credible and democratic transitions smooth and free of controversy? If not, should it be allowed to continue?

3. Can the Senate be given a role in overseeing elections and the transition to the next elected government?

4. There is a need to reconsider the role and function of the judiciary in the administration of elections. The matter of judicial overreach in electoral matters must be debated seriously and settled.

5. What steps are necessary to ensure that the ECP maintains its full strength at all times?

6. Should the ECP appoint its own officers as returning officers and district returning officers in the general elections?

7. A thorough and independent audit of all the processes of a general election shall be conducted to set a comprehensive reforms agenda. What should be the contours and mandate of the body set up to conduct this election audit?

8. How should the role of social media be regulated in shaping the pre-election discourse and in creating and propelling perceptions of the credibility of elections?

Discussion points

9. Should administrative boundaries (districts and tehsils/talukas) determine and dictate electoral boundaries (delimitation of constituencies) or should it be the other way around?

10. The laws and rules for creating new administrative units or changing the boundaries of existing units cannot be divorced from those determining the boundaries of electoral constituencies. Should laws and rules be enacted to create new administrative units or change the boundaries of existing units?

11. Should the numerical equality of population be the sole criterion for deciding the boundaries of constituencies? How can other criteria (distribution of population in geographically compact areas, physical features, facilities of communication and public convenience) that are mentioned in the Elections Act 2017 be applied?

12. Should the level of difficulty of the electorate in exercising their political rights be given some weightage when delimiting constituencies?

13. The conflict between a citizen's actual place (constituency) of residence and the one written on their national identity card must be resolved. Changing the definition of 'residence' in law is not a solution. All residents of a constituency should be enrolled as voters to elect their representative.

14. Should not the schedule for conducting population censuses be synchronised with the schedule for conducting general elections and delimiting constituencies?

15. By making possession of an NIC a necessary qualification for voting, the right has been converted into a responsibility. This must be debated from the point of view of denial of fundamental rights. Is it not the state's responsibility to ensure that every citizen has the right to vote?

Discussion points

16. If the electoral rolls must include only persons possessing NICs, then should it not be the state's responsibility to issue an NIC to every person eligible to vote? One way to resolve this is to change the status of NADRA from being a 'database organisation' to a citizens' registry through an amendment in the law.

17. Should we continue to just wait for the current systems to bridge the gender gap in the electoral rolls? The appalling gender imbalance in the rolls demands emergency measures. NADRA and ECP should be bound by the law to develop and implement an action plan to bridge the gap within a set timeframe.

18. The 2017 census showed that 10.4 percent of men aged 18 years and above did not possess an NIC and thus were not enrolled as voters. This disenfranchisement of nearly six million men must end.

19. The ECP recognises only male and female as genders. It must recognise transgender persons too and make room for this minority in its system.

20. The separate supplementary electoral rolls for Ahmadi voters must be abolished. This brazen act of discrimination on the basis of faith must end.

21. Should candidates be allowed to contest elections simultaneously in more than one constituency? The question should not be considered merely from the perspective of public expenses incurred in holding by-elections.

22. The legal and constitutional requirements for determining the qualification and disqualification of candidates have become the soft belly of our electoral system. This space has been frequently exploited by undemocratic forces to their own advantage. It needs serious reconsideration.

23. Does the rule that allows winning independent candidates to join a party violate the mandate given by the voters? Is it not detrimental to the development of parties as political institutions? Should it be allowed to continue?

24. There is a need to initiate a comprehensive discussion on granting voting rights to overseas Pakistanis. Besides studying its implications for the national electoral discourse, the debate must be informed by the experiences of other democracies. We propose the following questions that should form part of this debate.

i. Should dual citizens be given the right to vote or should it be restricted to Pakistani citizens residing abroad?

ii. Should overseas Pakistanis be allowed to vote in all elections—national, provincial and local—or should their participation be restricted to national elections?

iii. Which constituency would an overseas Pakistani vote in? What impact can overseas voters potentially have on constituency-level electoral outcomes?

iv. Should voting rights be linked to the time of a voter's emigration to another country? For how long shall an overseas Pakistani have the right to vote after migrating out of the country?

v. Should overseas voters be allowed to fund political parties? As they are generally considered wealthier than their resident counterparts, what impact can they have on the electoral discourse?

vi. There are at least six different voting methodologies that various countries currently use. Each has its own advantages and disadvantages. Which voting methodology should be adopted to ensure voting rights for overseas Pakistanis?

25. Is the 5 percent quota for female candidates by each political party of any use? Can it be improved to help achieve its objective?

Discussion points

26. Should we let the 5 percent quota for female candidates continue for, say, the next 20 years? Or should this quota be made more progressive and time-barred?

27. The gender gap in voter turnout is unacceptably wide. Unlike the case of gender gap in voter registration, our legal framework does not provide for bridging this gap in voter turnout. Should the legal framework for elections not take a proactive approach in encouraging and ensuring women's participation in elections?

28. Mandatory voting for all citizens as practiced in many countries needs serious consideration. This may help resolve the issue of overall participation in elections, in particular of women.

29. The debate on electronic voting machines must be depoliticised, its merits and demerits evaluated and a clear phase-wise plan of action accordingly charted out.

30. The role of polling agents should be carefully evaluated in the light of the problems they face, also in their interaction with polling staff. This could be part of the post-election audit discussed above as point 7.

31. Should the failure of the RTS and its impact on the credibility of the 2018 elections be a reason to abandon the system altogether?

32. The anomalies in electoral rolls assigned to a polling station, the issue of setting up new polling stations, and shifting previous ones days before polling are all issues that need to be discussed. Is designating polling stations on a permanent basis as a secondary part of constituency delimitation a solution?

33. Reserved seats for religious minorities need to be reviewed, considering that these are party-nominated per-

Discussion points

sons who do not speak for their communities. One suggestion is to emulate the reserved constituency system practiced in India to ensure the presence of Dalit representatives in elected houses.

34. Likewise, reserved seats for women have been in practice for over two decades now. Four elections have been held under this system and the fifth is round the corner. Has it served the purpose of politically empowering women?

If not, it is time for some creative alternatives. We propose the following:

- i. Women's reserved seats should be linked with women's votes polled by a party.
- ii. Clusters of three constituencies should be delimited as a single seat for women.
- iii. Certain general constituencies should be declared reserved for women, that is, to be contested only by female candidates.

35. Every citizen has the basic right to contest elections as a candidate. The legal provisions regarding election expenses must be revisited from this point of view.

36. Election campaign expenses must be curtailed and an effective system developed to monitor these and punish violators.

37. Should political parties be encouraged to raise funds through legal means, make their sources public and bear (fully or partially) the campaign expenses of their candidates?

38. The ECP has been receiving and making public the statements of assets and liabilities of parliamentarians. What purpose has it served? It must be clearly defined and the system modified accordingly.

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