



CONDUCTING ELECTIONS FOR *PUBLIC* REPRESENTATIVES

Call for an independent election commission

AN IMPETUS PAPER
BY
GULMINA BILAL

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Liberal Forum Pakistan
P.O.Box 1368, Islamabad,
Pakistan.
Ph:00-92-51-2822638
E-mail:forum_liberal@hotmail.com
www.liberalforumpakistan.org

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Preface

If political parties can be termed as the vehicles for being the public voice, elections can be understood as the process through which this voice is heard and respected. Thus, free and fair elections that truly reflect the will and aspirations of the people of a country are essential. Unfortunately, during almost fifty seven years of Pakistan's existence, one cannot truly say that the will of the people has been respected. There are a number of reasons for this but unfortunately they are too great to be enumerated here.

However, Pakistani political and economic liberals, from the platform of Liberal Forum Pakistan are mindful of the fact that when the broader issue of electoral reforms is taken up, it is imperative that the role of the Election Commission of Pakistan is studied and examined. The fact that there is definitely a need for improvement in the way elections are presently being conducted by the Commission is appreciated by all i.e. civil society groups, citizens, political parties as well as the Commission itself. However, the question is that given Pakistani political realities what could be the realistic way out of this quagmire? Also, don't the political parties, media, civil society groups and citizens also have a responsibility in ensuring that elections held in the country are truly free and fair? These are some of the questions that the present paper seeks to raise.

This paper, as admitted by the writer herself, is essentially designed to be an impetus for debate. It is by no means an academic paper but is essentially designed to put forth some ideas for discussion. I would like to congratulate Ms. Gulmina Bilal on her commitment and efforts to generate ideas for Pakistani political discourse. I believe that this is a very timely initiative and the Liberal Forum Pakistan, as a political advocacy group, is proud to be the frontrunner in this debate.

Asif Khan

Chairman Liberal Forum Pakistan

May 2005

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Introduction

The Islamic Republic of Pakistan is a country that is no stranger to elections. Political and judicial decisions based on expediency or concepts like “doctrine of necessity” have led to a situation where the force of the barrel has dismissed elected governments and imposed martial laws for extended periods of time. These periods of martial laws have then given way to elections which are generally not accepted by all as fair, primarily because it is alleged that the Election Commission of Pakistan is not as independent in practice as it seems to be on paper. Allegations of mal practices, pre-poll rigging, of rules being changed, of polling lists altered, ballot boxes disappearing ... all are cause for concern. These concerns form the basis for a call for an “independent and fair election commission” by various stake holders.

However, none of these stakeholders i.e. the civil society organizations, the political leaders, the political parties or the citizens have actually articulated this need in terms of specific problems associated with ailments of the election commission, while keeping in view the global experience and specific recommendations made from time to time by election monitoring organizations, both domestic and international.

This paper tries to address some of these areas. Thus the purpose of the paper is to:

- ◆ Highlight the challenges of conducting a free and transparent election; and
- ◆ Share the global experience of different models of election commissions.

In order to highlight the challenges of conducting a fair election, it is imperative that the present system of preparing, organizing and conducting elections is examined in view of the political, social, economic and the administrative realities of Pakistan. Once that is done, the global experience of election commission models can be examined and discussed and, if need be, lessons for Pakistan can be drawn from them.

The question that the global experience part of the paper tries to pose is what lessons, if any, Pakistan can learn from such experiences? The focus is not to criticize, but to draw attention to the global experience when it comes to managing independent and impartial elections. Thus the purpose of this part of the paper is to:

- ◆ Share with policy makers and political activists the global experience of election commissions;
- ◆ Serve as a baseline for looking at various election commission models;
- ◆ Serve as an impetus to the growing debate on the need for an independent and well

managed election commission in Pakistan.

Thus, this paper is by no means a research paper neither is it arguing for a specific model of the commission. Rather, it seeks to:

- ◆ Highlight main issues in the context of controversies around elections and public perceptions in Pakistan.
- ◆ Maps out the present challenges in conducting a free election in Pakistan.
- ◆ Share the global principles of election management on which different models are based.
- ◆ Give a more concrete impetus to the demand of reforms in the present working of the election commission.
- ◆ Identify issues and areas requiring more focused research.

One possible research idea could be to develop indicators for the five managerial principles that have been developed globally and determine how Pakistan measures up to these indicators. In light of the upcoming local bodies' elections, such an exercise might be extremely useful.

The paper is divided into three sections. The first section deals with the political environment of Pakistan that has been existing in the country from the time when the first martial law was imposed to the present. The rationale for the inclusion of this section is that it sets a historical and political context in which the challenges before the election management set up in the country could be better understood and appreciated. The second part of the paper deals specifically with the present ground realities in Pakistan, focusing on the present set up of the Election Commission of Pakistan, some instances from the last general elections of October 2002 as the benchmark for a discussion about the perceived degree of impartiality of the present Commission. This part also categorizes the various challenges before the ECP in conducting a free and fair election, and highlights the fact that political parties, media and citizens also have a due role in the process. It also raises some questions in the end as food for thought. The third and last part of the paper shares with the readers the global experience of election commissions and managerial principles, but leaving it to the readers to identify aspects which could be relevant for Pakistan to adopt to meet the challenge of establishing an independent and fair election commission. It rounds off with some broad suggestions, which may provide a basis for more specific discussions at appropriate forums.

A major limitation of this paper is that it is based on public perceptions of the electoral irregularities which have been collected using secondary resources. At the very onset, it must be highlighted that the present paper discusses only one key component in the electoral processes i.e. the election commission. There are many factors that together bring about free and fair elections such as a political system where there is separation of powers, an independent judiciary, speedy justice, comprehensive electoral laws, efficient and neutral administrative systems, functional checks and balances in the system and, perhaps most importantly, the actual implementation of the electoral laws. The presence of all of these factors together result in a free

election. Of course, even then there may be allegations but it in this context that the need of an independent election commission becomes hugely important. It is admittedly beyond the scope of this paper to examine each and every one of these factors and how they work in Pakistan. The present paper only attempts to focus attention towards one factor and that is the need for an independent election commission that has the necessary competence to carry on its work. Most importantly, the commission should also be seen to be independent by a vast majority of the public, if not all.

Thus it is by no means an academic paper. Instead, as the title suggests, the paper only aims to serve as an impetus for debate. However, it is hoped that it would provide leads and food for thought for accomplished researchers.

For before things can change, they must first be debated, examined and researched so that constructive ideas may emerge which will lead to a truly independent election commission respected by all sides of the political divide.

Gulmina Bilal

May 2005

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PART I

A quick history lesson

This part of the paper seeks to trace the political history of Pakistan in an attempt to discuss the present electoral system in the country and highlight the civil military tussle for power that has existed in the country since the First Martial Law of Iskander Mirza.

Elections are not conducted in isolation. This is definitely true for the body that is managing and conducting the election. Therefore, before a discussion on the present set up of the Election Commission is initiated, it is important to examine the political and social climate within which the present commission is operating.

There are presently 72 million registered votes in Pakistan and in the last twenty years, there have been six elections for the national and provincial assemblies i.e. 1985, 1988, 1990, 1993, 1997 and 2002.

The voters turn out in elections 1970-2002¹ is as follows:

Balochistan Assembly, 124 seats in the NWFP Assembly, thus bringing the total of provincial seats to 728. In the National Assembly, candidates to the general seats are directly elected by simple majority on the basis of a single member constituency. The women seats are indirectly filled on the basis of proportional representation system based on the number of general seats won by each political party from the Province concerned in the National Assembly.

Primary and secondary democratic processes have not had the space or the opportunity to strengthen and consolidate their positions in Pakistan. With the death in 1948 of its first head of state, Muhammad Ali

TABLE 1

Area	1970 elections	1985 elections	1988 elections	1990 elections	1993 elections	1997 elections	2002 elections
NWFP	48.09 %	40.63 %	33.92 %	35.7 %	34.59%	27.8 %	34.85 %
FATA	NA	73.25 %	77.75 %	59.7 %	61.8 %	33.7 %	25.53 %
Islamabad	NA	65.35 %	57.91 %	57.3 %	57.51 %	46.1 %	51.28 %
Punjab	68.63 %	60.14 %	46.49 %	49.6 %	47.07 %	39.8 %	46.14 %
Sindh	60.08 %	44.38 %	42.38 %	43.3 %	43.3 %	31.3 %	38.22 %
Balochistan	40.56%	36.33 %	25.69 %	29.2 %	24.96 %	23.2 %	29.42 %
Total	63.42 %	53.69 %	43.07 %	45.5 %	40.28 %	35.4 %	41.8 %

There are presently 100 seats in the Senate, 342 in the National Assembly, 371 seats in the Punjab Assembly, 168 seats in the Sindh Assembly, 65 seats in the

Jinnah, and the assassination in 1951 of its first Prime Minister, Liaqat Ali Khan, political instability and economic difficulties became prominent features of post-independence

¹ Key findings of the Pre and Exit Poll Survey Research: Elections 2002, Patta Development Organization, Islamabad, 2002, p 45

Pakistan. These difficulties have continued to date, varying in intensity but all marked by sporadic efforts by democratic forces to gain space and continued military intervention.

Casting a cursory glance at Table No: 1 above showing the total turn out in the elections from 1970 to 2002, one notices that the turn out has steadily decreased. While it is true, that globally, turn out rates have registered a fall, in the Pakistani context, this phenomena might also be exacerbated by the political events of these years. In spite of a growing population, with increased exposure, increased mobility and increased number of national identity cards, the voter turn out from 1970 to 1997 has registered a decrease. The turn out rate in 2002 is slightly higher than in 1997 perhaps because of a lowering of voter age to 18 years.

In order to fully appreciate the factors that contributed towards a growing apathy of the people of Pakistan, it is important to take a trip down memory lane which unfortunately reveals decades that can be at best described as periods of interrupted democracy.

Civil-Military musical chairs of Pakistani politics: 1958 to date.

1950s to 1970s

On October 7, 1958, President Iskander Mirza, with the support of the army, suspended the 1956 constitution, imposed martial law, and canceled the elections scheduled for January 1959. Twenty days later the military sent Mirza into exile in Britain and Gen. Mohammad Ayub Khan assumed control of a military dictatorship. After Pakistan's loss in the 1965 war against India, Ayub Khan's power declined. Subsequent political and economic

grievances inspired agitation movements which compelled his resignation in March 1969. General elections held in December 1970 polarized relations between the eastern and western sections of Pakistan, leading subsequently to a breakup of the country and formation of Bangladesh. Yahya Khan then resigned the presidency and handed over leadership of the western part of Pakistan to Bhutto, who became President and the first civilian Chief Martial Law Administrator. In 1973, Bhutto promulgated a new constitution accepted by most political elements and relinquished the presidency to become Prime Minister. On July 5, 1977, the military removed Bhutto from power and arrested him, imposed martial law, and suspended portions of the 1973 constitution. Chief of Army Staff Gen. Muhammad Zia ul-Haq became Chief Martial Law Administrator and promised to hold new elections within 3 months. These elections were then held in 1985 after Bhutto was hanged and eight years of martial law had already passed.

Decade of the 1980s

In 1980, most center and left parties, led by the Pakistan Peoples Party, formed the Movement for the Restoration of Democracy (MRD). The MRD demanded Zia's resignation, an end to martial law, new elections, and restoration of the constitution as it existed before Zia's takeover. In early December 1984, President Zia proclaimed a national referendum for December 19 on his "Islamization" program. He implicitly linked approval of "Islamization" with a mandate for his continued presidency. Zia's opponents, led by the MRD, rejected the referendum. When the government claimed a 63% turnout, with more than 90% approving the referendum, many observers questioned these figures.

On March 3, 1985, President Zia proclaimed constitutional changes designed to increase the power of the President vis-à-vis the Prime Minister (under the 1973 constitution the President had been mainly a figurehead). Subsequently, Zia nominated Muhammad Khan Junejo, a Muslim League member, as Prime Minister. The new National Assembly unanimously endorsed Junejo as Prime Minister and, in October 1985, passed Zia's proposed eighth amendment to the constitution, legitimizing the actions of the martial law government, exempting them from judicial review (including decisions of the military courts), and enhancing the powers of the President.

The Return of Democracy

On December 30, 1985, President Zia removed martial law and restored the fundamental rights safeguarded under the constitution. The first months of 1986 witnessed a rebirth of political activity throughout Pakistan. All parties--including those continuing to deny the legitimacy of the Zia/Junejo government--were permitted to organize and hold rallies. In April 1986, PPP leader Benazir Bhutto, daughter of Zulfikar Ali Bhutto, returned to Pakistan from exile in Europe.

Following the lifting of martial law, the increasing political independence of Prime Minister Junejo and his differences with Zia over Afghan policy resulted in tensions between them. On May 29, 1988, President Zia dismissed the Junejo government and called for November elections. In June, Zia proclaimed the supremacy in Pakistan of Shari'a (Islamic law), by which all civil law had to conform to traditional Muslim edicts.

On August 17, after the crash of a plane carrying President Zia and others, according

to the constitution, Chairman of the Senate Ghulam Ishaq Khan became the Acting President and announced that elections scheduled for November 1988 would take place.

These elections brought to power the Pakistan Peoples Party under the leadership of Benazir Bhutto who formed a coalition government with several smaller parties, including the Muhajir Qaumi Movement (MQM). In August 1990, President Ghulam Ishaque Khan, citing his powers under the eighth amendment of the constitution, dismissed the Bhutto government and dissolved the national and provincial assemblies. New elections, held in October of 1990, confirmed the political ascendancy of the IJI. In addition to a two-thirds majority in the National Assembly, the alliance acquired control of all four provincial parliaments and enjoyed the support of the military and of President Khan. Muhammad Nawaz Sharif, as leader of the PML, the most prominent Party in the IJI, was elected Prime Minister by the National Assembly.

However, Nawaz Sharif was not able to reconcile the different objectives of the IJI's constituent parties. In April 1993, President Ghulam Ishaque Khan, citing "maladministration, corruption, and nepotism" and espousal of political violence, dismissed the Sharif government, but the following month the Pakistan Supreme Court reinstated the National Assembly and the Nawaz Sharif government. Continued tensions between Sharif and Khan resulted in governmental deadlock and the Chief of Army Staff brokered an arrangement under which both the President and the Prime Minister resigned their offices in July 1993.

Interim set up

An interim government, headed by Moeen Qureshi, a former World Bank Vice President, took office with a mandate to hold national and provincial parliamentary elections in October.

Bhutto Part II

In the October 1993 elections, the PPP won a plurality of seats in the National Assembly and Benazir Bhutto was asked to form a government.

It was expected that the election of Prime Minister Bhutto's close associate, Farooq Leghari, as President in November 1993 would give her a strong power base. However, in November 1996, President Leghari dismissed the Bhutto government, charging it with corruption, mismanagement of the economy, and implication in extra-judicial killings in Karachi.

Elections in 1997

1997 elections resulted in an overwhelming victory for PML-Nawaz, and President Leghari called upon Nawaz Sharif to form a government. In October 1999, when Mr. Nawaz Sharif attempted to remove his Chief of the Army Staff General Pervaiz Mushraff, the army staged a coup and military rule was again imposed in the country. Mr. Nawaz Sharif was sent into exile to Saudi Arabia and the Mushraff regime conducted General Election in October 2002 after which a break away faction of Sharif 's party the Pakistan Muslim League –Q assumed power. Mushraff also conducted a referendum in April 2002 that had a staggering official turn out rate. Thus, presently, there is a

uniformed President who is also the Chief of the Army Staff and a technocratic Prime Minister in the form of Mr. Shaukat Aziz. His predecessors were Mr. Mir Zafarullah Jamali and Mr. Chaudhry Shujaat of the ruling Pakistan Muslim League.

Concluding Comment:

This was a brief tracing of the political climate of a country focusing on the civil military musical chairs for political power. One factor which is often cited when it comes to the question of as to why functioning democracy has eluded Pakistan, is of course the regular military interventions. However, another factor is also the weak political party structures of the country. As in most other countries in South Asia, Pakistani politics is dominated by powerful personalities. Political parties are identified by their leaders, rather than their programmes and manifestos. And this phenomenon is not just restricted to Sharifs or Bhattos. Whether it's Imran Khan's Tehrik-e-Insaaf or former president Farooq Leghari's Millat Party, or even Altaf Hussain's MQM, they all revolve round their respective leaders. There is also a de-linking between parties and the public. Parties are weak, personality based and as mentioned earlier lack formal organization. Since the political process has been interrupted so many times, that democratic institutions, including the Election Commission of Pakistan, which is so necessary in supporting democracy have not been allowed to function. The political and social environment of the country is such that there is an elite consensus that leads to fragmentation of society. Given Pakistan's political history, whenever elections are conducted there are allegations of rigging and role of the intelligence agencies in manipulating election results and even pumping finances.

Coupled this with the reality of a society where tribalism and feudalism is well entrenched, it is no wonder that the results of the elections do not reflect totally the will of the people.

As for the actual elections themselves, which are conducted by the Election Commission of Pakistan, there are frequent allegations of rigging and wrong doing. While one would attempt to take a rational look at the various allegations etc, later in the paper, it is important to state that there is a dearth of a widely accepted, supervisory body which could point out ambiguities which the ECP can take note of. Media of course has an important role to play but then the ECP and the judiciary must play their due roles too.

It is important to state here that the opposition parties frequently point out irregularities in implementation of electoral laws, weaknesses in the working of the ECP etc. but when in power themselves they do precious little to strengthen the ECP. Both the so called mainstream parties, the PPPP and the PML-N have been in power twice but have not taken any serious steps to strengthen the ECP or to ensure that electoral laws are implemented. The electoral laws mandate a certain ceiling of election expenditure but it is common knowledge that the actual expenditure is more than the ceiling primarily because of costs of transportation of voters, provision of food etc. According to the Political Party Ordinance 2002, financial assets reports have to be submitted to the ECP. Article 12 of Political Parties Order, 2002, reads:

“Information about the sources of party’s fund.

Every political party shall, in such a manner and on such forms as may be prescribed or specified by the Chief Election Commissioner submit to the Election Commission within 60 days from the close of each financial year, a consolidated statement of accounts of the party audited by a chartered accountant containing annual income and expenses and sources of funds, assets and liabilities. The statement referred to in clause 1 shall be accompanied by (a) certificate signed by the party leader stating that no funds from any sources prohibited under this Order were received by the party and (b) ,the statement contains an accurate financial position of the party.

According to independent political analysts², the Election Commission of Pakistan “seldom blows a whistle. The 342 members of the National Assembly, the 100 Senators and 728 members of the four provincial assemblies do fulfill the requirements of election laws but with a bit of engineering. Firstly, they have to hide the actual expenditures incurred on their election campaign to remain within the legally permissible limit of election expenditure. Secondly, they have to submit their assets details on an annual basis, of course showing no illegal acquisition or addition to their fortunes and lastly they have to be watchful of their academic credentials.”

In 2003, 45 political parties out of the 73 registered with the ECP submitted their accounts. On Sep 27th 2003, for the first time in the country’s history, through the official gazette the ECP made public annual accounts of 56 political parties. The ECP repeated this practice in 2004 when 59

² Khan, Z. (2005) *Disabled by Design*, Freedom Publishers, Islamabad.

political parties submitted their accounts. However, the rest did not.

After repeated reminders by the ECP, assets were submitted but as widely pointed out in the media; they did not reflect the truth. The media highlighted this but the ECP did not take note of it nor did they investigate it. Reports submitted to the ECP were incomplete and yet they were accepted by the ECP.

It is also common practice for the voters to ask the candidate to pay their utility bills in lieu of promises of votes on Election Day. These are violations of electoral laws that the ECP cannot do anything about as they are never brought before the ECP. An individual can contest the election result in the election tribunals appointed by the Chief Election Commissioner. The decision of the Election Tribunal is appealable before the Supreme Court of Pakistan. Thus it is imperative that hearing and decisions of cases should not be prolonged in the interests of the candidate. To have a candidate contest the election result for years on is an injustice to say the least. People are also not willing to testify as witnesses to election irregularities given the power concentration and feudal system of the country.

Thus, the political and social climate of the country is extremely challenging and needs to be understood in light of the discussion for a free and independent election commission.

PART II

Ground realities: present set up of Election Commission and political challenges

This part of the paper focuses on the description of the present set up of the Election Commission, its structure, powers, limitations and duties within the context of the political and social challenges present in the country. This part of the paper attempts to do a realistic depiction of the challenges before the Election Commission given Pakistani realities and seeks to raise certain pertinent questions as food for thought.

Present set up of the Election Commission of Pakistan.

The Election Commission of Pakistan is a constitutional body charged with the function of conducting transparent, free, fair and impartial elections to the National and Provincial Assemblies. The holding of elections to the office of the President and the Senate are, directly the functions of the Chief Election Commissioner. Under the existing laws, the conduct of Local Government Elections is also the responsibility of the Chief Election Commissioner. Under the Election Commission Order, 2002 (Chief Executive's Order No.1 of 2002), the Election Commission consists of the Chairman (Chief Election Commissioner of Pakistan) and four Members each drawn from the sitting judges of the High Courts of their respective Provinces. All the executive authorities in the Federation and in the provinces are constitutionally duty bound to assist the Chief Election Commissioner and the Election Commission.

The Election Commission was first established under the 1956 constitution to conduct elections. The role of Election Commission remained the same but its composition continued to change from time to time. Presently the Election Commission consists of one Chairman, who is the Chief Election Commissioner and four Members,

who are sitting Judges of High Courts of Provinces. Provincial Election Commissioners are stationed at each Provincial Headquarter and are assisted by Deputy Election Commissioners and Assistant Election Commissioners in the field offices. Assistant Election Commissioners are representatives of Election Commission of Pakistan at district level.

The ECP has its central secretariat at Islamabad which is administratively headed by the Secretary, who is assisted by four Joint Secretaries, five Deputy Secretaries and host of Section Officers. The Provincial Election Commissioners are in charge of the Election Commission offices in all the four provinces. They, in their respective provinces, have the services of Joint Provincial Election Commissioners, Deputy Election Commissioners, Assistant Election Commissioners and Election Officers at their disposal at divisional and district level.

It is important to mention here that the District Returning Officers, Returning Officers and Assistant Returning Officers are drawn from the subordinate judiciary i.e. District and Session judges are appointed as District Returning Officers and Additional District and Sessions Judges, Senior Civil Judges are appointed as Returning Officers and Assistant Returning Officers. However, in case of Federally Administered Tribal

Areas, where judicial officers are not available the executive officers are appointed as Returning Officers.

Functions of the Chief Election Commissioner

- ◆ To prepare electoral rolls for elections to the National and Provincial Assemblies and revising such rolls annually. [Article 219 (a)];
- ◆ To organize and conduct election to the Senate and fill casual vacancies in a House or a Provincial Assembly [Article 219(b)];
- ◆ To appoint Election Tribunals. [Article 219 (c)];
- ◆ To decide cases of disqualification of members of Parliament and Provincial Assemblies under Article 63(2) and Article 63A of the Constitution on receipt of reference from the Chairman or the Speaker or Head of the political party, as the case may be;
- ◆ To hold and conduct election to the office of the President as per Second Schedule to the Constitution of the Islamic Republic of Pakistan [Article 41 (3)];
- ◆ To hold Referendum as and when ordered by the President. [Article 48 (6)];
- ◆ To make rules providing for the appointment of officers and servants to be employed in connection with the functions of the Chief Election Commissioner or an Election Commission and for their terms and conditions of employment. Under

this power, the Honorable Chief Election Commissioner framed the Election Commission (Officers & Servants) Rules, 1989. [Article 221].

Members of the ECP

Each one of the four members of the Election Commission is appointed by the President in consultation with the Chief Justice of the High Court of the province concerned and the Chief Election Commissioner.

Transaction of business

The Commission transacts its business by holding meetings. All members of the Election Commission have equal status and say in the decisions of the Commission.

No executive interference in principle:

In principle, the Election Commission of Pakistan enjoys full financial and administrative autonomy and works independent of all governmental control. The Election Commission is supposed to perform its functions without interference from the executive. The Election Schedule for the conduct of General Elections as well as for the by-elections is decided by the Election Commission or, as the case may be, by the Chief Election Commissioner.

The preparation of polling schemes, the appointment of polling personnel, assignments of voters and arrangements for the maintenance of law and order are under the control, supervision and directions of the Election Commission.

The Supreme Court of Pakistan in its judgment reported as ***Election Commission of Pakistan v. Javed***

Hashmi (PLD 1989 SC 396) held that in election matters the Election Tribunals appointed by the Chief Election Commissioner have exclusive jurisdiction and the jurisdiction of all courts in such matters was excluded.

The Supreme Court of Pakistan has since then consistently followed this judgment.

Budget and expenditure

The Budget of the Election Commission is provided by the Federal Government. Any re-appropriation within the sanctioned Budget can be done by the Chief Election Commissioner without making any reference to the Finance Division. Funds required for preparation of electoral rolls and the conduct of General Elections and by-elections are provided in lump sum by the Finance Division according to the requirements of the Election Commission.

Further distribution of funds to the various functionaries is done with the approval of the Chief Election Commissioner

According to website reports of the ECP itself, the Chief Election Commissioner enjoys:

1. Full powers to re-appropriate funds from one head of account to another head of account within the allocated budget of the ECP.
2. Full powers to sanction expenditure on any item from within the allocated budget of the ECP.
3. Full powers to change nomenclature and upgrade/downgrade any post provided expenditure is met from

within the overall allocated budget of the ECP.

Cost of October 2002 general elections:

Publicity /voter education Rs. 96,62,00,000/- or US \$ 16,103,333.33		Ballot boxes Rs. 4,28,02,000/- or US \$ 713,366
	Commission's staff allowances Rs. 36,68,30,820/- or US \$ 6,113,847	

During the last general elections conducted in Pakistan in October 2002, the Election Commission of Pakistan spent a total of Rs 1,453,939,773 or US \$ 24,232,329.55. This was the total cost of election of 2002 while in 1997 the Election Commission of Pakistan spent Rs 1,05,44,95000/- or US \$ 17,574,916.66. Out of the total amount spent by the Election Commission in 2002, following was the break down in different categories:

The total number of registered voters in Pakistan are 66,713,027 while the actual number of voters who voted in the 2002 elections is 25,906,228. In other words, 38 % of the registered voters voted.

It is interesting to note that although the ECP had Rs 96, 62, 00,000/- or US \$ 16,103,333.33 in its budget for voter education work, the European Union Election Observer Mission was concerned at the almost complete lack of voter education activities carried out by the ECP

in the provinces. According to their reports ³, only centrally did, the Election Commission produced a voter education video broadcast on national television and placed public information advertisements in the newspapers and on radio and television urging voters to exercise their franchise. Even though the UNDP and others organized a civil society-based voter education campaign, this could not compensate for the inadequate effort of the ECP.

Charge sheet on the present ECP based on public perceptions:

The Election Commission of Pakistan (ECP) has routinely come under fire for its alleged biased treatment and management of elections in the country. These allegations have come from a number of quarters, particularly the political parties' circles, the civil society organizations as well as the international community. While determining the authenticity of these allegations is beyond the scope of this paper, one would like to point out that the ECP has certainly not helped its own case. As an example, one should cast one's eye over the 2002 Presidential referendum in which a number of allegations of rigging and wrong doing were highlighted. For instance, the ECP declared that 43.9 million people exercised their right to vote, out of which 42.8 million voted in favour of President Musharraf's (70%) favor. However, the commission had earlier given the number of eligible voters as 61.93 million but the official 1998 census figures declare that total number of people above the age of 18 years was 78.3 million. According to these figures, the turn out rate should have been around 56% and not the ECP cited 70% which would make it the highest turn out in

any election of Pakistan.

What is more disturbing than the referendum confusion and mix ups which were later admitted by General Musharaff himself is the fact that destruction of referendum records was ordered by the Election Commission. A record that they are supposed to keep at least for one full year and if there are no legal cases pending, the ballot papers etc are then destroyed. However, in a letter issued on November 16th 2002 (see Appendix I) the ECP directed that all the records must be destroyed. Specifically, they were asked to burn them by December 20th 2002. By December 27th 2002, all four Provincial Election Commissioners had submitted their compliance report to the Election Commission of Pakistan confirming that all the records of the referendum had been destroyed i.e. put to fire, as per instructions. As stated earlier, records have to be kept for one year and if there is a legal case pending against them then they should be kept until such time as cases are cleared which might extend beyond a year. A petition in the Supreme Court of Pakistan was filed by Syed Zafar Ali Shah, central leader of Pakistan Muslim League (N). However; the ECP went ahead and destroyed the records anyways. To breach the law in such a way, particularly with reference to an already controversial referendum, does not augur well for the claim of independence by the Election Commission.

Political parties have been repeatedly articulating their mistrust of the ECP and have backed their allegations with facts. Political parties have also declared repeatedly that electoral rolls are not transparent, polling lists are given but they are altered later. For instance, political

parties have charged that voter lists have not been issued in time, pre, Election Day and post poll rigging also is allegedly carried out. In the 2002 election, the ECP had earlier issued a notification barring the sitting ministers from contesting without resigning from their offices. However, it is a matter of record that the said notification was withdrawn on 8th July 2004 to facilitate Mr. Shaukat Aziz to retain his ministerial office (he was Minister for Finance at the time). On 5th July 2004, the Ministry of Finance issued a letter for making arrangements for submission of nomination papers of Mr. Shaukat Aziz, in violation of the rules and clearly shows the government's involvement in the electoral process. A number of political parties have alleged that in the Feb 2005 Lahore by elections on NA 170 ballot boxes were whisked away and 6 hours lapsed between the close of polling at 5pm and the recovery of the boxes at 11pm.

Introspection on the Election Commission's part

It will be unfair to declare that the Election Commission of Pakistan is not aware of these problems. In fact, the ECP itself recognizes⁴ that the "crucial concerns for Pakistan with reference to fair and free elections are:

- ◆ Problems in registration of citizens as voters in the electoral rolls
- ◆ Delimitation of constituencies boundaries
- ◆ Facilitating prospective candidates in fielding their nominations
- ◆ Deployment of security forces for

curbing violence during elections"

The ECP in a report on the October 2002 elections, brought out by the commission in June 2003, has declared that elections were conducted in a transparent manner.

The June 2003 report says, "The following steps were taken by the ECP to ensure transparency:

- ◆ Directive was issued banning bulk transfers of civil servants before elections.
- ◆ Returning officers were asked not to accept nomination papers from the sitting Ministers and Nazims unless they resign from their offices so as to eliminate the possibility of misuse of state resources to further their re-election.
- ◆ Time was extended for filing nominations, enhancing political parties' abilities to field candidates during the general elections.
- ◆ Effective security arrangements were made for the observers to enable them to visit the constituencies as per their convenience.
- ◆ Capturing of polling station was recommended by the Election Commission to be declared an offence. Consequently, the same was incorporated as an offence and made punishable with imprisonment which should not be less than three years and may extend to five years and fine, which should not be less

⁴ *Conduct of General Elections, 2002, A brief survey by Chief Election Commissioner of Pakistan. June 2003.*

than fifty thousand rupees and may extend to one hundred thousand rupees or with both, by adding Section 82A in the Representation of the People Act, 1976

- ◆ A website of the ECP was launched on the internet for the first time enabling the interested people and political parties to have access to necessary information
- ◆ Grievance cell in the office of the Commission at Islamabad was established for dealing with the public grievances and complaints relating to the Election Commission
- ◆ Control rooms were established for supervising election arrangements.

Begging to differ

The report on the October 2002 general elections put forth by the ECP in June 2003 declares that the European Union Observer Mission appreciated the steps taken by the Commission to conduct a free and fair election. However, the European Unions' Observer Mission report⁵ disagrees. According to their report, "the Election Commission displayed a number of shortcomings at both national and provincial levels. Some of them were related to the ECP's failure to curb the authorities' misuse of state resources in favor of political parties, in particular, but not exclusively, for the PML(QA)" The report further declares that while the ECP took the positive step of establishing a central Grievance Cell, tragically that Cell was not operational. The Mission further noted that the ECP remained a silent spectator when "serious restrictions on campaigning activities were

imposed by the President and Islamabad Commissioner as well as lifting of ban on political activities only forty days before the polling day." Processions were also banned. The ECP was also charged with using actual election symbols on mock ballot paper during its limited but heavily funded voter education campaign. The completeness and accuracy of the voters' register were in doubt prior to the elections. The EUEOM teams reported that in a significant number of polling stations visited, some voters were turned away because their names could not be found on the register. This could either have been due to the omission of names from the voters' register or the fact that voters may have gone to the wrong polling stations.

The EUEOM furthermore recorded two main forms of misuse of state resources, namely:

1. Misuse of public infrastructure (buildings, vehicles, etc.) and;
2. Pledges about future development projects made within the framework of campaigning activities.

All these actions contravene the provisions of section 92 of the Representation of the People Act, 1976, as well as a number of Orders of the Election Commission of Pakistan, notably the one issued on 16 September 2002. It should be stressed that the penalties under the above-mentioned legislation extend to two years imprisonment but it was largely unimplemented.

Local civil society organizations have also voiced their concerns over the independent functioning of the present ECP

and over the years have consistently pointed out a number of the discrepancies. The Human Rights Commission of Pakistan⁶ (HRCP), one of the country's leading civil society organizations, monitored the October 2002 general elections in 116 National Assembly constituencies with 1300 field observers. Some of the findings of their report were that polling stations like the one at Sanghar were seized by police officers and ballot papers were stamped by them after the candidates polling agents were thrown out of the station. The ECP turned a deaf ear to complaints. In Sindh and Punjab, the HRCP reported that "ballots were stolen, fake ID cards were in circulation, many postal ballots were found in unauthorized hands, indelible ink was missing and polling stations changed at the last minute" HRCP further went on to report that the "ECP could not provide adequate security to the declared sensitive constituencies that resulted in the incidents of violence and loss of innocent lives."

Another civil society organization, the South Asia Partnership Pakistan⁷ also monitored the elections and reported that the polling staff lacked proper information about the process and regulations of the voting. In many polling stations, they were unable to provide guidance to the voters. "Particularly, women and elders in the rural areas could not get proper guidance. For example, in some Hyderabad constituencies (NA-32, NA-46), polling started after 12:30 pm. Toba Tek Singh was one of the worst victims of the inefficiencies of polling staff and there was no proper arrangement of security personnel in many constituencies." They also gave further instance of wrong doing at various stations one of which was the female polling booth of

NA 130 where "a polling agent of government's favored party was misguiding and pressurizing rural women to vote for the party's candidate without any fear of being checked. In a Chaman constituency, a presiding officer was seen stamping and casting votes for the candidate of PML (Q) while the police never interfered. In one polling station of NA-120 female staff had brought their spouses to help them in their work." There were also other numerous reports by South Asia Partnership monitors that polling staff lacked vital things needed for the electoral process, like ballot boxes, ballot papers, stamps, indelible ink etc. Sometimes copies lacked serial numbers and sometimes even electoral symbols were missing. These discrepancies caused delay in the start of the polling process. In most of the polling stations, observed by the South Asia Partnership monitors, the polling started with the average delay of half an hour. Observers also reported inconvenience to the voters caused by flawed electoral lists prepared by NADRA which discouraged people from exercising their right to franchise. Polling stations were shifted at the eleventh hour on a whim. "For example, a Rajanpur constituency, NA-174, went to their polling station No. 216 only to know that their polling station had been changed. After search of almost three hours, they came to know that the presiding officer had established a polling station in his village, Basti Horra."

As the reports above show, in spite of claims and efforts by the Election Commission of Pakistan to conduct fair and free elections, reports of independent observers like the EU, HRCP etc have pointed out serious irregularities.

⁶ <http://www.hrcp.cjb.net>

⁷ *Democracy and Human Rights Program, Election Monitoring Report, 2002, South Asia Partnership, Pakistan. Website :www.sappk.org*

Report after report has revealed that state resources are regularly used to support the ruling party or establishment backed candidates and these resources could be the governmental machinery, government transport or state run television.

For instance, according to a media election monitoring done by a local civil society organization, the Liberal Forum Pakistan⁸, it was revealed that state television was blatantly used to give more coverage to the government sponsored parties. The first media monitoring report of Election 2002, by the Liberal Forum Pakistan, focusing on Khabarnama on PTV, News at Ten on PTV World, and the current affairs program, News night, stated that two political parties, the PPP and the MMA, received negative coverage on PTV. During the first half of its monitoring time frame, the report cited exact statistics of the state's attempt to doctor the electorate, with two minutes of negative coverage to Benazir Bhutto and Asif Ali Zardari, a four minute and 51 second tirade against the "corrupt rulers of the past" and a one minute and 20 second reportage against the inconveniences caused by the planned train march of the MMA. The report also stated that in another episode of News night, an impression was created that the restoration of democracy in Pakistan was not an issue with the US. More negative reportage came Benazir's way on PTV World with two special reports, covering approximately four minutes, discussing her disqualification from the polls. The PPP and PML (N) were also covered for two minutes and 43 seconds for their emerging political friendship. The second monitoring report (September 10-23) cited PPP as being singled out for maximum negative coverage, whereas PML(Q) topped the favorable reporting list,

with a grand total of 15 minutes of air time - a much higher percentage than the five minutes and 53-second coverage awarded to the PPP. The report further added that the PML(Q), whose election meetings were attended by Punjab governor, Khalid Maqbool, got more coverage than that of PPP and PML(N) put together. However, what is important to mention here is that the ECP took notice of this report and ordered PTV to ensure equal coverage to all the parties. The ECP took suo moto action on September 26 against PTV, serving notices to PTV's managing editor and news editor to explain their position by September 29 on charges of broadcasting negative coverage to opposition political parties.

Text of the European Parliament Resolution on Pakistani Election

- A Having regard to the overthrown of the elected government of Prime Minister Nawaz Sharif in a military coup by General Pervez Musharraf,
- B having regard to the judgment of Supreme Court on 12 May 2000, which validated the military takeover under the 'Doctrine of Democracy' on the understanding that democracy would be restored within three years of coup,
- C having regard to the announcement by General Musharraf on 14 August 2001 of a 'roadmap for the restoration of democracy',
- D having regard to the decision by General Musharraf to hold referendum on 30 April 2002 seeking endorsement of an extension of his rule for further five years,
- E whereas on 21 August 2002 General Musharraf issued Legal a Framework order 2002 (LFO), which conferred excessive powers on the President to the detriment of parliamentary democracy and institutionalized the role of military in the government of the country,
- 1 Believes that the referendum of 30 April 2002, which was marked by widespread electoral abuse, was contrary to the 1973 constitution of Pakistan and was a departure from the 'roadmap for the restoration of democracy';
 - 2 Recalls that it welcomed the holding of the 2001 local government elections and the October 2002 National and Provincial Assembly elections; points out, however, that the holding of elections does not in itself guarantee the full restoration of democracy;
 - 3 Recalls that it supported the decision by the EU to send an Election Observation Mission to Pakistan for the October elections:
 - 4 Acknowledges that, although the EUEOM received less than full cooperation from the Government of Pakistan, no restrictions were placed on the Mission and it was able to fulfill its role in accordance with the internationally accepted criteria used for election observation;
 - 5 Is aware of the criticism expressed in the report of the Commonwealth Observer Group 'that the conditions prescribed by the government for the campaign period were unduly restrictive and curtailed the freedom of parties and candidates to conduct their normal campaign activities' and its conclusion that the election was part of an 'incomplete democratic process'; is further aware that, because of this, Pakistan remains suspended from the Commonwealth;
 - 6 Is aware of a statement by Asian Network for Free Elections (ANFREL) that 'there are legitimate concerns regarding misconduct during the pre-election period' and that 'some of the practices observed and reported during this period were serious enough to limit possibilities of democratic transition in Pakistan';
 - 7 Is aware that the US-based National Democratic Institute for International Affairs (NDI) concluded that the framework for the balloting of 10 October 2002 for the National and Provincial Assemblies provides for a very limited transfer of power to elected civilian representatives;
 - 8 Is aware of a serious concerns regarding the elections expressed by respected locally based NGOs such as the International Crisis Group (ICG) and the Human Rights Commission of Pakistan (HRCP);
 - 9 Strongly endorses the preliminary conclusions of the EUEOM, which stated that there were serious flaws in the electoral process, also shares its strong reservation as to whether or not the elections would lead to a transfer of power from military to civilian administration;
 - 10 Deplores the Introduction of arbitrary criteria for nomination, particularly the requirement to have a BA degree, which deprive 96% of Pakistan citizens (including 41% of existing legislators) of the right to run for office, thereby diluting the representative nature of democracy in Pakistan, further deplores the enactment of legislation (of questionable legality) designed to exclude certain candidates, including Benazir Bhutto and Nawaz Sharif, from standing for election;
 - 11 Considers, therefore, that the official declaration of Danish Presidency of behalf of the council is an inadequate response to the assessment of the October elections by not only the EUEOM but also the NDI, the Commonwealth and ANFREL observer group; believes, furthermore, that this compounds the earlier mistake by the Council when it failed to express its concern regarding the presidential referendum of April 2002;
 - 12 Regrets that an opportunity to help Pakistan progress towards democracy has been missed;
 - 13 Calls on the EU to continue to monitor the progress closely and to remain engaged with Pakistan throughout its transition to democracy;
 - 14 Calls on the Government of Pakistan and the Election Commission of Pakistan to ensure that action in taken is taken to implement the EUEOM's recommendations that democratic processes in Pakistan be enhanced and joint work undertaken to achieve good governance and functioning democratic institutions in Pakistan and a transfer of power from a military to a civilian administration;
 - 15 Instructs its President to forward this resolution to the Council and Commission and to the Election Commission and Government of Pakistan.

Essential questions

As stated earlier, these are all instances that have either appeared in the media or have been reported by non-partisan civil society organizations. It is important to stress here that not all the ailments can be parked only at the door of the Election Commission of Pakistan. In a discussion regarding difficulties in conducting elections, a number of questions should be raised such as:

- ◆ In practice, how much space does the ECP have to exercise administrative control?
- ◆ Election Commission needs to have trained and professional staff. Does the ECP have the required resources and adequate administrative autonomy to train or engage professional staff?

The present set up is a judicial commission with the highest and most respected of the judiciary given the responsibility of conducting elections. However, in light of global experience, are they equipped to work as professional election managers as in the case of Canada which employs professional managers in elections. Thus another question is

- ◆ Does the ECP have the adequate financial autonomy and resources to hire election managers at market rates?

It is also important to discuss the role of political parties with regard to the effective functioning of the ECP. A cursory glance at the Pakistani newspapers would reveal that almost all the political parties call for reviewing of the functioning of the ECP and the implementation of electoral laws. This is

articulated by the Pakistan Peoples Party Parliamentarians, the Pakistan Muslim League–Nawaz, the Mutahida Majlis–e–Amal, the Mutahida Qaumi Movement as well as the Tehrik–I–Insaaf to mention a few. Barring Tehrik-i-Insaaf, almost all the parties have been in a position to bring about necessary changes in the functioning of the ECP. However, they have not done so with the result that the ECP is consistently weakened and election irregularities take place such as violation of rules, use of state resources by the ruling party, gerry mandering etc. Thus it is imperative that political parties also take responsibility for their lack of support towards a fair and independent election commission.

In a nutshell, the main challenges in conducting a free and fair election in Pakistan under the present commission set up can be categorized into three. These are challenges arising from the structure and function of the ECP itself, the actual process of conducting the elections and the interference of the party in power at the time of election. They can be enumerated as the following:

1. Constitution and appointment of the Election Commission:

The present ECP is a judicial body. The Chief Election Commission is appointed by the President “in his discretion” for three years. According to the Election Commission Order 2002,

- (1) There shall be a Chief Election Commissioner, hereinafter referred to as the Commissioner, who shall be appointed by the President, in his discretion, for a term of three years.
- (2) As provided in clause (2) of Article 213 of the Constitution of the Islamic

Republic of Pakistan 1973, no person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified under paragraph (a) of clause (2) of Article 177 of the Constitution to be appointed a Judge of the Supreme Court.

- (3) The Commissioner shall have such powers and functions as are conferred on him by this Order and the law.
- (4) The Commissioner may, by writing under his hand addressed to the President, resign his office.

As stated earlier in the paper, the political climate of Pakistan poses a challenge to such an arrangement as the office of the President is not perceived as neutral. In a democratic setup, it is identified with the ruling party and hence lacks credibility and neutrality in the eyes of the opposition parties. Presidential office lead by generals also lack neutrality in view of the repeated experience that military leadership plays an active role in the political party politics by promoting candidates or parties of their choice. Generals in the Presidential Office actually orchestrated referendums in a bid to legitimize their rule through the ECP. Such assignments have further contributed to undermining the credibility and image of ECP as a neutral institutions. In such an environment, appointment of Election Commissioner by the President is often controversial. Unfortunately, none of the governments or presidents have recognized

the importance of strengthening ECP as a credible and neutral institution. Such recognition could have motivated them to appoint election commissioners after consultations with other political parties. Hence they have failed to exercise the discretion allowed to them under the constitution judiciously and in the greater interest of democratic development in Pakistan. Against such a background, it is time that the procedure of appointing the Election Commissioner is re-examined in the light of best practices from other countries and the requirements of our political environment.

The other four members of the Commission are Judges of the High Court of each province again appointed by the President. Thus, the very constitution and appointment procedure of the ECP, given Pakistan's political history, is cause for concern.

2. Conduct of Elections

Challenges are also posed by the actual process of conducting election, which is of course a daunting task. Constituencies have to established, voter lists have to be developed, polling stations have to be notified, staff trained to name a few tasks. One of the most common complaints relate to the polling stations. According to the information provided by the ECP itself⁹ "polling stations are normally two kilometers from the house of the voters" However, interviews with parliamentarians¹⁰ revealed that polling stations although not far from the voters, are changed at the last minute and neither parties nor voters are informed of the change. Security on the day of the election is also an issue that comes

⁹ www.ecp.org.pk FAQ

¹⁰ Tehimeena Daultana, MNA from PML-N and Senator Engr Rukhsana Zuberi of PPPP.

under the preview of the ECP although it is provided by the law enforcement agencies. It is important to also mention the practice of candidates discouraging female voters in certain areas of the country which the ECP should take note of. The ECP's plea in this is that it can only address an issue that has been brought to its notice. This is the responsibility of the media and other members of the civil society. Another issue is the notification of the result. After the votes are counted in the presence of all the parties concerned, the result is given on an informal piece of paper¹¹ with the assurance that the official result will be declared soon. The problem arises when the official result differs from the one on the piece of paper that was handed to the contestants.

3. Government Interference

Another category of problems that poses a challenge to conducting a free and fair election in Pakistan is government interference. Government of the day routinely uses government transport for the candidate to canvass in. Governmental developmental schemes are announced by the candidate or by his/her supporter who is in power. For instance, as earlier pointed out, at the time of election of the present PM Mr Shaukat Aziz the Finance Ministry issued a letter for making arrangements for submission of his nomination papers in clear violation of rules. Mr. Shaukat Aziz also used his official car along with official convoys of security personnel, to canvass although he did limited canvassing after the bomb blast at Jhang in which two people were killed. State media is also used by the government of the day as revealed in the media election monitoring report of the Liberal Forum Pakistan quoted earlier¹².

Thus, it is imperative that the present election commission set up is reviewed in terms of its functioning in light of concerns expressed by political parties, civil society organizations as well as the international community.

Conducting an election that is free and fair is a challenge that almost every country of the world faces. It will also be naïve to suppose that pre poll, Election Day and even post poll rigging does not occur in other countries of the world. Certainly, Pakistan is not the only country that is confronted with this challenge. The challenge is to have such administrative systems in place that would minimize the chances of rigging in an election. Globally, different countries have developed different systems.

While on the subject of recommendations and review of the present set up of the Election Commission, it might be worthwhile to take a look at the various models of election commissions around the world in the hope of seeing what lessons, if any, Pakistan can take from them.

¹¹ As reported by Ms. Tehimeena Daultana, MNA from PML-N

¹² www.liberalforum-pakistan.org

PART III

Global experience of election commissions

This part of the paper seeks to examine the global experience of election commissions, their structure and functions in order to determine if there are any lessons for Pakistan to draw. It is by no means suggested that a model of a country be copy pasted in Pakistan. That is why no specific model is being recommended. This section is only meant to study the other models and get informed. It is often said that the Indian model is more suited to our needs. Whether that is true or not, needs to be determined. This part of the paper deliberately focuses on other models so that more information can be had.

It is increasingly recognized that successful elections are achieved by an administration that is professionally staffed, well equipped and adequately funded. T.S. Seshan, a former election commissioner of India commented that good elections require four elements i.e. an election law that is fully tuned to provide free and fair elections, an election commission which is truly autonomous and fearless, administrative procedures that ensure every man and woman can exercise their franchise freely and without fear and an electorate which is fully aware of its rights and responsibilities.

All over the world, increasingly, the need for a professional approach has been addressed by the formation of national and pan national groupings of elections officials and the emergence of specialized professional education opportunities. For instance, Mexico's Federal Election Institute (IFE) has created the Professional Electoral Service (SPE) a career system for specialized employees that aims to provide qualified personnel to meet the needs of the electoral service. The SPE's requirement that individuals working on elections undertake various types' of professional education throughout their careers has contributed significantly to the professionalization of IFE's work.

Professional election management bodies also exist in the United States, Central and Eastern Europe, Africa, the Pacific, Asia and the Caribbean. For instance, in Great Britain, an examination has been developed for people working in electoral administration. The Barbados Community College in Bridgetown started offering a four week certificate course in election administration as early as 1994. One by one the various states in the United States of America are also instituting standards for their local election officials and offering training programmes. International assistance is also beginning to be more focused on the training needs of election bodies rather than the material needs.

Electoral Management:

Election management¹³ is about selecting the right system for a country's particular circumstances. There are many models to follow in managing the election process. The ultimate choice largely depends on the

- ◆ Historic and cultural background of the country concerned
- ◆ Its level of sophistication
- ◆ Its financial and political situation

¹³ www.ifes.org.

◆ Education of its people

Election management has come to be recognized as a service comparable in many ways to more traditional service sectors and many of the tests of effectiveness that are used in those sectors can be applied to election management.

There is no best way to structure an organization. The establishment of an election management body (EMB) will inevitably involve a trade off between a variety of competing demands and needs. The EMB may be given many functions including the following:

- ◆ Conducting elections and referendums
- ◆ Compiling and /or maintaining a register of voters
- ◆ Promoting public awareness of electoral matters by conducting civic education and information programs for members of the public, particularly for women, youth and disadvantaged minorities.
- ◆ Training of electoral candidates, election officials
- ◆ Informing political parties and others about the electoral process.
- ◆ Ensuring that women and minorities are able to participate fully in the electoral process
- ◆ Making regulations governing the electoral process
- ◆ Enforcing the electoral law

◆ Researching electoral policy and related matters

◆ Providing the government, the legislature, and departments of the executive with information and advice about electoral matters

◆ Engaging in international cooperation and assistance

These might be some of the tasks of the Commission depending on the local needs of a country.

Global election commission models

The effective institutionalization of basic electoral and political rights obliges states to establish an appropriate electoral system to implement international obligations in regard to individual rights and to establish an effective impartial and /or balanced mechanism for the management of legislative elections.

There are different categories of national election management bodies through out the world. An election management body may be a permanent body, an independent national election commission, a government ministry responsible for elections, a decentralized body or a temporary commission established for a particular election. Different types of EMBs exists throughout the world and can be found in countries such as Australia, Bulgaria, Iceland, Israel,India,Kenya, Malaysia, Nepal, New Zealand, Portugal, Spain, New Zealand and India.

In South Korea, for instance, election management committees are established with the Central Election Management Committee being appointed for a six year

term. The nine members of the committee are selected as follows:

- ◆ Three by the President
- ◆ Three by the National Assembly
- ◆ Three designated by the Chief Justice of the Supreme Court.

In some countries, the national electoral commission is facilitated in its work by specialized departments. In Bulgaria and Iceland for instance, the compilation of the electoral register is the responsibility of the national census bureau or its equivalent. Electoral disputes may be left to the judiciary to determine, particularly at the appeal stage. In Romania, for example the election law allows for the formation of a temporary Central Electoral Bureau within a few days of fixing the election date. It is viewed differently in South Korea where the law provides for a permanent commission with members serving for six years. In Albania, alternatively, the law originally established a temporary Central Election Commission. Following international pressure, the election law was changed and a permanent body has now been established

The options, thus, are many and they include:

- ◆ Temporary election management body
- ◆ Permanent election management body
- ◆ Independent body whether temporary or permanent
- ◆ Partisan temporary or permanent body

- ◆ Mixed partisan/ nonpartisan body
- ◆ Specialized judicial body
- ◆ Government ministry
- ◆ Decentralized body

While determining the best model for a country, the economic climate is a consideration. Can a country afford a full time, permanent central election body or should it make do with a temporary, part time group of individuals to perform similar tasks over a shorter period with the possibility of permanence when economic stability arrives? Also, what possibilities are there of foreign donors assisting with the establishment of an electoral body? These considerations are all important. Whatever the decision, the electoral body has the responsibility to ensure the integrity of the electoral process.

1. Temporary body

The financial advantages of establishing an electoral body for a relatively short period are obvious. Renting accommodation, hiring staff and use of equipment for limited periods will reduce costs and may more easily attract investment or donations from outside agencies. This type of body is also more likely to be treated sympathetically, in the budgetary senses, by the government of the day. However, Pakistan has a permanent election commission receives substantial funding. For instance in the 2002 elections, the Election Commission of Pakistan received an amount of Rs 96, 62, 00,000/- only for civic education.

There are organizational advantages to temporary bodies. Staff may be borrowed or seconded from other areas of expertise

available to the government. If staff is hired, temporary contracts are easier to put in place and employees may be more adaptable. One other benefit of a temporary body could be that shorter time scales could lead to greater efficiency as fast approaching deadlines should lead to increased performance from a well motivated and committed staff. Temporary EMBs may also be more suited to small states, although they tend to be less independent of the appointing authorities.

However, there are disadvantages to the temporary EMB. Hurried financial aid to temporary commissions can lead to over provision, waste and inefficient use of financial resources. Other disadvantages include an inconsistent approach to electoral management, less opportunity for ongoing training and the adoption of a professional approach to the tasks at hand.

Also, modern multiparty elections require continuity in management in order to continually update methods of processing data. A temporary EMB would be unlikely to provide this opportunity. Election administrators of temporary bodies in some countries have complained that legislation does not allow them sufficient time to organize themselves internally.

2. Permanent body

The advantages of establishing a permanent national election management body must be weighted against the increased financial burden associated with the introduction of a permanent structure. There are of course advantages like consistency etc. but the major disadvantage is cost. A permanent body will require a proper work plan which should be subject to review on a regular basis. Additionally, there should be a process of reporting to the

parliament. Annual reporting and budgeting by the election body should be part of the parliamentary process.

3. Partisan election management body.

In new or developing multiparty democracies, there may be a desire to have independent electoral management in order that the commission can have a truly representative mix of all political parties involved in the election contest. One of the purposes of a partisan EMB is to ensure that one party watches the other. A problem arises when the number of political parties on the ballot becomes too great. Unless declared coalitions are formed, it may be difficult to have all interests represented on the commission.

There are cost advantages to this type of commission. Expenses on salaries could be kept to a minimum if party appointees act on a voluntary basis. The commitment to the electoral body could be enhanced to protect party interests and as everyone on the commission is a stakeholder, this commitment could aid efficiency.

There are of course disadvantages. There is no guarantee of quality nomination and representatives will probably have other commitments. There is also the view that members are bound to pursue their own party's interests and of course formal and informal coalitions may vote out or oppose good ideas of individual parties. In addition, nominees usually take instructions from the party and are known to boycott meetings of the EMB on party instructions. Parties have also been known to replace representatives frequently thus disrupting the functioning of the body. There is also the danger that the larger parties would collude with each other to elude the emerging smaller parties from

the process.

4. Partisan/non partisan mix

It is possible to have a mixed representation between party representatives and independent nominees and it could be argued that this type of commission would enjoy the best of both the worlds. In some countries the party representatives have a voice but not a vote on the council.

5. Judicial body

This is presently the type which is constituted in Pakistan. The problem with this kind of structure is that is not always viewed to be independent.

6. Decentralized electoral management

Decentralized electoral management is a system in which local government bodies undertake the organization of electoral matters on behalf of the central body. This system is similar to that which is used in the United Kingdom for all elections and in New Zealand for local and regional elections. Other countries with comparable systems include Ireland and Sweden.

7. Other models

In some countries the management body is a mix of the different systems described above. In Mexico for instance there is a dual structure at the national level, with the Federal Electoral Institute looking after electoral administration and the Electoral Tribunal adjudicating all manner of complaints. In Argentina, the Ministry of the Interior looks after election administration and the National Election Court makes

general policies and determines disputes. In Canada, the Chief Electoral Officer (CEO) is appointed by the House of Commons and manages elections in Canada. Upon taking the appointment, the CEO relinquishes personal voting rights, presumably to keep the CEO above politics and to demonstrate true independence and impartiality. The CEO appoints returning officers for each of the 295 electoral districts. Canada has a permanent establishment of approximately sixty staff members who deal with operations, information technology issues, give advice on legal issues, act as the broadcaster arbiter and deal with election finance issues.

Guiding principles

An election management body should be founded on principles of independence, non partisanship and professionalism. It should have clear procedures to make it accountable and have equally clear procedures for reviewing its effectiveness both as a management's organization and as a service provider. It must be nonpolitical but capable of operating in a political environment.

◆ *Independent*

In a country with multiparty activity, an EMB attracts the confidence of all parties only if it is seen to be independent of any party and of the sitting government. It is essential that the EMB has this confidence or else the process of the election and the results will be brought into question. While the EMB can never be wholly independent because it will be reliant on the legislature for the approval of funding and possibly the appointment of its key personnel, these powers should not be used to exert influence over the EMB. The EMB itself should also be structured to protect it from

influence. Some countries such as Papua New Guinea and South Africa have constitutional guarantees for the independence of their EMBs. In Costa Rica, it is a fourth branch of government under the constitution. Other countries may not guarantee independence in their constitution but do nevertheless cherish, respect and safeguard such independence. e.g. Australia, Canada and the United Kingdom

◆ *Non partisan*

Nonpartisan is not the same thing as independent. Rather, it implies that the EMB should not care about who wins or loses the election it is administering. Its interest should be in establishing a level playing field on which candidates and parties may compete; in giving all voters sufficient information so they can cast their vote in a reasonably informed manner and in adding up votes and declaring results without prejudice towards any party or candidate. The EMB should be composed of people who are and who are perceived by the key players to be capable of acting impartially and who enjoy the confidence of the major parties. In many cases, this means that the member's or policy makers of the EMB are not members of any political party. If a completely nonpartisan body cannot be created, then one that is balanced by the inclusion of representatives of various parties should be created.

◆ *Professional*

No matter how independent or impartial an EMB may be, an equally important characteristic is professionalism in its approach to the huge administrative task that is electoral management. Election management is essentially a service

industry and people have rising expectations of the ability of the industry to deliver a quality service. Failure to deliver that service because of nonprofessional behavior due to poor planning or other administrative inefficiency may have the consequence of calling into question the key principles of independence and impartiality. As a result, people will be less likely to participate in the process in future.

A professional EMB should constantly review the law it administers and the ways in which it advises its staff, political parties, candidates and voters about the electoral process. An EMB should ensure that the electoral law is faithfully administered and that all candidates, parties and voters are treated equally and fairly. It should also consider how best to inform and educate the voters about the electoral process and how to make best use of resources, including new technology. It should have sufficient resources to perform its functions.

Managerial principles

The International Institute for Democracy and Electoral Assistance (IDEA)¹⁴ has published a Code of Conduct for the professional administration of elections. The code details five principles that should form the basis of electoral administration to ensure both the appearance and the actual integrity of the electoral process.

According to this code, the administration of elections must

- ◆ Demonstrate respect for the law
- ◆ Be non partisan and neutral
- ◆ Be transparent

- ◆ Be accurate
- ◆ Be designed to serve the voters.

1. Election administration must demonstrate respect for the law.

The success of an election depends on the extent to which it is accepted as legitimate and binding by the participants in the political process. The expression of major policy decisions in a clear legal form provides the degree of certainty that is required for the development of a common understanding, by all participants in the process, of how it will be administered. If the election administration does not follow the law and apply it equitably and clearly explain the legal rationale for its decision, the common understanding of the participants may be affected and support for the election process may be weakened.

An election administration must therefore

- ◆ Comply with the laws of the country
- ◆ Within the legal framework of the country, ensure that the laws relating to elections are fully implemented in an impartial and equitable fashion
- ◆ Within the legal framework of the country, ensure that the every party, candidate, voter and other participant in the election process is treated fairly and justly, considering all the circumstances.

2. Election administration must be nonpartisan and neutral

For an election to be successful, participants in the process have to trust that the election administrators will carry out

their functions in a politically neutral way .If the people managing an election are perceived to have a commitment to any particular election result, the public credibility of the election process will be so seriously compromised that it will be difficult to restore faith in the process. Election administrators must therefore perform all their tasks in a manner that is strict nonpartisan and politically neutral.

Election administrators should therefore,

- ◆ Act in a strictly neutral and unbiased manner in every matter concerning a political party, candidate, voter or member of the press or media
- ◆ Do nothing that could indicate or be seen as indicating, partisan support for a candidate, political party, political actor or political tendency
- ◆ At all times conduct themselves in an irreproachable manner, exercise sound judgment and observe the highest levels of personal direction
- ◆ Disclose any relationship that could lead to a conflict of interest with their duties as election administrators.
- ◆ Not accept any gift or favor from a political party, organization or person involved in the election process

3. Administration must be transparent

For an election to be successful, participants in the process have to accept the decisions of the election administration. Participants are most likely to accept those decisions if they can easily satisfy themselves that the decisions are made

appropriately. To do that, they must have access to the information on which decisions are based. Of course, each election will generate a large amount of data, extensive databases and many documents. Generally, it is not practical to provide access to or copies of all that data to every person who may want access or copies. Election administrators should be prepared, however, to

- ◆ Justify their decisions
- ◆ Make freely available the information on which each decision was based
- ◆ Arrange effective and reasonable access to relevant documents and information within the framework of the country's electoral and freedom of information laws.

In addition, election administrators should

- ◆ Ensure that the agents of each political party or candidate can fully and effectively exercise their legal rights
- ◆ Consult with participants in the electoral process on a regular basis and in relation to specific decisions, if it is appropriate to do so in the circumstances
- ◆ In response to reasonable requests, provide an explanation for decisions they have made as part of the electoral process, or a decision made as part of the general operation of the election administration
- ◆ Establish a system that allows interested parties to access, in a

timely manner, all critical information, documents and databases used in an election process, or used in the normal operation of the election administration

- ◆ If any deficiency in the administration of an election comes to their attention disclose that deficiency on their own initiative.

3. Election administration must be accurate

It follows from the discussion of principle 3 that, for decisions of election administrators to be satisfactory for the participants, the information on which the decision is based must be accurate as well as accessible. Inaccurate or unreliable information undermines confidence in both the administration's decisions and its general competence. Election administrators and administrations must perform every task on the basis of the highest standards of accuracy of information and objectivity of analysis. In particular they should

- ◆ Ensure that information is collected, compiled and published in a way that is systematic, clear and unambiguous
- ◆ Do anything necessary, within the country's legal framework, to ensure that all the information they compile, use or publish has a sound factual basis.

6. Election administration must be designed to serve the voters.

Election administrators and administrations should work to provide to

every voter the highest quality required to enable voters to exercise their rights with the least possible inconvenience given the circumstances and the country's legal framework. In particular, they should

- ◆ Make it as convenient as possible for voters to participate in the election process
- ◆ Ensure that voters adequately understand the election process
- ◆ Do everything possible to provide a way to vote for people with special needs.

Suggestions

As stated earlier, this paper hopes to serve as an impetus for debate on the reforms needed for ensuring that election irregularities are minimized so that voters trust the electoral process and feel that their votes actually contribute towards the election of public representatives. Of course, the boarder question of electoral reforms needs to be taken up too but it is imperative to recognize that the present Election Commission perhaps does not suffer from lack of powers on paper, but rather in having the space in reality to implement its powers.

Given the political realities of the country, this lack of space for actual implementation of powers needs to be studied. A realistic examination of it would reveal that free and fair elections are actually the responsibility of not only the Election Commission but also of all the political parties, their workers, media, civil society groups as well as citizens themselves. The ECP is essentially the constitutionally designated leading body for conducting and supervising elections. But if the ECP does not get sufficient support from other government agencies, political parties or civil society, it may not be able to hold free and fair elections despite its best efforts.

Having said this, there are some suggestions that might be useful to consider.

These are:

- ◆ The Chief Election Commissioner

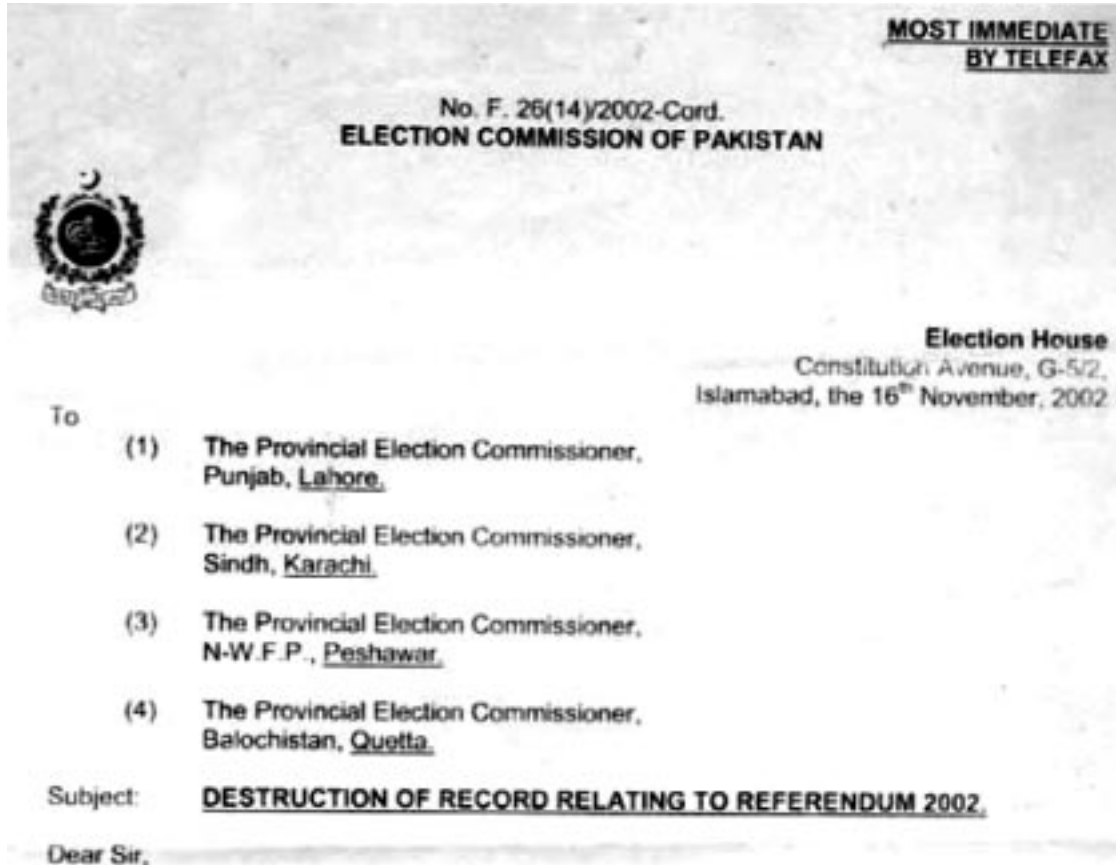
should be appointed through a consultation process involving all the main political parties and relevant organizations of the state. Appointments made with agreement of all the main political parties would help in restoring the credibility and neutrality of the Office of Election Commissioner, and would augur well for holding free and fair elections and promoting democratic development in Pakistan.

- ◆ Election Commission of Pakistan needs to be further strengthened in the sense of enhancing its ability to exercise the administrative and financial autonomy provided to it. This should result in increased efficiency and transparency in the Election Commission, as well as in the engagement of highly professional and trained staff with full capacity to conduct free and fair elections.
- ◆ Civil society, including NGOs, print and electronic media, professional associations, should be consulted and engaged in the process of conducting free and fair elections. Civil society can play extremely important roles in voters education and creating an enabling environment in which voters could exercise their right to vote freely. Such a collaboration of civil society with Election Commission should also help the EC in warding off

undue pressures from powerful interests and exercising its full authority to ensure that government machinery is not misused by one or the other political party.

- ◆ Election Commission must establish an efficient system of deciding on complaints and appeals against election results. It is extremely unfair that appeals currently take too long to decide. Political parties and civil society must provide full support to the EC in such an endeavor in the wider national interest. This would greatly help the EC in establishing its image as an efficient and credible organization.
- ◆ Instead of a judicial commission, in light of global models, perhaps, an election commission consisting of representatives of mainstream political parties i.e. those who are represented in the parliament and judiciary might be worth considering.
- ◆ The participation of the civil society of Pakistan might further facilitate the process of conducting free and fair elections. This participation may take various forms such as a civil society representative on an election commission of mainstream political parties or perhaps a civil society oversight of the election process.
- ◆ An independent complaint cell comprising of international nominees, media and civil society organizations may be established that should take up all the complaints independent of the ECP. In other words, this complaint cell will be a bridge between the ECP and the political parties.
- ◆ As discussed earlier in the paper, the ECP received some funds for voter education during the 2002 elections. Serious doubts were cast on the impartiality of this campaign by various groups including the European Union Mission. Civic education campaigns like these fall more in the realm of civil society group's work or alternatively political parties. Perhaps, the decision to allocate this responsibility to the ECP needs to be reviewed.
- ◆ Some guiding principles of conducting elections have been discussed under the global election models section of this paper. It might be useful to develop indicators for each of these principles as the operationalization of these principles would help the citizens to determine how fair and free the electoral process really is.

These were some of the suggestions that can be examined in light of this paper. In conclusion, it is important to reiterate that the election commission is one part of the equation. The broader issue of electoral reforms needs to be addressed in Pakistan. The Election Commission of Pakistan is of course a significant starting point.



I am directed to refer to this Commission letter of even number, dated the 3rd May, 2002 and to intimate that Election Commission of Pakistan in its meeting held on 11-11-2002, has been pleased to direct that the record relating to Referendum 2002 presently lying in District Treasuries (or any other place) shall be destroyed in presence of the Assistant Election Commissioner of the concerned district as well as the Deputy Election Commissioner concerned.

2. In pursuance of the decision of the Election Commission, the polling record of Referendum – 2002 shall be destroyed by **burning**, subject to the following conditions:

- (1) The polling record is to be destroyed by burning in the presence of the concerned Deputy Election Commissioner and Assistant Election Commissioner.
- (2) After the polling record is destroyed a certificate in quadruplicate should be issued by the concerned officers that the destruction was carried out in the prescribed manner and in their presence, and


- 2 -

- (3) One copy each of the certificate should be forwarded to the Election Commission of Pakistan as well as the Provincial Election Commissioner concerned for record. The remaining two certificates will be retained in the offices of the two respective field officers.

3. It may be pointed out here that some of the polling bags may contain election material, such as, self-inking stamps pads, stamps bearing the official code mark, stamps for marking ballot papers, brass sealing wax, etc, besides election documents. The respective officers are required to retrieve the election material as well as the empty polling bags before burning the official documents and prepare the inventory (in triplicate) of the election material taken out from the bags. One copy of the inventory, duly signed by the concerned Deputy Election Commissioner and Assistant Election Commissioner should be sent to the Provincial Election Commissioner concerned for record and the remaining two be retained in the offices of the concerned field officers.

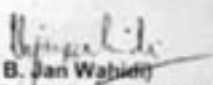
4. It is, therefore, requested that necessary instructions on the above lines may please be issued to all Deputy Election Commissioners and Assistant Election Commissioners under your administrative control and it should be ensured that the said record is destroyed in accordance with the above instructions by the 20th December, 2002 and a confirmation to this effect may also be sent to this Commission immediately thereafter.

Yours faithfully,


(R. B. Jan Wahidi)
Deputy Secretary (Elections)

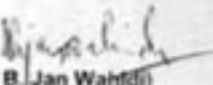
1) Copy forwarded to the DG (PP)/ Additional Returning Officer, Ministry of Foreign Affairs, Islamabad with the request that the polling Record pertaining to Referendum 2002 lying in safe custody in various Missions abroad may be destroyed by burning in the presence of Assistant Returning Officers in accordance with the above instructions followed by a confirmation to this effect to this Commission after doing the needful.

2) Copy forwarded to the Section Officer (Coordination)/ Assistant Returning Officer, ECP Secretariat, Islamabad. He is requested that the record in his custody may be destroyed by burning.


(R. B. Jan Wahidi)
Deputy Secretary (Elections)

Copy also forwarded to:-

- 1) The Joint Secretary (Admn), ECP, Secretariat, Islamabad.
- 2) The Joint Secretary (LGE), ECP, Secretariat, Islamabad.
- 3) The Joint Secretary (Budget), ECP, Secretariat, Islamabad.


(R. B. Jan Wahidi)
Deputy Secretary (Elections)

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(24)

Chief Election Commissioner and Election Commissions

213. (1) There shall be a Chief Election Commissioner (in this Part referred to as the Commissioner), who shall be appointed by the President [239][in his discretion.]

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

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

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

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

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

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

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

216. (1) The Commissioner shall not, (a) hold any other office of profit in the service of Pakistan; or

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

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

Provided that

(a) this clause shall not be construed as preventing a person who was a Judge of the Supreme Court or of a High Court immediately before his appointment as Commissioner from resuming his duties as such Judge on the expiration of his term as Commissioner; and

(b) a person who has held office as Commissioner may, with the concurrence of both Houses, be reappointed to that office before the expiration of two years after he has ceased to hold that office.

217. At any time when,

(a) the office of Commissioner is vacant, or

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

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

218. (1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election of such other public offices as may

be specified by law or until such law is made by the Majlis-e-Shoora (Parliament) by Order of the President, a permanent Election Commission shall be constituted in accordance with this Article.

(2) The Election Commission shall consist of,

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

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

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

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

(a) Preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually,

(b) organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly; and

(c) appointing Election Tribunals.

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

221. Until [240][Majlis-e-Shoora (Parliament)] by law otherwise provides, the Commissioner may, with the approval of the President, make rules providing for the appointment by the Commissioner of

officers and servants to be employed in connection with the functions of the Commissioner or an Election Commission and for their terms and conditions of employment.

The Conduct of General Elections Order, 2002

(CHIEF EXECUTIVE'S ORDER NO. 7 OF 2002)

Whereas pursuant to the announcement for restoration of democracy by the President on the fourteenth day of August, 2001, it is expedient to provide for the holding of general elections in the country for the election of the members of the National Assembly and the Provincial Assemblies and the matters connected therewith and ancillary thereto;

And whereas updated electoral rolls are to be prepared and delimitation of constituencies is to be carried out in view of the increase in the number of seats in the Assemblies;

Now, therefore, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, and in exercise of all other powers enabling him in that behalf, the Chief Executive of the Islamic Republic of Pakistan is pleased to make and promulgate the following Order:

1. Short title, extent and commencement:

- (1) This Order may be called the Conduct of General Elections Order, 2002.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions. In this Order, unless there is anything repugnant in the subject or context,

- (a) "Chief Election Commissioner" means the Chief Election

Commissioner appointed under the Election Commission Order, 2002 (Chief Executive's Order 1 of 2002);

- (b) "Constitution" means the Constitution of the Islamic Republic of Pakistan, 1973, which is in abeyance by virtue of the Proclamation of Emergency of the fourteenth day of October, 1999;
- (c) "prescribed" means prescribed by rules made under this Order; and]
- (d) "technocrat" means a person who is the holder of a degree requiring conclusion of at least sixteen years of education,

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- 1 Omitted, vide C.E.O. No. 21 of 2002, dt. 31-7-2002.
 - 2 Added *ibid.* recognized by the University Grants Commission or a recognized statutory body, as well as at least twenty years of experience, including a record of achievement at the national or international level.]
 3. **Order to override other laws.** The provisions of this Order shall have effect notwithstanding anything contained in the Constitution or in any other law for the time being in force relating to the forthcoming elections to the National Assembly and the Provincial Assemblies.
 4. **Conduct of General Elections.** Subject to the Election Commission Order, 2002 (C.E.'s Order No. 1 of 2002) and

notwithstanding anything to the contrary contained in the Constitution, the Electoral Rolls Act, 1974 (XXI of 1974), the Delimitation of Constituencies Act, 1974 (XXXIV of 1974), 1[the Senate (Election) Act, 1975 (LI of 1975], the Representation of the People Act, 1976 (LXXXV of 1976) and the Houses of Parliament and Provincial Assemblies (Elections) Order, 1977 (PPO No. 5 of 1977), or any other law for the time being in force, the Chief Election Commissioner or, as the case may be, the Election Commission shall take such steps and measures, including preparation of electoral rolls and delimitation of the constituencies, and adopt such procedure, do such acts, pass such orders, issue such directions and take all such ancillary, incidental and consequential steps as may be deemed necessary for effectively carrying out the elections for the members of the National Assembly and Provincial Assemblies in October, 2002.

- (1) There shall be three hundred and forty-two seats of the members in the National Assembly, including seats reserved for women and non-Muslims.
- (2) The seats in the National Assembly referred to in clause (1), except as provided in clause (3), are allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital as under:

General	Seats	Women	Total
Baluchistan	14	3	17
Federally Administered Tribal Areas	12	—	12
Federal Capital	2	—	2
The North-West Frontier Province	35	8	43
Punjab	148	35	183
Sindh	61	14	75
Total	272	60	332

1 Added vide CEO No. 21 of 2002, dt. 31-7-2002.

2 Substituted *ibid.*

- (3) In addition to the number of seats referred to in clause (2), there shall be in the National Assembly ten seats reserved for non-Muslims as defined in Article 260 of the Constitution.
- (4) For the purpose of election to the National Assembly,
 - (a) the constituencies for the election on general seats shall be single member territorial constituencies;
 - (b) the members to fill the general seats in the National Assembly shall be elected by direct and free vote;
 - (c) each Province shall be a single constituency for all seats reserved for women which are allocated to the respective Provinces under clause (2);
 - (d) the constituency for all seats reserved for non-Muslims shall be the whole country;
 - (e) the members to fill seats reserved for women which are allocated to a Province under clause (2) shall be elected through proportional representation system of political parties' lists of candidates specified in Article 8F on the basis of total

number of general seats won by each political party in the National Assembly;

- (f) the members to fill seats reserved for non-Muslims under clause (3) shall be elected through proportional representation system of political parties' lists of candidates specified in Article 8F on the basis of total number of general seats won by each political party in the National Assembly; and
- (g) a political party securing less than five per centum of the total number of general seats in the National Assembly shall not be entitled to any seat reserved for women or non-Muslims.]

(1) Each Provincial Assembly shall consist of general seats and seats reserved for women and non-Muslims as herein below specified:

General seats Women Non-Muslims Total

Baluchistan	51	11	3	65
North-West Frontier Province	99	22	3	124
The Punjab	297	66	8	371
Sind	130	29	9	168

Total : 577 128 23 728

1 Substituted vide CEO No. 21 of 2002, dt. 31-7-2002.

- (2) For the purpose of election to a Provincial Assembly,
 - (a) the constituencies for the general seats shall be single member territorial constituencies;
 - (b) members to fill the general seats shall be elected by direct and free vote;
 - (c) each Province shall be a single

constituency for all seats reserved for women and non-Muslims which are allocated to the respective Provinces under clause (1);

- (d) the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected through proportional representation system of political parties' lists of candidates specified in Article 8F on the basis of total number of general seats won by each political party in the Provincial Assembly; and
- (e) a political party securing less than five per centum of the total number of general seats in the Provincial Assembly shall not be entitled to any seat reserved for women or non-Muslims.]

7. System of elections. The elections for the members of the National Assembly and the Provincial Assemblies shall be held on the basis of joint electorate.

Notwithstanding anything contained in the Constitution or any other law for the time being in force including the Electoral Rolls Act, 1974 (XXI of 1974), for the election of members of the Senate National Assembly and Provincial Assemblies, a citizen who has attained the age of eighteen years on the first day of January, 2002, shall be eligible to vote and the Chief Election Commissioner shall cause the electoral rolls to be prepared accordingly under the provisions of the Electoral Rolls Act, 1974: Provided that any claim for inclusion of any name or objection against any entry in the electoral roll shall be made to the Revising Authority within 15 days of the publication of the draft electoral roll.]

Notwithstanding anything contained in the Electoral Rolls Act, 1974 (XXI of 1974), the

Electoral Rolls, Rules, 1974, or any other law for the time being in force, including the Forms

1 Inserted vide CEO No. 14 of 2002, dt. 14-5-2002.

2 Inserted vide CEO No. 21 of 2002, dt. 31-7-2002.

3 Inserted vide CEO No. 15 of 2002, dt. 17-6-2002.

prescribed for preparation of electoral rolls on joint electorate basis in pursuance of Article 7 of the Conduct of General Elections Order, 2002 (Chief Executive's Order No. 7 of 2002), the status of Qadiani Group or the Lahori Group (who call themselves 'Ahmadis' or by any other name) or a person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets or claimed or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him) or recognizes such a claimant as a Prophet or religious reformer shall remain the same as provided in the Constitution of the Islamic Republic of Pakistan, 1973.

7C. If a person has got himself enrolled as voter and objection is filed before the Revising Authority notified under the Electoral Rolls Act, 1974, within ten days from issuance of the Conduct of General Elections (Second Amendment) Order, 2002, that such a voter is not a Muslim, the Revising Authority shall issue a notice to him to appear before it within fifteen days and require him to sign a declaration regarding his belief about the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) in Form-IV prescribed under the Electoral Rolls Rules, 1974. In case he refuses to sign the declaration as aforesaid, he shall be deemed to be a non-Muslim and his name shall be deleted from

the joint electoral rolls and added to a supplementary list of voters in the same electoral area as non-Muslim. In case the voter does not turn up in spite of service of notice, an ex-parte order may be passed against him.]

8. Laws relating to election etc. to apply.

Notwithstanding anything contained in the Constitution, the Electoral Rolls Act, 1974 (XXI of 1974), the Delimitation of Constituencies Act, 1974 (XXXIV of 1974) and the Representation of the People Act, 1976 (LXXXV)

1 Inserted vide CEO No. 21 of 2002, dt. 31-7-2002.

of 1976) and any rules made thereunder, for the time being in force, shall, in so far as they are not inconsistent with any provision of this Order, apply to the preparation and revision of electoral rolls, the delimitation of constituencies, the choosing of a member from the Federal Capital, the appointment of election tribunals and the conduct of elections to the National Assembly and the Provincial Assemblies.

Notwithstanding anything contained in the Constitution of the Islamic Republic of Pakistan, 1973, the Senate (Election) Act, 1975 (LI of 1975), the Representation of the People Act, 1976 (LXXXV of 1976), or any other law for the time being in force, a person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly unless he is at least a graduate possessing a bachelor degree in any discipline or any degree recognized as equivalent by the University Grants Commission under the University Grants Commission Act, 1974 (XXIII of 1974)] 2[or any other law for the time being in force.]

(1) The Senate shall consist of one hundred

members of whom

- (a) fourteen shall be elected by the members of each Provincial Assembly;
- (b) eight shall be elected by direct and free vote from the Federally Administered Tribal Areas as provided in Article 8C;
- (c) two on general seats, one woman and one technocrat or aalim shall be elected from the Federal Capital in the manner specified in the Senate (Election of Members from the Federal Capital) Order, 1988 (P.O. No. 3 of 1988);
- (d) four women shall be elected by the members of each Provincial Assembly; and
- (e) four shall be elected by the members of each Provincial Assembly to represent technocrats and ulema.

Explanation. For the purpose of this Article, the term "technocrats" defined in clause (d) of Article 2 shall include ulema.

(2) Election to fill seats in the Senate allocated to each Province shall be held in accordance with the system of proportional representation by means of the

1 Inserted vide CEO No. 17 of 2002, dt. 24-6-2002.

2 Inserted vide CEO No. 21 of 2002, dt. 31-7-2002.

single transferable vote.

(3) The Senate shall not be subject to dissolution but the term of its members, who shall retire as follows, shall be six years

- (a) of the members referred to in paragraph (a) of clause (1), seven shall retire after the expiration of the first three years and seven shall retire after the expiration of the next three years;

- (b) of the members referred to in paragraph (b) of the aforesaid clause, four shall retire after the expiration of the first three years and four shall retire after the expiration of the next three years;

- (c) of the members referred to in paragraph (c) of the aforesaid clause,

- (i) one elected on general seat shall retire after the expiration of the first three years and the other one shall retire after the expiration of the next three years, and

- (ii) one elected on the seat reserved for technocrat or, as the case may be, aalim shall retire after first three years and the one elected on the seat reserved for woman shall retire after the expiration of next three years; and

- (d) of the members referred to in paragraph (d) of the aforesaid clause, two shall retire after the expiration of the first three years and two shall retire after the expiration of the next three years; and

- (e) of the members referred to in paragraph (e) of the aforesaid clause, two shall retire after the expiration of the first three years and two shall retire after the expiration of the next three years:

Provided that the term of office of a person elected to fill a casual vacancy shall be the unexpired term of the member whose vacancy he has filled.

8C. Constituencies in the Federally Administered Tribal Area. The constituencies for seats in the Senate from the Federally Administered Tribal Areas shall be as under;

Constituencies	No. of Seats
(i) South Waziristan Agency	01
(ii) North Waziristan Agency	01
(iii) Kurram Agency	01
(iv) Orakzai Agency	01
(v) Khyber Agency	01
(vi) Mohmand Agency	01
(vii) Bajaur Agency	01
(viii) Frontier Regions	01
(a) Tank	
(b) Dera Ismail Khan	
(c) Lakki	
(d) Bannu	
(e) Kohat	
(f) Peshawar	

8D. Qualifications and disqualifications of members of Majlis-e-Shoora (Parliament) and Provincial Assemblies.

(1) In addition to the educational qualification specified in Article 8A, a person shall not be qualified to be elected or chosen as a member of a House of the Majlis-e-Shoora (Parliament) or Provincial Assembly unless

- (a) he is a citizen of Pakistan;
- (b) he is, in the case of National Assembly, not less than twenty-five years and is enrolled as a voter in
 - (i) any electoral roll for election to a general seat; or a seat reserved for non-Muslims; and
 - (ii) any area in a Province from where he seeks membership for election to a seat reserved for women;
- (c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;
- (d) he is, in the case of a Provincial Assembly, not less than twenty-five years of age and is enrolled as voter in

- any area in a Province from where he seeks membership for that Assembly;
- (e) he is of good character and is not commonly known as one who violates Islamic Injunctions;
- (f) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;
- (g) he is sagacious, righteous and non-profligate and honest and ameen;
- (h) he has not been convicted for a crime involving moral turpitude or for giving false evidence;
- (i) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan:

Provided that the disqualifications specified in paragraphs (f) and (g) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation; and
- (j) he possesses such other qualifications as may be prescribed by an Act of Majlis-e-Shoora (Parliament).

(2) A person shall be disqualified from being elected or chosen as, and from being, a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly, if

- (a) he is of unsound mind and has been so declared by a competent court; or
- (b) he is an undischarged insolvent; or
- (c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or
- (d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or
- (e) he is in the service of any statutory body or anybody which is owned or controlled by the Government or in which the Government has a controlling share or interests; or

- (f) he being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or
- (g) he is propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the Judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan; or
- (h) he has been convicted by a court of competent jurisdiction on a charge of corrupt practice, moral turpitude or misuse of power or authority under any law for the time being in force; or
- (i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a local government on the grounds of misconduct involving moral turpitude; or
- (j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a local government on the grounds of misconduct involving moral turpitude; or
- (k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share of interest, unless a period of two years has elapsed since he ceased to be in such service; or
 - (1) he, whether by himself, or by any person or body of persons in trust for

him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by Government:

Provided that the disqualification under this paragraph shall not apply to a person

- (i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;
 - (ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or
 - (iii) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interests; or
- Explanation. In this Article, "goods" does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force; under a duty or obligation to supply.

(m) he holds any office of profit in the service of Pakistan other than the following offices namely:

- (i) an office which is not whole time

office remunerated either by salary or by fee;

- (ii) the office of Lumbardar, whether called by this or any other title;
- (iii) the Qaumi Razakars;
- (iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or
- (n) he has been convicted and sentenced to imprisonment for having absconded by a competent court under any law for the time being in force, or
- (o) he has obtained a loan for an amount of two million rupees or more, from any bank financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which stands unpaid for more than one year from the due date, or has had such loan written off, or
- (p) he or his spouse or any of his dependents has defaulted in payment of government dues and utility charges, including telephone electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six months, or
- (q) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.

8E. Objection against candidature.

Notwithstanding anything contained to the contrary in any law for the time being in force, any person or authority may object to the candidature of a person who has submitted nomination papers or whose name has been included in the party list submitted by a political party for election to a seat in the Majlis-e-Shoora (Parliament) or

a Provincial Assembly, before the Returning Officer within the period specified by the Election Commission for the scrutiny of nomination papers of candidates contesting elections for membership of Majlis-e-Shoora (Parliament) and Provincial Assemblies.

8F. Party lists for reserved seats, etc.

- (1) For the purpose of election to seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies, the political parties contesting election for such seats shall within the period fixed by the Election Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Chief Election Commissioner or, as he may direct, with the Provincial Election Commissioner, who shall forthwith cause such lists to be published for information of the public at large.
- (2) The parties' lists referred to in clause (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seat during the terms of National Assembly and Provincial Assemblies, as the case may be.
- (3) Where a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant for death, resignation or disqualification of a member, it shall be filled in by the next person in order of precedent from the party's list of the candidate submitted to the Election Commission under clause (1).

- (4) Every candidate contesting election on a seat reserved for women or non-Muslims shall, alongwith the nomination papers and other relevant documents, submit to the Returning Officer appointed by the Election Commission in this behalf
- (a) a copy of the party list of the candidate's political party for such seats;
 - (b) declarations and statements as required by law or rules in support of the nomination; and
 - (c) the fee required under any law for the time being in force for filing nomination papers.

President may by Order make such adaptations, modifications, additions or omissions as he may deem necessary or expedient.

- (3) Any court, tribunal or authority empowered to enforce any of the laws referred to in clause (2) shall, notwithstanding that no adaptations have been made in such law by an Order made under that clause, construe the law with all such adaptations as are necessary to bring it into accord with the provisions of this Order.

8G. Elections deemed to be held under the Constitution. The election held under this Order shall be deemed to have been held under this Constitution and shall have effect accordingly.]

9. Power to make rules.

- (1) The President may make rules for carrying out the purposes of this Order.
- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for the procedure of election on the seats reserved for women and technocrats.

10. Removal of difficulties.

- (1) If any difficulty arises in giving effect to any of the provisions of this Order, the President may make such provisions for the removal of the difficulty as he may deem fit.
- (2) For the purpose of bringing the provisions of the Constitution and of any of the laws relating to elections to the Senate, National Assembly and the Provincial Assemblies into accord with the provisions of this Order, the

ORGANIZATION'S PROFILE

The Liberal Forum Pakistan is a dynamic force on the political scene with new ideas. The LFP is based on the liberal principles of freedom and responsibility, peace and tolerance, competition and equal opportunities. LFP is an independent and indigenous non party organisation, which will raise awareness, train and empower citizen-oriented politicians and influence the political decision making process.

The members and activists of Liberal Forum Pakistan are committed citizens of all sectors of the society. The voluntarily working activists of LFP represent the whole diversity of the Pakistan society. Liberal Forum Pakistan believes in market economy with social responsibility and competition without state interference. LFP will prove that market oriented small enterprises can act successfully. For that LFP offers training, preparation- and coaching-programmes for young people, to start their enterprises. All citizens, who want to make a change to social, economic and political progress with more justice, a functioning democracy and stability, with accountability and delivering governance should join, support and sponsor the non partisan political excellence, the Liberal Forum Pakistan.

AUTHOR'S PROFILE

Ms. Gulmina Bilal is a young and dynamic Pakistani woman with a strong interest in political systems and advocacy. This interest has enabled her to work with a number of leading organizations both within Pakistan and outside. She has the distinction of leading a national political advocacy of Pakistan, the Liberal Forum Pakistan. As the twice elected Central General of Liberal Forum Pakistan, Ms. Bilal has designed a number of political advocacy campaigns and has also penned a report documenting the experience of women parliamentarians titled, "Women Parliamentarians: Swimming against the tide" She also prepared a documentary that traced the political contribution of Pakistani women titled , "The journey of Pakistani women through politics". She writes regularly for the opinion pages of leading Pakistani English newspapers. Ms. Gulmina Bilal also serves on the board of a leading Pakistani civic advocacy group, the Center for Civic Education, Pakistan. She can be contacted at bilalkor@yahoo.com.



Liberal Forum Pakistan
P.O.Box 1368, Islamabad, Pakistan.
E-mail: forum_liberal@hotmail.com www.liberalforumpakistan.org