

**Citizens' Group on Electoral Process**

**BACKGROUND PAPER**

**HOW INDEPENDENT IS THE  
ELECTION COMMISSION IN PAKISTAN?**

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PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

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# Background Paper

## Election Commission in Pakistan

### Preface

When electoral reforms are discussed in Pakistan, generally, political parties and other stakeholders complain of lack of “powers” and “independence” of the Election Commission of Pakistan (ECP) as the key institution constitutionally charged with the responsibility of holding free and fair elections in Pakistan. But, is the Election Commission really powerless in terms of efficient discharge of its responsibilities? What constitutes “independence” and what are the needed “constitutional powers” for the ECP after attaining which the ECP will be able to perform its functions better? How do the powers of the ECP compare with those of the Election Commission of India (ECI), revered within and outside India as an independent and powerful institute?

This background paper, prepared especially for the Citizens Group on Electoral Process CGEP, looks at the powers and functions of the ECP in an attempt to answer the question: *How Independent is the Election Commission in Pakistan?* Authored by **Mr. Saleem Qazi**, Former Former Joint Secretary, Election Commission of Pakistan and reviewed by legal input from CGEP, the paper discusses in detail available powers and privileges of the ECP, comparing those with the ECI. The paper concludes it is not the lack of Constitutional powers of the ECP that holds it back, but it is the lack of effective implementation of those powers that makes the ECP suffer from a deficit of trust in the Pakistani society.

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February 2008

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### Introduction

“The will of the people shall be basis for the authority of the government; this will shall be expressed in periodic and genuine election which shall be by universal suffrage and shall be held by secret vote or by equivalent free voting procedures”

Universal Declaration of Human Rights

More than eighty (80) million registered voters in Pakistan will be going to poll on February 18, 2008 to elect their representatives to National and Provincial Assemblies. These will be eighth (8th) general elections in the country after 1970 when elections on adult franchise were held for the first time. Free, fair, transparent and credible elections play important role in democracy. Elections in today's world involve a host of stakeholders, some of them playing critical role, which provides basis for determining fairness or otherwise of an electoral process. The success of whole election process depends on the performance shown by a number of actors - voters, candidates, political parties, election management bodies, Federal and Provincial governments, law enforcing agencies, civil society organisations. But pivotal role remains that of the election management body i.e. Election Commission.

Frequent military interventions have not only hindered development of a democratic culture in the country but have also impeded Election Commission in its transformation as a strong national institution. After every general election, there has been a lot of hue and cry about credibility and authenticity of elections. There have been allegations and counter allegations. But there has been consistent demand of an independent Election Commission whose very presence may be sufficient to guarantee free, fair and transparent elections. Most political parties and civil society organisations have been advocating an independent Election Commission powerful enough to establish its writ, when needed. Different perceptions of an independent Election Commission exist in different political circles. It may be difficult to have a unanimous opinion on this issue but the following broad parameters can be helpful in judging independence of an Election Commission:

- That how much administrative and financial autonomy Election Commission enjoys to enable it

to function independent of any governmental influence

- That what powers /authority Chief Election Commissioner and Election Commission have under the Constitution and laws to ensure conduct of elections in a free and fair manner
- That whether Election administration has respect for law and is non-partisan and neutral

This paper attempts to find answers to some of the above points and to compare it, where necessary and possible, with corresponding position prevalent in neighbouring India. It may, however, be of some advantage to look at the history of Election Commission in Pakistan before we discuss basic issues.

### Brief History of the Election Commission

The second Constituent Assembly succeeded in framing and adopting the first Constitution of Islamic Republic of Pakistan in 1956, nine (9) years after independence and six (6) years after Constitution of India was adopted in 1950. This Constitution provided for election to national and provincial assemblies on the adult franchise basis. The Election Commission was established under the 1956 Constitution comprising Chief Election Commissioner/Chairman of the Commission and such number of Election Commissioners as may be determined by the President. The term of office of the Chief Election Commissioner was five years with upper age limit of 65 years. Election Commission was charged with duties of preparation of electoral rolls, their annual revision and organising and conducting elections to Assemblies. A separate institution 'Delimitation Commission' was also provided for delimitation of constituencies.

In 1958, Martial Law was imposed and the Constitution was abrogated. Consequently, the Election Commission also ceased to exist. Another Constitution was adopted in 1962, which provided for election of members of National and Provincial Assemblies through electoral college consisting of 80,000 Basic Democracy Members. This time Chief Election Commissioner was to be appointed by the President of Pakistan for a term of three years. Chief Election Commissioner enjoyed perks and privileges of a Judge of the Supreme Court. The Commission had two

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Members, one each from West and East Pakistan, who were Judges of their respective High Courts. The 1962 Constitution lasted only six (6) years and was abrogated by another Military General.

The National Assembly unanimously adopted the present Constitution in 1973. It provided for an Election Commission consisting of one (1) Chairman/Chief Election Commissioner and two (2) Members, who were to be Judges of High Courts. The number of Members of the Election Commission was later raised to four (4) by the Election Commission Order, 2002, which later became a part of the Constitution through the seventeenth amendment.<sup>1</sup>

### The Chief Election Commissioner

Article 213 of the Constitution provides for appointment of a Chief Election Commissioner, who is or has been a Judge of the Supreme Court or has been a Judge of a High Court qualified to be appointed as a Judge of the Supreme Court. The Chief Election Commissioner (CEC) is appointed by the President in his discretion for a period of three (3) years, extendable for one (1) year through a resolution to be adopted by the National Assembly.<sup>2</sup> The CEC cannot be removed from office except in the manner prescribed in Article 209 for removal from office of a Judge (of a Superior Court) i.e., through a reference to the Supreme Judicial Council.<sup>3</sup> This provides security in the office much needed for a CEC to act independently without any fear of unceremonial exit from the office if the appointing authority, for one reason or the other, is unhappy with and wants to get rid of the CEC.

In India, the President appoints the CEC for a period of six (6) years or the age limit of 65 years. Under the Indian Constitution, the President acts on the aid and advice of the Council of Ministers headed by the Prime Minister, so the selection of the CEC in India is virtually done by the Prime

Minister in consultation with the Cabinet<sup>4</sup> (whereas in Pakistan, the CEC is appointed by the President in his discretion). Initially, there used to be only one (1) CEC appointed to the Election Commission of India (ECI) but later, posts for two (2) more Election Commissioners were created making the total number of Election Commissioners to be three (3) in the ECI. However, the roles and powers of the three Election Commissioners remain equal.<sup>5</sup> The CEC in India is not required to be a sitting or retired Judge of Supreme Court but enjoys the same status and perks and privileges as are allowed to a Judge of the Supreme Court. The Election Commissioners in India are usually appointed from the Indian Civil Service (ICS) because of their experience of administration, and not from the Judiciary. "The job of the CEC requires an administrator with a judicial mind. The work of the CEC is like the work of a deputy commissioner and an executive. At the time of elections in India, the ECI has a polling staff of 50,000,000 and this kind of administration can only be handled by the executive, not by a judge," as in the words of a former CEC of India, Dr. M. S. Gill.<sup>6</sup> The Election Commissioners in India can be removed only in the manner and on the grounds prescribed for a Judge of the Supreme Court of India<sup>7</sup> - through impeachment by the Parliament of India.

### Functions and Powers of the Chief Election Commissioner

The CEC is charged with the duties of:

- Preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually
- Organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly
- Appointing Election Tribunals<sup>8</sup>

In fact, the 1973 Constitution and the laws lay down certain

1. Legal Framework Order, 2002 (Chief Executive's Order No 24 of 2002) Art.3

2. Constitution of Pakistan Article 215 (1)

3. Constitution of Pakistan Article 215(2)

4. How India Votes: Election Laws, Practice and Procedure. Second Edition. Lexis Nexis, 2006. Page 187

5. *Ibid.* Page 191-192

6. PILDAT Report: The Pakistani Young Parliamentarian's Delegation: Study Tour to India. April 2007. Page 17.

7. Website of Election Commission of India ([www.eci.gov.in](http://www.eci.gov.in)) Constitution of India Article 324

8. The Constitution of Pakistan: Article 219

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powers and functions which are to be exercised/performed solely by the CEC. One of these powers, under the Representation of People Act, 1976, is the power to appoint as many Election Tribunals as may be necessary, which shall consist of individuals who have been, are, or at the time of their retirement as a District or Sessions Judge, qualified to be a Judge of the High Court.<sup>9</sup> Subject to the right to appeal to the Supreme Court, the Election Tribunals provide the final adjudication in all election disputes.<sup>10</sup> This role is important in its impact in the overall elections. Disputes about the eligibility and qualifications of the candidates and the fairness of the elections, for example, are ultimately decided by the Election Tribunals and the quality of these decisions affect the general perceptions about the independence and fairness of the electoral process.

These powers and functions of the CEC vis-à-vis the Election Commission make the CEC an institution quite independent of the Election Commission. In India, these powers are vested in the Election Commission and not in the CEC.

### Constitution of the Election Commission of Pakistan

Article 218 of the Constitution of Pakistan provides:

- "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:
  - The Commissioner who shall be Chairman of the Commission; and

- 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."

In India the Election Commission is a permanent constitutional body that was established in 1950. Originally, the Commission had only one (1) CEC. Now it consists of a CEC and two Election Commissioners who are also appointed by the President. The superintendence, direction and control of the preparation of electoral rolls for, and in the conduct of, all elections to the Parliament and to the legislature of every State and of elections to the offices of the President and the vice President of India are vested in the ECI.<sup>11</sup> The Election Commission in Pakistan is also a permanent body since 2002 after promulgation of the Election Commission Order, 2002. Before that, Members of Election Commission were appointed on the eve of every general election to conduct that particular election. Now there is continuity in their appointment and they are retired when they are superannuated.

The Election Commission in Pakistan is entrusted with functions of organising and conducting the Election and making necessary arrangements for making it fair.<sup>12</sup> The ECI has the power of superintendence, direction and control of an election.<sup>13</sup> It exercises its powers frequently to maintain its authority but in Pakistan this show of authority is often lacking.

It may be mentioned here that the Election Commission is a

9. Section 57

10. Section 67 of the Representation of the People Act, 1976.

11. The Constitution of India: Article 324

12. The Constitution of Pakistan: Article 218

13. Article 324 of the Indian Constitution



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distinct constitutional entity consisting of the Chairman and four (4) Members. The Election Commission of Pakistan is the organisation set up to assist the Election Commissioner. Members of the Election Commission have no administrative role in its day to day work. Bye-elections to a House or a Provincial Assembly are conducted by the CEC and not the Election Commission. In India, the CEC does not enjoy any such distinct authority.

### Assistance to the Election Commission

The Constitution of Pakistan and the law provide that it shall be the duty of all executive authorities in the Federation and in the Provinces to assist the CEC and the Election Commission in the discharge of his or their functions.<sup>14</sup> This provision helps the CEC and the Election Commission to implement their orders and directions effectively in accordance with the law. Almost identical provisions are available in the Indian Constitution for their Election Commission.<sup>15</sup> Furthermore, the Election Commission of Pakistan through the concerned Provincial Government can requisition any vehicle, vessel or animal as may be needed by it for transportation in connection with elections.<sup>16</sup> What if any authority or any functionary of such authority does not obey orders of the Election Commission? The law does not provide any specific remedy. However, in such an eventuality the Election Commission can invoke its authority available under section 103A of the Representation of the People Act, 1976 which empowers it to take action for contempt of the Court like High Court.

### The Present Election Commission

As on the date of writing this paper, the Election Commission consists of the following:

1. Mr. Justice (Retd.) Qazi Muhammad Farooq (a retired Judge of the Supreme Court), CEC/Chairman
2. Mr. Justice Nasim Sikandar, Judge Lahore High Court/Member
3. Mr. Justice Ahmad Khan Lashari, Judge Baluchistan High Court/Member.

4. Mr. Justice Ghulam Dastgir Shahani, Judge Sindh High Court/Member
5. Mr. Justice Jahanazeb Rahim, Judge Peshawar High Court/Member (*Last two Members have been appointed on January 5, 2008*)

Member from the NWFP Mr. Justice Qazi Ihsan-ul-Haq Qureshi retired on October 14, 2004 and Mr Justice Muhammad Sadiq Laghari, Judge Sindh High Court retired on June 30, 2006. Both these offices of Members remained vacant from said dates till appointment of the present incumbents on January 5, 2008.

All decisions of the Election Commission are expressed in terms of the opinion of the majority of members including the CEC/Chairman. No election conducted or other action taken by the Election Commission can be declared invalid or called in question only on the ground of existence of a vacancy or absence of any member from any meeting<sup>17</sup>. Thus it will be seen that non-availability of two members of Election Commission for such a long period does not invalidate its actions in the eyes of law.

### Administrative Autonomy

The Constitution confers a high degree of autonomy and independence from the government of the day to those who manage the elections.<sup>18</sup> Therefore, one of the parameters to judge the independence of an election commission is to determine as to how much it is free of governmental pressure or influence in the administrative matters.

The Election Commission of Pakistan enjoys considerable amount of autonomy in administrative matters. Article 221 of the Constitution provides that until Parliament enacts otherwise, the CEC may, with the approval of the President, make rules for the appointment by the CEC of officers and servants in connection with the functions of the CEC or the Election Commission.

Accordingly, the President promulgated the Election Commission (Officers and Servants) Rules, 1989 after their

14. The Constitution of Pakistan: Article 220. The Election Commission Order, 2002. Article 9

15. Constitution of India Article 324(6)

16. The Representation of the People Act, 1976: Section 6

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approval. These Rules contain terms and conditions of service of the Election Commission employees. In the matters of appointments, promotions, postings and transfers, conduct and discipline and other service matters, the rules and conditions applicable to the civil servants of corresponding posts in the Federal Government are also applicable to the employees of the Election Commission. Appointing authorities for different cadres/basic pay scales have been prescribed under these rules. The CEC makes all appointments, promotions, posting and transfers of the Election Commission employees or other officers of the Election Commission designated under the Rules<sup>19</sup>. No reference to Government is required to be made for this purpose. The CEC has been directly appointing Secretaries of the Election Commission. However in the past, Federal Government has been appointing its officers in the post of secretary, Election Commission.

The CEC is also competent to re-employ any retired employee of the Election Commission if he feels that it is necessary and in the public interest<sup>20</sup>. The CEC does not need approval of the Federal Government or any other authority in this regard.

It is a rather sad commentary on the seriousness with which the Parliament takes its responsibility as a legislature that it did not frame any rules relating to the appointment etc. of the officers and servants of the Election Commission since the constitution was framed in 1973 as per Article 221. As a result, these rules are framed by the CEC with the approval of the President of Pakistan.

### Financial Autonomy

For efficient working of an election management body, it is essential that it receives sufficient funds, in time, according to its requirements for successful completion of various stages of election process. One major hurdle in the independent working of the Election Commission was its total dependence on the Finance Division in all financial matters. This sometimes created very embarrassing

position for the Election Commission. The Election Commission has, therefore, been consistently vying, over the years, to get some sort of financial autonomy. Finally it succeeded in the year 2000 when after a visit of then Chief Executive (General Pervez Musharraf) to the Election Commission Secretariat, the Finance Division approved that the following powers will now be exercised by the Chief Election Commissioner:

- "Full powers to re-appropriate funds from one head of account to another head of account within the allocated budget of the Election Commission of Pakistan.
- Full powers to sanction expenditure on any item from within the allocated budget of the Election Commission of Pakistan.
- Full power to change nomenclature and upgrade/downgrade any post provided expenditure is met from within the over all allocated budget of the Election commission of Pakistan"<sup>21</sup>

Now the Election Commission is quite free to manoeuvre within its allocated budget and need not make references to the Finance Division on even petty matters such as re-appropriation of funds from one head of account to another. In the past, Finance Division used to cause unnecessary hurdles or delays, on technical grounds or on the excuse of financial constraints, in the references made to them, which the Election Commission urgently or essentially needed in connection with successful completion of some electoral activity. However, the Election Commission has still to seek approval of Finance Division for creation of any new post required by them for performance of their functions. In India the expenditure of the Election Commission is voted by the Parliament<sup>22</sup>. The ECI is free to make expenditure according to its requirements once it gets budget from the Government but to date, it has no specific authority available as was delegated to the CEC in Pakistan in 2000.

17. The Election Commission Order, 2002 (The Chief Executive's Order No 1 of 2002) Article 8

18. Dr. Sakuntala Kadigamar-Rajasingham--- Essentials of Free and Fair Elections.

19. The Election Commission (Officers and Servants) Rules, 1989. Rules 5,6,7,8,9,10 and 12

20. *Ibid* Rule 11

21. Finance Division, Government of Pakistan- Office Memorandum No F.3(7) Exp-111/2000 dated the 25<sup>th</sup> July, 2000

22. How India Votes: Election Laws, Practice and Procedure. Second Edition. Lexis Nexis, 2006.

### The Election Commission - Powers and Authority

For free, fair and credible elections, providing structure of an independent election management body, unless it is supported by implementable electoral laws, is not sufficient. For implementing such laws in an effective, neutral and non-partisan manner, the Election Commission is required to be vested with adequate powers and authority. It is, therefore, important to see if the Constitution and laws provide sufficient powers and authority to the CEC and Election Commission to enable them to supervise and conduct electoral process in a fair and transparent manner. A cursory glance at our electoral laws will reveal that, contrary to common perception prevalent in many political circles, the Election Commission in Pakistan possesses considerable legal powers and authority, which if properly exercised, can be instrumental in making electoral process, to a large extent, transparent and credible. Some relevant legal provisions empowering the Election Commission are discussed below briefly:

#### 1. Powers of the Election Commission

Article 6 of the Election Commission order, 2002 (Chief- Executive's order No 1 of 2002)

- **“Powers of Election Commission.”-(1)** The Election Commission shall have power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.
- (2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.”

These are very vast powers available with Election

Commission. The Election Commission can issue any direction or order which may be required for the performance of its functions i.e., to organise and conduct elections honestly, justly and fairly. Article 9 C provides bar of jurisdiction. It says that no court shall question the legality of any action taken in good faith by or under the authority of the Election Commission or the Chief Election Commissioner and other functionaries working in connection with the conduct of election. This legal provision can effectively be used by the Election Commission during pre-poll period when there are numerous complaints of violation of the code of conduct during election campaign by political parties and candidates and alleged pre-poll rigging particularly by the pro-government elements.

After announcement of schedule of elections by the Election Commission, no correction (including fresh enrolment of a voter) can be made in the electoral rolls<sup>23</sup>. But after schedule of elections was announced in 2002, a number of intending candidates approached the Election Commission for their enrolment as voter so that they may be able to contest elections. The Election Commission invoked the authority available under Article 6 of the Election Commission Order, 2002 regarding doing complete justice in any matter pending before it and ordered enrolment of such applicants, who had shown intention of filing nomination papers. However, no discrimination was made on the basis of political affiliations of applicants and this special concession, otherwise not expressly available in the law, was extended only to such applicants, who wanted to file nomination papers to contest elections. For ongoing elections too this facility was made available to prospective candidates under the same legal powers of the Election Commission.

#### 2. Executive Authorities to Assist the Commission

As stated earlier, all executive authorities in the Federation and in Provinces are duty bound to assist the CEC and the Election Commission in performance of functions<sup>24</sup>. Thus Election

23. The Electoral Rolls Act, 1974. Section 20

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Commission can seek assistance of any government official or department for implementation of its orders passed on any matter pending before it. This provision also enables them to requisition services of government officials for appointment as District Returning Officers, Returning Officers, Assistant Returning Officers and polling staff.

### 3. Conduct of General Elections, 2002

As the Constitution was held in abeyance in the year 2002, special laws were framed for conduct of general elections. Conduct of General Elections Order, 2002 was one such law, which has now been protected under 17th amendment in the Constitution. Article 4 thereof authorised the CEC and the Election Commission to adopt such procedures, do such acts, pass such orders, issue such directions and take such ancillary, incidental and consequential steps as may be deemed necessary for effectively carrying out the elections to the Parliament and Provincial Assemblies in October, 2002. How and to what extent this authority was used by Election Commission in 2002 is now a matter of history but there can not be two opinions about availability of unfettered authority to Election Commission in the matter of conduct of elections. In 2002, the Constitution was held in abeyance; hence special law was required to be promulgated. This Article was made specific to October, 2002 General Elections. It is, therefore, for the Courts to interpret whether these powers are still available with the Election Commission for forthcoming elections.

### 4. Action against Delinquent Officials

Sub-sections (6) and (7) of section 7 of the Representation of the People Act, 1976 provides as under:

“(6) The Commission or the Commissioner may, at any time, for reasons to be recorded in writing, suspend any officer

performing any duty in connection with an election, or any other public functionary, or any member of the police force or any other law-enforcing agency who obstructs or prevents or attempts to obstruct or prevent the conduct of fair and impartial poll or interferes or attempts to interfere with an elector when he records his vote, or influences in any manner the polling staff or an elector or does any other act calculated to influence the result of election, and make such arrangements as it or he may consider necessary for the performance of the functions of the officer so suspended.

(7) Where the Commission or the Commissioner suspends any officer under sub-section (6), the Commission or the Commissioner *shall refer the matter to the appropriate authority for taking disciplinary action against such officer.*”

The Election Commission can utilize this power for taking action against delinquent government officials who violate elections laws or commit irregularities while performing their duties in connection with elections. This provision, if properly publicised, can effectively control malpractices by election officials particularly at the polling stations.

In India, government employees working as chief electoral officers, district election officers, returning officers, polling staff and all other employees engaged in connection with conduct of elections are treated as on deputation with the ECI and they are subject to superintendence, control and discipline of the ECI. What is more, the ECI has adopted a practice to transfer such officers who either belong to the district or have been serving in the district for over 4 years at the time of election to ensure that bureaucracy is not in a position to influence the conduct of a free and fair election<sup>25</sup>. When the ECI took action against negligent and partisan officials, cases were taken to courts. Now the ECI and the

24. Constitution of Pakistan Article 220

25. PILDAT Report: The Pakistani Young Parliamentarian's Delegation: Study Tour to India. April 2007. Page 17.

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Central Government have reached agreement whereby the ECI can suspend an official for dereliction of duty or replace him/her. If a case is referred to some authority for action, that authority will inform the ECI about action taken within six months.<sup>26</sup>

### 5. Alteration in Election Programme

In terms of section 11A of the Representation of the People Act, 1976, the Election Commission is empowered to make alterations in the election programme already announced by it (without making any reference to any other authority) as it may deem necessary. Pursuant to this authority, the Chief Election Commissioner recently announced postponement of polling for General Elections from 8<sup>th</sup> January to 18<sup>th</sup> February, 2008.

### 6. Certain Offences Triable by Officers Authorized by the Commission

According to Section 86 A of the Representation of the People Act, 1976, the Election Commission has power to authorise any officer performing a duty in connection with an election, to exercise the powers of a Magistrate of the first class for summary trial of certain electoral offences. This helps in maintaining law and order on the polling day and also ensures conduct of polling in smooth and orderly manner.

### 7. Power of the Commission to Punish for Contempt

There is possibility that some individual or authority may openly flout any order or direction of the Election Commission or the CEC. In that case law provides power of the High Court to the Election Commission to punish any person for contempt of Election Commission<sup>27</sup>. This is a legal safeguard available with the Chief Election Commissioner and the Election Commission ensuring that their orders and directives made in connection with an election are implemented by concerned authorities in letter and spirit.

### 8. Polling Day and Post-polling Actions

It has been noticed that sometimes on polling day some miscreants create such situations at some polling stations which makes holding of free and fair elections rather impossible. In such a scenario, the Election Commission has authority to act in a manner to ensure that its mandate of conducting elections in a peaceful and politically neutral atmosphere, is fulfilled. Section 103 of the Representation of the Peoples Act, 1976, which vests these powers in the Election Commission, is reproduced below:

**“103. Commission to ensure fair election, etc.-**Save as otherwise provided, the Commission may

- (a) stop the polls at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under this Act or the rules, including rejection of a ballot paper; and
- (c) issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules.”

After polling, the Election Commission receives quite a substantial number of complaints from defeated candidates and political parties about alleged malpractices committed at the polling stations. They seek some immediate remedial action. While normally defeated candidates, if they have any grievances, are required to take their cases to appropriate Election Tribunal, there may,

26. How India Votes: Election Laws, Practice and Procedure. Second Edition. Lexis Nexis, 2006. Pages 231-233.

27. The Representation of the People Act 1976, Section 103A

however, be cases where apparently gross irregularities have been committed and the Election Commission's immediate interference becomes inevitable to maintain confidence of voters in the credibility of the whole election process. Law in such eventuality provides adequate powers and authority to the Election Commission to declare such an election void if it, from facts apparent on the face of record, is convinced that grave illegalities have been committed. Relevant provisions of law are reproduced below:

**“103 AA. Power of Commission to declare a poll void.--(1)**

Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such summary inquiry as it may deem necessary, the Commission is satisfied that, by reason of grave illegalities or violation of the provisions of this Act or the rules, the poll in any constituency ought to be declared void, the Commission may make a declaration accordingly and, by notification in the official Gazette, call upon that constituency to elect a member in the manner provided for in section 108:

(2) Notwithstanding the publication of the name of a returned candidate under sub-section (4) of section 42, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to a decision of a Tribunal.

(3) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be a Tribunal to which an election petition has been presented and shall, notwithstanding anything contained in Chapter VII, regulate its own procedure”.

### Conclusion

The legal provisions enumerated in the preceding paragraphs provide ample and convincing proof that the Election Commission in Pakistan is not totally devoid of teeth to bite. What is required is political will and commitment to act - to act when it is essential for the sake of free, fair, impartial and transparent elections.

Election laws in India and Pakistan are almost identical. In fact in the Representation of the People Act, 1976 of Pakistan many provisions have been replicated from the Representation of the Peoples Act, 1951 of India. The ECI is headed by senior bureaucrats and has no independent electoral machinery in the field. Instead the ECI totally depends on the administrative machinery of the Government of India. In Pakistan, the Constitution provides the qualification of a CEC to be from the higher Judiciary only and the Election Commission utilises services of a large number of judicial officers for the conduct of elections.

The difference, it appears, lies in the strength of the unfettered Indian democracy and the rule of law in India that the ECI has been able to effectively carry out its functions enjoying the trust of all stakeholders, the public and the media. However, one must also note that the ECI reached the pinnacle of its power, authority and its respect as a non-partisan and independent institution under one of its CECs, the celebrated Mr. T. N. Seshan, reminding one of the difference one individual can make in strengthening an institution. The Election Commission and the ECI enjoy almost similar constitutional powers in fact the Election Commission of Pakistan enjoys financial autonomy since the year 2000 while financial autonomy for the ECI is still a part of its proposed electoral reforms submitted to the Government of India since July 2004<sup>28</sup> - it is the effective utilisation of the constitutional and legal powers that makes all the difference.

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28. [Http://www.eci.gov.in/PROPOSED\\_ELECTORAL\\_REFORMS.pdf](http://www.eci.gov.in/PROPOSED_ELECTORAL_REFORMS.pdf) - Page 16. As accessed on January 24, 2008



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