

Electoral Administration: Comparative Perspectives of Pakistan and India

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ABSTRACT

Electoral history is replete with uproarious events, especially from Pakistani perspective; in all elections, the impartiality of the commission and transparency of the electoral process has been subject of controversies. In this context, year 2008 can be reckoned as eventful year as it had to witness the demise of iconic Benazir Bhutto. The General Elections 2013, however, have been held to be of some quality as compared to 2008 and 2018 General Elections. The Result Transmission System and counting of votes are those fiascos which have allegedly marred the credibility of the elections. On the other hand, Indian electorate is ten times greater than that of Pakistan. Despite being colossal in size and riddled diversification, the Indian Election Commission has always been enjoying the trust and confidence of the Indian masses. Surprisingly, the Commissions in both of the countries have been equipped with almost same constitutional powers but, unfortunately, at the end of

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electoral process election crew is demonized and a never ending chain of litigation is ushered. This paper is an attempt to touch the key aspect of electoral process in both jurisdictions and explore the possibilities of redeeming the declining trust and confidence of the electorate by examining the constitutional, legislative and judicial approaches in both of the countries. As the work hand is comparative research, therefore, efforts have been made to adhere to archival sources i.e. primary and secondary sources through the prisms of constitutional instruments, statutory provisions and decisions of the apex courts on both the sides.

Introduction

In its quest for the fulfillments of international pledges as to the flourishment of democratic values within country, in 2010, Pakistan has ratified the convention.¹ The instrument, besides containing an exhaustive inventory of the civil and political rights which the state parties pursuant to it have accepted to honour and to ensure,² reiterates the conduct of elections. As the enjoyment of these rights depends upon the mechanisms evolved by the signing country, therefore, the indigenous enforcement mechanism is the basic step contemplated by the covenant to give effect to the rights of individuals it enshrines.³ As to the international implementation, that is the reporting system as well as the inter state and the individual complaint system, is set up as a secondary means of implementation providing for a control system.⁴ So, in this context, it becomes imperative to assess the initiatives taken by India and Pakistan for making the electoral process more transparent, fair and equitable. As the extant system is believed to have been replete with distortions and evil practices, an extensive examination of

1 *International Covenant on Civil and Political Rights*, 1966.

2 Anja Seibert-Foer, "Domestic Implementation of the International Covenant on Civil and Political Rights Pursuant to its Article 2 Para 2," *Max Planck Year Book of United Nations Law*, 5 (2001): 399-472.

3 Seibert-Foer, "Domestic Implementation of the International Covenant on Civil and Political Rights Pursuant to its Article 2, Para 2".

4 Foer, "Domestic Implementation of the International Covenant.

the relevant laws will be a panacea to purge them of the prevalent impurities.

According to an estimate, in the India's parliamentary elections of 2009, more than 417 million voters exercised their right of franchise, which turned out to be 58 percent of the voters on the electoral rolls. Both of them have some similarities. Both have parliamentary systems of the governments to be run, with certain deviations, on Westminster model. Both have federal system, with a central government and provincial/state governments. Constitutional arrangements on both sides of the border give more powers to the central government in matters of elections. But it is interesting to note that despite some commonalities, both the jurisdictions have a lot to differ. For instance, India harbors more cultural variety than its counterpart. Electoral process, in India, by and large, has been fair and free till the 4th General Elections.⁵ The system, however, happened to be stigmatized since the 5th General Elections as numerous snags had hamstrung the process.⁶

Historical Progression

As both India and Pakistan have been under the colonial clutches for about ninety years, therefore, till the partition of India in 1947, the electoral history will be considered to be common. In this context, the word 'election' is not alien to the inhabitants of this part of the planet. One can perceive, while going through electoral annals, the traces of democracy. Ancient scriptures dating back to the *Vedic* period are replete with allusions to the republic and democracies which were prevalent in various parts of the then India.

Consequent upon the subjugation of India, the British Raj decided to make provisions relating to the inclusions of Indians in the process of law making. With this urge, the Indian Councils Act, 1861 was the first legislative initiative

5 Amandeep Kaur, "Issues of Reforms in Electoral Politics in India: An Analytical," *The Indian Journal of Political Science* LXXIII, no.1 (2012): 167

6 Kaur, "Issues of Reforms in Electoral Politics in India".

which empowered the Governor General and the Governors to nominate Non-Official Members in respective Councils.

Lok Sabha

After securing independence from the colonial clutches in 1947, India, constitutionally, opted to be socialistic, secular and democratic republic and reiterated that the success of democracy was dependent on fair, free and transparent elections.⁷

Indian parliament is bicameral in composition i.e. Lok Sabha and Rejia Sabha. Lok Sabha, direct voice of the public, is composed of representatives chosen directly by the people on the basis of the adult franchise. The maximum strength of the house is 552. India went for first elections to Lok Sabha in April 1952.

For instance, the Law Commission has reflected that the extant system has been instrumental in stigmatizing the electoral process with numerous inequities and distortions.⁸ In this respect, multiplicity of political parties is of paramount importance.⁹ For instance, there are some states wherein some political parties have established their suzerainty.¹⁰ The countervailing disadvantage of such situation is that the returned candidate receives, in various situations, more or less 30 percent of the legal votes cast.¹¹ Thus, the residuary votes practically remain unrepresented in the representative bodies.¹²

7 R. Ramesh, "Historical Perspectives of the Electoral Reforms in India," *Proceedings of the Indian History Congress 2011*, Vol. 772, Part. II, 1325.

8 Election Commission of India, *Report of Election Commission in India, 1999*.

9 Election Commission of India, *Report of Election Commission in India, 1999*.

10 Election Commission of India, *Report of Election Commission in India, 1999*.

11 Election Commission of India, *Report of Election Commission in India, 1999*.

12 Election Commission of India, *Report of Election Commission in India, 1999*.

Parliament

The first constituent assembly, as ordained by the Indian Independence Act, 1947, consisted of 69 members. It would not be out of place to mention that the assembly was entrusted not only the task of constitution making but it had to sit as legislative assembly as well. Notwithstanding the fulfillment of the task entrusted to the assembly, it had lost its mandate, as opined by Mr. A. K. Brohi, after the partition of India for it was elected for the united India. The assembly had an inherent infirmity, Mr. Brohi added, as the same was elected indirectly by the members of East Bengal and the West Punjab excluding therefrom the rest of provinces. Pakistan could witness its first formal constitution in 1956. The Parliament, under the said constitution, consisted of only one House to be known as National Assembly, consisting of 300 members who were equally divided between the East and West Pakistan as per the then scheme. The members were to be elected on the principle of adult franchise for a period of five years.¹³ Arrangements envisaged under the constitution couldn't survive any longer and as a result of another drive, Presidential form of government was prescribed under the new constitutional arrangements.¹⁴ The concept of unicameral legislature at the federal level and two provincial legislatures was kept intact under the new set up. Increase in number of legislators and reservation of six seats in National Assembly for women were, however, new initiatives which were demonstrated in the new Constitution. As a result of abrogation, the Constitution was replaced by an interim arrangement.¹⁵

Unlike previous arrangements, the new constitution guaranteed bicameral legislature namely, the National Assembly and the Senate. Albeit, the idea of second chamber had been floated in the draft constitution made by the first constituent assembly, but unfortunately, it couldn't

13 Article 44 of the Constitution of the Islamic Republic of Pakistan, 1956.

14 Constitution of the Islamic Republic of Pakistan Pakistan 1962.

15 Interim Constitution of Pakistan, 1972.

be materialized due to certain exigencies. The national assembly, originally, consisted of the the members who were to be elected directly by way of adult franchise. As the representation to the National Assembly was to be on the basis of population, therefore, the smaller provinces would likely to be meagerly represented. So, in order to erode the sense of deprivation, the provision of Upper House where equal representation would be ensured to all the provinces would be *sine qua non*. Besides ensuring checks and balances, the Upper House turned out to be an efficacious forum for guaranteeing provincial harmony and providing shield against brutal majority commanded by the major provinces in the National Assembly.¹⁶

Democracy, Free and Fair Elections

Success of a democratic set up is contingent upon prompt complicity amongst the Legislature, Executive, Judiciary, Election Commission, Media, Political Parties, and above all the citizenry.¹⁷ In this context, therefore, it becomes imperative that every individual of the society should play his defined role for the flourishing of democracy.¹⁸ Moreover, some times, the success of democracy also leans on the compliance of restraint on the part of the constitutional functionaries.¹⁹ Free and fair election and an uninfluenced voter are the basic pillars of true democracy.²⁰ On both sides of the border, money power and muscle power have been instrumental in deciding the fate of the elections. So, in order to put a check on the role of money, power and muscle, it is inevitable to revamp the electoral system lest the democracy would be regarded a sham by its believers. As the successive regimes have been demonstrating half hearted attempts by introducing some amendments in various

16 Hamid Khan, *Constitutional Law and Political History of Pakistan*, 2nd ed., (Oxford: Oxford University Press, 2009), 381.

17 Election Commission of India Vs Shevaji and others AIR 1988 SC 61.

18 Election Commission of India Vs Shevaji and others AIR 1988 SC 61.

19 Election Commission of India Vs Shevaji and others AIR 1988 SC 61.

20 Shri Umed V Raj Sigh and others AIR 1975 SC 43.

provisions of the law therefore, the dream of transparent and accountable election process couldn't be achieved. So, a pragmatic crusade is *sine qua non* for purging the extant system of impurities like influence of ill gotten finances and muscle force of the criminals. As democracy evolved on the foundation of 'free and fair election' is deemed to be the basic feature of the constitution²¹, therefore, democratic process cannot acquire required impetus unless the voter participates in it as a well-informed voter.²²

(A) Constitutional Provisions in India

Democracy has been said to be the government of the people, by the people and for the people. As it is a continual participative phenomenon, not a cataclysmic, periodic exercise, therefore, even a little man, in his multitude, marking his vote at the poll does a social audit of his parliament plus political choice of this proxy.²³ In this context, adherence to adult franchise and general elections come out to be constitutional obligations.

The proposition is less eloquence and more legal than what it might sound for the following reasons. Firstly, the Article 326 demonstrates that the elections to the federal and state legislatures shall be on the principle of adult suffrage.²⁴ Secondly, the Articles 81(1) (a) and 83, cumulatively ordain that, all the legislators in Lok Sabha shall be chosen by direct election from the territorial constituencies in the State.²⁵ Thirdly, the Article 81(2) (b) obligates the division of each State shall into territorial constituencies in prescribed way and the Article 83(2) speaks of the duration of the Lok Sabha House i.e. 5 years.²⁶ The expiry of the period of 5

21 M/S Amco Batteries Limited, Bangalore Vs Collector of Central Excise, Bangalore [2003] INSC 120.

22 Amco Batteries Limited, Bangalore Vs Collector of Central Excise.

23 Mohinder Singh Gill and others Vs The Chief Election Commissioner, New Delhi [1977] INSC 227.

24 Mohinder Singh Gill and Others Vs The Chief Election Commissioner.

25 Mohinder Singh Gill and Others Vs The Chief Election Commissioner.

26 Mohinder Singh Gill and Other Vs Chief Election Commissioner.

years reckoned from the date of the first meeting shall operate for dissolution of the House.²⁷ So, collective message which emerges out of constitutional arrangement demonstrates a periodical election to the Lok Sabha based on adult suffrage. Likewise, cumulatively command of the Articles 168, 170 and 172 reflects periodical election based on adult suffrage to State legislatures.²⁸

Basic concept adumbrated in the constitutional provisions is that the representatives of the people should be elected by the people. Under democratic infrastructure, it is submitted, when the ballot papers are counted, the poor tenant and the richest landlord/industrialist/entrepreneur has equal voice in deciding the fate of the politicians. Unlike some, even advanced, democracies, the 'doctrine of privilege of suffrage' has never been in vogue in Pakistan. History is witness to this fact that this political reality has not always been honored in America. In the eighteen hundreds, less than 10 percent of the American population comprised of qualified voters.²⁹ In this arena, sex, colour, property holdings, payment of taxes, past servitude and conviction to infamous crimes were considered to be major legitimate limitations on the privilege of suffrage.³⁰ Literacy test and other racial minorities were other anomalies which were rampant in the then America.³¹

Election Commission

Admittedly, principal drive behind the establishment of Election Commission is to conduct free, fair and transparent elections to various constitutional bodies. For prompt execution of this onerous task, it has been equipped with necessary powers which will, believably, emancipate it from

27 Mohinder Singh Gill and Other Vs Chief Election Commissioner.

28 Mohinder Singh Gill and Other Vs Chief Election Commissioner.

29 Alan Reltman and Robbert B. Davidson, *The Election Process: Law of Public Elections and Election Campaign*, 2nd ed., (New York: OCEANA Publications, 1980), 61.

30 Reltman and Davidson, *The Election Process*.

31 Reltman and Davidson, *The Election Process*.

the mighty clutches of the authority of executive. Establishment of a Democratic Republic as enunciated in the preamble to the Constitution is the *raison d'être* of this whole scheme of a representative democracy. In this context, the apex court pronounced in Mohinder Singh Gill's case that the heart of the parliamentary system was free and fair elections to be arranged, on adult franchise, periodically.³²

Being apex body, the Election Commission is enjoined upon the constitutional obligation to hold, supervise and adjudicate upon the electoral issues in India. As the party elections have attained the shape of global norms, therefore, being one of the biggest democracies on global map, India is not exception to this rule. Returning regime, the scholars and dexterous calculate, cannot attain legitimacy unless marred by public trust and confidence.³³ According to the constitution, besides the task of superintendence, direction and control of the preparation of the electoral rolls, the election commission has to conduct all the elections to parliament, legislature of every state, to the offices of the president and vice-president. For this purpose, the president of India has to appoint, after consulting the Commission, such regional Commissioners as he may deem appropriate. Their sole task is to provide assistance to the Commission in connection with the duties enumerated under clause (1) of the Article 324. Autonomy or independence of the Election Commission has been an area of acute acrimony in India. In order to know the factors undermining its autonomy, various endeavours have been made and Tarkunde Committee, in this context seems to be the first indubitable formal attempt to make recommendation for purging the body of its clumsy aspects. The Committee, inter alia, recommended that the election commission, on the footprints of judiciary, needed to be independent not only in theory but it ought to be so in terms of organizing and conducting elections. The

32 Mohinder Sing Gill's Case.

33 Nicholas Kerr, Anna Luhrmann, "Public Trust in Manipulated Elections: The Role of Election Administration and Media Freedom," *Electoral Studies* 50 (2017): 50-67.

Commission had, unlike its previous traditions, the committee added, lost its image of being independent of the Executive owing to the fact that the choice of the Chief Election Commissioner had never been based on criteria acceptable to all segments of the community. Fact of making it the concentrating camp of the superannuated officials had been instrumental in providing comfort to the notion that the incumbent would always indebted to the Government for his continuation in slot. It was strenuously opined that appointment of members would be presidential prerogative but on the advice of a committee consisting of the Prime Minister, Leader of the Opposition (or alternatively a Member of the Parliament selected by the opposition) in Lok Sabha and the Chief Justice of India.

For the satiation of its urge for the reformation of election commission, India would venture upon the drive in 1990 by appointing another committee under Dinesh Goswami, the then law minister. The committee, after truncating the recommendation made by the Tarkunde Committee, opined that the Chief Election Commissioner would be appointed by the President in consultation with the Chief Justice and the Leader of the Opposition and consultation would have legal basis. As to the rest of the Election Commissioner, the Committee added, that they would be appointed by the President in consultation with the Chief Election Commissioner and after the expiry of their term; they would be debarred from seeking any office including the office of the Governor under the Government

Composition of Election Commissions

Indian Constitution envisages an Election Commission comprising of the Chief Election Commissioner as its head and such number of Commissioners, if any, as shall be determined by the President. All the appointments to apex body shall be the presidential prerogative. Initially, the body did comprise only of the Chief Election Commissioner. It was not until 1989 that two other members, albeit for a very short period, were elevated by the President of India.

Undisputedly, actuated by pejorative observation of the Apex Court, catena of controversial decisions and ongoing rift between the government and the Commission, the former decided to embark upon the constitution of a multi-member Election Commission through an Ordinance which became an Act of Parliament in 1994.³⁴

A careful perusal of the provisions transpires that on the behest of Commission, the President or the Governor of the state are bound to place at its disposal sufficient crew for the functions of the election commission.³⁵ It is equally important to note that the staff placed at the disposal of the commission must comprise of the persons who must be employees of either of the Governments.³⁶ Similarly, if such requisition is initiated by the Regional Commissioner, the Local Authority shall be equally bound to make necessary arrangements for the supply of staff in connection with an election.³⁷ A cartel analysis of the entire gamut of election reveals that trust and confidence of the electors cannot be vindicated without having a strong and autonomous election commission. With this urge in mind, the architects of the constitution on both sides of the line have made robust efforts.

For electoral administration in Pakistan, the Constitution envisages a permanent Election Commission consisting of a Chairman and four Members. As to the Chairman, any person who has served as judge of the Apex Court, a senior civil servant or a technocrat and is below sixty eight years of age. The process of appointment of the Commissioner is cumbersome in the sense that it has to pass through two or sometimes three tiers. As a first step, the Prime Minister in consultation with the Leader of Opposition in the National Assembly has to finalize a panel of three for the deliberation

34 The Chief Election Commissioner and other Election Commissioners (Conditions of service) Amendment ordinance, 1993.

35 Article 324 of the Indian Constitution 1950.

36 Article 324 of the Indian Constitution 1950.

37 Article 159 of the Indian Constitution 1950.

of the Parliamentary Committee. In this Committee fifty percent representation is to be given to the Treasury Benches and fifty percent representation is to be given to the Opposition parties on the ground of their strength in Parliament. Out of total members, one-third is to be taken from the Upper House. If, however, Lower House is dissolved, all of them would be opted from the Senate. In case of disagreement, the Prime Minister and the Leader of Opposition has to send separate panels for the deliberation of the Committee.

All the elevations to this constitutional body would be for five years. Prescribed procedure would be adhered to for the removal of Commissioner or any other member.³⁸ The Commissioner or any of the members may, however, under his own handwriting, tender resignation to the President. In case the office of the commissioner falls vacant due to any exigency, absence or other inability to perform the functions of the Commissioner, the task shall be entrusted to a Commissioner who is the most senior in terms of age. Before entering upon his office, the Commissioner has to administer oath in prescribed manner.

Functions of the Commission

Framers of the constitution were immensely sensitive to the importance of the fair and free elections in the country. For this purpose, they had made incisive provisions in the constitution³⁹. Being a code in itself, this part of the constitution eruditely addresses the issue relating to enactment of laws and establishment of vibrant machinery for conducting elections.⁴⁰ Under the said chapter, *inter alia*, the powers and functions of the Election Commission have been adumbrated as under:

38 Article 209 of the Constitution of Islamic Republic of Pakistan 1973.

39 Articles 324 to 329 of the Constitution of India, 1950.

40 N. P. Ponnuswami Vs Returning Officer, AIR 1952 SC 4 as quoted in *Commentary on the Constitution of India*, Durga Das Basu (Haryana: LexisNexis Butterworths Wadhwa, Nagpur, 2007).

Electoral Rolls

The Commission, in India, has been riddled with the duty of superintendence, direction and control of all aspects of electoral rolls for all elections to the legislature and constitutional offices.⁴¹ If the law is silent on a particular issue the Election Commission, being an administrative body, can act under the Article 324, which is a some sort of “reservoir of power” to ensure unsullied elections.⁴² As the words “superintendence, direction and control are of widest amplitude, therefore, the same are sufficient to encompass necessary powers to ensure unpolluted elections in the country.⁴³

In order to eliminate the possibilities of injustice to any of the citizens, constitutionally, entire electoral machinery, of union or state, has been put at the disposal of the Election Commission.⁴⁴ For this purpose, the Commission would be authorised to pass orders to the polling staff deployed for any issue of the electoral rolls.⁴⁵ Although, initially, the idea of separate election commissions for the Union and States was expounded but with the proposal put forward by Dr. Ambedkar, the idea couldn't be materialized.⁴⁶

In Pakistan, like India, idea of independent Election Commission does sound with same voracity. Chief responsibility of the Commission is to conduct elections to the legislatures and constitutional offices as may be determined by the law.⁴⁷ Indubitably, free, fair, just and honest elections are edifice of true democracy which, without having accurately prepared/revised electoral rolls, will become a farce crusade.⁴⁸ Preparation of such list is not only

41 Ponnuswami Vs Returning Officer, AIR 1952 SC 4.

42 Union of India Vs Association for Democratic Reforms, AIR 2002 SC 2112.

43 Election Commission of India Vs Ashok Kumar, AIR 2000 SC 2979.

44 Basu, *Commentary on the Constitution of India*.

45 Basu, *Commentary on the Constitution of India*.

46 Basu, *Commentary on the Constitution of India*.

47 Article 21 of the Constitution of Islamic Republic of Pakistan 1973.

48 Worker's Party Pakistan Vs Federation of Pakistan, PLD 2012 SC 681.

the constitutional command but fundamental right of the citizens as well.⁴⁹ So, any deviation from the fulfilment of constitutional command paves the way to judicial intervention under the Article 184(3).⁵⁰ For the satiation of this urge, task of preparation of unpolluted/verified⁵¹ electoral rolls for elections also comes within the preview of the Election Commission.⁵² Notwithstanding the constitutional command, the word “hold” election also includes the act of preparation of electoral rolls.⁵³ Apex courts on both sides of the border have been cognizant of their constitutional mandate *viz-a-viz* the preservation of edifice of democracy. With this purpose in view, the constitutional courts have been upholding any complimentary endeavour for the flourishing of democracy through their erudite pronouncements. For the achievement of this goal, preparation or revision of accurate electoral lists has been held to be the task of the Election Commission.⁵⁴ In this respect, the Commission can seek the assistance of credible and independent agencies and reliance on conventional means like National Data and Registration Authority has to be discarded, rather the Commission, by engaging Army and Frontier Corps, is obligated to launch door to door drive for electoral rolls.⁵⁵

Settlement of Disputes

As stated earlier, election Commission is basically an administrative body, but under certain exigencies it has to assume adjudicatory roll as well. But before venturing upon the adjudicatory aspect of the Election Commission in India, it is imperative to establish whether the Commission qualifies to be a tribunal. On the touch stone of an unflinching test

49 Imran Khan Vs Election Commission of Pakistan, PLD, 2013 SC 120.

50 Imran Khan V Election Commission of Pakistan.

51 Imran Khan Vs Election Commission of Pakistan, 2012 SCMR 448.

52 Article 219 (a) of the Constitution of Islamic Republic of Pakistan, 1973.

53 Pakistan People Party Vs Government of Punjab, PLD, 2014 Lah 330.

54 PLD 199 S.C. 61.

55 PLD 199 S.C. 61.

evolved by the apex court, it has been held that while exercising its powers⁵⁶, the Election Commission exercises a fraction of judicial power of the state and thus has to act judicially, therefore, squarely qualifies to be a tribunal.⁵⁷

In Pakistan, adjudicatory aspect of the Election Commission seems to be in line with that of India. But, it differs, to some extent, in case of disqualification of a member of legislature. In Pakistan, as a reference by the Speaker or the Chairman, as the case shall be, the question of disqualification is to be adjudicated by the Election Commission and unless otherwise challenged before any competent forum, its decision shall attain finality.⁵⁸ Similarly, the issue of disqualification on the ground of defection also comes within adjudicatory powers of Election Commission and, in case it is not challenged in appeal before the Supreme Court, attains finality.⁵⁹

Advisory Functions

Indian constitution equips its Election Commission with the powers to advise the President or the Governor⁶⁰ on the matter of disqualification of any of the members of the Parliament or the State Legislature — a provision with stands in stark conflict with that of Pakistan. As stated earlier, in Pakistan, the Election Commission is not obligated to send, in the form of advice, either to the President or the Governor, the matter of disqualification of the legislators. The extant arrangement brings Pakistan on higher pedestal *viz a viz* its counterpart.

56 Article 324 of the Constitution and Rules 5 and 10 of the Conduct of Election Rules, 1961 and Election Symbols (Reservation and Allotment Order) 1968.

57 A. P. H. L. Conference Shillong Vs W.A. Sangama AIR 1977 SC215.

58 Article 63(3) of the Constitution of Islamic Republic of Pakistan, 1973.

59 Article 3-A of the Constitution of Islamic Republic of Pakistan, 1973.

60 Articles 103(2) and 192(2) of the Constitution of India, 1950.

Issuance of Guidelines

Neutrality of the election commission has been an area of acute concern for all the democratic circles. So, in order to bolster the rhetoric, election commissions around the globe have been equipped with arsenals of autonomy. India and Pakistan, being cognizant of its importance have been launching reform trajectories to ensure prompt transparency in electoral process. Issuance of guidelines is, basically, one of the strategies to keep the process above board. In India, the Commission has been equipped with the authority to issue directions to political parties for the submission of returns, for scrutiny, detailing therein the expenditures incurred by the political parties or their agents.⁶¹ The broad message emanating from the constitutional arrangement is to put a check on the flow of money power in the electoral process.⁶²

Being influenced by the abiding popularity of transparency and purity of the elections in contemporary jurisdictions, India has been demonstrating steep rise emulation in electoral reforms. For instance, the Commission has also been authorised to direct a candidate to submit an affidavit, on the day of submission of papers, to the extent of his full antecedents. To pull the system out of present malaise, it is obligatory for the candidate to let the little master know as to criminal, academic and financial record and detailed inventory of liabilities attached to the assets owned by the candidate, his spouse or dependents.⁶³ The judgment turned out to be a memorabilia and the Lock Sabha instead of ensuring due compliance of the erudite dicta of the apex court, using its political clout, would amend the People Representation of People Act.⁶⁴ The new arrangements absolved the legislators of the liability of making their

61 Article 324 of the Constitution of India, 1950.

62 Common Cause — A Registered Society V Union of India, AIR 1996 SC 3081.

63 Union of India Vs Association for Democratic Reforms, AIR 2002 SC 2112.

64 Representation of People (Third Amendment Act, 2002).

antecedents public. The emancipation turned out to be transitory and within a year or so, the apex court would strike down the amendment and held that a decision of the apex court couldn't be nullified by legislation. Thus, the authority of the Commission to call for the detail of a candidate's antecedents was held to be lawful.⁶⁵

Like its counterpart, holding of election in line with law, justly, fairly, honestly and free of corrupt practices is the mandate of the Election Commission of Pakistan. There is no gainsaying that such high ambitious goals can only be possible by having a strong Election Commission. Being aware of this vital aspect, the Supreme Court of Pakistan has been demonstrating pro-commission views in interpreting the constitutional provisions. In response to an issue if the Commission could issue orders for ensuring transparency in the electoral process, the apex court was of the view the condition of presenting National Identity Card at the time of casting vote was to lend greater credibility to the election process in the country.⁶⁶ Such move would, the court added, tantamount to prompt adherence to constitutional requirement of the Article 218 (3) of the Constitution.⁶⁷

The power to issue direction or orders is not subject to arousal of a situation but the Commission has been held to be empowered to issue order to overcome any chimerical apprehensions as well⁶⁸ and such power remains with the Commission from the Election Day to the notification of results.⁶⁹ For the issuance of such orders, formal meeting of the Commission is not necessary.⁷⁰ If three out of five members issue an order, it is to be considered the decision

65 *People's Union for Civil Liberties v Union of India*, AIR 2003 SC 2363.

66 PLD 1989 SC 61.

67 PLD 1989 SC 61.

68 *Worker's Party Pakistan through Akhtar Hussain and 6 others Vs Federation of Pakistan*, PLD 2012 S.C. 681.

69 PLD 2013 Lah 10.

70 PLD 2013 Sindh 117.

of the Commission.⁷¹ So much so, the orders issued by a single or two members, if not overridden subsequently by majority of the members, will be equally binding.⁷² The role of constitutional courts, in broadening the frontiers of the Commission's role, seems to really laudable. In this context, Worker's Party's case turns out to be a turning stone. For instance, in case of improvement in nomination pro forma⁷³, the Commission had made a formal request to the Government for said improvement.⁷⁴ After finding no response from the Government, the Commission introduced the said pro forma which was raised before the apex court of Pakistan.⁷⁵ The action of the Commission was upheld by the court by holding that inclusion of upright legislators was the demand of all stake holders in the country and the Commission was justified in introducing the said pro forma completely in line with constitution and relevant and above all the directions given by the apex court in the Worker's Party's case supra.⁷⁶

Conclusion

Conspectus of above discussion is that the Indian democracy owes a lot to the strength of its Election Commission. Least interference by the courts in the working of the Commission, full control over the bureaucracy, complete insulation of the election crew and constant supervision of the election campaigns are traits which bring the Election Commission in India on a very sound footings. The fact of its strength can be gauged from the fact that since the dawn of first parliamentary elections, the Indian Army has never been engaged in electoral process.

In Pakistan, frequent replacement in power corridors has been instrumental in providing inchoate electoral system. So,

71 PLD 2013 Sindh 117.

72 PLD 2013 Sindh 117.

73 Rule 3 of the Representation of People (Conduct of Election) Rules, 1977.

74 PLD 2013 SC 406.

75 PLD 2013 SC 406.

76 PLD 2013 SC 406.

it was owing to this inhibiting factor that Pakistan couldn't keep pace with contemporary changes. However, for the redemption of its lost faith, the system will have to redefine the roll of care taker governments, secret agencies and judiciary. In order to come out of its perfunctory role, the Election Commission in Pakistan needs to buttress itself by those arsenals by emulations from its Indian counter part. Institutional revamp coupled with capacity building and professional training is that acute area we need to be dwelt up at the earliest. For ensuring independence of the Commission, financial autonomy is another limb which needs to be addressed with desired frequency. Undoubtedly, use of Electronic Voting Machines in Indian electoral system is the hall mark of the system. But, in Pakistan, the matter remained behind the clouds of ministerial rhetoric under the sway of democratic civil governments and military regimes remained aliens to any such thoughts.