

Impartial Election Management Body: A Guarantee for Free and Fair Election

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Democracy is one of the universal and indivisible core values and principles to develop an inclusive society. In any democratic state, the will of the people is the basic requisite to derive the authority of the government. It requires free and fair elections in a way that the sanctity of the ballot be never compromised. To ensure the credibility and impartiality of the elections, states adopt a coherent and comprehensive policy to develop a mechanism to conduct the elections in a free and transparent manner under an impartial and empowered Electoral management body. The history of the Pakistan is rich with numerous incidents, including the sacking of elected governments through unconstitutional avenues, explicitly or implicitly under GHQ and the legitimization these moves through apex courts and fraudulent referendum. These frequent interventions fuel up the institutional decay and increase the trust deficit between the institutions and the people of Pakistan. Moreover, the democratic culture could not be internalized and institutionalized and also impeded Election Commission of Pakistan in its transformation as a strong national institution. Resultantly, each and every election met a lot of hue and cry and the credibility and authenticity of the elections used to remain at stake. An endless wrangling of allegations and counter allegations provokes, which poisons the polity of the state. There has been a persistent demand to establish an impartial election management body which used to maintain the sanctity of the ballot and will of the people in true letter and spirit. The study will encircle the power and structure of the Election Commission of Pakistan after eighteenth constitutional amendment and how it has succeeded to fulfill the demands and expectations of the stakeholders. The study will also compare the powers, structure, and credibility of the election management body of Pakistan to other regional states and how the loopholes, if any, can be addressed in political and constitutional manner.

Keywords: election management body, democracy, elections, rule of law

In the contemporary world, democracy is considered one of the most important vehicles to develop an inclusive society. Elected governments derive their authority to rule from the will of the people which is expressed in free, fair, transparent and credible elections. States develop a cohesive and comprehensive mechanism to provide people conducive atmosphere to elect their representatives at stipulated constitutional time slots. The whole electioneering cycle engages a host of stakeholders to maintain the sanctity of the ballot. Out of them, election management body plays a key role to complete the election cycle in free, fair, transparent and credible manner.

In Pakistan, frequent military interventions and their legitimization through apex courts and referendum have not only adversely affected the institutional strengthening, democratic culture development, but *“also impeded Election Commission of Pakistan in its transformation as a strong national institution. After every general election, there have been a lot of hue and cry about the credibility and authenticity of the elections”*. An endless wrangling of allegations and counter allegations provokes, which poisons the polity of the state (PILDAT, 2008).

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Literature Review

Elections have become the most popular and effective norm for the smooth transition of the power in democratic states. However, it all depends how election management body is administrative and financial autonomous and how it plays its role to counter the institutional and non-institutional tactics to snatch the will of the people. An EMB in any democratic state is empowered to conduct free, fair and transparent elections. However, the transparency and the quality of elections are under the circle of debate in both developed and developing democracies (Lehoucq, 2003).

Following core functions are also assigned to EMB (Catt, Ellis. A., Maley, Wall, & Wolf, 2014).

- Determine the eligibility of voter (s).
- Validating the election contesters after receiving their applications along with registration of political parties
- Conducting elections/ referendums
- Counting and tabulating the votes

However, the responsibilities of different EMBs vary from state to state. In United Kingdom, different bodies are constituted to conduct general elections and referendum (*Referendum on the voting system for UK parliamentary elections*, 2011). In Australia, two separate bodies are mandated to conduct national and state level elections. EMBs of Poland and Mexico are constitutionally mandated to conduct parliamentary and presidential elections (*Electoral legislation, principles and practice: a comparative analysis*, 2012). In some countries electoral functions are well defined to different bodies at different levels. A higher tier is assigned to conduct national level elections while local commissions, regional branches of different governmental departments or local authorities are mandated to conduct local level or state level elections. The US federal Election Commission do nothing but to “administering and enforcing federal campaign finance laws” (www.fec.gov). Such functions do not qualify the definition of EMBs.

Models of Election Management Bodies (EMBs)

Electoral management bodies in terms of their policies and functioning vary from state to state depending upon the “holistic design process” or the existing nature of state administration. EMBs are classified into three classes (Catt et al., 2014).

- Independent Election Management Body (IEMB)
- Governmental/Dependent Election Management Body (DEMB)
- Mixed Election Management Body (MEMB)

Independent Election Management Body

An EMB enjoying the autonomous financial and administrative powers and have constitutional cover to perform their functions is called Independent Election Management Body (IEMB). The body has power to manage and utilize its own budget and exercise its administrative functions independently. It may be accountable to the legislature, head of the state or judiciary but not to any functionary of the government (James, Loeber, & Van Ham, 2016). Financial and administrative autonomy of such EMBs are constitutionally protected and the government do nothing to contain their functions through executive orders. India, Pakistan, Indonesia, Poland, South Africa and Canada have constituted such EMBs to conduct free, fair and transparent elections.

In some states, two independent bodies are constituted to process the electoral activities. Both the bodies are autonomous in their administrative and financial functions and constitutionally insulated to make any interference to others domain. One of these bodies is mandated to devise practicable policies to conduct the elections in peaceful way and the second is authorized to implement the policies and conduct the elections. “Double independent frameworks” are designed to make the whole electoral process more fair and transparent (Catt et al., 2014).

Dependent Election Management Body (DEMB)

In countries, where EMBs are not autonomous and independent in their functions and heavily depend upon the governmental directions and answerable to ministry, these types of EMBs are called Dependent Election Management Body (DEMB). Elections, in these states are organized and managed by the executive branch of the government and the EMB is either led by a minister or civil servant. These bodies are financially and administratively depend upon the government functionaries and do nothing in their own capacity. With few exceptions, they have no members. Singapore, Bangladesh, Denmark, United States and the UK have constituted dependent election management bodies (Brich, 2008). Local authorities are mandated to conduct the elections. However, in Sweden and Switzerland, the central Election Management Body perform a policy coordinating role.

Mixed Election Management Body (MEMB)

Mixed Election Management Body usually have two component EMBs. Component independent EMB is independent and autonomous in its functions and mandated to devise a comprehensive electoral policy. It is also authorized to monitor and supervise the whole electoral process. On the other hand, component governmental EMB is responsible to organize and conduct elections (Bland et al., 2013).

The mutual relation of both the component EMBs vary and in some countries not very clear. In some countries, the role of component independent EMB was not more than a powerless monitoring body and did nothing to minimize the governmental influence over the electoral process. However, this proposition is dying out. In many of the states which follow MEMB, component independent EMB not only supervise the electoral process but also verifies, tabulates and transmits the results (Catt et al., 2014).

Table 1: Characteristics of the Three Broad Models of Electoral Management and their Component EMBs

Aspect of the Model and the Component EMB(s)	Independent Model	Governmental Model	Mixed Model	
	Independent EMB(s)	Governmental EMB(s)	Independent Component EMB	Governmental Component EMB
1. Institutional arrangement	Is institutionally independent from the executive branch of Government.	Is located within or under the direction of a department of state and/ or local government.	Is institutionally independent from the executive branch of Government.	Is located within or under the direction of a department of state and/ or local government.
2. Implementation	Exercises full responsibility for implementation.	Implementation is subject to executive branch of government direction.	Has autonomy to monitor or supervise, and in some cases set policy for, implementation.	Implementation is subject to executive branch of government direction, and monitoring or supervision and in some cases policy setting by independent component.

Source: (Bland et al., 2013; Brich, 2008; Catt et al., 2014)

The states devise their electoral laws and institutions according to state requirements and evolution process remains intact. Amendments are made as per societal demands in the institutional functioning to make the society more inclusive and representative. Election Management Bodies vary in their powers and functioning from state to state. Most of the states are doing their best to empower these bodies in terms of finance and administration to make them credible and to maintain the sanctity of the vote. Viable and practical modules are being developed so that the electoral process be made intact and transparent. Consultative rather than executive initiatives are on the table to induct the competent individuals to Election Management Bodies.

Research Questions:

The study will search the answers of following questions.

- Administrative and financial autonomy, which an election management body requires to enable itself independent from the government influence.
- Comparison of regional election management bodies in terms of administrative and financial autonomy

- The role of the ECP to conduct free, fair and impartial elections and how it can improve its functioning to maintain the sanctity of the ballot

Significance of the Study

The research is proposed to generate the new set of data including variety of variables in the institutional design of Election Management Bodies of Pakistan, India and Bangladesh. The study will be helpful to understand, specifically, the credibility and efficacy of these institutions, performance of these bodies and the integrity of the electoral process. It will also be helpful to compare the regional EMBs' powers, functions and performance. The study will provide a useful and comprehensive data to all those who have an interest or stake in electoral administration including political parties, print and electronic media, NGOs, political and electoral observers.

The study will provide an insight to the new researchers to explore which measures EMBs have taken in developed democracies to maintain the sanctity of the ballot and to improve their credibility.

Election Commission of Pakistan: A Brief History

Pakistan took nine years to constitute its first constitution after its emergence over the map of the world. The second constituent assembly succeeded to frame the first constitution of the Islamic Republic of Pakistan in 1956. The constitution empowered the citizens of Pakistan to elect their representatives for unicameral parliament through the ballot. In this regard, a permanent Election Commission of Pakistan was established in 1956 mandating it to prepare electoral rolls, their annual augmentation and conducting elections at national and provincial levels. The Election Commission of Pakistan comprised of the Chief Election Commissioner and a such number of election commissioners as determined by the President of Pakistan. The term of the office of the Chief Election Commissioner was five years with an upper age limit of 65 years. However, a separate institution entitled, "Delimitation Commission" was devised for delimitation of the constituencies (Khan, 2005; PILDAT, 2008). In 1958, Pakistan witnessed its first ever Martial Law. General Ayub Khan, the then army chief, sacked the government and abrogated the constitution. Consequently, the Election Commission of Pakistan met with its ill fate and ceased to exist. The 1962 constitution provided the election of the national and provincial assemblies election through an electoral college. The constitution empowered the President of Pakistan to appoint Chief Election Commissioner for the term of three years along with two members each from East and West Pakistan. The constitution ended the permanence of the ECP and devised to constitute new Election Commission for every election (Kamal, 2013). In 1969, Pakistan witnessed second Martial Law under the command of General Yahya Khan, the then army chief. He abrogated the constitution and subsequently, the Election Commission of Pakistan ceased to exist. In 1970, Pakistan experienced its first ever general election on the basis of adult franchised to elect the members of parliament. The National assembly framed the constitution unanimously. It provided for a permanent Election commission comprising one election commissioner as its chairman and two members. It was made mandatory that no one could be the part of the Election Commission except the judge of Supreme Court of the Pakistan or high courts. Later on, the strength of the election commission's members increased and arranged to provide equal representations to all the federating units. Through 17th constitutional amendment these enhancement became the part of the constitution. ("Legal Framework Order 2002," 2002).

Mandate of the Election Commission of Pakistan

The election commission of Pakistan is responsible for conducting the elections in an honest, just and fair manner so that the people of Pakistan elect their representatives in free, fair and transparent manner. Moreover, the Election Commission of Pakistan is charged to perform following responsibilities

- Electoral rolls preparation for national and provincial assemblies elections (Article 219(a), 1973.)
- Annual augmentation of the electoral rolls (Ibid)
- Conduct bye-elections to fill vacant national and provincial assemblies' seats (Article 219(b), 1973)
- Conduct election for the Senate
- After each election appoint election tribunals (Article 219(c), 1973)
- Decide the disqualification references made by the chairman or the Speaker or head of the political party under Article 63(2) and Article 63A of the constitution

- Arrange election for the office of the president of Pakistan (Article 41(3), 1973).
- Under presidential orders arrange referendum (Article 48(6), 1973)
- To appoint the caretaker government in case the outgoing government and opposition fail to develop consensus (21st Constitutional Amendment, 2015).

Administrative Autonomy:

Keeping in mind the functioning and importance of the election management body, the constitution framers made necessary safeguards for its administrative autonomy. So one of the most important barometers to judge the impartiality and independence of the ECP from the government influence is to check how it is independent in its administrative and financial domains. The CEC is empowered to make *“all appointments, promotions, posting and transfers of the Election Commission employees. He is also authorized to appoint secretaries of the ECP and hire retired employees and no reference in this regard is required to make to the federal government”* (Pakistan Fact Sheet The Election Commission of Pakistan, 2002; PILDAT, 2008)

The Election Commission of India is empowered to decide the election dates, administrative elections and avail the services of civil servants to complete election cycle. Moreover, the ECI enjoys the administrative autonomy to decide the usage of voting machines and election result declaration. Enforcement of the electoral laws, investigate and decide the electoral issues are the prerogative of the ECI (Devil, Rama & Mendiratta, 2013). Rules and regulations authorized the ECI to stop the vote count or refrain from declaring the electoral results if there are any irregularities and confine the culprits (Thomas & Gibson, 2014).

In the case of Bangladesh Election Commission, three different organizational structure found i.e, the election commission, election commission secretariat and field offices. Although the election commission is a constitutional body but the election commission secretariat is under the control of office of the prime minister of bangladesh. The appointment, transfer –posting and promotion require the approval of office of the Prime minister and election commission has nothing to do in this regard. Moreover, ministry of establishment is empowered to recruit first class officers at the field office of the EC. All these three organizational structures are tightly compartmented in their administrative functioning but to some extent they extend their coordination and cooperation to complete election cycle. The constitution of the Bangladesh provides the guidelines for the appointment, tenure and removal of the CEC and Election commissioners. However, neither the constitution nor the rules prescribes the qualification for the appointment to the post of CEC or election commissioner (Akram, 2006).

Financial Autonomy

Successful and timely completion of the election process requires appropriate and sufficient funds. The major hurdle to complete various projects on time is the insufficient funds and undue dependence on the finance division. Prior to the year 2000, financial autonomy was a nightmare for the ECP. It had to face financial constraints and limitations to complete its designated jobs. However, in the year 2000, General Pervaiz Musharraf, the then chief executive of Pakistan took necessary actions to make ECP financially autonomous (PILDAT, 2008). In this regard, CEC was authorized to exercise following powers.

- ECP empowered to re-appropriate its funds as per its functional requirements.
- ECP fully empowered within its allocated budget to sanction expenditure on any item
- Full powers to change nomenclature and upgrade/downgrade any post provided expenditure is met from within the overall allocated budget to the ECP (Finance Division, Government of Pakistan-Office Memorandum No.F.3(7) Exp-111/2000, 2000)

These powers have made CEP independent to utilize its allocated budget independently according to its functioning and no reference is required to make finance division for the re-appropriation of the funds. However, the ECP requires the approval of finance division for the creation of new post necessary for the enhancement of its performance.

Indian parliament allocates the budget to the ECI for its functioning as per demand. There is a consensus between central government and state governments to meet out the secretariat’s administrative

expenditures through budget grants. This budget is used for commissioner and staff salaries and the Secretariat's operating expenses, including the cost of some centrally supplied equipment, such as electronic voting machines. The ECI is autonomous to utilize its allocated budget and needs nothing to make reference to finance division. However, there is no specific authority delegated to ECI as the ECP has had after 2000 (Akram, 2006; PILDAT, 2008; Thomas & Gibson, 2014).

The expenditure of the Bangladesh Election Commission is drawn from the consolidated fund. It depends on the ministry of finance division for its budgetary allocation. Keeping in view, its yearly plan, regarding the preparation of voters lists, training of the personnel, the cost of the administrative machinery, the commission estimates its yearly expenditure. However, the ministry of finance does not provide the requisite budget to the commission, adversely affects its functioning and completion of designated jobs. Election commission launched voter identity card project in 1996 but the unavailability of the appropriate funds wasted all the initiatives in this regard and the commission due to financial restraints failed to complete the project (Akram, 2006).

Constitution of the Election Commission of Pakistan after 18th amendment

Election Commission of Pakistan is a permanent constitutional body and the primary function of the Election Commission of Pakistan is to organize and conduct elections in Pakistan in free and fair manner. In this regard, constitution entrusted several powers and constitutional safeguards to the ECP (Article 218, 1973). Prior to the promulgation of Election Commission Order 2002, the election commission has no permanent body and members were appointed for each and every election (Khan, 2005). Now the constitutional amendment devised a mechanism to appoint the members of ECP for not less than five years. When they are superannuated, they retired.

An individual is qualified to be appointed as the CEC if he or she is (or has been) a judge of the Supreme Court or a judge of a High Court and is qualified to be appointed as a Supreme Court judge. In the case of a member, a person should be the retired judge of the high court (18th constitutional amendment, 2010).

In Pakistan, President enjoyed the sole discretionary powers to appoint the CEC and members before the 18th amendment. In 2010, parliament devised a comprehensive consultative process looping opposition on the board.

The amendment brought drastic changes in the appointment process of the CEC and members of the ECP. When a post became vacant, the prime minister with the consultation of the opposition leader in the national assembly forwards three names to the parliamentary committee. If there are any differences, then both sends their lists to the concerned body. The twelve member committee is constituted by the Speaker of the National Assembly, equally represented from both sides and four from the Senate. The committee scrutinized the nominees and then makes its decision through consensus or a simple majority. After that, the name of the agreed upon candidate forwards to the president of Pakistan for an appointment (18th constitutional amendment, 2010, *Pakistan Fact Sheet The Election Commission of Pakistan, 2002*; Kamal, 2013).

Members of the election commission have no administrative role, but to assist the CEC. However, during the election days, they have to meet twice in a week to address the prevailing issues. It is pertinent to mention that to fill the vacant parliament or provincial assemblies seats CEC is authorized to conduct the whole process and not the election commission.

In India, the Election Commission is a permanent constitutional body and empowered of superintendence, direction, and control of elections (PILDAT, 2008).

- Preparing and augmentation of electoral rolls,
- conducting national and provincial elections and
- The election for the office of President and vice president are the primary functions of ECI (Thomas & Gibson, 2014).
- Political parties registration

- Monitoring election expenses
- Determine the next election date without any consultation from the government. It is the prerogative of the ECI.

Indian constitution delegates discretionary powers to the president for the appointment of an appropriate person as chief election commissioner and determines the numbers and appoint additional commissioners with relevant expert knowledge from the senior ranking public servants for six years(Devil,V.S. Rama & Mendiratta, 2013; Thomas & Gibson, 2014).

The president may also appoint regional commissioners before each election to assist the ECI in performing its functions, but only after consulting with the Chief Election Commissioner. The first ECI in 1950 had only a single member – the Chief Election Commissioner. In what was seen at the time to be an attempt to limit the power of the position, two additional commissioners were added in 1989 and again in 1993. Since 1993, the ECI has consisted of three members(Devil, & Mendiratta, 2013; Thomas & Gibson, 2014).

It is not binding for the president to have a consultation with any parties. However, the prime minister and the council of ministers play their role in the selection process. Since 1988, ECI functioned with a single member, however, now the strength has raised to three. The CEC enjoys the same perks and privileges as the judge of the supreme court. Once the CEC appointed can not be removed from his office without impeachment over the charges of misbehavior and incapacity. Financially, the ECI is not independent and parliament approved its budget. However, the commission never faced any financial restraints to conduct its functioning(Thomas & Gibson, 2014).

In Bangladesh, the constitution empowered the president to appoint chief election commissioner and members of the election commission. It is not binding for the president to consult political parties. However, the president used to constitute six members search committee, which meets experts and political parties. On the committee recommendation, the president makes the appointment of the chief election commissioner and members of the election commission

Conclusion

Professionalism, integrity, transparency and internal accountability are the main determinants which make an institution more credible and effective. Established political parties, vibrant media, political awareness and rule of law also play significant role to strengthen the institutions. Developed democracies have followed all these parameters to develop an inclusive society through free, fair and transparent elections at proper constitutional intervals. In developing or transitional democracies, segmental exclusion through different channels undermine the institutional worth and credibility. Inclusion is the only solution which will come in practice through credible and transparent institutional and governmental mechanism. Transparent elections through credible and independent election management body and peaceful transition of the powers to elected governments will make the state and society more democratic and inclusive.

Election laws and powers are almost same in Pakistan, India, and Bangladesh. Most of the provisions in the Pakistan Representation of the people act, 1976 and Bangladesh Representation of the People Order 1972 have been replicated from Representation of the people act, 1951 of India. In India, the election commission is headed by a senior bureaucrat. However, in Pakistan, the chief election commissioner and members should be from the judiciary. 18th Constitutional amendment drastically changed the appointment procedure of the CEC and members, and devised a consultative mechanism so that all the appointments be made through consultation involving both treasury and opposition. In Bangladesh, the constitution does not describe the qualification of CEC, he/she may be from the judiciary or from bureaucracy. In India, the Election Commission has no independent machinery and depends on the governmental institutions. In Pakistan, the constitution empowered the election commission to utilize the services of judicial officers and administrative machinery. In Bangladesh, the election commission depends on administrative machinery of the government to conduct elections.

The continuity of the democratic system, rule of law and transition of government through an electoral process make it possible for the ECI to carry out its functions impartially and freely. Resultantly, it enjoys the

trust of all stakeholders including voters, political parties, and media. Contrary to India, Pakistan and Bangladesh faced numbers of coups and sacking of elected governments. Unelected governments did their best to legitimize their rule through either fraudulent referendums or engineered elections. All these mock exercises adversely affect the functioning and credibility of the ECP and EC of Bangladesh. All three election commissions are enjoying almost similar constitutional powers and protections. However, the ECP enjoys financial autonomy since 2000 while the financial autonomy of both ECI and EC of Bangladesh is still on the proposed electoral reforms.

The enumerated legal provisions provide ample proof that ECP is not totally devoid teeth to bite. It requires political will and commitment to act for the sake of free, fair, impartial and transparent elections. In this regard all the stakeholders should do their best to maintain the sanctity of the ballot and the credibility of the elections. The ECP should apply the laws in true letter and spirit. Any breach in law from any side be confined and writ be maintained. The ECP should make it mandatory to implement its second strategic plan so that the designated goals be achieved on time and internal functioning capacity be more strengthened.

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