

**A Critical Analysis of the Election Act, 2017 in the light of the  
International Covenant on Civil and Political Rights**



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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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## DECLARATION

I, Muniba Afridi, hereby declare that this dissertation is original and has never been presented in any other institution, I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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**Approval Sheet**

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**Viva Voce Committee**

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## **List of Abbreviations**

ICCPR	International Covenant on Civil and Political Rights
UN	United Nation
US	United States
UDHR	Universal Declaration of the Human Rights
ECtHR	European Court of Human Rights
OSCE	Organization for Security and Co-operation in Europe
OAS	Organization of American States
HRC	Human Right Committee
OHCHR	Office of the United Nations High Commissioner for Human Rights
IIDEA	International Institute for Democracy and Electoral Assistance
ECP	Election Commission of Pakistan
ROs	Returning Officers
CEDAW Women	Convention on the Elimination of All Forms of Discrimination against Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
ECHR	European Convention on Human Rights
CNIC	Computerized National Identity Card
NADRA	National Database and Registration Authority
FAFEN	Free and Fair Election Network
EVM	Electronic Voting Machine
USB	Universal Serial Bus
Pdf	Portable Document Format
SC	Supreme Court

RoPA	Representation of People Act
EU	European Union
GE	General Election
ECI	Election Commission of India
VVPAT	Voter verifiable paper audit trials
MCC	Model Code of Conduct
FIR	First Information Report
CEC	Chief Election Commissioner of Pakistan
ICJ	International Court of Jurists
RTS	Results Transmission System

## **Dedication**

This thesis is dedicated to my beloved parents, whose support, prayers, perpetual support and unflagging love have been my greatest source of strength. To my brother, Ali Gohar, for his constant belief in me and my abilities and to my sister, Anfal, for always inspiring me with her encouragement and kindness and to my friends and teachers.

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## **Abstract**

The electoral process in Pakistan is regulated under the guidelines and provisions of the Election Act, 2017, which is considered a milestone in the election history of Pakistan. Internationally, political rights are discussed in the International Covenant on Civil and Political Rights, but Article 25 of ICCPR specifically deals with standards for free and fair elections. By ratifying the covenant in 2010, Pakistan obligated itself to align its laws with the ICCPR. This study critically analyses the Act in the light of the International Covenant on Civil and Political Rights to identify the alignment and discrepancies between the two legal frameworks and also to align the national laws with the standard established by the ICCPR, and the compatibility of the Act with international standards can be evaluated using these principles as a baseline. Using qualitative methodology, the study evaluates the legal frameworks (ICCPR and Election Act, 2017) and for this purpose the data is collected from both primary and secondary sources and then data will be analyzed through exploratory method. Key findings of the study highlight various strengths of the Act i.e. voter registration, improved accountability, strengthening of ECP, measures for women involvement in election. However, still there are some grey areas in the Act that need to be fixed as it hinders the standards mentioned in ICCPR. The findings show how important it is to align domestic laws and practices in accordance with international standards to promote public trust, democratic principles and defend human rights. Legislative and policy-making

bodies that want to enhance and improve the law and its implementation processes, as well as academics and non-academics, especially law students will benefit from the recommendations made in this study regarding future legal difficulties.



# CHAPTER 1

## 1.1 Introduction

Human rights are a set of rules that articulate values related to equality and fairness. These rights include cultural, civil, political, economic, and social rights. These include the freedoms of thought, religious belief, life, a fair trial, the prohibition of torture and other cruel inhuman treatment, the availability of medical and educational resources, and the enjoyment of a sufficient standard of living.<sup>1</sup> The subjects of a country's political rights are the freedom to engage in state's affairs and society without fear of repression or prejudice. The freedom to vote in elections since people choose their own leaders through them, the freedom to join a party of their choice, and the freedom to take part in demonstrations, events, and rallies.<sup>2</sup>

The French Revolutions (1798) and the US Declaration of Independence (1776) gave rise to new developing groups that were granted the right to exercise political power. As a result of these revolutions, these nations became more democratic and the concepts of equality, liberty, and citizenship gained acceptance. The government do not make the

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<sup>1</sup> 'An Introduction to Human Rights | Australian Human Rights Commission', accessed 10 November 2024, <https://humanrights.gov.au/our-work/education/introduction-human-rights>.

<sup>2</sup>'Citizenship and Political Rights–CSCE', accessed 10 November 2024, <https://www.csce.gov/issue/citizenship-and-political-rights/>.

constructive interventions to create a more just society. Until 1920 women of United States did not get the right to vote also the minority is deprive of political right but the US Constitution's fifteenth amendment in 1870 has granted its citizens the right to vote irrespective of color and race. In 19<sup>th</sup> century voting rights retained within the hands of powerful people and the lower class of the society remains deprive of voting rights. In United Kingdom and Ireland less than three percent had right to vote. After World War 2 different rights were recognized by the states and established a non- biased international body “United Nation” that only deals with human rights.<sup>3</sup>

### **1.1.1 Voting rights and international law**

More than a right, public participation is a necessary component of democratic government. It makes it possible for people to express their opinions, which helps to strengthen democracies that are durable. Rights which are necessary for participation are equality and nondiscrimination, peaceful gathering and association, the freedom of thought and speech, security, an effective remedy. International law recognizes political rights as human rights in form of conventions on different platforms before the world. On 10<sup>th</sup> of Dec, 1948, the General Assembly of UN adopted the UN's Universal Declaration of the Human Rights which discusses the basic fundamental rights of human beings but it was not a treaty so it has no binding effect on the states but on later stage different treaties and conventions adopted by UN inspired from fundamental right mention in Universal Declaration of Human Right (UDHR). Its Article 21 specifically deals with voting rights which states that the people’s will will serve as the foundation for the government’s power

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<sup>3</sup> Peter Herrmann, International Human Rights, Social Policy and Global Development: The Historical Development of the Concept of Rights (April 2020), 15- 26. [10.46692/9781447349228.003](https://doi.org/10.46692/9781447349228.003).

and it will be reflected in regular legitimate elections that are performed using secret ballots or comparable free voting procedures and are open to all citizen.<sup>4</sup> It established guidelines for elections that were free and impartial.

The UN Convention on Protection of Fundamental Freedoms and Human Rights (1953) acknowledged the right to cast votes. Under Protocol I Article 3 of the ICCPR, States commit to holding transparent election by secret ballot at scheduled times under the parameters which will ensure people's right to openly express their ideas in the legislature and European Court of Human Rights (ECtHR) govern and regulate the convention. Article 9, 10, and 11 of this convention further protect these freedoms of expression and thought. The International Organization Security and Cooperation in Europe (OSCE) has set out requirements for fair elections, Organization of American States (OAS) has introduced election observation mission to avoid the discrimination in voting right, the European Union offer financial and technical support for initiatives that encourage democratization, especially those that help with election procedures. The ICCPR focusses on political rights, specifically Article 25 deals with electoral process and has binding effect on the ratifying states.<sup>5</sup>

In 1966 the United Nation comes with a covenant ICCPR and adopted by 11 countries but presently 173 countries are members to the said covenant. States are obligated to implement provisions of the ICCPR in domestic legislation to show compliance with international standards.<sup>6</sup> The ICCPR offers a variety of political and civil right safeguards

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<sup>4</sup> 'The Right to Vote', accessed 10 November 2024, <http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html>.

<sup>5</sup> Ibid.

<sup>6</sup> P. Narumugai, 'Role of ICCPR and ICESCR in the working of the Constitutions', *IJLLR*, 17 June 2021, <https://www.ijllr.com/post/role-of-iccpr-and-icescr-in-the-working-of-the-constitutions>.

and its Articles 2, 3, 19, and 21 cover political rights however, the ICCPR's Article 25 particularly addresses the right to vote.<sup>7</sup> It explains the important elements of election such as to take part in the management of public affairs directly or through freely elected representatives, and to vote and win office in legitimate election that will be conducted by using secret ballots on regular basis along with equal suffrage, ensuring the unrestrained expression of the electorate's will.<sup>8</sup>

The Human Right Committee (HRC) of ICCPR was to oversee the implementation of the Convention on Political and Civil Rights which consist of eighteen members and these members are independent experts and representative of their states but working in their own personal capacity the rationale is that the committee member work without any pressure and help the members states make their election transparent and stable democracy in a country. Primarily it perform four functions i-e review state reports, issue general comments, inter- state complaints and individual communications. The HRC holds sessions for three to four weeks, often in March, July, and October.<sup>9</sup> Signatory States are obligated to execute judicial, administrative, and legislative steps to preserve the rights outlined in the ICCPR, as well as to provide appropriate remedies. Ratified countries are expected to provide the Committee with a report every four years by member states. After reviewing and assessing the report, the Committee issues "concluding observations" which address issues raised then offer recommendations for the country. The Committee also

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<sup>7</sup> Aaron Thompson, 'The United States and the ICCPR', *SAIS Review of International Affairs* 28, no. 2 (2008): 105–6, <https://muse.jhu.edu/pub/1/article/254270>.

<sup>8</sup> International Covenant on the Civil and Political Rights, (New York, 19 Dec. 1966) 999 U.N.T.S. 171, entered into force 23<sup>rd</sup> Mar. 1976, Art 25, <https://treaties.un.org/pages/showdetails.aspx>.

<sup>9</sup> Sophia Mard, 'THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS ICCPR Art. 25' (Center for Civil and Political Right, 2020), [https://ccprcentre.org/files/media/WEB\\_Guidelines\\_Art25\\_](https://ccprcentre.org/files/media/WEB_Guidelines_Art25_).

releases general comments that reflect its evaluation of the treaty's human rights provisions.<sup>10</sup>

### **1.1.2 Obstacles for Participation in Electoral Processes**

People can openly express their opinions and utilize their freedom to take part in public affairs during elections. Elections, however, can also heighten social tensions already present, especially during periods of complicated change and crisis, such as armed conflict, rising inequality, and change in climate, increasing the likelihood of human rights abuses and violation. The deliberate spreading of inaccurate or misleading information is known as a disinformation campaign. Cyber security is seriously threatened by these operations, particularly during periods of elections. These campaigns use social media, computer programs, and modern technologies to change public opinion, interfere with democratic processes, and compromise the integrity of elections in the digital age. Typically, disinformation campaigns are used to undermine the vote and delegitimize certain candidates; for example, voter confusion or discouragement may result from false information about voting dates, procedures, scandals, manipulated images, or fake news that are used to harm the credibility of candidates or political parties, and these strategies are exacerbated by software programs, fake accounts, and algorithmic biases that ensure that misleading content spreads quickly. Negative language and hate speech aimed at marginalised and discriminated-against groups such as Ethnic and religious minorities, as well as migrants, have been used as political tools, further dividing countries.<sup>11</sup>

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<sup>10</sup> “FAQ: THE COVENANT ON CIVIL AND POLITICAL RIGHTS,” ACLU, July 11, 2013, <https://www.aclu.org/documents/faq-covenant-civil-political-rights-iccpr>.

<sup>11</sup> ‘Your Vote Your Right: The Foundations of the Right to Vote in International Law | OHCHR’, accessed 11 November, 2024, <https://europe.ohchr.org/news-events/news/your-vote-your-right-foundations-right-vote-international>.

Over the years, UN has created international rules and norms pertaining to election, political participation in order to solve such issues. The Human Rights Council's (UN inter-governmental body) special procedures and treaty bodies play a crucial role in interpreting human rights standards by offering explanations that specify the requirements pertinent to electoral procedures under the ICCPR. Election procedures that adhere to international human rights norms, particularly those outlined in the ICCPR, are encouraged by the Office of the United Nations High Commissioner for Human Rights (OHCHR). In addition to making recommendations to increase fairness and openness. It oversees elections to evaluate adherence to rights like the freedom of speech, assembly, and nondiscrimination. Together with UN agencies and regional organisations, OHCHR offers technical assistance to improve electoral integrity and strengthen democratic principles. It additionally collaborates with technical skills, trains election staff, and promotes the participation of marginalised groups in the electoral process, including women, members of minorities, and people with disabilities. The major responsibility of the office is to Promote and defend right of citizens to vote.<sup>12</sup>

### **1.1.3 Key Elements to Conduct Free and Free Election**

Impartial and transparent elections are required to have good governance. Elections is a necessary component of a vote-based system and provide a base for successful government and stable democracy. Numerous international legal frameworks address the concepts of impartiality, competence, independence, and democracy for elections. The Inter-Parliamentary Union's Declaration and the African Charter on Democracy, Elections, and

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<sup>12</sup> Joshua Douglas, 'Is the Right to Vote Really Fundamental?', *Law Faculty Scholarly Articles*, 1 October 2008, [https://uknowledge.uky.edu/law\\_facpub/10](https://uknowledge.uky.edu/law_facpub/10).

Governance both stress the significance of independent and impartial electoral processes, while the UDHR and ICCPR highlight the right to fair and transparent elections. These principles are also covered in detail in the Venice Commission's Code of Good Practice and Credible Election in 2009 discusses the following characteristics for a fair election.

#### **1.1.3.1 Transparency**

An essential component of a legitimate election is transparency. Every candidate and political party should have an access to the election rolls. It is compulsory for candidates to give a detailed explanation of their assets and a criminal histories in an affidavit that they submit with all of the required nomination paper. The public should have easy access to all of these details.<sup>13</sup>

#### **1.1.3.2 Independence**

The body conducting the election in a country should be independent. To take their own decisions, resolve dispute between parties and other election related issues.<sup>14</sup>

#### **1.1.3.3 Competence**

The body that carried out the whole election process should be active and appoint well-trained and fearless staff. So, that the people can exercise this basic fundamental right.<sup>15</sup>

#### **1.1.3.4 Impartiality**

An impartial approach must always be taken when conducting the electoral process. Enforcing the election laws to prevent any unauthorised advantage for the ruling party.<sup>16</sup>

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<sup>13</sup> 'Free and Fair Elections?: Standards, Curiosities, Manipulations - Michael Krennerich - Google Books', accessed 19 November 2024, [https://books.google.com.pk/books/about/Free\\_and\\_Fair\\_Elections.html?id=ItJxzgEACAAJ&redir\\_esc=y](https://books.google.com.pk/books/about/Free_and_Fair_Elections.html?id=ItJxzgEACAAJ&redir_esc=y).

<sup>14</sup> 'The Rise of Election Monitoring: What Makes Elections Free and Fair? | Journal of Democracy', accessed 19 November 2024, <https://www.journalofdemocracy.org/articles/the-rise-of-election-monitoring/>.

<sup>15</sup> Ibid, 38.

<sup>16</sup> Ibid, 40.

Election Commission of Pakistan should consider these guidelines for better and impartial elections like providing the polling crew with adequate training, the commission should be independent and candidate asset accountability etc. Therefore the likelihood of illegal activity will reduced.<sup>17</sup>

### **1.1.4 Pakistan Election's History since Independence**

Giving people a fair chance to choose their representatives is essential to the concept of people's power and without transparent and impartial elections for the purpose of choosing their leaders, a vote-based political structure cannot be considered. Pakistan is one of the countries in South Asia with the lowest voter turnout rates, ranking sixth out of 169 countries whose average voter turnout data was compiled by International Institute for Democracy and Electoral Assistance, a global alliance of governments based in Sweden.<sup>18</sup> Based on the combined findings, the average turnout for the past eight general elections is 46.12%, with the exception of the 1977 election, which was widely believed to be rigged. The reason for the low voter participation has been explained by the voters' lack of faith in the in electoral system.<sup>19</sup> Political rights have been violated throughout history, particularly during elections.<sup>20</sup>

On June 23, 2010, Pakistan ratified the ICCPR but put some reservation to this covenant. Pakistan made a number of reservations that are related to the Covenant's Articles 3, 6, 7, 12, 13, 18, 19, 25, and 40. Pakistan announces that the provisions of Article

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<sup>17</sup> Ibid.

<sup>18</sup> Ahmed Bilal Mehboob, "Voter Turnout Fault Lines," Dawn, November 7, 2022, <https://www.dawn.com/news/1719403>.

<sup>19</sup> Naeem Ullah Khan and Sana Akhter, 'Historical Challenges to Pakistan's Good Governance: Reforms', *JPUHS* 9, no. 2 (2016): 152–67, <https://pu.edu.pk/images/journal/HistoryPStudies>.

<sup>20</sup> 'Pakistan: A Political History | Asia Society', accessed 12 December 2024, <https://asiasociety.org/education/pakistan-political-history>.



25 (electoral rights and participation in public affairs) will be applied in a way that does not contradict the Pakistani Constitution's provisions. Regarding Articles 12 (freedom of movement) and 13 (expulsion of foreigners), more reservations were made. Reservation to Article 40 of the Covenant, the Government "does not recognize function of the Committee." Article 40 of ICCPR establishes a framework for tracking how nations fulfil their covenant-mandated human rights commitments. It requires nations that have ratified the ICCPR to provide HRC with regular reports outlining the steps they have taken to put the covenant's protections into practice. The committee reviews these reports, communicates with the nation that submitted them, and makes suggestions regarding the issues and shortcomings. Countries are supported and assisted in their efforts to better adhere to international human rights norms via this accountability mechanism. Reservation by Pakistan is openly denying its duty which is to report the committee regarding the measures and actions that have taken in a state in association with the covenant.<sup>21</sup>

### **1.1.5 Pakistan's Reservation on ICCPR**

Reservations may only be made as long as they are not banned by the treaty or not inappropriate with the treaty's aim according to the 19th article of the Vienna Convention on the Law of Treaties. Broad rules have been developed by the HRC for reservations which should not be violated by member states. General Comment 24 of HRC asserts that reservations cannot clash with the objectives and goals of the ICCPR<sup>22</sup> if

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<sup>21</sup> 'Pakistan's Reservations: A Challenge to the Integrity of the United Nations Human Rights Treaty System - Amnesty International', accessed 25 November 2024, <https://www.amnesty.org/en/documents/asa33/006/2011/en/>.

<sup>22</sup> 'Human Rights Body Reminds Pakistan of Duty to Report on Civil and Political Rights | OHCHR', accessed 25 November 2024, <https://www.ohchr.org/en/press-releases/2011/04/human-rights-body-reminds-pakistan-duty-report-civil-and-political-rights>.

- Reservations need to be detailed and transparent to ensure clarity for the Committee, reserving State, and other parties about human rights compliance requirements. Reservations cannot be generic instead, they must specifically mention a Covenant provision and define its scope in relation to it.<sup>23</sup>
- Widely accepted reservations that effectively nullify all Covenant rights and call for any modification to national legislation to guarantee adherence to Covenant duties are especially concerning. Consequently, no true international rights or responsibilities have been recognized.<sup>24</sup>

Pakistan's reservation to the article 25 specifies that it will only be implemented if it does not violate the laws of the Pakistani constitution. Pakistan's reservations to ICCPR Article 25 violates international law for reasons that are outlined below, per General Comment 24 of HRC:<sup>25</sup>

- Reservation is not specific as it pertains to Article 25 in its whole rather than to particular aspects of voting or taking part in public affairs. When a State makes a reservation, it is best to outline any domestic laws in detail or customs that deems inconsistent with the Covenant obligations reserved, according to General Comment 24 of HRC.<sup>26</sup> For example if Pakistan highlight that specific election law doesn't allow certain citizen (Ahmadis on separate electoral list) in the same

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Human Rights Committee, General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, retrieved from UNHCR Refworld.

<sup>26</sup> Ibid.

way as other citizens due to its religious statues it would show more clarity in reservation to ICCPR.

- It refers to a national legal instrument that is open to revision and interpretation and that is difficult for other State parties (those that have violated the Covenant) to understand.<sup>27</sup>
- The reservation establishes a de facto hierarchy of rules wherein international obligations are subordinated to national law.

States are required by international law, especially the ICCPR, to abide by provisions that support fair, free, and transparent elections. However, evaluating compliance is made extremely difficult by Pakistan's objections to some ICCPR regulations and its resistance to official reporting requirements. The Human Rights Committee is unable to offer Pakistan helpful criticism to assist it in aligning its voting system with ICCPR standards in the absence of regular reports. The ICCPR's objectives are compromised by this lack of participation since state reporting is crucial for identifying areas that require improvement and for meeting international standards. Therefore, the goals of the ICCPR, such as encouraging accountability and enhancing democratic processes, are incompatible with Pakistan's reporting strategy.<sup>28</sup>

Pakistan is under obligation to enact legislation that are not in conflict with the ICCPR's provisions after ratification. The constitutional amendments further strengthened the legal foundation, such as the one that created a legislative process for choosing the chief ministers, interim Prime Minister, and ECP members. Notwithstanding the legal

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<sup>27</sup> Ibid.

<sup>28</sup> "Human Rights Body Reminds Pakistan," *OHCHR*.

revisions, the 2013 election faced issues, especially the Independent Election Commission of Pakistan's failure to utilise its broad jurisdiction to establish a thorough regulatory framework, which left important election-related issues up to the ECP's rulings. Furthermore, the Pakistani Election Commission refused to take full responsibility for overseeing every aspect of the election process. The ECP assigned a number of significant duties to temporary Returning Officers (ROs) in the absence of adequate central oversight or control. This makes it more difficult to consistently implement the relevant legislation. The lack of relevant "Election Commission of Pakistan" laws and regulations regarding administrative complaint resolution competencies and processes has hampered stakeholders' ability to seek effective solutions. The primary electoral laws are scattered, and tribunals handled the majority of complaints involving candidate nominations in a short period of time. After seven years of ICCPR ratification, Pakistan enacted an Election Act, 2017 in response to the urgent necessity to enact legislation that addressed the rigging allegation.<sup>29</sup>

## 1.2 Literature Review

Guy S. Goodwin-Gill in his book "Further Steps along the Democracy Road and the Development of International Law and practice"<sup>30</sup> given a thorough description of the laws, regulations, and nation procedures relating to elections and current electoral trends. In addition, it examines how international rules and practices have changed since 1994 and lists a number of current and upcoming electoral standards-related challenges. The

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<sup>29</sup> European Union, 'A Competitive and Improved Election Process in Pakistan despite Militant Violence and Procedural Shortcomings' (Govt. of Pakistan, 13 May 2013).

<sup>30</sup> Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, New expanded ed (Geneva: Inter-Parliamentary Union, 2006).

International Round Table conference on Electoral Standards identified several concerns, including women's representation, oversight and participation. Challenges are not covered in a book on incorporating ICCPR standards into national electoral legislation in countries such as Pakistan. This gap is essential when analysing Pakistan's Election Act of 2017 and needs a critical review of its compatibility with ICCPR standards in order to guarantee that the country's national legislation reflects human rights standards.

Nahuel Maisely in his article “The International Right of Rights? Article 25 (a) of the ICCPR as a Human Right to take part in International Law making”<sup>31</sup> stresses that since ICCPR Article 25(a) provides all citizens “chance and privilege to participate in their government's operations, either personally or another way is the participants who are freely selected,” civil society organisations are already allowed to participate in the creation of international laws. In short, it focusses on how civil societies might participate in the creation of international law under ICCPR Article 25(a). In order to protect people's political rights, such as the ability to vote and participate in government under the ICCPR. To critically investigate whether the Election Act, 2017 is consistent with Article 25 of the ICCPR. This identification emphasizes how crucial it is that national electoral rules adhere to international human rights norms in order to preserve democratic values.

Andrea Schedler's article “Elections without Democracy: The Menu of Manipulation”<sup>32</sup> highlights that a stable and strong democracy is not possible without a free and fair election. This article throws light on concept of delimitation of boundaries,

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<sup>31</sup> Nahuel Maisley, ‘International Right of Rights? Article 25(a) of the ICCPR as a Human Right to Take Part in International Law-Making’, *European Journal of International Law* 28, no. 1 (1 February 2017): 89–113, <https://academic.oup.com/ejil/article/28/1/89/3097818>.

<sup>32</sup> Andreas Schedler, ‘Elections without Democracy: The Menu of Manipulation’, *Journal of Democracy* 13, no. 2 (April 2002), doi:10.1353/jod.2002.0031.

electoral authoritarian, liberal, and modern democracy. It also discusses the distinction between liberal and electoral democracies and manipulations that occur during the election period. Also emphasizes that democracy in a state is not possible without elections, but he puts a condition for election that it should be just, fair, and transparent, then the subject of a state can enjoy the true essence of their fundamental right, “the right to vote.” This article shows that how democracy and election are directly related but it left Pakistan election fairness as it has long history of electoral malpractices and manipulation. This viewpoint is important for examining how electoral rules align with ICCPR in light of Pakistan's Election Act, 2017. Determining whether the Act can support a truly democratic environment and if it complies with international standards of human rights will be aided by evaluating whether it guarantees fair electoral practices.

Susan D. Hyde and Nikolay Marinov in their article “Which Elections Can Be Lost”<sup>33</sup> elaborate that what are the ways that election lost its essence and discusses that how scholar have evaluated the causes and results of election competition. They highlighted that electoral competition require three factors determine election competition: the presence of opposition, the legality of numerous parties, and the number of contenders. Elections with competition are those that satisfy all three requirements. In this article two important questions were asked i-e Does democracy (and election competitiveness in particular) encourage a more transparent government? Do boycotts of elections aid or harm the possibilities of political reform or the opposition gaining power? It has examine the connection between political leaders' methods for gaining and retaining power and the

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<sup>33</sup> Susan D. Hyde and Nikolay Marinov, ‘Which Elections Can Be Lost?’, *Political Analysis* 20, no. 2 (April 2012): 191–210, doi:10.1093/pan/mpr040.

design of political institutions. As article discusses election generally not in the light of ICCPR. It aims to discuss Pakistan's election law in the light of ICCPR.

The Council of Europe in its book “Code of Good Practice in Electoral Matters”<sup>34</sup> explains a stable democracy is the consequences of fair and transparent election. It highlights that both universal suffrage and election frequency are defined by a collection of best practices for elections. This book define that what are the prerequisite conditions and principles for execution of fair elections, such as the validity of election legislation and the observance of fundamental rights and procedural safeguards like impartial authorities conducting elections and the presence of an efficient system of observation and appeals. The need to assess Pakistan's Election Act, 2017 in ICCPR aligns effectively with these principles. In addition to analysing whether the Act has these crucial principles ,the study seeks to determine if it complies with ICCPR criteria and can guarantee democratic government through impartial and free elections.

Tova Andrea Wang “The Politics of Voter Suppression: Defending and Expanding Americans' Right to Vote”<sup>35</sup> pointed out in the first section that the foundation of American democracy is the freedom to vote. The country places the power of representative governance in the hands of the people, and its amendments lists numerous ways in which this power cannot be curtailed. American history is replete with examples of expanding suffrage, such as the 15th and nineteenth amendments, which extended voting rights to

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<sup>34</sup> ‘Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - European Commission for Democracy through Law, Council of Europe - Google Books’, accessed 26 November 2024, [https://books.google.com.pk/books/about/Code\\_of\\_Good\\_Practice\\_in\\_Electoral\\_Matte.html?id=S-RiXz4N24oC&redir\\_esc=y](https://books.google.com.pk/books/about/Code_of_Good_Practice_in_Electoral_Matte.html?id=S-RiXz4N24oC&redir_esc=y).

<sup>35</sup> Andrea Tova Wang, *The Politics of Voter Suppression: Defending and Expanding Americans' Right to Vote*, 1st ed., A Century Foundation Book (Cornell University Press), accessed 26 November 2024, <https://www.jstor.org/stable/10.7591/j.cttq42k4>.

women and Black people. The last portion highlights that how political parties restrict, suppressed fundamental “right to vote” of minorities, poor and Black people of United States. This book explain US democracy and the developments with time and today it’s a Super Power. So, this book can be used as a guideline for Pakistan’s unstable democracy and rigged elections and to examine Election Act, 2017 in the light of ICCPR.

Arne Tostensen in his article “Election observation as an informal means of enforcing Political Rights” explains in particular how election monitoring has evolved into an informal enforcement mechanism in connection to numerous elements of the "ICCPR," particularly Article 25. Committee on Human Rights restricted scope of sanctions and inability to adequately implement legislation lead to this unofficial position. He also underlined how it has lost credibility as an informal way to uphold political rights. The HRC of the ICCPR can utilise this article as a reference to increase this mechanism's efficacy and gain significant control over the transparency of elections held in the signatory state.

Boris Makarenko in his book “Democracy in a Russian Mirror” in chapter seven “The Role of Elections in Democracy”<sup>36</sup> explains the significance of the election's voting rights, as most individuals participate directly in government through voting. With elections taking the place of a monarch's divine right, constitutional monarchy and democracies replaced absolute monarchs as the primary means of establishing legitimacy. Additionally, talks about large-scale protests against election fraud, such as "colour

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<sup>36</sup> Boris Makarenko, ‘The Role of Elections in Democracy (Chapter 7) - Democracy in a Russian Mirror’, in *DEMOCRACY IN A RUSSIAN MIRROR* (Cambridge University Press, 2015), <https://www.cambridge.org/core/books/abs/democracy-in-a-russian-mirror/role-of-elections-in-democracy/2A189AF6E17F67541A86EC2FF5C75644>.



revolutions" or the rallies that followed the December 2011 Duma elections in Russian cities like Moscow, are clear indications of a severe crisis in the political system's legitimacy. There is no discussion on the United Nations Covenant ICCPR, notably Article 25, which offers standards for election.

Yasir Masood Khan in his article "Election Commission, Electoral Reforms and Democracy in India: Lessons for Pakistan"<sup>37</sup> debate over election reforms, structure of democracy in India, Indian Election Commission as well as how India has increased accountability among political parties by having internal elections within them. Pakistan and India shared a history prior to partition and are similar in many other ways; however, India has a robust and stable democracy since its independence, still Pakistan struggling with democracy. This article can be used as a model in this study for maintaining a stable democracy which will led to improved and enhanced transparency in elections. To analyze the Pakistan Electoral laws under Article 25 of ICCPR and to highlight the shortcomings in electoral laws.

Hassan Nasir Mirbahar in his article on "Flawed Laws, Flawed Elections: Local Elections in Pakistan"<sup>38</sup> wherein discusses how electoral integrity violations inside legal structures impact election procedures, investigates the consequences of election rules that diverge from global norms for electoral integrity and examines the consequences of such violations. He chose Pakistan's local government elections as the subject of his research because he feels that both academics and practitioners should take local elections seriously.

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<sup>37</sup> Yasir Masood, 'ELECTION COMMISSION, ELECTORAL REFORMS and DEMOCRACY IN INDIA: LESSONS For PAKISTAN', *Quarterly Journal of the Institute of Regional Studies, Islamabad* XXXIII, no. 1 (2014): 100–139.

<sup>38</sup> Hassan Nasir Mirbahar, 'Flawed Laws, Flawed Elections: Local Elections in Pakistan', *Election Law Journal Rules Politics and Policy* 1 (2019): 2–5, doi:10.1089/elj.2017.0479.

The article not discusses the Election Act. To examines the violations of the Election Act of 2017 with the express goal of identifying gaps that are urgently needed at this time and evaluating Pakistan's adherence to the ICCPR.

Shaista Gohar, Yunus Khan and Shehla Gul in their article “Electoral Reforms in Pakistan during the PPP 4th Regime and Its Implementation Status: A Reappraisal”<sup>39</sup> in which they discusses important elements of democracy and election is one of them and analyze constitutional amendments and 2013 general election in detail also the electoral reform brought by the PPP government during 2008-2013. It is mainly focused on Election Act, 2017 and its comparison with ICCPR to strengthen electoral system in Pakistan.

Imrana Begum in her article “General Election in Pakistan: A critical study”<sup>40</sup> examines Pakistan's election, elected government, and election commission, explains the constitutional role of elections, and discusses the country's 48-year electoral history, which is filled with accusations of fraud, manipulation, and malpractice. It also critically evaluates how subsequent elected governments dealt with the disputes surrounding general election's outcomes. It evaluates the efficacy of electoral reforms for the upcoming general elections. It explains why these changes did not fix the electoral issues. By highlighting important issues and offering suggestions for improving electoral process transparency, this study seeks to dispel long-standing misconceptions about elections. Focusses its research primarily on Pakistan's Election Act of 2017 and its connectivity with ICCPR political

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<sup>39</sup> Shaista Gohar, Yunus, Shehla, Khan, Gul, ‘Electoral Reforms in Pakistan during the PPP 4th Regime and Its Implementation Status: A Reappraisal’, *Journal of Asian Development Studies* 13, no. 1 (March 2024): 76–83.

<sup>40</sup> Imrana Begum, ‘General Election in Pakistan: A Critical Study’, *FWU Journal of Social Sciences* 16, no. 3 (10 October 2022), <http://ojs.sbbwu.edu.pk/fwu-journal/index.php/ojss/article/view/1066>.

laws, & its analysis to address gaps and improve its efficacy, since these particular topics are not covered in the article.

Muhammad Asif, Tariq Anwar Khan, and Muhammad Fahim Khan in their article “Electoral Malpractices in Pakistan: Facts and Events of Political Instability”<sup>41</sup> focusses on how the elections happened, electoral laws, political representatives, along with the roles performed by media organizations, establishment, and other participants which caused political turmoil. It also examines Pakistan's problematic democratic government and political instability since its founding. To draw attention to the circumstances in those areas that resulted in unlawful activity and the behaviors that caused political instability in Pakistan. Although it did not address it in the context of international law (ICCPR), paper emphasized wrongdoings and other significant issues that contributed to an unstable democracy. It elaborate the similarities and differences between the Election Act, 2017, and ICCPR to make the election’s laws in compliance with standards in the ICCPR.

Dr Hamida Bibi, Dr. Sadaf Bashir and Dr Surat Khan in their article “An Assessment of Electoral Reforms in Pakistan (2018- 2022)”<sup>42</sup> argue about election cycle between 2008–2018, highlighting the problems with the process, and mentioning some of the provisions of the Election Act, 2017 in relation to electoral reforms and the ECP’s performance during these elections. Although it does not point out legal flaws or link the Election Act of 2017 with the ICCPR as a requirement following ICCPR ratification, this

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<sup>41</sup> Muhammad Asif, Tariq Anwar Khan, Muhammad Fahim Khan, “Electoral Malpractices in Pakistan: Facts and Events of Political Instability,” Pak. Journal of Int’L Affairs 4 (2021): 1-6, 13-14.

<sup>42</sup> Hamida Bibi, Bashir, Khan Sadaf, Surat, ‘An Assessment Of Electoral Reforms In Pakistan (2018- 2022) | Journal of Positive School Psychology’, *Journal of Positive School Psychology* 6, no. 10, accessed 26 November 2024, <https://journalppw.com/index.php/jpsp/article/view/13159>.

work aids in identifying issues with the electoral process but the research is going to elaborate that how Election Act, 2017 and ICCPR are interlinked.

### **1.3 Statement of Problem**

The absence of a thorough comparison between Pakistan's Election Act of 2017 and ICCPR particularly with regard to electoral rights and practices from 2010 - 2023, represents research vacuum. Although there may be research on the specific features of the Election Act, 2017 or the ICCPR, but nothing is known about how they interact and how it affects Pakistan's adherence to international human rights norms. It is more difficult to fully comprehend how Pakistan's electoral reforms affect its legal and practical responsibilities under international human rights law. To find resemblances and differences between two legal documents and to bring national legislation in accordance with ICCPR, it is necessary to review Election Act, 2017 with reference to ICCPR.

### **1.4 Research Questions**

1. What standards are provided in International Convention on election?
2. Whether Election Act, 2017 is meeting the requirement of free and fair elections as per International standards?
3. How does the Election Act, 2017 relate and differ to ICCPR with regard to electoral rights?
4. What legal obstacles in bringing Election Act, 2017 into compliance with International Covenant Civil and Political Rights?

## **1.5 Limitations of the Research**

The study is limited to the years 2010–2023. This time frame covers certain significant events documented in the legislative, judicial, and sociopolitical histories pertinent to the Election Act of 2017, although it inevitably leaves out the prior legal and historical settings that would enhance logical understanding regarding the Act's development. This study relies on primary (legislative text, international document) and secondary data and this reliance limits the ability to incorporate firsthand perspectives from stakeholders such as the impacted population, legal practitioners, and legislators. It is comparative study in which the comparison will be made between the Election Act, 2017 with international standards but no other jurisdiction will be part of this research.

## **1.6 Significance of Research**

In the affair of state its citizen right to participate through voting, allowing them to choose their own leaders through the electoral process. International law has acknowledged economic, social, civil, cultural and political rights but “right to vote” has importance in democracy. So the United Nation specifically addressed political rights in international covenant ICCPR. Due to its significance. Pakistan has given its citizens the rights by passing laws pertaining to political liberty and elections, yet despite the laws such as the Election Act of 2017, elections are consistently accused of being rigged due to a lack of an efficient implementation mechanism, legal loopholes, etc. There hasn't been any productive research done to pinpoint the issue with current legislation in the context of international legislation (ICCPR). This research highlights legal challenges and offer recommendations for the future that will benefit academics and non-academics,

particularly law students, as well as legislative and policy-making bodies that aims to improve law and its implementation mechanisms.

## **1.7 Methodology**

This study uses qualitative data analysis, data gathered from both primary and secondary sources. Primary sources are parliamentary legislation, Acts, ordinances and international documents (ICCPR), whereas secondary sources are books, articles, reports, scholarly works, and online resources. The data obtained from both sources primary and secondary will be analyzed using descriptive technique, and the researcher will then use exploratory method to examine the study from 2010 to 2023.

## **CHAPTER 2**

### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE PAKISTAN'S ELECTORAL LAWS**

The standards for fair and impartial elections are mentioned in Article 25 of ICCPR, and Article 40 of ICCPR binds the state member to submit a report in a timely manner. Pakistan was required to enact laws that adhered to international law (ICCPR) as a signatory state. Pakistan in 2017 legislates a complete code of election, "Election Act, 2017." The chapter will discuss the differences and similarities between the Election Act, 2017 and ICCPR and the changes brought in the election laws of Pakistan in the context of reports issued by the Human Rights Committee of ICCPR.

#### **2.1 Human Rights Law and International Election Integrity**

Election integrity refers to any election that adheres to the principles of democracy of political equality and universal suffrage as stated in international accords and standards and that is conducted with professionalism, objectivity, and openness throughout the election cycle.<sup>43</sup> United Nation is the international organization that is particularly concerned with human rights and has highlighted different rights of the people around the

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<sup>43</sup> ACE Electoral Knowledge Network, "Electoral Integrity," accessed January 5, 2025, [https://aceproject.org/ace-en/topics/ei/explore\\_topic\\_new](https://aceproject.org/ace-en/topics/ei/explore_topic_new).

world and among all these rights one is “right to vote”. So for this right international standards pertaining to elections are derived from UN treaties. These responsibilities are meant to be the cornerstones of any election process, not to be all-inclusive lists of requirements. The state is required by treaties to take the appropriate actions to enable people to properly exercise their rights.<sup>44</sup> Some points of International Election integrity and Human Rights Law in the United Nations’ publication titled "Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections" are as follows

### **2.1.1 Non- discrimination**

The ICCPR (article 2 (1)), the IESCR (article 2 (2)), and the UDHR (article 2) all asserts that using the rights that are provided by these treaties shall not subject anyone to any kind of discrimination based on their social background, property, race, colour, language, faith, political beliefs, or another characteristic. In order to give women more protection against discrimination in all of its forms, CEDAW (Article 7) also provides further protections against all forms of discrimination. Other international treaties particularly safeguard the same rights of minority groups, indigenous peoples, and Individuals with disabilities to participate.<sup>45</sup>

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<sup>44</sup> Manuel Wally, *International Obligations for Elections: Guidelines for Legal Frameworks* (International IDEA, 2014).

<sup>45</sup> Office of the United Nations High Commissioner For Human Rights, *Human Rights and Elections - A Handbook on International Human Rights Standards on Elections* | OHCHR (United Nation), accessed 26 November 2024, <https://www.ohchr.org/en/publications/training-and-education-publications/human-rights-and-elections-handbook-international>.



### **2.1.2 Self - determination**

International law's basic principle is the rejection of oppression or dominance by a group over another. It advocates for a society where each individual and group can live their lives freely, unhindered by servitude or compulsion from other groups. The UN Charter (Article 1(2)), ICCPR (Article 1) and the ICESCR all recognize and acknowledge freedom to choose for oneself.<sup>46</sup>

### **2.1.3 Pre- requisite rights**

Political right in UDHR, ICCPR and ICESCR create a favorable environment for fair election conduction along with other rights (rights to independent legal processes, protection from discrimination, free speech, information, assembly, and association). To guarantee the free and fair conduct of elections, partisan organizations, political gatherings and rallies, voter education initiatives, political propaganda, and political activities must all function without unjustified intervention.<sup>47</sup>

### **2.1.4 Universal and equal Suffrage in Election**

Equal suffrage means that each citizen's vote must be given equal weight regardless of their race, colour, gender, language, faith, political or other beliefs, national or social status, property, birth, or other position. International and regional accords preserve the right to have election with equal suffrage. They require that each voter be given an equal vote as other voters. The principles of equal suffrage "one person, one vote" must be followed, and

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<sup>46</sup> Manuel Wally, "International Obligations for Elections: Guidelines for Legal Frameworks."

<sup>47</sup> Ibid, 6.

Constituency limits should be established in accordance with the principle that voters should be (almost) properly represented in the legislature.<sup>48</sup>

### **2.1.5 International Standards for Political Party and Candidate Participation**

Ensuring political candidates an equal chance to engage with and win over people is essential. This calls for an electoral environment where candidates and political parties can freely travel the nation in search of votes, can organize peaceful rallies and other forms of public support, and can freely express their views to the public and have sufficient opportunity to do so and this is the right of every candidate and political parties to provide such environment. The European Convention on Human Right (ECHR) 1953, acknowledged the electoral rights and to secure these rights also provide assistance and support. Discussions on issues of public interest and political debate are strongly protected by the ECHR. Political parties as well as candidates should have a wide range of options for expressing their political opinion in spite of the fact that opposition disagree with them under Article 19 of ICCPR and UDHR and Article 10 of ECHR.<sup>49</sup>

## **2.2 The ICCPR's Political Rights Law**

The ICCPR properly addressed the political rights of human being because the states had realized the political rights significance and demand in the modern era due to this fact the UN specifically addressed these rights in a separate document i-e ICCPR. Article twenty-

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<sup>48</sup> 'The Carter Center's Election Obligations & Standards Database - ICNL', accessed 26 November 2024, <https://www.icnl.org/post/tools/the-carter-centers-election-obligations-standards-database>.

<sup>49</sup> 'Freedom of Expression and Respectful Discourse: Guidance for Political Candidates and Parties | EHRC', *Equity and Human Rights Commission*, accessed 26 November 2024, <https://www.equalityhumanrights.com/guidance/freedom-expression-and-respectful-discourse-guidance-political-candidates-and-parties>.

five of the covenant deals with participation of individuals in electoral process.<sup>50</sup> The political rights law in ICCPR are as follows.

### **2.2.1 Non-discrimination and equality of participation**

The rights to equality and non-discrimination must be respected in order to give every citizen equal access to voting. The International Covenant on Civil and Political Rights, articles 2 (1), 3 and 26, stand up for the freedom from prejudice. Article 2(1) of ICCPR states that regardless of any type of discrimination, such as based on race, colour, gender, language, faith, political beliefs, national or social group, property, birth, or any other characteristic, every member state to the Covenant commits to upholding and guaranteeing every right ensured in the Covenant for everyone within its borders and within its authority.<sup>51</sup> According to Article 3, parties to the existing Covenant promise to guarantee that men and women have equal access to the civil and political rights outlined in the covenant.<sup>52</sup> According to Article 26 of ICCPR, everyone is entitled to the same level of legal protection, free from discrimination.<sup>53</sup>

These three articles of the covenant bound the States to legislate the laws in accordance with the convention just to make sure that the states are following the convention also the political component of the ICCPR is further demonstrated by the

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<sup>50</sup> ‘Summary: International Covenant on Civil and Political Rights (ICCPR) - CCLA’, accessed 26 November 2024, <https://ccla.org/privacy/surveillance-and-privacy/summary-international-covenant-on-civil-and-political-rights-iccpr/>.

<sup>51</sup> ‘The Right to Equality and Non-Discrimination’, *Icelandic Human Rights Centre*, accessed 13 December 2024, <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination>.

<sup>52</sup> Ben Saul, David Kinley, and Jacqueline Mowbray, ‘Article 3: Equal Rights of Men and Women’, in *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, ed. Ben Saul, David Kinley, and Jacqueline Mowbray (Oxford University Press, 2014), 0, doi:10.1093/law/9780199640300.003.0006.

<sup>53</sup> Ibid.

governments' obligation to prohibit discrimination and ensure fair participation in public affairs.<sup>54</sup>

### **2.2.2 Freedom of speech and expression**

Everyone has the right to express themselves freely. Media is one of its primary advocates of freedom of expression and belong to everyone, including political parties as well as people running for office. Though not for freedom of speech, the law may impose reasonable, fair and non-discriminatory restrictions and restrictions on the use of the free speech right. Article 19 ICCPR of addresses the right to free speech and opinion of people.<sup>55</sup>

Article 19 of ICCPR deals with liberty of expression which states that everyone shall be free to express their ideas without hindrance and every person has a right to the freedom of expression, this covers the capacity to look for, receive, and disseminate thoughts and data of any kind, across every boundary, whether through spoken words, written or printed words, or any other media of his choosing. It may be subject to specific legal restrictions. Expression freedom and opinion liberty are necessary to exercise one's right to vote and should be completely safeguarded. Media freedom has a crucial role in informing the subjects of the state during elections. It is the duty of states to provide a framework for regulation that accommodates a broad spectrum of political viewpoints and guarantees democratic principles upheld. Voters can have access to comprehensive, reliable, precise information regarding each and every facet of the election process. According to the Human Rights Committee, a free press and media are necessary for the

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<sup>54</sup> Ibid.

<sup>55</sup> Wally, "Manuel. International Obligations for Elections: Guidelines for Legal Frameworks."

unrestricted sharing of thoughts and viewpoints that may discuss public concerns without restriction and to enlighten public opinion.<sup>56</sup>

### **2.2.3 The right to peaceful assembly**

People who gather peacefully for certain purposes are protected by the right to assemble peacefully. Everybody has the right to gather peacefully under the provisions of ICCPR (Article 21). To avail the protection, a gathering must be peaceful and avoid violence. There is an assumption that assemblies are peaceful. An assembly can remain calm even if some people engage in isolated acts of violence. However, a rally is no more “tranquil” if there's widespread and serious violence among participants. When it comes to election processes, the right to peaceful assembly is essential because public protests and political rallies in elections plays an important role and offer a useful means of informing the public about political issues.<sup>57</sup>

According to the United Nation HRC, there should be greater protection and accommodations for gatherings with political subject matter, since political speech is protected as a form of expression. The participation of journalists, human rights defenders, and media during elections is crucial for accountability, transparency, and defending the rights of voters. Human rights advocates keep an eye on elections to make sure there is no abuse in the voting process, journalists and media expose any abnormalities and offer important information during election and their participation is valuable to democracy. The electoral process without it, there are more chances for tampering, more reasons for

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<sup>56</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights and Elections: A Handbook on International Human Rights Standards on Elections, Professional Training Series No. 2/Rev.1 (New York and Geneva: United Nations, 2021), 17.

<sup>57</sup> Ibid, 24.

individuals to abstain from voting, and more reasons to lose faith in the whole political system. According to the ICCPR, the people who work to conduct impartial election are entitled to protection. Authority that supervise does not cease if the gathering is declared unlawful or dispersed.<sup>58</sup>

#### **2.2.4 The rights to vote, fair participation in public office and involvement in public affairs**

Article 25 of ICCPR states that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
- (c) To have access, on general terms of equality, to public service in his country.”<sup>59</sup>

This Article specifically deals with election procedures and public participation in formation of democratic state.

#### **2.2.5 Human Rights Committee General Remarks on ICCPR Article 25**

On 12th July, 1996 in its fifty-seven session the Human Right Committee presents its comments on Article 25 of ICCPR. The right of every citizen to vote and to hold public office is acknowledged and upheld by the Covenant's 25th article. The Covenant requires States, regardless of the type of government in force, to adopt whatever laws and other

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<sup>58</sup> Ibid, para 47, 49, 50, 53, 54.

<sup>59</sup> United Nations General Assembly, International Covenant on Civil and Political Rights, adopted December 16, 1966, Article 25, entry into force March 23, 1976.

regulations may be needed to guarantee that people have a real opportunity to enjoy the freedoms that it protects. The foundation of democratic administration founded on popular consent and adhering to the covenant's principles is Article 25. People are entitled to freely select their type of government and constitution, as well as to establish their political position. The right of individuals to take part in the processes that comprise public affairs behavior is covered in Article 25. Any limitations placed on the exercise of the rights protected by article 25 need to be based on just and equitable conditions. Establishing a higher age limit for elections or appointments to particular positions, for example, might make more sense than allowing all adults to exercise their right to vote. Without valid, impartial, and reasonable legal grounds, citizens' freedom to exercise their rights cannot be curtailed. For instance, someone's proven mental impairment might be a reason to deny them the ability to vote or hold public office.<sup>60</sup>

#### **2.2.5.1 Explanation of Article 25 (a) of ICCPR**

The broad definition of "conduct of public matters," as stated in paragraph (a), includes the use of all three branches of government as well as the exercise of political authority. Each aspect of public administration is covered such as the creation and execution of national, regional, local, and international policies. The constitution together with other legislation shall specify the division of authorities and the ways in which individuals might exercise their right under Article 25 to participate in the administration of public affairs.<sup>61</sup>

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<sup>60</sup>United Nations Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25), CCPR/C/21/Rev.1/Add.7, July 12, 1996, <https://www.refworld.org/docid/453883fc22.html>.

<sup>61</sup> Ibid, para 5.

### **2.2.5.2 Explanation of Article 25 (b) of ICCPR**

Article 25's paragraph (b) lays forth particular rules pertaining to the rights of citizens to vote or run for office in order to engage in public affairs. Sincere periodic elections in line essential to ensure the responsibility of representatives for the use of their assigned executive or legislative authority. Like that Elections must be conducted at regular periods that are short enough to guarantee that the authorities of governance is still based on voters' unrestricted expression of their will. The privileges and the responsibilities ought to be legally protected. It also supports the right to direct involvement. When citizens decide on public problems through a referendum or election procedure carried out in compliance with paragraph (b), or when they choose to amend or choose their constitution, additionally, they take an active interest in managing public affairs. Direct citizen participation can be achieved by involvement in organisations established to advocate for the public in conversations with the government and in assemblies that have the authority to decide on matters pertaining to a certain local or communal issue.<sup>62</sup>

### **2.2.5.3 Unreasonable Restriction on Voters**

The Human Right Committee mention that the state parties should not impose unreasonable restrictions like physical incapacity or property, literacy, educational requirements or voting eligibility should not be dependent on party affiliation.<sup>63</sup>

### **2.2.5.4 Effective Action by State during Election Period**

The state should take the following action during election period which were highlighted by HRC

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<sup>62</sup> Ibid, para 6 and 9.

<sup>63</sup> Ibid, para 4.



- Voter registration is necessary, should be made easier, and barriers should not be placed in the way of such registration.<sup>64</sup>
- Ensuring successful exercising one's rights to vote demands that the rights to free speech, assembly, and association be protected; these rights must be completely secured.<sup>65</sup>
- When certain obstacles, including poverty, illiteracy, language problems impede those who are eligible to vote from properly exercising their rights, proactive steps should be taken to address them.<sup>66</sup>
- Information about election should be provided in minority languages.<sup>67</sup>
- To provide enough information for illiterate voters, use specific approaches like photos and symbols.<sup>68</sup>

It is not reasonable to restrict someone's ability to contest election by requiring them to belong to a certain party. If a candidate must have a certain number of supporters required to receive a nomination, this criterion need to be acceptable and shouldn't prevent them from candidacy. The committee also highlight this aspect that to oversee the election process and guarantee that there should be autonomous electoral authority to ensure that it is conducted fairly, impartially, and in accordance with the laws of state that are compatible with the Covenant.<sup>69</sup>

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<sup>64</sup> Ibid, para 11.

<sup>65</sup> Ibid, para 12.

<sup>66</sup> Ibid, para 15 and 16.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid, para 17.

## **2.3 Alignment of ICCPR and Election Act, 2017 of Pakistan**

Article 25 of the ICCPR lays out guidelines for holding free and fair elections in a democracy. The ICCPR addresses people's civil and political rights.

### **2.3.1 Standards Set Out by Human Right Committee of ICCPR (Article 25)**

In the 57<sup>th</sup> session 1996 the Human Right Committee of ICCPR has presented condition for an election to be free and fair from Article 25 of International Covenant Civil and Political Rights.

1. Every citizen regardless of sex, religion, caste, creed, language have a right to vote without discrimination
2. Elections are to be held at periodic intervals.
3. Delimitation of boundaries ( Fair, Equal , Non- discriminatory)
4. Secrecy of the ballot
5. Registration of voters and Voter education
6. Election rights may only be restricted in a reasonable manner.
7. Autonomous electoral authority
8. Independent assistance should be given to those who are handicapped or illiterate.
9. The principle of one person, one vote
10. Independent election observer
11. Reasonable restrictions on campaign finance
12. Information about election should be provided in minority languages.
13. Enforcing party membership or party affiliation requirement for candidates is not a reasonable way to restrict someone's right to run for office.

14. Media are free to voice opinions and on matters of public concern.

It necessitates the complete enjoyment of and observance of the rights protected by an Article 19, 21 and 22.

15. Citizens participate in the governance of national issues by influencing public opinion and interacting with their representatives.

The above standards for fair election were translated by the ICCPR and the next step is to examine how the current Pakistan Election Act of 2017 adheres to and deviates from these guidelines.<sup>70</sup>

## **2.4 Analysis of Election Act, 2017 in the light of Article 25 of ICCPR**

### **2.4.1 Every citizen regardless of sex, religion, caste, creed, language have a right to vote without discrimination**

ICCPR Article 25 guarantees the right to vote. Only legally imposed restrictions that are non-discriminatory, based on reasonable and objective standard. Merely reasonable limitations, such as voting rights may be subject to a minimum age restriction etc.<sup>71</sup> The Election Act, 2017 does not mention in a specific provision that every citizen has a right to vote but when we analyze the Act different sections of the Act highlighting the above fact that every single individual has this right to vote and the government took special action to

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<sup>70</sup> National Human Rights Commission, Bangladesh, The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance, study conducted by Dr. Mohammad Shahabuddin, Department of Law & Justice, Jahangirnagar University (Dhaka: National Human Rights Commission, Bangladesh, 2013).

<sup>71</sup> Office of High Commissioner for Human Rights, *Human Rights: A Basic Handbook for UN Staff* (United Nation, 2020), <https://www.ohchr.org/sites/default/files/Documents/Publications/HRhandbooken>.

make sure that all the citizen of the state should enjoy fundamental right as acknowledged in Article 47, 48, 91, 93, 94, 167, 168, 170. Article 47 make sure women participation in election. The Election Act, 2017 allows the commission's ability to report annually on the total number of registered voters, both male and female in the National and Provincial Assembly and 91 is about women participation on Election Day. In Article 48 Election Commission of Pakistan "ECP" acknowledge the non- Muslim, transgender, disable people participation in the election also make sure to issue their national identity card. Article 93 takes special measures for prisoners and Returning Officer to cast votes through postal ballot, Oversees Pakistanis right to vote protected by Article 94 and Articles 167, 168, 170 in chapter 10 are penal provisions for those who refrain citizen from casting votes, bribery and undue influence. All these sections shows the concern of the government by taking special actions to ensure the participation of every individual in election.<sup>72</sup>

The ICCPR recognize right to vote without discrimination but Article 48-A of Election Act, 2017 has given right to vote to Ahmadis but are required to give up their faith or consent to being listed separately on the list of voters and accepting the label of "non-Muslim" in order to register to vote. But the core principle of Ahmadiyya religious doctrine is self-identification as Muslims, hence they ultimately abstain from voting altogether. Pakistani elections cannot be considered "free and fair" if a group of minority is shut out of the voting process. Voting rights cannot be denied of anybody because of their religious beliefs. The Election Act, 2017 retains the discriminatory provision targeting Ahmadis. In addition to being denied the ability to vote, the Ahmadiyya minority has been

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<sup>72</sup> Michael Boda, Abba Mohsin, 'Election Law Reform Project A Unification of Pakistan's Election Legislation Including Model Provisions for Electoral Reform' (Free & Fair Election Network, 15 June 2011).

the target of deadly acts of violence carried out by extremist groups and has been further exposed due to the separate electoral list that includes their names, addresses, and photographs. So, they are more vulnerable to targeted attacks because there is a distinct database of all enrolled Ahmadis voters with their contact information. Article 48-A violates Pakistan's legal obligations under the United Nations Convention ICCPR which include the ability to vote and the periodic holding of credible elections free from discrimination. This violation specifically targets the Ahmadiyya community.<sup>73</sup>

#### **2.4.2 Secrecy of voter**

Voters are permitted to cast through secret ballots in elections under the fundamental democratic principle of voter confidentiality, sometimes referred to as secrecy of the ballot or a secret ballot. The idea of voter secrecy has been proposed to end the practice of influential individuals or organizations pressuring voters to select a certain candidate. By the end of the 1800s, the secret ballot had become largely accepted across the country. However, Australia was the first country to see a broad adoption of a secret ballot because of the armed uprising of workers against the government that followed the gold rush of the mid-19th century. Working-class chartists demanded voter confidentiality as part of democratic reform, a demand that had a significant effect on Australian colonial gold miners. In 19th century, the idea of voter privacy first emerged.<sup>74</sup>

ICCPR in Article 25 has mention that secrecy of ballot is one of the important aspect of fair and transparent electoral process and Pakistan as a signatory state has

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<sup>73</sup> 'Pakistan: Ensure Ahmadi Voting Rights | Human Rights Watch', *Human Rights Watch*, accessed 26 November 2024, <https://www.hrw.org/news/2018/06/29/pakistan-ensure-ahmadi-voting-rights>.

<sup>74</sup> Muhammad Imran et al., 'The Role of Election and Election Commission of Pakistan in the Development of Democracy in Pakistan' 7, no. 2 (n.d.).

incorporated a provisions in Election Act, 2017 to make sure that the vote cast by secret ballot but here violate privacy of the voter which is basic right of citizen but violated by the two provisions Section 41 and 79(3) of Election Act, 2017 giving right to election agent or candidate to deviate from this international acknowledged right privacy of voter.<sup>75</sup> Section 79 (3) states that,

“On the application of a candidate or his election agent, the District Election Commissioner or any officer authorized in this behalf by the Commission shall provide to a candidate or an election agent a hard and searchable soft copy on universal serial bus (USB) in portable document format (PDF) or any other tamper-proof format of the final electoral roll with photographs of the voters and shall ensure that the copy is the same as provided to the Returning Officer and Presiding Officers.”<sup>76</sup>

The whole voter list database of the nation is extremely susceptible due to a major flaw in the Election Act of 2017. The voter lists database contains data of 104 million voters who participated in the GE-2018. As stated by an expert in cyber security, security is at risk because allowing the public access to 104 million voter databases which are derived from Nadra's citizen database is a surefire way to jeopardize the privacy of every Pakistani citizen identity, including their photos. The softcopy of voter information may be swiftly duplicated and transferred with a single click of a button, resulting in massive harm to the country's national asset. Because it can seriously compromise voters' confidentiality, which is a defining characteristic of democratic elections. Section 79(3) of Election Act, 2017 presents a serious threat to national resources. Election supplies such as ballot boxes, EVMs, voter records are useful not just as tangible tools but also for protecting the confidentiality of individual ballots. If Section 79(3) is not properly

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<sup>75</sup> Ibid.

<sup>76</sup> Pakistan, The Elections Act, 2017, Section 79(3). Revised through Elections (Second Amendment) Act, 2023.

implemented, they will undoubtedly be vulnerable to chaos, tampering, or unauthorized access to materials. Such an event either compromises the confidentiality of ballots or exposes private voter data. For example, if voter lists or results sheets are handled improperly or leaked, votes may be tracked down or additional personal information may be added to those voters, violating the process's integrity.<sup>77</sup>

Similar to this, damaging or altering EVMs can jeopardize the confidentiality of votes and cast doubt on the validity of the election's outcomes. The need for extremely robust safeguards under this clause is thus highlighted by the fact that such effects often undermine public trust in the electoral system itself in addition to causing physical and financial harm to the nation's assets. The ECP should make arrangements in this regard, such as allowing the inspection of electoral rolls but with CNIC numbers, complete addresses and other sensitive data, only the constituency and name visible.<sup>78</sup>

### **2.4.3 Delimitation rules for women and minorities**

Delimitation principles emphasize fairness, equality, and transparency. It include equal representation by guaranteeing equal weight to the votes and forbidding discrimination, also states that no group should be favored or disadvantaged based on their race, ethnicity, religion, or political affiliation. The boundaries set by administration and geography should be followed by delimitation, and it should also take into account the changes in population and be evaluated on a regular basis to ensure balance. Voting system must be made legitimate and trustworthy, which requires an independent authority to supervise and

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<sup>77</sup> Ansar Abbasi, "Election Act 2017 Exposes Citizens' Database to Hackers, Criminals," The News International, April 26, 2018, <https://www.thenews.com.pk/print/309160-election-act-2017-exposes-citizens-database-to-hackers-criminals>.

<sup>78</sup> Ibid.

include stakeholders in the process. Electoral district boundaries can discriminate against minority groups by dividing them across seats, potentially reducing their voting power. This practice ought to be outlawed. Concentrated minority groups are shielded from discriminatory constituency boundaries by provisions against them. In addition to forbidding the division of minority communities, special measures will be needed to enable a representation of minority groups but are not big enough and concentrated enough in space to gain from staying together inside a single constituency.<sup>79</sup> The Election Act, 2017 section 17 to 22 specifically deals with the delimitation of constituencies but section 19 sub clause 3 and 4 that women's and minorities' delimitation rules are applied as a whole rather than regionally, which means that these limitations or hurdles vary from region to region which can't be taken or considered as whole phenomenon.<sup>80</sup>

ICCPR Human Right Committee in explanation of Article 25 also emphasize that information about election should be provided in every languages<sup>81</sup> this shows the significance of minorities rights in international law regardless of the fact that Pakistan is a signatory to the ICCPR but there is no such provision in the Election Act, 2017 or measure taken by election commission for minority feasibility during election.

#### **2.4.4 Election Observer**

The ICCPR in particular, as well as public international law has establish standards for election observer during election period i-e freedom of movement and the liberty of

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<sup>79</sup> Dr. Lisa, 'Challenging the Norms and Standards of Election Administration' (IFES, n.d.).

<sup>80</sup> Moosvi, 'Electoral Politics in Pakistan: Law, Parties, and the Need for Innovation', <https://Pide.Org.Pk/>, accessed 26 November 2024, <https://pide.org.pk/research/electoral-politics-in-pakistan-law-parties-and-the-need-for-innovation/>.

<sup>81</sup> 'Language Requirements for Election Materials :: California Secretary of State', accessed 26 November 2024, <https://www.sos.ca.gov/elections/voting-resources/language-requirements>.



expression for election assessment. Media may also have an impact on election as an election observer. The election observer supervise every phase of election. The ICCPR has made it compulsory for a genuine election to have domestic and international election observer.<sup>82</sup> The Election Act, 2017 section 238 is regarding election observer which has given discretionary power to the commission to allow domestic and international election observer. There is no such provision in the Election Act, 2017, to make it compulsory for the commission to make special arrangements for election observer to supervise the election in every phase for the fair outcomes and for stable democracy.<sup>83</sup>

Election observers play a crucial role in determining whether or not the Election Act of 2017's provisions uphold the democratic rights guaranteed by the ICCPR. They critically evaluate the extent to which legal provisions most notably in Section 9, 12(c), 47, and 94 of the Act that are necessary under the ICCPR for equal representation in public affairs are provided to marginalised groups, including women, non-Muslims, transgender people, and overseas. The observers even go so far as to point out deviations, hazards, etc that could jeopardize the processes' transparency. Election observers can establish accountability procedures that guarantee democratic practices in the face of the nation's international commitments by recording and disclosing non-compliance under ICCPR.<sup>84</sup>

The Election Act, 2017, critically analysed, it is observed that there are certain areas that conflict with the standards of ICCPR, such as Section 48-A that contradicts equal participation without discrimination, Section 79(3) and 41 that violate the privacy of the

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<sup>82</sup> Avery Davis-Roberts and David J. Carroll, 'Using International Law to Assess Elections', *Democratization* 17, no. 3 (June 2010): 416–41, doi:10.1080/13510341003700253.

<sup>83</sup> 'The Gender Gap in the Electoral Rolls: Barriers to CNIC Registration', n.d., <https://paktvoter.org/wp-content/uploads/2019/01/Gender-Gap-in-Electoral-Rolls>.

<sup>84</sup> Ibid.

voters, Section 19(3) which states that the entire country will serve as a single constituency for the reserved seat rather than regionally, and Section 238 which allows the commission to decide how to manage election observers during the election. The remaining standards mentioned in the article 25 of international covenant on civil and political rights align with provision of Election Act, 2017 such as to make sure woman participation in election (Section 9, 12 (c), 47), under section 8 of the Act commission is authorize to conduct impartial election, section 12 regarding the public awareness and training for election, to confirm the involvement of the non- Muslims, disable and transgender under section 48, section 94 has highlight the oversees Pakistanis fundamental right to vote and also the Election Act, 2017 has separate chapters related to electoral rolls, election expenses, candidates assets and their liabilities, how to deal with election disputes, offences and penalties etc to conduct fair and free elections in a country.

## **2.5 Human Rights Committee of ICCPR**

HRC of ICCPR which manages the human rights treaty of the United Nations, is responsible for keeping an eye on ICCPR implementation by reviewing States reports, complaints by individuals, and interstate complaints and by preparing substantive statements, general discussions, and general remarks on subjects covered by the ICCPR.<sup>85</sup>

### **2.5.1 Composition of ICCPR Human Rights Committee**

Eighteen members, commonly referred to as "Experts," make up the HR Committee. Each State can designate two candidates. According to Article 28 of ICCPR, members must be people with strong moral principles and acknowledged expertise in human rights. Each

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<sup>85</sup> 'Meetings of States Parties & Elections | OHCHR', accessed 26 November 2024, <https://www.ohchr.org/en/treaty-bodies/crc/meetings-states-parties-elections>.

member is chosen by the state Parties in a confidential manner (secret ballot) after being nominated by their respective State Parties. Every committee member is eligible for re-election if nominated, and their terms are four years. States Parties are required to guarantee that members of the HRC are distributed fairly geographically (article 31).<sup>86</sup> The HRC has three annual meetings and its headquarters is in Geneva. Every year it submits a public report to the UN General Assembly and the UN Economics and Social Council.<sup>87</sup>

## **2.5.2 Mandate of Human Right Committee of ICCPR**

Three methods enable HRC to keep an eye on how the ICCPR is being applied.

1. It looks at the States Parties' periodic country reports, which outline the national initiatives that the nations have taken to further adherence to the Covenant and human rights in general. Every State is required to submit these reports.
2. Provided that both the party making the allegation and the alleged offender have acknowledged the HRC's authority to handle such complaints, the HRC is able to receive and review complaints from parties claiming that another Party's state is not following the rules to uphold its commitments under the Covenant.
3. Human Rights Committee may also accept and evaluate statements from people who allege that the Member State violated their rights under whose authority they reside if they have signed the first optional protocol.<sup>88</sup>

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<sup>86</sup> 'Human Rights Committee', *OHCHR*, accessed 26 November 2024, <https://www.ohchr.org/en/treaty-bodies/ccpr>.

<sup>87</sup> Philip Alston and Frédéric Mégret, *The United Nations and Human Rights: A Critical Appraisal* (Oxford University Press, 2013).

<sup>88</sup> Albert Camus, 'The Practical Guide to Humanitarian Law', accessed 26 November 2024, <https://guide-humanitarian-law.org/content/article/3/human-rights-committee/>.

## **2.5.3 Reporting Requirement under Human Right Committee of ICCPR**

### **2.5.3.1 General Comments of Human Right Committee**

Article 40 establishes the capacity to generate General Comments. The Committee released 33 General Comments before the end of 2009. It clears the duties of States Parties as well as the interpretation and extent of different provisions. To offer States Parties with higher understanding of the Committee's stance on the obligations that each State has taken on by acceding to the ICCPR, the HRC provides general comments which addresses specific articles of the ICCPR. Additionally, the committee has provided a general comment on Article 25 of the ICCPR to give a clear understanding to the member states.<sup>89</sup>

It is mandatory for every State Party to submit a report to HRC one year following ICCPR's adoption, outlining how well it is implementing its provisions. Following the first report, the State will provide follow-up reports after being asked by the Bureau of Human Rights Committee. The HRC has traditionally reviewed periodic State reports by first having the State submit a report outlining the progress made since the last reporting cycle. The Committee then chooses a list of issues to determine which issues it would most like to discuss in an effective conversation with the State. The Committee will then draft its final remarks based on the State's and civil society's findings and responses to the set of problems provided. A more straightforward reporting process, known as "list of issues before reporting," created by HRC. This process begins with the Committee creating a list of problems to which state replies and the Committee has decided to restrict each list of problems to no more than 25 questions then the HRC has a positive direct discussion with

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<sup>89</sup> Ayuk Nkwa Pascal, 'The Legal Framework for the Protection of Liberty in Cameroon', 11 January 2022, 8, doi:<https://doi.org/10.20935/AL4730>.

State party representatives over the list of problems following the filing of a State report. The last step, the Standing Committee to come up with concluding findings, a document that comprises an introduction, the main areas of concern, advantageous features, the obstacles and challenges preventing the ICCPR from being implemented, and recommendations and suggestions. Additionally, a tentative deadline for the State party's upcoming periodic report is provided.<sup>90</sup>

HRC also consider complaints from individuals and between states according to the ICCPR's Article 41 , organize general sessions to get opinions on current problems from interested civil society participants, NGOs, national human rights organizations, and other UN agencies, the Committee has authority to intervene if states are not submitting the reports on alarming issues and the Committee extends an invitation to other UN organizations and specialized agencies to collaborate in its activities. Specialized agencies are invited by the Committee to present written reports that include country-specific details on the member states whose reports are in front of them. At the start of each session, representatives from these organizations are also asked to speak to the Committee. Additionally, following a meeting with the Committee, the United Nation's Secretary-General may designate specialised agencies which may have jurisdiction over them, on parts of the reports that the member state submit. After that, the specialized agencies might offer their opinions on specific report portions.<sup>91</sup>

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<sup>90</sup> 'Human Rights Bodies' Hearings & Sessions: December 2022 – International Justice Resource Center', accessed 26 November 2024, <https://ijrcenter.org/2022/12/01/human-rights-bodies-hearings-sessions-december-2022/>.

<sup>91</sup> 'Human Rights Committee (ICCPR) | LII / Legal Information Institute', accessed 26 November 2024, [https://www.law.cornell.edu/women-and-justice/court/human\\_rights\\_committee\\_%28iccpr%29](https://www.law.cornell.edu/women-and-justice/court/human_rights_committee_%28iccpr%29).

## **2.6 Pakistan's Reporting Requirement to the ICCPR Human Rights Committee under Article 40**

Amnesty International and other organisations commended Pakistan's ICCPR ratification, which took place on June 23, 2010. The covenant establish universal human rights that are fundamental for everyone's well-being. There is no reason why Pakistani people should have fewer or lower rights than other individuals throughout the world. The Pakistani government objected to eight out of the 27 sections of the ICCPR, which are 3, 6, 7, 13, 18, 19, 25, and 40. HRC is empowered by Article 40 to review the conclusions that the parties to the Covenant have presented. Furthermore, Pakistan aims to evade reporting under the treaty and to ignore the crucial role that the UN Committee on Human Rights plays in assessing the compliance of states with ICCPR duties by reserving Article 40 of the ICCPR. Such a restriction contradicts the Covenant's goals and objectives. The purpose of the covenant would likewise be incompatible with a reservation that limits the Committee's ability to interpret the terms of any of its clause as the Committee said in its previous General Comment 24 of 1994. Following that, the Pakistani administration explained that the reservations were the result of a "technical error," but it has taken a year for Pakistan to repeal them. As a result, just two reservations remain to ICCPR Articles 3 & 25. Following the removal of the reservations from Article 40, Pakistan is responsible for reporting to HRC.<sup>92</sup>

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<sup>92</sup> Amnesty International, Pakistan's Reservations: A Challenge To the Integrity of The United Nations Human Rights Treaty System, Easton St., London: International Secretariat, Amnesty International, 23 Jun, 2011, <https://www.amnesty.org/en/wp-content/uploads/2021/07/asa330062011en>.

## **2.7 Pakistan's Initial Report to the Human Right Committee**

Pakistan filed its first report to the HRC in 2016 before the legislation of the Election Act, 2017 which was actually due in 2011. The Government of Pakistan discusses each provision of the Covenant and how the state implementing the international law mentioned in ICCPR related to the electoral process at a state level.<sup>93</sup>

### **2.7.1 The Right to free Expression in ICCPR**

Freedom of opinion and expression is discussed in ICCPR, are important aspects during elections, and Pakistan, state party to the covenant explains how the state has protected this right. Article 19 of the Constitution of Pakistan protects the freedom of opinion and expression, saying: Each and every individual is entitled to Freedom of speech, expression, and press subject to any justifiable lawful limits put in place for Pakistan's defense, security, or integrity.<sup>94</sup>

In Election media play an important role as an election observer as they cover the whole electoral process. Freedom of media is guaranteed by the constitution but with restriction it doesn't explain that what kind of limitation is imposed during election period as it was observed during election. The technique is recognized to limit the capability of neutral election observers to do their jobs by suspending the internet and mobile services and lead to errors in the voting process. The local election observers who must visit several

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<sup>93</sup> Ibid.

<sup>94</sup> United Nations, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Initial Report of Pakistan, CCPR/C/PAK/1, International Covenant on Civil and Political Rights, Human Rights Committee, November 24, 2015.

voting places and interact with other observers have challenges due to the interruption of internet and cell phone service, making it fundamentally undemocratic.<sup>95</sup>

### **2.7.2 HRC's Remarks on Pakistan's Initial Report**

At its 3386th, 3387th, and 3388th sessions which took place on July 11 and 12, 2017, the Committee reviewed Pakistan's first report (CCPR/C/PAK/1). At its 3406th and 3407th sessions, which took place on July 25 and 26, 2017, it approved the current concluding observations. The Committee is pleased that the government of Pakistan restricted its concerns to provisions 3 and 25 after withdrawing many in 2011. However, it concerns that the State party holds reservations Article 3 and 25 that limit their applicability to the degree that they are consistent with the law of the land. To guarantee that the Covenant is fully and effectively implemented, a States Party should consider withdrawing its outstanding objections to Articles 3 and 25. Concerns have been raised about the Pakistan's Electronic Media Regulatory Authority's handling of media content, including the interruption of over 20 programs in the past four years especially during election days. Additionally, Clarity is lacking in the supervisory procedures and procedural protections to guarantee that the Regulatory Authority's actions are consistent with the free expression principle.<sup>96</sup>

### **2.7.3 The right of participating in public affairs**

Voting is open to all Pakistani nationals who are at least eighteen years old and of sound mind. Pakistan in its report mention the laws they have legislated for the inhabitant of Pakistan to practice the right to vote and for candidates who are contesting election and

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<sup>95</sup> 'Inherently Undemocratic': Pakistan Suspends Mobile Services on Voting Day | Elections News | Al Jazeera', accessed 26 November 2024, <https://www.aljazeera.com/news/2024/2/8/inherently-undemocratic-pakistan-suspends-mobile-services-on-voting-day>.

<sup>96</sup> United Nations, Concluding Observations on the Initial Report of Pakistan, CCPR/C/PAK/CO/1, International Covenant on Civil and Political Rights, Human Rights Committee, August 23, 2017.



forming political parties. These laws are Constitution of Pakistan 1973, ECP autonomous body, the Representation of People Act (RoPA) of 1976, the Conduct of Election Rules of 1977, the Political Parties Rules of 2002, the Allocation of Symbol Order of 2002, and the Code of Conduct for Political Parties and Contesting Candidates for General Elections. Articles 62 and 63 of the Constitution, as well as the "Representation of the People's Act" of 1976 offer a comprehensive legislative framework regarding who is eligible to run for office in Pakistan and who is not. The Conduct of Elections Rules of 1977 serve as a complement to these. The Constitution states that minorities and women enjoy a specific quota of reserved seats in both national and provincial legislatures. Women are also granted special reserved seats at the local body levels. In addition to the seats that are reserved, women have the right to contest election on a general seats without facing any prejudice. ECP is a dynamic, self-governing organization. It is mandated by the constitution to supervise Pakistan's electoral process. In order to do this, it has carried out a significant effort to update voter lists, successfully eliminating more than 30 million fraudulent registrations. Because of the ECP's technological developments and the digitization of the electoral rolls, all eligible voters are able to confirm their registration on the voter list via text using mobile phone networks. Voter trust has significantly increased as a result, and concerns about voter data manipulation have been eliminated. Now, each voter is aware of the precise location of their vote registration. Any person whose information is missing from the list of voters can have it added or updated. Additionally, special steps are taken to guarantee in the general elections Article 34 of 1973 Constitution instructs the government to take actions in this area while defending the legal right of women to completely involve in national affairs. Women's equal involvement in national life,

measures must be implemented to make sure women's full involvement in all areas of national life.<sup>97</sup> Pakistan highlighted the measures taken by the Government of Pakistan on participation in public affairs.

#### **2.7.4 Human Right Committee Findings on Pakistani's Right to Take Part in Public Affair**

In addition to criticizing the lack of adequate information on the execution of these quotas. The Committee is concerned that only religious minorities are subject to the minority quotas. Additionally, it talks about how government departments have implemented quotas for people with disabilities, as well as quotas for women and members of minority groups in National and provincial parliaments. Furthermore, Ahmadis' exclusion from the main electoral list alarms it and being placed on a separate voting list, women's low voting participation, and the continued barriers to voting among minorities, including gipsies, and people with disabilities are also issues of concern. It is recommended that the State party review its policy regarding temporary extraordinary measures, which includes minority quotas, to make sure that all members of religious, cultural, and ethnic minorities are covered and that all citizens have equal access to public services and can take part effectively in the governance of public affairs. To ensure everyone's ability to vote is unhindered and the state party should enhance the election process.<sup>98</sup>

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<sup>97</sup> United Nations, Initial Report of Pakistan, CCPR/C/PAK/1.

<sup>98</sup> United Nations, Concluding Observations, CCPR/C/PAK/CO/1.

### **2.7.5 Pakistan's ICCPR compliance following the submission of the first report to the HRC**

Pakistan reported to the Human Rights Committee for the first time to the ICCPR, highlighting its efforts to comply. The ECP oversees the country's elections are held in accordance with the Election Act, 2017, a comprehensive law that repeals eight prior electoral laws and gives international guidelines on inclusivity legitimacy in light of ICCPR compliance regarding the rights of women, minorities, and other marginalised communities. The Election Act, 2017, includes numerous provisions that encourage women to participate in the electoral process, such as encouraging women to become members of political parties (Chapter XI, Section 203(4)), requiring parties to provide a minimum of 5% of their general election tickets to female candidates (Chapter XI, Section 206), empowering the ECP to conduct awareness campaigns to encourage women to register and vote (Chapter II, Section 12(c)), and taking action to close if there is more than 10% female-to-male voter registration gap in any given constituency (Chapter IV, Section 47(2)). The initiatives include ensuring minority representation and facilitating access for those with disabilities, among other underprivileged groups. The most urgent issue, however, is the marginalisation of the Ahmadis, who are listed separately on an electoral list in accordance with Section 48-A, against the equality and nondiscrimination principles outlined in the ICCPR.<sup>99</sup>

One distinct ethnic group in Pakistan is the Gipsy people, sometimes called the Khana Badosh. They are semi-nomadic or nomadic and are well-known for their unique

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<sup>99</sup> “Key Highlights of the Elections Act, 2017,” Pak Voter Civic Information Portal, May 4<sup>th</sup>, 2024, <https://pakvoter.org/election-laws-and-rules/>

mythology and nomadic way of life. Gipsy settlements may be found all throughout the nation in abandoned plots and slums located by the sides of the roadways. People from these groups find it very hard to get a CNIC due to regulations set forth by NADRA. New requirements require applicants to submit birth certificates in addition to having their paperwork attested by the family member who holds a CNIC and a married woman, providing her husband's CNIC. Because approximately eighty percent of the gipsies do not have CNICs, their offspring find it incredibly difficult to obtain theirs. However, in order to get CNICs, gipsies must establish permanent home addresses, which requires them to settle down, even if only temporarily, on state or private territory. This is where a substantial part of gipsy families are exploited by important landlords who allow them to settle in exchange for their political devotion.<sup>100</sup> For casting of vote citizen must possess CNIC. The government do not give attention to this community which was mention by HRC in its concluding observation on initial report of Pakistan also as a protest they do not cast vote. The Pakistani census does not include information about gipsies. Gipsies are not on the government's priority list since there are no data available for the community. Additionally, no action has been made by ECP to guarantee that all Gipsies are listed on the electoral records, any government employee or prisoner in Pakistan may vote through postal ballot, but there are no such regulation for nomadic populations, such as the Gipsies. Gipsies haven't received much attention from Free and Fair Election Network which organizes trainings for various sectors on the significance of voting and voting processes. Pakistan is a Commonwealth member and voters in remote locations who are unable to go to voting centers on their own are reached by mobile teams in other Commonwealth nations

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<sup>100</sup> Zulfikar Kunbhar, 'The Disenfranchised Gypsies - Daily Times', Daily Times, 18 July 2018, <https://dailytimes.com.pk/269470/the-disenfranchised-gypsies/>.

but not in Pakistan. If this approach is used, the large number of gipsies exercise basic right of voting.<sup>101</sup>

### **2.7.6 Analysis of 2018 Election**

On July 25, 2018, election in Pakistan made progress towards its second consecutive democratic transition by mid-august. The recently elected national assembly members of Pakistan have displayed the third straight peaceful transition of power from one democratic civilian administration to another. 2018 election were held after enactment of Election Act, 2017 and submission of first report to the HRC of ICCPR.<sup>102</sup>

#### **2.7.6.1 The Involvement of Women and Youth in 2018 Election**

Despite being a signatory to CEDAW, women in Pakistan are denied their fundamental rights, much like in the majority of underdeveloped nations. Despite the fact that all Pakistanis, male and female, are entitled to vote, there are no equal voting rights. Even though the majority of political parties signed an agreement prohibiting women from voting, women were still not allowed to cast ballots in the most recent elections in Pakistan. Nonetheless, the Elections Act of 2017 protects women's political rights and stipulates that ECP shall deem the results invalid in constituencies where women's vote participation is less than ten percent of the total. It also stipulates that for general seats, each political party is required to give female candidates not less than five percent of its party tickets. Actions taken by the ECP during the general elections in 2018, a significant percentage of women (171) stood for general seats and in certain constituencies women outnumbered men in the voting process, for the first time even women from the tribal areas of conservative South

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<sup>101</sup> Ibid.

<sup>102</sup> Iltaf Khan, Farmanullah and Ruwaid Khan, "The Continuation of Democracy in Pakistan: An Analysis of 2018 General Elections," *Global Political Review*, VII(II), (2022), [https://doi.org/10.31703/gpr.2022\(VII-II\)](https://doi.org/10.31703/gpr.2022(VII-II))

Waziristan cast votes. Women have been encouraged to participate in politics as party candidates and voters by the majority of political parties, from nationalist to religious, which signals well for Pakistani politics going forward.<sup>103</sup>

In Pakistan, youth comprise about 60% of the population. A significant percentage of Pakistan's urban middle-class youth participated in the July 2018 elections, reviving the country's political system after they lost trust in the more established conventional political movements, their leadership, policies, and initiatives.<sup>104</sup>

#### **2.7.6.2 Claims of Rigging in the 2018 General Election**

Numerous political parties have questioned the outcomes of the general election held in 2018, made a number of accusations of election rigging.<sup>105</sup> The main accusations made are as under

1. In several voting centers, the presence of poll workers, election officials, and candidates throughout the vote-counting process was not adequately guaranteed. The entire election process becomes corrupt when poll workers are not present when results are being compiled.
2. Certain districts have excessive delays in the release of both official and unofficial election results.
3. The employing of inexperienced poll workers in some constituency, voting centers.
4. Voters exceeded the number specified in subsection 3 of section 59 of the Election Act, of 2017 at some voting places.

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<sup>103</sup> Ibid, 33.

<sup>104</sup> Ibid.

<sup>105</sup> Madiha Afzal, "Did Pakistan's Imran Khan Win a 'Dirty' Election or a Real Mandate?" Brookings Institution, July 27, 2018, <https://www.brookings.edu/articles/did-pakistans-imran-khan-win-a-dirty-election-or-a-real-mandate/>.

5. Effective complaint mechanism were absent at district level.
6. The electoral process was already polluted and the integrity of the elections was seriously questioned due to the pre-election interference and political engineering that favored one party over the others and denied other political parties an even level playing field.<sup>106</sup>

### **2.7.6.3 Delimitation**

The practice of breaking up a nation's whole territory into smaller sections in order to hold elections more effectively is known as delimitation. Constituencies are created as the entire region where elections are held is broken up into smaller sections they are meant to represent various demographic groups. To define seats for the 2018 election, the Pakistani Commission use the preliminary data from the 2017, Census. However, serious concerns were expressed regarding the delimitation procedure before the 2018 elections. According to the legislation, constituencies must have about equal populations only up to 10% difference is allowed but there are significant variations in population size in certain constituencies, Approximately 780,000 people live in each National Assembly seat on average. Thirty-one constituencies are abnormally big or small: four in Baluchistan, eight in KP, nine in Sindh, and ten in Punjab.<sup>107</sup>

### **2.7.6.4 European Union and Commonwealth Observation Mission**

July 17, 2018 saw the arrival of the 100-member long-term EU oversight mission in Pakistan the smaller and shorter Commonwealth Observation mission. Another came on

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<sup>106</sup> Syed Nazir, Shaukat Tareen, Wahid Khan and Muhammad Yousaf Baloch, "Allegations of Rigging in General Election-2018 in Pakistan," Bi-Annual Research Journal BALOCHISTAN REVIEW 45, no. 1, (2020): 292. <http://www.uob.edu.pk/Journals/Balochistan-Review/>.

<sup>107</sup> 'Pakistan General Elections 2018: Analysis of Results and Implications', *Orfonline.Org*, accessed 20 November 2024, <https://www.orfonline.org/research/pakistan-general-elections-2018-analysis-of-results-and-implications-46324>.

July 18, 2018 and returned on July 30, 2018, and on July 27, 2018, it issued its preliminary statement. The pre-poll environment was not regarded as free and fair by the EU Observation mission. They saw limitations on press freedom that compelled the media to engage in self-censorship. The team also referred to the counting procedure as flawed and wondered why the previous prime minister was the target of the decision. With a few exceptions regarding the military's presence and involvement in the counting process, the EU declared Election Day has been transparent and orderly. Election rules have clearly improved since the last elections, according to the Commonwealth Mission, but counting techniques, the results transmission mechanism still require improvement. The General Election of 2018 achieved a quality score of 51.79% overall. With an aggregate score of 64%, Polling-day Operations obtains the best rating of GE 2018 quality. The lowest score of 40% was awarded to the counting, compilation, and transmission of votes, indicating that these processes were the poorest in terms of the general election's administration and quality.<sup>108</sup>

The 2018 Pakistan General Election highlighted areas that still needed improvement to meet international standards for respecting a critical and significant part of Article 25 of the ICCPR. Critical concerns in regard to this included restricted participation by transgender people, insufficient access for people with impairments, and cultural barriers that prevented women from voting. Accountability concerns were brought up by RTS delay, and public confidence was eroded by claims of pre-election manipulation and the presence of military personnel in voting places. Discrimination was practiced

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<sup>108</sup> Saiful Islam, Muhammad Zubair, Imraz Muhammad, "An Analysis of 2018 General Elections in Pakistan," *Journal of the Research Society of Pakistan* 56, (Jul – Dec, 2019): 191- 197, <https://pu.edu.pk/images/journal/history>



against Ahmadis and other religious minorities. Equal representation was gradually hampered by the reserved seats' own lack of inclusivity towards minorities and women. Polling abnormalities, undertrained personnel hampered election management. In order to improve electoral integrity and public trust in next elections, remove the legal flaws from the Act as well as upgrading electoral technology and campaign finance regulations etc.

## **2.8 Second Report Submitted By Pakistan to Human Right Committee under Article 40 of International Covenant on Civil and Political Right**

The Pakistani government is pleased to submit, in accordance with Article 40 of the Covenant, its Next Periodic Report before HRC. The relevant issues raised by the committee are the main subject of this report and the suggestions made during the first review, which was completed in 2017. In order to achieve its responsibilities, since submitting its most recent report, Pakistan has taken more administrative, legislative, and policy actions in accordance with international law. These actions are in accordance with the government's priority of defending the rights of its citizens, which includes minorities and other individuals who are at risk in society. Enacting laws defending the rights of children, women, and other socially vulnerable populations, boosting national human rights organizations and law enforcement agencies, and collaborating more with civil society members, have all resulted in significant advancements.<sup>109</sup>

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<sup>109</sup> Human Rights Committee: Second Periodic Report Submitted by Pakistan under Article 40 of the Covenant, Due in 2020, CCPR/C/PAK/2 (Geneva: United Nations, 2022), para. 1–2.

### **2.8.1 Human Right Committee on Pakistan's Reservations**

In order to guarantee the complete and efficient implementation of the Covenant, member states has to think about renouncing its outstanding objections to articles 3 and 25.<sup>110</sup>

The Pakistani government had concerns about articles 3 & 25, of the Covenant during the ratification process, which was revisited in 2011. The review process led to Pakistan's reservations being reduced in scope to comply with Sharia law, or the law of inheritance, and constitutional criteria. Apart from the Constitution's obligations, the government has implemented Articles three and twenty-five of the Covenant and has implemented numerous policy measures to guarantee the involvement in politics of all citizens of the nation without discrimination and to advance, among other things, gender equality initiatives. Pakistan's reservations on Articles three and twenty-five are based on upholding the Constitution's supremacy. They must be applied in accordance with the Pakistani Constitution.<sup>111</sup>

#### **2.8.1.1 Right to Express Opinion (Freedom of Expression)**

Concerns about journalistic freedom of expression are acknowledged by the government. The government views media professionals as partners in promoting and safeguarding human rights and basic freedoms. Pakistan has a lively media with enormous autonomy in how it functions. Journalistic freedom is protected by Article 19 of the 1973 Constitution. The government values open information and reporting, and opposes press restriction. The government is always open to unbiased and helpful media criticism. “Protection of Journalists and Media Professionals Act, 2021” was just adopted. It got presidential assent

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<sup>110</sup> Ibid, para 15.

<sup>111</sup> Ibid.

on December 1st, 2021. The Act aims to promote and protect media professionals' freedom of speech, safety, independence, and impartiality. The Act establishes a framework of laws and institutions that support media professionals' and journalists' freedom of speech.<sup>112</sup>

HRC highlights that threats to press freedom and censorship intensify during general elections as this aspect were not discuss by the state party. HRC demands to give explanation of reports i-e the demonstrations on May 9, 2023, there has been a surge in actions of pressure and censorship against media outlets, including as television station closures, license suspensions, Internet shutdowns, and social media blackouts, Journalists, media workers, human rights advocates, and political activists face threats, intimidation, and violence, including kidnapping and murder, when practicing their right to free expression especially during election.<sup>113</sup>

The ECP is the independent organisations in charge of overseeing elections. It can take decision regarding election but ECP had not taken any action regarding freedom of expression violations brought to light by the HRC also Election Act, 2017 is the complete code of election, but the provisions in the Act does not explain how to exercise the freedom to express oneself and opinion in elections because ICCPR Article 19 has recognized this as a basic political right of every human being. So, the Election Act, 2017 required to acknowledge this fundamental political right although the constitution of Pakistan has highlighted this right but the Act as a complete code of election should explain the restriction on media especially during election period because during this period media is crucial, and raise voices and opinions on behalf of the subjects of the State.<sup>114</sup>

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<sup>112</sup> Ibid, para 116-118.

<sup>113</sup> Human Rights Committee: List of Issues in Relation to the Second Periodic Report of Pakistan, CCPR/C/PAK/Q/2 (Geneva: United Nations, 2023), 2.

<sup>114</sup> Ibid.

### **2.8.1.2 Participation in Public Affairs as a Right**

Pakistan has made great efforts to boost minorities' political engagement. Members of religious minorities have designated seats in each assembly. Religious minorities are granted 10 seats of the 336 members in the National Assembly. Among the Senate's 96 seats, four are set aside for religious minorities, one from each of the provinces. The provincial assembly of Khyber Pakhtunkhwa has three seats reserved for religious minorities, while Punjab has eight, Sindh has nine, and Baluchistan has three. The minority is selected by the political parties that the general public elects. The minorities that these seats represent do not directly elect the people who occupy them. According to Section 48 of the Elections Act of 2017, ECP will work with NADRA to speed up the granting of ID Cards for people who are not Muslims, people with disabilities, and transgender citizens by taking special steps to register them as voters on the electoral rolls. In letter and spirit, the ECP is carrying out the legislation. The ECP presents a complaints procedure to ensure citizens' right to vote is not hindered. During the 2018 General Elections and subsequent bye elections, no complaints were filed regarding discrimination based on citizenship status. In recent years, Pakistan's electoral rules have been amended (ECP can form benches to hear complaint in 2018 and appoint retire judges to election tribunals amendment in 2024, Care taker government can take/make decision about ongoing agreement amendment in 2023) and numerous regulations have been implemented to make the voting process more inclusive.<sup>115</sup>

Issues raised by the Human Right Committee of ICCPR on 29<sup>th</sup> of Nov, 2023 in reply of second periodic report submitted by the Government of Pakistan are Provide

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<sup>115</sup> Ibid, Para 136-141.

pertinent statistical information about the steps taken to encourage minority involvement in public affairs, especially that of women and religious minorities, report on the steps implemented to combat the gender-based prejudices and persistent practices that lead to women's continued under-representation in positions of decision-making in the public and private sectors, including elected office, especially for women from minority groups, information on legislative actions taken to ensure transparent and open elections and encourage political plurality in the State party as well as claims of voter intimidation and extortion, measures to prevent delays that might obstruct the democratic process and guarantee that elections are conducted in accordance with the Constitution.<sup>116</sup>

Pakistan being member to ICCPR does not report to HRC on time till now. The first report was submitted in 2015 and was due in 2011, the second submitted in 2022, was due in 2020. The consequences of late submission include the potential for strained relations with the HRC and disruptions to the review process, even though there is no official punishment for late submissions. It misses deadlines which makes it more difficult for a state to be informed about what it fails to carry out in a timely manner. The state that keeps putting things off may also be saying that it damages its reputation on the global stage overall, particularly in regards to its human rights commitments.<sup>117</sup>

## **2.9 Conclusion**

The Election Act, 2017 discloses significant disparities that still exist such as Article 48-A barred Ahmadis from electoral process because of their religious beliefs and the disenfranchisement of nomads because of challenges in obtaining CNICs, even though it offers guidelines aimed at enhancing the participation of women and people with

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<sup>116</sup> Ibid, Para 28.

<sup>117</sup> Ibid.

disabilities in voter education and facilitation. These shortcomings points the need for improved implementation and legislative changes. Pakistan's reporting to the HRC under the ICCPR shows compliance but it does not report timely, yet there are still issues and advancements in bringing domestic laws into line with international human rights norms. In order to achieve international human rights responsibilities and develop an inclusive democratic government, all of these are essential criteria of ICCPR principles must be fully included for the latter.

## **CHAPTER 3**

### **ELECTORAL REFORMS UNDER THE ELECTION ACT, 2017:**

#### **PROGRESS AND LEGAL HURDLES**

Pakistan's electoral system is supported by the Election Act, 2017, which unifies outdated laws, implements progressive changes and conduct campaigns to improve accountability, transparency, and inclusivity. This chapter will examined the practical and legal barriers to its effective implementation as well as the challenges that still need to be resolved in order to advance the credibility of Pakistan's election system.

The Election Act, 2017 has introduced several progressive reforms in relation to the electoral process. It grants the Election Commission of Pakistan (ECP) authority to conduct elections at state level. Key reforms include the introduction of polling stations for women only, distribution of polling material for these stations, and programs aimed at increasing the participation of women in the electoral process. The Election Act of 2017, undoubtedly a landmark legislation, makes it possible to comply with Pakistan's obligations under the ICCPR, with focused reference to Article 25, which lays down the standards of fair, free, and transparent electoral processes. In terms of inclusion, openness,

and justice, the Election Act, 2017 functioning is hampered by the issues of enforcement gaps, ambiguous clauses, and systemic issues which needs to be addressed.<sup>118</sup>

### **3.1 The Electoral Reforms Introduced By the Election Act, 2017 of Pakistan**

#### **3.1.1 Pakistan's Election History**

From 1962 to 2018, a total of twelve election have been held in Pakistan. There were no elections for the first 15 years. Twelve elections were conducted from 1965 to 2024. The 1970 elections are thought to have been Pakistan's most equitable other than this almost all elections were rigged throughout the history.<sup>119</sup>

#### **3.1.2 Background of Election Act, 2017**

Elections are the legislative mechanism that, in accordance with the democratic ideal, results in the selection of the nation's leaders. Territory, population, administration, and sovereignty are the four components that make up a state. These four elements are crucial to conducting elections. The populace chooses its representatives to create a government, which is ultimately in charge of upholding the territorial sovereignty principles and guaranteeing the safety and security of its people. Election represent the consistent and stated desire of the populace. Since Pakistan's independence election in the country is regulated by different election laws. Before Election Act, 2017 eight different laws deals with Pakistan election process but after this Act previous laws of election were merged into

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<sup>118</sup> Saad-ur-Rehman Khan and Imaan Hazir Mazari, 'Prepared by: The Research Society of International Law (RSIL), Pakistan' (The Research Society of International Law (RSIL), Pakistan, 2018).

<sup>119</sup> Dr Hamida Bibi, Dr. Sadaf Bashir, Dr Surat Khan, "An Assessment of Electoral Reforms in Pakistan (2018- 2022)."



the Election Act 2017. This act was presented in the parliament on 7<sup>th</sup> August, 2017 and was signed by the president on 2<sup>nd</sup> of October, 2017 and became the law of the land. The Act main goal is to guarantee free and fair elections in Pakistan's parliamentary elections. Election Act of 2017 has been recognized as the country's first major election reform to implement an electoral goals. The Election Act of 2017 establishes a monitoring and evaluation procedure, result management system, promotes women's participation, holds candidates accountable through political finance, and permits the commission to take disciplinary action against civil servants involved in electoral malpractices.<sup>120</sup>

## **3.2 The Pakistani Election Act of 2017's Electoral Reforms**

### **3.2.1 Strengthening of the ECP**

The Election Act of 2017 strengthened Pakistan's Election Commission and has given a greater financial autonomy (Section 11(2)) and powers comparable to that of a high court (Chapter II, Section 4). It can now take disciplinary steps against any election staff members who are found to have violated electoral laws or norms. Previously, the ECP lacked such authority and struggled to take appropriate action against officials seconded from different departments. The ECP is responsible for developing election regulations and can even establish rules for anything not explicitly stated in the legislation. Four months prior to the elections, the ECP will draft a thorough Action Plan including all necessary or completed legal and administrative actions (Section 14). The ECP will provide election officials with training and take action to increase public awareness of the law and recommended procedures (section 6). The election of 2013 was delayed because the ECP

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<sup>120</sup> Haider, 'The Election Act, 2017 - A Policy Review' (PIDE School of Social Sciences, 2022).

previously needed presidential assent before it could establish regulations. Previously there is no such provisions in election laws.<sup>121</sup>

### **3.2.2 Women's Participation in election**

ECP now has authority to challenge any agreements that forcefully exclude women from voting and to void results in seats where women's turnout is 10% or below (Section 9(1) and 47 (2)). Although further clarification is needed on the ECP's precise use of this broad discretion, it is nevertheless a crucial step in increasing women's involvement. The requirement that political parties present women candidates for not less than 5% of general seats in provincial assembly and national parliament elections (Section 206) is another good step to raise the proportion of female candidates for office.<sup>122</sup> The ECP working as an independent organization taking measures for women's involvement in public office, including

- A specialized "Gender and Social Wing" was formed by ECP to guarantee and improve the participation of transgender (TG), women, individuals with special needs, and religious minorities in Pakistan's election process.
- In 2017, ECP initiated a countrywide Women CNIC/Voter Registration Initiative in 116 districts nationwide where the gender imbalance on the electoral rolls was greater than 10%. By encouraging more women to register to vote and the goal of the effort was to eliminate the gender gap on the electoral rolls. By December 2023, ECP has effectively reduced the gender disparity in the electoral rolls from 11.8%

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<sup>121</sup> 'Background Paper The Elections Act, 2017 An Overview' (PILDAT, February 2018).

<sup>122</sup> Iftikhar A. Khan, "ECP Accused of Ignoring Low Women's Turnout in Feb Polls," Dawn, December 25, 2024. <https://www.dawn.com/news/1801687>

to 7.74% as a consequence of these unique activities. The program is presently being carried out throughout Pakistan in its fourth phase.

- At the ECP Secretariat as well as Provincial Headquarters, harassment committee are successfully ensuring that the workplace is a welcoming and safe place for women employees
- In order to increase understanding of the election process and voting day activities, ECP regularly engages with rural women at grassroots levels. Additionally, during the annual Rural Women's Day celebration in October, Election Commission of Pakistan conducts simulated surveys and hold discussions with rural women.
- In accordance with Election Act, 2017 Section 206, ECP ensures that political parties provide women on general seat 5% of ticket in their political party.
- ECP guarantees rigorous adherence to Sections 9, 12, and 18 (1), 47, 48, 84(9), 91(1), 93, 104, 170, 203(4), 206, and 226 of the Elections Act, 2017, It focusses on increasing the representation and political participation of under-represented groups, such as minorities, women, people with handicaps, and transgender individuals.<sup>123</sup>

The Election Act of 2017 empowered the ECP, leading to initiatives by the ECP to encourage women to participate in the electoral process.

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<sup>123</sup> 'Election Commission of Pakistan', accessed 26 November 2024, <https://ecp.gov.pk/gender-and-social-inclusion-wing>.

### **3.2.3 Streamlined Registration for Voters**

Voter registration is much easier, allowing everyone who applies for a CNIC from NADRA to register to vote simultaneously and to be registered at either their "current" or "permanent" residence. Furthermore, the ECP actively work to boost voter registration and participation among women, members of religious minorities, and individuals with disabilities. This is a crucial requirement because it is estimated that 11 million women are unregistered, that was the reason that ECP has simplified registration process. So, that every citizen can easily register itself and cast vote to enjoy its fundamental basic right.<sup>124</sup>

### **3.2.4 Setup for caretaker Government**

The Election Act, 2017 takes a significant step forward in defining the roles and restrictions of caretaker government, as well as defining the boundaries of action that these interim governments may and cannot take, by prohibiting them from implementing any significant policy changes. The section 230 of the Act deals with caretaker government. The legal stance following Section 230 states that the legal and constitutional framework governing the caretaker government's powers and functions must be followed. The Act seeks to protect the caretaker government's impartiality and integrity by ensuring that it only serves to assist a seamless election process and refrains from making significant administrative or policy decisions. Section 230 highlight the duties of caretaker government:<sup>125</sup>

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<sup>124</sup> Election Commission of Pakistan, Voter Registration Campaign for Women, Persons with Disabilities, Transgenders, and Minorities, last modified 2024, <https://ecp.gov.pk/voter-registration-campaign-for-women-persons-with-disabilities-transgenders-and-minorities>.

<sup>125</sup> Shahzad Ahmed, Caretaker Government: Roles and Functions under Elections Act 2017 (Islamabad: Free and Fair Election Network (FAFEN), 2023), 1–18, <https://fafen.org>.

- Performing day-to-day administrative tasks required to guarantee the proper operation of the government.
- Supporting the ECP in holding legally compliant elections.
- Unbiased towards all persons and political parties.

Section 230 bans the interim government from:

- Decisions on important policy matters.
- Performing in a way that might violate the power of the next elected government.
- Ratifying legally binding agreements, unless there are special circumstances, or participating in substantial international talks with other nations or organizations.
- Transferring public personnel without getting the commission's consent or taking into account how practical it would be.
- Trying to influence elections or taking part in activities that might have an adverse effect on impartial and free elections.<sup>126</sup>

### **3.2.5 Elections in Local Governments**

The Act establishes a legally obligatory timeframe for local elections that must occur 120 days after local councils dissolve or their terms are over (Section 219) not only one section but a whole chapter of the Act deals with the local government election.<sup>127</sup>

### **3.2.6 Tribunals and Complaints**

For the first time ever, the Act gives any citizen the ability to complain to the ECP about nearly every aspect of an election. Within thirty days of receiving a complaint, the ECP

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<sup>126</sup> Usama Khanwar, 'The Problematic Precedence of Caretaker Governments in Pakistan - Pakistan', *DAWN*, accessed 26 November 2024, <https://www.dawn.com/news/1768202>.

<sup>127</sup> 'FAFEN to Observe LG Elections in Cantonments - Free and Fair Election Network', accessed 26 November 2024, <https://fafen.org/fafen-to-observe-lg-elections-in-cantonments/>.

must respond to it and provide details about it on its website. However, only candidates may submit petitions pertaining to their candidatures and outcomes. However, as candidates can now submit petitions directly to a tribunal instead of the ECP, which was previously in charge of receiving and forwarding them to the tribunal, the process for filing a petition about candidature or results has been significantly simplified. There would be less delays as a result of this process improvement. “The Free and Fair Election Network” (FAFEN) discovered that many petition from the ECP to the tribunals had been moved six months beyond the petitions' due date.<sup>128</sup>

### **3.2.7 Overseas Pakistanis' Right to Vote**

Approximately 9 million Pakistani citizens who live abroad are registered with NADRA, making up to 8% of all Pakistani voters. By any measure, this is an enormous amount. The Elections Act, 2017's Section 94 requires the ECP to create a system to uphold Pakistanis living abroad' basic right to vote also ECP is required by law to create a system to uphold their basic right to vote.<sup>129</sup>

### **3.2.8 Improved Accountability and Outcome Transparency**

As a public entity, the ECP ought to be answerable, just like any other government organization (Public organization). The Act establishes important measures to this end, including the ECP's duty to create and submit yearly reports for the provincial and federal legislatures to consider, as well as its requirement to make its regulations available for public debate. The ECP must submit a post-election evaluation report and an election

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<sup>128</sup> “Legal Memo on Pakistan’s Elections Act 2017 and Election Petitions,” Advocates and Counsel, April 6, 2023, <https://absco.pk/insights/legal-memo-on-pakistan-elections-act-2017-and-election-petitions/>.

<sup>129</sup> Tahir Naseer, ‘Election Law Amendment Does Not Deprive Overseas Pakistanis of Right to Vote: IHC CJ’, *DAWN.COM*, 15:18:44+05:00, <https://www.dawn.com/news/1692586>.

strategy four months before to a general election that reflects all the preparations needed to undertake legitimate elections. Additionally, the Election Act, 2017 mandates that the ECP take action in order to enhance transparency of the election results process, since this has previously undermined stakeholders' trust in the electoral system.<sup>130</sup> These include:

1. Setting up an electronic system to handle result displaying them on the Commission's website and at polling places.
2. Launching a results transmission mechanism that allows presiding officers at polling station to email returning officers and ECP screenshots of result form via smartphones.<sup>131</sup>

Pakistan implemented a comprehensive election legislation known as the "Election Act, 2017" which ultimately served as evidence of Pakistan's adherence to international law. In order to conduct democratic, equitable, and impartial elections, the Act has included a number of measures. These include measures to facilitate women's involvement in the process of voting, recognition of the rights of Pakistanis overseas, simplification of voter registration, complaint and tribunal procedures, and local government election procedures. However, there are still some challenges to the Election Act, 2017 that require attention because Pakistani elections held subsequent to the Election Act of 2017 are still not considered to be fair and transparent.

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<sup>130</sup> Mukhtar Ahmad Mukhtar Ahmed Ali, 'Pakistan Elections 2024: Transparency in Elections', 26 March 2024, <https://www.freiheit.org/pakistan/transparency-elections>.

<sup>131</sup> Ibid.

### **3.3 Legal Challenges to the Election Act, 2017**

The Election Act of 2017 was enacted by the civilian government on October 2, 2017, about ten months before the National Assembly's tenure expired, the Parliament enacted the Elections Act 2017 to significantly strengthen the general elections. With its fifteen chapters and 241 articles, the Act established new election procedures that gave ECP administrative and financial independence. Stating section 241, which also reaffirmed the ECP by granting it independence and autonomy. Eight election laws were repealed by the Act's. These laws' main shortcomings include poor voter registration, a lack of representation for women and minorities, lack of specificity due to overlapping of some provisions, and failed to reflect recent demands on matter such as openness, accountability, and fairness in elections. The Election Act, 2017 was aimed at amalgamation of all such laws under a single framework and to bridge this gap so that the whole electoral system becomes comparable with the rest of the world.<sup>132</sup>

Two important provisions of the Election Act of 2017 were sections 94 and 103. According to Section 94 the Commission may conduct pilot projects to test the technical efficacy, privacy, security, and economic feasibility of allowing overseas Pakistanis to cast ballots in bye-elections. The Commission will then share the findings with the Government. This provision is actually giving overseas Pakistanis its basic right.<sup>133</sup> To evaluate the technological efficiency, privacy, and confidentiality of the current manual voting, voter verification, and vote counting procedures, section 103 assigned the ECP the responsibility of planning trial-run programs for the use of Electronic Voting Machine &

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<sup>132</sup> Begum, "General Election in Pakistan: A critical study."

<sup>133</sup> International Institute for Democracy and Electoral Assistance (IDEA), "What Is the Death Penalty?," last modified 2024, <https://www.idea.int/answer/ans9376200860742>.



biometric verification devices in bye-elections and financial feasibility regarding the EVM plus biometric verification system, and would communicate the findings to the government, which will then provide them to Parliament no later than fifteen days before to the commencement of a House session. Since the 2013 general election, parliamentary committee meetings to include the provisions pertaining to electronic voting devices and overseas Pakistanis' ability to vote in the 2017 Elections Act. The committee have been able to convince the ECP to accept both provisions. General election 2013 did not see the implementation of the experimental projects according to sections 94 and 103.<sup>134</sup>

### **3.3.1 Elections (Second Amendment) Ordinance, 2021**

When the Senate and National Assembly weren't in session, it made amendments to the Election Act of 2017. Overseas Pakistanis to use the right to take part in the forthcoming general elections, it is required for ECP to purchase electronic voting machines. Through an ordinance, the President proposed two revisions to Sections 94(1) and 103 in the Election Act of 2017. On June 8, 2021, the "Standing Committee on Parliamentary Affairs" approved the bill, even though only eight of the twenty-one members were present. The parliament passed the Bill in a joint session on November 17, 2021. The Bill states that the ECP will permit Pakistanis living overseas to vote, subject to confidentiality and security, with the technological support of NADRA, or another organization. For general elections, the Bill also permitted the ECP to buy electronic voting machines. On the 23rd of November in 2021, the EPC established three committees to determine the expense of EVMs and modify the applicable laws and guidelines. In the midst of these changes, Pakistan underwent a political transformation. On April 9, 2022, against the Prime

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<sup>134</sup> Begum, "General Election in Pakistan: A critical study."

Minister, the National Assembly passed the motion of no confidence. Two months after the election of the new administration, Elections Amendment Bill 2022 was approved, reversing the 2017 election change. The improvement of the election process has been hampered by the inability of Pakistan's ruling political parties to agree on electoral reforms. One of the issues with the Election Act of 2017 is that political parties continue to change the law according to their interests rather than to increase electoral process transparency. By reversing the amendments ten million overseas Pakistanis were denied their fundamental right to cast vote also hinders ECP duty under Article 218(3) of 1973 Constitution<sup>135</sup>

Repealing provisions allowing overseas Pakistanis to cast votes and introducing electronic voting machines (EVMs) has manifested into extremely serious legal and constitutional questions. It is consistent with larger questions of discontinuity of policy, and possible violations of fundamental rights under domestic law and international obligations, particularly the requirements of Article 25 of the ICCPR, which guarantees free and fair elections. Reversal of rights deprives overseas Pakistanis of the right to vote, curtailing their right to participate in public affairs and violating the principle of equality before law. Reversal of EVM implementation signifies the absence of political will towards modernization of the electoral process itself, thus throwing the credibility and stability of electoral reforms under jeopardy and obstruct the duty of ECP which is mention in Article 218(3) of 1973 constitution of Pakistan. In this entire situation, law is silent and open to amendment in accordance with the political parties' goals. The Election Act, 2017 was legislated to reform the electoral laws, but the Act does not set any criteria or standards

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<sup>135</sup> Ibid, 134-140.

that the Act should amend with ECP consultation as an impartial independent authority and has no interest in amending the law but only concerned with conducting a free and just election in a state and this Act was considered a major electoral reform since independence but it seems to be a flexible law, repeated amendments may result in the legal structure being inconsistent and unpredictable. Additionally, there is a chance of misuse since the simplicity of change might result in rash or careless changes motivated more by short-term interests than by the long-term welfare of society. If this Act is open and easy to amend it will hinder its purpose and objective which is transparency and fairness in election laws and itself in elections.<sup>136</sup>

### **3.4 Threat to Voters Privacy in Pakistan's Election Act, 2017**

Concerns about privacy arise from the problem of providing election candidates with electoral rolls.<sup>137</sup> According to the 2017 Election Act's Section 79(3), upon request from a candidate or his election agent, the District Election Commissioner or another officer designated by the Commission in this capacity must give them a hard copy of the final electoral roll with voter photos in a searchable soft copy on the USB in PDF or another tamper-proof format. The copy must be identical to the ones given to the Returning Officer and Presiding Officers.<sup>138</sup>

Voter's name, father's name, home address, National Identity card numbers, and photo are all listed on the electoral records. Some see this as a positive step since it would enable candidates to connect with their supporters and confirm their identities on Election

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<sup>136</sup> Ibid.

<sup>137</sup> Talal Raza, 'Electoral Rolls under Elections Act 2017: Is the Privacy of Pakistani Voter in Jeopardy?' Digital Rights Monitor, 30 May 2018, <https://digitalrightsmonitor.pk/electoral-rolls-under-elections-act-2017-is-the-privacy-of-pakistani-voter-in-jeopardy/>.

<sup>138</sup> The Elections Act, 2017, § 79(3), Government of Pakistan.

Day. Some believe that this gives the candidate too much power and threatens people's privacy. It's possible that the data on election rolls will end up in the hands of the wrong people. The Election Act of 2017's Section 79(3) is a generic clause that doesn't specify under what conditions it may be appropriate to share a candidate's electoral roll. In addition to privacy violations, may result in major electoral offences like bribery, undue influence, unfair treatment, and personation. Additionally concerned that this would enable some groups to target minorities. The fact that these lists include addresses can be troublesome, particularly for Ahmadis who are registered to vote because they are clearly listed as Ahmadis on separate rolls. Therefore, it could backfire, which could have devastating consequences and possibly infringe Article 14 of our Constitution which deals with privacy. On the parliament floor, raised concern that the images of women on the voting roll shouldn't be displayed. Nevertheless, it was ultimately determined that candidates would have access to voter photos on the electoral rolls as in Pakistan people strongly believe in traditional and cultural norms in case of women. Section 79(3) of the Election Act, 2017 deals with providing candidates and their agents access to the electoral rolls which would include photographs of voters, thus raising privacy concerns for voters, women in particular. The intention, of course, is that this will make for transparency however, by doing so, it might have the unintended effect of putting social pressure or scrutiny against women voters, thus deepening the barriers for them to participate in the elections. Measures taken by legislators to counter the low voter turnout by women must strike a balance between transparency and privacy. That is because any electoral law must be in conformity with the international human rights standards. Privacy assured in the release of electoral

rolls would contribute essentially to overcoming these obstacles to the empowerment of women.<sup>139</sup>

### 3.5 Legal Gaps in Section 63 of Election Act, 2017

It is proposed to insert Section 63 in the Election Act, 2017, to lay down the disqualification of candidates. However, it has multiple gaps that face strong legal barriers in its practical use. A key issue is vagueness over the disqualification of candidates for defection. It is vague on whether such a defector is automatically barred from running in future elections. The disqualification issue were discussed in the case *Zain Qureshi v. Muhammad Salman and another* (Election petition No. 1 of 2022).<sup>140</sup>

*In Zain Qureshi v. Muhammad Salman and Another (2022), Zain Qureshi contested the election and was elected. He switched to a different party after winning the election. The legal question is whether a person who defected after winning an election may be prohibited from running for office again or if the tribunal made under the Election Act could prevent him from running for office again with the same party. The Supreme Court clarified that defection as a ground for disqualification is not automatic and must be expressly provided by the legislature.*<sup>141</sup>

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<sup>139</sup> Raza, 'Electoral Rolls under Elections Act 2017: Is the Privacy of Pakistani Voter in Jeopardy?'

<sup>140</sup> Lahore High Court Research Centre, *Fortnightly Case Law Bulletin* (16–30 June 2022): "Judgments of Interest," accessed January 27, 2025, <https://sys.lhc.gov.pk/appjudgments>.

<sup>141</sup> Election Appeal No.01 of 2022 *Zain Qureshi v. Muhammad Salman and another* (Supreme Court of Pakistan 16 June 2022).

Such ambiguity shows distrust in each other within the ranks and enables defectors to reemerge in next elections without encountering any real consequences, thereby destabilizing politics further.<sup>142</sup>

While section 63(2) provides for the summary resolution of disputes, it does not adequately consider the potential complexities of factual disputes. That procedural gap tends to cause delays; complex matters, like challenges to nomination papers, require detailed consideration that summary processes do not provide. Section 63 of Election Act, 2017 states that:

“An Appellate Tribunal shall summarily decide an appeal filed under sub-section (1) within such time as may be notified by the Commission and any order passed on the appeal shall be final.”<sup>143</sup>

This suggests that the complex factual issues that arise during election disputes may be outside the scope of the Act's procedures i-e summary trials. Thus, it highlights the need for a more comprehensive and trustworthy procedure to resolve such electoral disputes. Thus, this ruling made it possible for deserters to run in the by-election. The Election Act, 2017 to establish clear guidelines regarding defectors' disqualification from voting and the factual dispute should not be resolved under summarily trials. The provision does not explicitly indicate how long it should take to resolve disputes. This deficit leads to months of litigation that leave candidates, voters, and political parties uncertain and make twisted purpose of elections.<sup>144</sup>

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<sup>142</sup> Ibid.

<sup>143</sup> Pakistan, The Elections Act, 2017, Section 63(2). Revised through Elections (Second Amendment) Act, 2023.

<sup>144</sup> Muhammad Mohtasim, ‘Constitutional Cases in 2022-23 and Their Impact on Political Landscape of Pakistan’, *Social Studies*, 2024.

The uncertain standards for ascertaining the materiality of omissions or false statements in asset and liability declarations make things even more complicated and causes inconsistency in outcomes and room for manipulation, as seen in the case of *Ayesha Nazir v. ECP* (2022). *In this case Ayesha Nazir had left out some information in her asset declarations, her nomination papers were challenged. Although she was initially dismissed by the ECP, the case brought up important legal issues regarding what constitutes a "material" omission under Election regulations.*<sup>145</sup>

No clear guidelines on whether such omission should result in disqualification. The tribunal faces difficulties in disqualifying a candidate in the absence of clear rulings. The vague wording of Section 63 has also led to some confusion which gives some scope to the litigants to take advantage of these loopholes.<sup>146</sup>

### **3.6 Independence of Election Commission of Pakistan**

Ensuring the integrity and impartiality of electoral processes nationwide is a major responsibility of the ECP. The 1956 constitution established the ECP. However, the Constitution of 1973's Articles 218 – 221 mainly describe its current organization and operations, including the part played by ECP in Pakistan's electoral process and gave it much more authority in order to preserve Pakistani democracy, the ECP is entrusted with overseeing, organizing, and conducting elections. By combining and revising previous electoral laws into a single document, the Election Act of 2017 improved the legal

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<sup>145</sup> Law School Policy Review, 'When Should Courts Grant Summary Judgments Under CPC: Insights from Law and Economics', *Law School Policy Review*, 10 April 2023, <https://lawschoolpolicyreview.com/2023/04/10/when-should-courts-grant-summary-judgments-under-cpc-insights-from-law-and-economics/>.

<sup>146</sup> Mohtasim, 'Constitutional Cases in 2022-23 and Their Impact on Political Landscape of Pakistan'.

foundation guiding Pakistani elections and expedited the voting process. The duties of the ECP are spelt out in detail in this inclusive legislation, and they include making electoral rolls, defining constituency boundaries, conducting elections, and making sure that all electoral operations are conducted in a fair, just, and strictly legal manner.<sup>147</sup>

Even with its vast legal authority, the ECP still has a number of obstacles to overcome in order to put these rules into effect. A major obstacle that compromises the ECP's independence and influences its decision-making processes is political meddling. Even though ECP is an independent organization under the constitution. Structural changes are required to preserve the ECP's independence and operational efficacy. These reforms seek to guarantee that the ECP is not subject to political meddling and sufficiently prepared to oversee free and transparent elections in the nation by changing the framework under which it operates. The ECP would be better equipped to carry out its core duty in Pakistan's democratic processes by examining internal governance and improving procedural autonomy.<sup>148</sup>

For the ECPS to remain independent from political interference, the nomination process for ECP officials must be changed which is after amending Article 213 of 1973 constitution of Pakistan mandates that the prime minister send three nominees for approval to a parliamentary committee, consulting the opposition leader. Previously, the president picked the CEC and the prime minister and opposition leader will submit separate names to the committee for review and approval of any individual if they are unable to reach an

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<sup>147</sup> .Dr. Muhammad Imran, 'The Future of Electoral Laws in Pakistan: Challenges and Reforms', *Remittances Review* 9, No. 2 (25 April 2024): 5462–88, Doi: <https://doi.org/10.5281/zenodo.13294663>.

<sup>148</sup> Ibid.



agreement.<sup>149</sup> By including additional clauses in the present legal structure governing the selection process, it will be possible to guarantee its independence and openness. Article 221 for instance, ought to be changed to create panels for improving the selecting process's independence and transparency and avoid political influence on ECP and according to 221 the ECP asks government employees and officers to help with the election process. Election-related tasks carried out by civil personnel under political government control face the risk of fraud and partiality. There have also been cases of poll workers being under pressure to alter results and postpone results. Although the president must approve any rules ECP makes for such appointments, the ECP's power will be restricted if parliament passes a law specifically pertaining to the appointment ECP members under Article 213 of 1973 Constitution.. There is no deadline for the selection of the Chief Election Commissioner and other officials under Article 213, which disrupts the electoral process and calls into question the legitimacy of the ECP. Political disagreements caused the 2014 CEC seat to be empty for one year and four months, and the selection of ECP members was postponed for a year in 2019. The Election Act of 2017 is undermined by these shortcomings. Section 6 deals with decision-making, although it requires the presence of a CEC along with at least two other members. Sections 10 and 11 of the Act provide ECP the right to make rules and hire staff, however Sections 213 & 221 establish external dependencies that compromise its independence. The ECP must be granted complete authority regarding its budget & financial decisions by amending Sections 10 and 11. ECP needs approval of executive for budget allocation which sometime delays in election related activities like training of staff, voter registration etc and challenge its authority.

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<sup>149</sup> Iftikhar A. Khan, 'New Criteria for Appointment of CEC, ECP Members', DAWN.com, 06:30:46+05:00, <http://www.dawn.com/news/1257614>.

ECP's autonomy is essential to shielding it from political pressures that may occur as a result of budgetary limitations. A state should have independent commission to conduct election and it was mention in ICCPR but the factors mention above hinders to work independently and deviate from standard mention in ICCPR.<sup>150</sup>

### **3.7 Analysis of Electoral System of India in Comparison with Pakistan**

Good governance is necessary for the concept of democracy to succeed, but so are legal, political, administrative, and cultural practices. A complicated connection between the ruled and the rulers, or between the electorate and the politically elected through regular elections, is referred to as democracy. Therefore, for democracy to function properly, voters must have confidence that just the candidates they voted for would be chosen, in addition to elections being transparent. Within the framework of India, there are ongoing electoral reforms. Pakistan can still learn from Indian democratic practices, particularly those pertaining to the functioning of ECI as well as the kinds of electoral reforms implemented in India, even though Indian democracy is still far from ideal.<sup>151</sup>

#### **3.7.1 Focusing on Technological Remedies for the Election Problem**

India's implementation of Electronic Voting Machines offers Pakistan a crucial case study. Similar challenges are faced by both nations, such as logistical limitations in overseeing vast election regions and prior instances of electoral fraud. In order to solve problems by manually voting systems, like booth capture and ballot tampering. India used electronic voting devices in a methodical manner in the early 2000s. "Voter verifiable paper audit

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<sup>150</sup> Imran, 'The Future of Electoral Laws in Pakistan: Challenges and Reforms.'

<sup>151</sup> Masood Khan, 'Election Commission, Electoral Reforms and Democracy in India: Lessons for Pakistan.'

trials" (VVPAT), which India subsequently used in addition to the deployment of EVMs, greatly lessened these issues by providing voters with an open way to confirm the votes they cast. Pakistan is investigating similar technological integrations to increase voting efficiency and transparency. The ECP aims to imitate India's initiatives to reduce voting fraud. But Pakistan faces the problem of amending election law for political interest EVM project were introduced by the Government of Pakistan by passing a bill and issue direction to ECP regarding this reform but unfortunately the bill was reverse back and ECP were not successful in this electoral reform.<sup>152</sup>

### **3.7.2 Election Commission of India**

ECI has the constitutionally granted residuary rights to act appropriately in situations where approved legislation do not adequately address a particular issue during election administration.

Article 324 gives the "superintendence, direction, and control of elections" to "an Election Commission." In the case of *Mohinder Singh Gill & Anr vs. the Chief Election Commissioner and Others* (1977), the Supreme Court of India in this case ruled that Article 324 operates in domains left untouched by legislation. In India, every Chief Election Commissioner was chosen based on merit and was often a highly qualified government official. Following the release of the election schedules, banks in India are required to notify the ECI of transactions that are above one million rupees while ECP has not implemented such oversight mechanism.<sup>153</sup>

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<sup>152</sup> Imran, 'THE FUTURE OF ELECTORAL LAWS IN PAKISTAN: CHALLENGES AND REFORMS.'

<sup>153</sup> 'Elections and Electoral Reforms', *Atish Mathur*, accessed 18 November 2024, <https://www.atishmathur.com/polity/elections-and-electoral-reforms>.

### 3.7.3 Caretaker Government

In India, there have been significant free and fair elections since the country's independence, and they have been successfully managed, administered, and conducted by ECI. There is no caretaker government in India.<sup>154</sup> Over time, Indian elections have developed into a reliable system. However, unlike Pakistan, India does not use a bipartisan procedure to appoint its electoral commission.<sup>155</sup> ECI has a lot of power under the Indian Constitution. The 'superintendence, supervision & control' of elections falls under its purview. The president and the state governor appoint as many employees as the Election Commission requests in order to carry out these responsibilities. The Elections Commission has a rule for hiring these officers that states that they cannot be assigned to election duty if they have a criminal proceeding unresolved in a court of law. Furthermore, officials who have previously been charged with a gap in election-related activity or for those the Commission of Election has recommended penalties will not be given any election-related responsibilities. To monitor the conduct of elections, ECI hires its own government officers as observers. They can order a constituency's returning officer to halt the vote-counting process at any point prior to the announcement of the election's results. When election officer thinks there are inconsistencies in the voting procedure that could affect the outcome of the election, he makes such a judgments. ECI constantly seeks to gain the full trust of all parties involved, including political parties, in order to guarantee legitimate elections. During election seasons, the ruling government does not meddle in the Commission's operations. If the parties and candidates are not following Model Code

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<sup>154</sup> Md Abdul Alim, 'Indian Election: ECI's Role', *The Daily Star*, 19 May 2014, <https://www.thedailystar.net/indian-election-ecis-role-24642>.

<sup>155</sup> Ahmed Bilal Mehboob, 'Caretaker System's Future', *DAWN.COM*, 07:17:57+05:00, <https://www.dawn.com/news/1820206>.

of Conduct (MCC), ECI has authority to show cause notice and file FIR against them. One of the world's "fiercely independent" election management organization is ECI. After the election apparatus is in operation, the voting procedure is under the administrative control of the ECI and cannot be stopped by a court of law. Even though the electoral machinery's members are not its employees, ECI maintains complete control over it. This is made possible by the following main factors: the president's neutrality, the strict enforcement "MCC" along with other legal provisions; and, lastly, all stakeholders respect democracy.<sup>156</sup>

General Zia-ul-Haq introduced the idea of caretaker governments into Pakistan's democratic system, and General Pervez Musharraf later strengthened it. The power of the president to dissolve the National Assembly and remove an elected government was eliminated by later constitutional changes adopted by elected governments. However, the caretaker system was not abolished by these revisions rather, the president's authority to designate caretaker governments was transmitted to the opposition leader and prime minister. In order to prevent the departing government from having any influence over the election process, caretaker systems were kept in place. The creation of a non-partisan interim government would guarantee that the outcomes of the elections are believable and acceptable to everyone. Although Section 230's permissible and impermissible actions for the caretakers have been clarified by the Elections Act of 2017, there is still flexibility and interpretation. According to Section 230 (2a), the caretaker governance is only permitted to "take major policy decisions on urgent matters." While (2d) specifies that the interim government cannot participate into large international negotiations with foreign countries

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<sup>156</sup> Alim, 'Indian Election: ECI's Role.'

or international organisations or sign any legally enforceable agreement, unless there is a compelling reason to do otherwise, but it does not define what constitutes a major, urgent, or exceptional cases and caretaker administrations are not responsible to parliament and may have varying interpretations due to their non-election status.<sup>157</sup>

The tenure of Pakistan's most recent interim governments has been far longer than the time stipulated in the Constitution. In a recent Senate debate. A number of senators advocated for the removal of the interim government of Pakistan and the continuation of elected governments with limited authority during elections. This would be a very prudent move, as their main responsibility will be to hold elections in timely and transparent manner, which they had failed to do in past.<sup>158</sup>

India has developed with increased democratic maturity over time, even though both countries have embraced democratic voting systems and a shared colonial past. In particular, Article 324 of Indian Constitution, the independent Election Commission of India (ECI), which manages the whole election process without the need for a caretaker administration and introduce EVM with Voter Verifiable Paper Audit Transit (VVPAT) has enhanced institutional independence through ongoing improvements to the Indian electoral system. India's system is more durable, transparent, and representative of democratic norms than Pakistan's, which relies on temporary arrangements and contentious reforms.

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<sup>157</sup> Tahir Mehdi, 'Making Elections Credible' (Human Rights Commission of Pakistan, 2023), <https://hrqp-web.org/hrqpweb/wp-content/uploads/2020/09/2023-Making-Elections-Credible>.

<sup>158</sup> Mehboob, 'Caretaker System's Future.'

### **3.8 Conclusion**

Pakistan shows its commitment toward ICCPR by legislating election code “Election Act, 2017,” it represents a significant step towards aligning with international standards (ICCPR), include measures to facilitate women's involvement in the process of voting, recognition of the rights of Pakistanis overseas, simplification of voter registration, complaint and tribunal procedures, and local government election procedures. However there are certain areas in the Act that are not in compliance with ICCPR; for instance, ICCPR's main concern is to conduct free and fair elections, and it can be achieved by using modern technologies, but political parties object to the use of electronic voting machines (EVMs) and other technologies in election processes by voicing concerns about their reliability or manipulation potential. Since modern technologies make elections more fair and equitable and can reduce the likelihood of fraud, political interference in the nomination process of ECP members, section 79 (3) violate the privacy of voters, section 63 of the Election Act, Articles 213 and 221 of 1973 constitution and section 10 and 11 of the Election Act, 2017 undermine ECP independence etc. These gaps needs consideration to conduct free and impartial election in a state.

## **CHAPTER 4**

### **CONCLUSION AND WAY FORWARD**

#### **4.1 Conclusion**

Elections are an important element in democracy and political development. The international law has highlighted the importance of elections in a stable democracy. The United Nations make efforts for the acknowledgement of political rights of human beings and after 16 years of its establishment finally a significant convention, ICCPR, has developed standards for elections in Article 25 that how to operate equitable, and transparent elections in a state. Pakistan in 2010 became a party to the covenant, so it is under obligation to legislate its laws in accordance with the standards mentioned in the ICCPR, and after seven years of ratification, finally Pakistan enacted the law related to electoral process “Election Act, 2017.” Before this Act, there were eight different laws in Pakistan dealing with elections and these laws were scattered means these eight codes deals with different aspect of election but the Act merged eight and make it easier for organization that conduct election. The Election Act, 2017 make sure to legislate the laws in accordance with the standards mentioned in the ICCPR, like provision for participation of women, disabled, and transgender people in elections, voter registration facilities, etc to show its compliance on international level but at the same



time there are some areas that are in conflict with the international law, i.e., privacy of voter, section 28-A of the Act that discriminate the Ahmadiyya community, loop holes in section 63 of Election Act, 2017, reversal of section 94 and 103 by the political parties for their interest, the commission that conducts the electoral process should be independent, certain sections of the Act that compromise the ECP authority and the quality that it is an independent organization, etc still there is a dire need to reform the Act for future election transparency and build a stable democratic state as our neighbor country India. Another important point is that Pakistan is a signatory and is duty-bound to submit a report to the Human Rights Committee of ICCPR, and the ICCPR make it very clear to its member that after one year of ratification the country is duty bound to submit its report as Pakistan ratified in 2010 so the due date of its submission is 2011 but submitted its first report in 2015 and was four years late and the second was due in 2020 and submitted in 2022 also which was also late and this behavior is violating Article 40 of the ICCPR. Due to this reason, the committee is unable to help the state conduct a free and fair election and make its laws in consistency with international law and point out the weak areas in our election laws and make it more impactful but it also cooperate with the HRC of ICCPR.

## **4.2 Recommendations**

In the light of previous discussion and considering the ground realities of election even after the legislation of Election Act, 2017, following are the recommendations to the Election Act, 2017 to strengthen and make it more impactful for future election and in consistence with the standards of the ICCPR.

1. Section 79(3) and 41 of the Election Act, 2017 erode public confidence by affecting confidentiality of voters. These particular provisions should be addressed by the lawmakers or ECP in order to restore public confidence.
2. One of the problem is the low voter turnout, especially of women. The Act should make it compulsory by legislating a specific provision that bound every citizen of Pakistan to cast a vote and non- voters should be punished by law.
3. Section 238 of the Election Act of 2017 relates to election observers and grants the commission the discretionary power to allow both domestic and foreign observers. The commission's power should not be discretionary but rather bound the commission to make arrangements for election observers, internet suspension on Election Day, a ban on media coverage, etc.
4. Pakistan should adopt modern electoral practices like Electronic Voting Machines (EVMs) to weed out electoral malpractices. The Act must include such conditions which make it compulsory for any changes in laws regarding elections to be passed or finalized by the ECP to maintain independence, neutrality, and transparency in the electoral process.
5. There is no clear and detailed ruling regarding disqualification issue except a ruling of Supreme Court in case Zain Qureshi v. Muhammad Salman and another problem is subsection (2) of section 63 that appeal must be summarily decided by an appellate tribunal. There should be clear definition and ruling related to the disqualification and all appeal shall not only be summarily trailed as some factual disputes require detailed procedure.

6. Ensure the selecting process of ECP is independent and transparent by including extra provisions in the current legislative framework. For instance, in order to strengthen the selecting process's autonomy and integrity, Article 213 and 221 should be changed to create panels and prevent political influence on ECP.
7. The provision of the Election Act, 2017 is also very generic and not specific dealing with caretaker government but if the power of care taker government given to ECP, it will make the commission more independent and powerful, and then only ECP will be responsible for a transparent election.
8. The Overseas Pakistanis right to take part in election is a fundamental right although section 94 deals with this area but still their right is violated because of no proper procedure is present for them. The internationally accepted practice for overseas to cast vote is proxy vote, postal voting, electronic means (Internet) and personal voting. The most popular method to cast an external vote is personal voting, in which voters are required to cast their votes in person at a designated location. This could be a specially constructed polling station overseas or a diplomatic mission which is the voting procedures in South Africa, Argentina, Hungary, and Afghanistan also voting through Electronic means becoming more common in the near future. The Act should adopt any of international practice so that a large number of overseas not denied from their basic right.
9. Improve Pakistan's institutional framework and coordination systems to address the country's ICCPR reporting delays. Pakistan ought to establish the National Treaty Reporting Unit under the umbrella of the Ministry of Human Rights with qualified people to oversee the treaty obligations and guaranteeing timely reporting and

coordinate effectively between the provinces and the relevant ministries. Lastly, working together with civil society organisations can provide independent assessments that will improve the reporting process as a whole.

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