

[Working Paper Series: Systems of Political Finance Across Asian Democracies]

## Regulating the Use of Money in Politics: The Case of Pakistan

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The Islamic Republic of Pakistan is a federal parliamentary democracy. It has a bicameral legislature at the federal level, while each of the four provinces have unicameral legislatures. The Parliament of Pakistan has the constitutional responsibility to legislate on a vast number of subjects contained in the Fourth Schedule of the Constitution, while each Provincial Assembly can legislate on subjects under the constitutional authority of the provinces. At the federal level, the Prime Minister is elected from a population-based house, the National Assembly, where seats are allocated to each province and the federal capital on the basis of population. Elections are held under the first-past-the-post (FPTP) system, and seats reserved for women and members of the non-Muslim population are chosen through a proportional representation (PR) system. Members of the National Assembly and Provincial Assemblies each have a five-year term. The executive authority of the Federation is exercised in the name of the President by the federal government, which consists of the Prime Minister and the Federal Ministers. This is also the case in provinces where Chief Ministers, together with provincial cabinets, exercise executive authority over each of the four provinces. Seats in the Senate of Pakistan are equally allocated to each of the four provinces and are filled through a PR system by means of the single transferable vote. The Senate does not have a fixed term, but elections on half of its seats are carried out every three years.

In Pakistan, the system of political finance is determined under the latest Act of Parliament on the subject, the Elections Act 2017,<sup>1</sup> and before that, the Representation of People Act. Under the law, the Elections Commission of Pakistan (ECP) is legally charged with the responsibility to implement clauses dealing with financial matters in the electoral and political domains. An entire chapter, Chapter VIII on Election Expenses and Statement of Assets and Liabilities, is devoted to the subject in the Elections Act 2017. The chapter details limits on election expenses, how to submit election expenses, and other areas and legal dimensions of political finance.

The election laws in Pakistan have traditionally set a spending ceiling for candidates contesting the National Assembly and each of the four Provincial Assemblies. The Elections Act 2017 increased the allowable expense ceiling from the previous PKR 1.5 million (roughly equivalent to USD \$9,575) to PKR 4 million (roughly equivalent to USD \$25,534) for candidates contesting a seat in the National Assembly and from the previous PKR 1 million (USD \$6,384) to PKR 2 million (roughly equivalent to USD \$12,767) for Provincial Assembly candidates.<sup>2</sup>

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<sup>1</sup> The Elections Act, 2017 <https://www.ecp.gov.pk/Documents/laws2017/Election%20Act%202017.pdf> Accessed: 30 December 2021

<sup>2</sup> Shahid Hamid, "Responsibilities of Political Parties and Candidates in Electoral Process." PILDAT, April 2018, Accessed

Every candidate is required by law to open a separate bank account for election campaign expenditures. The law also stipulates that when submitting nomination papers, a declaration has to be included which shares the details of the exclusive account with a scheduled bank for the purpose of election expenses. Further, every candidate is required to submit details of their election expenses within 30 days of an election to the ECP. Such expenses must remain under the legal spending limit determined by the Parliament.

Clause 132 of the Elections Act 2017 defines electoral expenses for each candidate. These include expenses incurred by any person or political party on behalf of the candidate or by a political party specifically for the candidate. If another person incurs any election expenses on behalf of a candidate, whether for stationery, postage, advertisements, transport, or any other item, such expenses shall be deemed to have been incurred by the candidate. However, unlike the previous laws, the Elections Act 2017 has left it open for others to spend on a candidate's campaign such that the candidate is not answerable instead of strengthening the provisions of election expenses for candidates. However, Clause 132(5) states that if a candidate's election expenses are disputed, the Commission may conduct an inquiry to ascertain whether the election expenses incurred by persons other than the candidate were incurred with his or her permission. If the expenses were incurred without the candidate's permission, they would not be deemed to be election expenses on behalf of the candidate. Immediately after an election, every candidate is required to submit all bills, receipts, and other documents for payments made as election expenses for over PKR 1,000. The ECP has 90 days from the receipt of election expenses from candidates to scrutinize the election expenses. However, capacity in the ECP is a key issue, and despite the establishment of a section on political finance within the Commission, election expenses are almost never scrutinized.

In addition to submitting election expenses, members of the Parliament and Provincial Assemblies are legally bound to submit their individual statements on income and assets to the ECP annually. These statements are public in nature and are published in an official Gazette. Clause 137 of the Elections Act 2017 makes it legally binding to submit an annual statement of assets and liabilities, including the assets and liabilities of spouses and dependent children. The ECP is empowered by law to suspend the membership of legislators until they submit the statements, and also to make public the names of any members who fail to submit the requisite statement.

Another key legal requirement is the submission of key financial data of each candidate contesting an election at the time of submitting nomination papers. The Elections Act 2017 stipulates that every candidate has to provide a statement of their assets and liabilities and of their spouse and dependent children for the year preceding June 30<sup>th</sup>. Since the ECP does not have the capability to actively scrutinize political finance, as a result little or no financial verification is actually carried out. Nomination papers are public documents, and the media and public can and do obtain them for prominent candidates. However, the nomination papers are not proactively placed on the ECP website to invite public scrutiny.

Although candidates have long demanded an increase in electoral spending given the large constituency sizes in Pakistan, the increase in electoral spending limits does not equally serve everyone. The issue specifically hurts female politicians. In Pakistan, Parliament and Provincial Assemblies have a reserved quota of seats for women. However, women who are members of political

parties feel that they are not often selected as candidates because they do not have the financial resources to run their own election campaigns. They believe that it is the parties, and not the female candidates, who should spend money on their electoral campaigns. They therefore feel that increasing the ceiling of election expenses is unfair and will only make contesting elections more difficult for persons with modest means, especially women.

In Pakistan, allegations about big money used to lure provincial and national legislators to vote a certain way in the Senate election continue to be raised every six years. The media becomes awash with stories of “horse-trading” and money changing hands. No evidence is produced in support of such claims, but candidates winning without sufficient votes from their respective parties is cited as the major ground for such allegations. It is, however, important to point out that although most of the legislators vote in the Senate elections along party lines, the law does not bind them to do so. The law requires MNAs and MPAs to vote in the Senate election through secret ballots. This is why voting against party lines in these elections is not considered defection and hence is not grounds for disqualification. Even in India, where the Rajya Sabha election is conducted through an open ballot and state legislators are allowed to show their ballots to their authorized party representatives before casting it, voting against the party line is not considered defection.<sup>3</sup>

The Election Commission of Pakistan is empowered by law to frame a Code of Conduct in consultation with political parties. This Code applies to political parties, contesting candidates, election agents, and polling agents. The ECP is also empowered to frame a Code of Conduct for security personnel, media, and election observers. Clause 233(3) of the Elections Act 2017 states that political parties, candidates, election agents, polling agents, security personnel, members of the media, and observers shall follow the Code of Conduct during an election. The ECP publishes this Code in the official Gazette and on its website. The latest Code of Conduct was framed by the ECP ahead of the 2018 general election in Pakistan.<sup>4</sup>

Although Pakistan’s election laws have traditionally set limits on election spending by individual candidates and these limits have been considerably enhanced in the new law, there has never been a limit placed on election spending by political parties. Even though political parties have to submit details of their election expenses to the ECP in addition to annual statements of party accounts, there is no legal limit to the election expenditures that a political party must follow. Every party is required by law to submit an annual consolidated statement of accounts audited by a Chartered Accountant to the ECP. However, the new law has also, unlike in the past, allowed corporations to donate to political parties.

Clause 204(2) of the Elections Act stipulates that every political party must duly record fees, contributions, or donations made by a member or a supporter of a political party. Clause 204(3) prohibits foreign funding to parties and specifies that any contribution or donation made, directly or indirectly, by any foreign source including any foreign government, multinational or public or private company, firm, trade, or professional association or individual shall be prohibited. This includes contributions or donations made in cash, kind, stocks, transport, fuel, and provision of other such facilities. However, any contribution to a political party by an overseas Pakistani will not constitute

<sup>3</sup> Ahmed Bilal Mehboob, “Money and Politics,” Dawn, March 06, 2018, Accessed December 30 2021, <https://www.dawn.com/news/1393400/money-and-politics>

<sup>4</sup> ECP General Elections 2018 - Code Of Conduct For Political Parties, Contesting Candidates, Election Agents, Polling Agents -Urdu- (2-7-2018). Accessed December 30 2021, <https://www.ecp.gov.pk/PrintDocument.aspx?PressId=55345&type=PDF>

foreign funding. Clause 212(3) stipulates that any aid, financial or otherwise, from any foreign government or political party of a foreign country, or any portion of its funds from foreign nationals can result in the dissolution of a political party.

The lack of financial limits on election spending by political parties was probably not so much of an issue in the past when overall party spending was rather limited and nearly all election-related expenses were incurred by candidates themselves. However, the dynamics of elections have changed over a period of time. Political parties now play a much greater role and exercise a much greater influence on elections. The expenses incurred by political parties have also increased since the past four elections, especially since 2002, when electronic media entered the electoral arena as a major player. With the increasing use of social media in political campaigns, lack of a spending limit on elections by parties remains a major issue that has been left legally unaddressed.

Political parties are increasingly using broadcast media for both direct and indirect political messaging. These advertisements are not constituency-specific and, therefore, such spending cannot be technically and legally counted towards the spending for a particular constituency for which there is a limit prescribed by the law.

Advertisements in broadcast media are generally a big-ticket item and usually constitute the single largest item in election spending. It is considered so exorbitant that in certain countries like the UK, election advertisements on broadcast media are disallowed by law. In some other countries like India, state television time is provided free of charge to political parties with certain criteria in place to determine the air time allowed to each party.

It is because of these rather recent developments that an election spending limit on political parties is extremely important. Initial drafts of the Elections Act 2017 did propose a limit of PKR 200 million for each party, but this was omitted in the final version. Giving free reign to political parties in election spending will promote the influence of big money in politics together with all of its unhealthy effects.

With no limit on their spending, political parties will be tempted to tap into sources of funding which may not be legal and/or ethical. At least one major political party in Pakistan has been under investigation and litigation on charges of receiving illicit foreign funding. Uncontrolled spending will generate extra pressure on parties to look for financiers who may have their own interests to serve through the cultivation of political parties. The election spending limit is, therefore, an important reform for consideration by all political parties.

Despite this oversight, electoral laws in Pakistan contain reasonable checks and limits on political financing. The lingering problem, however, has always been the lack of adequate capacity and will to enforce such laws by scrutinizing critical documents including election expense returns, annual accounts submitted by political parties, and statements of assets and liabilities submitted by candidates and legislators. Although the ECP has set up a political finance section, it does not have adequate capacity to monitor, scrutinize and enforce. Despite enjoying immense constitutional and legal powers, the Election Commission of Pakistan has generally been criticized for its perceived or real inability to fully enforce its powers. It suffers low public trust mainly due to this inability to assert its authority and to use the sweeping powers available to it under the Constitution and the Elections Act 2017.

While a reasonable degree of legal requirements on political finance exist in Pakistan, including limits on electoral candidate election expenses and the requirement for elected legislators

to submit electoral expenses and annual income and assets reports, the Election Commission of Pakistan requires greater capacity building to effectively review and monitor these through an effective public finance wing. In addition, in the interest of improving public access and transparency, all documents relating to expenses, assets, nomination forms, etc. must be proactively made public by the Election Commission of Pakistan through its website.

The role of money in politics is not fully addressed just by placing limits on electoral expenses. The far more serious issue is that of regulating public, private, and corporate funding to political parties and candidates. Strict legal terms must be defined on the allowable size of donations, their purpose, the name of the donor, and the utilization of funding by both parties and candidates. The ECP's capacity to engage in financial scrutiny of the same needs to be enhanced.

One major area of reform is the requirement to place a reasonable limit on electoral spending by political parties. Applying a limit on candidate electoral expenses while leaving electoral expenses open-ended for political parties does not cover the entire gamut of electoral expenses. To ensure a level playing field, parties must also have to adhere to an expense limit which must be effectively scrutinized and enforced by the ECP. In addition, political parties should not be allowed to use media or social media for campaign purposes. If such use is not prohibited, effective spending limits on the use of media and social media for political parties must be effectively enforced.

The need of the hour is to build and enhance the capacity of the Election Commission of Pakistan to fully analyze and enforce a reformed system of political finance. This does not just require hiring the right professionals and catering to the need of greater public access and transparency, but also asserting and effectively utilizing powers of the Election Commission of Pakistan. ■

- **Ahmed Bilal Mehboob**, the founder and President of the Pakistan Institute of Legislative Development and Transparency (PILDAT) has over 25 years of experience in senior management and advisory positions and over 15 years of experience in design, planning, and successful implementation of research and policy initiatives in a variety of fields of democratic governance. His research, analyses, and advocacy have helped in shaping and influencing critical policies in Pakistan, in addition to informing the public and media discourse on challenges and opportunities of democratic governance. Mr. Mehboob has carved a non-partisan political research initiative from the platform of well-known indigenous and independent think tank PILDAT and has spearheaded objective and non-partisan, evidence-based analysis and policy reform initiatives in areas such as political and institutional reform including democracy, governance, rule of law, political parties, local governments, electoral processes, civil-military relations, federation-province relations, women and youth in politics, and so on. Under the leadership of Mr. Mehboob, PILDAT, established in 2002, is widely recognized for the quality, seriousness, and objectivity of its policy analyses and successful and effective reform initiatives. Mr. Ahmed Bilal Mehboob is regularly invited to lecture at Pakistan's premium public policy institutions, including the National School of Public Policy and its affiliates, defense institutions such as the National Defence University and Command and Staff College, public and private institutions of academic excellence, as well as many national, regional, and international think tanks and research institutions. He also writes regularly for media and is invited to appear as an analyst on key issues of democratic governance. Mr. Mehboob holds a B.Sc. degree in Civil Engineering from the University of Engineering & Technology of Lahore, Pakistan. As an engineer, he has served outside Pakistan in both the Middle East and the USA. As a student activist, Mr. Ahmed Bilal Mehboob was elected as President, Engineering University Students Union from 1971-1972 and also served as Chairman, Lahore Students Council in 1972.

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