

**FAFEN Position Paper on Federal Framework Legislation for
the Conduct of LG Elections**

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Background

A local government election system inspiring public confidence is critical to strengthening democracy in Pakistan. The existing legal and administrative frameworks as proposed/enacted by the provinces for the conduct of local government elections are inadequate to meet internationally accepted and constitutionally endorsed standards of electoral freedom, uniformity, fairness, neutrality and transparency. The framework needs comprehensive reforms to enhance the quality of future elections, thereby allowing democracy to take firm roots.

One of the essential elements to achieving a local government election system is federal legal measure to ensure that the constitutional and legal guarantees to rights and entitlements of voters and candidates are complied with by the provinces. Such standardization is possible within the overall ambit of the existing constitutional provisions delineating the responsibility for the conduct of local government elections to the Election Commission of Pakistan (ECP).

While local government is a provincial subject, electoral rights of citizens and candidates are not subject to varying interpretations of the provinces. The constitution mandates the ECP as custodian of the electoral rights of citizens and candidates under federal legislation as prescribed in Article 222 of the Constitution that explicitly states that the ECP functions under laws framed by the national parliament (*Majlis-i-Shura*).

The Eighteenth Amendment Act 2010 inserted Article 140-A (2) to the Constitution, mandating the ECP to hold elections for the local government. However, constitutional and legal amendments critical to the operationalization of Article 140-A (2) were never made, creating legal lacunae for the ECP. One example is the responsibility for the preparation of electoral rolls for the local government, as existing constitutional Article 219 (a) empowers the ECP to prepare voters list for only national and provincial elections. Similarly, Article 219 (d) only mandates the ECP to hold general elections of local government. It is silent on the responsibility for indirect elections of local government which have been introduced in provincial legislations.

Another example is delimitation. While demarcation of administrative boundaries for local government is a provincial subject, these boundaries when serving as electoral constituencies should adhere to the basic and universal principles of delimitation as enshrined in the country's laws on delimitation. Moreover, the administrative delimitation will also have a consequence for general elections. Without expert technical opinions from election authorities, the delimitation process should not be finalized in any province.

In the absence of clear legal guidance, a constitutional and federal institution (the ECP) is now being required to function under laws that are devised by federated units (the

provinces), without any umbrella legislation authorizing its functions. Under these circumstances, the validity of any ECP action may be subject to future legal challenges, calling any local government election into question.

The Free and Fair Election Network (FAFEN), therefore, proposes a Federal Framework Legislation for the Conduct of Local Government Election in order to define the role of the ECP to conduct consistent, free, fair and transparent local government elections under the laws provided by the provincial assemblies. The proposed legislation will also provide minimum standards guidelines to provinces to ensure uniformity in provincial legislations on basic electoral rights and processes, including qualification of voters, eligibility of candidates, periodicity of elections, voting and counting processes, minimum quota for reserved seats for women, minorities, peasants and workers, criteria for reservation of seats, eligibility for reserved seats candidates, responsibility for preparation of voters rolls, basic principles for delimitation, election complaints handling and election dispute mechanisms.

Recommendations for Federal Framework: Legal and Constitutional Pathways

The routes for putting in place the proposed set of measures could possibly be pursued through either constitutional or legal instruments. Constitutional amendment is the most wholesome and overarching instrument for dealing with the existing lacunae and inconsistencies within and among the provincial and federal laws and the corresponding scope of their respective legal, structural and organizational mandates. The constitutional amendment route, however, is a lengthy and contentious process requiring at least a two-third majority support from the Parliament.

A potential alternate pathway for the purpose of the Federal Legal Framework lies in introducing legal instruments in the light of the existing Constitutional amendments -- in particular, Article 140-A (2) of the Constitution. The subordinate law to the amendment may serve the purpose of explaining the ECP's terms of reference in organizing and holding the elections in lieu of the recommendations listed above. Furthermore, the law may spell out in detail, the ECP's responsibility to oversee and organize both direct and indirect phases of the elections as required under the various provincial local government laws. In addition, the Federal Framework for Local Government may well address the issue pertaining to women and minorities by operationalizing a formula to ensure minimum representation requirements at various levels of the local government structure in fulfillment of Articles 32, 34 and 36.

To make local government elections uniformly fair and consistent with constitutional and legal provisions as well as international best practices, FAFEN recommends the following standardizations to be made part of the Federal Framework Legislation:

1. Responsibility to Conduct Local Government Elections

Framework Legislation for the Conduct of Local Government Elections should authorize the ECP to conduct local government elections under duly enacted provincial legislations, provided these laws are compliant with minimum requirements as defined by the Federal Framework Legislation. The ECP should also be authorized to make detailed rules and regulations for the administrative conduct of local elections that must be implemented in every province.

2. Phased Local Government Elections

The ECP should hold phased elections keeping in view the scale of the local government elections, which usually draw greater public interest both in terms of voting and candidate contestation. Such phased models are successfully practiced in many countries, including India, which not only eases administrative pressures but also helps improve the quality of elections. Pakistan has practiced a similar phased

model under the local government system of 2001 and 2005. This principle should be included in the Federal Framework Legislation.

3. Voter Eligibility

The Framework Legislation for the Conduct of Local Government Elections should require provincial legislations to adhere to the definition of a voter as contained in Articles 51 and 106 of the Constitution and Section 6 (2) of the Electoral Rolls Act 1974. The necessary requirement of possessing a Computerized National Identity Card (CNIC) issued by the National Database and Registration Authority (NADRA) should be incorporated in all provincial legislations as required by the amendment in section 6 (2) of the Electoral Rolls Act 1974 in April 2011.

4. Constituency Delimitation

The Framework Legislation for the Conduct of Local Government Elections should define the basic principles for delimitation of administrative boundaries that would serve as electoral constituencies in the local government elections. The Framework Legislation should provide adequate guidelines to provinces to guard against political gerrymandering and maneuvering. Section 9 of the Delimitation Act 1976 provides basic principles that should be uniformly adopted by the provinces in carving out administrative units-*cum*-electoral constituencies.

With the exception of Khyber Pakhtunkhwa (KP), the legislations introduced in the provinces assign the delimitation task to the provincial governments. The KP legislation establishes a Delimitation Council that will delimit local councils. Administrative delimitation without adhering to the basic electoral principle of equal suffrage would raise serious questions about electoral processes, as is evident from court petitions against the delimitation process in Sindh and Punjab. The Framework Legislation should provide basic principles such as average population for a union council, homogeneity and use of uniform census blocks etc.

The argument for standardized delimitation is further bolstered considering the technical, administrative and financial costs an alternative system would incur. The ECP, being the possessor of the voters' lists for National and Provincial Assemblies' elections, can make the rolls compatible with the needs of the local government elections only if the delimitation for union councils is made on the same census blocks used by the ECP. It would require a great amount of labour and resources to either make fresh rolls in each province or adjust the existing rolls to fulfill the requirement of Punjab that has delimited the constituencies according to the 1998

census blocks. The ECP used census blocks from the 2011 House Count. Such technical discrepancies should be preempted through a federal Framework Legislation to ensure uniform, fair and smooth elections administered by the ECP.

5. Periodicity of Local Government Elections

The Framework Legislation for the Conduct of Local Government Elections should require the provinces to include in explicit terms the periodicity (frequency or regularity) of local government elections. Periodicity is among the basic characteristics of democratic elections. Although the legislations in each province provide for four-year terms for the elected local governments, none of them specify the period after which fresh elections of local governments will be held. The Framework Legislation should provide provinces the timeframe for fresh elections after expiry or dissolution of the local government. Article 224 of the Constitution mentions 60 days for fresh elections in case of expiry and 90 days in case of dissolution of the National Assembly. A similar principle may be followed for local government elections.

6. Establishment of Local Government Councils

The Federal Legislation Framework should establish a timeframe for the completion of the local government elections including indirect elections for the second tier.

7. Electoral Rolls

The ECP is responsible for preparing and revising the electoral rolls annually for National and Provincial Assemblies' elections under Article 219 (a) of the Constitution. The Framework Legislation for the Conduct of Local Government Elections should guide the provincial legislations in voter registration, especially in fulfilling the technical prerequisites for voter registration by the ECP. All provincial legislations put the responsibility of the electoral rolls on the ECP, and therefore Section 4(1) of the Electoral Rolls Act 1974 should formally be amended to add this responsibility.

8. Appointment of Returning Officers and Election Staff

The Framework Legislation for the Conduct of Local Government Elections should also provide for the provinces the basic principles for selecting staff for election duty. Representation of People's Act (ROPA) 1976 provides guidance for the management of election staff for national and provincial elections. Similar principles should be applied for local government elections.

The legislations of Punjab, Sindh and Balochistan hold the ECP responsible for the appointment of the District Returning Officers (DROs), ROs and Assistant ROs

(AROs), but KP legislation is silent on the subject. Additionally, the legislations in each province are silent on the qualification of and timeframe for the appointment of ROs, DROs and AROs. Framework Legislation should determine uniform principles for the appointment of these officials.

9. Qualification and Disqualification of Candidates

Qualification and disqualification of candidates is an important aspect of any election. Articles 62 and 63 of the Constitution define the qualification and disqualification, respectively, for candidates wishing to become members of the Parliament. These constitutional principles have been operationalized in Section 12 (2) of the ROPA 1976 and ROPA Rules 1977. Candidacy for local government elections should not be assessed differently from these principles.

Framework Legislation for the Conduct of Local Government Elections should require the provinces to follow the standardized criteria for qualification and disqualification of candidates.

Provincial legislations currently have varied criteria for candidate qualification and disqualification. For example, Sindh, KP and Balochistan have set the minimum age of 21 years for candidacy, while Punjab has introduced an age limit of 25 years for all candidates except those vying for reserved seats for the youth. In addition, provincial legislations should not leave the issue of qualification and disqualification to the subjective interpretation of ROs. For example, the KP legislation's terms such as "good character", "adequate knowledge of Islam" and "abstaining from sins" can easily be misinterpreted.

10. Reserved Seats

Federal Framework Legislation for the Conduct of Local Government Elections should provide uniform criteria for provincial legislations for the reservation of other-than-general seats in local councils.

Article 32 of the Constitution of Pakistan articulates the basic principle of representation. It requires that "the State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women". In addition, Articles 34 and 36 reinforce the state's responsibility to ensure participation of women and representation of minorities in national life.

The Framework Legislation for the Conduct of Local Government Elections should attempt to operationalize this constitutional requirement by providing basic

principles of representation as was done in the case of representation of women and minorities enshrined under Article 51 and 106 of the Constitution.

A minimum quota for reserved seats should be prescribed on the basis of population and/or the number of general seats. The current provincial legislations differ on quotas for religious minorities, peasants and workers and, more importantly, on the mode of election for these reserved seats.

For instance, the KP Local Government Act reserves one seat for women at Union Council / Committee level and 22% of seats in the higher Councils /Committees or Corporations. The Balochistan legislation has a 33% quota for women, a 5% quota for peasants/workers and determination of non-Muslim seats based on their population.

The Framework Legislation for the Conduct of Local Government Elections should define the quotas, the criteria and the mode of election for reserved seats that must be followed by all provinces uniformly. Similarly, the Framework Legislation should also define who can be a candidate on a reserved seat. Uniform definitions will help ensure more meaningful representation of marginalized groups in local government elections.

11. Voting, Counting and Consolidation

Article 226 of the Constitution provides for secret balloting, which is essential to guarantee the free expression of the voters' will. Although the provincial legislations have mostly relied on the Section 33 of ROPA 1976 for voting and counting processes, a recent amendment in the Sindh Local Government Act allows for a show of hands for the indirect election of Chairman and Vice Chairman of all bodies other than union councils. The Framework Legislation for the Conduct of Local Government Elections should formalize voting, counting and consolidation procedures by providing guidelines to provinces on these topics.

For consolidation of the vote count, Section 39 of ROPA 1976 provides solid guidelines that should be part of the Framework Legislation. KP's local government elections law emphasizes transparency, which should be additionally included in the Framework Legislation guidelines to all provinces.

12. Responsibility for Conducting Indirect Elections

The Constitution and all provincial legislations put the responsibility of conducting elections on the ECP but none of these laws mention who will conduct indirect elections. This gap can be misinterpreted. The Framework Legislation for the Conduct of Local Government Elections should specifically address this issue by

guiding the provinces to include in their local government legislations that the ECP will conduct both direct and indirect local government elections.

13. Election Complaints and Challenges to Election Results

None of the four provincial legislations make any mention of how election complaints and challenges to the election results will be handled. Federal Framework Legislation for the Conduct of Local Government Elections should reinforce the mechanisms for election dispute resolution as enshrined in Section 39 (5) of the ROPA 1976. Section 103AA of the same law empowers the ECP to declare the poll in any constituency void. These legal principles should be incorporated in each of the provincial legislation. FAFEN recommends that much more specific uniform procedures are needed to address both election complaints and results disputes both for general and local government elections.

14. Appeals and Petitions

Framework Legislation for the Conduct of Local Government Elections should include the same mechanisms for appeals and petitions against election results that are used for National and Provincial Assemblies' elections. All the details regarding election petitions and election tribunals, particularly time for filing and disposing of petitions and appeals against decisions on petitions and criteria for appointment of judges, must be incorporated in provincial legislations for local government elections, following the Framework Legislation's guidelines.

Article 225 of the Constitution provides that no election to the Senate, National Assembly or any Provincial Assembly shall be called into question except by an election petition presented to an election tribunal. Similar rules should be applied to the local government elections for the purpose of uniformity and quality.

Sections 52 to 77 of ROPA provide guidelines regarding election petitions on presentation, parties, contents, procedure on receipt of petition by ECP, appointment of tribunal, power to transfer, place of trial, appearance, procedure before tribunal, powers, decisions, grounds for decisions and appeal against the decision of tribunals. These rules should be used for local government elections as well.

The current provincial legislations say very little about election dispute resolution mechanisms. All legislations should empower the ECP to appoint the tribunals.

15. Election Management

The management of election processes reflects significantly on the extent of realization of democratic and fundamental rights of citizens to choose their

government. Given the historically profound implication of elections on the broader political environment and stability of Pakistan, the Federal Framework Legislation for the Conduct of Local Government Elections should put in place a more uniform and professional administrative setup for the conduct of all elections.

One critical issue in this regard relates to the ECP's control over staff deputed from other state institutions for the conduct of elections. The Federal Framework Legislation should provide for the embedding of the seconded/deputed staff into the election management structure with an established hierarchy that overrides the deputed staffs' position, rights and responsibilities in their parent organization for the duration of their election related work. The ECP—for the duration of the deputed staffs' election related work—must have exclusive control and authority over the personnel Terms of Reference and conduct.

16. Election Transparency

A critical issue evident from the electoral history of Pakistan reinforces the need for a transparent election process to help ensure the public trust in election processes and results. These processes in need of transparency especially include demarcation of constituencies, creation of complete and accurate voters' lists, determining and publicizing a functional polling scheme, enforcing procedures for free balloting, and conducting open result consolidation at all levels. Transparency of these processes requires unhindered observation and availability of officially authenticated documents to all concerned citizens and organizations.

The Federal Framework Legislation for the Conduct of Local Government Elections must enforce transparency in all provinces equally related to electoral processes ranging from delimitation to polling schemes to be used on Election Day.

17. Party-Based Elections

Given the freedoms of associations enshrined in Article 17 of the Constitution and given the representative nature of the local government system in established democracies, the Federal Framework Legislation shall provide for party-based local government elections.

The need is further reinforced given the Lahore High Court's order and subsequent amendment in the Punjab's local government law to hold party-based local bodies' elections. The Federal Framework's inclusion of the party-based elections will therefore provide the tool for across the board implementation of the constitutional right of freedom of association. This will ensure the equality of citizens to avail a constitutionally guaranteed right notwithstanding the provincial boundaries.