



DRAFT ELECTIONS BILL, 2017

FAFEN's Review and Recommendations

January 17, 2017 - Islamabad

DRAFT ELECTIONS BILL, 2017 REQUIRES CRITICAL IMPROVEMENTS TO FULLY EMPOWER ELECTION COMMISSION

ISLAMABAD: The Draft Elections Bill, 2017, represents a step forward, but still requires critical improvements to ensure the independence and authority of the Election Commission of Pakistan (ECP) over all aspects of an election as a prerequisite for free, fair and transparent General Election due in 2018.

Appreciating the Parliamentary Committee on Electoral Reforms for circulating the draft bill for public feedback, the Free and Fair Election Network (FAFEN) believes that the draft bill is a combination

of progressive and regressive measures, which may be counterproductive and may not yield the desired result of improving the quality of elections. The bill also does not completely address the structural issues that pertain to the independence, autonomy and authority of the Election Commission. Therefore, FAFEN calls on the Parliamentary Committee to consider a final set of recommendations before submitting the bill to Parliament for approval.

The draft bill is the first unification

of all election laws, which FAFEN has advocated since 2007 and highly commends. It includes significant proposed improvements that relate to protection of the authority of the Election Commission, promoting women's political and electoral participation, establishing permanent polling places, systematic handling of election-related complaints and election result petitions, establishing the right of election observation, as well as providing for legal clarity over the issues such as caretaker governments, local government elections, and declarations and disclosures required by political parties, legislators and candidates. While the bill adequately addresses some important weaknesses of the election system, it still includes significant defects that must be

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DRAFT BILL EMPOWERS GOVERNMENT TO APPROVE ELECTION RULES INSTEAD OF ELECTION COMMISSION

remedied. Perhaps most importantly, the proposed law does not go far enough in protecting the independence and authority of the Election Commission with regard to the promulgation of procedural rules to administer elections and disqualifying Members who violate rules. The Commission also is not given full control over Returning Officers and have responsibility for critically-important steps in the election process, including candidate nominations and constituency election results. In addition, the bill improves election transparency in some respects, but punishes anyone who shares election information outside the chain of command,

bars media and observers from the scrutiny of candidate nominations, and fails to provide time standards for publication of the most essential election-related documents and data. The election bill includes several positive measures related to women's participation, but misses the opportunity to establish a legal procedure for collecting sex-disaggregated voting data or take initiatives on behalf of the electoral rights of other marginalized communities, including religious minorities. There is still an opportunity for the parliamentary committee to cure these debilitating infirmities in the draft election bill, 2017.



ECP INDEPENDENCE AND AUTHORITY

The draft election bill stops short of providing the complete independence and authority to the ECP that is needed to ensure an election that is free of government interference. Section 239 of the draft bill is particularly problematic as it enables the Election Commission to "to make rules for carrying out the purposes of this Act," but only with the approval of the government. The constitution and existing law requires presidential approval for rules, which also compromises the independence of the Election Commission. FAFEN strongly recommends that Election Commission should be empowered to make its own procedural rules for implementation of the new draft election bill, in line with best international practices and in the spirit of upholding the independence of the Election Commission.

Similarly, Section 240 of the draft bill has created dependence of the Election Commission on the



government when there is any difficulty in giving effect to any of the provisions of the bill. The government will forward such provisions to the parliament, and there is no timeframe for such referrals. This provision is yet another measure that will undermine the independence of the Commission, and it is in direct conflict with Section 4 (3), which empowers the Commission to take any measure to do anything for carrying out the purposes of this bill "for which no provision or sufficient provision exists". FAFEN strongly recommends deletion of Section 240 from the Elections Bill, 2017 in order to ensure the independence of the Commission.



The powers of the Commission are further weakened by inconsistencies in the law regarding disqualification of elected Members. The Commission may disqualify a Member for a second violation of the Code of Conduct for Political Parties and Candidates or if the Member is involved in an agreement to bar women from voting. However, it cannot disqualify a Member who has submitted a false statement of election expenses or wealth statement. The Commission must refer such cases to the session court, which may allow Members who have submitted false information to continue their



membership until the exhaustion of all appeals. This weakness of the Commission's power also conflicts with Section 4 (2) of the draft bill, which grants that any direction and order of the Commission shall be treated as it has been given by a high court. FAFEN strongly recommends that the powers of the Election Commission to disqualify a Member should be made consistent throughout the new election law.

The law also does not bring Returning Officers (ROs) under the supervision of the Commission. According to Section 53 (1), an RO "shall do any such acts as may be necessary for effectively conduct [sic] the poll in accordance with the provisions of this act and the

rules", rendering ROs practically independent, without a supervising higher authority. District Returning Officers (DROs) are subject to the "superintendence, directions and controls" of the Commission, but similar language has not been used for the Returning Officers. FAFEN strongly recommends that ROs shall also be made subject to superintendence, directions and controls of the Commission, with appropriate enforcement mechanisms, to establish ECP's control over critical election processes between the announcement of the election schedule (or "programme") and 45 days after the announcement of final election results, which are the responsibility of the ROs.

DRAFT BILL IS REGRESSIVE ON ISSUE OF ACCESS TO INFORMATION; RECOMMENDS EXTRAORDINARY PUNISHMENT FOR UNAUTHORIZED USE OF INFORMATION; BARS ACCESS OF MEDIA, OBSERVERS AND CITIZENS TO THE SCRUTINY OF CANDIDATES DURING THE NOMINATION PROCESS

ELECTION TRANSPARENCY AND ACCESS TO INFORMATION

The draft bill is particularly regressive on the issue of access to information, which is protected under Article 19-A of the Constitution. According to Section 194 (c) of the draft bill, a fine of five million rupees and an imprisonment up to five years may be awarded to any person who "publishes or communicates ... information or data to any other person" "which to his knowledge has been obtained or disclosed in contravention of this Act or in breach of the security, secrecy and integrity thereof." Similar penalty has been prescribed for an employee of the Election Commission who "publishes or communicates any information or data to any other person" without having the authority. Interestingly, the penalties prescribed to restrict access to information are more stringent than the penalties for corrupt or illegal practices under the draft bill. These provisions clearly indicate an effort to curb access to information, and are unacceptable. FAFEN strongly recommends that Section 194 (c) be withdrawn and penalties under this section should be rationalized.

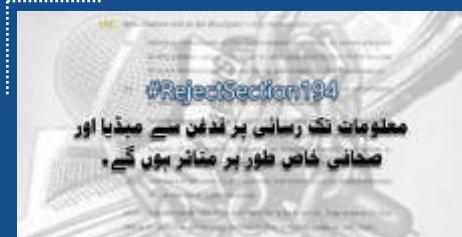
DRAFT BILL DOES NOT ADDRESS THE ISSUE OF POLITICAL MONOPOLIES OR PRESCRIBE ANY MEASURES THAT CAN DILUTE CONTROL OF SOME FAMILIES OVER POLITICAL PARTIES

While the draft bill does provide legal protection to election observation, it bars access of media, observers and citizens to the scrutiny of candidates during the nomination process, which is a step backwards from the existing laws and compromises the transparency of this critical step in the election process. FAFEN strongly recommends that the law should allow at least media and observers to be present at the scrutiny process. In addition, the meetings of the Election Commission should be open to media and observers, and minutes of the Commission's meetings and the voting records of its Members should be made public.

The draft unified election law also fails to impose time requirements on the Election Commission to make publicly available all of the critical documents related to elections. The documents that should have clear deadlines for being made publicly available include: nomination papers, election expense returns by the candidates, election result forms such as polling station vote counts, ballot paper accounts, final consolidation of the result from each constituency, candidate wealth statements and consolidated accounts by political parties. The draft bill does provide a timeline for publication on the website of the official gazette notification of the winning candidates, but it unreasonably gives the Commission two full weeks to make this essential document available on the web. These gaps should be filled by the law.

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ELECTORAL PARTICIPATION OF WOMEN AND MARGINALIZED PEOPLE

The draft bill includes commendable provisions to promote and protect women's electoral and political participation, including the power of the Election Commission to require a re-poll in polling stations or constituencies where women's voter turnout is less than 10% of the polled votes. The mandatory requirement for political parties to award 5% of tickets for contestation on general seats to women, however, is cosmetic and should be increased to 17% at least. The bill also requires the Commission to take special measures to improve women's voter registration nationwide and in specific constituencies where women's under-registration is stark. However, the draft bill fails to require by law the procedure for the collection of sex-disaggregated voting data, and includes almost no special initiatives to enhance the electoral and political participation of other

marginalized communities, including religious minorities, persons with disabilities, and transgendered individuals. The right for persons with disabilities to cast their vote through postal ballot is positive, but not sufficient. FAFEN strongly recommends that the law grant the Election Commission authority to take all necessary measures for the full electoral and political empowerment of members of marginalized communities. The bill should also be amended to require political parties to award 5% of tickets for contestation on general seats to people belonging to religious minorities. of tickets for contestation on general seats to people belonging to religious minorities.

Other important weaknesses that need the attention of the parliamentary committee include:

1 POLITICAL INFLUENCE, PARTIES AND CANDIDATES

- a. The draft bill does not address the issue of political monopolies or prescribe any measures that can dilute control of some families over political parties.
- b. The draft bill allows indirect elections to the Senate, which have the potential to allow party leaders to induct members based on nepotism and not merit.
- c. The draft bill prohibits a foreign-aided political party, but does not address the situation of a political party formed or headed by a dual national or Pakistani living overseas.
- d. The draft bill empowers government direct referral to the Supreme Court in case a political party is declared prejudicial to Pakistan's sovereignty and integrity. Similarly it empowers government to issue dissolution declaration of a foreign-aided political party and refer the matter to Supreme Court. Instead, both cases need to be referred to the Election Commission for a decision, which may be challenged in the Supreme Court.

2 DELIMITATIONS

- a. The draft bill apparently allows delimitation at any time before the issuance of the election programme, but last-minute delimitations may be used to influence the election process and its outcome.
- b. The draft bill does not grant the right of appeal to a voter aggrieved by the Commission's decision on delimitation representation(s).



3 CARETAKER GOVERNMENTS

- a. The draft bill does not provide for the transparency of the process of the appointment of the caretaker governments. Minutes of the meetings of the leader of the House and leader of the opposition in this connection must be required to be made public.

4 POLLING STATIONS

- a. The draft bill does not sufficiently clarify the criteria for finalizing polling stations, including the number of female and male registered voters for each station and booth, as well as maximum distance, in case of exceptions, of voters from polling stations.

5 CAMPAIGN FINANCE

- a. The draft bill does not adequately mention the duration in which expenses incurred by the candidate shall be deemed as election expenses. It also does not cover election expenses incurred by the party on behalf of the candidate.
- b. The draft bill does not require submission of income tax returns by Members of the Assemblies and the Senate and only requires annual submission of wealth statements including assets and liabilities.

6 ECP AUTHORITY FOR POSTINGS/TRANSFERS AND DISCIPLINARY ACTIONS

- a. The draft bill does not establish the Commission's authority over postings and transfers of officials not on election duty.
- b. The draft bill provides for disciplining of election staff only from the date of notification of the election programme instead of the date of their appointment. Under the proposed law, election staff including DROs and ROs will be appointed two months before the announcement of the election programme. The cutoff of date of these appointment may also be increased to 45 days after the announcement of the election result.
- c. The draft bill does not specify whether the Commission can initiate direct disciplinary actions against officials seconceded from the subordinate judiciary.

7 BALLOT COUNTING AND ELECTION RESULTS

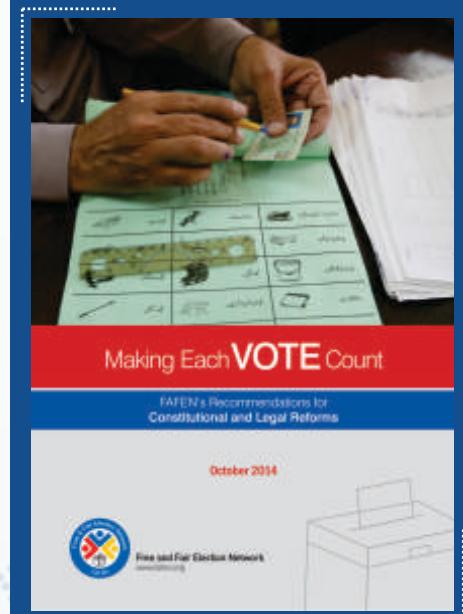
- a. The draft bill does not provide adequate specificity about the ballot counting procedure to ensure ballots for each election (seat) are counted separately and to ensure ballot papers from female and male ballot boxes are counted separately (for sex-disaggregation of voter turnout data).
- b. The draft bill requires announcement of provisional result by the ROs, which can be problematic due to changes in the election result during vote consolidation because of postal ballots, overseas voting, identification of problems at polling stations, etc.

8 LOCAL GOVERNMENTS

- a. The draft bill does not provide a timeframe for election on reserved seats in LGs. It also does not provide a timeframe for bye election on an LG seat falling vacant.

FAFEN PREVIOUS HANDBOOKS ON ELECTION BILL

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TDEA-FAFEN GENERATES DEBATE ON DRAFT ELECTIONS BILL, 2017

TDEA-FAFEN team met with the representatives of Pakistan Federal Union of Journalists (PFUJ) and National Press Club, Islamabad on January 10, 2017 and informed them about various aspects of the Draft Elections Bill, 2017.

TDEA-FAFEN and National Press Club, Islamabad, then arranged a joint meeting with anchor persons, resident editors, bureau chiefs, columnists, bloggers and senior journalists on January 16, 2017, which was briefed by TDEA-FAFEN Head of Programs Muddassir Rizvi and Team Lead Rashid Chaudhry on various issues of transparency and access to information dealt with in the draft Elections Bill.

Journalists expressed ignorance about the provisions of the bill related to transparency and formed a committee, comprising senior journalists, to study the draft bill in

detail and raise the issue in their talk shows, programs, columns, blogs and with the politicians as well as the government.

Hamid Mir of Geo News and Rauf Klasra of Channel 92 raised the issue in their talk shows the same night while The News International carried their correspondent Myra Imran's story on the issue next day.

TDEA-FAFEN held Press Briefing to share its recommendations with media on the Draft Elections Bill, 2017 on January 17, 2017.

Head of Programs Muddassir Rizvi was invited to various TV programs and he along with FAFEN Chairperson Sarwar Bari and Team Lead Rashid Chaudhry gave interviews to BBC, Voice of America, and other print and electronic media groups.

Following is the Media Coverage of these two events:



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