

**Political Contestation and Electoral Reforms: An Analysis of The Election Act, 2017 in Pakistan**

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<b>Received:</b> 07-11-2025	<b>Revised:</b> 24-11-2025	<b>Accepted:</b> 14-12-2025	<b>Published:</b> 23-12-2025
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**ABSTRACT**

*Election plays a vital role in a democratic society and ensures political participation. Election Commission of Pakistan as an autonomous constitutional body with mandate to conduct, regulate and supervise elections. However, it remained controversial due to the alleged pre-election manipulation and allegations of systemic rigging and interference of military etc. A series of laws are passed for the election's reforms for instance The Electoral Rolls Act 1974, Election and Commission Order 2002 etc. Despite that, electoral process is controversial and needs practicable reforms. However, The Election Bill, 2017 passed to address electoral issues but became subjected to criticism. This research paper is qualitative and based on content analysis. It analyzes clause 203 and sections 7B and 7C in The Election Bill, 2017 and stance of opposition political parties in and outside the Parliament of Pakistan.*

**Keywords:** Election Bill, 2017, Clause 203, Sections 7B and 7C

**INTRODUCTION**

Elections are significant for the strengthening of democracy. Periodic elections indicate the progress of political stability and ensure the confidence of people on the electoral system. Free and impartial elections provide equal opportunity to the people to elect their representatives and make them accountable to the people through elections. In the democratic countries, the constitution of the land clearly stipulates timeline, guidelines and procedure for holding elections. Thus, transparent, impartial and period elections pave the way for the strengthening of democracy (ERP, 2024).

The electoral history of Pakistan is marred with political confrontations and political instability. Elections were held in different eras that aimed to strengthen democratic culture but all in vain. From 1962 -2024, numerous elections were held in Pakistan including 1962, 1965, 1970, 1977, 1985, 1988, 1990, 1993, 1997, 2002, 2008, 2013, 2018 and 2024 and all these elections were suspicious of election rigging and political maneuvering. On the other hand, scholars argue that 1970 elections were to the extent transparent in the history of electoral politics of Pakistan (ERP, 2024). This election was held under the Legal Framework Order (LFO) promulgated by Yahya Khan. However, the announcement of election results of 1970 general elections ensured tensions over the power sharing formula between Zulfikar Ali Bhutto of PPP and Sheikh Mujeeb-ur-Rehman of Awami League. Aftermath, the political tussle and confrontation led to the dismemberment of Pakistan in 1971.

Moreover, in 1977, Zulfikar Ali Bhutto completed his tenure and announced general elections. The results of these elections became controversial because citizens and opposition political parties alleged that Mr. Bhutto rigged and influence its results in his favour. However, Pakistan National Alliance started agitations against him and ultimately led to the imposition of martial law by Mr. Zia-ul Haq and his regime altered the Political Parties Act of 1962. Resultantly, it led to the disqualification of key PPP and other opposition members. Scholarly interpretations viewed the act as an intentional effort to eliminate opposition voices from the political landscape. Despite that, Mr. Zia-ul Haq held the general elections on non-party basis but for the legitimization of his non-democratic regime (Dawn, 2015).

Similarly, in 2000, General Pervez Musharraf introduced the Legal Framework Order (LFO). He took measures to curtail the powers of elected representatives in order to legitimize his presidential authority legitimize and military intervention. Furthermore, he suppressed the fundamental political rights for instance Freedom of association and right to contest elections. Under the LFO, he disqualified his political rivals on the grounds of criminal conviction, financial defaulters and individuals purportedly to be absent from legal proceedings. These political oriented measures intended to deprived of Nawaz Sharif and Benazir Bhutto from contesting the General Elections (Report, 2003).

Post-Musharraf era witnessed a revival of democratic system. Number of steps were taken in different elected governments to address the existing gaps in electoral system of Pakistan. These measures intended to curb the systemic inefficiencies and ensure an effective and impartial electoral process. However, outcome of these reforms is varied for instance: some proved implementable while other reforms failed to implement. Similarly, ECP faced continuous obstacles in the enforcement of the electoral laws. In the same way, in 2008, Pakistan People's Party formed a government and played a vital role in the restoration of constitution to its original form. It restored a fundamental part that pertained to electoral laws for instance, part VIII through Eighteenth Amendment. These measures particularly aimed to ensure integrity and transparency in electoral process (Shah, 2010).

In addition to this, PPP government in 2012, passed Twentieth amendment which herein stipulated that under Article 224-A of the Constitution of Pakistan (1973) a new setup of neutral caretaker government would be formed after the expiry of elected government that would enhance the impartiality of ECP (Begum, 2022). Despite the reforms taken and presence of electoral laws in the constitution of 1973, political controversies remained unresolved. The existing law of Election Commission of Pakistan (ECP) mentioned in 1973 constitution failed to address the apprehensions of political parties and citizens over electoral system of Pakistan (Richter, 2019).

However, despite of constitutional directives the electoral process in Pakistan remained subject of debate and controversy. However, most elections conducted under this constitution have been challenged over concerns of political violence, rigging and claims of electoral malpractice. Election outcomes are often disputed by defeated political parties and accused the winning party for the manipulations of election outcomes. Thus, political stakeholders in opposition vehemently expressed their concerns regarding alleged riggings and interference of non-political forces in the electoral process. These political parties urged to introduce practicable reforms to guarantee impartial elections for the strengthening of democratic system in Pakistan (Bibi H, Bashir S, Khan S, 2022).

In line of electoral reforms, in 2017, another electoral Bill was passed from the parliament of Pakistan. It compiled several laws and introduced new ways and techniques to ensure the transparency of the electoral system. It incorporates the use of Electronic Voting Machines (EVMs) that would extend the right to vote to overseas Pakistanis (Mehboob, 2021). All the major political parties were unanimously agreed to initiate this pilot project to check the feasibility of these two reforms (Tabeer, 2018)

## **THE ELECTIONS ACT 2017**

Election Act 2017 was passed on October, 2, 2017 by the Parliament of Pakistan. It was passed on the eve when there were approximately ten months remaining in the completion of National Assembly term. Prior to this bill, the parliamentary committee met seventy times in two years aimed to discuss Election Act 2017 (Bari, Sarwar, 2022). Some segments of society recognized the bill as landmark political development in the sphere of electoral reforms (Mehboob, 2021). Previously, there were existing eight electoral reforms but they were not in consolidated form. However, this act helped in compilation of eight distinct electoral laws into a single framework. This bill intent to reform the electoral process, ensure independent elections and to strengthen the Election Commission of Pakistan (The Gazette of Pakistan, 2017). The key features of the bill are as follows.

### **1. Consolidation of Electoral Laws**

The Act consolidated eight distinct electoral laws including the “Electoral Rolls Act of 1974, the Delimitation of Constituencies Act of 1974, the Senate Election Act of 1975, the Representation of the People Act of 1976, the Election Commission Order of 2002, the Conduct of General Elections Order of 2002, the Political Parties Order of 2002, and the Allocation of Symbols Order of 2002” into a single framework. The goal of this integration was to eliminate discrepancies and promote of uniform implementation of eight electoral laws.

### **2. Election Commission of Pakistan (ECP) autonomy**

This bill empowered Election Commission of Pakistan financially and administratively.

### **3. Voter Registration and Electoral Rolls**

The act provides that in order to provide a more precise and open voter registration procedure, data from the National Database and Registration Authority (NADRA) would be used for creating electoral rolls.

### **4. Candidate Eligibility and Nomination**

The act objective was to increase accountability and transparency in the electoral process. It imposes more stringent criteria for candidate nomination, such as the declarations about criminal records and details of financial assets of candidates.

### **5. Election Expenses and Transparency**

This act aimed to improved financial transparency and weakens the excessive influence of wealth in politics. Furthermore, it made compulsory for the candidate to submit a thorough report of the expenditure.

### **6. Mechanism for Dispute Resolution**

The Election Bill 2017 provides a mechanism for dispute resolution aimed to settle electoral complaints in order to ensure transparent electoral processes. Moreover, it authorizes the ECP to void or re-hold elections in any consistencies if voting irregularities or misconduct is found in the respective consistencies (FAFEN, 2017).

## **7. Use of Technology**

The law introduces provisions pertaining to the use of biometric verification technology and electronic voting machines (EVMs) in election processes. The use of technology intended to increase efficiency, transparency, to improve procedural efficiency and ensure public trust on the electoral results (FAFEN, 2017).

## **8. Inclusivity Measures**

This bill aimed to ensure inclusivity measures to increase political involvement through encouraging minorities, women, and individuals with disabilities to participate in the election. The legislation provides a key clause which ensures women empowerment. All political parties are legally bind to set aside a specific percentage of their political party tickets for female candidates only (Begum, I.2022).

Despite its objectives, there is a clause 203 and two sections 7B and 7C in the Election Act, 2017 which are significant in a sense that attracts the attention of most political parties, media and civil society.

### **The Stance of Opposition Political Parties on The Election Bill, 2017**

The bill was passed during the parliamentary session under controversial conditions on 22 August 2017 from National Assembly of Pakistan and on 22 September 2017 from the Senate of Pakistan. Subsequently, the bill was assented by the President of Pakistan on 2 October 2017. The opposition parties criticized the following different clauses of the bill particularly, clause 203 and sections 7B and 7C of the Conduct of General Elections Order, 2002. This controversial clause and sections led to opposition in the parliamentary politics and consequently provoked protest inside and outside the parliament. However, this research paper primarily focuses on the opposition inside the parliament and setting background of the protests that staged outside parliament in order to understand the context of the study.

Similarly, the research paper firstly analyzes clause 203 of the Election Bill, 2017. There are different views on this clause. One group of thought is in favor while other is against it. Many researchers, human rights activists, and political analysts have expressed deep concerns about Articles 62 and 63 of the Constitution of Pakistan. However, many of the staunch supporters of the clause in Election Bill, 2017 believe that these provisions of the constitution (Articles 62 and 63) are worded in ambiguous and imprecise ways. The main target of their criticism is Article 62(1) (f), which mandates that it is mandatory for the lawmakers that they would be "sadiq and ameen" (honest and trustworthy).

The critics argued that there is no definition for the moral phrases "sadiq," "ameen," "sagacious," and "righteous" in the statute. Consequently, the uncertainty and vagueness of the provision provides opportunity to the courts and other political actors overarching authority and frequently this overarching authority has been used to disqualify elected officials for the vested political interests (The Express Tribune, 2018). Thus, analyst notes that clause 203 is a landmark political development and would strengthen democratic politics and would the political exploitation. It would prevent the disqualification of political parties' members from the public offices.

On the other hand, the opponent group of the clause is skeptical that it would undermine the essence of Article 62 and 63 of the constitution of the Pakistan. Islamic Jurists and Lego-political analysis defend Article 62, 63 and specially Article 62(1)(f) and stressed that the Constitution of an Islamic Republic rightfully incorporates Islamic moral requirements for political representatives. They highlighted that "sadiq" and "ameen" are terms that come from traditional Islamic jurisprudence rather than being random

ideas. These constitutional provisions were designed to encourage public officials to be honest. They contend that Pakistani democracy is an Islamic democracy and that morality-based credentials are necessary for the public representatives (Nyazee, I. A. 2022).

This paper particularly highlights the role of opposition in the parliament over clause 203 in the Election Bill, 2017. Clause 203 of the Elections Act, 2017 pertains to internal participation and political party membership. It ensures that every citizen (not in the service of Pakistan) has the right to join and form a political party. Citizen has the right to take part in its activities, and be elected as an office-bearer. It limits that a person cannot be a member of more than one political party simultaneously. In this regard, the opposition lawmakers vehemently protested and alleged that the disputed clause 203 in this bill would provide opportunity to the ineligible politicians to serve in public office which is in contradiction with articles 62 and 63 of the Constitution of Pakistan. They alleged that clause 203 was solely design to benefit one person, the former Prime Minister Nawaz and feared that this particular clause limits and constrains the scope of returning officer during nomination scrutiny. Aftermath, the bill's passage led to ferocious demonstrations in the parliament of Pakistan. Opposition members ripped copies of the bill and tossed them at the dais of the Speaker (Bilal, 2017).

Furthermore, Imran Khan and Shah Mehmood Qureshi of PTI, in their addresses to the National Assembly, opposed Clause 203 and stressed that this clause violates the core essence of the Constitution of Pakistan. They argued that Constitution states that any individual who is not qualified as a Member of the National Assembly (MNA) under Articles 62 and 63 cannot hold office and also not qualified to lead a political party. The Supreme Court had established precedent on the subject matter by disqualifying Nawaz under Article 62(1)(f) in the Panama Papers case. They contended that eliminating this clause would undermine democratic norms and constitutional principles. Moreover, Sahibzada Tariqullah of Jamaat-i-Islami opposed the bill in the lower house and said that the truth about Clause 203 has been concealed from parliament members. He expressed that it is unacceptable that the law would permit someone who has been declared ineligible by the Supreme Court of Pakistan to serve in a public position. Similarly, Sheikh Rashid, the leader of the Awami Muslim League (AML) expressed his concerns that this clause would endanger democracy in a country (Bilal, 2017).

Secondly, this paper analyzes the sections 7B and 7C of the Conduct of General Elections Order, 2002. Sections 7B and 7C of the Elections Act, 2017 address the status of Ahmadis in the electoral system. Section 7B declares that Ahmadis are to be treated as non-Muslims under the Constitution of Pakistan. Section 7C requires a declaration of belief in the finality of Prophethood; those who refuse are removed from the joint electoral roll and placed on the non-Muslim voters list. However, public discontent and extensive criticism were sparked when sections 7B and 7C of the Conduct of General Elections Order, 2002 were amended by the PML-N government. The declaration form that required for public office holders has been modified (Shafiq et al., 2017). In the updated Form-A, declaration of belief in the finality of Prophet Muhammad's (PBUH) prophethood, the phrase "I solemnly swear" has been replaced with "I declare". The opposition groups criticized the ruling party for passing a law that removed the need for candidates to state on their election nomination form that they believed in Khatm-e-Nabuwwat, or the finality of the Prophet hood. Legal experts argue that the update to the form changed it from being a sworn affidavit to a declaration (Haq, 2017).

Many scholars contend that Sections 7B and 7C are discriminatory in nature and violate standards of international human rights, especially Article 25 of the ICCPR, which guarantees equal political participation (International Crisis Group, 2014). Critics argued that these clauses undermine Pakistan's democratic inclusion concept by largely appeasing religious lobbyists (Stahnke, 2008). Some legal scholars contend that the problem lies not only in prejudice but also in the ambiguous legal language used in these



sections (Shah, 2019). They note that Sections 7B and 7C have been used as political tools to put pressure on governments and parliaments on multiple occasions, including during the 2017 Elections Act discussion that sparked mass protests (Ghias, 2022).

On other side, religious scholars and political organizations (including JUI-F and Jamaat-e-Islami) contend that Sections 7B and 7C are crucial to preserving Pakistan's ideological foundations as an Islamic state. They asserted that these clauses uphold the importance the sovereignty of Islamic principles in law and are consistent with the constitution's classification of Ahmadis as non-Muslims. They believed that eliminating these passages would be equivalent to weakening Pakistan's Islamic identity (Ahmad, 2010).

In this regard, a number of religious political parties voiced grave concerns and started large-scale demonstrations. The demonstrators were members of religious groups such as the Sunni Tehreek Pakistan (ST), the Tehreek Labbaik Ya Rasool Allah (TLY), and the Tehreek-i-Khatm-i-Nabuwwat started Sit-in in 2017. They occupied the Faizabad Interchange, which links Rawalpindi and Islamabad via the Islamabad Motorway and Murree Road, the key transit routes between the twin cities. Number of schools of thought participated in the demonstrations i.e; Bareilvi, Deobandi, Ahle Hadith, and Shia (Guramani, 2017).

Moreover, they claiming that through amendment the Khatm-e-Nabuwwat doctrine were undermined or compromised by the parliament. Religious parties warned the government that if the bill wasn't immediately repealed, it would cause massive public discontent. The main issue raised by the religious groups is that the contentious law has made it possible for Ahmadis, constitutionally recognized non-Muslim minority in Pakistan, to register on the Muslim voter list (Alam, 2017). Opposition parties argued that purposefully modifications were made to the Khatm-i-Nabuwwat oath during the legislative process of the Elections Act. They demanded to return the bill in original form and to remove Mr. Zahid Hamid, Minister of Law from his position. Opposition parties' intense pressure forced the government to reintroduce the "Election Act 2017" in the National Assembly, restoring provisions 7B and 7C that dealt with the Prophet Hood's finality in its original form (Chaudhry, 2017).

## CONCLUSION

This study finds that electoral reforms remained a controversial debate in Pakistan. Undoubtedly, numerous governments took steps for the strengthening of electoral process but such efforts did not yield desired outcomes and opposed by the opposition parties. Similarly, The Election Act, 2017 passed by the parliament in order to ensue free and fair election but this act became subjected to controversy. In this regard, opposition parties, civil society and media opposed the clause 203 and section 7B and 7C of the Election Act, 2017. However, some segment of society was staunch supporter while on other hand others were proponent of this act. This act provoked opposition both inside and outside of the Parliament.

The staunch supporters argued that it would strengthen democratic politics and would prevent the disqualification of elected officials undemocratically. On the contrary, it would benefit ineligible politicians and violates the democratic principles, human rights and the essence of constitution. Moreover, religious parties opposed that section 7B and 7C would weaken the Islamic identity. These findings highlight that the role of the opposition is particularly significant in the law-making process. This is demonstrated by the government's forced adoption of the opposition's position, the repeal of Sections 7B and 7C, and the dismissal of the Law Minister. Thus, an effective electoral process is vital for the strengthening of democratic politics in Pakistan.

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