

IN THE SUPREME COURT OF PAKISTAN

[Original Jurisdiction]

PRESENT:

**MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE KHILJI ARIF HUSSAIN
MR. JUSTICE TARIQ PARVEZ**

Constitution Petition NO.87 of 2011

[Constitution Petition challenging election
campaigns expenses regulation case]

Workers Party Pakistan through Mr. Akhtar Hussain Advocate, General
Secretary, 5 McLeod Road, Lahore & 6 others

... PETITIONERS

VERSUS

Federation of Pakistan & 2 others

... RESPONDENTS

For the petitioners : Mr. Abid Hassan Minto, Sr. ASC.
Mr. Bilal Hassan Minto, ASC.
Mr. Mehmood A. Sheikh, AOR.

For Election Commission : Mr. Dil Muhammad Alizai, DAG.
of Pakistan : Syed Safdar Hussain Shah, AOR.
Syed Sher Afgan, DG (Elections)
Mr. M. Nawaz, Director.

For ANP : Mr. Khalid Khan, ASC.

For MQM : Dr. Farogh Naseem, Sr. ASC.

For PML (Q) : Dr. Khalid Ranjha, Sr. ASC.
Syed Nayab H. Gardezi, ASC.

For PML (N) : Mr. M. Rafique Rajwana, ASC.
Mr. Naseer Ahmed Bhutta, ASC.

For PTI : Mr. Hamid Khan, Sr. ASC.
Mr. Waqar Rana, ASC.
Mr. M.S. Khattak, AOR.

For JI : Mr. Taufique Asif, ASC.

For APP : Mr. Salman Akram Raja, ASC.

assisted by M/s Malik Ghulam Sabir, Barrister Sahar Asif and Malik Ahsan Mehmood, Advocates.

For SUP : Mr. Abdul Wahab Baloch, ASC.
Syed Jalal Shah, ASC.
Raja Abdul Ghafoor, AOR.

Other Political Parties : Nemo.

On Court notice : Mr. Amir Ahmed Ali, DC, Ibd.
Syed Muzaffar Ali, Manager (L)
NADRA

Dates of hearing : 9, 10, 11, 12, 16, 17, 18, 19 &
20th April, 2012

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J U D G M E N T

IFTIKHAR MUHAMMAD CHAUDHRY, CJ – The titled petition has been instituted under Article 184(3) of the Constitution of the Islamic Republic of Pakistan on behalf of different segments of the society, which include, *inter alia*, certain political parties, representatives of the civil society and academicians with the following prayers: -

- (a) Declaration that the prevailing electioneering practices involving wealth, power and influence are against the mandate of the Constitution regarding free, fair, just and honest elections on a level playing field and need to be remedied.
- (b) Declaration that there cannot be a true and honest implementation of Article 218(3) if the current electioneering practices are not remedied in accordance with the mandate of the constitution.
- (c) Declaration that implementation of the mandate of the Constitution for choosing true representatives of the people is the function of the Election Commission as mandated by Article 218(3) and that the Election Commission has the power, under the Constitution and the law to do all that is necessary in this regard including the powers of making rules, issuing orders and giving directions and that the powers of the Election Commission

extend even to stopping an election if it is satisfied that due to the violation of the law including Section 49 it will not be possible to hold elections under the mandate of Article 218(3).

- (d) Declare that the Constitution mandates compulsory voting.
- (e) Declaration that the rule making powers as contained in section 107 of Representation of People Act, 1976 and section 9E of the Election Commission Order, 2002 are to be exercised by the Election Commission alone and the said sections are *ultra vires* to the extent that they require the approval of the President.
- (f) Declaration that sections 41 and 71 regarding drawing of lots between candidates with equal votes are *ultra vires* the constitutional mandate and that section 20 providing for the election of an uncontested candidate without enabling the voters to reject that candidate at polls is also *ultra vires* the mandate of the Constitution requiring that true representatives of the people may be elected/chosen.
- (g) Declaration that Section 83A (3) of the RPA in that it impliedly permits use of megaphones, loudspeakers, etc., on election day is *ultra vires* the mandate of the Constitution regarding free and fair elections and a level playing field.
- (h) Direction to the Election Commission to make rules and do other necessary acts for implementation of the principles and mandate of the Constitution as determined by this Court and the parameters and guidelines set by this Court, in particular regarding: -
 - (i) Matters relating to election expenses.
 - (ii) Maintenance of separate bank accounts by candidates and political parties with proper audit of expenses incurred therefrom.
 - (iii) Regulation of election campaign activities in the context of expenses and in the light of the principles laid down by this Court as regards the purpose of elections and the purpose of an election campaign.
 - (iv) Appointment of Election Tribunals and prescription of their procedure in order to ensure that election disputes are decided expeditiously (Sections 57 and 62 of RPA).
 - (v) Complete ban on all modes of canvassing in the 48 hour period prior to polls including ban on election

camps of candidates as well as removal of all hoardings, posters and banners.

- (vi) Ban on private transport on election day except in respect of the disabled with prior permission and through a procedure devised for this purpose and also to requisition government transport, if necessary, for this purpose as well as increase in the number of polling under a rational formula sections to enable voters to walk to polls.
 - (vii) Supply of voting information to voters through the assistance of NADRA.
 - (viii) Take steps to implement Electronic Balloting (Para 31 of the Petition)
 - (ix) Improve voter awareness especially in regard to confidentiality and the procedure of voting (Para 33 of the Petition)
 - (x) Insistence by the Commission for proper disclosure regarding compliance of Section 8 of the Political Parties Order 2002.)
- (j) Declaration that an election that does not provide the right to choose "None of the above" (NOTA) candidates is ultra vires, inter alia, sections 17, 51 (6), 106 (3) and 218 (3). Or in the alternative, hold as per prayers 'd' and 'e' in C.P.87 of 2011.
- (k) Direction that the Election Commission may take appropriate steps by framing rules, etc., to enable voters to use the NOTA option.
- (l) Recommendations regarding following legislative changes:-
- (i) Provision of procedure to implement the constitutionally mandated system of minimum threshold and 2nd Round/Run Off as opposed to the First Past the Post principle.
 - (ii) Provision of consequences for not voting in elections.
 - (iii) Provision of criteria for fixing a ceiling for expenses (Section 49 RPA).
 - (iv) To review and enhance punishments for offences contained in the RPA in order for them to act as deterrents.

2. After a preliminary hearing, notices were issued to the respondents to file replies to the petition. Accordingly, respondents No. 1 to 3, namely, Federation of Pakistan, Ministry of Law & Justice and the Election Commission of Pakistan filed their replies. Subsequently, *vide* order dated 13.02.2012, Awami National Party, Balochistan National Party, Jamhoori Watan Party, Labour Party Pakistan, Markazi

Jamaat Ahle Hadieth (Zubair), Mohajir Qaumi Movement Pakistan, Muttahida Qaumi Movement Pakistan, Pakistan Awami tehreek, Pakistan Muslim League (N), Pashtoonkhwa Milli Awami Party, Pakistan Peoples Party (Shaheed Bhutto), Pakistan Peoples Party (Sherpao), Pakistan Peoples Party Parliamentarians, Pakistan Tehreek-e-Insaf, Jamiat Ulama-e-Islam (F), Jamiat Ulema-e-Pakistan (N), Jamat-e-Islami Pakistan, Markazi Jamiat Ahl-Hadith (Sajid Mir), Pakistan Muslim League (Q), Pakistan Muslim League (J), Pakistan Muslim League (F), Pakistan Muslim League (Z), National Party, Sindh United Party, Awami Party Pakistan and Sindh Taraqi Pasand Party were ordered to be impleaded as parties subject to all just exceptions. In pursuance of the said order, Awami National Party [ANP], Muttahida Qaumi Movement Pakistan [MQM], Pakistan Muslim League (N) [PML(N)], Pakistan Tehreek-e-Insaf [PTI], Jamat-e-Islami Pakistan [JIP], Pakistan Muslim League (Q) [PML(Q)], Sindh United Party [SUP] and Awami Party Pakistan [APP] appeared and filed concise statements. While the respondents concurred in principle with the petitioners' concerns, they differed in their approach to the issues highlighted by the petitioners.

3. Mr. Abid Hassan Minto, Sr. ASC appeared on behalf of the petitioners and argued that existing practices and processes of electioneering and campaigning deter the ordinary citizens from partaking in the political process on account of massive use of wealth by larger and wealthier political parties, and violate their fundamental rights enshrined in Articles 17 and 25 of the Constitution. The learned counsel has placed reliance on the judgments of this Court in Ms. Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) and Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473)

and contended that their right to *form a political party* includes the right to *participate in free and fair election* and to *form government* if such party is successful because '*participation*' in the electioneering process necessarily implies that "*every person and every group in society can genuinely take part in the process of elections, as voter and candidate, without constraint coercion and subjugation*". Consequently, any unconstitutional curtailment of their right to participate, and to form government, is tantamount to an abridgement of their right under Article 17(2) of the Constitution. Secondly, a combined reading of Article 17(2) and Article 25 of the Constitution mandates a 'level playing field' for electioneering purposes. It is argued that the impugned practices, and broadly speaking, the existing political culture further negates Article 51(6)(a), which mandates that members shall be elected by a 'free', and 'fair' vote 'in accordance with the law' because these practices do not permit the vote cast to be a '*free vote*', as mandated by Article 106(3)(a) either. The petitioners have identified following specific practices that they believe violate the Constitution and Representation of Peoples Act, 1976 (hereinafter referred to as 'ROPA'): -

- (i) Jalsa or political Rally and Jaloos or procession
- (ii) Banners/posters/billboards/stickers
- (iii) Use of loudspeakers
- (iv) Car rallies Pamphleteering
- (v) Setting up Camps
- (vi) Newspaper, TV or radio advertisements, press coverage and programs & surveys

These practices, according to the learned counsel, are carried out in blatant disregard of provisions of the ROPA, namely, section 48, 49 and 84. He has concurrently submitted that certain provisions of ROPA create a political arena that is structurally designed to guarantee the

success of only the wealthier political parties and, by necessary implication, destroy the petitioners' prospects of success in the election.

4. The learned counsel for the petitioners has challenged the *vires* of section 49 of ROPA on the ground that the permissible ceiling of election expenses, i.e. 1.5 million for a National Assembly seat and 1 million for a Provincial Assembly seat creates an uneven playing field between moneyed people vis-à-vis persons with scant resources with the result that the latter are alienated from the political system and deprived of their right to participate in the governance of the country. The learned counsel has submitted that most parties and candidates fail to observe the said ceiling and incur election expenses far above the prescribed limit. He has further argued in favour of a broader interpretation of section 48 of ROPA so as to construe the word 'election' to begin from the time that the President fixes a date for election. To support such a reading, he has argued that the rule that the relevant time period 'for the purposes of elections' commences from the date of notification of the elections, as laid out in the Javaid Hashmi's case (PLD 1989 SC 396) is not applicable to 'campaign finance' activities. It is further argued that the word 'before' mentioned in the section, ought to be read to include the period before the commencement of the election. This, according to the learned counsel, would have the effect of including those electioneering expenses that would have otherwise escaped the ceiling expense prescribed by section 49. Since ROPA does not define the word 'person', it is argued that it ought to be defined to include political party. It has been submitted that such a reading is in consonance with the spirit of the provision, which is to regulate and restrict election expenditure.

Furthermore, such a reading of this provision would also ensure that candidates do not use their parties as a tool to exploit the spirit of this provision and that the election meets the requirements of Article 218(3) of the Constitution of Pakistan.

5. In the same line, the learned counsel for the petitioners argued that the punishment for violating section 49, should be levied against the candidate even when the party, and not the candidate, has exceeded the prescribed ceiling. This, it is argued, is possible if the phrase 'consent or connivance of that candidate' in the section is interpreted to mean that the candidate connived or consented to a section 49 violation, even if it was the party and not the candidate who violated it. This, according to him, would shift the burden onto the candidate to take into account his party's election expenses as well and ensure that no violation of section 49 takes place.

6. Mr. Minto has vehemently contended that section 49 of ROPA, which prescribes a limit on election expenses, is liable to be declared arbitrary and discriminatory in terms of Article 25, particularly, in view of the Election Commission's recommendation for enhancing it without considering the economic conditions of the overwhelming majority of the people who have a Fundamental Right to participate in the election process on a level playing field. Regardless of the fact whether the ceiling is high or low, the petitioner's have contended that it is arbitrary in nature and impossible to enforce, therefore, all elections must be regulated in a way that all election practices based on massive spending of money are banned.

7. The Election Commission of Pakistan (ECP), in its reply, raised a preliminary objection regarding maintainability of the petition

on the ground that the conduct of election to the National Assembly and Provincial Assemblies is the exclusive jurisdiction of the Election Commission of Pakistan as mandated by the Constitution and the law. On merits, it was stated that the Election Commission is an independent constitutional body comprising a retired Judge of the Supreme Court of Pakistan as Chief Election Commissioner, who is Chairman of the Commission and four Members, who are retired Judges of the High Courts. The Election Commission has been constituted in accordance with the provisions of the Constitution and it is charged with the duty of organizing and conducting elections and to make such arrangements as are necessary to ensure that the elections are conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against. It is also the duty of the Election Commission to prepare electoral rolls for elections to the National and Provincial Assemblies and to revise such rolls annually; organize and conduct election to the Senate or to fill casual vacancies in a House or a Provincial Assembly; appoint Election Tribunals; hold local governments' elections and such other functions as may be specified by an Act of the Parliament. The Election Commission is not a law making body, rather it works within the limits of legal framework provided by the Parliament.

8. As regards the assertion of the petitioners relating to the huge expenditure incurred by a candidate in his election campaign and its overall impact on the electoral processes, it is pleaded on behalf of the Election Commission that the issue is required to be seen in the context of the existing provisions of the law. It is submitted that all electoral practices and processes currently employed by the Election Commission for the conduct of an election are based on constitutional

or legal provisions, therefore, such practices and processes cannot be termed as 'unconstitutional' or 'unlawful' as asserted by the petitioners. It is further submitted that a provision of the Constitution or the law may be deficient, ineffective or susceptible to more than one interpretation or there may be some practical problems hindering its execution. It, however, cannot be termed as 'unlawful' as the same has been validly passed by the Legislature. It is also submitted that these provisions prescribe a ceiling, and spending money beyond the ceiling by a candidate on his election campaign would be an illegality, which would attract the penal provisions of the law. It is pleaded that these provisions, by restraining the richer people from spending money on their election campaigns beyond a certain limit, tend to provide a level playing field to all citizens of Pakistan rather than favouring a particular class of people. Similarly, the Election Commission states that the security deposit required to be made by a prospective candidate at the time of filing of his nomination papers is a nominal amount of Rs.2000/- for a National Assembly seat and Rs.1000/- for a Provincial Assembly or Senate seat, which is well within the reach of common citizens.

9. Mr. Khalid Khan, ASC has appeared on behalf of Awami National Party (ANP) and submitted that the goal of the ANP is to ensure the betterment and welfare of poor people of Pakistan representing their interests in all elected bodies. Therefore their party would welcome any change that advances the same whole-heartedly. ANP agrees with most of the submissions and suggestions made by the petitioners.

10. Dr. Muhammad Farogh Naseem, ASC has appeared on

behalf of MQM and submitted that MQM, in principle, does not oppose the basis of the petition and fully subscribes to the idea that wealthier candidates and political parties may not be permitted to create an uneven playing fields. However, according to him some of the suggestions made by the petitioners were either too academic, or were incompatible with the ground realities. The learned counsel submitted that an almost similar legal framework is provided in India to regulate election expenses. Section 77 of the Representation of People Act, 1951 (hereinafter referred to as the Act, 1951) provides for keeping an account of election expenses whereas section 123 enumerates the acts and actions, which are to be deemed to be corrupt practices. However, subsection (7) of section 123 explains that in order to qualify as a corrupt practice the excess expenditure must be incurred or authorised by a candidate or his agent and the employment of extra persons must likewise be by a candidate or his agent. He referred to the case of Rananjaya Singh v. Baijnath Singh (AIR 1954 SC 749), wherein it was held that the expenses incurred by the father in connection with the election of his son without his consent were not to be included in the election expenses unless the employment of extra persons and the incurring or authorising of extra-expenditure is by the candidate or his agent. He also referred, concurrently with the learned counsel for the petitioners, to the case of Kanwar Lal Gupta v. Amar Nath Chawla (AIR 1975 SC 308) = [1975 SCR (2) 269], wherein it was held as under: -

(1) The total expenditure proved to have been incurred or authorised by the first respondent exceeded the prescribed limit and therefore his election should be set aside on the ground of corrupt practice defined in section 123(6).

(2) It is not uncommon to find that during elections, posters and handbills are printed without complying with

the requirement of section 127A, and sometimes containing scandalous material about rival candidates. There should therefore be some independent semi-judicial instrumentality set up by law, which would immediately investigate, even while the election fever is on and propaganda and canvassing are in progress and the evidence is raw and fresh, how the offending handbills and posters have come into existence.

It was also observed that: -

It should be open to any individual or to any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. The democratic process can function efficiently and effectively, for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever low or humble he may be, should be able to participate on a footing of equality with others. Now money plays an important part in the successful prosecution of an election campaign by buying advertisement and canvassing facilities, by providing the means for quick and speedy communications and movements and sophisticated campaign techniques, and also by the employment of paid workers where volunteers are found to be insufficient. Therefore, if one political party or individual has larger resources available to it than another the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process.

The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in electoral process. If there were no limit on expenditure political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and the affluent who constitute but a fraction of the electorate. It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and association, increased access or subtle influences which condition their thinking. In such an event, the result

would be that though ostensibly the political parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be the representatives of a certain economic class, and their policies and decisions would be shaped by the interests of that economic class. Persons of a particular class who have exclusive governmental power, even if they tried to act objectively, would tend to overlook the interests of other classes or view those interests differently. To this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse the policies and decisions that will attract campaign contributions from affluent individuals and groups. Pre-election donations would be Rely to operate as post-election promises resulting ultimately in the casualty of the interest of the common man. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. Under s, 123(6) not only is the incurring of expenditure in excess of the prescribed limit a corrupt practice but also the authorising of such expenditure. Authorising may be implied or express, and whether a particular expenditure was impliedly authorised by the candidate would depend upon the facts and circumstances of each case as appearing from the evidence adduced before the court.

The reasonable interpretation of the provision, which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying the election process and ridding it of the pernicious and baneful influence of big money, is, that the legislature could never have intended that what the individual candidate cannot do the political parties sponsoring him, or his friends and supporters, should be free to do. When a political party sponsoring a candidate incurs expenditure specifically in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure; and he cannot escape the rigors of the ceiling by saying that he has not

incurred expenditure but big political party has done so. The party candidate does not stand apart from his political party and if the political party does not want its candidate to incur the disqualification it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. If a candidate were to be subject to the limitation of the ceiling but the political party sponsoring him or his friends' and supporters were to be free to spend as much as they like in connection with his election, the object of imposing a ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated.

11. Mr. Muhammad Rafiq Rajwana, ASC appeared on behalf of Pakistan Muslim League (Nawaz) and submitted that PML(N) agrees, in principle, with various points raised in the tilted petition especially towards the reduction of expenses and bringing further reforms to enable a common citizen to contest an election and to become a member of the Parliament. PML(N) does not challenge the maintainability or otherwise of the petition since a vocal deliberation on the subject of election in the country will bring about positive radical changes in the election culture and create a level playing field for the voters, supporters and electors for electing true representatives. However, PML(N) has following reservations on certain averments in the petition: -

- (i) The petitioners instead of criticizing the duly elected representatives should strive hard to create awareness amongst the people for election purpose and to fully participate in the elections; and
- (ii) The elections were neither unconstitutional nor unlawful and, in any case, the returned candidates were duly elected.

12. Mr. Rajwana submitted that the constitutionality or otherwise of the election laws is not required to be gone into in these proceedings, rather strict implementation and reforms of the present laws is need of the hour. According to him, the existing laws, rules and orders have been promulgated to ensure a free and fair election, but the same have not been implemented in letter and in spirit. Therefore, it is emphasized that these laws be strictly enforced by the Election Commission in performing its constitutional duty under Article 218(3) of the Constitution, the Act, 1976 and other laws/rules. The Fundamental Rights cannot be denied to anybody subject to law and reasonable restrictions. An independent and authoritative Election Commission is necessary to hold elections justly, fairly, in a transparent manner and in accordance with the provisions of Constitution and the law. As such, the Election Commission is to be made fully empowered to actuate and effectuate the true spirit of the laws. In this regard, some of the initiatives have been taken in the 18th & 20th Constitutional Amendments.

13. The learned counsel has further submitted that the democratic culture has not taken roots in the society due to successive disruptions in the constitutional order, and there was no cavil with the propositions qua education of voters, the measures aimed at enhancing the turn out, and minimizing of election expenses. He has added that the present elected representatives enjoy the confidence of the people, but they will have to work harder to perform their responsibilities which they owe towards the people.

14. Dr. Khalid Ranjha, Sr. ASC appeared on behalf of Pakistan Muslim League (Quaid-e-Azam) [PML(Q)] and submitted

that the Constitution of Pakistan and the election laws (viz. sections 48 to 51 of ROPA) provide an adequate mechanism for restricting election expenses. According to the learned counsel, Chapter VIII of ROPA provides for offences, penalties and procedure in case of breach of conditions relating to election expenses. It is further submitted that the primary problem with the electoral process is the lack of capacity of the Election Commission to attend to the same. As is the case in the neighbouring country, the Election Commission needs to undertake monitoring of the election expenses from the day the holding of election is notified. An election expenditure mechanism ought to be put in place in each constituency to monitor day-to-day election expenditure incurred by the candidate,. Maintenance of day-to-day account of election expenditure by the candidate is required to be made mandatory. Though the account of election expenditure is required to be submitted within 30 days of the declaration of the result, the monitoring has to be done on a regular basis during the campaign period because after the campaign is over, it becomes difficult to get any evidence of election expenditure.

15. Mr. Hamid Khan, Sr. ASC appeared on behalf of Pakistan Tehreek-e-Insaf. He submitted that the PTI more or less agrees with the contents of paragraphs 1 to 23 of the petition, which takes into account various legal issues pertaining to the need to set a level playing field for all political parties during the elections, and promote democratic values and culture. The learned counsel submitted that PTI entirely agrees with the petitioners that there is a dire need to formulate and establish general principles for regulating the conduct of elections and for ensuring that the Election Commission and the

Caretaker Government strictly abide by the same. He agreed with the petitioners that the Election Commission has failed to regulate expenditures made by the candidates on their election campaigns. According to him, the ceiling placed on election expenses under the election laws has become meaningless over the years because nobody abides by it and the Election Commission never enforced it. It is also the endeavor of PTI that huge expenditures incurred by the members of established political parties in Pakistan be somehow rendered ineffective and such electoral system be devised in which members of middle and working classes have a fair chance to compete against the moneyed people having large land holdings and other resources. PTI is of the opinion that a change in the political culture of electioneering will immensely help in reducing corruption and promoting competence and honesty in public affairs. The PTI has given following proposals to ensure free, fair and transparent elections: -

- (i) The District Returning Officers (DROs) and Returning Officers (ROs) of each constituency should be drawn from amongst the members of subordinate judiciary. If the DROs and ROs are nominated by the Government in office, the whole election process will be polluted and the Government in power, even if it is a caretaker one, would manipulate the results of the elections in favour of the parties that they, directly or indirectly, support. The persons drawn from the executive as DROs and ROs cannot be deemed to be neutral and there will be no free, fair and credible elections under their supervision.
- (ii) The Governments in the past had recruited their party members and favourites in the police force. They cannot be entrusted with maintaining law and order even handedly. It is, therefore, imperative that armed forces should be made responsible for maintaining law and order throughout the country during the general elections.
- (iii) The personnel belonging to armed forces should be

stationed inside and outside every polling station to ensure maintenance of peace, avoidance of violence and holding of fair elections.

- (iv) The permanent polling scheme throughout the country should be formulated and circulated and be given wide publicity. Permanent polling stations should be notified throughout the country and no changes in the location of polling stations should ever be made. The polling scheme and permanent polling stations should be notified at least two months before the elections so that the candidates and voters may file objections well in advance.
- (v) The Presiding Officers and their assistants in the polling stations should preferably be drawn from federal rather than provincial government departments. The experience shows that the provincial government servants are more susceptible to the influence of the local *Zamindars*, feudals and men of influence.

In the end, it has been prayed that in addition to the grant of reliefs prayed for by the Petitioners in the petition, the above mentioned steps and reforms proposed by them for holding of free, fair and transparent elections be also considered and that directions to the Election Commission and other authorities concerned be issued throughout the country.

16. Mr. Taufique Asif, ASC has appeared on behalf of Jama'at-e-Islami Pakistan (JIP). He opened his arguments with the following verse of the Holy Quran: -

"A party amongst you must be there to promote the good and suppress the evil" [Surah Aal-e-Imran: 104]

He submitted that the Muslims of the Sub-Continent dreamt of a separate independent state, which came true in 1947 with the creation of Pakistan in pursuance of their continued struggle and sacrifices. Therefore, it is the duty of every Pakistani citizen, especially Muslims,

to pursue the path of their ancestors and carry on the struggle to transform the state of Pakistan into a truly Muslim country to ensure peace and prosperity, development and stability, welfare and responsibility. The learned counsel has submitted that JIP agrees with the petitioners on main issues. JIP has given following further proposals to ensure free, fair and transparent elections:-

- (i) Fair and transparent elections are not possible without genuine electoral lists;
- (ii) Voters must be enlisted at their present residential addresses;
- (iii) Preparation of electoral lists afresh on the basis of NADRA's lists; and
- (iv) Voter lists be placed on the internet and the SMS service recently introduced by the Election Commission for verification of votes be made toll-free.

17. Mr. Abdul Wahab Baloch, ASC appeared on behalf of Sindh United Party (SUP). He has vehemently supported the petition on maintainability as well as on merits and prayed that the same may be allowed in the interest of justice. SUP has made the following suggestions: -

- (i) Before the filing of nomination paper of the candidate, place of polling station must be finalized and published in a polling station manual.
- (ii) On each census block number, name of Deh/village/ward should be clearly printed.
- (iii) To ensure transparency in the process of casting of votes, signature/initial of the polling officer on the voters' list should be compulsorily affixed.
- (iv) For the identification of the candidate, specimen signature of the candidate should be supplied by Returning Officer to the Presiding Officer along with the other polling material. Specimen signature of candidate verified by the returning

officer must be filed on the day of candidature/ final list of candidates.

- (v) The candidature card should be issued by the Returning Officer with photograph and also card of Chief Polling Agent issued by the Returning Officer with photograph.
- (vi) The unidentified person should not be allowed to enter the premises of the Polling Station.
- (vii) For the reduction of expenses of the candidate, the total number of voters of a polling station should be between 700 and 1100 and the number of the voters at one polling booth should be 400 to 500 each. If the number of the voters is above 1100, polling station should be divided into two polling stations.
- (viii) The fee for Nomination Form should not be more than Rs. 1,000/-. The voters' list should be provided by the Election Commission.
- (ix) The polling station of a census block should be on the basis of boundary wall and other utilities without any shortage of polling staff and polling material, there should be proper training of the polling staff for conducting the poll, the polling material should be evenly distributed polling stations wise, and the polling staff of each polling station must reach at least 12 hours before the election day and time.
- (x) The payment for election duty to the returning officer should be made on daily basis from the day the procedural work starts.
- (xi) Before poll/election, it is necessary to complete voters' list, which should be published according to new census block-wise of each year, e.g., 2011/2012 because the present constituencies are based upon the old census of 1998.
- (x) The Government has completed one phase of census of the house counting, but public counting has not been completed as yet. It is necessary to complete the same. The new census number has been given to the voters in the voters' list. Now the population has increased. Therefore, the constituencies should be increased in

accordance with law and regulations for the representation of the people.

- (xi) To increase the turnout, the Polling Stations should be enhanced so that the voters can easily approach the same to cast votes.
- (xii) In the year 2004, several Districts were bifurcated and new Districts created in various Provinces. As a result, many constituencies fall within different Districts, which is a violation of rules. Therefore, Election Commission should ensure that constituencies of both the National as well as Provincial Assemblies are in one district.
- (xiii) Each party as well as each candidate should be provided equal time on media, particularly on the National TV Channel to express his view and manifesto.

18. Mr. Salman Akram Raja, ASC appeared on behalf of Awami Party Pakistan (APP). He submitted that the electoral process is integral to the discharge of the sacred trust reposed by the people of Pakistan in their representatives, as envisaged by Article 2A of the Constitution. This trust is to be discharged in a manner that fully observes the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam. Therefore, all actions and practices that interfere with, or distort the electoral exercise are to be seen as subversion of the sacred trust enshrined in the Constitution of Pakistan. All constituents of the State of Pakistan, including the judiciary, in the discharge of the sacred trust, are under an obligation to implement and interpret the Constitution and all other laws in a manner conducive to the freest and fairest conduct of the electoral exercise. The existing political culture is defeating the essence of Articles 17 and 25 of the Constitution. As a consequence, it is compromising the legitimate expectations of a vast majority of citizens by curtailing their social, economic and political rights guaranteed in

the Constitution. The prevalent culture of election campaigning and electioneering has created hegemony of a few elite families over the politics of the country and has denied a majority of the people their right to meaningfully participate in election process. The learned counsel has made the following suggestions: -

- (i) The Constitution of Pakistan provides guarantee of dignity, freedom and equality to all citizens and forbid discrimination on the basis of sex etc. despite Article 34 as given in principles of policy that steps shall be taken to ensure full participation of women in all spheres of national life. Women and other marginalized segments of society are barred to meaningfully participate in election process. Women are under registered in electoral rolls, face opposition when going to vote and are often turned away from polling stations. In some constituencies, especially in Khyber Pakhtunkhwa and Balochistan, rival candidates and political parties entered into agreements to restrain women from casting votes. Election officials are also found being insensitive to the values, e.g., polling officers insist on veiled women showing their faces for identifications to male polling staff, which discourages some women from voting. Election Commission should be held accountable for ensuring political participation of women.
- (ii) Women turnout in each constituency must not be less than 25% of total votes cast otherwise results may be declared void and re-poll ordered. In addition, Election Commission, before every election, must conduct voters' education programmes, particularly for women and minorities.

Finally, it is prayed on behalf of APP that the influence of money and administrative power in any manner whatsoever on election process is unlawful, thus, the same be declared unconstitutional, and Election Commission may be directed to make arrangements in this regard.

19. Another grievance of the petitioners pertains to existing election practices involving massive use of wealth by the bigger political parties as manifested by enormous '*Jalsa/political rallies*' and '*Jaloos/processions*', advertisements via banners, posters, billboards, stickers and other forms of media, use of loudspeakers, setting up election camps, and processions of car rallies, which deprive the ordinary citizens from partaking in the political process. It is argued that because only well-established and affluent political parties and politicians can afford to undertake such practices, a *Jalsa* and *Jaloos* has the effect of inhibiting ordinary persons from exercising their right under Article 17(2) of the Constitution. The petitioners have sought a complete ban on all these activities. Most of the respondent political parties have differed with the stance taken by the petitioners.

20. It is contended on behalf of the petitioners that *Jalsas* or political rallies and *Jaloos* or processions are not an effective means of communication for the purposes of campaigning. They have alleged that an election campaign is intended to educate the voters and share the manifesto and policies of the party or the candidate with the electorate. This object, it is argued, cannot be achieved by the aforesaid means. It is further argued that these practices are exorbitantly expensive and unfortunately have become the norm in the domestic political arena. Because only well-established and affluent political parties and politicians can afford to undertake such practices, a *Jalsa* and *Jaloos* has the effect of inhibiting ordinary persons from exercising their right under Article 17(2) of the Constitution. Because these practices are expensive and an unnecessary extravagance that serve to distort the political arena, the petitioners argue that these should be banned. On the other hand, it is argued by the learned

counsel for MQM that MQM do not agree that all "*Jalsa*" or Political Rally and "*Jaloos*" or "Procession" should be prohibited during the election campaign, inasmuch as it would militate against Articles 16, 17 and 25 of the Constitution. It is submitted that a distinction is required to be drawn where the procession/jaloos takes the shape of a car rally as opposed to where people in a city are using vehicles to reach a particular place earmarked/notified for a procession. There would be a problem in stopping a car rally, *per se*, as this would be used to prevent people approaching a particular site meant for the procession. It is suggested that it would be better to regulate such rallies so that they do not take place on a random basis. Learned counsel appearing on behalf of Jamat-e-Islami Pakistan has also made a similar suggestion to avoid disturbance and inconvenience to the general public.

21. It is submitted on behalf of PML(N) that "*Jalsas*" or political rallies should be allowed insofar as they comply with the election laws. According to the learned counsel, public meetings, rallies or processions are the best modes of approaching the people, conveying to them the party manifesto and the party program for the betterment of the people, introducing the candidates, etc. According to him, political processes cannot take effect sitting in a room with the candidates, announcing their candidature and expecting voters to come at their own to cast votes. The scope of Article 17 has already been expanded by various judgments of this Court.

22. Mr. Hamid Khan, ASC has submitted that PTI is of the opinion that *Jalsas*, political rallies and *Jaloos*/processions are necessary part of election campaigns and integral to the creation of

political awareness amongst the people at large. It is a right, which every political party enjoys under Article 17 of the Constitution. On the other hand, it is submitted by Mr. Salman Akram Raja, ASC, on behalf of APP that *Jalsas, Jaloos* or processions may be completely banned during the 60 days of election campaign. According to them, the Election Commission should designate a suitable place in each constituency where all candidates address the public at large and also hold discussion on their respective manifestos.

23. The petitioners have submitted that the practice of advertising candidates and/or party via banners, posters, billboards and stickers is an 'utter waste of time and resources'. They have argued that these practices are not an important and effective means of communication, are aesthetically unpleasant and extremely costly. In light of these assertions, the petitioners have argued that because such practices have become a norm in election campaigns, in order to secure any chance of winning, most candidates end up employing these practices and consequently exceeding the ceiling amount prescribed for election expenditure by section 49 of ROPA. Therefore, the petitioners have submitted that in light of their arguments, these and other practices, like wall-chalking, etc., ought to be banned. Dr. Farogh Naseem has recommended that provisions should be made to ban the pasting of banners, posters or stickers on private or governmental properties. Mr. Muhammad Rafique Rajwana has, however, submitted that the billboards, banners, etc., should be permitted to be displayed within the four corners of the law. Similarly, Mr. Hamid Khan submitted that banners/posters/stickers are not necessarily expensive and are meant to spread the message of political parties during the election campaigns and to introduce the

candidates to their electorate. However, he has argued that billboards are very expensive, which should be done away with in order to reduce election expenses. Mr. Salman Akram Raja submitted that display of banners, posters, billboards, stickers, etc., must be completely banned during 60 days of election campaign.

24. The petitioners have submitted that the purpose of an election campaign is not to overwhelm people by employing such means that have nothing to do with the actual dissemination of ideas. It is argued that the use of loudspeakers only serves the aforesaid purpose. Furthermore, it is contended that in addition to the abovementioned effect, the use of loudspeakers causes aural aggression and intrusion of privacy, and intimidates and imposes ideas on voters without their consent. Such means of overpowering and intimidating voters, which have the effect of curtailing their right to make a free choice, should be banned. On the contrary, Dr. Farogh Naseem has submitted that loudspeakers are not expensive and in fact constitute an important aid in the dissemination of information, especially with respect to the sharing of manifestoes of political parties and candidates. Political parties which are popular amongst the people at large are able to attract very large crowds. Therefore, any prohibition on loudspeakers, amplifiers or other such modern devices would be counter-productive. Mr. Muhammad Rafiq Rajwana has submitted that the use of loudspeakers in big gatherings and rallies is necessary to enable the people to hear the speakers, and to know the candidates, political parties and their manifestoes. Mr. Hamid Khan has submitted that PTI is not opposed to the use of loudspeakers and other amplifiers, which are not expensive instruments. Rather, these facilitate the reaching out to a large audience by the party candidates

and the generation of healthy discussion and political activity. On the other hand, Mr. Salman Akram Raja, ASC, on behalf of APP has submitted that use of loudspeakers (otherwise permitted by law) may also be completely banned during 60 days of election campaign.

25. The petitioners have also argued that car rallies also qualify as displays of wealth, which have the effect of 'overawing' and consequently exploiting the voters. It is submitted that car rallies, and in particular those comprising of expensive cars cultivate a "mentality of supporting the perceived stronger or winning side regardless of what that side has to say on real issues." Since such a practice undermines the essence of voting, i.e. making an informed choice, the petitioners have sought that these car rallies be banned completely. In the context of car rallies, the viewpoint presented on behalf of PML(N) is that these rallies should be made subject to reform, but before that existing election laws are to be strictly implemented. Mr. Hamid Khan has submitted that PTI does not oppose car rallies, but agrees with the petitioners that the political parties should not use expensive cars, which qualify as display of wealth and substantially enhance the expenditure incurred by the candidates.

26. It is submitted on behalf of the petitioners that pamphleteering, as it is presently practiced, suffers from the same defects as the other impugned practices mentioned above. However, it has been argued that pamphleteering may be used for productive ends as well. The petitioners do not find issue with pamphleteering, so long as the distributed pamphlets contain the candidate's manifesto and concurrently seek a ban on all other forms of pamphleteering. Dr. Farogh Naseem has submitted that the distribution of pamphlets aids

the dissemination of information regarding political parties and their candidates, but pamphlets should not serve to incite racial, ethnic, religious, parochial, provincial or even political hatred. Mr. Rafiq Rajwana has submitted that pamphlets containing unobjectionable contents for election purposes are the best and cheapest mode of communicating with the voters. Mr. Hamid Khan does not oppose the use of pamphlets during the election campaign provided the contents of the pamphlet are not inflammatory and do not promote hatred or prejudice in the society. However, pamphlets can be used to distribute manifestos of the political parties or to introduce candidates in their respective constituencies. Mr. Taufique Asif, learned counsel for JIP, has submitted that JIP does not agree with the petitioners.

27. The petitioners have contended that State and private TV channels must not televise or broadcast programs mentioning specific candidates and should not give coverage, negative or favourable, to any of the candidates by names or by obvious reference. This privilege, they believe, can only be availed by wealthier political parties and candidates, and is an advantage that compromises the rights of the petitioners. It is further argued that surveys carried out and published in newspapers declaring the rising or declining popularity of candidates or parties should also be disallowed during the relevant period since these tend to unreasonably influence and consequently sway voters' opinion. It is submitted that these surveys condition the electorate and compromise the objectivity with which they ought to cast their vote. Dr. Farogh Naseem has submitted that a complete ban in this regard would violate the freedom of press, which is also a fundamental right. According to him, the suggestion that the electronic and print media should not charge political parties or their

candidates is too wide and blanket in nature. Firstly, the press/media cannot be stopped from charging for the advertisement, as this would violate the fundamental right of freedom of business of the media. Secondly, the prospects of propagating information using modern devices shall stand completely precluded in case any blanket order of the nature sought by the petitioners is passed. The correct approach, therefore, would be to opt for the regulation thereof. It is suggested that the Ministry of Communication may be directed to prescribe a cap/upper restriction on the size and frequency of such advertisements. Further, a code of conduct may be devised so that the information sought to be advertised is put through a system of preliminary checking to avoid disinformation. Mr. Hamid Khan has stated that PTI agrees with the petitioners that expensive newspaper, TV or Radio advertisements should not be allowed because it would substantially enhance the election expenses of the candidates. However, there will be no problem if the newspapers, TV or Radio programmes give coverage to activities of political parties and their candidates. Similarly, he has not taken any issue with the media carrying out surveys that project the popularity and acceptability of various political parties and their political leaders. Mr. Taufique Asif has submitted that JIP does not agree with the petitioners on this issue. Mr. Abdul Wahab Baloch, ASC, learned counsel for Sindh United Party has submitted that each party as well as each candidate should be provided equal time on the media, particularly on the National TV Channel to express their views and share their manifestos. Mr. Salman Akram Raja has submitted that the Election Commission should ensure that no candidate or political party reserves time on private TV

channels and that adequate time should be given to each party to present their programme on State TV.

28. Learned counsel for the petitioners has submitted that there should be complete ban on the use of private vehicles for the purpose of transporting the voters to the polling station. The Election Commission should be ordered to increase the number of polling stations to enable the voters to cast their votes at shorter distances. A procedure should be devised for this purpose, by making regulations and issuing necessary orders, including requisitioning of government transport, if necessary, to carry the elderly or disabled persons to the polling stations, or to meet any other emergency needs. Mr. Salman Akram Raja, ASC has submitted that transportation of voters on the polling day may be completely banned. However, the Election Commission may collect funds from political parties in accordance with their number of candidates participating in elections and make arrangements for transportation of voters, but in no case should the candidates be allowed to hire/use private transport on election day. The routes of such transport should be widely advertised in the print and electronic media for information of the general public. Mr. Hamid Khan has submitted that it is well settled that the candidates are not allowed to transport voters to the polling stations on the election day. However, this principle and provision is openly flouted by political parties. Thousands of vehicles are deployed on the election day by the candidates to pick the voters from their homes to the polling stations. This exercise entails expenditure of millions of rupees that is incurred in one day. Such practices minimize the winning prospects of the political parties and candidates of modest means. It is submitted that a direction be issued that all private transport should cease to operate

on election day so that the voters can reach the polling stations by themselves on foot, bicycles or motorbikes. He submitted that in India four-wheeler vehicles are not allowed to transport voters on the day of elections and the voters reach the polling stations on their own. This would ensure truly free and fair elections. However, to facilitate the voters, the number of polling stations ought to be raised by at least 50% throughout the country so that the polling stations are not at a distance of more than two kilometres from the place of residence of voters.

29. Learned counsel for the petitioners has submitted that the supply of *Perchi* containing particulars of voters, including name, parentage, polling station/booth, serial number of the voter in the electoral roll should be banned. These *Perchis* are tantamount to canvassing and, therefore, allegedly influence the mind of the voter. The respondent-political parties agree that the issuance of *Perchi* should be banned and arrangements made by the Election Commission in consultation with NADRA to provide said information to the voters by incorporating the same in NIC. It was informed that the Election Commission has started the service of providing information to the voters through SMS message service. For this purpose, a voter has to make a phone call or send an SMS on a given number and the relevant information is provided to him. A suggestion was made during hearing of the case that Election Commission should prepare a *Perchi*/card containing all the necessary information such as serial number, name of polling station, number of polling booth, etc. In response, it was submitted on behalf of NADRA that voters card can be issued by the Authority at an approximate cost of Rs.100/- per card. It was further submitted that the card would contain an electronic chip having

space/memory of 1 kb, which could be enhanced to 27 kb. Another suggestion was that the Election Commission may generate funds by allowing private/public companies to print these cards/*Perchis* with their monograms, logos, product signs or names, etc., for advertisement purposes on commercial basis. Such information can also be provided in the utility bills, bank accounts cards, etc.

30. The petitioners have submitted that the activities carried out at election camps are intended to, and have the effect of, overawing the electorate and breeding the impugned political culture. These activities reduce, what would otherwise serve as an occasion to educate the electorate, into a funfair, carnival or picnic. The "setting up of picnic opportunities and doling out free food to workers hardly corresponds to the idea of a serious office". The petitioners have, therefore, submitted that the setting up of camps ought to be regulated. Their number, purpose, timing, their manner of conduct and the activities permitted to be carried out therein during the campaign and on election day ought to be monitored. It is only in such a setting that the petitioners believe, election camps would serve their required purpose. Dr. Farogh Naseem has submitted that camps should not be used as picnic spots, but can be used effectively to disseminate relevant information. Mr. Hamid Khan has stated that PTI agrees with the petitioners that election camps should not be set up to host extravagant indulgences. Activities conducted in these camps should be limited to distributing party manifestos and introducing candidates to their electorate. JIP, however, does not agree with the petitioners on this issue.

31. We have heard at length the learned counsel for the petitioners, learned Deputy Attorney General on behalf of the official respondents, namely, Federation of Pakistan, Ministry of Law, Justice & Parliamentary Affairs and the Election Commission and the learned counsel appearing for the respondent political parties, and have gone through the documents placed on record by the Election Commission as well as the case-law cited at the bar.

32. To begin with, the petitioners have invoked this Court's jurisdiction under Article 184(3) of the Constitution. In this behalf, the Federation of Pakistan through Ministry of Law and Justice Division and Election Commission have raised objection with respect to the maintainability of the instant petition. However, during arguments, none of the parties pressed the said objection, rather they requested the Court to issue certain directions to the concerned authorities. The Learned Deputy Attorney General, appearing on behalf of Federation, Ministry of Law & Justice and the Election Commission also prayed that appropriate orders may be passed on certain issues raised in the petition.

33. The scope of jurisdiction of this Court under Article 184(3) of the Constitution by now is fairly settled in a plethora of case law, therefore, there is no necessity to recapitulate the constitutional provision or to refer to the entire case-law for the purpose of deciding the question of maintainability of the instant petition. This Court, in the cases of Ms. Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416), Haji Muhammad Saifullah Khan v. Federation of Pakistan (PLD 1989 SC 166) and Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473) has already held that the right to form, or

be a member of a political party guaranteed under Article 17 of the Constitution subsumes the right to participate or contest in the election, and to form government if successful. The petitioners have vehemently averred that the impugned practices violate the fundamental right of the citizenry at large guaranteed by Article 17 read with Article 25 of the Constitution. None of the respondents has rebutted the above assertion of the petitioners. Accordingly, the instant petition is held to be maintainable.

34. It may be mentioned here that the instant petition falls in the public interest litigation, which is not adversarial but inquisitorial in nature. In the cases of Watan Party v. Federation of Pakistan (PLD 2011 SC 997) and All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2012 SC 1) referred to by Mr. Farogh Naseem, ASC, this Court has held that it has the jurisdiction to adjudicate upon a case if it falls within the ambit of inquisitorial proceedings. It is also well settled that while entertaining a direct petition under Article 184(3), this Court has ample power to examine the *vires* of laws, rules or regulations. Reference in this regard has been made to the cases of Wukala Mahaz Barai Tahafaz Dastoor v. Federation of Pakistan (PLD 1998 SC 1263), Farooq Ahmad Khan Laghari v. Federation of Pakistan (PLD 1999 SC 57), Jalal Mehmood Shah v. Federation of Pakistan (PLD 1999 SC 395), Liaquat Hussain v. Federation of Pakistan (PLD 1999 SC 504), Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265) and Muhammad Mubeen-us-Salaam v. Federation of Pakistan (PLD 2006 SC 602).

35. Before dilating upon the issues agitated in this petition, it may be observed that the 1973 constitutional Order is a living

manifestation of the will of the people of Pakistan. In this Order, the people have made clear that all authority to govern shall be exercised *"within the limits prescribed by (Allah)"*, and only by or on behalf of the people of Pakistan. This Order, therefore, rests on two fundamental precepts. Firstly, that the exercise of this authority shall be informed and circumscribed by the principles of Islam, and secondly, that the people of Pakistan shall play an integral role in the exercise thereof. Any action or inaction that contravenes these instructions is *ultra vires* of this authority, unconstitutional and void.

36. All constitutional mandates and prescriptions are deemed to have been issued in furtherance of these Islamic principles and within these prescribed parameters. Article 2A, therefore, expressly instructs that *"...principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed"* in the State of Pakistan. The protection and advancement of these principles is an integral objective and an essential feature of the Pakistani constitutional Order. In appreciation of the value accorded to Fundamental Rights by Islam, the same Article mandates that the State shall guarantee *"fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality"*. The entire set of Chapter II of the constitution further reiterates the constitutional importance and manifests the realization of this objective. To that end, Article 8(1) enunciates the significance of these rights and the principles that they embody, by declaring, *"all law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such*

inconsistency, be void". In effect these rights, as enunciated by Islam, have been placed on a higher pedestal and enshrined as a central feature of our constitutional framework.

37. This constitutional Order declares that "*the authority (is) to be exercised by the people of Pakistan*". The vesting of this authority and entrusting the exercise thereof to the people, emphasizes the principle of self-government as the bedrock of our constitutional framework. By guaranteeing the observance of '*principles of democracy*' in Pakistan and mandating that the "*State shall exercise its powers and authority through the chosen representatives of the people*" the Constitution instructs that this authority be exercised by and through a representative and democratic government. This constitutional order was framed with an ardent dedication '*to the preservation of democracy*' and therefore encapsulates it as one of its core values. Furthermore, by establishing and enumerating the powers and manner in which the legislature is to function, Part II and III of the constitution cement 'democracy' as the chosen system of the people and a fundamental constitutional dictate. Therefore, it is patently clear that the constitutional imperative of 'advancing and protecting Fundamental Rights, as enunciated by Islam, through a democratic system of government' underpins the operation of our constitutional Order. This symbiotic relationship between 'democracy' as a governing system and the objective of 'advancing and protecting Fundamental Rights, as enunciated by Islam' preserves and reinforces both these constitutional dictates as cardinal features of our constitution. Various provisions of the constitution have been drafted to effectuate this imperative. The freedom of association, as enunciated by Article 17 of the constitution, confers a Fundamental

right on every individual to partake in the political governance of the State, whilst concurrently reinforcing the constitutional mandate to protect and advance this right through a democratic state. Furthermore, the 'freedom of assembly' (Article 16) and 'freedom of speech' (Article 19) also serve to realize this constitutional imperative.

38. The Constitution provides a comprehensive mechanism to ensure minimal deviation from these dictates. It identifies and regulates one of the key aspects of democracy, the election process. In Article 218, the Constitution constitutes the Election Commission and empowers it to organize and oversee the election process and to ensure, *inter alia*, that it is conducted "*honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against*". Article 218(3) of the Constitution enumerates the broad and overarching responsibility of the Election Commission and declares that: -

"218. Election Commission.

(1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public offices as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.

(2) The Election Commission shall consist of-

- (a) The Commissioner who shall be the Chairman of the Commission; and
- (b) four members, each of whom has been a Judge of a High Court from each Province, appointed by the President in the manner provided for appointment of the Commissioner in clauses (2A) and (2B) of Article 213.

(3) It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted

honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."

39. The phrase "the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against" as used in Article 218(3) of the Constitution informs the content and scope of powers conferred by it on the Election Commission. It may be advantageous to refer to the meanings of the terms "honestly", "justly" and "fairly" as given in various legal instruments, which read as under: -

"Honestly":

- (i) 'honest' means full of honour: just: fair dealing: upright: the opposite of thievish: free from fraud: candid: truthful: ingenious: seemly: respectable: chaste: honourable; 'honestly' means in an honest way: in truth; 'honesty' is the state of being honest: integrity: candour. [Chambers, 20th Century Dictionary, New Edition 1983 at page 601]
- (ii) 'honesty' – "according to the best lexicographers the words 'truth' 'veracity' and 'honesty' are almost synonymous, very nearly the same definitions being given to each of the words". [P. Ramanatha Aiyar's "Advanced Law Lexicon", 2005 Edition, Vol. 2, at page 2153]
- (iii) Honesty is a thing deemed to be done in good faith, where it is infact done honestly, whether it is done negligently or not. [*Fakhruddin v. A. Shah* (PLD 1982 Kar 790)]
- (iv) Honestly is state of mind which is psychological factor capable to prove or disprove only by a evidence or conduct. [*Amjad Khan v. Marium* (1993 CLC 175)]

"Justly"

- (i) 'just' means "conforming to or consonant with, what is legal or lawful, legally right, lawful"; ... "The words 'just' and 'justly' do not always mean 'just' and 'justly' in a moral sense, but they not unfrequently, in their connection with other words in a sentence, where a very different signification. It is evident, however, that the word 'just' in the statute [requiring an affidavit for an attachment to State that Plaintiff's claim is just] means 'just ' in a moral sense; and from its isolation, being made a separate sub-division of the section, it is intended to mean 'morally just' in the most emphatic terms. The claim must be morally just as well as the legally just in order to entitle a party to

an attachment." Robinson v. Burton (5 Kan. 300.) [Black's Law Dictionary, Revised 4th Edition of 1968, at page 1001]

- (ii) 'just' means righteous: fair: impartial: according to justice: due: in accordance with facts: well-grounded: accurately true: exact: normal: close-fitting: precisely: exactly: so much and no more: barely: only: merely: quite; 'justly' means in a just manner: equitably: accurately: by right; 'justness' means equity: fittingness: exactness. [Chambers, 20th Century Dictionary, New Edition 1983 at page 686]
- (iii) 'just'. As an adjective, fair; adequate; reasonable; probable; right in accordance with law and justice right in law or ethics; rightful; legitimate, well founded; conformable to laws; conforming to the requirements of right or positive law; conformed to rules or principle of justice. 2 Bom LR 845. As an adverb of time the word 'just' is equivalent to "at this moment," of the least possible time since" (Ame. Cyc.).

The word 'just' is derived from the Latin 'justus' which is from the Latin 'jus' which means a right, and more technically a legal right--- a law. The word 'just' is defined by the Century Dictionary as conforming to the requirements of right or of positive law, and in Anderson's Law Dictionary as probable, reasonable. Kinney's Law Dictionary defines 'just' as fair, adequate, reasonable, probable, and *justa causa* as a just case, a lawful ground. Being in conformity with justice [S.191, Explan. 2, ill. (a) IPC (45 of 1860) and Art 42, Const]; fair.

An allegation is an indictment that an offence has 'just' come to the knowledge of an officer having authority to prosecute is, by implication, a sufficient allegation that the offence had not previously come to the knowledge of any other public officer having authority to prosecute.

'JUST' as used in Laws providing that an affidavit for attachment shall show the nature of the plaintiffs claim, and that it is just, etc., should be construed to mean just in a moral sense. The claim must be morally just, as well as legally just in order to entitle a party to an attachment. "Shall have the power, if he shall think just, to order a new trial." in the County Courts Act, 1888 (51 & 52 Vict. c. 43), S.93. These words do not give a County court judge an absolute power of granting new trials. His power under the section is subject to the rules and limitations as to the granting of new trials which are binding upon the High Court, the Court of Appeal, and the House of Lords. Murtagh v. Barry (1890) 44 Ch D 632 (LORD COLERIDGE, C.J.). The crucial word in the phrase is "just" which imparts a judicial, and not an absolute power. (Craies St. Law).

The term 'just' is derived from the Latin word 'justus'. The word, 'just' connotes reasonableness and something conforming to rectitude and justice something requireable

and fair. M.A. Rahim and Another v. Sayari Bai, AIR 1973 Mad 83,87. The word 'just' denotes equitability, fairness and reasonableness having a large peripheral field. Helen C. Rebellor v. Maharashtra S.R.T.C., (1999) 1 SCC 90, para 28: AIR 1998 SC 3191. The word 'just' occurring in Section 168 of the Act means that the compensation must be just and it cannot be a bonanza; not a source of profit but same should not be a pittance. The expression 'just' denotes equitability, fairness and reasonableness and non-arbitrariness. Divisional Controller KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197, para 15. [Motor Vehicles Act (59 of 1988), S. 168].

Reasonableness may be 'good cause' but it is not necessarily 'just cause'. If a person voluntarily retires on pension, he is getting a substantial financial benefit for himself, and it is not fair or just to the unemployment fund that he should also get unemployment benefit for the six weeks under the act. Crewe v. Social Security Commissioner, (1982) 2 All ER 745, 749. [Social Security Act, 1975, S.20(1)(a)].

The words 'just cause' in S. 263 are exhaustive and not merely illustrative. Merely the failure to fill an inventory or the account within the specified time is not sufficient. It must be established that the person to whom the grant has been made willfully and without reasonable cause omitted to exhibit them. In Re. T. Arumuga Mudaliar, AIR 1955 Mad 622. [Indian Succession Act (39 of 1925), S.263]. [P. Ramanatha Aiyar's "Advanced Law Lexicon", 2005 Edition, Vol. 3, at pages 2539 and 2540:]

- (iv) 'just' means according to law. [Utility Stores Corporation of Pakistan Ltd v. Punjab Labour Appellate Tribunal (PLD 1987 SC 447) and Shahi Bottlers (Pvt) Ltd v. Punjab Appellate Tribunal (1993 SCMR 1370)]

"Fairly"

- (i) 'fairly' means "equitably, honestly, impartially.... Justly, rightly, with substantial correctness, reasonably...". [Black's Law Dictionary, Revised 4th Edition of 1968, at page 719]
- (ii) 'fairly' means beautifully: neatly: justly: reasonably: plainly: gently: fully: quite: tolerably. [Chambers, 20th Century Dictionary, New Edition 1983 at page 452]
- (iii) 'fair' --"the word conveys some idea of justice or equity in partial free from suspicion or bias; equitable; reasonable; honest; upright; and as applied to the weather, a fair weather is one free from clouds; not obscure"—'FAIR, HONEST, EQUITABLE, REASONABLE' – 'fairness' enters into every minute circumstance connected with the interest of the parties, and weights them alike for both; honestly is contended with a literal conformity to the law, it consults the interest of one party. An estimate is fair in which profit and loss, merit and demerit with every

collateral circumstances is duly weighed; a judgment is equitable which decides suitably and advantageously for both parties; a price is reasonable which does not exceed the limits of reason or propriety. A decision may be either fair or equitable; but the former is said mostly in regard to trifling matters, and the latter in regard to the important rights of mankind. It is the business of the umpire to decide fairly between the combatants, it is the business of the Judge to decide equitably between men whose property is at issue." [P. Ramanatha Aiyar's "Advanced Law Lexicon", 2005 Edition, Vol. 2, at page 1761 and 1762]

A perusal of the above shows that the words "justly", "fairly" and "honestly" have similar shades of meaning. As has been rightly submitted by Mr. Farogh Naseem, these words imply that the Election Commission is under a direct constitutional obligation to exercise all powers invested in it in a *bona fide* manner, meeting the highest of standards and norms. As a natural corollary, therefore, all discretionary power is also to be exercised and tested against these standards.

40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in Election Commission of Pakistan v. Javaid Hashmi and others.(PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election

programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including *all stages involved in the election process*. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein

41. The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as *In Re: Petition filed by Syed Qaim Ali Shah Jellani* (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, *Mst. Qamar Sultana v. Public at Large* (1989 MLD 360) and *In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V* (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make 'such orders as may in its opinion be necessary for ensuring that the

election is fair, honest etc'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met.

42. The Parliament has framed different laws to effectuate the above constitutional provision and to regulate elections to the National and Provincial Assemblies. ROPA reiterates and further vests the Election Commission with the responsibilities and powers to, *inter alia*, regulate and check intra-party affairs and actions taken by candidates and parties in anticipation of and on Election Day, resolve all election disputes, declare the election void and to award punishments for violating relevant election laws. In appreciation of the arduousness of its task, section 5(2) of ROPA further empowers the Election Commission to "*require any person or authority to perform such functions or render such assistance for the purposes of this Act as...it may direct*". The Election Commission may, under section 103(c) of ROPA also "*issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules*". Article 220 of the Constitution also directs the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. The law, therefore, entrusts the Election Commission with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process.

43. Article 218(3) also empowers the Election Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices. Sections 78, 79, 80, 80-A, 81 and 83 of ROPA comprehensively define the terms "corrupt practices" and "illegal practices". ROPA in sections 82, 99 and 100 further elaborates the consequences of such practices and enunciate that the same form a sufficient basis for the Election Commission to, *inter alia*, imprison, fine and disqualify those who violate them. These provisions, therefore, subsume all those impugned activities as cognizable by the Election Commission. Similarly, Section 103(a) of ROPA instructs the Election Commission to ensure a "*fair election*". In doing so it implies that "large scale malpractices including coercion, intimidation and pressures, prevailing at the election" would negate the 'fairness' elections are to embody. While sections 78, 79, 80, 80-A, 81 and 83 specify activities that the Election Commission can regulate and check under Article 218(3), section 103(a), substantially enhances this defined spectrum of cognizable activities and reinforces the obligation to check them. In section 103(c) section it empowers the Election Commission to issue instructions, exercise its powers and make orders to effectuate the said standard

44. While there is no cavil with the proposition that the Election Commission stands as an independent and fully empowered constitutional body, the 18th and 20th Constitutional Amendments, have substantially enhanced the degree of independence and the scope of powers enjoyed by the Election Commission. Prior to 18th Constitutional Amendment, the Commission comprised the Chief Election Commissioner and two retired Judges as members thereof. Vide the 18th Amendment, the strength of the members has been

increased from two to four, with the additional requirement that each of the members be a Judge of High Court of each Province, duly appointed by the President as per prescribed procedure provided for appointment of the Commissioner in clauses (2)(a) & (b) of Article 218(1) of the Constitution. The entrustment of greater responsibility and the enhancement of its strength are part of an effort fully to equip the Commission to discharge its broad set of responsibilities. These also reflect a growing trust in the Commission to act independently and without influence in conducting and organizing elections "fairly, honestly, justly and in accordance with law". In the parliamentary system of government a constitutionally independent and empowered Election Commission rests as one of the foundational stones of a democratic setup. In the past, the Election Commission has succumbed to external influence and failed to discharge its responsibilities successfully. The inadequacy of the Commission's effort in organizing and conducting the election to the above standards, has had detrimental repercussions for the democratic system in Pakistan. Not only has it undermined the legitimacy of the elections and the claim of the winning party to form government, but has also, by disregarding express constitutional dictates regulating the same, devastated the trust and faith reposed by the citizenry in the rule of law and supremacy of the Constitution. This is why Pakistan has witnessed political parties, individual candidates, as well as the citizenry, reject and denounce some of the election results. The rigging of elections was cited as a major ground for the imposition of martial law in the country in 1977, which was unfortunately validated by the Supreme Court. Consequently, an unconstitutional order was imposed on the people of Pakistan with the false hope of holding fair and free

elections within 90 days. The solemn commitment made by General Ziaul Haq, Chief Martial Law Administrator, however, was never honoured and the people of Pakistan remained subject to an unconstitutional regime for nearly 11 years. In light of the powers and independence that the Election Commission enjoys today, such an unfortunate abuse of power and disregard of the constitutional dictate to establish and preserve democracy seems impossible.

45. Furthermore, under Article 221 of the Constitution, the Commission, with the approval of the President, is empowered to make rules providing for the appointment of its officers and servants. Similarly, under section 107 of ROPA, the Commission may, with the approval of the President, make rules for carrying out the purposes of this Act. These powers further reinforce the independence with which the Commission is to exercise its powers. Such conclusions have already been drawn and find support in the case of Sh. Rashid Ahmed v. Federation of Pakistan (PLD 2010 SC 573) relevant paragraph there from is reproduced hereunder: -

9. We have considered the above submissions and have also gone through the material placed before us and the relevant constitutional provisions. Part VIII of the Constitution comprising Articles 213 to 226 related to "Elections". Article 213 reflects that Chief Election Commissioner in this part shall be referred to as the Commissioner; whereas, Article 219(b) provides that "the Commissioner shall be charged with the duty of organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly". Thus it is quite evident that the Constitution places upon the Chief Election Commissioner an obligation to organize the election. Article 220 of the Constitution provides that "it shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions; conceptually placing the position of Commissioner and Election Commission upper most while discharge their functions requiring the executive authority to assist; in other words "to aid" the Commissioner and the Election Commission. In that course, the executive

authority shall have no option but, to offer, unhesitatingly, its assistance to make the way for the Commissioner or the Election Commission smoother rather than to make it difficult; either to stop, postpone or slow down their pace in the discharge of duties, in this case holding election for seat to question. The provision of Article 220 of the Constitution also reflects to be in pari materia with the provision of Article 190 of the Constitution according to which "all executive and judicial authorities throughout Pakistan shall act in aid of Supreme Court"; which hold the Supreme Court upper most in the hierarchy of the judiciary for which the Constitution envisages that its independence shall be fully secured. Thus, to sum up, testing on the touchstone of afore-referred provisions of Constitution, the net result that comes out is that the Chief Election Commissioner and the Election Commission are absolutely independent with exclusive jurisdiction while performing duties within terms of Part-VIII of the Constitution in which no interference is allowable by any of the parties interested by resorting to any manner and mode, as was done in the present case. All the concerned quarters, namely Federal and Provincial Governments, the Law Enforcing Agencies as well, are under an obligation to ensure that Chief Election Commissioner/Election Commission function independently; and see that they are properly strengthened enabling them to discharge their constitutional commitments fairly, freely and without any hindrance and pressure of whatsoever nature.

It may therefore be said that there is no restriction on the Commission to frame rules with the approval of President, to ensure that the elections are conducted fairly, honestly, justly and in accordance with law and that corrupt practices are guarded against. Under Article 222, Majlis-e-Shoora (Parliament), subject to the Constitution, is authorized to promulgate laws for following purposes: -

- (a) the allocation of seats in the National Assembly as required by clauses (3) and (4) of Article 51;
- (b) the delimitation of constituencies by the Election Commission;
- (c) the preparation of electoral rolls, the requirements as to residence in a constituency, the determination of objections pertaining to and the commencement of electoral rolls;
- (d) the conduct of elections and election petitions; the decision of doubts and disputes arising in connection with elections;
- (e) matters relating to corrupt practices and other offences in connection with elections; and
- (f) all other matters necessary for the due constitution of the two Houses and the Provincial Assemblies;

While the Majlis-e-Shoora may promulgate law to regulate the same, any law which has the effect of abridging any of the powers of the Commissioner or the Commission would not find support in the law.

46. It is of utmost importance that the Election Commission executes its functions and discharges its responsibilities effectively, efficiently and in letter and in spirit. By declaring that the representatives of the people "*shall be elected by direct and free vote, in accordance with law*" in Article 51(6)(a), the Constitution identifies 'elections' as the first and an integral step in effectuating the aforesaid constitutional dictates. At page 254 of the judgement given in the AL-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84), this Court commented on the important role of the Election Commission and observed that by fulfilling its mandated duties and responsibilities, the Election Commission essentially "*give(s) birth to a body/institution of the nation, called Parliament*". The effective fulfilment and honest discharge of this tremendous responsibility would lend greater legitimacy to an elected democratic government and give effect to its constitutional mandate. It is, therefore, imperative that the Election Commission employs its extensive powers to regulate the election process. Any shortfall in the discharge of its responsibilities would violate express dictates of our Constitution, devastate the efficacy of our constitutional order and the envisioned operation of the State. Therefore, in appropriate circumstances, the Election Commission may be directed to fulfil its constitutional and legislative dictates by *inter alia* bringing all relevant political practices into conformity with the Constitution and the law.

47. We have examined this issue in the light of the provision of Article 218(3) as well as the relevant provisions of ROPA. It may be noted that all parties to the instant case concur that the law regulating election expenses and other election related activities is already present on the statute book. This mechanism of regulation finds meaning through the relevant Articles and provisions of the Constitution, ROPA as well as other laws for example, the Senate (Election) Act, 1975. It may be noted here that section 48 of ROPA defines 'election expenses' whereas section 49 *ibid* caps the campaign expenditure of the contesting candidate to one and a half million rupees for a seat in the Senate and a National Assembly seat and one million rupees for a Provincial Assembly seat. Section 68 of ROPA provides that the Tribunal shall declare the election of the returned candidate to be void if, inter alia, *a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent*. Subsection (2) of section 68 provides that the election of a returned candidate shall not be declared void on the ground *that any corrupt or illegal practice has been committed, if the Tribunal is satisfied that it was not committed by, or with the consent or connivance of that candidate or his election agent and that the candidate and the election agent took all reasonable precaution to prevent its commission*. Section 70 of the Act provides that the Tribunal shall declare the election as a whole to be void if, inter alia, it is satisfied that the result of the election has been materially affected by reason of the prevalence of extensive corrupt or illegal practice at the election. Section 78 of the Act, 1796 defines the corrupt practices which, inter alia, include contravention of the provisions of section 49.

Section 82 provides that any person guilty of corrupt practice shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both. Section 99(1A) provides that a person shall be disqualified from being elected as, and from being, a member of an Assembly, if, inter alia, has been convicted by a court of competent jurisdiction on a charge of corrupt practice, moral turpitude or misuse of power or authority under any law for the time being in force; or he is found guilty of a corrupt or illegal practice under any law for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect; or illegal practice. Considering the above provisions, we agree with the submission of Mr. Rafiq Rajwana, ASC that the strict implementation of the existing election laws is the need of the hour. We are also in agreement with the submission made by Dr. Khalid Ranjha, Sr.ASC that the Constitution and the election laws of Pakistan provide a comprehensive and adequate mechanism for regulating election expenses by enumerating different offences, penalties and procedures for a breach thereof. It is a matter of fact that the provisions and articles regulating the same are not adhered to, both in letter and in spirit. It is therefore emphasized that all these laws be strictly complied with by all relevant parties. It is also true that this mechanism for regulating the election process is concurrently, inadequately enforced. Poor enforcement thereof stems from a misconception regarding the capacity of the Election Commission to attend to the same. At this juncture, we reiterate that the Election Commission is fully empowered and independent to do all that is necessary to fulfil its constitutional mandate and instruct that it do so.

48. We would now propose to deal with specific practices identified by the petitioners. With respect to the financial accountability of the candidate, Section 50 of ROPA provides that every contesting candidate, other than the returned candidate, shall submit the return of his election expenses within thirty days of the publication of the name of the returned candidate. As per subsection (2) of section 50, the return of election expenses of the returned candidate and of every contesting candidate shall be submitted to the Returning Officer in the prescribed form containing (a) a statement of all payments made by him together with all bills and receipts; (b) a statement of all disputed claims; (c) a statement of all unpaid claims, if any; and (d) a statement of all moneys, securities or equivalent of money received from, or spent, by any person for the benefit of the candidate, specifying the name of every such person. As per subsection (3), the returns submitted under sub-section (2) shall be accompanied by an affidavit of the candidate in the prescribed form. As per section 51 of ROPA, the Returning Officer is bound to keep the returns and documents submitted under section 50 and to allow any person to inspect the same on payment of the prescribed fee, during a period of one year from the date of their receipt, or provide the copies if the same. Though the account of election expenditure is required to be submitted within 30 days of the declaration of the result, the monitoring has to be done on a regular basis during the campaign period because after the campaign is over, it becomes difficult to get any evidence of election expenditure.

49. Ch. Shujat Hussain and Mr. Mushahid Hussain Syed, President and Secretary General of PML(Q) appeared in Court on

28.03.2012, and submitted that the elected representatives of the people, immediately after taking oath, file false returns of election expenses before the Election. To overcome this phenomenon, in our view, the Election Commission must monitor election expenses from the day the holding of election is notified. All expenses incurred in carrying out any election related activity, are legally required to be accounted for. It is precisely because of the failure to account for the same that election expenses incurred by each candidate run into millions of rupees and exceed the prescribed ceiling. We reiterate that all expenditure over and above the prescribed ceiling qualifies as corrupt practice and direct the Election Commission to exercise its rule making power to formulate procedures to monitor election expenses and deal with the corrupt practices committed in the election process in accordance with law and ensure that the election is held justly, honestly and in accordance with law. An expenditure monitoring mechanism, i.e. monitoring cell, surveillance system, media certification, etc., should be devised to monitor the election expenses, be they for the National Assembly, Senate, Provincial Assemblies or the Local Bodies. The Election Commission must hold meetings with the candidates and apprise them of the relevant laws/rules, receive from them statements of expenses on weekly basis by engaging election staff, carry out inspection at random at different places. All transactions relating to election expenses should be entered into with GST registered firms/persons. Furthermore, a candidate must account for all the expenses immediately after the election is over. The Declaration Form should include the following further declarations: -

- To meet election expenses, I have opened account No. _____ with _____

[name & branch of a scheduled bank] and the amount permissible for election expenses deposited therein.

- All election expenditure shall be made out of the money already deposited in the aforesaid account.
- No transaction towards the election expenses shall be made through an account other than the above account.

[Copy of bank statement will be annexed with the Return.]

Maintenance of day-to-day account of election expenditure by the candidate ought to be mandatory. In order to monitor day-to-day election expenditure incurred by the candidate, election expenditure monitoring centres/teams ought to be constituted in each constituency. The services of Returning Officers can also be availed in this regard. It is only through such a rigorous mechanism that the necessary culture of accountability within the political sphere.

50. In the course of electioneering and campaigning, most candidates and their supporters take out massive car rallies and use expensive vehicles for transporting the voters to and from the polling stations. In doing so these candidates and parties end up incurring exorbitant expenses and exceed the ceiling prescribed to section 49. This practice also creates a nuisance for the ordinary citizens and causes discomfort to the sick and students. Such rallies ought not to be allowed to travel long distances except if they have pre-arranged corner meetings at specific designated places. These meetings should be notified to the ordinary public by the local administration. The local administration must also ensure that all candidates are accommodated. Secondly, the substantial expenditure incurred in hiring and using transport has never been adequately monitored by the Election Commission. We, therefore, direct the Election Commission to take account of all expenditures incurred in the course

of campaigning for activities that are directly and indirectly related and ancillary to the election process. Furthermore, to facilitate the voters, the number of polling stations may be increased appropriately throughout the country so that the polling stations are not at a distance of more than two kilometres from the place of residence of voters. In this regard, the Election Commission may take into consideration the suggestions made at the bar and ban all private transport on Election Day. Alternatively, the voters may be transported by vehicles, owned, rented or affiliated with the Election Commission. The routes of such vehicles should be widely advertised in the print and electronic media for information of the general public.

51. During hearing, *vide* order dated 17.04.2012, we instructed the relevant authority to submit a report regarding the sufficiency of the existing Polling Scheme and the number of Polling stations. The relevant portion wherefrom is reproduced hereunder: -

“In compliance of directions of this Court, Syed Sher Afgan, DG (Elections), Election Commission of Pakistan has placed on record Election/Polling Scheme prepared in the year 2007 for the Elections of 2008 (33 books); he is directed to handover copy of this Election/Polling Scheme (33 books) for record of the Court; he is further directed to deliver a copy of the notification of the polling/election scheme for constituency of NA-49 to the Commissioner and Deputy Commissioner ICT, who on receipt of the same shall submit a report to the following effect: -

- i) whether the polling/election scheme prevailing for the last many years is sufficient to cater the requirement of the voters, so they may conveniently exercise their right of franchise without depending upon the arrangements made by the candidates contesting the elections qua transporting them from one place to another, etc.; and
- ii) whether the number of polling stations are to be increased according to the latest electoral list.”

Relevant Paras from the report received in pursuance of the aforesaid order read as follows: -

"3. Polling Scheme is prepared under Section 8 of the Representation of the People Act, 1976. Polling Stations established for General Elections-2008 relating to Constituency NA-49 were 197 while total registered voters were 242877. In line with the relevant law, all polling stations were set up in the government buildings. Each polling station covered radius of about 03 kilometer. At an average, 1500 to 2500 voters were facilitated to cast their vote in each polling station. And every polling station comprised of about 2 to 4 polling booths each.

4. In pursuance of the Supreme Court Order and subsequent to the meeting presided over by the Acting Chief Election Commissioner of Pakistan consultations were held in the Deputy Commissioner's Office with the Federal Directorate of Education, District Election Commissioner Islamabad and the concerned Sub Divisional Magistrates. It has transpired that in comparison to year 2008, a total of 56,723 additional voters have been registered so far thereby increasing the total number of voters in NA-49 to low as compared to 242877. Thus there is a requirement to enhance the number of Polling Stations so that they are commensurate with the population/voters increased. In this proposed draft it is recommended that 50 new Polling Stations should be introduced thus raising the number to 247 as compared to 197 in the year 2008. By increasing the number of Polling Stations it is expected that twofold benefits will be accrued that is: -

- (i) More Polling Stations will reduce the distance covered by the voters to cast their vote.
- (ii) Pressure on Polling Stations will be eased thus resulting in quick turn over at each Polling Station.

5. As a result of this exercise, the average number of voters per Polling Station is 1212 which is a manageable number. While determining the additional Polling Stations, the distance that a voter has to travel has been kept into

consideration. There are 847 census blocks in NA 49 now. The polling stations have been established in such a way that a radius of 1.5 kilometers is covered compared to 3 kilometers of the scheme of general election of 2008.

7. The addition of Polling Stations will require increased manpower and deployment of security apparatus. Islamabad has sufficient staff available, in the Federal Directorate of Education and the Capital Development Authority, which can perform such duties."

52. Other electioneering practices like camping in the vicinity of the polling station and the handing over of *Perchis* to the voters are a cause of concern. By camping in the vicinity of the polling station and handing over of *Perchis* to the voters, the candidates, through their polling agents and supporters, influence the voters and compromise the objectivity with which they are to cast their vote. On polling day candidates establish their camps near the polling stations and spend substantial amounts to canvass the voters to vote for a particular candidate. Such action on the part of the candidates/supporters is clear violation of section 84 of ROPA. Section 84 of ROPA imposes restriction on election activity 48 hours before the polling. and specifically prohibits public meetings and promotion or participation in any procession . It clearly stipulates that the election campaign in all respects has come to an end 48 hours before the polling in order to enable the electorate to exercise their right of franchise freely and without influence. Similarly, section 85 prohibits canvassing for votes, soliciting of votes, persuading any elector not to vote at the election or for a particular candidate, or exhibiting any notice, sign, banner or flag designed to encourage the electors to vote or discourage the electors from voting for any contesting candidate within a radius of 400 yards of the polling station. It is common

knowledge that different forms of electioneering activities continue through the prohibited period. Therefore, to ensure strict compliance with section 84 of ROPA, the Election Commission may manage to dispatch extracts from the voters' list in the name of one or more persons living in a house much before the polling day by post, or to save the postage by annexing such extracts with any of the utility bills. It is also suggested that NADRA may be deputed to furnish details of the voters at their residences. This exercise is required to be completed at least 7 days before the polling day, and this would facilitate a voter to exercise his right of franchise independently with full application of mind and without influence from the candidate or his supporters. A fair and transparent election rests at the heart of a democratic system. Therefore, any effort which cultivates a complimentary political culture should be encouraged. If need be, instead of involving the employees of the Provincial Governments, the employees of Federal Government/autonomous organizations/agencies, including the armed and para-armed forces may be instructed to carry out stipulated functions at the polling stations.

53. Section 83A provides that no person or political party shall affix posters, hoardings or banners larger than the size prescribed by the Election Commission. It further provides that wall-chalking as part of an election campaign is prohibited in all forms and that loudspeakers shall not be used for election campaign except at the election meetings. Contravening these provisions is punishable with imprisonment up to one year or fine, or both. The Zila Nazim and the Returning Officer ought to ensure the effective implementation of these provisions. Section 83A(1) provides that the prescribed posters,

hoardings or banners shall not be affixed nor parties' flags shall be hoisted on any public property or at any public place, except with the permission in writing from, and on payment of such fee or charges, as may be chargeable by the concerned local government or authorities. However, strangely, the concerned authorities have never taken any steps to enforce these provisions. The Election Commission should take all necessary steps to ensure compliance and enforcement thereof.

54. The petitioners have also recommended that certain election activities be introduced and actively encouraged – activities that, on the one hand, fulfil the purpose of the election campaign, and on the other, which a common man is able to engage in. The petitioners have identified door-to-door campaigning, formation and distribution of manifestos, equal opportunity to canvas on State television and radio, and candidate – voter interaction/debates, etc. The following details the petitioner's position on each of their recommendations and the respondents response to them. It subsequently records our observations on the matter.

55. Door-to-door campaigning is an effective means of establishing communication between the candidate and the voter. Such a campaign strategy demonstrates the candidate's "*resolve, commitment and level of interest in his/her community*". According to the petitioners, door-to-door campaigning is the cheapest and most convenient method of communication for persons of modest means. The provisions of Articles 17, 25, 51 and 218(3) of the Constitution which mandate a fair and level playing field and require that the interests of persons of modest means be protected. The petitioners

have also submitted that this method of communication is the least intrusive method of communication, since it involves direct contact between the candidate and the voter and leaves the decision to interact and receive information entirely on the voter. Finally, the petitioners have submitted that this recommendation, supplemented with a ban on political rallies, big luxurious vehicles, loudspeakers, banners, etc., would be the most effective way of reaching out to the electorate and creating a political culture, which is fair and open to individuals from all walks of life. Almost all of the respondents concur with this proposal of the petitioners. Dr. Farogh Naseem, on behalf of MQM, and Mr. Hamid Khan, on behalf of PTI have submitted that door-to-door campaigning is an effective means of communicating with the electorate. The political culture in developed countries also encourages door-to-door campaigning and other forms of personalized voter-candidate interaction.

56. The petitioners have submitted that it should be mandatory for every political party and/or candidate to publish and distribute a manifesto containing a candidate's election promises and program. The petitioners believe that manifestoes are an essential component of an election campaign since they bind a candidate to his/her promises and the governing mandate enumerated therein. Furthermore, the publication and distribution of manifestos is a relatively cheap yet effective means of communication, especially in situations where mobility is limited. They have, therefore, argued that through a published manifesto, a new candidate has the opportunity of indirectly reaching out to voters, without having to expend too much on travel. The petitioners have also argued that the publication and distribution of the manifesto is a necessary expense that, owing to its

utility, ought to be supported by the government. They have, however, conceded that strict conditions as to expenses relating to the publication, including those relating to the quality of paper and printing be employed. This initiative would, in the opinion of the petitioners, allow even those less advantaged individuals to participate in politics, who do not have the financial means to publish and distribute their manifestoes themselves. Such an initiative would pave way for free and fair elections and consequently towards progress and welfare via a true democracy. Dr Farogh Naseem, on behalf of MQM, agrees with the proposal of the petitioner. He has submitted that publishing and disseminating a party's manifesto is integral to any election campaign. Consequently, the State may assist in this regard by bearing the expense of publishing it. Advocate Hamid Khan has also submitted that PTI fully supports the initiative of the petitioners. He has submitted that the cost of printing a manifesto and supply of party flags is generally borne by political parties and not individual candidates. He has further submitted publishing of manifesto and disseminating it amongst the voters is a relatively less expensive method of campaigning and should be encouraged.

57. The petitioners have proposed that the State should provide a schedule delegating airtime to candidates on state television and radio. This facility, in their opinion, would serve as a unique opportunity for the candidate to share their election programs and manifestoes with the electorate. The petitioners have further reiterated their condemnation of the practice of allowing candidates airtime on private television channels to advertise their candidature as part of their election campaign. Mr. Rafique Rajwana has submitted on behalf of PML(N) that the State should not be seen discriminating against any

candidate and/or any political party. Consequently, it should be duty of the government to provide air time for equal duration to all political parties and their candidates. Mr. Hamid Khan has concurred with the proposal of the petitioners. He has submitted that equal air time should be given to political parties that have fielded a large number of candidates in the general elections, on the State Television and Radio. Mr. Salman Raja, on behalf of APP, has submitted that the Election Commission should ensure that no candidate or political party should be allowed to reserve time on private TV channels and that adequate time should be given to each party to present their programme on State Television.

58. The petitioners have also proposed setting up forums that encourage candidate-voter interaction by allowing the voters the opportunity to put forward their questions to the candidates. An election campaign is a means for the candidate to communicate with the voters. The petitioners have proposed that the State should encourage candidates to present themselves to their voters and to actively address their questions and concerns through a direct platform. In this regard, they submit that the State should designate indoor venues according to a preplanned schedule duly published in and disseminated through newspapers. Dr Farogh Naseem has submitted that MQM has developed a detailed strategy for increasing interaction with voters, both at the party and the candidate level. They have submitted that the petitioners' proposal would have the effect of increasing the desired interaction between the electorate and the voter. Furthermore, Mr. Hamid Khan has also submitted that the voters should have an equal opportunity to reach the candidate during the election campaign. There should be debates between the

candidates and voters which would enable them to understand one and another better. Appreciating the practical implications of such a proposal, Mr. Hamid Khan has observed that considering the large number of voters per constituency, there may be practical difficulties for the State to arrange such gathering, and fulfil the purpose of these gatherings.

59. The petitioners have submitted that voter awareness regarding his legal and constitutional rights and duties, is integral to the election process and, therefore, to the functioning of democracy. According to the petitioners, the prevalent political culture in Pakistan perpetuates power on the basis of feudal land holdings and other disenfranchising power centres. This is grossly apparent in the electioneering culture in such areas. Consequently, according to the petitioners, the ordinary voter is not always entirely aware of his/her rights and duties regarding the process of voting itself. They have, therefore, submitted that this Court may issue appropriate directions to the Election Commission to undertake an extensive and effective campaign through the media to educate voters about, inter alia, the necessity to vote and the procedure of voting. Furthermore, the petitioners have proposed that the Election Commission must concurrently assure the voters that their choice on the ballot would remain completely anonymous and that the exercise of their right of franchise should be carried out without fear. The Election Commission may designate an official at each polling station in order to ensure such a commitment is met and to provide guidance regarding voting procedure. Upon implementation, such a proposal would curtail the number of invalid votes. They have further argued that section 103 of the ROPA, imputes responsibility to ensure that the elections are

conducted honestly, justly and fairly, squarely on the Election Commission. They have argued that by educating the voter about the procedure and importance of voting, the Election Commission would only be fulfilling its responsibility mandated by section 103 of ROPA. Dr. Farogh Naseem has submitted on behalf of MQM, that voter education can be undertaken effectively by political parties themselves. He has submitted that political parties, therefore, may be directed to conduct such seminars and others related activities. He has also suggested that necessary changes should be made to incorporate the said seminars as part of the secondary school curricula. He has further submitted that the government may also be directed to allocate funds for education of the voter. Mr. Rajwana, on behalf of PML(N), has expressed a similar concern regarding the need to educate the voter. This, he has observed may be achieved either through the parties or the government, or both. Mr. Hamid Khan has expressed PTI's support for this proposal. He has submitted that political parties should undertake the responsibility to educate the voters. It is one of the basic duties and obligations of the political parties to create voter awareness so that the voters can make intelligent and informed choice when casting their votes.

60. The petitioners have argued that sections 38 & 39 of ROPA read with Articles 17, 19-A and 51 of the Constitution mandate that the results of each polling station be announced at that polling station after a first count and a recount in the presence of the representatives of each candidate and by law consolidation of results be done on the basis of that count/recount. Dr. Farogh Naseem has not expressed any issue with the proposal of the petitioners. He has submitted on behalf of MQM that the results should be immediately

announced in Form 14, which should contain the signatures and thumb impression of the Presiding Officer. He has argued that instead of involving government servants or bureaucrats, who allegedly act upon and are subservient to the dictates of the incumbent government, members of the lower judiciary and teachers should be involved in the process of tabulation as well as announcement. Mr Hamid Khan has submitted on behalf of PTI that, the results should be announced immediately after the count of votes at the end 'of the poll that day at each polling station. The results should be declared immediately and their certified copies should be supplied to the polling agents of all candidates after the count. He has further submitted that the result should also be affixed outside the polling station after due certification by the Presiding/Polling Officers at the polling station. This should be strictly enforced since it would minimize interference with the election process and the counting of votes.

61. We have considered the above suggestions of the petitioners as amplified by the submissions made on behalf of the respondent political parties. There is unanimity of view on various suggested courses of action. Therefore, we direct the Election Commission to frame rules and issue instructions to provide legal sanction to these measures, namely, door-to-door campaign, manifesto, canvassing on State television and radio, and candidate – voter interaction/debates, etc. as appropriate and implement the same to achieve the ultimate objective of fair, free, just and honest election.

62. There is divergence of opinion among the petitioners and the respondent political parties on the issue of computerized balloting. It is submitted on behalf of the petitioners that the existing system of

balloting via paper votes is antiquated and suffers from severe defects. First and foremost, the petitioners have argued that this system is susceptible to rigging. They have further submitted that because of the system of casting votes by paper, most election disputes pertaining to balloting require a full-fledged trial for a resolution. They have submitted that India, with has a much larger voting population, has a computerized balloting system. In this regard, they have submitted a report drafted by PILDAT (Pakistan Institute of Legislative Development and Transparency) that has identified and recommended the relevant authorities to implement the system of computerized balloting in Pakistan. The petitioners have therefore sought *"appropriate directions from this Honourable Court to the Election Commission to take urgent steps to implement the; method of balloting as speedily as possible."* Dr. Farogh Naseem has, however, submitted that the masses have not been sufficiently educated to deal with the complexities of a completely computerized overhaul. He has submitted that this suggestion is not suited to the present times. He has further argued that if computer balloting is introduced, there is a possibility that feudal lords may amass computer devices and use them to cast votes themselves to the complete exclusion of the voters. In this regard, he has submitted that political parties may be instructed to conduct seminars and other activities to educate the voters. He has also submitted that this education may be introduced at the secondary education level and taught as part of the syllabus to inculcate a sense of responsibility in the citizenry to cast votes. This process however, requires long term planning and should not be on the agenda of the Election Commission in the short run. Mr. Hamid Khan has, on behalf of PTI submitted that electronic voting should be

introduced through Electronic Voting Machines (EVMs). He has however pointed out that the upcoming general elections may be too soon for this overhaul. Prior to the adoption of EVMs various laws need to be introduced in order to safeguard the system against electoral fraud. Furthermore, according to Mr. Hamid Khan, the system cannot work without the introduction of biometric voter identification system, which would indentify the voters at the polling stations. Since such pre-requisites are not in place, Mr. Hamid Khan has submitted that introducing electronic voting for the upcoming general elections would have the effect of throwing the entire vote-counting process into disarray. Mr. Taufique Asif has submitted that the JIP agrees in principle with the introduction of electronic voting and fully appreciates the merits of it. He has however submitted that the system must be fool-proof and should be introduced gradually on an experimental basis, and all the stake-holders must be consulted before finalizing this system. It was also submitted that the citizens must be provided with the facility to register, correct or transmit their votes through internet or telephone and system may also be installed (in due course of time) in the relevant government departments for the said purpose. The Federation has submitted that the Election Commission is in the process of introducing computerized balloting in the country.

63. Having considered the pros and cons of computerized balloting as highlighted by the petitioners as well as the respondents, we expect that the Election Commission, which has already commenced work on this issue, will take effective steps to introduce computerized balloting at an appropriate time.

64. The petitioners have raised another plea relating to intra-

party elections. Dr. Farogh Naseem has submitted that a pertinent concern is the fact that the Election Tribunals fail to decide election disputes efficiently and at times with such time delay that election petitions become infructuous in the course of hearing. Mr. Hamid Khan has submitted that intra-party elections should be held at every level to promote democratic culture within the party. Such elections should be held with secret ballot and the political parties should not be fiefdoms of their leaders. By introducing electoral process within the political parties the democratic culture will be promoted. There will be greater opportunity for the parties to grow and develop leadership within their own ranks. The existing ruling elite has deliberately avoided holding of internal elections of their political parties and is running them arbitrarily at the will and whims of their leaders.

65. We have considered the issue in the light of the arguments made at the bar. The issue at hand, however, does not relate to this plea. We, therefore leave it to be taken up at the appropriate forum.

66. Article 222 of the Constitution provides that the Parliament may, by law, provide for allocation of seats in the National Assembly, delimitation of constituencies, preparation of electoral rolls, requirements as to residence in a constituency, determination of objections pertaining to and the commencement of electoral rolls, conduct of elections and election petitions, matters relating to corrupt practices and other offences, and all other matters necessary for the due Constitution of the two Houses and the Provincial Assemblies. Article 219(a) of the Constitution specifically provides that the Election Commission is charged with the duty of preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and

revising such rolls annually. However, there have been widespread complaints that the electoral rolls are not revised annually and that they contain hundreds of thousands of bogus entries. It has been submitted that not only the General Elections of 2002, but also those of 2008 were held on the basis of electoral rolls based on the 1998 Census. In this behalf, Mr. Farogh Naseem, ASC has referred to the case of Imran Khan v. Election Commission of Pakistan (Constitution Petition No. 31 of 2011) and Ms. Benazir Bhutto v. Federation of Pakistan (Constitution Petition No. 45 of 2007) wherein the authenticity of electoral rolls has been questioned. In the said case, this Court has already taken certain corrective steps. In this behalf, it has been pleaded on behalf of the Awami Party Pakistan that women are under-registered in electoral rolls and the Election Commission has failed to ensure the political participation of the same in the electoral process. As a solution to the issue of bogus entries in the electoral rolls, Mr. Hamid Khan, Sr. ASC has suggested that the Army and Frontier Corps be instructed to be present not only at the stage of polling, but also at the time of preparation/revision of electoral rolls.

67. Fair, free, honest and just elections are *sine qua non* for strengthening of democracy. To achieve this goal, accurate preparation/revision of electoral roll is immediately required to be undertaken by the Election Commission through credible and independent agencies. In so doing, the conventional ways and means of merely depending upon NADRA alone or other similar bodies must be discontinued forthwith. Accordingly, we direct the Election Commission to undertake door-to-door checking of voters' lists and complete the process of updating/revision of the electoral rolls by engaging Army and the Frontier Corps, if need be. This exercise should

be undertaken as early as possible and in accordance with the time limit fixed in Imran Khans' case (supra).

68. It is submitted on behalf of the petitioners that the election tribunals, which are mandated to resolve all election disputes, are over worked and cause severe delays in resolving disputes. It is submitted that *"the number of tribunals appointed should have a fair co-relation with the number and volume of disputes raised or petitions filed, and procedures ensuring speedy disposal,* therefore, this Court may issue appropriate directions to the Election Commission so that the election disputes are decided expeditiously. Such directions would ensure the speedy removal of an illegal office bearer and would avoid the situation wherein such an individual continues to hold the office illegally despite serious challenges to his election solely because the tribunals are overworked or existing procedures allow lingering of trials. On behalf of MQM, it is submitted that the Election Tribunals do not speedily decide election disputes and at times election petitions become infructuous due to efflux of time as they are not decided during the time in which an office is occupied by a candidate. Similar concerns have been agitated on behalf of PTI and APP and it has been submitted that the election tribunals keep delaying the disposal of petitions until the next elections so as not to get into "bad books" of winning candidates, who more often than not belong to the party in power. Section 67(1A) of ROPA mandates that a Tribunal must adjudicate a petition within 3 months. Unfortunately this provision is violated more often than not. Reliance has been placed on a report by European Union 2008 EOM on the 2008 elections, which found that 39 out of 221 petitions from 2002 elections remained unresolved after the Parliament's five-year term had expired. The petitioners have

requested that while issuing the requisite directions, the following factors may be kept in mind: -

- (i) deeming an election petition and its reply to be the examination in chief of the parties;
- (ii) examination in chief of witnesses by affidavit;
- (iii) recording of evidence on commission; and
- (iv) heavy costs for adjournments sought without good cause.

It is submitted on behalf of PTI that the procedure for resolving election disputes expeditiously should be provided under the law. There should be more election tribunals, which should speedily decide the cases of election disputes.

69. We have given anxious consideration to this issue. Since the purpose of this petition is to allow vast majority of Pakistani citizens to meaningfully participate in the election process, there is a need to adhere to the procedure laid down for resolving election disputes expeditiously and ensure completion of whole process including appeals within 120 days. Section 57 of ROPA empowers the Chief Election Commissioner to appoint as many Tribunals as may be necessary. Thus, corrective measures are required to be taken at their end to ensure that the election disputes are resolved at the earliest. The Election Commission may also consider establishing a panel of lawyers well conversant with election laws at the State expense to provide free legal services to the marginalized segments of society and take other steps it considers appropriate.

70. As it has been pointed out hereinabove that under the constitutional dispensation, Article 2A, etc., the country is to be governed by the chosen representatives of the people of Pakistan. There have been debates at different forums that, in view of the low

turn out of the voters at election, a winning candidate does not qualify as a representative of the majority of the electorate of a constituency. There are cases in which a candidate has been returned despite the fact that the number of votes polled in his favour had not been more than 10 to 15 percent. These statistics and the phenomenon of low voter turn-out raise pertinent questions regarding the ownership of the winning candidates claim. They also shed light on a dire need to identify and address the key causes thereof.

71. Article 51 is an embodiment of the democratic spirit of our Constitution, wherein it prescribes the mechanism for the selection and establishment of a democratically elected government. This Article entitles every person to cast their vote if they meet the requirement mentioned therein. It therefore, enables all eligible individuals to participate in the political process of the country and to thereby, select as well as set a democratic government in motion. The aforementioned discussion has sufficiently addressed the Constitutional importance of democracy as a cardinal feature of our Constitutional Order and a prescribed system of government. Indeed, it is only through the operation of Article 51 that the Constitutional dictate of establishing a democratic government is realized. A failure or any shortfall in the operation thereof would substantially undermine the legitimacy of an elected democratic government. Furthermore, this would also have the effect of isolating the electorate from the democratic process and rendering the elected government, democratic in form, but not in spirit. Such a compromise, and especially of a fundamental tenet of our Constitution must be avoided. The parties have submitted that the electorate in Pakistan has, in almost all elections, failed to implement Article 51. They have submitted statistics which indicate that Pakistan

has suffered from a glaringly low voter turnout in almost all national elections. In the National Elections of 2008, the total voter turnout, as recorded by the Election Commission, was 44.11 percent of the total registered voters. A meager 31.32 percent, 31.05 percent and 33.54 percent of total registered voters cast their votes in Balochistan, FATA and Khyber Pakhtunkhwa respectively. In Punjab and Sindh, 48.18 percent and 44.16 percent of the registered voters voted at the elections. During hearing of the case, the representatives of Election Commission were asked to share figures that demonstrated the percentage of votes secured by the winning candidate in a particular constituency. The results were perplexing. In NA-I, Peshawar, against total votes of 387083 only 88954 votes were polled (22.98% of the total votes). The candidate who secured 49.70% of the votes polled and a meager 11.42% of the total votes cast, was declared successful,. It is to be noted that the individuals who stand elected by securing an insignificant majority of the votes cast, cannot legitimately claim to be the representative of the people. Furthermore, an election that suffers from such a poor voter turnout could not be said to be effectuating the true spirit of democracy, as envisioned by the Constitution. All necessary steps must be taken to ensure that this Constitutional dictate of nurturing and being governed by democratic ethos is honored in letter and spirit.

72. Many countries have enacted laws, which make it compulsory for the electorate to participate in the election process. Compulsory voting is an age old practice that was adopted to counter anti-democratic practices and presently twenty three countries have adopted compulsory voting in their respective jurisdictions. In 1777, the State of Georgia enacted legislation to make voting compulsory

and directed that *"every person absenting himself from an election, and shall neglect to give in his or their ballot at such election, shall be subject to a penalty not exceeding five pounds; the mode of recovery and also the appropriation thereof, to be pointed out and directed by act of the legislature: Provided, nevertheless, that a reasonable excuse shall be admitted"*. In Austria, compulsory voting was partially introduced in 1929 but extended to parliamentary elections in 1949. Netherlands also introduced compulsory voting in 1917 along with in Spain, Venezuela and Chile. Congo, Brazil and Argentina have also made voting compulsory for citizens between 18 and 70 years old. In primaries, the citizens under 70 years of age may refuse to vote, if they formally express their decision to the electoral authorities, at least 48 hours before the election. Ecuador has adopted a form of compulsory voting, which makes its obligatory on citizens between 18 and 65 years to vote in elections. It is, however, not compulsory for citizens aged 16–18, illiterate people, and those older than 65. In Singapore, voting is compulsory for citizens aged above 21 years on the 1st of January of the year of election. Non-voters are removed from the electoral register until they reapply, providing a reason for their abstention. Peru and Uruguay have also adopted compulsory voting to ensure that their democratic mandate is sufficiently and successfully met.

73. Some jurisdictions impose sanctions against individuals who violate the law by failing to vote. They, however, before levying a sanction, require the non-voting citizen to provide legitimate reasons for his/her abstention from voting, if any exist. These sanctions have taken different forms. Countries have also impressed fines against non-voters. The amount varies in different countries, e.g., 3 Swiss

Francs in Switzerland, between 300 and 3000 ATS in Austria, 200 Cyprus Pounds in Cyprus, 10-20 Argentinean Pesos in Argentina, 20 Soles in Peru, etc. A non-voting citizen may also face imprisonment as a sanction. In cases where such a person refuses to pay the fine despite being reminded to do so, the courts impose a prison sentence. Countries like Belgium disenfranchise voters who fail to vote in elections consecutively for 15 years. In Singapore the voter is removed from the voter register until he/she reapplies to be included and submits a legitimate reason for not having voted. In Peru the voter has to carry a stamped voting card for a number of months after the election as a proof of having voted. This stamp is required in order to obtain some services and goods from some public offices. In Bolivia the voter is given a card when he/she has voted so that he/she can proof the participation. The voter would not be able to receive his/her salary from the bank if he/she cannot show the proof of voting during three months after the election. Australia introduced compulsory enrollment and voting in 1924, for both state and national elections. Some states have made voting in local council elections compulsory as well. Eligible voters who remain absent from the polling stations are liable to pay fines of 20-50 Australian Dollars and may also face imprisonment in case of non-payment of fines.

74. For reference, the relevant provisions of the Commonwealth Electoral Act 1924, whereby certain amendments were made in the Commonwealth Electoral Act 1918-1922 for the purpose of making provision for Compulsory Voting, are reproduced hereinbelow: -

Compulsory voting.

128A.(1.) It shall be the duty of every elector to record his vote at each election.

(2.) It shall be the duty of each Divisional Returning Officer at the close of each election to prepare a list (in duplicate) of the names and descriptions of the electors enrolled for his Division who have not voted at the election, and to certify the list by statutory declaration under his hand.

(3.) The list so certified shall in all proceedings be prima facie evidence of the contents thereof and of the fact that the electors whose names appear therein did not vote at the election.

(4.) Within the prescribed period after the close of each election the Divisional Returning Officer shall send by post to each elector whose name appears on the list prepared in accordance with sub-sections (1.) and (2.) of this section, at the address mentioned in that list, a notice, in the prescribed form, notifying the elector that he appears to have failed to vote at the election, and calling upon him to give a valid truthful and sufficient reason why he failed so to vote.

(5.) Before sending any such notice, the Divisional Returning Officer shall insert therein a date, not being less than twenty-one days after the date of posting of the notice, on which the form attached to the notice, duly filled up and signed by the elector, is to be in the hands of the Divisional Returning Officer.

(6.) Every elector to whom a notice under this section has been sent shall fill up the form at the foot of the notice by stating in it the true reason why he failed so to vote, sign the form, and post it so as to reach the Divisional Returning Officer not later than the date inserted in the notice.

(7.) If any elector is unable, by reason of absence from his place of living or physical incapacity, to fill up, sign, and post the form, within the time allowed under sub-section (5.) of this section, any other elector who has personal knowledge of the facts may, subject to the regulations, fill up, sign, and post the form, duly witnessed within that time, and the filling up, signing, and posting of the form may be treated as compliance by the firstmentioned elector with the provisions of sub-section (6.) of this section.

(8.) Upon receipt of a form referred to in either of the last two preceding sub-sections, the Divisional Returning Officer shall indorse on both copies of the list prepared in accordance with sub-section (2.) of this section, opposite the name of the elector, his opinion whether or not the reason contained in the form is a valid and sufficient reason for the failure of the elector to vote.

(9.) The Divisional Returning Officer shall also indorse on both copies of the list, opposite the name of each elector to whom a notice under this section has been sent and from or on behalf of whom a form properly filled up signed and witnessed has not been received by him, a note to that effect.

(10.) Within two months after the expiration of the period prescribed under sub-section (4.) of this section, the

Divisional Returning Officer shall send to the Commonwealth Electoral Officer for the State one copy of the list, with his endorsements thereon, certified by statutory declaration under his hand.

Each copy of the list prepared and indorsed by the Divisional Returning Officer, indicating

- (a) the names of the electors who did not vote at the election;
- (b) the names of the electors from whom or on whose behalf the Divisional Returning Officer received, within the time allowed under sub-section (5.) of this section, forms properly filled up and signed; and
- (c) the names of the electors who failed to reply within that time, and any extract therefrom, certified by the Divisional Returning Officer under his hand, shall in all proceedings be prima facie evidence of the contents of such list or extract, and of the fact that the electors whose names appear therein did not vote at the election, and that the notice specified in sub-section (4.) of this section was received by those electors, and that those electors did, or did not (as the case may be), comply with the requisitions contained in the notice within the time allowed under sub-section (5.) of this section.

(12.) Every elector who—

- (a) fails to vote at an election without a valid and sufficient reason for such failure; or
- (b) on receipt of a notice in accordance with sub-section (4.) of this section, fails to fill up, sign, and post within the time allowed under sub-section (5.) of this section the form (duly witnessed) which is attached to the notice; or
- (c) states in such form a false reason for not having voted, or, in the case of an elector filling up or purporting to fill up a form on behalf of any other elector, in pursuance of sub-section (7.) of this section, states in such a form a false reason why that other elector did not vote, shall be guilty of an offence.

Penalty: Two pounds.

(13.) Proceedings for an offence against this section shall not be instituted except by the Chief Electoral Officer or an officer thereto authorized in writing by the Chief Electoral Officer.

75. As has been discussed above, it is a constitutional imperative that a democratic government be established and nurtured in Pakistan and an obligation of all functionaries of the State, including the Election Commission, to ensure adherence thereto. Various provisions of the Constitution and other laws have fully empowered and legally equipped the Election Commission to ensure that the

election, it is responsible to "*organize and conduct*", establishes and achieves a true democratic government as envisioned by the Constitution. Therefore, the Election Commission is obliged to ensure that all elections witness a substantial participation of the electorate. By making voting compulsory and attaching sanctions for its violation, the Election Commission and/or the appropriate body can resolve a long standing problem, and bring existing election-related processes in line with the dictates of the Constitution. Therefore, all necessary steps must be taken to make voting compulsory in Pakistan as early as possible. This initiative would have the effect of strengthening democracy by giving effect to the constitutional mandate that the Government shall be run by the chosen representatives.

76. The petitioners have also proposed that the existing 'First Past the Post' (FPTP) system be scrutinized for its viability as an election system. They have questioned whether FPTP fulfills the constitutional mandate of ensuring true representation and free, fair and just elections and proposed that other systems be tested for their viability and considered as possible alternatives. They have argued that since the Constitution does not specifically endorse this particular system, it is permissible to consider and adopt an alternative system, that is better attuned to the spirit of democracy envisioned by the Constitution is permissible. Mr. Salman Akram Raja has submitted that to ensure meaningful participation and representation of all shades of classes and groups, it should be made mandatory that there should be mixed electoral system based on first-past-the-post and proportional representation as is prevalent in majority of countries. At least 10% of seats should be reserved for parties on proportional representation basis, if they obtain more than 2% of the total votes polled. The list of

such candidates may be given in advance to Election Commission.

77. It may be noted that according to FPTP system of election, the candidate securing the highest number of votes is the winner. The winning candidate, however, does not necessarily receive an absolute majority of all votes cast. Thus, according to this voting system, the members of the Parliament who claim themselves to be representatives of people, may not command the majority of the votes registered and polled. Therefore, they may not genuinely represent their electorate. Such phenomenon is perpetuated by defective electoral laws, especially section 42 of the ROPA, which is based on FPTP. The said section provides that any contesting candidate who has secured the highest number of votes (not more than 50% of the polled votes) is declared to be elected. At this stage, reference may be made to the definition of the expression "majority votes" given in Black's Law Dictionary, 6th Edition, p. 955, which reads as under: -

"Majority votes: Votes by more than half of votes for candidates or other matter on ballot. When there are only two candidates, he who receives the greater number of the votes cast is said to have a majority; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a plurality, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined."

78. In the elections of 2008, the members of the Parliament/Assemblies were elected on the basis of system of 'first past the post'. In light of the above, most of them could not claim to be true representatives of the people of their respective constituencies, as they did not secure more than 50% of the votes polled. For example, in the case of the National Assembly out of 268 contested seats the winners in 108 seats secured less than 50% of the polled votes. Thus, more than 40% of the National Assembly seats

lacked majority representation. In certain cases, it was even less than 30%. In order to make the electoral system democratic and representative the only remedy lies in the adoption of re-polling (runoff) in those electoral constituencies where there is no clear winner who has secured at least or more than 50% of the votes polled. In the fresh polling between the two leading candidates anybody who secures majority votes should be declared successful. This system is prevalent in many democratic countries. The same has been adopted in the Local Government Elections in Pakistan. This question arose especially on the observation of this Court that the 18th amendment to the Constitution has brought about a change in Article 91(4) and introduced a second round/runoff election, if the candidate for Prime Minister is unable to secure a certain threshold number of votes from the total of the membership of the National Assembly, in the first round of voting. The said provision violates the principle of majority. Professor Bernard Crick, Emeritus professor of Politics, Birkbeck College, London, in his famous book 'Democracy', describes the FPTP as undemocratic and certainly unrepresentative. In the case of Mir Salim Khan Khosa v. Chief Election Commissioner (2002 SCMR 109) it was held that *under the unamended provisions* [section 16(3) read with section 37 Balochistan Local Government Election Ordinance, 2000] *the panel of candidates securing even a single vote more than the other contesting panel or panels of candidates was entitled to be declared elected but under the amended provisions securing of more than 50% of the total votes of the members of the Unions Councils in the District is mandatory and the candidates who fail to achieve the target are not to be notified as returned candidates even if they secure highest number of votes. The rationale and object of the amendment*

appears to be to ensure that the winning panel of candidates virtually represents the majority of the voters of the district and a panel of candidates out of three or four contesting panels does not win the election by securing 25% or 30% of votes. The amendments have redressed the possible anomaly under majority or plurality system where in the event of an election being contested by a large number of candidates one of them wins the election with a few votes and thereby represents only a small and not a large segment or the constituency. However, as the respondents therein had secured more than 50% of total votes, the appeal was dismissed.

79. The petitioners have proposed that the electorate should be given the option of refusing to vote for candidates they do not support. It is for this reason that they have proposed that the ballot paper should have a 'none of the above' option. This option would, according to the petitioners, lend voice to those members of the electorate who do not support any of the candidates for the political office/seat. The fact that Pakistan suffers from a low voter turnout in elections, means that those who stand elected may not truly be the 'representative' of the people of Pakistan. If the vote is an expression of the electorate's choice, then the electorate ought to be given the option to express their dissatisfaction with the candidates, as well. A 'None of the above' option, therefore, would serve to give effect to this purpose. Furthermore, with this option, the electorate would be in a position to claim greater ownership of their constituencies and would be able to exercise their own decision-making powers by nominating appropriate candidates. To reinforce their point, the petitioners have also submitted that such a practice also exists in some parts of the world and has been proposed in others. They have sought a

declaration that an election that does not provide the right to choose "None of the above Candidates" is ultra vires, inter alia, Articles 17, 51 (6), 106 (3) and 218 (3). Or in the alternative, hold as per prayers 'd' and 'e' in C.P.87 of 2011. On behalf of the Federation, it was stated that the said runs contrary to the electoral laws in force. Mr. Salman Raja, ASC, on behalf of the APP agrees with the proposal of the petitioners. He has further submitted that if the number of votes casted in the 'None of the above' category are more than those casted in favour of other candidates, than those elections must be declared void and re-polling should be ordered. Mr. Taufique Asif has submitted that the JIP agrees in principle with the petitioners, but have alternatively proposed that proportional system should be considered as a viable alternative for the existing system of elections, which is better suited to attaining electoral justice and national harmony – a primary goal of the society that the majority system (presently prevalent in Pakistan) is incapable of attaining. It has been submitted that the proportional system has the following merits: -

- (a) Wider Representation;
- (b) Political Institutionalization;
- (c) Political Education;
- (d) Fair Elections;
- (e) Crystallization of Ideology;
- (f) Political Equations;
- (g) Sense of Participation and Confidence;
- (h) Tolerance for Disagreements; and
- (i) An Islamic Perspective.

In certain jurisdictions, voters have the option to vote 'none of the above' if they do not want to vote for any of the candidates to show dissatisfaction with the certain candidates instead of whole process. The same is, therefore, recommended to be considered for adoption

by the concerned authority.

80. In the light of the above discussion, the titled petition is disposed of with the following observations, declarations and directions: -

- (1) The freedom of association, as enunciated by Article 17 of the Constitution, confers a Fundamental right on every individual to partake in the political governance of the State, whilst concurrently reinforcing the constitutional mandate to protect and advance this right through a democratic system. The 'freedom of assembly' (Article 16) and 'freedom of speech' (Article 19) also serve to realize this constitutional imperative;
- (2) By guaranteeing the observance of '*principles of democracy*' in Pakistan and mandating that the "*State shall exercise its powers and authority through the chosen representatives of the people*", the Constitution of Pakistan instructs that the authority to govern be exercised by and through a representative and democratic government. The conferment of this authority has been framed with an ardent dedication '*to the preservation of democracy*' and, therefore, encapsulates it as one of its core values. By establishing and enumerating the powers and manner in which the legislature is to function, Part II and III of the Constitution cement 'democracy' as the chosen system of the people and a fundamental constitutional dictate;
- (3) The Constitution of Pakistan mandates the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against, but unfortunately the said mandate has not been properly fulfilled in the past;
- (4) The Representation of the People Act, 1976 vests the Election Commission with the responsibilities and powers to, *inter alia*, regulate election expenses, provide for offences, penalties and procedures in case of breach of

conditions relating thereto, resolve all election disputes, declare the election void, etc. The constitutional requirement to hold elections fairly, freely, honestly, justly and in accordance with law obligates the Election Commission to exercise all powers vested in it to the best of standards and norms;

- (5) All public power is a sacred trust, which is to be exercised fairly, justly, honestly and in accordance with law; and wherever any discretionary power is vested in a public authority or functionary, that too, is to be exercised to achieve the goal of fair, free, honest and just discharge of this sacred trust; and
- (6) The impugned election practices and processes are cognizable by the Election Commission and are required to be dealt with in accordance with the Constitution and the law; therefore, the constitutionality or otherwise of the election laws is not a relevant question in the present proceedings, rather strict implementation is called for.

81. In pursuance of the above, we hold and direct as under: -

- (a) All the election laws be strictly implemented by the Election Commission in the discharge of its constitutional mandate under Article 218(3) of the Constitution, Representation of the People Act and other laws/rules;
- (b) The Election Commission is empowered to check not just illegal actions relating to the election (violating the limits set for campaign finance, etc.) or corrupt practices (bribery, etc.), but is also empowered to review all election activities, including *Jalsas*, *Jaloos*, use of loudspeakers, etc. for their effects on the standards of 'fairness, justness and honesty' that elections are expected to meet. The Election Commission is also empowered to take pre-emptive measures to ensure that the spirit of democracy and 'fairness, justness and honesty' of elections is fully observed. The Election Commission is, therefore, directed to take all necessary steps to ensure the same;

- (c) The Election Commission must undertake monitoring of the election expenses from the day the holding of election is notified. A candidate must account for all the expenses immediately after the election is over. The Declaration Form should include the following further declarations: -
- (i) To meet election expenses, I have opened account No. _____ with _____ [name & branch of a scheduled bank] and deposited therein the amount permissible for election expenses.
 - (ii) All election expenditure shall be made out of the money already deposited in the aforesaid account.
 - (iii) No transaction towards the election expenses shall be made through an account other than the above account. [Copy of bank statement will be annexed with the Return.];
- (d) The Election Commission must hold meetings with the candidates and apprise them of the relevant laws/rules, receive from them statements of expenses on weekly basis by engaging election staff and carry out inspection at random at different places. All transactions relating to election expenses should be entered into with GST registered firms/persons;
- (e) To facilitate the voters, the number of polling stations may be increased appropriately throughout the country so that the polling stations are not at a distance of more than two kilometres from the place of residence of voters. In this behalf, the Election Commission may take into consideration the suggestions made at the bar, including the provision of official transport to the voters, but in no case, shall it allow the candidates to hire/use private transport on election day. Where arrangement for transport is made by the Election Commission, the routes of such transport should be widely advertised in the print and electronic media for information of the general public;
- (f) As regards the handing over of *Perchis* to the voters at election camps, the Election Commission must take steps

to provide the requisite information to the voters by other means as discussed hereinabove. Therefore, to ensure strict compliance with section 84 of Representation of the People Act, 1976 in letter and in spirit, establishing of camps near the polling stations should be banned forthwith. The Election Commission may manage to dispatch extracts from the voters' list in the name of one or more persons living in a house at least 7 days before the polling day by post, or to save the postage by annexing such extracts with any of the utility bill;

- (g) Only such election campaign activities ought to be permitted, which on the one hand fulfil the purpose of the election campaign, and on the other are within the reach of the common man. The petitioners have recommended certain activities, namely, door-to-door campaign, manifesto, canvassing on State television and radio, and candidate – voter interaction/debates, etc. ROPA and other relevant laws have held these activities to be permissible in the eyes of the law. These, therefore, ought to be encouraged by Election Commission on the basis of their merit;
- (h) To ensure fair and transparent election, if need be, instead of involving the employees of the Provincial Governments, the employees of Federal Government/autonomous organizations/agencies, including the armed and para-armed forces may be instructed to carry out stipulated functions at the polling stations;
- (i) As regards the introduction of computerized balloting, it is informed that the Election Commission has already undertaken work on it. We, therefore, expect that effective steps will be taken in this regard at an appropriate time;
- (j) To achieve the goal of fair, free, honest and just elections, accurate preparation/revision of electoral roll is immediately required to be undertaken by the Election Commission through credible and independent agencies.

Accordingly, we direct the Election Commission to undertake door-to-door checking of voters' lists and complete the process of updating/revision of the electoral rolls by engaging Army and the Frontier Corps to ensure transparency, if need be;

- (k) Corrective measures are required to be taken by the Election Commission to ensure that the election disputes are resolved at the earliest. The Election Commission may also consider establishing a panel of lawyers well conversant with election laws at the State expense to provide free legal services to marginalized segments of society;
- (l) The Election Commission is obliged to ensure that all elections witness a substantial participation of the electorate, therefore, all necessary steps must be taken to make voting compulsory in Pakistan as early as possible;
- (m) In the 'First Past the Post' system of election, the winning candidate does not necessarily receive an absolute majority of all votes cast, therefore, such a candidate does not command the majority of the votes polled. As such, the system of 'First Past the Post' violates the principle of majority. The Election Commission may explore ways and means to introduce appropriate system of election including 'run off election' and 'none of the above options', in the light of the discussion made hereinabove, to ensure true representation of the people and rule of the majority; and
- (n) The Election Commission is empowered to frame rules to ensure that the elections are conducted justly, fairly, honestly and in accordance with law and that corrupt practices are guarded against. There is unanimity of views on various suggested courses of action. Therefore, we direct the Election Commission to frame rules and issue instructions to provide legal sanction

to these measures and implement the same to achieve the ultimate objective of fair, free, just and honest election.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court on 8th June, 2012
at Islamabad.

CHIEF JUSTICE

APPROVED FOR REPORTING