**The reserved seats dilemma**

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According to the 1973 constitution and the Election Act 2017, political parties are allotted reserved seats for women and non-Muslims based on the priority lists they submit to the Elections Commission of Pakistan (ECP) prior to the general elections and as per election schedule.

These seats are distributed in proportion to the number of general seats each party wins in a direct contest for the National Assembly and the provincial assemblies. Although party heads are allowed by law to nominate anyone for these seats, this discretion has primarily been abused to give quotas to friends and family, with legitimate workers either overlooked or assigned serial numbers that are unlikely to be elected to parliament.

According to Articles 51 and 106 of the constitution respectively, in the National Assembly, there are currently 60 seats set out for women and 10 for non-Muslims, and 14 seats set aside for women and non-Muslims in the Balochistan Assembly, 30 in the Khyber Pakhtunkhwa Assembly, 74 in the Punjab Assembly, and 38 in the Sindh Assembly. Independent returned candidates can lawfully join any political party within three days of the names of the returned candidates being published in the official gazette, and they will be included in the total number of general seats won by a political party.

In accordance with Section 104(1) of the Election Act of 2017, in order to contest for seats in an assembly designated for women and non-Muslims, political parties must submit separate lists of their candidates in priority order for the designated seats to the ECP, the provincial election commissioner, or another commission-authorized officer within the time frame the ECP sets for nomination paper submissions. The ECP will then promptly publish these lists for public consumption.

The parties lists mentioned in sub-section (1) can include as many names of additional candidates as a political party deems necessary to contest seats reserved for women and non-Muslims, to provide for any disqualification of candidates during the scrutiny of nomination papers, or to fill any vacant seats during the term of an assembly, in accordance with Section 104(2) of the Election Act. This section further specifies that a candidate seeking a seat designated for women or non-Muslims must file their nomination papers by the deadline for filing nomination papers for the election within the election schedule. The nomination papers will be examined in a manner similar to that of candidates seeking general seats, as per Section 62.

Therefore, the following legal principles will be considered and implemented to achieve the aforementioned provisions for reserved seats for both women and non-Muslims as per Articles 5, 106 and 224 of the constitution read with Section 104 of the Election Act, 2017 and Rules 92, 93 and 94 of the Election Rules, 2017.

Within the election schedule, the head of the political party or a representative designated by him/her will submit to the ECP a list of priority for reserved seats for women and non-Muslims.

The proportional representation system of political party lists of candidates will be used to elect members to fill seats for women and non-Muslims in the National Assembly and provincial assemblies. This system will be based on the total number of general seats that each political party has won in the National Assembly or, if applicable, in the provincial assembly.

According to Section 104 of the Election Act, the ECP is not permitted to consider any new party lists for the distribution of reserved seats beyond the election schedule.

When the deadline for submitting nomination papers has passed, a political party’s list cannot be altered or changed, either in terms of priority, by adding new names to the list, or by removing any names under the Election Act.

When an independent candidate applies to become a member of a political party under Article 51 of the constitution, the party leader notifies the ECP of the candidate’s application and provides the candidate’s consent, which must be properly attested by an Oath Commissioner appointed under the Oaths Act, 1873 (X of 1873) or a notary appointed under the Notaries Ordinance, 1961 (XIX of 1961).

It is mandatory by law to follow the election schedule issued by the ECP even for reserved seats. Accordingly, no party is allowed to file a new list of priority lists for women and non-Muslim reserved seats under Section 104 of the Election Act read with Rule 92 of the Election Rules.

The distribution of reserved seats for women and non-Muslims following the general election is only available to political parties that are represented in the assembly by their own election symbol. If a political party does not have elected representatives, independent returned candidates are not permitted by law to join that political party. This is in accordance with Articles 51, 106, and 224 of the Constitution as well as Section 104 of the Election Act, 2017 and Rule 92 of the Election Rules.

The proportional representation system used to elect members to fill the seats designated for women in each province will depend on how many general seats each political party has won in the provincial assembly. The political parties will share the seats designated for women and non-Muslims according to their percentage share, as determined by sub rule (2), and according to the order of precedence of the candidates’ names on the party list.

The provisions of subsections (1) and (2) of Section 104 shall, to the greatest extent possible, apply to fill any vacancy that may arise after the party list is exhausted. However, the list submitted by a political party shall not be subject to modification or alteration, either in terms of priority or by adding new names to the list or removing any name after the deadline for submitting nomination papers has passed.

That in the event that a political party fails to submit a list to the ECP in accordance with Section 104 of the Election Act 2017 by the specified deadline and it has representation in parliament, no new list can be submitted at a later date for the purpose of allocating reserved seats because the time of submitting the list has expired. As a result, the proportionately reserved seats would remain vacant in the respective national and provincial assemblies and cannot be later awarded to a political party.

Articles 51, 106, and 224 of the constitution, Section 104 of the Election Act, and Rules 92, 93, and 94 of the Election Rules all specify reserved seats for women and non-Muslims; neither the ECP nor a political party may vary from or circumvent these provisions.

Lastly, the ECP will announce the total number of reserved seats that each political party has won in the National Assembly and provincial assemblies, respectively, by publishing a notice in the official Gazette. The total number of general seats in the National Assembly, or, if applicable, the corresponding provincial assembly will be used to calculate each political party’s percentage share.

Since this is the first time that a significant number of candidates for the national and provincial assemblies have been returned to office during the general election and have joined a political party in both assemblies, there is a strong presumption that this interpretation of reserved seats allocation will take place if a political party fails to submit the priority list of reserved seats in accordance with Section 104 of the Election Act. As a result, this legal dispute will end up in constitutional courts, where they will determine for the first time how to interpret these provisions of the constitution and the Election Act of 2017.

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