



Law and political parties

By
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Political parties need to be regulated by law because, left to themselves, the party bosses will flout the very principles of democratic governance which they espouse in the functioning of the state. Nearly 30 years ago the then chief election commissioner of India, S.I. Shakhddhar, publicly censured them. 'Political parties make strong demands for the conduct of free and fair elections to legislative bodies, but choose to ignore the application of the same principles when it comes to the functioning of their own party organs. It has been revealed before me in various cases that I had occasion to hear that parties do not follow their own constitutions. They hold no party elections. ... A few persons in a party, occupying the vantage position in the apex body, quite often strangulate the democratic functioning and aspirations of the members of the party at the grass roots.... I therefore, suggest that there should be parliamentary legislation making it obligatory on the part of every political organisation to register their body and regulate their functioning by laying down broad outlines and norms.'

In Britain political parties are organised constituency-wise. Aspiring candidates are selected democratically by the constituency party. The party's national headquarters give the final approval. Germany's Law on Political Parties 1968 is a good model as it provides a comprehensive scheme which ensures democratic functioning.

It obligates political parties to maintain a written constitution, rules and programmes. The executive committee must be elected at least every second calendar year. The party executive and representatives to assemblies of delegates must be elected by secret ballot. Likewise, party candidates for election to parliament must be elected by secret ballot by the party. Besides, Section 21 of the related federal electoral law lays down that a party's candidate must be elected in an assembly of party members in his constituency.

The act imposes an obligation to publish audited accounts. It is in this context that Chapter IV provides for reimbursement of election campaign expenses. This law thus meets the three crucial tests — regular elections by the party's members to all its office-bearers from the national to the provincial and mohalla units, nomination of party candidates through elections, regular audit of accounts and their publication. Pakistan acquired its first law on political parties in 1962, the Political Parties' Act. It provided for the audit of accounts and their submission to the election commission, for registration and dissolution of political parties and for disqualification of defectors. The 14th Amendment of 1997 comprehensively took care of defections.

The act of 1962 was, however, repealed by the Political Parties Order 2002, promulgated on June 28, 2002. It provides for the formation of political parties and lays down the matters which their constitutions must contain. Among them is the 'procedure for (i) election of party leader and other office-bearers at the federal, provincial and local levels, wherever applicable; (ii) selection or nomination of party candidates for election to public offices and legislative bodies; (iii) resolution of disputes between members and party, including issues relating to suspension and expulsion of members; and (iv) method and manner of amendments in the constitution of the party'. With regard to suspension from membership or expulsion from the party, para 7 says that the member 'shall be provided with a reasonable opportunity to show cause against the action and of a hearing'. This implies that (a) he must have due notice of the charges; (b) the charges must be specific enough to enable him to show cause — expressions like 'disloyalty' or 'anti-party activities' will not do; and he must be heard, personally by the disciplinary authorities. Para 5(4) gives every member 'the right of access to the records' of the party.

Para 8 says explicitly that 'the political parties shall make the selection of candidates for elective offices, including the membership of the Majlis-e-Shura (parliament) and provincial assemblies, through a transparent democratic procedure'. But the word 'election' is not used. Para 10 and 11 lie at the heart of the order. They ordain democratic functioning. Para 10 says: 'Every political party shall have an elected general council at the federal, provincial and local levels ... and shall, at least once in a year, convene a general meeting at the federal, provincial and local levels of the party ... to which the party members or their delegates shall be invited to participate.'

Para 11 takes the next logical step. 'The party leader and other office-bearers of every political party at the federal, provincial and local levels shall be elected periodically in accordance with the party's constitution through secret ballot based on a democratic and transparent system.' Within a week from the completion of the intra-party elections the party leader must submit to the election commission a certificate, under his signature 'to the effect that the elections were held in accordance with the constitution of the party' mentioning full details — the dates, names,

voting figures and the rest. The election commission then publishes the certificate. Political parties are bound also and submit to the election commission an audited statement of accounts for every financial year (para 13).

Failure to submit the certificate or the audited accounts debars a party from acquiring an election symbol.

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A.G. Noorani, "Law and political parties," *Dawn*. 19-09-2009.

Keywords: Political science, Politics, Political parties, Political leaders, History, Elections, Democracy, Legislation, Law, Election, Pakistan