

Chapter 2

Political Background

Elections 2002–2008

The 2002 elections in Pakistan were held under the presidency of military leader General Pervez Musharraf, as part of a 'roadmap to democracy'.

Pakistan had been suspended from the Councils of the Commonwealth following the unconstitutional overthrow of Prime Minister Nawaz Sharif's government in 1999 by the Chief of Army Staff General Pervez Musharraf. Since then, the Commonwealth had maintained pressure on him to restore elected civilian government.

A Commonwealth Observer Group was present at the 2002 elections. In the context of an amended 'roadmap' that saw General Musharraf alter the Constitution by decree to allow him to retain the presidency for a further five years, the Group concluded that they had 'observed an incomplete democratic process'.

The 2008 elections took place in the aftermath of the assassination of Benazir Bhutto, leader of the Pakistan People's Party (PPP). Exiled abroad following the 1999 coup, she had returned to Pakistan following a deal that saw pending cases against her and other political leaders shelved.

The elections were genuine and broadly competitive, although Baloch nationalist parties boycotted the process following the 2006 killing by security forces of nationalist leader Akbar Bugti.

Key political developments, 2008–2012

The PPP, emerging as the largest party in the 2008 elections, formed a coalition government with several regional parties. The Pakistan Muslim League-Nawaz, (PML-N), led by Nawaz Sharif, formed the main opposition following a brief period within the coalition government.

Over the course of the next few years the government faced a number of serious challenges. Among them was a marked increase in extremist and sectarian violence, a deepening energy crisis, several natural disasters, and a significant deterioration in relations with the United States following several high-profile incidents including the capture of Osama bin Laden in Pakistan in May 2011.

In addition, addressing entrenched poverty, generating stronger economic growth, and improving educational opportunities were seen as pressing requirements to be addressed by

the government.

One of the main aims of the governing coalition, with support from the opposition, was to reverse the constitutional changes enacted by General Musharraf. These had served to increase the powers of the president at the expense of parliament.

The 18th Amendment (2010)

In the 18th Amendment to Pakistan's 1973 Constitution, passed in 2010 with broad political support, significant limits were placed on the president's powers. These included: the removal of the president's ability to by-pass parliament and rule by decree; the removal of the president's power to dissolve parliament; and a limit on the time permitted for the president to consider and ratify bills approved by parliament.

The 18th Amendment also restored powers to parliament and the prime minister. These included recommendations for the appointment of provincial governors and military chiefs which would henceforth be binding on the president, the lifting of prime ministerial term limits, and the removal of the duty to consult the president.

In response to longstanding demands from provincial governments, the 18th Amendment also recalibrated the relationship between the provincial and federal governments. The 'Concurrent List', which set out areas of joint responsibility, was abolished. Over 50 such areas of responsibility were devolved to provincial governments, including policing, education, health and local government. In addition, the National Finance Commission was reconstituted after a gap of many years and an assessment was conducted to determine the share of federal income to be disbursed to the provinces.

Of particular significance for the electoral process were the provisions in the 18th Amendment relating to the appointment of the Election Commission of Pakistan (ECP) (see Chapter 3) and the caretaker government. These responded to a widespread sense that the constitutional independence of the Election Commission required strengthening, and that the caretaker government system had not delivered the neutrality expected of it.

The caretaker government

The Constitution provides for a neutral caretaker administration appointed by the president to oversee preparations for and conduct of elections. This is intended to reduce the ability of the outgoing government to make use of state resources and the benefits of incumbency. However, earlier caretaker governments had not demonstrated the required neutrality, and in practice had represented a continuity of the outgoing government, albeit with new faces.

The 18th and 20th Amendments redefined the process for the nomination and appointment of caretaker administrations at the federal and provincial levels. The amendments provided for time-bound consultations between the prime minister and the leader of the opposition on the selection of the caretaker prime minister, followed by consideration of four names by a

parliamentary committee if agreement cannot be reached in the first instance. This committee is to comprise equal numbers of government and opposition members, chosen by the prime minister and leader of the opposition. If agreement cannot be reached, the four names have to be submitted to the Election Commission, which is required to take a final decision within two days. A similar procedure was set in place for the appointment of caretaker provincial chief ministers.

On 24 March 2013, following the inability of the government and opposition parliamentarians to agree on a name, the decision went to the ECP, which chose retired judge Justice Mir Hazar Khan Khoso as the caretaker prime minister.

The federal caretaker administration was generally accepted as having conducted itself in a sufficiently neutral manner. In one widely publicised instance when the caretaker interior minister made media remarks supporting a particular party, the Election Commission took official notice of the remarks and requested the caretaker prime minister to take appropriate action. The caretaker prime minister summoned the minister, sought clarification of his remarks, and issued a public statement reiterating the neutrality of the caretaker government.

The Political Parties Order

It is also of note that in 2011 the Political Parties Order was extended to cover the Federally Administered Tribal Areas (FATA) so that in the 2013 elections, political parties there were, for the first time, able to field candidates under party banners and campaign in the region.

Local government

Pakistan's last local government elections had taken place in 2001 and 2005 under General Musharraf's administration. A system of non-party 'local bodies' was introduced with the stated aim of strengthening 'grassroots democracy'. Following the return to elected civilian democracy and the devolution of powers to the provincial governments, each province was to determine the form of its local government and the timing of elections. However, none of the provinces has yet agreed a timetable for the holding of local government elections. In the interim, civil servants occupy the various positions vacated by elected local officials.

The Supreme Court

Pakistan's Supreme Court, headed by Chief Justice Iftikhar Muhammad Chaudhry, played a politically significant role in the lead-up to the 2013 elections.

Chief Justice Chaudhry had been dismissed by General Musharraf in March 2007. A mass lawyers' movement in support of the Chief Justice had contributed to the weakening of General Musharraf's authority. Justice Chaudhry was restored to his former position in March 2009 by the new government. Since then, the Court had stepped up its engagement with political

issues, often taking *suo moto*¹ notice of controversial issues.

In December 2009 Chief Justice Chaudhry ruled null and void the National Reconciliation Ordinance (NRO). The NRO had provided full legal protection from pending investigations and cases against holders of public office. Although many national and provincial MPs had benefitted from the Ordinance, politically the most affected by the ruling was President Asif Ali Zardari.

The Supreme Court subsequently ordered the government to request the Swiss authorities to re-open corruption cases pending against President Zardari. The government maintained that he was covered by presidential immunity. The repeated refusal of the government, led by Prime Minister Yousuf Raza Gilani, to comply with the court order resulted, in June 2012, in the Court holding the prime minister in contempt of court. He was consequently disqualified as a member of parliament and was unable to contest the 2013 elections.

The new Prime Minister Raja Pervez Ashraf was then named as a respondent in the so-called 'Swiss cases' matter. However, in October 2012, the government agreed to write to the Swiss authorities, who confirmed, in February 2013, that it was not possible to re-open the cases.

In November 2012, in the course of a *suo moto* case relating to violence in Karachi, the Supreme Court directed the Election Commission to devise a plan for a delimitation exercise in respect of Karachi. In making the order, the Court remarked that the exercise should be carried out in such a way that no political party would have complete control of the city.

The Muttahida Qaumi Movement (MQM), whose political stronghold is in Karachi, protested the ruling on the basis that by law, delimitation could only be carried out on the basis of a census, which had not been carried out. The Election Commission noted that the last census had been carried out in 1998 and that a fresh one was overdue. In March 2013, the Supreme Court, criticising the ECP for its 'inaction' on the matter, ordered that a fresh delimitation be carried out in the absence of up-to-date census data. The Commission then carried out a partial delimitation of three out of twenty National Assembly and eight out of forty-two Provincial Assembly constituencies. Questions were asked as to why only some constituencies had been identified for delimitation. The MQM was unsuccessful in its legal attempts to halt the exercise.

The Observer Mission learnt that in the run-up to elections, Chief Justice Chaudhry travelled around the country addressing judicial officials who were to serve as returning officers during the nominations and scrutiny process, to exhort them to uphold the Constitution and to remember the importance of judicial supervision of the elections. The role of the Chief Justice in this regard was criticised by some, who viewed it as undermining the role of the Election Commission. The excessively intrusive manner in which some returning officers questioned candidates on religious knowledge and personal circumstances was subsequently attributed, by a number of commentators, to the earlier intervention by the Chief Justice.

¹ *Suo Moto* – actions taken by a judge without a prior motion or request by the parties.

The Supreme Court also ordered that overseas Pakistanis should be able to vote in the 2013 elections (See Chapter 3 for more details on this issue).

Significance of the 2013 elections

The general elections of 11 May 2013 provided the opportunity for the first democratic transfer of power from one full-term civilian government to another. For the first time in Pakistan's 66-year history, there was the prospect of an elected government completing its term in office and being replaced by an elected successor. Previous elections (1970, 1985, 2002 and 2008) either took place after a period of military rule, or after the removal of an elected government by military intervention (1988, 1990, 1993 and 1997).

The 2013 election was the 10th election in Pakistan's history to be held under universal franchise. It was the first to be held under new constitutional and electoral reforms. The election was also conducted in the context of unprecedented judicial independence, as well as a more noticeably diverse and vibrant media landscape.

In addition, a number of parties, including Baloch nationalist parties, that had boycotted the 2008 elections decided to participate.