



electionswatch

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Introduction

Apart from observing each general election since the early 1990s, the Human Rights Commission of Pakistan (HRCP) has continued to monitor the political environment leading up to polling day, reflecting its commitment to free, fair and credible elections. This is done from a rights-based perspective, ranging from delays in elections and violations of the right to freedom of expression, assembly and association, to the conduct of the Election Commission of Pakistan (ECP), caretaker governments, the judiciary, political parties and other stakeholders. Given the polarized political environment in 2023, HRCP has felt it necessary to institute a working group to monitor the pre-election environment and issue a periodic bulletin calling attention to any developments that could disrupt Pakistan's democracy, and reminding all political stakeholders that civil society continued to keep a watchful eye on all election-related matters.

This edition of the bulletin covers some major political developments during the period 1 January to 30 September 2023, that have a bearing on the credibility of the forthcoming elections.

Context

It is important to take a quick look at the political developments of the last 18 months to understand the current uncertainty that surrounds the elections. The instability is said to have begun with the former prime minister Imran Khan falling out with the then army chief General Qamar Javed Bajwa and the military establishment for exercising his choice in favour of General Faiz Hameed (then the ISI chief) as the next army chief. Having been at the receiving end of Hameed's displeasure, the political opposition was apprehensive of Khan's choice while the coalition partners began to withdraw their support for the PTI-led government, allegedly after a nudge from the military.

The opposition initiated a vote of no confidence against the prime minister in April 2022 and, after a brief battle in the Supreme Court, succeeded in unseating him and installing a PDM-led coalition government.

Imran Khan asked his supporters to rally behind him and agitate against what he claimed was a conspiracy against his legitimate rule. A game of musical chairs was played in Punjab where governments changed hands many times before the PTI chairman decided to disband the PTI-led provincial governments in Punjab and Khyber Pakhtunkhwa in January this year.

A worrying trend witnessed post-April 2022 was the maligning of politicians, not just from the opposition but also the government, in the form of audio and video leaks—some unseemly—on social media, violating their fundamental right to privacy. Political instability along with the economic meltdown, worsened in this period; the provincial elections were postponed in the two provinces and political fights ended up in the courts as well as the ECP, with both institutions emerging as polarised and partial.

The year 2023 started with the former prime minister and PTI chairman Imran Khan making serious claims about the military establishment not having learnt any lessons from 'past mistakes' and engaging in political engineering. In Balochistan, news emerged of several former PTI politicians having joined the PPP.

In January, both the Punjab and Khyber Pakhtunkhwa assemblies were dissolved by their respective chief ministers amid political turmoil, with the Punjab governor distancing himself from the process. In February, President Arif Alvi unilaterally announced 9 April as the date for general elections for the Punjab and Khyber Pakhtunkhwa assemblies. He later asked the ECP to hold polls in the two provinces on any date between 30 April and 7 May. In March, after meeting President Alvi, the Khyber Pakhtunkhwa governor announced 28 May as the date for the assembly polls without officially communicating this decision to the ECP.

Political developments: Claims of political engineering, victimisation and selective accountability

Alongside a legal battle for elections to the two provinces as per the Constitution, the defence ministry told the ECP that the army was not available for election duty in both Punjab and Khyber Pakhtunkhwa. The election dates as proposed by the courts were not heeded and the caretaker governments in the two provinces continued beyond their constitutional mandate.

An accountability drive against politicians from the outgoing government continued in 2023, with PTI supporters declaring they would not let their leader be arrested under any circumstances. This brought PTI workers into head-on conflict with law enforcement agencies in Lahore, amid incidents of rioting. The arrest finally happened on 9 May in Islamabad, leading to unprecedented riots and arson, followed by mass arrests. The accountability drive continued through September, the most prominent example being the arrest and rearrest of former Punjab chief minister Pervaiz Elahi. To HRCP's consternation, investigations in none of these cases have been completed, even after several months.

Leaders of other political movements such as the PTM were also apprehended. In June, Ali Wazir, a PTM leader and MNA, was taken into custody by security forces in North Waziristan. When contacted, the North Waziristan police denied that Wazir was in their custody. He was rearrested in September after his release on bail from Adiala Jail.

A leader of the Altaf Hussain-led Muttahida Qaumi Movement and 34 others were sent to prison in July, lawyers and officials claimed. They said that the 34 MQM-L activists, who were granted bail for taking out a pro-Altaf Hussain rally in Korangi the day before, had been detained under the Maintenance of Public Order Ordinance 1960 for one month.

Rumours of delays in the general elections continued to float even before the National Assembly was dissolved. A longer caretaker setup was predicted. In late August, the PPP demanded elections within 90 days under any conditions while the MQM-P joined the ranks of those endorsing fresh delimitations, the others being the PML-N and JUI-F.

Events of 9 May and what followed

Politicians such as Bilawal Bhutto-Zardari of the PPP have raised objections to the absence of a 'level playing field' in the run-up to the general elections.

PTI workers took to the streets on 9 May, following a video message from Imran Khan, urging them to protest in case he was arrested. The protests quickly dissolved into violence: protestors vandalized and set on fire military and state properties in major cities across the country. The authorities immediately restricted access to social media platforms and internet shutdowns occurred. Amnesty International and other human rights organisations condemned these restrictions as an attack on freedom of expression. In the aftermath, PTI workers across Pakistan were arrested and charged.

A week later, on 16 May, the National Security Committee announced that the Pakistan Army Act 1952 and Official Secrets Act 1923 would be used to try civilians arrested in connection with the 9 May protests—that too, in military courts, depriving them of their right to due process and fair trial. They were kept in military custody and families were not allowed to meet them unless the courts intervened. PTI leaders, including women, were arrested and rearrested; many remained in custody under MPO laws. In the weeks that followed, some of these arrested leaders held hurried press conferences, condemning the actions of 9 May and distancing themselves from these events. On 8 June, former PTI leader Jahangir Khan Tareen launched a new party, the Istehkam-i-Pakistan Party, during a press conference in Lahore. He was joined by several other PTI defectors, including Aleem Khan, Imran Ismail, Ali Zaidi, Fayyazul Hasan Chohan, and Amir Mehmood Kiyani, who had left the party following the 9 May incidents.

On 13 June, the National Assembly passed a resolution calling for the rioters involved in the 9 May violence to be tried and convicted under the Pakistan Army Act 'without a delay of even a single day'. In late June, then Defence Minister, Khawaja Asif, suggested that social media networks should be blocked for their role in inciting violence on 9 May. He noted the absence of a regulatory framework and praised the military's swift accountability actions while highlighting challenges faced by civilian authorities.

Conduct of the ECP

At present, at least 102 civilians are still waiting to be tried in military courts. The arrests have continued well into September on various pretexts, including the MPO.

The Elections Act 2017 requires all political parties to hold intra-party polls, also to enable them to obtain or retain a political symbol. In May, however, despite repeated warnings and deadlines, the PML-N failed to hold these polls and the ECP appeared to have put the intra-party polls case against the ruling PML-N in 'cold storage'.

The ECP also appeared to have been in two minds regarding the holding of elections under the new census. As late as 29 June, a senior ECP official reportedly stated that conducting polls on the basis of fresh delimitations was out of the question as the results of the digital census had not been formally notified. Despite this reluctance on the ECP's part to conduct a fresh delimitation exercise in time, on 5 August, shortly before the dissolution of the National Assembly, the Council of Common Interests accepted the results of the 2023 census. This meant fresh constituency delimitations and an inevitable delay in holding polls, making it certainly impossible to follow the constitutional scheme of 90 days. Political leaders, lawyers' bodies and civil society criticized this decision as invariably delaying the polls while experts feared it would be used for gerrymandering and manipulating electoral results.

Earlier on 1 August, the ECP had directed the caretaker chief minister of Khyber Pakhtunkhwa to sack his ministers, advisers and special assistants who were 'involved in politics' to ensure a free and fair electoral exercise in the province. More importantly, on 9 August, the ECP disqualified former prime minister and PTI chairman Imran Khan for five years under Article 63(1)(h) of the Constitution and denotified him as a returned candidate from NA-45 Kurram-I.

On 15 August, the ECP placed a complete ban on exit and entrance polls, including those on official digital media accounts of print and electronic media outlets as well as social media influencers—a move that many have held violates democratic norms.

After the dissolution of assemblies in early August, the ECP's silence over a firm election date garnered strong criticism, leading to suspicions that the caretaker setups had been brought in for longer than warranted. The ECP then announced a schedule for delimitation, stating that it would be able to complete this exercise by 14 December (obviously followed by a period in which to entertain petitions challenging decisions on constituency delimitations). In September, the ECP said it would complete the exercise by 30 November.

On 28 September, the ECP published a list of preliminary delimitations in light of the 2023 digital census, in which the total number of National Assembly seats was reduced to 336 from 342 and dozens of districts were clubbed together to rationalize the population of constituencies. There are 60 reserved seats for women and 10 for religious minorities. The Free and Fair Election Network (FAFEN) criticized the proposed delimitations, saying that as many as 180 constituencies of the national and provincial assemblies do not meet the 'legal preferability' of a 10 percent variation in the population, thereby undermining the principle of equal suffrage upheld in the amendments to the Elections Act 2017.

There has also been a difference of opinion over who will decide the election date—the ECP or the president. On 25 August, Chief Election Commissioner Sikandar Sultan Raja declined President Arif Alvi's invitation for consultations to fix a date for the general elections, stating that, in accordance with Article 51(5) of the Constitution and electoral framework, this was the ECP's domain. On 14 September, President Alvi wrote to the ECP to seek guidance from the superior judiciary, stating that 6 November should be the cut-off date for polls and that general elections to the national and provincial assemblies must be held on the same day. This was the fourth such letter he has written to the chief election commissioner, but political experts such as PILDAT consider the letter ambiguous—for not giving a specific date for the polls and for suggesting that polls for the national and provincial assemblies be held on the same day.

Subsequently, on 21 September, the ECP announced that elections would be held in the last week of January 2024, but has not set a firm date as yet. A meeting with political parties to discuss a code of conduct is slated for early October 2023.

In this environment of polarisation, most political disputes have ended up on the doorstep of the higher judiciary, and its decisions have been seen in the same light. For instance, in May 2022, responding to a presidential reference seeking the interpretation of Article 63-A of the Constitution (on the grounds for disqualifying lawmakers), the Supreme Court handed down a split verdict, which was seen by the dissenting judges as well as in legal circles as amounting to ‘rewriting the constitution’. This had implications for an unstable Punjab government, leading to a bitterly contested election of the chief minister.

Additionally, the Supreme Court’s suo moto action over the delays in elections in Punjab and KP were criticized both within and outside the judiciary as being ‘pre-emptive’, with the chief election commissioner having been summoned by the bench while hearing an unrelated petition.

The then chief justice of Pakistan (CJP)’s power to form benches—including his refusal to form larger benches to hear cases relating to political petitions—was criticised strongly, creating the perception that the judiciary was as polarised as other institutions.

It is important to review the laws passed by the outgoing federal government, some in undue haste, either to address political polarization or to undo the victimization of the PTI-led government or simply to please the military establishment. Since all these bills were passed by a house minus the opposition (with PTI MNAs choosing to stay away from the National Assembly), they are bound to have an impact on electoral outcomes in one way or the other.

In March 2023, the Parliament passed the Supreme Court (Practice and Procedure) Bill 2023, broadening the apex court’s authority to invoke suo moto jurisdiction or to accept for hearing petitions under Article 184 (3) of

Judicialization of politics or politicization of the judiciary

Legislation passed by the outgoing government

the Constitution, and to decide on bench formation by providing for the formation of a committee comprising the CJP and two senior-most judges to make these decisions. The Supreme Court is currently holding a full court hearing on this case.

In April 2023, the Supreme Court ruled that the bill, if it received presidential assent, would 'not have, take or be given any effect.' On 17 September 2023, Justice Qazi Faez Isa took oath as the chief justice of Pakistan, following which the apex court began hearing petitions challenging the Supreme Court (Practice and Procedure) Bill 2023. If the law comes into effect, it will allow legislators disqualified by the Supreme Court under its original jurisdiction to appeal their disqualification within 30 days of the law having been enacted.

In April 2023, the National Accountability (Amendment) Bill 2023 empowered the NAB chairman to close pending inquiries where he felt no case exists and to transfer graft cases involving corruption of less than Rs500 million to the relevant agencies or departments. The bill was criticized strongly by opposition party PTI, but was passed into law in May 2023.

The National Assembly passed a bill amending the Elections Act 2017 in June 2023, which limited the disqualification of lawmakers to five years with retrospective effect, and empowered the ECP to announce election dates unilaterally without having to consult the president. The bill was passed during a session that lacked quorum.

In July 2023, the Contempt of Majlis-e-Shoora (Parliament) Bill 2023 imposed further limits on freedom of expression, making it harder to hold elected representatives accountable. Subsequently, the Pakistan Army (Amendment) Act 2023 criminalized defamation of the armed forces, including online and prohibited retired military personnel from participating in public life. Observers criticized both bills for having been 'bulldozed' through Parliament without debate.

A joint session of the Parliament passed amendments to the Elections Act 2017 in July 2023, granting the caretaker government powers to take actions or decisions regarding

Conduct of caretaker governments

existing bilateral or multilateral agreements and projects. The move was criticized by opposition parties PTI and JI for according caretaker governments power beyond their mandated role of running the day-to-day affairs of government.

In August 2023, the amended Official Secrets Act 1923 gave intelligence agencies sweeping powers to enter and search any person or place without a warrant if they suspect an offence had been committed under the act. Although a somewhat diluted version of the bill was passed by the Senate, the amendments have nonetheless broadened the scope for targeting dissidents and political rivals in the future. Subsequently, the president denied having given assent to the amended Official Secrets Act 1923 and Pakistan Army (Amendment) Act 2023, claiming he had asked his staff to return them unsigned within the stipulated time to render them ineffective. The status of both these laws is not clear at present.

The caretaker governments in Punjab and KP were formed in January 2023, implying that they have been in power well beyond their constitutionally mandated term. If elections are held in February, these two provincial governments will have been in power 14 months and the federal, Sindh and Balochistan governments for six months. The appointment of the caretaker chief minister in Punjab and of the KP caretaker cabinet has remained controversial, with allegations of bias, interference in the electoral process and misuse of state resources.

The ECP has been criticised for failing to ensure that caretaker governments do not stray outside their constitutional mandate. In June 2023, a Lahore High Court judgment observed that the caretaker government in Punjab had transgressed its powers by making major policy decisions, issuing significant promotions, appointments and transfers of public officials without the ECP's approval, and attempting to engage in activity that could potentially influence free and fair elections, thereby contravening Section 230 of the Elections Act 2017. Observers have noted that the ECP needs to play a more effective role in overseeing caretaker governments' decision-making processes without instigation by the superior courts.

The federal caretaker government took power in early August 2023, with the relatively unknown BAP senator Anwaarul Haq Kakar selected as caretaker prime minister. His affiliation with the BAP, a party allegedly propped up by the military establishment, raised questions as to his neutrality. Apart from the general critique that it is proving partisan and unaccountable, this caretaker government has found itself in the eye of the storm for raising electricity and fuel prices catastrophically. The ECP has written a letter to the prime minister, urging the government to avoid political inductions in the cabinet, referring most likely to the inclusion of a principal secretary to the former prime minister Nawaz Sharif.

In an interview for BBC in September 2023, Prime Minister Anwaar-ul Haq Kakar said that civilian institutions had 'deteriorated' and that the government had to 'rely' on the military when facing challenges to governance. This was criticized by rights observers as tantamount to accepting the entrenched role of the military in electoral politics. Earlier, HRCP had strongly criticized Mr Kakar for claiming that fair elections were possible without senior PTI leaders, including former prime minister Imran Khan, adding that making such partisan statements fell outside a caretaker government's mandate.

In a worrying development, ABN News journalist Muhammad Khalid Jamil was arrested in September 2023 on charges of spreading 'provocative narratives' under the Prevention of Electronic Crimes Act 2016. Journalists have voiced their concern over crackdowns on their colleagues, saying that free and fair elections cannot be possible unless citizens are allowed to express their political opinions without fear of reprisal.

Deteriorating law and order in Balochistan and KP has already begun to affect political workers' right to freedom of peaceful assembly, with at least 44 people killed and over 100 injured in a suicide blast on a JUI-F convention in Bajaur in July 2023. Earlier in January, a suicide blast at a mosque in Peshawar left over 100 people dead, most of them police officials. Additionally, the TTP has reportedly marshalled forces in the former tribal districts and has been linked to several attacks targeting civilians as well as military and law enforcement personnel, creating a

Deteriorating security in Balochistan and KP

climate of fear that could extend to political candidates—particularly the JUI-F—and voters alike in the lead-up to polling day.

In Balochistan, a spate of attacks by militant nationalists—among others in Barkhan (February), Muslim Bagh (May), Kech, Zhob and Sui (July), and Gwadar (August)—has weakened law and order in the province, targeting not only security personnel, but also civilians and foreign nationals. As before, this is likely to lead to greater securitization, although not necessarily greater security for voters and political candidates. Additionally, amid ongoing violence between two rival groups of the Mengal tribe in Wadh, Khuzdar, during July–August 2023, the BNP-M accused the previous government of failing to act against the militants allegedly responsible for an armed attack on the residence of party chief Akhtar Mengal. The party has also claimed that the ongoing violence is preventing a level playing field for electoral politics in the province.

The Human Rights Commission of Pakistan (HRCP)'s Working Group on the Pre-Election Environment comprises Hina Jilani, Naazir Mahmood, Asad Jamal, Saroop Ijaz, Zegar Sher, Jamila Gillani, Munizae Jahangir, Zia-ur-Rehman and Shahzada Zulfiqar. This bulletin was produced by HRCP's secretariat, with support from Maheen Pracha and Adeel Ahmad, under the direction of Farah Zia.