



Project Report

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PAKISTAN IN TRANSITION: THE 1988 ELECTIONS

Report of Survey Delegation

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EXECUTIVE SUMMARY

A six-person bipartisan survey team sponsored by the National Democratic Institute for International Affairs (NDI) visited Pakistan October 10-18, 1988. The purpose of the visit was to study the legal and administrative framework in place for the November 16 national elections and to assess the feasibility of sending an international delegation to support the electoral process at the time of the elections.

For the last two years, NDI, at the request of interests within Pakistan, has been developing a project to encourage and assist the transition to a democratically elected civilian government. Based on a series of missions, NDI had concluded that the transition process was impeded by the diminished and inadequate capacity of key institutions to support democratic development. NDI planned a series of seminars to address this problem. The program was postponed when President Zia Ul-Haq dismissed the government of Prime Minister Muhammad Khan Junejo and dissolved the National and Provincial Assemblies on May 29.

Thereafter, the President scheduled elections for November 16. Maintaining that free and fair elections were essential to democratic development, NDI explored the possibility of sending a delegation to observe the elections. President Zia was receptive to the idea on the condition that it include

Republicans and Democrats from the United States. Benazir Bhutto, leader of the Pakistan People's Party, meanwhile, encouraged the presence of representatives of the international community for the elections.

Following the death of President Zia, the constitutional transfer of power to Senate President Ghulam Ishaq Khan, and a series of decisions by the Supreme Court pertaining to the elections, it was decided that NDI would send a survey team to study the electoral system and the feasibility of sending a delegation for the November 16 elections. The objectives of this mission were to obtain information about the election laws, the administrative procedures for elections, and the political climate in which the elections would take place.

Of particular interest to NDI were: (1) the electoral code and administrative procedures for the 1988 elections; (2) preparations being made by the Election Commission; (3) the implementation of the electoral code in the pre-election period, particularly the delimitation of electoral districts, the preparation of electoral rolls, and the certification of candidates; (4) the decisions of the Supreme Court relating to the conduct of party-based elections; (5) the overall political climate as it may affect the fairness of the election; and (6) the willingness of the government and the contesting parties to cooperate with an international group in providing access and security at the time of the election.

The survey team visited Islamabad and all four provincial capitals, as well as several rural areas. Meetings were held with a variety of government and non-government officials, including National and Provincial Election Commissioners, Provincial Chief Ministers and Governors, leaders of all major political parties, journalists, and representatives of the legal and academic communities.

The survey team's summary conclusions are as follows:

- The processes established by laws and regulations for the conduct of the November elections are impressive and safeguards against manipulation of the vote compare favorably with those of democratic countries around the world. A comprehensive framework for procedurally correct elections has been devised.

- The Election Commission has thus far fulfilled its legal responsibilities in a fair and expeditious manner. Its decisions, specifically those relating to the delimitation of electoral districts, the assigning of symbols and the certification of candidates, have been accepted by all contesting parties.

- The new activist posture adopted by the Supreme Court has placed it in a position of institutional leadership as Pakistan attempts once again to establish constitutional democracy with a meaningful role for political parties.

- The actual implementation of the written legal and administrative procedures will be the key factor in assessing the fairness of the elections. Given the system in place, irregularities — such as intimidation of voters, multiple vote casting, last-minute movement of polling places, ballot-stuffing, and fraud during the counting phase — can be detected by Pakistanis monitoring the process. Thus, it is our belief that fraudulent practices affecting the margin of victory in any given election district should be difficult to conceal.

- Specific reforms of past election procedures in Pakistan — including the appointment of judicial officials as local and district election administrators, the identification of voters, and the far reaching authority given by the government to the federal Election Commission in conducting the elections — increase the prospects for free and fair elections. In particular, the replacement of the executive branch of government by the judiciary in the administration of the elections has inspired confidence in the process by all participants.

-- General Mizar Aslam Baig's guarantee that the military will maintain law and order during the elections and that the army "will leave politics to the politicians" is welcomed and accepted by all parties.

-- Some political party leaders have expressed concern that officials of the caretaker government are using their incumbency to gain an advantage in the election by spending government funds to promote their own political agenda. This practice is common in democracies, but the charge carries additional weight in Pakistan because the current government lacks the legitimacy of a free election (the President was the constitutionally-designated successor, but the other ministers and provincial leaders were appointed by President Zia after the dissolution of the Junejo government).

Whether or not the "caretaker" problem is addressed prior to the election, concerns that provincial chief ministers will attempt to rig the elections have been somewhat allayed by the introduction of the judiciary into the process. We believe that safeguards are adequate to detect attempts to compromise the election, and that, while no safeguards provide absolute guarantees, those in place in Pakistan

should be a deterrent to those who would attempt to tamper with the system.

- Despite concerns about certain perceived imperfections in the implementation of the electoral system, most political leaders believe that the climate surrounding these elections is favorable. Although violence in the Sind and floods in the Punjab could influence election results, there is a consensus that elections should proceed as scheduled. The survey team recognizes that varying degrees of violence have accompanied previous elections in Pakistan and that if such violence were to erupt on November 16 it would not, per se, invalidate the electoral process.

Based on discussions with a broad cross section of political leaders, the delegation believes that most Pakistanis are prepared to accept the results of the elections, regardless of their outcome, assuming they are conducted in a free and fair manner, and concludes that the elections provide an opportunity for democracy in Pakistan to move forward. An international delegation would serve the interests of Pakistan and the community of democratic nations by underscoring the vital role a credible election process can play in bringing about a stable transition to a democratic government.

I. INTRODUCTION

The October 10-18 visit by a bipartisan delegation was the fourth NDI mission to Pakistan in 18 months. In early 1986, following the cessation of martial law the previous year, NDI was approached by several Pakistani emissaries requesting programmatic support for a transition to a civilian democratic government. Prior to embarking on a program, NDI prepared a study of developments in Pakistan since independence. The study included, information provided by a review of relevant literature and periodicals, past and current U.S. ambassadors and foreign service personnel assigned to the region, members of Congress and their staffs, and representatives of the Pakistan government in the U.S.

With this background, NDI sent its first mission to Pakistan in April 1987. A five-person survey team led by Leon Billings, former executive assistant to Secretary of State Edmund Muskie, included NDI Board members and consultants. The team met with President Zia, Prime Minister Junejo, government ministers, members of the National Assembly, a wide spectrum of political party leaders, jurists, academics and journalists. The objective of the mission was to determine the commitment of the major political participants to establishing a democratically-elected civilian government. The viability of political parties and the role they would play in contesting free and fair elections also was closely examined.

In November 1987, NDI sent a two-person delegation -- Mark Siegel, Board Member, and Robert Carroll, Assistant Program Director -- to observe the non-party Local Bodies Elections. They were in Lahore in the Punjab Province for the November 30 elections and prepared a study of the administrative procedures, the campaign practices of the candidates and the participation of the voters in the first elections since the lifting of martial law.

A subsequent delegation visited Pakistan in December 1987 to determine the interest of Pakistanis in a future NDI program and to secure their participation in the design of such a program. The mission recommended a series of seminars from which Pakistan could draw on the experience of other countries in charting a transition to democracy. The first seminar was scheduled for September 1988 and would have addressed the role of political parties, the government, the press, the military and the courts in the transition process.

Most recently, a six-person bipartisan delegation visited Pakistan from October 10-18, 1988 to assess the legal and administrative procedures for the scheduled November 16 National Assembly elections. President Zia's sudden death in August had intensified interest in these elections, the first party-based elections since 1977. Under the 1973 Constitution, the President will appoint a prime minister from the newly elected

National Assembly. The National Assembly, along with the Provincial Assemblies elected on November 19, will elect a new President.

The survey team included regional and election experts -- Graeme Bannerman, William Oldaker, Verne Newton, and Casimir Yost. It was accompanied by NDI Senior Consultant Patricia Keefer and Program Coordinator Stephen Del Rosso. The team visited the federal capital of Islamabad and the four provincial capitals. Meetings were held with the National and Provincial Election Commissions, the Attorney General, the Minister for Law and Parliamentary Affairs, provincial governors, chief ministers and ministers, political party leaders, members of the bar association, judges and journalists. [Appendix A, Itinerary]

The following report presents the October 1988 delegation's findings and recommendations.

II. THE GOVERNMENT AND THE CONSTITUTION

Approximately 97% of Pakistanis are Muslim and since 1956 Pakistan has been an Islamic Republic. The dominant Moslem strain is Sunni, although Shias comprise a small but vocal minority.

The current Constitution of Pakistan was adopted in 1973. This Constitution was suspended in 1977 by General Zia under the proclamation of Martial Law. The 1973 Constitution was reinstated in 1985 and, soon after, national elections were held.

The Constitution establishes a federal form of government with a president, a prime minister and a parliament consisting of two houses — the National Assembly and the Senate. The president appoints the prime minister, as well as the chiefs of the armed forces, judges, and cabinet members with "the advice of the Prime Minister." He also can veto bills, although the veto can be overridden by the Parliament, and can dissolve the National Assembly if so advised by the prime minister. Notwithstanding the president's broad powers under the constitution, it is the prime minister who is responsible for the administration of the government.

The federal parliament consists of the 237-member National Assembly and the 87-member Senate. The Senate's duties are comparable to those of the upper house in the British model; authorization bills must originate in the Senate.

Under the Constitution, the president chooses a prime minister who will be "most likely to command the confidence of the majority of the National Assembly" as ascertained by a majority vote in the Assembly. Within thirty days of the election of the new National Assembly (i.e., no later than December 16 if the current schedule is maintained), both houses of the Parliament and the provincial assemblies will convene as an electoral college to elect a new president. There is divided opinion as to the order of these events and some controversy may ensue unless a consensus can be reached on these matters.

Pakistan has four provinces. The Sind and the Punjab (which contains over half of the Pakistan's population) are the most heavily populated, agriculturally rich and economically developed. The North West Frontier Province (NWFP) and Baluchistan are significantly less populated, have fewer natural resources, and are economically underdeveloped. The four provinces have popularly elected assemblies that elect a chief minister who administers the provincial government. (However, three of the four current Chief Ministers were appointed by

President Zia following the dissolution of the government and the National and Provincial Assemblies on May 29, 1988.) The President appoints Provincial Governors.

The basic administrative structure has remained virtually unchanged since the colonial period, despite all the constitutional upheavals and changes at the national and provincial levels. Provinces are subdivided into regions, districts, and tahsils (district subdivisions). They are run by a hierarchy of administrators, such as a divisional commissioner, the deputy commissioner (in the district) and the subdivisional magistrate, subdivisional officer, or tansildar at the tahsil level.

In addition to providing a framework for the government, the 1973 Constitution recognizes certain fundamental rights. The Supreme Court and other courts play a significant role in protecting these rights. It is a testimony to the integrity and independence of most judges that, despite the pressures exerted on the judiciary during the Zia era, including challenges from the military and religious courts, the Supreme Court of Pakistan and the High Courts of the Provinces still are held in high esteem throughout the country.

With the lifting of martial law in 1985, the Supreme Court regained some of its authority to make decisions on

controversial and politically significant matters. By the summer of 1988, prior to the death of President Zia, the Court had adopted a new activist phase, signalled by its decision in a case brought by PPP co-chairperson Benazir Bhutto, that sections of the Political Parties Act requiring political parties to register with the government were unconstitutional. The court ruling recognized the fundamental right of the Pakistan people to organize political parties.

On October 3, 1988, the Supreme Court ruled on a PPP petition that The Representation of Peoples Act of 1976, as amended in 1985, was unconstitutional in so far as it failed to recognize the existence and participation of political parties in the elections, particularly regarding the allocation of symbols. The Supreme Court ruling opened the way for elections to take place on a party basis with symbols granted to an individual political party or to a combination of parties agreeing to run joint candidates — an important development in a country with only a 24% literacy rate.

In a third major decision, the Supreme Court on October 9 affirmed the High Court of the Punjab's decision that the May 29 dissolution of the National Assembly by President Zia was void because it did not comply with the constitutional provisions authorizing dismissal of the National Assembly. Despite reaching this conclusion, the Court stated that it did not wish

to recall the National Assembly because it was in the national interest that the November 16 elections take place.

Most government officials, as well as members of the respected Bar Association, support the Court's recent judicial activism. The Supreme Court has established its role in the election process and, if called upon, can act as an arbiter in any election disputes relating to interpretations of the law or Constitution.

III. THE ELECTION PROCESS

There will be two sets of elections in 1988. On November 16, Pakistanis will choose 207 Members of the 237 Member National Assembly, the lower House of the Parliament. The remaining thirty seats are reserved for women, elected indirectly by the National Assembly, and minorities, elected directly on an at-large basis on November 16. On November 19, Pakistanis will vote for the Assemblies of each of the country's four Provinces. National Assembly members are elected to five-year terms and Senate members to six-year terms.

A. Laws Governing Pakistan Elections

For a country that has held relatively few elections, Pakistan has an exceptionally thorough and well-conceived election code. The Political Parties Act of 1962 is the starting point of modern political law in Pakistan. The Act has been amended on a number of occasions and, most recently, was interpreted by the Supreme Court in its October 1988 decision to allow political parties to participate fully in the electoral process.

The Delimitation of Constituency Act was passed in 1974 and sets forth how boundary lines for constituencies should be drawn. The Electoral Rolls Act of 1974 sets forth the rules for establishing the methods of determining voter eligibility for a

particular election. In Pakistan, all persons whose names appear on the electoral rolls are eligible to vote and are deemed to be "registered".

The principal law governing the conduct of elections is The Representation of the People's Act of 1976. This Act, which is summarized below, lays out in detail the procedures for conducting elections.

B. The Election Commission

Pursuant to the 1973 Constitution, National and Provincial elections are administered by a three-member Commission presided over by a Chief Election Commissioner. This individual must have served as a judge of the Supreme Court or a provincial High Court. He is assisted by two High Court Judges appointed by the President.

The current Commission appointed by President Zia includes Chief Election Commissioner, Justice S. A. Nusrat, and Justices Mohammed Fafiq Tarar and Abdul Razzak A. Thahim. Justice Nusrat, whose original term expired last summer, was reappointed by President Zia on an interim basis (some political leaders challenge the legality of the extended term).

As cited in the Constitution, the duties of the Commission are to "organize and conduct the elections and to make such arrangements as are necessary to ensure that elections are conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against." Specifically, the Commission is authorized:

- 1) to appoint separate Commissions for each Province;
- 2) to prepare and annually revise the electoral rolls to the National and Provincial Assemblies;
- 3) to prepare the delimitation of constituencies;
- 4) to organize and conduct elections to the Senate and to fill vacancies in the elected Provincial and National Houses;
and
- 5) to appoint election tribunals that hear disputes regarding the outcome of the elections.

The Election Commission has taken several important steps, described below, to ensure the fairness of the upcoming elections. These steps are not without controversy, but, on balance, are viewed as positive developments by most observers in Pakistan.

Two significant reforms deserve mention here. Unlike previous elections, all election workers down to the local polling station level will be under the supervision and employ of the Election Commission. The Commission also has been vested with extraordinary

power to try complaints of "grave illegalities" and, if necessary, to order new elections in any constituency within several weeks of the National Assembly elections.

C. Provincial and Local Election Administration

In addition to the federal Election Commission, there are provincial Election Commissions in each of Pakistan's four provinces. These Commissions, staffed by judges appointed by the federal Commission, assist the national body in administering the elections at the provincial level.

At the local and district levels, the elections are administered by Returning and Assistant Returning Officers, also appointed by the Election Commission from the judiciary. The appointment of judicial officials as Returning Officers is viewed as a major election reform. In the past, these positions were filled by civil servants appointed by the President and were suspected of being susceptible to political pressures.

The major duties of the Returning Officers are: to receive and scrutinize nomination papers from candidates; to select suitable public buildings for polling stations; to enlist and train polling personnel, to supply equipment in time for use at the polling station; to collect and consolidate results of the count from the

polling stations; and to submit the consolidated count to the Provincial and federal Election Commissions. The Returning Officer also will resolve most election disputes.

Each of the 33,500 polling stations in the upcoming elections will be staffed by a "Presiding Officer" appointed by the Returning Officer, normally from the ranks of local teachers.

The major duties of the Presiding Officers are: to set up the polling station; to receive election material and ballot boxes; to supervise the polling station; to maintain discipline and law and order; to allow candidates and their polling agents to enter the polling station; to ensure the secrecy of the ballot; to summarily inquire as to the identity of a challenged voter; to count the votes after the close of the polling station; to issue certified copies of the count statement to the polling agents; to communicate the results of the count to the Returning Officer; and to return the polling bags containing the ballots and the result of the count to the Returning Officer.

D. Voter Registration

The 1973 Constitution empowers the Chief Election Commissioner to prepare electoral rolls and to revise them annually. Under the Constitution, a person is entitled to be enrolled in an electoral

area if he or she is:

- 1) a citizen of Pakistan;
- 2) not less than twenty-one years of age on the first day of January of the year in which enrollment takes place;
- 3) not declared by competent court to be of unsound mind; and
- 4) deemed to be a resident of the electoral area.

Draft electoral rolls for the upcoming elections were published following the Delimitation Order of October 2. The final rolls must be published no later than one week prior to election day.

The electoral rolls were first prepared in 1974 and 1975 by some 20,000 registration officials conducting house-to-house surveys based on the 1971 census. In subsequent years, simplified procedures were adopted whereby existing rolls were published in draft and displayed publicly to invite claims, objections and applications for corrections. The electoral rolls for the upcoming elections, prepared between March 1986 and October 1988, contain some 43 million voters, approximately 90% of those who are eligible.

E. Delimitation

Under The Delimitation of Constituencies Act of 1974, constituencies were constructed by the Election Commission from the smallest administrative units as determined from the most recent census

conducted in 1981. The formula used to calculate the size of a constituency is one seat per 407,000 citizens for the National Assembly. The rules state that the size of constituencies may fluctuate twenty percent either way.

Preliminary lists of constituencies were published in September to invite objections, with public hearings held to rectify any defects of continuity and compactness. According to the Election Commission and most political leaders, relatively few objections were submitted. The final list of constituencies was published on October 2.

IV. ELECTION DAY

A. Voting Procedures

The polls will open at 8:00 AM and close at 5:00 PM. Approximately 1500 voters are assigned to each polling station. A polling station is administered by a Presiding Officer. The two booths within the polling station are manned by an Assistant Presiding Officer and two Polling officers. Separate stations are provided for male and female voters whenever possible.

Before polling begins, empty ballot boxes are opened, shown to the candidates or their agents and sealed. The sealed boxes are then placed before the Presiding or Assistant Presiding Officer and within sight of the candidates or their agents.

Upon entering the station, a voter gives his name and electoral roll number to the polling officer. This information is often written on a slip of paper issued by a party official who sits at a table outside the polling station and makes his own unofficial vote tally of party members. (Voters are not required to engage in this practice and may proceed directly to the polling officer.)

[Appendix B, Sample Slip]

The polling officer marks off the name and number of the voter in the electoral roll after checking the identity card. Unlike previous elections, presentation of identity cards will be mandatory for voting. The polling officer punches a hole in the identity card as a safeguard against multiple voting. The second polling officer puts a mark with indelible ink on the cuticle of the left thumb of the voter and ensures that the voter has no such mark on his thumb or other finger.

The voter proceeds to the Assistant Presiding Officer who records the electoral roll number on the counterfoil of the ballot. He stamps the counterfoil with an official seal [Appendix C, Sample Seal] and signs it. The Assistant Presiding Officer obtains a thumb impression of the voter on the counterfoil, stamps and signs the back of the ballot, and then hands it to the voter along with an inked rubber stamp [Appendix D, Sample Stamp].

The voter enters a screened compartment and stamps the space on the ballot containing the name and symbol [Appendix E, Party Symbols] of the candidate for whom he wishes to vote [Appendix F, Sample Ballot]. He folds the ballot first vertically and then horizontally before leaving the screened compartment and placing the ballot in the ballot box. The ballot must be folded in such a way that the official mark is visible [Appendix G, Diagram of Process].

B. Voter Challenges

According to information provided to the delegation by the Election Commission, if a person applying for a ballot is suspected of not being the voter whose name is listed on the identity card, the voter may be challenged by a candidate or polling agent. Since leaving Pakistan, NDI has been informed by the PPP that the Election Commission has now issued instructions requiring Presiding Officers to permit all those who present identity cards to vote, regardless of challenges alleging that the bearer of the card is not the person whose name is on the card. Under such circumstances, problems of multiple voting could develop, particularly if reports that excess cards have been produced prove true and if the indelible ink does not work.

In any event, where challenges are permitted the Presiding Officer will make an initial determination. If he is unable to resolve the matter, the case is presented to the Returning Officer. The name and ballot of a challenged voter, meanwhile, is kept apart from the regular vote tally. During the vote consolidation process described below, the Returning Officer examines all ballots excluded from the count by the Presiding Officer and makes a determination as to whether they should be counted. If the Returning Officer is also unable to make a determination, he may direct the case to a special tribunal that will adjudicate such disputes after the election.

C. Ballot Counting

Immediately after the close of the polls, the Presiding Officer counts the vote in the presence of the contesting candidates or their agents. The Presiding Officer is authorized to exclude from the count any ballot lacking an official mark and the Presiding Officer's signature, containing any extraneous marks, and not indicating for whom the voter had voted.

The Presiding Officer prepares a statement of the count that he signs along with the candidates or their agents. Certified copies of the count are given to the candidates or their agents. At this point, the Presiding Officer is authorized to announce publicly the "unofficial" results of the count. The Presiding Officer communicates the results to the Returning Officer who consolidates the results of all the polling stations in his constituency. The Election Commission has directed Returning Officers to order recounts of votes only if they are convinced that such requests are reasonable.

The Returning Officer communicates the consolidated results to District Returning Officers who in turn transmit the results to the Provincial Election Commission and the Election Commission Secretariat in Islamabad. Whenever possible, results are first communicated by telephone with certified copies of the vote count to

follow. Provincial and federal Election Commissions check the validity of the phoned-in messages by calling back the Returning Officers providing the results.

After a series of checks and counterchecks, the unofficial results are released by the Election Commission to the media through its control room in Islamabad. The official count is completed after all challenges are adjudicated, usually within three or four days following the election.