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### *Chapter 3*

## *THE LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE ELECTIONS*

The election code and procedures for the 1990 elections were virtually unchanged from those used in 1988. As in 1988, it appeared that the election code and procedures would provide a good framework for voter registration, balloting, the tabulation of election results and the enforcement of the law. Positive aspects of the process included satisfactory voter registration rolls, picture identification cards, and the practice of marking each voter's thumb with indelible ink to deter multiple voting. These safeguards, when combined with an aggressive watchguard role for party agents and judicial supervision of the process, suggested that it would be difficult to perpetuate large-scale fraud without detection.

This chapter outlines the legal and administrative framework used for the 1990 elections. It provides an overview of the CEC, the election laws, and the delimitation of constituencies and voter registration processes. It primarily describes the procedures as they are prescribed by law. Later chapters discuss the procedures as they were observed in practice.

### **A. 1990 Elections**

Two hundred and seventeen of the seats in the National Assembly, the lower house of the national government, were to be filled by the elections on October 24. Muslim citizens were eligible to contest in 207 of these single-member constituencies. Ten seats

were reserved for election on a nationwide, at-large basis by members of specified non-Muslim, minority communities. The CEC canceled the election in one National Assembly constituency due to the murder of a candidate on election eve. A constitutional provision setting aside an additional 20 seats for women, to be elected by the National Assembly, expired. On October 27, Pakistan's electorate voted for members of the four provincial assemblies, using an election system similar to that used in the National Assembly elections.

## **B. Overview of Election Laws**

Pakistan's election system is based on the British system of one-person, one-vote, single-member districts and "first past the post" contests. Several laws combine to establish the electoral system. The Representation of the People's Act of 1976, as amended, is the principal law governing the conduct of elections. This law outlines general electoral procedures. The Electoral Rolls Act of 1974 describes the rules for determining eligible voters; under this law, all individuals who appear on the electoral rolls are eligible to vote and are deemed "registered." The Delimitation of Constituencies Act of 1974 sets forth the manner in which the Election Commission should draw boundary lines for various constituencies. Finally, the Political Parties Act of 1962, the starting point of modern political law in Pakistan, governs the formation and activities of political parties.

Between 1988 and 1990, four changes were made in election procedures. First, the manner in which candidacies could be challenged was changed. In 1988, only registered candidates could challenge the candidacy of a prospective opponent; the 1990 law permitted any qualified elector in the district to challenge any candidacy. Second, the period in which such challenges could be made was expanded from two to four days. Third, the number of High Court judges who sit on tribunals that hear appeals to the decisions of returning officers concerning the nomination of candidates was expanded from one to three.

Fourth, and most significant, the 1990 law required the president to ask the designee of the party that won the most seats in the relevant assembly to form a new government at the national and

provincial levels. This differed from the 1988 provision that authorized the president to select a prime minister who would be "most likely to command the confidence of the majority of the Assembly." In virtually all other respects, the electoral system for the 1990 elections was the same as that in place in 1988.

### **C. The Election Commission**

Pursuant to Pakistan's 1973 Constitution, the president appoints a three-member Central Election Commission (CEC) to administer national and provincial elections. Each commissioner must be or have been a judge of the Supreme Court of Pakistan or a High Court in one of the provinces. The constitution charges the Commission with responsibility 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." The Commission is also authorized to appoint a separate commission for each province. Specifically, the constitution authorizes the Commission: 1) to prepare and annually revise the electoral rolls for the National Assembly and provincial assembly elections; 2) to organize and conduct elections to the Senate and to fill vacancies in the National Assembly or a provincial assembly; and, 3) to appoint Election Tribunals. The Chief Election Commissioner for the 1990 elections was Justice Naimuddin Ahmed of the Supreme Court.

On election day, the Election Commission employs and supervises more than 350,000 employees. This enormous undertaking requires nearly continuous preparation during the non-election years as well as massive mobilization in the immediate pre-election period. Between elections the CEC is responsible for adjustments in constituency boundaries and voter registration. During her tenure in office, Prime Minister Bhutto failed to fill two vacancies on the CEC, which may have affected the Commission's administrative preparedness when the elections were called ahead of schedule. The fact that the Commission was not sufficiently funded or properly constituted in advance may have affected its ability to redraw constituency boundaries and update the registration rolls in 1990.

The vacancies on the Commission were filled on August 15, 1990, nine days after the dismissal of the government. In the weeks preceding the elections, the CEC successfully hired the requisite employees to administer the polls, prepared the materials for balloting, heard complaints and issued rulings regarding the campaign period.

In 1990, all election workers down to the local polling station level were placed under the supervision of the CEC. The system required that the CEC recruit and train some 250,000 employees in a remarkably short period. While the procedural knowledge of most polling officials seemed fairly high, confusion at some polling places suggests that the Election Commission's training program may not have adequately reached the lower levels of the election staff.

#### **D. Election Administration at the Provincial and Local Levels**

In addition to the Central Election Commission, election commissions in each of Pakistan's four provinces assisted in administering the elections at the provincial levels. These provincial election commissions appointed election officials in their respective jurisdictions and processed election results before relaying them to the CEC.

The Representation of the People Act calls on the CEC to appoint "district returning officers," "returning officers," and "assistant returning officers" from among the officers of the Federal Government, Provincial Governments, corporations controlled by any such Government and local authorities." District returning officers, who have jurisdiction over several National Assembly constituencies, are appointed generally from the ranks of district and sessions judges. The CEC handbook for the 1990 elections also calls for returning officers, who have responsibility for all elections within one National Assembly constituency, to be drawn from the judiciary. In some cases, where judges were not available, officers of the executive branch and judicial magistrates were appointed. Assistant returning officers, who work for the returning officers and have jurisdiction for one provincial assembly constituency, generally came from the ranks of the civil service.

The returning officers receive and scrutinize nomination papers from candidates, select suitable public buildings for polling stations, enlist and train polling personnel, deliver materials for use at the polling station, collect and consolidate results of the count from the polling stations, and submit the consolidated count to the provincial and federal election commissions. The returning officers are also responsible for attempting to resolve election disputes.

The returning officer selects a presiding officer, normally a local teacher or local government official, to supervise each polling station. Presiding officers control all election-related activities at the polling station level. They set up the polling station, receive election material and ballot boxes, supervise the polling process, maintain order, allow admission to candidates or their polling agents, ensure the secrecy of the ballot, conduct summary inquiries to establish the identity of challenged voters, count the votes after the polls close, issue certified copies of the count statement to the polling agents, communicate the vote totals to the returning officer, and return the polling bags containing election material and ballots to the returning officer.

Each polling station includes no more than four voting booths, which are administered by an assistant presiding officer and two polling officers. Generally these officials are also teachers. Every competing candidate is allowed to designate a party agent for each voting booth to observe the process.

The delegation heard allegations that the CEC appointed returning officers, assistant returning officers and presiding officers on the basis of political loyalties and that it failed to appoint judges to the position of assistant returning officer. While some assistant returning officers were not judges, information on whether judges were in fact available for these positions or what effect the lack of judicial qualification had on the ability of these officials to perform their duties was difficult to obtain. In addition, the PDA cited a 1986 law that allowed the Punjab chief minister to appoint judges who had not undergone the standard application procedures as evidence that the potential for abuse existed.

These allegations concerning the appointment of election officials were hard to assess. The use of judges as senior election officials, however, constitutes an important safeguard in the electoral system. A pattern of non-judicial appointments, therefore, could undermine the independence of the election process.

Approximately 1,500 voters were assigned to each polling station of which there were more than 33,500 throughout the country. Most stations were segregated by gender with polling officials also assigned, in most cases, according to gender. Constituencies contained, on average, 160 polling stations. Non-Muslims voted on the same day using different ballots and generally in separate polling places.

Most voting stations were located in schools or other government buildings. This controlled space allowed the election officials to limit access to polling stations to one entrance and to place the voting booths in separate but contiguous rooms. (See Chapter 5 for details on the procedures as observed on election day.)

### **E. Delimitation**

Under the Delimitation of Constituencies Act, the Election Commission constructs constituencies for Muslim seats according to the "distribution of population, including non-Muslims, in geographically compact areas" taking into account "existing boundaries of administrative units, facilities of communication, . . . public convenience and other cognate factors to ensure homogeneity in the creation of constituencies."

Between 1988 and 1990, the CEC redrew the boundaries for four National Assembly constituencies. According to the Commission, redistricting was limited, given the truncated preparation period and the vacancies on the Commission. The new constituencies were designed to ensure that a single constituency did not cross a district boundary, as set forth in the law. The major controversy regarding this process involved the redrawing of National Assembly (NA) constituencies 157, 158, 160 and 161. The PDA claimed that these constituencies were redrawn in a manner that benefitted caretaker Prime Minister Jatoi, who had been badly defeated in NA 158 in 1988.

## **F. Voter Registration**

The 1973 Constitution empowers the Chief Election Commissioner to prepare electoral rolls and to revise them annually. The constitution provides that a person is eligible to be enrolled in an electoral area if he/she is: 1) a citizen of Pakistan; 2) not less than 21 years of age on the first day of January of the year in which enrollment takes place; 3) not declared by a competent court to be of unsound mind; and, 4) deemed . . . to be a resident of the electoral area.

According to the CEC, the existing rolls were prepared in 1986-87. They were revised in 1988, but not in 1989 because, according to the CEC, the necessary funds to conduct this revision were not provided by the government. A new revision was scheduled to begin on August 12, 1990, but it was postponed once elections were called for October. Under the Electoral Rolls Act, the registration rolls close on the date that an election is announced. This practice is intended to deter political parties from padding the rolls for a particular election.

The number of voters included on the rolls for the 1990 elections was 48,648,960, an increase of 587,920 over the total eligible for the 1988 elections. While this amounts to an average increase of approximately 2,707 per National Assembly constituency, the PDA alleged prior to the elections that NA 158 alone increased more than 20,000. One not entirely convincing explanation for this increase stated that it was due to the new boundaries for NA 158.

## **G. Allocation of Party Symbols**

Due to low literacy rates, symbols as well as names are used on ballots. Political parties are allocated symbols by the CEC, which they then use throughout the country. The symbols play an important role in campaign materials with many signs, posters and banners displaying the symbol more prominently than the parties or candidates' names. (See Appendix XI.)

In 1988, the allocation of the symbols became mired in controversy when the CEC decided not to award any party the symbol

that it had used in past elections. The PPP objected to this decision and requested that the president reverse the CEC's ruling. The president rejected the PPP's request and the PPP was assigned an arrow, in place of its traditional symbol, the sword.

In 1990, the CEC's allocation of symbols did not provoke objections. The CEC assigned the PDA an arrow and the IJI a bicycle.

## **H. The Complaints and Petitions Process**

The election laws provide four mechanisms for parties or candidates seeking redress for alleged improprieties, depending on the point during the process at which such complaints are made: 1) pre-election complaints are filed with the CEC; 2) election day challenges are presented to the presiding or returning officers; 3) post-election complaints are also filed with the CEC; and, 4) formal election petitions are filed with the CEC and then referred to an Election Tribunal.

Before election day, parties or individuals may file complaints with the CEC. The law does not require these complaints to be recorded on a specific form or to follow a specific format. During the pre-election period, the CEC has unlimited power to investigate these complaints and to impose punishments of contempt on any person who violates a CEC order. The Commission, however, does not investigate complaints independently; it relies upon information provided by other government departments, returning officers, provincial election commissioners, and the civil servants in the CEC.

On election day, a political party agent may challenge an individual voter if the agent believes that the individual is misrepresenting his/her identity or should not be on the election register. If the challenged individual can provide additional evidence that satisfies the accusing party agent, he/she may vote normally. If he/she cannot satisfy the challenger, the individual may vote, but the serial identification number of his/her ballot is marked, the ballot is placed in a separate envelope and the challenge is reviewed by the returning officer.



Following the election and for 60 days after the "gazetting" (publication) of the official results, candidates can file complaints with the CEC. The Commission hears these complaints – which generally request recounting or repolling – but will only act on them if the complainant establishes a *prima facie* case. If the complainant cannot meet this threshold, he/she may file an election petition. If the complaint is received prior to the gazetting of the official results, the CEC may withhold the results for that particular constituency until the complaint is decided. The Commission has the authority to order repolling or recounting in a given constituency.

After the gazetting of the official results and for 45 days thereafter, parties or individuals may file petitions with the CEC. These petitions are formal pleadings, similar in form to a pleading in a civil suit. They must state allegations, list witnesses and supply documents of proof. If the evidence provided in any given petition is deemed sufficient for review, the Commission refers the petition to an election tribunal. The tribunal may dismiss the petition with only a hearing. It may also invalidate the results in a given constituency, declare a new winner, or order repolling or recounting.