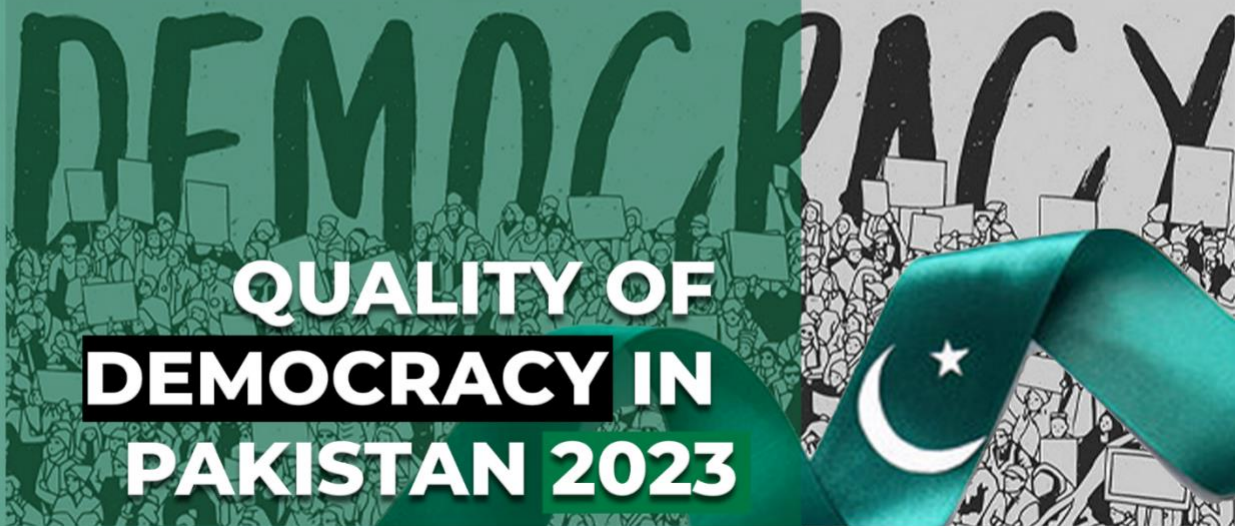


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**QUALITY OF  
DEMOCRACY IN  
PAKISTAN 2023**

**ANOTHER ROUGH YEAR FOR  
PAKISTAN'S DEMOCRACY**



**REPORT 2023**



## **Contents**

*Abbreviations and Acronyms*

*Executive Summary*

Reincarnation of Populists

How May 09 Shaped Pakistan's Troubled Democracy?

The Saga of the 12<sup>th</sup> General Election

Parliamentary Performance

The Senate of Pakistan

Pakistan Provincial Assemblies

The Credibility of the ECP

Transition at the Supreme Court

Free Media under Siege

Trials of Civilians under Military Courts

Role of the President

A Hybrid Regime or Optical Illusion?

## **Abbreviations and Acronyms**

ANP	Awami National Party
BAP	Balochistan Awami Party
CEC	Chief Election Commissioner
COAS	Chief of Army Staff
ECP	Election Commission of Pakistan
ISPR	Inter-Services Public Relations
LHC	Lahore High Court
PML-N	Pakistan Muslim League - Nawaz
PPP	Pakistan Peoples Party
PTI	Pakistan Tehreek-e-Insaf
PTM	Pashtun Tahaffuz Movement
RSF	Reports san Frontières (Reporters without Borders)
SC	Supreme Court
SIFC	Special Investment Facilitation Council

## ***Executive Summary***

Democracy in Pakistan is stuck in a familiar and deepening rut at the end of 2023. The past year has only made the hoped transition towards improved democracy that much harder for the country now called *an electoral autocracy by some international democracy rating think tanks*.

Remedies and lessons are obvious but the people who have the power and capacity to pull the country out of the rut have not taken the right steps for the last ‘seventy years’, borrowing the phrase of former Chief of Army Staff, Gen. (Retired) Qamar Javed Bajwa used while referring to his institution’s interference in the country’s political affairs. The transition could be initiated with a simple change of perspective and by marshalling the required will.

As an organisation consisting of Pakistanis for the betterment of Pakistan’s democracy, PILDAT has advised the decision-makers consistently to do the right thing by the Constitution for over two decades. Our counsel, and our efforts of capacity-building and engagement with political parties have been the same.

Deferring course correction, may not be an option much longer. It may be a luxury the country of young Pakistanis cannot afford.

The only option available is to urgently design and execute a transition from the hybrid system to a normal, functional democracy. Will the coming election and the post-election arrangement provide a flip to move in that direction? It is difficult to be optimistic but on the first day of the new year, we re-dedicate ourselves to continue working for a democratic Pakistan despite the challenges on the horizon.

## Reincarnation of Populists



When on December 19, US State Colorado’s Supreme Court ruled that former US President Mr. Donald Trump was ineligible to run for President and could not appear on the State’s primary ballot, a familiarity with the situation was felt by many in Pakistan where former Prime Minister Mr. Imran Khan, incarcerated since August 5, stands disqualified from politics. The key legal difference of course is that while Mr. Khan is disqualified for “corrupt practices,”<sup>1</sup> Mr. Trump is disqualified through the US Constitution’s ‘insurrection’ clause.<sup>2</sup>

While a final decision on his electoral fate is still away as he faces several other legal issues including criminal charges, Mr. Trump’s conviction has come due to his alleged role in the January 6 US Capitol riot nearly three years ago. Mr. Imran Khan also has no shortage of legal woes that his supporters term as completely trumped-up, the most lethal charge against him is inciting his party loyalists and supporters to attack various military installations across the country on May 09.

Despite the similarity between their legal afflictions, the difference could not be starker when a former US President is accused of instigating his supporters to attack the citadel of US democracy, Capitol Hill or the US Congress, Pakistan’s former Prime Minister is accused of crossing the Rubicon by turning his party against his former benefactors and assaulting the symbols of State’s security apparatus termed by the official military spokesperson and readily endorsed by the civil government as Pakistan’s ‘black day.’<sup>3</sup>

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<sup>1</sup> Umer Burney, Imran Gabol, “Imran arrested after Islamabad court finds him guilty of ‘corrupt practices’ in Toshakhana case,” *Dawn* online, August 5, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1768528>.

<sup>2</sup> Madeline Halpert and Brandon Drenon, “Colorado Supreme Court kicks Trump off ballot, citing ‘insurrection’,” *BBC* online, December 20, 2023, accessed December 21, 2023. <https://www.bbc.com/news/world-us-canada-67768873>.

<sup>3</sup> Sanaullah Khan, “Civil, military leaders decide to observe May 9 as ‘Black Day’ nationally,” *Dawn* online, May 16, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1753698>.

Another comparison between the two former leaders that cannot be overlooked is they both personify a brand of populism ill-suited to the challenges of both countries. Their perceived steady popularity puts into perspective an uncomfortable reality for democracy: that populists can and do hold a large sway on public opinion and passions just by grand yet empty slogans and demagoguery. If populists can invoke such passions in people without much scrutiny of their restrictive brand of politics, it forewarns disastrous consequences for pluralistic and inclusive democracy.

### **How May 09 Shaped Pakistan's Troubled Democracy?**



The condemnable violence and vandalism of May 09 was the culmination and not the beginning of Mr. Imran Khan's severance of his and his party's once strong ties with their benefactors in the Pakistan Army whose support brought the PTI into power and Mr. Khan installed in the office of Prime Minister in 2018. His legal ouster from the office of Prime Minister through a successful no-confidence motion in April 2022<sup>4</sup> inadvertently helped him shed his growing public disapproval towards soaring popularity as he blamed the United States in cohort with the then-leadership of the Pakistan Army to ease him out as PM.

The change in guard in the office of the Chief of Army Staff (COAS) in November 2022 seemed to further solidify the rift between Mr. Khan and the leadership of the Pakistan Army as Mr. Khan continued an inconsistent policy of outright condemnation and offer of direct talks alternatively. Though he maintained that he had no direct role in inciting his supporters to attack military installations on May 09, he went on to blame the Army Chief as the sole reason behind his May 2023 arrest and said that the COAS *"is worried that if I come to power, I will de-notify him. Which, I tried my best to send him a message, I will not. All this is happening is direct orders from him. He is the one who is convinced that if I win, he will be de-notified."*<sup>5</sup>

On July 30, Prime Minister at the time, Mr. Muhammad Shehbaz Sharif went as far as to say that the May 9 conspiracy was hatched against the Chief of Army Staff to trigger a civil war in the country.<sup>6</sup> *"9 May tau aik Pakistan ke khilaf sazish thi; woh afwaj-e-*

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<sup>4</sup> Fahad Chaudhry, "Imran Khan loses no-trust vote, prime ministerial term comes to unceremonious end," *Dawn* online, April 09, 2022, accessed December 21, 2023.

<https://www.dawn.com/news/1684168>.

<sup>5</sup> Amir Wasim, "Former PM Imran blames army chief for arrest episode," *Dawn* online, May 13, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1752783>.

<sup>6</sup> "Exclusive Interview With PM Shehbaz Sharif – Saleem Safi – Jirga – Geo News," *Geo News* online, July 30, 2023, accessed August 09, 2023. <https://www.youtube.com/watch?v=bcMVM17tM34>



*Pakistan ke khilaf sazish thi; woh sipah salaar General Asim Munir ke khilaf sazish thi ke uss din Imran Niazi jo ke sarghana tha uss sazish ka aur us ke hawari, jis mein khawateen bhi hain, mard bhi hain, jis mein iss ka siyasi jatha woh bhi shamil tha, kuch fauji bhi thay, un ke khandan ke afraad bhi thay, uss din ye plan tha, inthehai qabih, aik sazish thi ke Pakistan ki fauj ka takhta ulat dein, aur Pakistan mein anarchy ho jaey aur Pakistan mein civil war ho jaey. Yeh tha plan.”*

[What happened on May 09 was a conspiracy against Pakistan, against the Armed Forces of Pakistan and against Chief of the Army Staff General Asim Munir. Imran Niazi was the leader of that conspiracy which included his followers including both women and men, and armed band of his party; it also included some military men including some members of their family. The dangerous plan and reprehensible conspiracy on that day (May 09) was to overthrow the leadership of the Pakistan Army so that anarchy and civil war could erupt in Pakistan.]

In response to a question whether what he said was based on his information or his analysis, Prime Minister responded that he said this on the basis of 100 % evidence. *“Mein bilkul 100 feesad aik reliable information ki bunyad pe baat kar raha hoon,”* he said. [I am stating this on the basis of 100% reliable information.]

Ironically, it is a clash between two personalities again which has come to define the latest crisis of democracy in the South Asian nuclear power, home to nearly 250 million. In 76 years of Pakistan’s existence, the Pakistan Army has alternated between direct ouster of elected civilian governments through four (4) direct coup d’état and propped one popular leader and ousted another based on personalised likes and dislikes. In this dangerous game, hardly any regard has been given to public’s sentiments whose support provides the critical trust base for the military with unimaginable cost to the neutrality and standing of the institution.

As a result, political parties and popular leaders continually suffer from a crisis of confidence as their political fate depends not on their popularity or the cogence of their governance policies but how adept they are at keeping the GHQ positively engaged and play second fiddle. The cyclical political process in Pakistan also forces political campaigns to oscillate between pro and anti-establishment and not focussed on serious solutions to Pakistan’s economic and governance issues. In this never-ending charade, Pakistan’s citizens and their prosperity remains at ultimate loss. Neither the Army is learning to steer clear of politics and focus solely on the security domain defined in the Constitution, nor the politicians have agreed on an unbreakable set of rules to never seek or receive the Army’s support for coming into power. Pakistan suffers but its political players, constitutional and unconstitutional, have refused to learn any lesson.

## **The Saga of 12<sup>th</sup> General Election**

According to the Constitution, the 12<sup>th</sup> General Election was due to be held in Pakistan by October 2023 after the 15<sup>th</sup> National Assembly and four Provincial Assemblies elected in 2018 were due to conclude their respective 5-years terms. However, with his Prime Ministerial term truncated in April 2022 and his desire to cash-in on his perceived rising popularity, Mr. Imran Khan demanded an earlier General Election in 2022. In his failure to force the meeting of his demand, Mr. Khan advised his party’s Chief Ministers in Punjab and Khyber Pakhtunkhwa to dissolve the two Provincial

Assemblies before the conclusion of their terms. His political gamble, which resulted in dissolution of the Punjab and KP Provincial Assemblies in January 2023, did not yield desired results. Earlier in 2022, Mr. Imran Khan had advised PTI MNAs to resign from the membership of the National Assembly though the decision was retracted by him without much effect on January 16, 2023 as these were accepted by Speaker National Assembly in batches spanning over the year.<sup>7</sup>



The issue of holding General Election to the Punjab Assembly rather controversially was taken up by the Supreme Court under then Chief Justice Umar Ata Bandial in a *suo motu* notice.

An earlier decision made by a bench headed by Justice Bandial on interpreting Article 63-A of the Constitution had cast long shadows leading later to early dissolution of the Provincial Assembly of the Punjab by the PTI government on January 14, 2023. In its verdict on May 17, 2022, the Supreme Court had declared that votes cast by legislators in violation of their party's stance must not be taken into account while determining the outcome of a motion.<sup>8</sup> This verdict was described as 're-writing the constitution' by many including one of the fellow judges on the bench who did not agree with the judgment.

In the *suo motu* notice on Punjab Assembly election, the Supreme Court first held in a 3-2 verdict on March 1, 2023, that elections to the Punjab and Khyber Pakhtunkhwa Assemblies should be held within 90 days and fixed 14 May, 2023 as the date for holding polls of Punjab Assembly. However, a powerful view existed that the Supreme Court three-member bench which gave the verdict was not authorised to hear the case or pass a judgement after the four judges who were part of the earlier seven-member bench, dismissed the petitions and declared that the Supreme Court was not

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<sup>7</sup> Saqib Virk, "NA speaker in volte-face on PTI resignations," *The Express Tribune*, January 27, 2023, accessed August 22, 2023. <https://tribune.com.pk/story/2396384/na-speaker-in-volte-face-on-pti-resignations>.

<sup>8</sup> Nasir Iqbal, "Defectors' votes on motion don't count, SC holds," *Dawn* online, May 18, 2022, accessed August 3, 2023. <https://www.dawn.com/news/1690249/defectors-votes-on-motion-dont-count-sc-holds>.



authorised to assume jurisdiction while high courts in Lahore and Peshawar were hearing the case.<sup>9</sup>

As the Federal government, the ECP and the Parliament dragged their feet on holding staggered elections, the SC finally issued its detailed verdict on August 4, 2023 and held that it was the responsibility of the ECP to hold election within 90-days as per Article 224(2) of the Constitution.<sup>10</sup> However, despite a messy and prolonged legal battle, elections were not held within 90 days.

In an apparent bid to delay the 12<sup>th</sup> General Election further, the 15<sup>th</sup> National Assembly of Pakistan was dissolved by the President of Pakistan upon the advice of outgoing Prime Minister Mr. Muhammad Shehbaz Sharif on August 9, 2023 just three (3) days before it was to complete its five (5) year term to push the timing of General Election by additional 30 days.

Towards the end of September, without appointing a firm date of the 12<sup>th</sup> General Election, the ECP announced that General Election would be held in the last week of January 2024.<sup>11</sup> Its own announced period was inexplicably cast-aside by the ECP itself as it proposed February 11, 2024 for GE during a hearing in the Supreme Court presided by Chief Justice Qazi Faez Isa. The SC asked the Chief Election Commissioner (CEC) to consult with the President after which February 8 has been appointed as the date for next General Election.<sup>12</sup>

But the date announced as ‘set in stone’ by the Chief Justice once again encountered issues after a Lahore High Court (LHC) decision stayed the appointment of District Returning officers (DROs), Returning Officers (ROs) and Assistant Returning Officers (AROs) from the executive. On December 15, a Supreme Court bench headed by CJP Isa suspended the LHC decision and ordered the ECP to notify the schedule of General Election to be held on February 08, 2024.<sup>13</sup>

Delay in holding of the General Election has meant an unusually prolonged role in office of the five (5) caretaker governments in Pakistan. While the Punjab and KP caretaker governments were appointed in January 2023 and continued beyond the maximum period mandated by the Constitution, the federal caretaker government also met the same fate of being in office for a longer period. This has raised valid concerns that continuation of unelected caretaker governments for extended periods runs counter to the spirit of democracy and the Constitution as it defines in its

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<sup>9</sup> Ahmed Bilal Mehboob, “COMMENT: Where do we go from here?” *Dawn* online, April 5, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1745995/comment-where-do-we-go-from-here>.

<sup>10</sup> “Five year Performance of 15th National Assembly of Pakistan August 13, 2018-August 09, 2023,” *PILDAT* online, August 26, 2023, accessed December 21, 2023. <https://pildat.org/parliamentary-monitoring/five-year-performance-of-15th-national-assembly-of-pakistan-2018-2023>.

<sup>11</sup> Irfan Sadozai, “ECP says elections to be held in last week of January,” *Dawn* online, September 21, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1777085>.

<sup>12</sup> Nasir Iqbal, “ECP agrees to hold elections on Feb 8,” *Dawn* online, November 3, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1786006/ecp-agrees-to-hold-elections-on-feb-8>.

<sup>13</sup> Nasir Iqbal, “Timeline issued after SC steps in to rescue Feb 8 poll date,” *Dawn* online, December 16, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1798241>.

preamble where it is stated that “...the state shall exercise its powers and authority through the chosen representatives of the people.”<sup>14</sup>

During a visit to the United States where the Chief of the Army Staff also held a meeting with the Pakistani-American businesspersons, Gen. Syed Asim Munir was quoted as saying that ““As far as I know general elections will be held on the 8th of February.” He also said that “if elections get delayed .. it won’t be beyond the limit when Senate elections are to be held,” by March 2024.<sup>15</sup>

Mr. Imran Khan, who earlier alleged that Pakistan's military is “petrified” of election<sup>16</sup> and his party was deliberately being dismantled, also pledged to summon the former Chief of Army Staff, Gen. (Retd.) Qamar Javed Bajwa and a U.S. embassy representative in his trial for allegedly leaking state secrets.<sup>17</sup> The case, however, was practically dismantled by a Supreme Court bench chaired by Justice Sardar Tariq Masood and comprising Justices Athar Minallah and Syed Mansoor Ali Shah that ordered granting bail to Mr. Khan and former Foreign Minister Mr. Qureshi and said that the court found “no sufficient incriminating material available at this stage” and was “of the tentative opinion that there are no reasonable grounds for believing, at this stage, that the petitioners have committed the offence” punishable under Section 5(3) of the Official Secrets Act.”<sup>18</sup>

The PTI, or whatever was left of it in the aftermath of May 9, received another major blow as the ECP in a verdict on December 22, decided against letting the PTI retain its ‘bat’ electoral symbol for the February 8 General Election.<sup>19</sup> In an unusual move, the ECP voided the PTI’s intra-party elections for a second time following strict examination of the polls process. The PTI, as a result, was to suffer from the consequences of the decision that would make the PTI candidates to only contest election as independent candidates, not be bound by the rule of party discipline and the party losing seats reserved for women and non-Muslims.<sup>20</sup> The party, however, got relief through the Peshawar High Court which suspended the ECP order.<sup>21</sup>

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<sup>14</sup> Ahmed Bilal Mehboob, “Dismissing the Constitution,” *Dawn* online, September 09, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1774812/dismissing-the-constitution>.

<sup>15</sup> “General elections to be held on Feb 8: Gen Asim Munir,” *Pakistan Today* online, December 21, 2023, accessed December 24, 2023. <https://www.pakistantoday.com.pk/2023/12/21/general-elections-to-be-held-on-feb-8-gen-asim-munir/>.

<sup>16</sup> Charlie Haynes and Derek Cai, “Imran Khan: Pakistan military is 'petrified' of elections,” *BBC* online, August 3, 2023, accessed December 21, 2023. <https://www.bbc.com/news/world-asia-66391332>.

<sup>17</sup> Ayaz Gul and Sarah Zaman, “Pakistan's Khan Pledges to Make Ex-Army Chief, US Officials Part of Ongoing Trial,” *VoA News*, December 4, 2023, accessed December 21, 2023. <https://www.voanews.com/a/pakistan-khan-pledges-to-make-ex-army-chief-us-officials-part-of-ongoing-trial-/7383839.html>.

<sup>18</sup> Haseeb Bhatti, “SC approves Imran, Qureshi’s bail in cipher case,” *Dawn* online, December 22, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1799939>.

<sup>19</sup> Irfan Sadozai, “ECP decides against letting PTI retain ‘bat’ as electoral symbol,” *Dawn* online, December 22, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1800000/ecp-decides-against-letting-pti-retain-bat-as-electoral-symbol>.

<sup>20</sup> Kalbe Ali, “PTI, ECP both found at fault,” *Dawn* online, December 24, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1800318>.

<sup>21</sup> Abdul Hakeem, “Peshawar High Court suspends ECP order stripping PTI’s ‘bat’ symbol,” *Dawn* online, December 26, 2023, accessed December 27, 2023. <https://www.dawn.com/news/1800848>.

As the process of filing of nomination papers by electoral candidates drew to a close on December 24, media aired complaints of the PTI candidates being denied their right to file nomination papers, facing obstacles and of police raids and state intimidation targeting their families.<sup>22</sup>

In report issued by the PTI on December 26, 2023 titled *Widespread Pre-Poll Rigging Rattles Pakistan: Reports of Arrests, Abductions and Harassment*, the party catalogued the issue encountered by the party's head and leaders faced in submitting nomination papers by the deadline of December 24. In the report, the party complained of "yet another reprehensible display of unabashed fascism and a shameless assault on democracy," a "disturbing and calculated campaign of pre-poll rigging aimed squarely" at the PTI candidates. "This nauseating pattern unfolds across diverse regions, painting a chilling picture of a systematic and concerted effort to stifle opposition voices and, in turn, corrode the very foundations of the electoral process," commented the party.<sup>23</sup>

The statistics of the candidates' nomination papers released by the ECP at the end of the period for filing nomination papers, however, indicate about 30% increase in the number of candidates for the upcoming election compared to the 2018 election. Although several cases of attempted snatching of nomination papers and forcibly obstructing their submission were reported in the media, there was no report of a candidate who was unable to file nomination papers.

Leader of the Pakistan Muslim League–Nawaz (PML-N) Mr. Nawaz Sharif, who was disqualified from holding public office in 2017 and was sentenced in the Avenfield apartment and Al-Azizia Steel mill, cases have been acquitted. His political fortunes appear to be getting the required nudge from the establishment's support that earlier helped towards his disqualification but now seem poised towards his electoral victory. With the passage of the amendment in Section 232 of the Elections Act by the Parliament which has fixed the period of disqualification to five years, he appears all set to contest the upcoming GE and hold public office if elected as he awaits the SC judgment on the issue.<sup>24</sup>

As Pakistan prepares to hold yet another General Election, the prospect of its fairness appears just as bleak as the 2018 General Election largely agreed to be a manipulated election. Despite the oft-repeated interference in the political process, leading political parties appear "addicted to the establishment's patronage"<sup>25</sup> to win a managed public popularity and form fractured governments. The outgoing Chief of Army Staff, rather conveniently and belatedly publicly admitted to the Pakistan Army's interference in

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<sup>22</sup> "Hollowed Out," Dawn online, December 24, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1800372/hollowed-out>.

<sup>23</sup> "Widespread Pre-Poll Rigging Rattles Pakistan: Reports of Arrests, Abductions and Harassment," *Pakistan Tehreek-e-Insaf* online, December 26, 2023 accessed December 26, 2023. <https://insaf.pk/news/widespread-pre-poll-rigging-rattles-pakistan>.

<sup>24</sup> Ahmed Bilal Mehboob, "Rehabilitating Nawaz," *Dawn* online, December 24, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1800368/rehabilitating-nawaz>.

<sup>25</sup> Ahmed Bilal Mehboob, "Is there a way out?" *Dawn* online, March 4, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1740327/is-there-a-way-out>.

the political and electoral processes.<sup>26</sup> Despite the acknowledgment, no one appears willing to learn from past mistakes and step completely away from politics.



## Parliamentary Performance

### 15<sup>th</sup> National Assembly of Pakistan

The 15<sup>th</sup> National Assembly of Pakistan was set to complete its 5-year term on August 12, 2023 but it was dissolved three-days before on August 9, in order to push forward the holding of General Election by another 30-days.

Conclusion of the 5-year term of the 15<sup>th</sup> National Assembly left democracy just as vulnerable and manipulated when the Assembly members took oath on August 12, 2018. The National Assembly and its members allowed themselves to be manipulated by one elected government to the other, with active control of the establishment, in carrying out basic functions such as legislation. A look at the Assembly's legislative performance shows that either the Assembly hastily legislated on the pressure of the executive or in fulfilling foreign obligations. Outgoing Prime Minister Mr. Imran Khan, after his ouster from power, publicly claimed that he required and used the help of the country's intelligence agencies to bring his own coalition MNAs to the House to pass legislation and even Federal Budgets.

The 15<sup>th</sup> National Assembly has also had the unique experience of the first-ever successful passage of Vote of No-Confidence (VoNC) in Pakistan's parliamentary history against a Prime Minister. Even though two previous Prime Ministers had faced votes of no confidence against them but those had remained unsuccessful. As a result, the Assembly witnessed two governments: the first from August 18, 2018 to April 10, 2022 with the PTI Chairman Mr. Imran Khan as Prime Minister (PM), while the second government was formed by a coalition of the PDM and the PPP with Mr. Muhammad Shehbaz Sharif as PM which lasted from April 11, 2022 to August 09, 2023.

Another first was the rejection of the no-confidence motion using Article 5 of the Constitution and Prime Minister Imran Khan's advice to the President to dissolve the 15<sup>th</sup> National Assembly before the Supreme Court set it aside as being contrary to the Constitution and of no legal effect.

In legislative activity, the 15<sup>th</sup> National Assembly passed 279 laws in 5 years which are the highest compared to previous three Assemblies starting from 2002. However, the manner of legislation undermined basic tenets of Parliamentary Democracy as most bills were passed without debate and scrutiny of the committees. The PTI government relied heavily on ordinances for the purpose of legislation. Out of 75 ordinances laid in the Assembly in 5 years, only 3 were promulgated by the coalition government while 72 were promulgated by the PTI government.

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<sup>26</sup> "State of Democracy in Pakistan, 2022," *PILDAT* online, January 01, 2023, accessed December 24, 2023. <https://pildat.org/assessment-of-democracy1/state-of-democracy-in-pakistan-2022>.

The Assembly met for a mere 452 sittings or average 90 sittings per year in 5-years. It consumed a total of 1,245 working hours in 5 years or on average 249 working hours per year. This brought the average working day to be a mere 2 hours and 45 minutes during five years of the 15<sup>th</sup> National Assembly. It is no surprise then that the Assembly could merely dispose-of less than half of its planned daily agenda as more than half (50.53%) of the agenda items scheduled for sittings held during 5 years were left over on average.

Average attendance of MNAs was recorded at 61% in 5-years. It must be noted that cost per MNA to the taxpayers stands at PKR 20.52 million in five years of the 15<sup>th</sup> National Assembly. As PM, Mr. Imran Khan attended just 11% attendance while Mr. Muhammad Shehbaz Sharif attended only 17% sittings.

While previous Assemblies also witnessed bitter treasury-opposition relationship, this was the first time that the leading opposition party decided to quit their elected representation from the Assembly altogether after the defeat of VoNC akin to throwing toys out of the pram. This decision that violated the very basis of democratic representation was understood to be a colossal mistake by most but was realised too late by the PTI as it robbed the National Assembly of the opposition and itself of the opportunity to be an important player in making critical future appointments such as the chair of the NAB and a neutral caretaker Prime Minister.

Earlier in the 3 years and 8 months of the PTI-led reign, the Federal Government ensured there was little use for the opposition in the National Assembly. As Prime Minister, Mr. Imran Khan chose not to rise above his dislike for leading opposition figures and instead resorted to severely restricting the efficiency and effectiveness of the Assembly. His liberal use of choice words for the opposition leaders and obdurate attitude towards engagement not only hamstrung consensus-based legislation on national and international issues, it also compromised required and unified national positioning in the face of serious regional and security crises facing Pakistan. As inconceivable as it appeared at the time, he even opted to avoid fulfilling binding constitutional and legal obligations and did not hold formal consultation on statutory appointments such as membership of the ECP and promulgated an ordinance just to avoid consultation on appointment of NAB chairperson.

Before it finally found an opportunity to overthrow the PTI government, the joint opposition in the National Assembly too limited itself largely to agitation, sloganeering, walkouts, tearing up Assembly documents and shouting at Ministers, Prime Minister and even the President. Basic reform such as constituting shadow cabinets in individual parties or the joint opposition in the National Assembly was not carried out and the Opposition remained mostly unprepared to oversee the government on substantial policy and legislative issues.

During its life between 2018-2023, the 15<sup>th</sup> National Assembly witnessed many major national issues and crises. Of these, the overarching issue of public concern was economy and economic stability of the country followed by issues of law and order, poor governance, regional instability, foreign relations and domestic issues relating to functioning of State institutions outside of their constitutional domain. However, the 15<sup>th</sup> National Assembly either remained irrelevant in unfolding national issues and crises or it chose not to play the leading role envisaged by the Constitution in addressing, reviewing and resolving these.



As the only representative national legislature based on the country's population, the performance of the National Assembly leaves a lot to be desired. In fact, it's working creates a serious crisis of legitimacy of representative democracy in Pakistan. While we lament that no Prime Minister has been able to complete the full five-year term in our national history, it is important to question, and to reform, what successive National Assemblies do and must accomplish in order to ensure an effective, functioning and stable democratic Pakistan.<sup>27</sup>

## The Senate of Pakistan



The Senate of Pakistan is set to complete its next parliamentary year in March 2024. The Senate can be credited with publishing its own annual performance reports though that has been less of an impetus to improve performance.

As has been the case with our Parliamentary institutions, the Senate can take little pride in taking take stock of the role it played, if at all, in navigating the political and economic crises as a house with equal representation from all provinces of Pakistan. Despite the worsened crises facing the country, the Senate could not evolve beyond a debating club where, instead of initiating and leading a meaningful engagement on policy issues, its sessions remained just as mired in partisan political blame-game, infighting and political mocking of opponents. With another year passed, there is little that the Senate can credit itself for in terms of any efforts to regain its power and authority.<sup>28</sup>

During its parliamentary year starting from March 12, 2023, the Senate of Pakistan has held 7 sessions by the end of 2023 while it has only met for 39 actual sittings. The House has passed 78 pieces of legislation. The average attendance of Senators stood at 56 during 2023.

As Prime Minister, Mr. Muhammad Shehbaz Sharif did not attend any sitting of the Senate. In his three years and 8 months in office as Prime Minister, Mr. Imran Khan had only attended 1 sitting of the Senate.

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<sup>27</sup> "Five year Performance of 15th National Assembly of Pakistan August 13, 2018-August 09, 2023," *PILDAT* online, August 26, 2023, accessed December 21, 2023. <https://pildat.org/parliamentary-monitoring1/five-year-performance-of-15th-national-assembly-of-pakistan-2018-2023>.

<sup>28</sup> "The Senate of Pakistan: Parliamentary Year 2022-2023 – A Citizens' Report on Performance," *PILDAT* online, April 15, 2023, accessed December 25, 2023. <https://pildat.org/parliamentary-monitoring1/the-senate-of-pakistan-parliamentary-year-2022-2023-a-citizens-report-on-performance>.



## Pakistan's Provincial Assemblies

Since the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa were prematurely dissolved on January 14 and January 18, 2023 respectively, both remained functional only for 4 years and 5 months. Upon the conclusion of the 5-year term of the Provincial Assemblies in August 2023, only the Provincial Assembly of Balochistan completed its five-year term and was dissolved on August 12, 2023. The Provincial Assembly of Sindh was dissolved just a day before the conclusion of its term on August 11, 2023.

Much like the Parliament which contributed little to strengthening democracy and democratic governance, poor performance was evident in four (4) provincial assemblies also where there was negligible focus placed on effectively carrying out their functions of public representation, cogent legislation and meticulous oversight of each Provincial government. Each provincial government used Provincial legislatures to rubber-stamp required legislation including the most important provincial budgets.



Even though transparency and access of information to the public in two houses of the Parliament had a lot of room for improvement, Provincial Assemblies, in comparison, have defied all requirements of transparency and public access. PILDAT noted that during their 5-year tenure, Provincial Assemblies wilfully began to regress and withdraw public information from the citizens. Their websites provided scant, outdated and incomplete information for citizens and media alike. Limited access of legislative proceedings of Provincial Assemblies to citizens violates the basic principle of transparency and in turn, promotes a lack of public trust in these assemblies.

Performance analysis of Pakistan's Provincial Assemblies shows that the Sindh Assembly met for the highest number of working hours, i.e., 184 hours and 20 minutes per year and held the highest number of sittings, i.e., 65 sittings per year in 5-years among the four Provincial Assemblies though it ranked last in terms of transparency and access to information for citizens where it secured only 5.5 score out of 11.

The Provincial Assembly of Khyber Pakhtunkhwa passed most laws compared to all other Provincial Assemblies but it ranked last in the attendance of Khyber Pakhtunkhwa's Chief Minister who only joined 20 (8%) sittings of the Assembly out of 248 sittings in 4 years and 5 months. The Khyber Pakhtunkhwa Provincial Assembly also had the lowest budget allocation per working hour amongst all four Assemblies at

PKR 13.3 million. In terms of public access and transparency, the KP Assembly turns out to be the most transparent of the four assemblies by securing 8.5 score out of 11.

The Provincial Assembly of Punjab ranked last in attendance of Leaders of the Opposition who attended only 34 (12%) sittings out of 274 sittings of the Assembly during 4 years and 5 months. The Punjab Assembly has the lowest allocated budget per member, i.e., PKR 8.5 million but it translates into a budget of PKR 26.3 million per working hour which is the highest among all four Provincial Assemblies. Furthermore, the Punjab Assembly, on average, dedicated 11 days to discuss annual budgets per year.

The Provincial Assembly of Balochistan ranked at the top in attendance of the Chief Minister, who joined 75 (31%) sittings out of 241 sittings of the Assembly, and Leader of the Opposition who attended 151 (63%) sittings. The Balochistan Assembly allocated the highest budget per member during five years and it stood at PKR 31.1 million and it ranked last in legislative activity by passing only 19 bills per year on the average, holding only 48 sittings per year, 116 working hours per year and spent only 7 days for budget sessions per year.<sup>29</sup>

### **The Credibility of the ECP**

Dejected perhaps by the majority of General Elections since 1985 as managed affairs, the public in Pakistan does not pose a huge volume of trust in the Election Commission of Pakistan (ECP). A July 2023 public opinion poll by Gallup Pakistan placed the ECP's institutional ratings at 42%, well below the Pakistan Army's at 88%, Media at 56% and Courts at 56%.<sup>30</sup> This is even though ECP today is far better organised and equipped under a CEC and members of the Commission who, unlike the past, are ready to assert their authority and bear the brunt.



Under the PTI government, the ECP was targeted from the top, in a very populist fashion, and vilified after the Senate election of March 2021 and the ECP nullifying the by-election in NA 75 popularly referred to as Daska by-election. Prime Minister Mr. Imran Khan accused the ECP of protecting those who made money by holding the Senate elections through secret ballot alleging that “money was used” in the Senate election and public demanding of resignation from all the five members of the Election Commission of Pakistan. The PTI government made sure that it conveyed that as a party, it did not have confidence in the ECP.<sup>31</sup> A populist stance by a popular leader to

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<sup>29</sup> “Comparison of Five Year Performance of four Provincial Assemblies of Pakistan 2018-2023,” *PILDAT* online, September 10, 2023, accessed December 25, 2023. <https://pildat.org/parliamentary-monitoring1/comparison-of-five-year-performance-of-four-provincial-assemblies-of-pakistan-2018-2023>.

<sup>30</sup> “Survey reveals Pakistan army tops charts with 88% public favor,” *Samaa TV* online, September 09, 2023, accessed December 24, 2023. <https://www.samaa.tv/208731791-survey-reveals-pakistan-army-tops-charts-with-88-public-favor>.

<sup>31</sup> “Five year Performance of 15th National Assembly of Pakistan August 13, 2018-August 09, 2023,” *PILDAT* online, August 26, 2023, accessed December 21, 2023. <https://pildat.org/parliamentary-monitoring1/five-year-performance-of-15th-national-assembly-of-pakistan-2018-2023>.

weaken an important national institution did not help the public opinion. At least in the eyes of independent analysts, the ECP restored and strengthened its credibility and its independence by finally issuing its report on the Daska by-election.

To its credit, the ECP withstood the public pressure from a leading political party as well as the Supreme Court in 2023 until the CEC voiced his opinion in a letter to presiding officers of the Parliament complaining of ‘judicial overbearing’ diluting its Constitutional writ. The letter proposing legal amendment to remove President’s role in appointing date of an election, the CEC lamented that the writ of the ECP had systematically been challenged on several occasions by citing examples of the Daska by-polls in February 2021 and the contempt proceedings initiated by the ECP against PTI leaders and suspension of its orders by high courts, effectively binding the ECP’s hands in the face of brazen attacks. In such a situation where the ECP writ has been time and again perceptibly compromised, the question arises whether the ECP can perform its bedrock duty to conduct free, fair, and transparent elections to the best of its ability in the given environment,” wrote the CEC. <sup>32</sup>

The ECP’s role in holding same-day or staggered election after the dissolution of the Punjab and KP Assemblies was criticised by many, though it found favour from the ruling coalition government. Many argued that there were ample Constitutional provisions for holding same-day General Election including the requirement of caretaker governments as well as the ongoing census at the time.

Perhaps the severest criticism of the ECP in 2023 also came from allowing clearly partisan caretaker ministers and cabinets to continue in office. The most celebrated – or objectionable case is that of Senator Sarfraz Bugti who was politically affiliated with the Balochistan Awami Party (BAP) and served in the federal caretaker government since August 17 to December 13 when he resigned from the post of Interior Minister and joined the Pakistan Peoples Party with the intention to contest GE. <sup>33</sup>

It must be clarified that according to Constitution’s Article 224 (1-B), members of the caretaker Cabinets including the caretaker Prime Minister and the caretaker Chief minister and their immediate family members [spouse and children] shall not be eligible to contest the immediately following elections to such Assemblies.

A similar case happened with the KP Caretaker Government which took oath on January 26, 2023 with well-documented political affiliation of most caretaker ministers. Only when one of the ministers addressed a political party’s public gathering, the ECP sprang into action and advised the caretaker chief minister to sack the minister concerned. When the minister resigned on July 24, after serving for 6-months, the ECP asked the KP chief minister to sack almost the entire cabinet which was involved in partisan politics.<sup>34</sup>

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<sup>32</sup> “Update on The Performance of Democratic Institutions | April 2023,” *PILDAT* online, May 10, 2023, accessed December 24, 2023. <https://pildat.org/inter-institutional-relations/update-on-the-performance-of-democratic-institutions-april-2023>.

<sup>33</sup> “Ex-caretaker interior minister Sarfraz Bugti joins PPP,” *Dawn* online, December 18, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1798894/ex-caretaker-interior-minister-sarfraz-bugti-joins-ppp>.

<sup>34</sup> “Ahmed Bilal Mehboob, “Dismissing the Constitution,” *Dawn* online, September 09, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1774812/dismissing-the-constitution>.

As late as December 22, 2023, Secretary ECP wrote to the Secretary Establishment Division reminding him of submission of compliance report for removal of Mr. Ahad Cheema, Advisor to Caretaker PM on Establishment and invited him for a hearing scheduled for December 26.<sup>35</sup>

The ECP defended its decision of December 22 to disallow the electoral symbol for the PTI by stating that the PTI chose not to follow its own constitution according to which the party was to form a Federal Election Commission to hold intra-party elections. In the record submitted by the PTI, the party did not show that any competent authority had appointed the Federal Election Commission in line with the party's own established procedure. Appointment of a single federal election commissioner was not a requirement of the PTI constitution and such an individual could not exercise any power to hold the intra-party elections in the absence of a complete commission. The earlier ECP order declaring the intra-party elections held by the PTI on June 10, 2022 to be invalid was also criticised as being 'unprecedented' as the ECP had not carried out similar scrutiny for other parties whose intra-party polls are also conducted as a mere formality.<sup>36</sup>

However, in informal statements, the ECP has maintained that election symbols are suspended of at least 10 other political parties including the ANP on intra-party polls and other reasons. On December 21, the ECP had also rejected the ANP's appeal seeking further time for intra-party elections.<sup>37</sup>

Another major lingering issue questioning the credibility of the ECP has been its inability to hold and publicly share an independent inquiry into the sudden dysfunction of the state-of-the-art Result Transmission System (RTS) which came to a standstill in the evening of July 25, 2018, the election-day over 5-years ago. The Secretary ECP at the time, Mr. Babar Yaqoob Fateh Mohammad appeared on TV screens well after midnight to inform the nation that the RTS had "collapsed" as he announced that the ECP was returning to the traditional method of manually tabulating the results and, therefore, there could be an inordinate delay in the release of unofficial results.<sup>38</sup> Even though the ECP initially asked the Cabinet division to form an inquiry committee for failure of RTS, it came to a naught without any developments in 5-years since.<sup>39</sup>

In April 2020, post-retirement, former Secretary ECP was appointed to the lucrative post of chairman of the Federal Land Commission with the status of federal minister by the PTI government<sup>40</sup> raising questions about his complicity in management of the 2018 General Election results.

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<sup>35</sup> "Letter To Cabinet Secretary For Removal Of Biased Federal Cabinet Members," ECP online, December 22, 2023. <https://ecp.gov.pk/press-releases>.

<sup>36</sup> Ahmed Bilal Mehboob, "Scrutinising intra-party polls," *Dawn* online, November 26, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1792662/scrutinising-intra-party-polls>.

<sup>37</sup> Iftikhar A. Khan, "Election Commission rejects ANP's plea seeking time for intra-party polls," *Dawn* online, December 22, 2023, accessed December 24, 2023. <https://www.dawn.com/news/amp/1799764>.

<sup>38</sup> Amir Wasim, "RTS controversy likely to haunt ECP, Nadra for a long time," *Dawn* online, August 2, 2018, accessed December 24, 2023. <https://www.dawn.com/news/1424394>.

<sup>39</sup> Iftikhar A. Khan, "PPP, PML-N unhappy with RTS probe terms of reference," *Dawn* online, August 4, 2018, accessed December 24, 2023. <https://www.dawn.com/news/1424872/>.

<sup>40</sup> Iftikhar A. Khan, "Babar made chairman of Federal Land Commission," *Dawn* online, April 11, 2020, accessed December 24, 2023. <https://www.dawn.com/news/1548206>.



## Transition at the Supreme Court

The reign of Justice Umar Ata Bandial, who served as Pakistan's 28th Chief Justice, onwards of February 2022, came to an end in September 2023. Leading views describing his tenure have been anything but laudatory. Analysts have used the choicest words to describe the partisan nature of his chief justiceship by referring to his period in office of the CJP as 'Justice under Siege'<sup>41</sup> to referring to his time as the CJP as his 'Tarnished Legacy'<sup>42</sup> or as 'Justice Unconscious.'<sup>43</sup>



Perhaps finally mindful of his own divisive rather than an inclusive role as the CJP towards the end, Justice Bandial left his office by publicly saying that his court faced the impact of "bitter" constitutional litigation. He said that "*the court was put to test in a trying contest which was... only hostile and aggressive and as a result we sat back and became [its] victim and suffered in performance.*" He said that the Supreme Court had been put to the test in a hostile and aggressive environment which had affected its performance.<sup>44</sup>

He provided no meaningfulness to his parting words until his last day in office.

Just a day before relinquishing his role as the CJP, he oversaw a bench that ordered the restoration of corruption cases against public office holders on PTI Chairman Mr.

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<sup>41</sup> Asad Rahim Khan, "[Justice under siege: The year of Umar Ata Bandial](https://www.dawn.com/news/1776211)," *Dawn* online, September 16, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1776211>.

<sup>42</sup> Abid Hussain, "The 'tarnished legacy' of Pakistan's retiring top judge Umar Ata Bandial," *Aljazeera* online, September 16, 2023, accessed December 25, 2023. <https://www.aljazeera.com/news/2023/9/15/the-tarnished-legacy-of-pakistans-retiring-top-judge-umar-ata-bandial>.

<sup>43</sup> Abdul Moiz Jaferii, "Justice Unconscious," *Dawn* online, September 16, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1776093/justice-unconscious>.

<sup>44</sup> Nasir Iqbal, "Outgoing CJP Bandial blames 'bitter litigation' for denting SC output," *Dawn* online, September 12, 2023, accessed September 23, 2023. <https://www.dawn.com/news/1775353>.

Imran Khan's 2022 petition challenging amendments made to the National Accountability Ordinance by the Parliament. The 2-1 verdict was dissented by Justice Syed Mansoor Ali Shah and supported by Justice Umar Ata Bandial and Justice Ijazul Ahsan.<sup>45</sup>

Questions were raised on his controversial jurisprudence even before he took oath of office of the CJP. Just after assuming office, his first test was leading a larger bench in April 2022 to unanimously hold dismissing of VONC resolution against Mr. Khan and the subsequent dissolution of National Assembly as unconstitutional and a violation of fundamental rights. Thereafter, he faced another issue but under his leadership a serious constitutional controversy was created when he led the bench that, according to his own colleagues on the bench 're-wrote the Constitution' by interpreting Article 63-A of the Constitution and declaring that votes cast by legislators in violation of their party's stance must not be taken into account while determining the outcome of a motion.<sup>46</sup>

As CJP, Justice Bandial bent or modified rules, chose to look away, risked looking completely partisan, lost control of the Supreme Court and yet resisted appointing a full-court to hear some of those critical petitions involving the Constitution that he himself termed as bitter. The list of cases, as of his flip-flops, ran rather long to accommodate in the snapshot of Pakistan's state of democracy at the end of 2023. Larger, far more detailed volumes are required describing his rule and role as these must be penned down if only for the sake of supremacy of the Constitution in the country.

As a colleague, the role he played towards his fellow judge, Justice Qazi Faez Isa, is well-documented. He oversaw and authorized the witch-hunt that involved Justice Isa's wife using the flimsy pretext of a Presidential reference against Justice Isa orchestrated on the orders of the ISI leadership at the time that even Mr. Imran Khan side-stepped from and regretted supporting after his removal from the office of Prime Minister. When the incoming Prime Minister Mr. Muhammed Shehbaz Sharif had the good sense to withdraw the reference against Justice Isa in March 2023 nearly a year after he took oath of office as PM, Justice Bandial decided to take his sweet time until July 21, nearly 4 months after he received the President's assent, to accept the government's plea to withdraw previous PTI government's curative review petition against Justice Qazi Faez Isa.

It was powerful symbolism when Justice Qazi Faez Isa requested his wife, Ms. Sarina Isa, to be present alongside him during his oath-taking as 29<sup>th</sup> CJP. Ironically, it was President Dr. Arif Alvi who administered oath to Justice Isa while he had previously filed a reference against Justice Isa in May 2019 over alleged misconduct and non-disclosure of assets of his spouse. The 13-month tenure of Justice Isa is due to end in October 2024.<sup>47</sup>

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<sup>45</sup> Haseeb Bhatti, "[SC orders restoration of corruption cases against public office holders](https://www.dawn.com/news/1776008)," Dawn online, September 15, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1776008>.

<sup>46</sup> Nasir Iqbal, "Defectors' votes on motion don't count, SC holds," Dawn online, May 18, 2022, accessed August 3, 2023. <https://www.dawn.com/news/1690249/defectors-votes-on-motion-dont-count-sc-holds>.

<sup>47</sup> Nasir Iqbal, "Symbolism marks Justice Isa's swearing-in as CJP," Dawn online, September 18, 2023, accessed September 25, 2023. <https://www.dawn.com/news/1776510/symbolism-marks-justice-isas-swearing-in-as-cjp>.



As his era unfolds, Justice Isa has initiated many firsts since holding office as the CJP. He appointed Ms. Jazeela Aslam as the first-ever female registrar of the Supreme Court. He also made history by ordering live-streaming of a full court bench hearing on the Supreme Court (Practice & Procedure) Act, 2023 and later oversaw a full-court verdict to declare the law as Constitutional within a month of serving as the CJP. <sup>48</sup>He has taken steps to address issues related to case management and complaints against judges. Under his leadership, the Supreme Court case load of 57,000 cases was reduced by resolving 257 cases within one week of the CJP taking oath. <sup>49</sup>

His latest, and, somewhat controversial, achievement to-date in the context of Pakistan's democracy, has been nudging the reluctant decision-makers to finally appoint a firm date and issue a schedule for the 12<sup>th</sup> General Election to be held on February 08, 2024.<sup>50</sup> The Supreme Court has no constitutional role in appointing the date of the election or in influencing the ECP or the President to do so. To some, the ECP's independence was compromised when it was made to consult the President and announce the election date.

### **Free Media under Siege**



News media of Pakistan including press, electronic or even social media, has not seen an improvement in freedom in 2023. If anything, 2023 proved yet again the silencing of independent voices, the management of media and the propagation of the sickening culture of buying media voices in support of or against a political party or group to sow polarisation and dissent in the society. The game of influence and management of media has been played so many times over the past few decades that it has become an art form.

In trying to stay afloat and to continue in a bid to inform the public, serious media entities have resorted largely to self-censorship from the threat of overbearing control. The dark practice of 'media advice' on placement of stories and statements practised under martial laws has resumed in the newsrooms. Media is not allowed to air images,

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<sup>48</sup> Haseeb Bhatti, "[Law aimed at clipping CJP's wings 'sustained as being constitutional': SC rules in majority verdict](https://www.dawn.com/news/1780502)," *Dawn* online, October 11, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1780502>.

<sup>49</sup> Rubab Zahra, "Supreme Court Clears 257 Cases in a Single Week," *Minute Mirror* online, October 1, 2023, accessed October 06, 2023. <https://minutemirror.com.pk/supreme-court-clears-257-cases-in-a-single-week/>.

<sup>50</sup> Nasir Iqbal, "Timeline issued after SC steps in to rescue Feb 8 poll date," *Dawn* online, December 16, 2023, accessed December 21, 2023. <https://www.dawn.com/news/1798241>.

messages or statements from political leaders newly fallen out of favour like Mr. Imran Khan just as earlier treatment was reserved for Mr. Nawaz Sharif and his daughter. Topics including Balochistan and Pashtun Tahaffuz Movement which were banned from mainstream media coverage are still banned.

Taking channels or anchors off-air continues to be a favourite treatment to silence any dissent. The case of Mr. Imran Riaz Khan miraculously returning home after four months of captivity tell a tale too familiar for those familiar with the control of Pakistan's news media. The mysterious murder of anchor Arshad Sharif remains unresolved after over a year as global media watchdog Reporters Without Borders (RSF) has called for an independent international probe after the United Nations special rapporteurs "deplored" the Pakistani and Kenyan governments for their "failure to cooperate and conduct any serious investigation."<sup>51</sup> Many leading voices of former anchors supporting Mr. Imran Khan's PTI have had to go into self-exile.



In terms of media freedom in global classifications, Pakistan has been ranked at 150 out of 180 with a score of 39.95 by the RSF. Its 2023 index states that "Despite changes in political power, a recurring theme is apparent: political parties in opposition support press freedom but are first to restrict it when in power. Pakistan's media regulators are directly controlled by the government and systematically put in defence of the executive before the public's right to information."<sup>52</sup>

### **Trials of Civilians under Military Courts**

The issue of trials of civilians under military courts gained momentum after the May 09 fiasco. The elected government at the time changed its position on whether the miscreants of May 09 would be tried in military or anti-terrorism courts though the military tried to advocate for civilians' trials under the Army Act and Military Courts.

On May 13, Prime Minister of Pakistan at the time, Mr. Muhammad Shehbaz Sharif announced that cases of those responsible for May 09 "will be tried by the anti-

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<sup>51</sup> "Reporters Without Borders calls for int'l probe into Arshad Sharif case after UN letter to Pakistan, Kenya," Dawn online, December 6, 2023, accessed December 24, 2023.

<https://www.dawn.com/news/1795621>.

<sup>52</sup> "Pakistan, Index 2023," Reporters sans Frontiers, RSF online, accessed December 24, 2023.

<https://rsf.org/en/country/pakistan>.

terrorism courts.”<sup>53</sup> But the ISPR reported on May 20 that the Chief of the Army Staff said that “legal process of trial against planners, instigators, abettors and perpetrators involved in 9 May tragedy has commenced under Pakistan Army Act and Official Secret Act as per existing and established legal procedures derived from the Constitution of Pakistan.”<sup>54</sup> Later, on May 21, Prime Minister announced the government’s decision to prosecute protesters who had attacked civilian infrastructure on May 9 under the anti-terrorism law but those individuals who had vandalized military property would face trial under the Army Act.<sup>55</sup>

In June 2023, the Attorney General had informed the Supreme Court that 102 people were in the Pakistan Army custody relating to May 09.<sup>56</sup> An updated list of 103 civilians was provided to the SC later.<sup>57</sup>

In October 2023, a 5-member Supreme Court bench comprising Justice Ijazul Ahsan, Justice Munib Akhtar, Justice Yahya Afridi, Justice Syed Mazahar Ali Akbar Naqvi and Justice Ayesha Malik declared that trying civilians in military courts for their alleged role in attacks on army installations in May 09 riots were ultra vires the Constitution. The bench had also emphasised that the cases of the suspects involved in the vandalism would proceed before criminal courts.<sup>58</sup>

The SC verdict was challenged by the Federal Caretaker government on the grounds that under the light of the Supreme Court Practice and Procedure Act, the judgement was liable to be set aside for having been rendered without jurisdiction and thus a nullity in the eye of law.<sup>59</sup>

On December 13, a 6-member Supreme Court bench headed by Justice Sardar Tariq Masood and comprising Justice Amin-ud-Din Khan, Justice Muhammad Ali Mazhar, Justice Syed Hasan Azhar Rizvi, Justice Musarrat Hilali and Justice Irfan Saadat Khan suspended the earlier October 23 order and allowed proceedings against May 9 suspects to continue in military courts though it barred from convicting, acquitting suspects until the Supreme Court’s final decision to come after the SC was set to resume hearing on the issue in January 2024. The decision was a 5-1 majority decision with Justice Hilali dissenting from the majority view.<sup>60</sup>

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<sup>53</sup> Shehbaz Sharif (@CMShehbaz), Twitter, May 13, 2023, 3:29 pm,

<https://twitter.com/CMShehbaz/status/165733222276571137?cxt=HHwWgsDU-YG4g4AuAAAA>.

<sup>54</sup> “General Syed Asim Munir, COAS visited Lahore,” ISPR online, May 20, 2023, accessed June 10, 2023. <https://www.ispr.gov.pk/press-release-detail?id=6539>.

<sup>55</sup> Syed Irfan Raza | Amjad Mahmood, “Army Act only for those who attacked military property: PM,” *Dawn* online, May 22, 2023, accessed May 28, 2023. <https://www.dawn.com/news/1754939>.

<sup>56</sup> Haseeb Bhatti, “102 people in army’s custody, AGP tells SC,” *Dawn* online, June 23, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1761297>.

<sup>57</sup> Haseeb Bhatti, “May 9 riots: SC declares military trials of civilians null and void,” *Dawn* online, October 23, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1783065>.

<sup>58</sup> Haseeb Bhatti, “Caretaker govt challenges SC verdict on military trials of civilians,” *Dawn* online, November 17, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1790132>.

<sup>59</sup> Haseeb Bhatti, “Caretaker govt challenges SC verdict on military trials of civilians,” *Dawn* online, November 17, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1790132>.

<sup>60</sup> Nasir Iqbal, “SC suspends order striking down trials in military courts,” *Dawn* online, December 14, 2023, accessed December 24, 2023. <https://www.dawn.com/news/1797697/sc-suspends-order-striking-down-trials-in-military-courts>.

## Role of the President

Dr. Arif Alvi, who took oath of office of 13th President of Pakistan on September 09, 2018 as the hand-picked choice of PM Mr. Imran Khan, was elected for his second term as Member of the National Assembly in 2018 before he vacated his seat to be elected as President. Even though, as his official profile says, he resigned from all positions in his parent political party the PTI ‘in line with Constitution of Pakistan,’<sup>61</sup> he has failed to evolve in the role of a non-partisan President failing to fulfil not just the requirement of the Constitution but in defying all political, official and moral norms in holding the highest elected office in Pakistan.



Dr. Alvi’s Constitutional term as President ended on September 8, 2023, he has personally become a beneficiary of the absence of electoral college for election of the President and he would continue to be in office until the Constitutional requirements are met through General Election to the National and Provincial Assemblies as well as the Senate.<sup>62</sup>

After his leader Mr. Imran Khan was ousted from the office of Prime Minister in April 2022, the role played by Dr. Alvi as President in refusing to administer oath to the incoming PM and his conduct vis-à-vis the Governor Punjab has been rightly criticized.<sup>63</sup>

Unencumbered by the criticism against him for playing a blatantly partisan role, President Dr. Arif Alvi continued to use his office for pushing for the PTI’s agenda in holding premature or early General Election. His role became especially controversial in appointing a date for general election to the dissolved Punjab Assembly when he unilaterally, and without constitutional authority, appointed the date of election.<sup>64</sup> He also chose to criticize the Governors of Punjab and KP for “*not performing their*

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<sup>61</sup> “Dr. Arif Alvi, The President of the Islamic Republic of Pakistan,” President.Gov.PK, accessed December 25, 2023. <https://president.gov.pk/about/dr-arif-alvi>.

<sup>62</sup> Iftikhar A. Khan, “Arif Alvi fourth president to complete full term,” *Dawn* online, September 08, 2023, accessed September 22, 2023. <https://www.dawn.com/news/1774681/arif-alvi-fourth-president-to-complete-full-term>.

<sup>63</sup> “State of Democracy in Pakistan 2022,” *PILDAT* online, January 1, 2023, accessed December 25, 2023. <https://pildat.org/assessment-of-democracy1/state-of-democracy-in-pakistan-2022>.

<sup>64</sup> Naveed Siddiqui, Nadir Guramani, “President Alvi unilaterally announces April 9 as Punjab, KP election date,” *Dawn* online, February 20, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1738185>.



constitutional duties for appointing a date not later than ninety days from the date of dissolution”<sup>65</sup> of the two Provincial Assemblies. Despite possessing no constitutional role to fix the date of Provincial Assembly elections, he wrote multiple times to the CEC for a consultation which was also turned down publicly.

Dr. Alvi’s controversial role did not just revolve around the date of election to two Provincial Assemblies, he chose to defy his Constitutional role repeatedly in giving his assent to various laws passed by the Parliament. He followed the trend of refusing his Constitutional duties since after the coalition government came in place of the PTI government in April 2022, and continued to do so in 2023 especially in refusing assent to amendments in laws including the Pakistan Institute of Medical Sciences (PIMS) Act, 2023 (Act No.I of 2023), the Finance (Supplementary) Act, 2023, the Supreme Court (Practice and Procedure) Act, 2023 and the National Accountability (Amendment) Act, 2023.<sup>66</sup>

In another bizarre manner on August 20, over 10 days after the dissolution of the 15<sup>th</sup> National Assembly, President Dr. Arif Alvi, through a tweet, denied having assented to two laws including the Official Secrets (Amendment) Act, 2023 and the Pakistan Army (Amendment) Act, 2023. He said that since he disagreed with both laws, he had asked his staff to return the bills unsigned within the stipulated time and despite assurance from his staff, he learnt that his staff undermined his will and command.<sup>67</sup> After his tweet where he implied the blame rested with his principal secretary, he sought to replace him, though senior bureaucrats in the Presidency refused to take up principal secretary’s position after the bills saga.<sup>68</sup>

When the time came for affixing the date of General Election to the National Assembly, much the same partisan activism was witnessed from the President who repeatedly proposed to engage with the CEC for date of election to the National Assembly. Days after dissolving the 15<sup>th</sup> National Assembly on advice of the PM on August 09, President again wrote to the CEC on August 23 for consultation on appointing date.<sup>69</sup> His invitation for consultation was again rebuffed by the CEC who took the position that after the passage of the Election (Amendment) Act, 2023 (XXXV of 2023), it was now the duty of the Election Commission to notify a date for General Election.<sup>70</sup> Earlier (before the recent amendment), Section 57 of The Elections Act, 2017 (Act No. XXXIII of 2017), had mandated the President to announce the date of General Elections after consultation with the Election Commission. On August 30, Ministry of

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<sup>65</sup> President of Pakistan @PresofPakistan X (formerly Twitter), February 20, 2023, 4:36 pm, accessed December 25, 2023. <https://twitter.com/PresOfPakistan/status/1627632612503171072>.

<sup>66</sup> “Five year Performance of 15th National Assembly of Pakistan August 13, 2018-August 09, 2023,” PILDAT online, August 26, 2023, accessed December 21, 2023. <https://pildat.org/parliamentary-monitoring/five-year-performance-of-15th-national-assembly-of-pakistan-2018-2023>.

<sup>67</sup> Nadir Guramani, ‘As God is my witness’: President Alvi says he did not assent to bills amending Army Act, secrets law,” Dawn online, August 20, 2023, accessed September 10, 2023. <https://www.dawn.com/news/1771203/as-god-is-my-witness-president-alvi-says-he-did-not-assent-to-bills-amending-army-act-secrets-law>.

<sup>68</sup> Syed Irfan Raza, “Bureaucrats refuse posting to Presidency after bills saga,” Dawn online, August 23, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1771692>.

<sup>69</sup> President of Pakistan @PresofPakistan X (formerly Twitter), August 23, 2023, 4:05 pm, accessed December 25, 2023. <https://twitter.com/PresOfPakistan/status/1694304944462213288>.

<sup>70</sup> Iftikhar A. Khan, “Empowered’ CEC turns down president’s meeting offer,” Dawn online, August 25, 2023, accessed August 30, 2023. <https://www.dawn.com/news/1772098/empowered-cec-turns-down-presidents-meeting-offer>.

Law and Justice informed the President Arif Alvi that powers to appoint date of General Election rested with the ECP, not the President.<sup>71</sup>

Despite his consistent efforts to push forward his previous party's position, Chairman PTI, from behind bars at the time since August 5, conveyed his "*profound regret and disappointment in President Alvi for failure to fulfil his constitutional duty of announcing the election date during this crucial time for the nation.*"<sup>72</sup>

Perhaps owing to open criticism from his party leader, or as analysts termed that he feared being side-lined in the PTI, President Dr. Arif Alvi presented a rather delayed change of hearts when he called for "an end to bitterness" to pave the way for "cooperation and forgiveness" to strengthen democracy in Pakistan.<sup>73</sup>

History, however, has enough evidence to judge him for being a partisan, divisive President than the one who played his role according to the Constitution.

### **A Hybrid Regime or Optical Illusion?**



In its statement on International Day of Democracy on September 15, 2023, PILDAT had questioned whether mere acceptance of the reality that Pakistan had been a hybrid regime with active influence of the military in governance or the acknowledgement of reality should help actors and stakeholders find solution towards improved democratic governance?<sup>74</sup> There is little progress to report on the state and quality of democracy in Pakistan at the end of 2023.

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<sup>71</sup> "Poll date ECP's sole prerogative, ministry tells president," *Dawn* online, August 31, 2023, accessed September 1, 2023. <https://www.dawn.com/news/1773198/poll-date-ecps-sole-prerogative-ministry-tells-president>.

<sup>72</sup> "Imran disappointed with President Alvi, claims sister," *The Express Tribune*, October 4, 2023, accessed December 25, 2023. <https://tribune.com.pk/story/2439173/imran-disappointed-with-president-alvi-claims-sister>.

<sup>73</sup> Syed Irfan Raza, "[President Alvi calls for 'forgiveness to end political bitterness.'](#)" online, October 11, 2023, accessed December 25, 2023. <https://www.dawn.com/news/1780460>.

<sup>74</sup> "PILDAT statement on International Day of Democracy, September 15, 2023," PILDAT online, September 14, 2023, accessed December 24, 2023. <https://pildat.org/assessment-of-democracy1/pildat-statement-on-international-day-of-democracy-september-15-2023>.



PILDAT had also quoted many international indices confirming the deformed democracy practised in Pakistan. The Sweden-based V-Dem (Varieties of Democracies) Institute had termed Pakistan, in the latest 2023 report, as an Electoral Autocracy (the third category among the four categories). The report also noted that Pakistan has improved from a Closed Autocracy to an Electoral Autocracy but now it is stalled in this category like Algeria. In the 2023 report of the V-Dem Institute, Pakistan ranks 106 on the Liberal Democracy Index while India and Bangladesh rank 97 and 147 on this index respectively. It is interesting to note that the position of Pakistan is stagnant while India has witnessed a downward movement from one level to another. PILDAT noted that in 2023 some other countries that are in the category of Electoral Autocracy include India, Nigeria, Russia, the Philippines, and Türkiye, home to 44% of the world population.<sup>75</sup>

As Pakistan braces for yet another General Election scheduled to be held on February 08, 2024, Pakistan's categorisation as an 'Electoral Autocracy' confirms that the country merely goes through the motions of holding elections without seriously fulfilling any requirements for these to be free and fair.

Lately, the UK-based Economist Intelligence Unit's Democracy Index has consistently classified Pakistan as a **Hybrid Regime** with a score of 4.13 out of 10 in 2022 indicating a decline from 4.31 in 2021. The EIU has maintained that Pakistan's democratic institutions have been weakened by the military's interference in politics, the decline of media freedom and the rise of religious extremism.<sup>76</sup>

According to Freedom House, Pakistan is a Partly Free country and its Global Freedom Score is 37 out of 100. Moreover, its Political Rights Score is 15/40 and Civil Liberties Score is 22/60. The Freedom House also joins other global indices in recognising Pakistan military's continued interference in political affairs, decline of media freedom, and the rise of religious extremism as major concerns for Pakistan.<sup>77</sup>

With nearly a year of Punjab and KP Caretaker Governments in office and the fifth month of Federal, Sindh and Balochistan Caretaker Governments holding office well beyond the Constitutional limit of 90 days, is even hybrid regime a correct term to describe Pakistan's governance reality?

As if the violation of Constitutional principles of holding General Election within 90 days of dissolution of an Assembly was not enough, there appears to be no requirement of even window-dressing these violations.

Take, for instance, the formation of the Special Investment Facilitation Council (SIFC) created by the outgoing coalition governments as one of its last acts. The SIFC was created in June 2023 under the chairpersonship of PM and included Chief of the Army Staff, Chief Ministers as its members. Its agenda included an elaborated 'Economic Revival Plan' envisaging on 'capitalizing Pakistan's untapped potential in key sectors

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<sup>75</sup> "Democracy Report 2023: Defiance in the Face of Autocratization," V-Dem, accessed September 11, 2023. <https://v-dem.net/publications/democracy-reports/>

<sup>76</sup> "Democracy Index 2022," Economist Intelligence Unit. Accessed September 11, 2023. <https://www.eiu.com/n/campaigns/democracy-index-2022/>

<sup>77</sup> "Freedom in the World 2023: Pakistan," Freedom House, accessed September 11, 2023. <https://freedomhouse.org/country/pakistan/freedom-world/2023>

of Defence Production, Agricultural / Livestock, Minerals / Mining, IT and Energy, through indigenous development as well as investments from friendly countries.

The SIFC, according to the COAS, enjoys the “Pakistan Army’s all out support to complement Government’s efforts for Economic Revival Plan, considered fundamental to socio-economic prosperity of Pakistanis and reclaiming Pakistan’s rightful stature among the comity of nations.”<sup>78</sup>

In his maiden briefing on working of key Federal Ministries, Caretaker Prime Minister Mr. Anwaar-ul-Haq Kakar on August 15 emphasised that enhancement of foreign investment under the Special Investment Facilitation Council (SIFC) was among the top priorities of the Federal Caretaker government. He termed the SIFC as a ‘ray of hope’ for Pakistan.<sup>79</sup>

A new website of the Special Investment Facilitation Council (SIFC) carries ‘Messages from Leadership’ starting with a message from Caretaker Prime Minister Mr. Anwaar-ul-Haq Kakar followed by ‘Message From Chief of the Army Staff’ General Syed Asim Munir, HI(M) on its home page. Its Leadership Page also lists Caretaker PM and COAS followed by listing under the title of ‘Our Team’ including Provincial Leadership, Federal Cabinet and Provincial Cabinet Members.

Meetings of the SIFC are held regularly with COAS in attendance alongside the caretaker PM. The role and potential of the SIFC is regularly cited by the COAS in national and global forums alike.

It may appear unimportant but very cogent in the realistic analyses from economists who believe that after selling the promise of the SIFC to bring to the country nearly US \$ 25 billion in investments, the caretaker government has begun to “stealthily trying to walk some of those expectations back.”<sup>80</sup>

It is the job of civil and military bureaucracy to make available to the disposal of elected governments their knowledge and expertise for making and implementing required policies. For civil servants, the field could be as vast as economics, law, administration, or process knowledge and skills.

For military, this would essentially be skills and expertise in security and defence. Given the de-facto enlarged role, this may also include bilateral and international relationship management. But to make its expertise available and for elected governments to avail it, newer, supra-constitutional and supra-legal entities are not needed. Contrary to the objective to “fast track” such forums and bodies add unnecessary and cumbersome layers of bureaucratic procedures, undermine existing

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<sup>78</sup> “Eco Revival Plan – SIFC Meeting,” PMO online, June 20, 2023, accessed December 24, 2023. [https://pmo.gov.pk/news\\_details.php?news\\_id=1254](https://pmo.gov.pk/news_details.php?news_id=1254).

<sup>79</sup> “Update on The Performance of Democratic Institutions | August 2023, PILDAT online, September 10, 2023, accessed December 24, 2023. <https://pildat.org/inter-institutional-relations/update-on-the-performance-of-democratic-institutions-august-2023>.

<sup>80</sup> Khurram Husain, “Assurances and realities,” *Dawn* online, November 16, 2023 accessed December 24, 2023. <https://www.dawn.com/news/1789770/assurances-and-realities>.

constitutional and legal forums that have a well-established system of parliamentary oversight, and diminish and take-away institutional capacity from its original focus.<sup>81</sup>

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<sup>81</sup> Aasiya Riaz, "Another Council," The News International, June 25, 2023, accessed December 24, 2023. <https://www.thenews.com.pk/print/1084319-another-council>.