

IS DELAYING ELECTIONS AN OPTION?

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The year 2023 is supposed to be the year of National and Provincial Elections in Pakistan. The National Assembly and the four Provincial Assemblies were elected on 25th July 2018 and the members of these Assemblies took oath in August 2018 within a few days apart. The Constitution of Pakistan (Articles 52 and 107) sets a five-years term for each of these Assemblies from the date of the first sitting when members take oath. Since the current (15th) National Assembly held its first sitting on 13th August 2018, its five-years term is set to complete on 12th August 2023.

DEADLINE TO HOLD ELECTION IN NORMAL CIRCUMSTANCES:

The Constitution, in Article 224(1), also provides that election of the new Assembly must take place no later than 60 days following the completion of the five-years term of the Assembly. If the current National Assembly completes its term, the election to the next Assembly will be required to be held by 12th October, 2023. The same constitutional provisions apply to the provincial Assemblies.

PREMATURE DISSOLUTION OF AN ELECTED ASSEMBLY AND THE DEADLINE TO HOLD ELECTIONS:

The Constitution authorizes the leader of the house - Prime Minister (Article 58) in the case of National Assembly and Chief Minister (Article 112) in the case of Provincial Assembly - to dissolve the Assembly and call for fresh election anytime during the term of the Assembly at his discretion. In the case of premature

dissolution, however, the fresh election has to take place within 90 days of the date of dissolution as per Article 224(2). The Prime Minister, therefore, may dissolve the National Assembly a day before the expiry of the term of the Assembly if he wishes to extend the election date and in that case the election date may be extended by about a month to around 11th November, 2023. The same scenario applies to the Provincial Assemblies.

SIMULTANEOUS ELECTIONS TO NATIONAL AND PROVINCIAL ASSEMBLIES:

Generally, the election to National and Provincial Assemblies in Pakistan have been held around the same time. The first direct election to the National and all Provincial Assemblies on the basis of universal adult franchise was held in 1970 when the gap between the National and Provincial elections was ten days. In the later elections, this gap was reduced to three days and since 1997, the elections to the National and all four Provincial Assemblies have been held on the same date. The elections to all Provincial Assemblies were always held on the same date for the past eleven general elections since 1970. Although there is no constitutional requirement that the National and Provincial Assemblies elections take place on the same date, the coincidence of holding of these elections simultaneously has resulted in financial savings and repeated deployment of police and other security forces (including the armed forces) has been avoided.

UNIQUE CONSTITUTIONAL PROVISION FOR CARETAKER GOVERNMENTS:

Pakistan seems to be the only country which still has a provision for appointing new caretaker governments during general elections. Article 224 and 224A, which were amended and introduced respectively as a part of the 18th Constitutional Amendment in 2010, lay down the details of the appointment of caretaker governments through a 3-step bi-partisan process involving Leader of the House and Leader of the Opposition in the out-going Assemblies in the consultative process. In most, if not all, other countries, the elected governments continue but their powers are significantly reduced and subjected to oversight by the Election Commission during the electoral process. The arrangement of caretaker governments in Pakistan is meant to guard against the political government's direct or indirect interference in the election process, which was sadly witnessed in a big way during the 1977 general elections – the only time the election was held without a caretaker government after the enforcement of the 1973 Constitution. The level of sensitivity about potential political interference by the political governments and their functionaries is so great that recently when elections for the Provincial Assembly of Khyber-Pakhtunkhwa (KP) were anticipated, the Election Commission suspended the Local Governments in the province although these were elected only about a year prior.

PREMATURE DISSOLUTION OF PUNJAB AND KP ASSEMBLIES:

In this background, when the two PTI-led Provincial Assemblies of Punjab and KP were prematurely dissolved on 15th and 18th January, 2023 by their respective Chief Ministers upon the direction of their Party Chief – Imran Khan – as a strategy to force early election to all the five assemblies, a number of technical questions were raised in addition to the political ones. The PTI strategy to push the federal and the remaining two provincial governments to announce fresh elections at the national and provincial level apparently did not work so far, as the federal government has resisted the pressure by the PTI and refused to dissolve the National Assembly prematurely, and so have the governments in the other two provinces – Sindh and Balochistan.

POSTPONEMENT OF ELECTIONS BY ECP:

Despite the fact that the Constitution stipulates elections to prematurely dissolved Provincial Assemblies within 90 days, the Election Commission (ECP) postponed the elections of the Punjab Assembly to 8th October, 2023 – about 6 months beyond the 90-days constitutional limit. The ECP based its decision on the refusal of the Government to provide the extra funds required to hold the elections in two batches instead of the usual simultaneous election to all five assemblies, due to, what the Government stated, the precarious economic condition of the country.

The federal as well as the provincial government of Punjab had also declined to provide the requisite police force and rangers to maintain peace and order during the elections. The military also regretted to provide its personnel for election duty as, according to the reported statement of Ministry of Defence, the armed forces personnel were committed to their primary duty of guarding the borders and fighting terrorism within the country. The ECP also mentioned in its order of 22nd March and the Chief Election Commissioner (CEC) in his letter (dated 10th April) that since the ECP, under the circumstances, cannot hold free, fair and transparent elections as required in Article 218(3) of the Constitution within 90 days, it has the constitutional power and responsibility to postpone the election to a date when it will become possible to hold elections in accordance with Article 218(3).

THE SUPREME COURT ORDER TO SETS ASIDE ECP ORDER TO POSTPONE ELECTION AND DIVISIONS WITHIN THE SUPREME COURT:

Although, the Supreme Court has cancelled the Election Commission order to postpone the election and fixed 14th May as the new date for the election to the Punjab Assembly, the federal government has refused to accept the order of the 3-members Supreme Court bench as the legitimate one because four judges of the same court declared the judgment of the 3-members bench as a minority opinion. The Parliament and the federal government do not accept the 3-member bench orders lawful and reject them. Despite the fact that the Supreme Court 3-members bench has ordered the State Bank to transfer the requisite funds of Rs. 21 billion and may issue similar orders to the security agencies to provide the requisite security cover to the election, it is not certain that the election to the Punjab Assembly will take place on 14th May.

UNPRECEDENTED STAGGERED ELECTION TO THE ASSEMBLIES AND THEIR RAMIFICATIONS:

If, however, elections to the Punjab Assembly alone or with KP Assembly take place much earlier than the elections of the National Assembly and the other two Provincial Assemblies, it would be the first time in the country's electoral history that segregated elections take place. This obviously leads to a situation that the entire country is not ruled by caretaker governments. The caretaker governments are appointed only in the provinces whose Provincial Assembly is to be elected. As the election process in Punjab is moving ahead and may soon make headway in KP as well, caretaker Chief Ministers and Cabinets have been appointed in the two provinces following the procedure prescribed in Article

224A of the Constitution. The federal government, however, which has its influence in all the provinces including Punjab and KP, continues to be ruled by a political government and may influence the outcome of the election. Similarly, when National Assembly elections take place in October or November later this year, Punjab and KP provinces whose population together constitutes about 75% of the entire country's population, will be ruled by political governments and not by caretaker governments. The National Assembly election in Punjab and KP at that time may be strongly influenced by the political Provincial Governments in the two provinces. In addition, the outcome of the election in the largest province, Punjab, is likely to significantly influence the subsequent National Assembly election in the province.

The staggering of election is not going to be a one-time affair; this will perpetually disrupt the election cycle and it will be almost impossible to return to simultaneous election mode.

CONSTITUTIONAL PROVISION FOR DELAYED ELECTION:

Although there is no express constitutional provision to defer the general election of a provincial assembly, Chapter X of the Constitution which deals with Emergency Provisions, provides a window of opportunity to the federal government commanding majority in the two houses of the Parliament to extend the term of the National Assembly up to a year and, therefore, postpone the General Election for the National Assembly by the same period. In this context, Article 232 (6) reads:

'While a Proclamation of emergency is in force, Majlis e Shoora (Parliament) may by law extend the term of the National Assembly for a period not exceeding one year and not exceeding in any case beyond a period of six months after the Proclamation has ceased to be in force.'

WHO PROCLAIMS EMERGENCY?

The proclamation of emergency may be initiated by the resolution of a Provincial Assembly or by the President on his own (of course, upon the advice of the Prime Minister) but in the latter case the Proclamation will need to be placed before both houses of the Parliament for approval by each House within 10 days.

WHAT CONSTITUTES AN EMERGENCY UNDER ARTICLE 232?

The Proclamation of Emergency can be issued when the country or any of its parts are threatened by war or external aggression, or by internal disturbances beyond the powers of a Provincial Government to control. Apparently, it will be the threat of internal disturbances, which is likely to be invoked to proclaim Emergency under Article 232.

JUDICIAL REVIEW OF THE PROCLAMATION OF EMERGENCY:

In the past, almost all proclamations of emergency have been challenged in a court of law and in many cases, the proclamation was declared void by the superior courts. The current National Assembly may extend its duration by another one year during its life which means before August 12, 2023. Given the current state of relations between the Supreme Court led by Justice Bandial, the Honourable Chief Justice of Pakistan, and the federal government, one may assume that the Proclamation of Emergency, if issued, will face serious challenges in the courts and may be declared void. After the scheduled retirement of the current HCJP in September this year, the situation may ease for the federal government but that will be too late for the current National Assembly to extend its term as it will stand dissolved on 12th August, 2023 upon completing five years.

IMPLICATIONS FOR THE DELAYED ELECTION:

All three modes of general elections i.e. Early elections within 90 days of premature dissolution of one or more legislatures; On-time Elections within 60 days of the completion of 5-years term of one or more legislatures and, Delayed Elections using the Emergency provisions under Article 232(6) of the Constitution, conform to the Constitution but Early and Delayed Election may carry extra political and financial implications.

DELAYED ELECTIONS PRECLUDE SIMULTANEOUS ELECTIONS:

In both early and delayed elections, the simultaneous elections to all the five assemblies will be highly unlikely. In the case of delayed elections specifically, National Assembly elections may be delayed but it will not be possible to delay the Provincial Assembly elections. Despite the constitutional provision, Pakistan has never delayed its elections beyond five years term of the Assemblies over the past fifty years after the 1973 Constitution was put in place. Besides the challenges in the court, the delayed election may lead to street agitation and unrest, further exasperating the state of political polarisation. Many politicians and political scientists have suggested that even five-years terms of Assemblies are too long and should be trimmed down to four years. In such a backdrop, extending the term of the assembly to six years will be hardly acceptable to a majority of the people even in the garb of emergency.

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