[**Land of constitutional frauds**](https://www.dawn.com/news/1738678/land-of-constitutional-frauds)

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*“For my friends, everything. For my enemies, the law” — Óscar R. Benavides*

THE spectre of violence and chaos haunts Pakistan. Never before in Pakistan’s history have three types of chaos engulfed the country — political as well as economic chaos, and chaos resulting from terrorism and separatist violence. Even at the time of the crisis of East Pakistan in 1970-71, there was chaos resulting from political deadlock and separatist violence but there was no danger of economic bankruptcy.

The root cause of the present political chaos is the inability of political and military elites to agree on the rules of the game for political transition to the next government.

The problem of peaceful transfer of power, or the inability of any government to accept the possibility of losing power, is an age-old problem of politics; in Pakistan, it is a problem which both military dictatorships and political governments have shared. It is reinforced by a subcontinental obsession with creating a de jure or de facto one-party state — Mujibur Rahman (1975), Indira Gandhi (1975-77), Modi (2014 onwards), Hasina Wajid (2009 onwards), Bhutto (1971-77), Nawaz Sharif (1997-99), Imran Khan (2018-2022), and of course, it is also shared by all military dictators who have ruled Pakistan and Bangladesh.

In contemporary Pakistan, the peaceful transfer of power is presently being sabotaged by engaging in a strategy of constitutional frauds, which is the tactic of employing absurd constitutional interpretations to justify an unconstitutional and undemocratic end, by using the Constitution as a pawn in a political game. Imran Khan’s regime engaged in this constitutional fraud by sabotaging the no-confidence vote and by [dissolving the National Assembly](https://www.dawn.com/news/1683230) in 2022.

The current government, led by the PML-N and PPP, is also engaged in such constitutional frauds by trying to [delay elections](https://www.dawn.com/news/1733844) to the Punjab and KP assemblies and by misusing the law to possibly disqualify and criminalise its political opponents, which is a grand tradition shared by all political and military elites, including the previous government led by Imran Khan.

Absurd reasons for delay: Elections have to be held no later than 90 days from the date of dissolution, under Articles 105(3) and 224(2) of the Constitution. But the reasons given by the federal and provincial governments to delay the Punjab and KP elections are comical at best and dangerous at worst.

The solution to the current chaos lies with the Supreme Court and the high courts.

The first reason is that there is no money to hold separate elections for the provincial assemblies. Can the foundational basis of our democratic constitutional state, which is the holding of timely elections, be sabotaged because the state is unwilling to spare a couple of billion rupees?

The second reason, according to the federal and provincial governments, is that terrorism does not allow the holding of elections. If elections can be held in 2013, despite the TTP’s specific threats to the PPP, ANP and MQM and a wave of terrorist attacks across the country, elections can certainly be held now. More importantly, will we let the terrorists determine when our elections are held?

The third reason they state is that if separate elections are held for the Punjab and KP assemblies now, then the National Assembly elections at a later period will be held under non-caretaker Punjab and KP governments, which would defeat the so-called spirit of the constitutional caretaker set-up. If this constitutional interpretation is accepted then the constitutional power to prematurely dissolve the provincial and national assemblies as a result of the advice of the chief minister or a successful no-confidence vote would be made constitutionally redundant, because prematurely dissolving assemblies does, in most situations, lead to provincial and national elections being held at different time periods.

The fourth reason cited is that the Punjab governor is not constitutionally bound to give the election date because he did not dissolve the Punjab Assembly as the latter was deemed to have been dissolved under Article 112 of the Constitution. If this argument is accepted then any governor can hold constitutional democracy in limbo by simply not giving, or delaying, the election date.

Moreover, we are at the precipice of a constitutional breakdown with the president, the Election Commission of Pakistan (ECP), the governors and a single judge of the Lahore High Court giving contradictory constitutional interpretations.

**Fig leaf of Article 254:**

Article 254 of the Constitution is the bedrock of the present government’s political strategy for delaying the Punjab and KP elections. Article 254 merely saves actions from constitutional invalidity if, for constitutionally justifiable reasons, these actions could not be carried out within the constitutionally prescribed time period.

But as noted by the Supreme Court in ‘Reference No.1 of 1988 case’, the non-performance of duty within the period prescribed will still be a violation of the Constitution.

Moreover, as Justice Mansoor Ali Shah in the ‘Rao Naeem Sarfaraz case’ (2013) held, Article 254 doesn’t provide unqualified licence to violate constitutional timelines for oblique political reasons. And only recently, Chief Justice Umar Ata Bandial in the case of the no-confidence motion against prime minister Imran Khan (2022) held that “Article 254 is not a general ‘escape’, that allows the concerned constitutional authority to disregard, as it may please, the time limit set out in any constitutional provision”.

In short, the present government’s preplanned strategy for oblique political reasons to delay elections cannot be protected under Article 254.

The solution to this constitutional chaos lies with the Supreme Court and the high courts. Being the ultimate custodians of the Constitution, the courts must ensure that both provincial and national assembly elections are held within the constitutionally prescribed time periods, pass minimalist judicial orders to ensure that the ECP holds free and fair elections (without straitjacketing the ECP) and not let the judicial process be misused to illegally disqualify and illegally criminalise political opponents.

Last year, on the issue of the [no-confidence motion](https://www.dawn.com/news/1684168) against Imran Khan, it was precisely the Supreme Court which through judicial adjudication saved this country from complete constitutional collapse.

The question whether elections are held within the constitutionally prescribed period and whether such elections are free and fair will determine whether Pakistan’s future is inclined towards constitutional governance or recurring constitutional chaos.

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