**A controversial postponement**

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The Election Commission of Pakistan (ECP), while postponing the elections in Punjab, maintains that it has taken the decision in view of the current security situation and the non-availability of security personnel for deployment at polling stations across the province.

The ECP says that due to these reasons it is not possible to organize elections in an honest, fair and peaceful manner, and in accordance with the constitution and law.

In its notification the ECP explains that it has taken this decision by exercising its “powers conferred upon the ECP by Article 218(3), read with Section 58 and Section 8(c) of the Elections Act, 2017.” It further says that the commission “hereby withdraws the election programme […] and fresh schedule will be issued in due course of time with the poll date on October 8.”

It will be pertinent to look at the clause of the constitution and sections of the Election Act 2017 under which the ECP has taken this decision. Article 218(3) of the constitution says, “it shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the elections is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against.”

Section 58 of the Election Act 2017 says, “notwithstanding anything contained in section 57, the Commission may, at any time after the issue of the notification under sub-section (1) of that section, make such alterations in the Election Programme announced in that notification for the different stages of the election or may issue a fresh election programme as may, in its opinion to be recorded in writing, be necessary for the purposes of this Act.”

Section 8(c) says, “the Election Commission may issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.”

The law clearly says that the ECP is supposed to hold elections honestly, justly and fairly. However, it can change the announced elections schedule if it feels that holding elections as required under Article 218(3) is not possible by recording the reasons for doing so.

I think the ECP had no choice other than postponing elections, especially at a time when security personnel were not available to perform duties at polling stations. The overall security situation in the province as per the briefing given to the ECP by the chief secretary and IG Punjab was also not in favour of conducting the election. It is pertinent to point out that the ECP depends on the provincial administrations and security agencies for conducting free, fair and just elections. And in the absence of their support, the purpose of the constitution and the Election Act cannot be fulfilled.

The postponement has not been well received by the PTI and the Supreme Court Bar Association, which maintain that the ECP has acted in an unconstitutional manner and is also guilty of contempt of court as the SC in its decision had held that elections would be held within 90 days.

Even though Article 224(2) does says that “when the National Assembly or a provincial Assembly is dissolved a general election to the Assembly shall be held within a period of ninety days after the dissolution”, if they cannot be held within that period for any valid and pressing reasons it does not constitute breach of the constitution. Such circumstances are covered by Article 254 of the constitution which reiterates, “when any act or thing is required by the constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period.”

Also, I am afraid those who think that the ECP’s action is against the SC decision have not read the quoted decision properly. Para 14 of the judgment says that the ECP will act in conformity with Sections 57(1) and 58 of the Election Act 2017. I have already quoted the text of Section 58 according to which the ECP can change the given date. Section 57(1) of the Election Act 2017 as mentioned in the SC decision says “the president shall announce the date or dates of the general elections after consultation with the commission.”

The ECP has fully complied with the SC decision. It did consult the president who announced the election date as required under Section 57(1). However when it did not receive the required support from security institutions to perform duty at polling stations, it justifiably postponed the elections in terms of the powers conferred on it by Section 58 of the Election Act 2017. Therefore the argument that the ECP’s action is a breach of the SC decision and constitutes contempt of court is not valid.

Precedents do exist when elections had to be postponed on two occasions due to situations which were not conducive to conducting the elections. Article 54 of the constitution does make provision for such eventuality. The ECP is neither guilty of breach of the constitution nor defiance of the court decision.

The reaction of the PTI stems from purely political considerations. Unfortunately, the party is used to looking at confronting issues only through the prism of its own political agenda irrespective of the fact whether it serves or undermines national interests. Imran Khan dissolved two provincial assemblies without any justification. The only reason, it seems, was to create difficulties for the PDM government.

The two dissenting judges of the SC had rightly emphasized the need for ascertaining whether the assemblies were dissolved in conformity with the constitution or not. It is interesting to note that the chairperson of the PTI and his party leaders like Fawad Chaudhry had also talked about the possibility of delaying the elections if the PDM agreed to hold elections for the National Assembly and four provincial assemblies simultaneously somewhere around June or July.

How could the party make such a proposal if the elections could not be delayed beyond 90 days and delaying it further meant breach of the constitution? The answer is it did know that it was constitutionally possible to hold the elections beyond 90 days if the circumstances demanded. Its current response is nothing but crass politics.

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