**Conundrum regarding elections**

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After his belated and under pressure announcement that he did not approve the Army Act (Amendment) Bill 2023 and the Official Secrets (Amendment) Bill 2023, and that his staff undermined and defied his command by not sending the unsigned bills back, the President has thrown another spanner in the works by invoking Article 48(5) and asking the ECP to consult him on the date for elections within 90 days, as required by the quoted Article. He has contended that under this Article, the President is obliged to appoint a date for elections not later than 90 days from the date of dissolution of the Assembly.
I think the position taken by the President is not applicable in this case. The President did not dissolve the Assembly on his own, but on the advice of the Prime Minister. Article 48(5) could have been invoked had he dissolved the assembly on his own under Article 58(2). The President can dissolve the assembly as per Article 58(2) in his discretion only when a vote of no-confidence is passed against a prime minister, and no other member commands a majority of the house. In that case, he can set a date for the election and appoint the caretaker cabinet for the interim period.
However, if the President dissolves the National Assembly in terms of Article 58(1) on the advice of the prime minister, he cannot unilaterally appoint a date for the election nor can he appoint a caretaker cabinet without adopting the procedure provided in Article 224-1A. Moreover, the amendments to the election laws by the PDM government have stripped the President of the power to fix the election date.
Under normal circumstances, the elections should have been held within 90 days as per Article 224(2). The plea that the Supreme Court Bar Association (SCBA) has taken in a request to the SC for ordering the ECP to announce the date for elections as per constitutional requirements, adding that the CCI which approved the census was not properly constituted.
What the verdict of the SC on this petition would be cannot be predicted with any amount of certainty, but it would perhaps be interesting to probe whether Article 224(2) is the ultimate and conclusive article of the constitution in regards to holding the elections within 90 days, or if other Articles of the Constitution and Acts of the Parliament also have any relevance in this regard.
According to Article 51(5) of the Constitution, the seats of the National Assembly for each province and the federal capital shall be allocated based on the population in accordance with the last preceding census officially published. So, in the light of this Article, after the approval of census results by the CCI, it was constitutionally obligatory for the ECP to carry out new delimitation of the constituencies and then hold the elections. Section 17(2) of the Election Act says, “The Commission shall delimit the constituencies after every census is officially published.”
Ostensibly, it seems that the ECP has acted in accordance with its constitutional and legal obligations. As far as strict adherence to Article 224(2) is concerned, one needs to also have a look at Article 254 of the constitution, which reads: “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 solely because it was not done within that period.” To a commoner like me, it clearly means that if for any valid reasons compliance with Article 224(2) is not possible, and an action is taken accordingly, it would not be invalid and ineffective. Article 51(5) of the constitution and section 17(2) of the Election Act 2017 do provide justification for going beyond the 90 days stipulated in Article 224(2). The process does not involve a breach of the constitution. It is a matter of common sense as well.
Interestingly, the PPP, which was part of the PDM government and involved in the decision-making process of the CCI that approved the census, knowing fully well that as a consequence of this decision, the ECP would have to carry out fresh delimitation of the constituencies, has also taken a U-turn and demanded that the elections should be held within ninety days. That is what is called playing to the gallery.
Reportedly, the PTI, as it has always done, has also decided to challenge the decision of the CCI on the new census and the delimitation of constituencies by the ECP. A statement issued by the party spokesperson alleged that the schedule for the delimitation issued by the ECP was malicious and a clear deviation from the constitution. The argument by the PTI is almost similar to what the SCBA has contended in its petition. My take on it is the same as I have already explained. Article 224(2) is not absolute and needs to be read with Article 254 and Section 17(2) of the Election Act 2017 to draw a conclusion. My conclusion is that nothing unconstitutional and illegal has been done, and the whole process has due constitutional and legal legitimacy. However, after the new bombshell by the President, the matter is surely going to go before the SC.
I firmly believe that the SC should restrain itself from entertaining issues related to the political domain and let them be resolved by the parliament or the politicians among themselves. The fate of the SC’s decision regarding elections in Punjab is before us. It could not be implemented because the other requirements to fulfill this obligation could not be materialized. My humble request to the SC would be not to order anything which cannot be implemented, as prayed by the petitioners, in the light of the constitutional obligations other than Article 224(2) and the wrongly quoted Article 48(5) by the President, as it could lead to yet another embarrassment for it. The best thing in the national interest would be to allow the process to be completed as envisaged by the ECP in the light of its constitutional and legal obligations. Heavens are not going to fall down with the legitimate delay in the date of elections. The SC in regard to Punjab elections had usurped the powers of the ECP in regards to the announcement of the elections date and schedule. It surely did not have constitutional powers to do that. As a custodian of the constitution, it should avoid doing things that constitute a breach of the constitution.