**Questions of infallibility**

[**Malik Muhammad Ashraf**](https://www.nation.com.pk/columnist/malik-muhammad-ashraf)

March 03, 2023

The five-member bench of SC which was a shortened version of the nine-member bench initially formed to dilate on the suo moto notice in regards to the election date in KP and Punjab in the backdrop of the unilateral declaration of the date by the President held that elections should be conducted within ninety days and no institution of the state had the authority to postpone elections beyond that period. It also said that the declaration of the President in regard to KP was not valid because it was the obligation of the governor to announce the date as per the constitution after having dissolved the assembly on the advice of the chief minister. However, in the case of Punjab, the President must give the date in consultation with the ECP.

Holding elections within ninety days after the dissolution of provincial assemblies is surely obligatory according to the constitution and no one can dispute that. But the way the proceeding occurred and the fact that the orders of the dissenting judges were not taken into account while deliberating on the issue has raised my questions to be answered. The dissenting judges expressed the view that the apex court could not take suo moto notice of the issue when the matter was already under hearing in two provincial high courts in the light of the SC decision already given in a similar case. Justice Athar Minallah even stressed the need for ascertaining whether the dissolution of the assemblies was done in conformity with the constitution or not before considering the issue in regard to the election date. The orders of the dissenting judges are very much pertinent and should have been deliberated upon.

[First consignment of Pakistani spices, dates reaches Israeli Market](https://www.nation.com.pk/28-Mar-2023/first-consignment-of-pakistani-spices-dates-reaches-israeli-market)

The five-member bench also did not give any consideration to the submissions of the ECP that it was unable to fulfill its obligations regarding elections due to the fact that the judiciary had refused to provide Returning Officers, the security establishment had also declined to spare personnel for security duty during the elections because of their engagement in anti-terrorism operations and the finance ministry had also expressed its inability to provide necessary finances required for holding the elections.

The verdict was given with a 3-2 majority by the reduced bench. A similar decision was given by the SC on a reference made by the President in regard to the interpretation of Article 63A of the constitution. The two dissenting judges had maintained” Article 63-A is a complete code in itself which provides a comprehensive procedure regarding defection of a member of the parliament and consequences thereof. Any further interpretation of it, in our view, would amount to re-writing the constitution and will also affect other provisions of the constitution, which have not even been asked by the President. Therefore it is not our mandate and we see no force in the questions asked through this Presidential Reference.”

[Fed govt tables bill moderating CJP's powers in national assembly](https://www.nation.com.pk/28-Mar-2023/fed-govt-tables-bill-moderating-cjp-s-powers-in-national-assembly)

Nevertheless, the majority verdict said, “The vote of any member of a parliamentary party in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63-A cannot be counted and must be disregarded and this is so regardless of whether the party head subsequent to such vote proceeds to take or refrains from taking action that would result in a declaration of defection.” The order did not conform to the relevant Article of the constitution. The judges by saying that a member would be treated as having defected even if the head of the party does not initiate action against him actually tried to add to the text of the relevant Article.

In the domain of jurisprudence, it is an internationally settled principle that judges are not legislators but adjudicators interpreting the text of the constitution and law laid out by the legislators and stating what the text means. They cannot even change a comma in the text of the constitution. It is also agreed that the judges while delivering their verdicts must exercise utmost restraint. It envisages refusal to exercise judicial review in deference to the process of ordinary politics as it supports the process of democratic self-governance as one of the main political ideals in a democratic dispensation.

[Pakistan Railways receives 70 new coaches from China to enhance freight operations](https://www.nation.com.pk/28-Mar-2023/pakistan-railways-receives-70-new-coaches-from-china-to-enhance-freight-operations)

The Supreme Court Bar Association rightly held that the interpretation of Article 63 A that the vote of the dissenting members would not be counted was against the constitution. Consequently, it filed a petition seeking a review of the SC opinion rendered on the reference by the President. The hearing on that petition has been pending for the last nine months. A renowned jurist and eminent judge Jackson of the US Supreme Court said that the apex court is not final because it is infallible, but it is infallible because it is final. This observation has assumed the significance of a legal maxim and is universally accepted. What it means is that by virtue of being the ultimate forum of justice, the apex court becomes infallible and its decisions become binding irrespective of the fact whether they are good or bad.