**A risky plan**

BY A H M E D B I L A L M E H BOOB 2020-12-13

IF the Senate election takes place in March 2021 as scheduled, the PTI is likely to emerge as the largest party in the house, displacing the PML-N from that position.

Not only that, the coalition led by the PTI may either get a majority or be a breath away from controlling the Senate af ter the election. This will be a significant shif t in the power structure of the country as the constituent parties of the PDM, which decisively control the current Senate, will be reduced to a minority. This change will certainly ease a lot of the PTI`s current problems such as the passage of legislation considered important by the government but stuck in the Senate.

The opposition PDM alliance plans to disrupt the expected unfavourable (for the PDM) outcome of the forthcoming Senate election by forcing the government through street agitation to call for fresh general elections before March 2021. This is a political move with associated uncertainties and risks. In parallel, the PDM thinks it can make a legal move to stall the Senate election by resigning en masse from the national and provincial assemblies. Some PDM leaders think that the resignations may render the electoral college for Senate elections incomplete which in turn may make the Senate election constitutionally untenable.

Apparently, it seems that mass resignations of legislators belonging to the PDM parties will not be able to disrupt the Senate election. Although the Constitution is not explicit on the subject, Elections Act, 2017, leaves no doubt that vacancies in the electoral college which, in this case, are the national and provincial assemblies, cannot stall the upcoming election, at least from a legal standpoint.

Chapter VII of the Act deals with the conduct of elections to the Senate and Section 130 deals specifically with the question of vacancies in the electoral college. It reads: `An election of a Member of the Senate by the Members of a Provincial Assembly, Members of the National Assembly ... as the case may be, shall not be called in question on the ground merely of the existence of any vacancy in the membership of the Assembly....

The law, therefore, hardly leaves any doubt as far as the legality of the Senate election after resignations is concerned.

In fact, the PTI and other non-PDM parties which may remain in the assemblies after and if the PDM parties resign, will hugely benefit by winning all those Senate seats which would otherwise have been won by the PDM parties. This is a scenario which will then haunt the PDM parties for the next six years which is the term of thesenators so elected.

In all other assemblies, the situation is straightforward in the light of Section 130 of the Elections Act but the Sindh Assembly, however, presents a tricky situation. Here the PPP, a constituent party of the PDM, is the ruling party holding a clear majority in the house. The chief minister may advise the dissolution of the assembly shortly ahead of the Senate election in March 2021 which may keep an entire province out of the election.

In case this happens, it will be the first time that a province skips the Senate election cycle. Since there is no clear and explicit provision in the Constitution and the Elections Act regarding such a situation, the matter may end up in a court of law for resolution and interpretation of the Constitution. This may become necessary also because fresh election of the chair and deputy chair of the Senate has to take place immediately af ter the March 2021 election and the absence of half the representation of a province may signifi-cantly impact the outcome of these elections.

Although the absence of an assembly at the time of the Senate election may be unprecedented in Pakistan, a similar situation has repeatedly arisen inneighbouring India. While half the Senate members retire every three years in Pakistan, India follows a biennial cycle when one-third of the members retire every two years. The cycle of biennial retirements and elections operated normally in India up to 1962 but one legislative assembly or the other in India was not available for Rajya Sabha (Senate) elections af ter that. As a result, some members of Rajya Sabha are retiring almost every year.There had been unsuccessfulefforts to seek judicial intervention to restore the biennial election cycle of Rajya Sabha.

Irrespective of the time of the election of members against a regular vacancy in the Rajya Sabha, their term of membership remains six years.

Although the courts in Pakistan may have the last word, it seems that even the dissolution of the Sindh Assembly may not be able to disrupt the forthcoming Senate election.  The writer is president of the Pakistan Institute of Legislative Development And Transparency.

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