**Non-Compliance with the constitutional provisions**

[Mian Rauf](https://www.nation.com.pk/columnist/mian-rauf)

September 13, 2023

[Opinions](https://www.nation.com.pk/opinions), [Columns](https://www.nation.com.pk/columns)

Pakistan is facing one of the worst politico-economic and constitutional crises. Self-oriented interpretation and a lax attitude towards the constitution by the executive and other state institutions appeared scary and dangerous. The spirit of the constitutional principles is well known, but has been brushed aside by power politics dominating the country’s political landscape. Focusing upon the text without any regard to its spirits is as absurd as the imagining of living human beings without a soul
With the ouster of PTI-led government through vote of no-confidence last year, the country has witnessed complete defiance of the constitutional provisions. Various provisions of the constitution of Pakistan, 1973, elating to holding timely polls to the two early dissolved Punjab and KP assemblies, releasing funds for polls and prerogative of appointing dates for elections have been explicitly misused and misapplied by the then executive with the full connivance of the Election Commission of Pakistan. Even the Supreme Court’s verdict for holding polls in the province Punjab on May 14, 2023 was treated with disdain.
Now we have un-elected caretaker setup in place to look after day to day state affairs after the dissolution of National assembly and four provincial assemblies. The maximum period for caretakers is just 90 days as mandated by the Constitution. It would be a gross violation of the constitution, if the interim-hybrid regime stays longer than the constitutional deadline of 90 days as the preamble of the constitution envisages the exercise of state authority and power through the chosen representative of people and not through nominated and unelected one.
However, a new controversy has cropped up after the election commission refused meeting with the President of Pakistan on the issue of who is authorised to appoint the date for general elections in the country. The ECP considers its sole prerogative to announce the general elections date in view of the newly inserted amendment to section 57 of the Election Act, 2017 which reads as “Subject to the Constitution the Commission shall by notification in the official gazette announce the date or dates, as the case may be, of the general elections”. Here what ECP failed to understand is the subservient and subordinate nature of section 57 to the Constitution of Pakistan. The power to announce the date of elections by the ECP is subject to the Constitution and ECP cannot assume paterfamilias role in this regard.
It is pertinent to mention here that the 1973 Constitution of Pakistan envisages three situations when the National Assembly gets dissolved, i.e. upon completion of its full term of five years under Article 52, upon an advice of the Prime Minister under Article 58(1), and upon the President’s discretionary actions under article 58(2) before the expiry of the full term. There is a difference between a situation where the National Assembly is dissolved by the President (either upon the advice of the Prime Minister or upon a discretionary action by the president) and a situation where the National Assembly stands dissolved by automatic operation of the Constitution. Where the President dissolve the National Assembly under Article 58(1) upon an advice from the Prime Minister to do so or he dissolves the Assembly under Article 52(2) in the exercise of his own discretion it is, therefore, clear that in both such situations the President is bestowed with the power under Article 48(5) to appoint the caretakers as well as appoint the date not later than 90 days from the date of dissolution for holding of general elections to the National Assembly. In current situation, the National assembly stood dissolve by the hand of president thus he is authorised to appoint the date of general elections and ECP cannot take away this privilege of the President by relying on faulty interpretation of section 57 of the Election Act,2017. Whatever it is that permissible can only happen within the parameters, and in particular the outer limit, fixed by the Constitution itself.
Another reason behind the delayed poll is being cited by the ECP is the issue of fresh delimitation of constituencies on account of newly notified census, which contradicts the ECP’s earlier stance for holding poll in accordance with the last census without any delay on its part. The fate of the digital approved census by Council of Common Interest still hangs in balance as the Supreme Court Bar Association has taken this issue before Supreme Court requesting it to declare the same unconstitutional and illegal due to participation of caretaker chief ministers of Punjab and KP in the CCI meetings. However, the constitutional demand of holding polls within 90 days cannot be violated under any circumstance whatsoever it may be. The job of carrying out delimitation process has to be done within 90-day period as the Supreme Court in it its ruling in the Constitutional Provision No:5 of 2023 has held that “the time period imposed by Article 224 for holding general elections cannot be extended by the Commission by reason of any overriding constitutional power claimed to be conferred upon it by Article 218 or in terms of the 2017 Act”.
It is universally accepted that a constitution of a country is also like a living organism which flourishes and grows with the requirements of time and society. Therefore, a regular pruning of the constitution is always advisable for its good health and prosperity. It is not the mandate and domain of the Election Commission or the Executive to do interpretation of the law and the constitution as the constitution has bestowed the judiciary with this mandate. Adherence to the constitution by the state institution would set the course for ending political instability, ensuring the independence of judiciary and securing the rights of the individuals.