

[ADRN Issue Briefing]

Upcoming Elections and Political Turmoil in Pakistan

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Historical Background

Historically, elections have been quite tumultuous in Pakistan. The aftermath of the fateful first parliamentary election of 1970 was a civil war in the eastern wing of the country, then known as East Pakistan, and it led to the break-up of Pakistan in 1971. The military government of Pakistan at that time was reluctant to accept the mandate of the East Pakistan-based Awami League – the party that had won an overall majority in the country and an absolute majority in the eastern province. The party wanted a confederation-style autonomy for the provinces in general and the East Pakistan in particular which was not acceptable to the military dominated by West Pakistan.

Pakistan, so far, has conducted ten general elections after the first election in 1970. Pakistan has a parliamentary government with two houses. The parliamentary leader of the majority party or the coalition of parties in the popularly-elected National Assembly is elected as the Prime Minister (PM) and serves as the chief executive of the country. Pakistan is a federation with four provinces. Each province has a provincial assembly that elects its respective chief executive, namely the Chief Minister (CM). Since 1970, elections to the National Assembly and the provincial assemblies are held around the same time with a gap of maximum 10 days between the National and Provincial Assemblies elections in 1970. Starting with the 7th election in 1997, the election to the national and four provincial assemblies take place on the same date. The simultaneous elections to all the five assemblies significantly reduce cost and other complications that the country would face if the elections to different assemblies take place on different dates apart by several months, if not years. The country's Constitution, however, does not bar staggered elections. Each assembly has a term of five years but the PM and CM can prematurely dissolve the national and provincial assembly respectively in their discretion. The Constitution requires that fresh election to an assembly takes place within 60 days if it is dissolved on the completion of its 5-years term. If an assembly is dissolved prematurely, its fresh election must take place within 90 days of dissolution.¹

The last elections to the national and four provincial assemblies were held in July 2018 and their respective terms started in August 2018 when the members took oath. Therefore, these assemblies were to complete their term in August 2023 and their fresh elections were scheduled for October 2023.

¹ The Senate of Pakistan. 2018. "The Constitution of the Islamic Republic of Pakistan." 59.
[https://senate.gov.pk/uploads/documents/Constitution%20of%20Pakistan%20\(25th%20amendment%20incorporated\).pdf](https://senate.gov.pk/uploads/documents/Constitution%20of%20Pakistan%20(25th%20amendment%20incorporated).pdf)

Political and Legal Crisis for Scheduling Next Elections

Two rather unprecedented developments, however, took place during the last one year, which not only upset the election schedules, but also produced unprecedented political upheavals. In April 2022, the then-PM Imran Khan lost the support of the majority in the National Assembly and became the first PM in the country's history to be ousted by a no-confidence vote in the parliament.

Soon after Imran Khan was deposed, he decided to launch a movement to seek fresh election to the assemblies. Initially, he asked all members of the National Assembly (MNAs) belonging to his party, Pakistan Tehreek-e-Insaf (PTI), to resign from their seats. Imran Khan believed that it would be very difficult for the new government to continue functioning while more than one-third of the assembly seats were vacant. He also thought that holding by-elections on so many vacant seats would force the government to rather hold election for the entire assembly. While 29 MNAs belonging to his party defied his directions, the remaining 123 tendered their resignation. As these resignations awaited processing and transmittal to the Election Commission after acceptance by the Speaker, the new Speaker from the new ruling coalition was elected since the previous speaker from PTI had resigned. The new speaker withheld acceptance of these resignations on the pretext that he wanted to make sure that the resignations were genuine and that the MNAs had tendered these resignations voluntarily.²

Following the successful revolt against Imran Khan in the National Assembly, the opponent parties started efforts to dislodge his party's government in Punjab - the largest province of the country where over 56% of the country's population inhabited. The effort initially proved to be successful and the PTI-backed CM was replaced by the one from the opposition. The in-house changes took place amid unprecedented violence and assault on the presiding officer within the assembly chamber. This change was challenged and while the cases were being contested in the courts, the Provincial Assembly of the Punjab split along party lines and the two equal groups held two separate assembly sessions in different premises. This was a spectacle that was never seen before in the country's history.

Finally, after several twists and turns, the Punjab CM supported by Imran Khan's party was restored. At this point, Imran Khan took a decision that further intensified the political turmoil. He asked the CMs of Punjab and Khyber Pakhtunkhwa (KP) - the two provinces whose government was controlled by Imran Khan's PTI - to dissolve their respective provincial assemblies.

The CMs and many others within the party considered the premature dissolution of the assemblies as a suicidal act because together with the assemblies, their provincial governments would also be wrapped up almost a year before the due date. However, Imran Khan remained adamant and the two assemblies were dissolved at the advice of the respective CMs - Punjab Assembly on the 14th and KP Assembly on the 18th of January 2023. Imran Khan thought that the prospect of the fresh election of the two assemblies which represent about 70% of the country's population would persuade the PM and the other two provincial Chief Ministers to dissolve the National and the remaining two provincial assemblies too and go for fresh elections in the entire country - an aim which Imran Khan had been resolutely chasing from the day he was removed from his position. Even this assumption of the former PM did not prove to be correct as the federal government decided not to dissolve the National Assembly. The other two provinces - Sindh and Balochistan - also decided that their provincial assemblies would continue and complete their five-years term.

² Arab News. 2023. "Fresh uncertainty in Pakistan with new twist in saga of resignations of ex-PM Khan's MPs." <https://www.arabnews.pk/node/2247086/Pakistan>

Another political crisis was created when the Provincial Governor of Punjab refused to fix the polling date for the Punjab provincial election because he correctly claimed that he was not the one who dissolved the assembly (It was dissolved upon the advice of the CM and, following the constitution, the assembly stood dissolved 48 hours after tendering the advice) and that the Constitution Article 105(3) only empowered the Governor to fix the date when Governor dissolved the assembly. The Provincial Governor of KP also did not appoint the polling date on the pretext that the law and order situation in his province was so bad that the election could not take place. This confusion about the responsibility of fixing the polling date had arisen because it was the first time that provincial assembly elections were to be held separately from the National Assembly election. In the past 10 general elections since the Constitution of Pakistan was adopted in 1973, National and Provincial Assemblies elections were held almost simultaneously and the President of Pakistan fixed the polling date. Now that the National Assembly election was not involved and only provincial assembly elections were to be held, the Governors were expected to fix the polling date. Unfortunately, the Constitution was unclear about who assumes the responsibility of fixing polling dates when Assembly is not dissolved by the Governor.

Taking advantage of Section 57 of the Elections Act 2017, which empowered the President of Pakistan to appoint the polling date, President Arif Alvi announced 9th April as the polling date for both provincial assemblies. President's action was immediately rejected by the PM and almost all political parties except PTI since the President had not consulted the Election Commission, which he was supposed to do according to Section 57 of the Elections Act. In addition, the President, according to Article 48(1), is required to always act on the advice of the PM unless it is explicitly mentioned in the Constitution that it was a discretionary power of the President. As it is not mentioned anywhere in the Constitution that appointing polling date was a discretionary power of the President, he was bound to act on the advice of the PM, which neither the President sought nor the PM gave. The President's action to unilaterally fix the polling date was, therefore, considered unconstitutional by many legal experts besides politicians.

The question of fixing date in Punjab was initially brought before the Lahore High Court where the Judge asked the Election Commission of Pakistan (ECP) to fix the polling date in consultation with the Governor. The ECP considered the judgment not in line with the Constitution and challenged it before the Supreme Court. Finally, while cases were pending before the High Courts in Lahore (Capital of Punjab) and Peshawar (Capital of KP), a 9-members bench of the Supreme Court took it upon itself to decide the matter. Although three judges considered that it was improper for Supreme Court to take up the case while the High Courts were already proceeding on it, a 5-member bench heard the case and directed the President of Pakistan and the Governor of KP to fix the polling dates for Punjab and KP assemblies after consulting the ECP. The country kept plunging deeper and deeper into political turmoil while the constitutional cases were being contested.³

³ Maleeha, Lodhi. 2023. "The only way out?." <https://www.dawn.com/news/1740674/the-only-way-out>

Uncertain Elections and Possible Military Intervention

The election dates for Punjab and KP have now finally been decided respectively by the President and the Governor, but the crisis is far from over. In fact, it has intensified. While the Constitution requires the election to an assembly to be held within 90 days from the date of its premature dissolution, various federal government departments like Finance, Interior and Defence have conveyed to the ECP that they would not be able to provide funds, security forces and the military personnel in the current extraordinary situation when the country is facing the worst economic crisis of its history and almost facing a default, the terrorist activities are on the rise and security personnel are tied up in fighting them. On top of that, the new population census is in progress and the subsequent demarcation of constituencies won't be completed before August.⁴ It was decided by the Council of Common Interests (CCI), a constitutional body to guard the provincial interests in the federation, under the chairmanship of the former PM Imran Khan about two years ago that the next election would be based on the new census.

In the meantime, some of the worst clashes have erupted between the police and Imran Khan's supporters in Lahore when the police tried to arrest the ousted PM. Two non-bailable arrest warrants were issued against Imran Khan on March 13, 2023 by the local courts of Islamabad after he failed to appear in these courts in cases of non-disclosure of profit earned by selling gifts received as PM (*Toshakhana* - Repository of state gifts - case) and of threatening a female judge. The courts had asked the police to present him before the courts on March 18. Therefore, Islamabad Capital police along with the Punjab police arrived at his residence to arrest him. The government might have acted overzealously while trying to arrest Imran Khan but the arrest would have been lawful. Later clashes between PTI workers and the police in Lahore when the latter entered Imran Khan's residence with a search warrant and in Islamabad when Khan reached for court appearance, have further heightened the political tension. These developments have strengthened the apprehensions about maintaining law and order during the upcoming elections, and even holding of election is in doubt.

While the political crisis is deepening, many including Imran Khan think that fresh election is the only way to resolve the crisis. Others, such as the federal government and its 13-party coalition think that election is neither feasible in these circumstances nor meaningful in resolving the crisis.

On March 22, 2023, the ECP postponed the general election of the Punjab Assembly from April 30 to October 8, 2023, invoking Article 218(3) which makes the ECP solely responsible for holding free and fair election while guarding against corruption and Section 58 of Elections Act 2017 which authorizes the ECP to alter the election schedule or issue an altogether new schedule. In a 8-page long notification, the ECP explained the background of the postponement which, in brief, states that it is unable to hold a peaceful and fair election for the following reasons: the Ministry of Finance expressed inability to provide additional funds; Ministry of Defence declined to provide troops for election security; and the provincial government informed that only very limited police security can be provided. The ECP decision is as unprecedented as the severity of multiple crises faced by the country and in a way has further deepened the political crisis. The PTI has reacted angrily and is poised for street agitation against the ECP decision in the Supreme Court, which will have the last

⁴ Iftikhar A. Khan. 2023. "Governor fixes May 28 for KP assembly polls." <https://www.dawn.com/news/1742266/governor-fixes-may-28-for-kp-assembly-polls>

word on the election schedule. Meanwhile, the coalition federal government endorsed the ECP decision and welcomed the prospect of simultaneous election of National and all Provincial Assemblies.

Irrespective of the outcome of the anticipated proceedings in the Supreme Court, prospects of crisis resolution are weak. Even if the Supreme Court directs the ECP to hold election according to the original schedule, its enforcement is not guaranteed as was the case a few months ago when the ECP could not hold election for Islamabad Metropolitan Corporation, the local government of the federal capital, despite direction by the Islamabad high court. As a result, the political crisis may further deepen to a point that military decides to intervene in an effort to bring about order before election could be held.

- **Ahmed Bilal Mehboob** is the founder and the President of PILDAT, who has over 25 years experience in senior management and advisory positions and over 8 years experience in design, planning and implementation of projects in the field of Parliamentary development, strengthening democratic institutions, democratisation, political discourse, election monitoring and dialogues for reconciliation. Mr. Mehboob is considered an authority on political, legislative and electoral affairs of the country.

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