

The decent protester

BINOY KAMP MARK

The Decent Protester, appropriately capitalised and revered is, from the outset, one who does not protest. It is an important point: to protest in the visage of such a person is an urge best left to inner fantasy and feeling. You come late to the scene: the best work and revolt has been done; the people who made the change are either dead, in prison, or ostracised. Modest changes might be made to the legal system, if at all.

To actually protest, by which is meant screaming, hollering, and disrupting, with the occasional sign of public indignation, is something of a betrayal. A betrayal to your comfortable station; a betrayal to your happy state of affairs. Show disgust, but keep it regular, modest and contained. Add a dash of bitterness that amount to hypocrisy.

This regularity is something that ensures the continuation of police states, apartheid regimes, and vicious rulers. It also perpetuates the status quo in liberal democracies. The cleverness of this is the idea of permissible revolt: As long as you operate within the acceptable boundaries of protest, your conscience is given its balm, and the regime can continue to hum to the tune of the tolerable. It is a principle that states of all political hues adopt, though the degree of that adoption is sometimes moderated by bills of rights and the like.

When Henry D Thoreau was arrested and found himself spending a night in a Concord prison in 1846 for refusing to pay his poll tax, he was making a broader statement about breaking rules, albeit from a selfish perspective. His objects of disaffection were slavery and the Mexican War. To the individual exists a conscience that should not bow to majoritarian wishes. If there is a law "of such a nature that it requires you to be an agent of injustice to another," he writes in 'Civil Disobedience', "then, I say, break the law." In Walden (1854), he elaborated on the point, claiming that no citizen "for a moment, or in the least degree, resign his conscience to the legislation."

This view has hardly gone unchallenged, suggesting that civil disobedience can be a slippery matter. Hannah Arendt cast more than a heavy stone at Thoreau in her own essay on the subject in 'The New Yorker' in September 1970. Her proposal, instead, was the necessary need to institutionalise civil disobe-

dience and render it a matter of recognised action, rather than individual abstention. Thoreau had, after all, suggested distance and the will of the individual, that it was "not a man's duty, as a matter of course, to devote himself to the eradication of any, even to the most enormous wrong; he may still properly have other concerns to engage him; but it is his duty, at least, to wash his hands of it..."

To that end, Arendt felt that "it would be an event of great significance to find a constitutional niche for civil disobedience — of no less significance, perhaps, than the event of the founding of the constitutio liberatis, nearly two hundred years ago." But she resists, curiously enough, the idea of legalising it, favouring a political approach akin to treating the protester as a registered lobbyist or special interest group. "These minorities of opinion would thus be able to establish themselves as a power that is not only 'seen from afar' during demonstrations and other dramatizations of their viewpoint, but is always present and to be reckoned with in the daily business of government."

Few countries better exemplify this dilemma than Australia, a country that has no formal constitutional protection of the right to protest yet insists on a collaborative model between protester and state (protest permits, for instance, take precedence over any organic right; cooperating with police is encouraged, as laws are to be abided by). In some ways, an argument might well be made that civil disobedience, in anaemic form, has been institutionalised down under.

The result from brought forth in this coagulation is simple if compromising: the Decent Protester. Such a person is one very much at odds with the barebones definition of civil disobedience advanced by Robin Celikates, who describes it as "intentionally unlawful protest action, which is based on principles and aims at changing (as in preventing or enforcing) certain laws or political steps." In other words, there can be no Australian Rosa Parks. Each state has its own guidelines for the decent protester, offering a helpful hand for those braving a march or organising a gathering. An information booklet covering the right to protest in the Australian Capital Territory has a range of "guidelines". It speaks of "many public places" in Canberra, the national capital, "where people can exercise their right to communi-

cate their opinions and ideas through peaceful protests and demonstrations." The authors of the booklet make the claim that Australian "democracy recognises this right which is subject to the general law and must be balanced against the rights and interests of others and of the community as a whole."

The Commonwealth Attorney-General's office gives the false impression that Australia has a clear right to peaceful assembly for people to meet and "engage in peaceful protest." A list of international human rights treaties are suggested as relevant, including the International Covenant on Civil and Political Rights (articles 21 and 22) and the International Covenant on Economic, Social and Cultural Rights (article 8(1)(a)).

But being a party to a convention is not the same as incorporating it. Legislation needs to be passed and, for that reason, remains mediated through the organs of the state. The Fair Work Act 2009, for instance, protects freedom of association in the workplace but only in the context of being, or not being, members of industrial associations. Not exactly much to go on. Other publications venture a much older right to protest, one that came to the Great Southern Land, paradoxically enough, with convict ships and manacles. "The origins of the common law right to assembly," argues a briefing paper by Tom Gotsis for the NSW Parliamentary Research Service, "have been traced back 800 years to the signing of the Magna Carta." This, in turn, finds modest recognition in state courts and the High Court of Australia, not least through the limited implied right of political communication. Ever eccentric in its conservatism, that right is not a private one to be exercised against the state, merely a control of hubristic parliaments who venture laws disproportionate to it. Not exactly a glorious, fit thing, is that implied right. Such protest, measured, managed and tranquilised, makes the fundamental point that those who control the indignation control the argument. Much time has been spent in Australia embedding police within the protest structure, ensuring that order is maintained. Trains, buses and cars must still run on time. People need to get to work. Children need to be in school. The message is thereby defanged in the name of decency. It also means that genuine lawbreaking aimed at altering any policies will

Conflict of laws

KAMAL AZFAR

It is a fundamental principle of private international law that, in order to avoid 'conflict of laws' and to respect the 'comity of nations', only courts of law in the country in which immovable properties are situated have exclusive jurisdiction, and only the laws of that country will apply. Courts cannot assume jurisdiction over foreign immovable properties.

This principle was also followed in the case of Hotel Metropole. In the Hotel Metropole case, the Honourable Sindh High Court did not enforce a foreign decree attaching the hotel, issued by J Sir Jan Peter Singer of the High Court of England and Wales, in a suit under the UK Matrimonial Laws, filed by Meher Minwala, the divorced wife of Mr Happy Minwala. As a result the decree was not enforced in Pakistan as it did not apply the laws of Pakistan — ie, the Parsi Marriage and Divorce Act 1936 — and instead invoked the laws of England.

The question often arises which is the proper law to be applied so as to avoid conflicts of laws between na-

tions of different countries. The laws of England do not recognize the concept of 'benami transactions'. The concept of benami or ostensible owner was first applied by the Privy Council to transactions relating to transfer or ownership of immovable properties in British India.

In the year 2017, the parliament of Pakistan passed the Benami Transaction (Prohibition) Act 2017. The Benami Act contains various penal consequences including confiscation of benami property. This Act applies only to the territories of Pakistan and does not apply to immovable properties situated in England. Subsection (2) of Section (1) of the Act expressly states "it shall extend to the whole of Pakistan".

The Indian Supreme Court, in the case of Ct A Ct Nachiappa Chettiar v Ct A Ct Subramania Chettiar, reported in AIR 1960 SC 307, held that the courts in India have no jurisdiction to determine the questions of title in respect of immovable properties situated in foreign countries or to direct partition thereof. The fundamental principle in the case of immovable properties, stated in 'Conflict of Laws', authored by eminent Jurist

Dacey, is as follows: "The courts of a foreign country have no jurisdiction to adjudicate upon the title or the right to the possession of any immovable property not situated in such country". The laws of England and Wales do not include or recognize the doctrine of 'benami or ostensible ownership' if the land or building is situated in the UK. The registered owner alone is the owner and no one else.

In keeping with the fundamental doctrine of 'Comity of Nation' and to avoid 'Conflict of Laws', the concept of ostensible owner or benami ought not to be extended to an immovable property situated in England. Indeed any person declaring a property registered in the UK in the name of another person as his own could be prosecuted in England for making a false claim to title of the property. In order to avoid 'conflict of laws' between the courts of law of different countries, in the case of immovable properties, the proper law is the law of the country where the property is situated. Thus, if the immovable property is situated in England the concept of benami or ostensible is not applicable. This is also known as the doctrine of 'comity of nations'.



Dubious protest



MUHAMMAD USMAN

It is true that a democratic government is distinguished by its three redeeming features. First, it is legitimate, stamped with approval of people through honest ballot. Second, it bows to principle of accountability by law and people. Three, it shows disposition to remain responsive to needs and aspirations of people. In case a government is found wanting, people have the right to protest to drill sense in

its head. Arguably, even they have the right to dislodge it if situation direly warrants so however, underlying principle ought to be that it is an extreme measure and is resorted to only when there is no way out politically.

Taking the advantage of these democratic norms, Maulana Fazlur Rehman has announced to launch a Long March with alleged tacit support of all opposition parties in one guise or the other to topple government of Imran Khan under the banner of his political party, JUI to correct the situation which otherwise seems to him irretrievable.

On good reasons, it is a widely held view particularly, by informed sections of society that no such situation of despair and frustration exists rather, situation is likely to take turn for the better. One finds hard to resist not to mention that frantic outcry has been raised by a man

who was defeated rather humiliated electorally by masses in his own native town and is being backed by all opposition parties, known ruling elite in common parlance. These are the people who have plundered this nation mercilessly without a pause whenever had the opportunity and even did not hesitate to become cat paws in hands of outside powers to harm the country. No saner mind could relish their stunts in power.

If these were not enough to make his March unwarranted, dubious and obnoxious, he chose to paint it darker with brush of militancy, extremism and radicalization.

He took a guard of honour from a contingent, dressed in mustard colour and carrying dandas (stick wielders) in a past march as of a ceremonial military parade. It amounts to state within a state. Reportedly, these people were of an outfit

"Ansar-ul-Islam" which is a subsidiary of his political party, JUI. This was an inconceivable but an outrageous sight to all and sundry. Maulana is an acknowledged shrewd politician who fully knows length and curvature of politics. He is too adept not to overstep in a minefield. Even taking fraction of this into account, his wild action could not be dismissed as mere act of desperation.

There seems to be far more to it. An in-depth examination is the need to dig out what impelled him to take this awful course politically. There could be multiple dimensions.

An eminent anchorperson, Doctor Moeed Pirzada has candidly pointed out that uniform of armed contingent in question bears close resemblance in colour to dress of Indian RSS. The timing of its occurrence is also another important aspect particularly, when in the wake of recent Indian brutalities and

lockdown in IoK, Pakistan is making concerted efforts to expose mentality of RSS as Nazism in India worldwide to relatively good effect. Indian and other foreign media channels now have the footages/images to depict presence of similar force of a political party in Pakistan to dilute the vigorous campaign of Pakistan to unveil true face of India. If one witnesses Indian channels, it appears that as Maulana is working for their cause.

They are smug and jubilant. Another sordid aspect is the day of Long March; October 27.

This coincides with the day which is observed by Kashmiris and Pakistan a black day to condemn illegal annexation of Kashmir by India.

Given environments, this time, it was ought to be observed with more vigour and ferocity but may stand marred with deceit and hypocrisy of

Maulana's action. This is indeed a spanner in works. This is by no mean accidental. This is willful.

Apart from above, it may again tarnish image of Pakistan which is improving in terms of extremism and terrorism but still remains under microscopic scrutiny at world capitals and institutions.

The raising/maintaining of a militia-type force entails huge sum of money followed by recurring expenditure. In instant case, sources of funding may lie outside the country.

This may not be a poorly founded supposition. There are news by government's circles that it knows about funding to Maulana by VVIP prisoners in the country.

Possibly money has been doled out by them to stoke chaos, confusion, uncertainty in country in order to retard economy which has started showing signs of sound recovery and up-

ward trajectory with ultimate purpose of keeping popularity of Imran Khan down slide for their political existence/survival. In process, they may also be able to pressurise the government to get deal of some sort on accountability plan. These are underhand transactions for ulterior motive.

It is good to learn that government has moved the summary, seeking ban on Ansar-ul-Islam being a lath barthar force which is not allowed under the law however, government must not end its pursuit here rather go all out to unearth its real architects, motives and sources of funding to bring the culprits to justice to deter others sternly. The country could no more endure such characters. Under no event, these people be allowed to go scot free in the garb of negotiations to end protest or peace and quiet in politics.

The writer, retired Lt Col, is freelance columnist based in Islamabad

Letters to the Editor

Namaz timings on TV

I have noticed Iftaar timing discrepancy on TV channels for the last three years. This discrepancy is evident if you scroll multiple websites for namaz timings or sunset sunrise timings. There is difference of some minutes evident, and in attached documents difference of days in Ramadan timetable is also evident. Sir this issue needs to be highlighted in media as this discrepancy has serious legal and religious implications. So, I am writing this letter with the hope that you will publish.

I have been to several ulema and no one taking notice which is a deplorable sign. I have given application to FIA but did not get any deserving response, although they have accepted my application and are investigating different aspects of this discrepancy.

Dr Faisal Shehzad
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The silence of the UN

The United Nations has, yet again, failed to safeguard the interest and fundamental rights of people belonging to poor and powerless countries. It appears that the UN Security Council passes resolutions only to prove its

existence, as the execution of such resolution is limited to merely discussions. No substantive and effective steps are taken by the UN to ensure that the core purpose of its existence is served. As far as I recall, the only dispute which was thoroughly resolved by the UN was the issue of Timor and Indonesia. The most recent example of such inaction(s) is evident from the silence of the UN on the atrocities against the Kashmiris residing in Occupied Kashmir. It has been extensively debated in the UN that the issue of Kashmir is a global issue and not limited to the internal problems of India. However, the same has been blatantly disregarded by the Indian prime minister. Modi disallowed senators from the US to visit Indian-held Kashmir and has further refused to remove the curfew imposed therein. Despite this, the UN chooses to remain silent and has turned a blind eye to the issue. It unfortunately appears that the UN only intervenes in matters which concern its own interests. The members of the Security Council continue to observe inhumane brutalities committed by India against its minorities.

Raja ShafaatUllah
ISLAMABAD

Water scarcity

Water is one of the most precious resources on the planet. Without water we cannot sur-

vive. Pakistan is currently facing an acute water shortage that is likely to wreak havoc in the country in the coming years. Water scarcity involves water stress, water shortage or deficits, and water crisis. Due to lack of proper measures for securing and preserving natural resources, our country is suffering from water scarcity.

A recent report by the IMF has ranked Pakistan third among countries facing acute water shortage.

The Pakistan Council Research in Water Resources (PCRWR) has warned that Pakistan may run out of water by 2025.

The water crisis in Pakistan is more due to wastage of water, rapid population growth, deteriorating situation of dams, an outdated canal system, expensive and improper ways of irrigation. The federal and provincial governments must make proper policies for water.

Maira Nadeem
RAWALPINDI

Indian violence

On Sunday, unprovoked Indian Army shelling across the Line of Control (LoC) left six civilians dead, and martyred one soldier. Pak Army, in retaliation, killed nine Indian troops and destroyed two bunkers. To substantiate its

counterfeit claims to have allegedly killed terrorists and smashed their launch pads, Indian media resorted to unfounded, speculative ways, as usual, to whip up its xenophobic and national sentiments of their gullible people for getting domestic, political mileage. The escalation in ceasefire violations by India had been going on since 2017 when the Indian forces had committed 1,970 ceasefire violations.

Though Pakistan has reiterated its offer to hold dialogue to iron out all outstanding issues, the hardliner Hindutva ruling clique seems to be in war-mongering mode. To divert global attention from the Kashmir lockdown, the Indian racist government is playing with fire by causing disturbances along the LoC. The world needs to intervene between the two nuclear neighbours before it is too late.

Riaz Ahmad Soomro
SHIKARPUR

The bright side?

This refers to the article 'Wandering in a wilderness' by Ghazi Salahuddin. I advise the writer to be positive. According to him, 44 percent of children in Pakistan are stunted. That means 56 percent of children are not stunted. And not to worry, only 25 million

children are out of school. That leaves more than a hundred million who do go to school.

There are other good things to write about, like the very low number of people killed by dengue fever (only a couple of hundred so far), while the hard-working prime minister of the country is mediating to end the war in Yemen to make life easier for us.

Shakir Lakhani
KARACHI

Accident prone

Another tragedy happened near Mianwali the other day when the gas cylinder of an ambulance exploded after collision with a tanker, killing all nine persons in the ambulance. Pakistan has a very high ratio of deaths in road accidents as safety codes are totally denied by public transporters.

Time and again, accidents occur due to explosion of gas cylinders. No strict action has so far been taken by the government on the legal front to curb the nuisance of fixing sub-standard gas-cylinders in vehicles. At least it should exclusively ban these 'moving bombs' in public transport, especially in ambulances to save the general public from cruel deaths.

Iftikhar Mirza
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