

Elections under fire

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German legal philosopher Carl Schmitt's book 'Legality and Legitimacy', published in 1932 as the Weimer Republic crumbled towards its end, turned out to be one of the most consequential works of jurisprudence of the last century.

For Schmitt, parliamentary democracy was inherently a compromise-ridden structure of dispersed sovereignty that delivered hollow legality.

Parliamentary majorities and supermajorities cobbled together by reaching out in compromise across political divides resulted in self-serving interest groups stifling the undiluted expression of the people's will. What emerged was formal legality without legitimacy.

Institutions of the state that fell under the sway of this legality deserved to be mocked. The people must await, celebrate and obey the charismatic leader who would encapsulate and express their will and their rage while expunging from the body politic carcasses of the ancient regime. Listening to the prime minister's speech the day after the Senate elections one could perhaps be forgiven a moment of dread.

After all, things did not turn out well either for Schmitt's vision of legitimacy or for the German people and their leader in the years that preceded the reassertion in Germany, a world war later, of parliamentary democracy and the inevitable compromises it entails.

The prime minister bemoaned a parliament that had failed to amend the constitution so as to provide for election to the Senate through open, rather than secret, balloting as proposed by him. He had nothing but contempt for the Election Commission of Pakistan that had turned up before the Supreme Court of Pakistan to oppose the open ballot that he had sought through a presidential reference. He asked the people directly, "Why would the Election Commission oppose an open ballot?" The dark implications packed in his question have since become a wellspring of derision for the ECP and for what is described by the faithful more

generally as "the system that must go."

For the record, the ECP opposed the prime minister's desire for an open ballot because the constitution of Pakistan contains Article 226 which reads as follows: "Election by secret ballot. All elections under the Constitution, other than those of the Prime Minister and the Chief Minister, shall be by secret ballot." The constitution also contains Article 59 that establishes the Senate, provides for its membership and tenure and requires that election to fill the seats in the senate allocated to each province 'be held in accordance with the system of proportional representation by means of the single transferable vote'.

The opposition to open balloting for Senate elections that the ECP resolutely presented before the Honourable Supreme Court of Pakistan was nothing more than a reading of the constitution and expression of an interpretation that had been held ever since the adoption of the constitution in 1973. There can be little doubt that the gold standard for democratic elections the world over is considered to be balloting that is absolutely and permanently secret, based on ballots that are neither identifiable nor traceable with respect to the voter.

The requirement for a secret ballot is set out in Article 21 of the 1948 Universal Declaration of Human Rights and Article 25 of the 1966 International Covenant on Civil and Political Rights. The 1994 Declaration on Criteria for Free and Fair Elections, adopted by the Inter-Parliamentary Council of the Inter-Parliamentary Union states that the "right to vote in secret is absolute and shall not be restricted in any manner whatsoever."

The global veneration for secret balloting is based on the protection afforded by secrecy against voting on account of pressure or inducement. A person who seeks to buy the vote of another can never be sure that the vote cast in secrecy inside the polling booth will be in accordance with the bargain. Secrecy also allows for quiet, conscientious dissent. Global wisdom notwithstanding, it is clear that in Pakistan Senate elections based on secret balloting have caused controversy, concern and quite likely

corruption – with many members of the national and provincial assemblies voting anonymously to defeat the candidates of their own political parties.

A strong case is made out for amending Article 226 of the constitution so as to exclude Senate elections from the requirement of secrecy in voting. The constitution itself provides the mechanism for its amendment through a two-thirds majority in both houses of parliament. The power to amend the constitution is the supreme attribute of democratic sovereignty. It requires calm deliberation and a near consensus.

Carl Schmitt's typology of leaders is instructive. The dictator seeks to render the extant constitutional order irrelevant without replacing it with a new framework to constrain the exercise of power. The charismatic plebiscitarian leader seeks to himself lay down new constitutional norms and create exceptions to existing norms on the basis of authority claimed directly from the people. The democratic leader seeks to build coalitions and consensus within parliament that would allow the requisite majority for an amendment to the constitution.

The presidential reference that sought open balloting for Senate elections was a barely veiled attempt to escape the command of Article 226 without a formal amendment to the constitution. A new moral norm, ratified by the Supreme Court, that would render Article 226 redundant was envisaged. The resistance put up by the ECP to the attempt to render a part of the constitution illusory deserves the gratitude of all who profess fidelity to the constitution and its processes.

On March 1, 2021 the Supreme Court of Pakistan answered the presidential reference by opining that Senate elections were indeed elections under the constitution and were, therefore, required to be held through a secret ballot. The court also held that the secrecy envisaged by Article 226 of the constitution was not absolute. It was held that the ECP could employ technology to ensure that elections are conducted fairly and transparently.

With Senate elections scheduled for March 3, the ECP turned down the proposal made by the government that all ballot papers be embossed with a barcode that would enable identification of each voter in the event of commission of corrupt practices. The ECP followed established law in maintaining that no change to the conduct of election could be made after the announcement of the election schedule or without proper formulation of rules. If secrecy of the ballot was to be penetrated then the circumstances that would permit such penetration had to be clearly stated in rules framed under Article 218 of the constitution and the Election Act 2017.

Rules are not made overnight. Simply the fact that a political party might have won fewer Senate seats than expected could not, on its own, be considered evidence of an offence meriting the disclosure of voter identity since the constitution does not require voting in accordance with party directives. Failure or refusal to do what the constitution does not demand can hardly constitute an offence meriting an exception to the secrecy mandated by Article 226.

In the eyes of the faithful, the refusal of the ECP to barcode ballot papers was its second sin within a week. On February 25, the electoral victory claimed by the ruling party in the Daska constituency for the National Assembly was set aside by the ECP. A violent, blood-soaked day had ended with twenty presiding officers, along with their police escorts and ballot bags, going missing for the entire night. All cell phones and wireless sets were found inoperative. When the chief election commissioner of Pakistan desperately attempted to locate his staff, he found that he had no access to the chief secretary, inspector general of police, the commissioner or the deputy commissioner concerned. A police officer that he had ordered removed from the constituency on account of patent bias against the opposition candidate had been appointed in charge of security for the election. When the presiding officers finally emerged from the fog, with ballot bags that reflected a turnout of

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LNG contract with Qatar

Pakistan signed another long-term contract for LNG supply with Qatar. The contract is at market rates and is at a steep discount to the first contract in 2016. At that time, given the LNG market dynamics and Pakistan's lack of experience in LNG buying, it was a fair deal. That said 2016 contract was at 10-15 percent premium to market rates at the time. In 2021, the new contract is at market rates – 10.2 percent slope of Brent. Then, there are additional benefits of winter-summer arbitrage, and higher cargo charges to be shared by Qatar. This makes the effective rate even better. The key reason behind this good price is that the government has struck a package deal with the sheikhdom. There are probably several other economic and defence deals that have been made alongside the one on LNG. On the economic front, the chatter is that Qatar, which will be hosting the FIFA World Cup 2022, has agreed to get manpower from Pakistan to boost its home remittances. It is, however, important to note that the LNG price offered to Pakistan is no different from those China and Singapore received from Qatar recently.

With Pakistan at two days of shipping distance from Qatar as compared to China at 15 days, Pakistan's shipping cost is around 1/5th of China's. However, the terminal handling charges in Pakistan are much higher. Without getting further into these finer points of pricing, the more important point is: another long-term contract of take or pay at a time when Pakistan's exposure on LNG supply is increasing. A good trader would rather pay a premium on pricing (such as at 10.5 percent) to counter the exposure of take or pay. Pakistan handles too much of its existing FRUs and is already at higher throughput risk. The new deal will add two cargos a month to make nine cargos a month on take or pay. This will increase to ten cargos in 2024 (with addition of two cargos under the new contract and by then a contract of one cargo a month will expire). The demand is not an issue. The domestic gas supply is falling and there is pent up demand from power, fertilizer, CNG and industry. There is and will be shortage of gas in the domestic sector. Indigenous gas is not enough to cater to the demand in winters. But the consumer is not willing to pay the LNG price which is higher than the price of domestic gas. If the government supplies LNG at lower rates, it will end up paying a subsidy or adding to an already growing gas circular debt problem.



Beware the ideas of March

GHAZI SALAHUDDIN

Clichéd it certainly is but I am not resisting the temptation of invoking Shakespeare. It was a soothsayer's warning to Julius Caesar: "Beware the Ides of March". That was about a specific date – March 15. In our case, it is the entire month of March that bears dark forebodings.

This is not to say that there would be no cause for celebration for this or that side of the political divide. March 3 – Wednesday – was, of course, a day of great triumph for the opposition when Yousaf Raza Gilani defeated Hafeez Sheikh in the National Assembly for a seat in the Senate. This is a major upset, since it literally implies a vote of no confidence against the government of Prime Minister Imran Khan.

All of a sudden, a tremor ran through the entire political landscape – since it could not have happened without numerous defections from the ruling alliance, and members of the PTI were precisely under the spotlight. Here was an unambiguous certification of reports that many PTI members of the National Assembly were not happy with the choice of Hafeez Sheikh, a veritable outsider, as their candidate for the Senate. There was a reason why the PTI had strived so hard for an open ballot for the Senate elections.

In any case, Pakistan is now caught up in the whirling vortex of the aftermath of Wednesday's election in Islamabad. Imran Khan and his commanders in the battlefield have angrily asserted that votes had been bought and the Election Commission of Pakistan (ECP) had failed in its obligation to check these derelictions. This has led almost to a state of confrontation between the PTI and the Election Commission.

For brevity's sake, let me just share two headlines. "PM blasts ECP over 'foul play' in Senate election". This was on Imran's address to the nation on Thursday. "Stop with the mud-slinging, ECP responds to PM Imran's remarks", on the Election Commission's statement on Friday. To carry this argument further, federal ministers were ready to challenge the ECP's rather firm declaration of its constitutional authority.

In his address to the nation, the prime minister announced that he was seeking a vote of confidence on March 6. After the defeat of his candidate in the National Assembly, this is seen as a face-saving exercise. But the irony here is that this vote is also sought from the 15 or 16 PTI MNAs who, as Imran himself admitted, had 'sold' their votes. But they have not been identified. It is unlikely that a probe into the video released on the eve of the election in which Yousaf Raza Gilani's son was instructing off-screen PTI members on how to spoil their ballot papers would provide the necessary clarifications.

These are matters that contain many complexities and controversies. Pakistan's electoral history has numerous dark passages and the present crisis is born of the PML-N's indictment of the

2018 general elections for having been manipulated to bring Imran Khan into power. There was that familiar display of 'electables' changing their parties, in some cases under pressure, in the midst of the campaign.

A number of PTI lawmakers and ministers have had a happy fling with other parties and alliances that were previously in power. With a few exceptions, there has always been buying and selling in the marketplace of power politics. And Imran Khan is not averse to playing this game. But will the upheaval that is taking shape during this month of March make any difference in Pakistan's politics? Can Pakistan realise its dream of a free and fair election that is not disputed by any party?

One way of looking at it is to delve into the meaning and the message of Yousaf Raza Gilani's victor. There is this feeling, strengthened by comments made by the leaders of the Pakistan Democratic Movement (PDM), that the establishment has become 'neutral'. What has obviously happened is that the opposition has gained confidence and Imran Khan seems vulnerable. There is something ominous about this month of March. A sharp rise in the political temperature began before the March 3 elections. Just recall the scene in the Sindh Assembly when, a day before the Senate showdown, PTI lawmakers physically attacked a 'rebel' colleague.

I feel sorry for not being appropriately able to attend to tomorrow's Aurat March, and to its significance in the context of the evolution of Pakistani society. It is a tragic fact that our rulers, for whatever reasons that may have clouded their minds, have patronised orthodox and misogynist elements. But the success of this inspirational struggle for women's emancipation is mandatory for our democratic survival. Another big day will be March 12, when the Senate will elect its new chairman.

This again will be a secret ballot. Imran Khan has nominated Sadiq Sanjarani, the present chairman, as the candidate of the ruling alliance. Yousaf Raza Gilani is likely to be the opposition's choice for this crucial post. Though PTI now is the largest party in the Upper House, the opposition has 53 senators against 47 of the ruling alliance. Will Imran Khan reject the verdict if his candidate wins this election?

Given the present rush of events, March 26 seems so far away. But this date, when the opposition will begin its Long March to Islamabad, will come – with its intimations of another dramatic clash between political adversaries. Meanwhile, the PDM has set its sights on Punjab, where the PTI is playing on a weak wicket. Will the winds of change first rise in Lahore?

Ah, but there are other rumblings we can hear in these early days of March. After the National Command and Operation Centre (NCOC) announced its Covid-19 relaxations, cases have suddenly started to go up. A third wave is appearing on the horizon. Our campaign for vaccination is

The PM and the ECP



DR NAEEM AHMAD

Prime Minister Imran Khan's address to the nation on Thursday was more of a lashing out than the discourse of a seasoned politician. The PM looked angry and beleaguered and focused more on the Pakistan Democratic Movement (PDM) than his own government's performance. In what seemed like a desperate attempt to shift the blame of his own party's failures to the ECP, the PM said that the ECP was 'protecting those who made money by holding the Senate elections through secret ballot'. His remarks were unsavoury and smacked of his troubled situation in the current hybrid dispensation.

The opposition's ability to stage an upset in the Senate's elections has clearly riled up the PM who tried to talk about a problem he did not fully understand but pretended to grasp fully. If you try to explain something that you yourself are not clear about, you end up further confusing your listeners. His main thrust was that the nation could comprehend all the problems of this country by looking at the use of money in the recent elections for the Senate of Pakistan. Somehow, he failed to inform the audience about what action he had taken against those PTI members who in his opinion had sold them-

selves out.

A major question is about how he knew that the money bought the votes. If he has any proof, he should bring them out to the public and call out names. Secondly, his claims about having a party of 'honest people' for the past over two decades have evaporated in thin air. If he had the best and the cleanest party in the country, why did its members sell themselves out? He claimed that money has been playing a role in Senate elections for the past 30-40 years.

He conveniently forgot to mention that for 20 out of 43 years since 1977 the country was under the yoke of military dictatorships directly – 11 years under General Ziaul Haq and nine years under General Musharraf. While the dictators could rule with the help of their state machinery for decades, no civilian and popularly elected politician could complete her or his five-year term as prime minister. Imran Khan himself staged long sit-ins to remove elected governments in the past.

In contrast, the response by the Election Commission of Pakistan to the criticism PM Khan levelled against it reads like a well-thought-out piece of advice. Though no institution can claim to be entirely above board, the ECP recently has held its head up under the leadership of Sikandar Sultan. The ECP is right in asserting its authority and making it clear that it will not respond to pressure. Had that been the case in 2018 and afterwards during the no-confidence against the chairman of the Senate, perhaps the outcomes of both would have been different.

The ECP is right again in pointing out that it will not ignore the law and the constitution just to please someone. We have been witness to repeated attempts by which the constitution was mutilated beyond recognition and the courts too provided relief to all those who committed this serious crime. All dictators who violated

the constitution got a safe exit and then even the parliaments put in place by the dictators themselves were ready to please the dictators to save their own skins. This country has seldom seen independent elections, and the new-found voice of the ECP we must respect and support.

This is not to say that fraudulent practices are no more possible; the point is if you call for evidence in all such practices, you must be ready to produce your own evidence against any fraud. The defeat of the no-confidence move against the chairman of the Senate was a case in point. The late Hasil Bizenjo was a hot favourite and commanded the majority of the Senate members as displayed by the show of hand in the Senate. But when the vote count was complete, the result was unexpected and smacked of some wrongdoing.

At that time, the PM was happy and demanded proof of fraud and did not even accept that some of the Senate members might have sold themselves out; or would have voted under duress.

The opposition was unable to produce the solid proof demanded by the PM. According to the same logic, now the burden of proof lies with the PM and his simple rhetoric is not going to help him. The Supreme Court of Pakistan in its opinion about the Senate polls had clearly said that the polling should be held in accordance with the constitution.

The demand of the PM that the ECP should have introduced traceable balloting was out of place as there is no provision in the constitution for this method. It is true that the Charter of Democracy signed by the PML-N and the PPP does mention open balloting; and for that you need a constitutional amendment. Suddenly, this love for the Charter of Democracy displayed by the PM is intriguing as he never talks about any other point in that charter, which also calls for a com-

plete neutrality of all state institutions in political matters.

If the PTI is so enamoured by the Charter it should initiate a new legislation to approve the Charter by parliament; the PML-N and PPP would gladly approve of it. This cherry-picking by the PM from the Charter of Democracy was not for the benefit of democracy, neither is it in the interest of the country if it fails to get the full Charter.

The assertion of the PM in his address that those who want to become senators use money is an outright insult to his own senators and to his own MPs who it seems according to the PM accepted incentives to change loyalties.

The PM also wondered about the 'joke being played with our democracy'; the question is: does he actually know or realize who started playing jokes with democracy in our country? You don't need to read the 74-year history of the country; you just look at the two decades of the 21st century and find for yourself who has been playing havoc – not jokes – with democracy since the turn of the century. The PM claims to have started a campaign to save democracy, but in his campaign the real culprits are missing and the real villains are his heroes when he nostalgically talks about the 1960s when the country was run by self-appointed president General Ayub Khan.

The PM's only criteria of evaluating a Pakistani head of state was that the president of the US used to welcome him. Shall we tell the prime minister that the youngest and the first female prime minister of the Muslim world addressed the American parliament? But it can hardly be counted as a criterion to judge the respect of a PM internationally. For the US, most dictators of the world were welcome and American presidents opened their arms for these dictators as long as the latter followed the diktats and toed the line given by the US.