

The Business

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Pharma industry

The imposition of a standard rate of 17 percent sales tax on import of active pharmaceutical raw materials since 16 January 2022 has pushed up input costs substantially, and failure to pay refunds on time is leaving the sector with no option but to remove some of the most necessary medicines from the shelf. According to the Pakistan Pharmaceutical Manufacturers Association (PPMA), shortage of some life-saving drugs is being reported and if this trend keeps up, a lot more crucial medicines will disappear and even emergency items like drips, IV and even heart-related medicines might become scarce sooner rather than later. Since a lot of the raw material for all kinds of medicines is imported, and the rupee is continuously losing ground against the dollar, the industry is simply unable to keep up normal operations unless FBR devises a mechanism for payment of said refunds to the entire sector. The problem is that FBR often does not honour its promises about repayments because of all the fake, illegal outfits that operate at the margins alongside legitimate pharmacies. But to punish the good because of the bad makes no sense at all and not only does it put a question mark on the Board's work ethic, it also risks ruining a very vital sector.

Former Prime Minister Imran Khan had planned to give the pharma sector whichever kind of shot in the arm it needed to turn it into revenue generating export industry. Yet only a year or so down the road the sector's struggling to get its legitimate repayments from the government. How times have changed. The FBR's also not yet been convinced to pay refunds on the basis of purchases, not consumption. Since it takes 1-2 years for full consumption of raw materials and subsequent sales of finished products to get to the repayments, and that time is too long for most outlets to bear such high input cost, the Board will simply have to find a way that works for everybody. Surely, it's possible to make timely refunds to the legitimate bunch, while checking unscrupulous elements, and keep an entire sector from collapsing.

It's a shame that the important pharma sector has been riddled with controversies for a number of years now. First, it was the mysterious hike in prices of certain important medicines, for which certain interest groups were held responsible but no action worth mentioning was taken. Then elements within the government were accused of toggling prices at their whim; again no serious investigations were conducted and nothing really became of the findings and accusations. Whatever structure is running the country right now ought to take this issue very seriously and push FBR to make timely sales tax repayments to the entire sector without any further delay.

Parliament and judicial review

MUHAMMAD WAQAR RANA

The Supreme Court's decision (short-order) whereby the deputy speaker's ruling of April 8, 2022 on a point of order rejecting a no-confidence motion against the former prime minister Imran Khan was declared unconstitutional has initiated a debate across society, more particularly amongst the legal fraternity.

The downside of entering a political thicket is that applause and criticism is largely based on party affiliations or personal likes and dislikes with few exceptions discussing the constitutional principles involved. The SC has shown restraint and maturity by not suppressing dissent following Lord Atkins' famous dictum that justice is not a cloistered virtue. Justice should be allowed to suffer scrutiny, and be respectful, even though outspoken comments of the ordinary person. It is in that background that an attempt is made to examine the constitutional principles involved in the whole matter to give a sense to a misdirected debate.

In the age of classical parliamentary democracy, A V Dicey axiomatically stated two interlinked principles of parliamentary sovereignty. Parliament, thus defined (Queen in Parliament), said A V Dicey, has the right under the English law to make and unmake laws. The second concomitant principle was that no person is recognized by the laws of England to override or set aside the legislation of that parliament. This legislative sovereignty of the British parliament was achieved after a long struggle between the King and Commons and Lords as reflected in English history. As an ancillary principle to it, parliament also evolved the principle to protect itself by incorporating in Article 9 of the Bill of Rights of 1689 that the validity of any proceedings in parliament could not be called in question on the ground of irregularity of procedure. In addition to avoiding the king's wrath, members and officers of parliament were immune from the jurisdiction of the courts. For matters relating to its membership and working, parliament was the highest tribunal of the land.

Article 69 of Pakistan's constitution has been borrowed from Article 122 of the Indian constitution that is based on Article 41 of the Government of India Act, 1935. A long series of cases, from Stockdale v Hansard (1839) to Hamilton v Al-Fayed (1999), interpreted these provisions in different sets of facts. The earliest case from Indian jurisdiction is of the Federal Court of India in Ymayal v Lakshmi (1945). The law in relation to privileges and immunity of parliament has been

summed up by the constitution bench in Ramdas Athwale (2010). These provisions confer privilege and immunity upon the members and officers of parliament. The above principle was applied to the former colonies with a modification in as much as in the interest of the Empire; the Crown through its representative (governor-general) could override legislative bodies as provided in the constitution. After Independence, things fundamentally changed. It is the written constitution that is now supreme. The powers of all branches of the government are subject to the constitution. Moreover, with the incorporation of fundamental rights and conferment of jurisdiction upon courts to enforce those rights and by prescribing powers of various branches of the government, the courts assumed the power of judicial review on the principles of Marbury v Madison.

Article 8 of the constitution, read with Article 198(4) and Article 199, conferred jurisdiction upon the high courts and the Supreme Court to enforce fundamentals and determine the constitutionality of the actions of the executive, statutory agencies and other constitutional functionaries and bodies. But unlike the German and continental constitutional courts that had power of constitutional review, courts in other jurisdictions evolved doctrines to expand their judicial power by judicially reviewing legislation and constitutional amendments (doctrines of basic structure and implied powers).

The core issue: is the ruling of the deputy speaker on a point of order, rejecting a motion of no-confidence, protected under Article 69 of the constitution on the ground that the matter relates to proceedings in parliament? Without going into the semantics and technicalities, an alternate argument is put forward. The bar under Article 69 is not absolute. Moreover, it does not apply to the exercise of powers of the National Assembly in relation to vote of no-confidence under Article 95 of the constitution for the reasons set out here.

It has been held that matters relating to the deflection and disqualification of members or sending of reference to the Election Commission are adjudicatory in nature and are thus not immune from judicial review. Impeachment proceedings in parliament against different functionaries of the state are also subject to judicial review. The nature of the 'business' of a motion of no-confidence under Article 95 and the resultant resolution under Article 95(4) relate to another important principle of the constitution. This business involves the cabinet system of government and responsible government. An executive remains in power so long as

s/he enjoys the support of the majority. The votes of confidence and no-confidence are two manifestations of the principles of responsible government which are not a part of the legislative business of Parliament.

Unlike Article 69, which uses the expression of 'Majlis-e-Shoora' (Parliament), Article 95 vests power in the National Assembly with whose total majority's vote the prime minister is elected under Article 91(4). The power to remove the prime minister after the passing of a resolution by the majority of the total membership of the National Assembly under Article 95(4) falls within executive business. A resolution of a legislative house is not legislative business.

The policy argument: apart from the facts of the present matter, where ill advice and presentation spoilt a good case in and outside the National Assembly, in all likelihood a constitutional mischief may be created by a sitting executive by getting the motion for no-confidence rejected by obtaining a prior ruling of chair on a point of order which could enormously undermine several constitutional principles. But in order to stop these mischiefs, the Court must have the jurisdiction under the constitution. It would be noted that the speakers' powers under Article 73 in relation to the money bill have been judicially reviewed both in India (2019) and Pakistan. Similarly, the speaker's acts under Article 63(2) were also judicially reviewed. In a case from the Solomon Islands (1990), the court held that if the ruling interfered with a constitutional right then the court had the jurisdiction in the matter. The case related to a no-confidence motion.

The Supreme Court assumed jurisdiction in this case under Article 184(3) of the constitution. The matter was of great public importance but it remains to be seen how any fundamental right was violated. The jurisprudence evolved by the Supreme Court however shows that the court can judicially review a matter if it violates any of the provisions of the constitution. Constitutional principles contained in the constitution have meaning only if people are willing to abide by the constitution in its letter and spirit.

However, in the bid for power by political stakeholders, contempt for basic rules has increased with the passage of time due to ineffective accountability that includes judicial review and lack of social condemnation of the corrupt. These unconstitutional practices, including interference in the working of the constitution and trading of loyalties, will keep undermining democracy and parliament unless a democratic culture takes roots. The finest constitution will not work for bad people and fine people will manage their

Evidence-based foreign policy



FARRUKH SALEEM

How should foreign policy be formulated? There is a global movement towards 'evidence-based foreign policy making'. We need to reexamine how we formulate our foreign policy.

Four things that foreign policy should not be: personality based, opinion based, based on pre-existing biases or based on anecdotes. Two things that our foreign policy ought to be: national interest driven and evidence based.

An evidence-based foreign policy is a scientific method with four components: fact finding, asking informed questions, forming informed answers and transparency. We need to 'collect evidence' and 'determine national interest'. National interest is defined as: "The interest of a nation as a whole held to be an independent entity separate from the interests of subordinate areas or groups".

On 18 March 2021, General Qamar Javed Bajwa, at the Islamabad Security Dialogue, said that it is our "desire to change the narrative of geo-political contestation into geo-economic integration." The National Security Policy of Pakistan (2022-2206) states: "Economic interest as the most critical dimension of our national interest". Question:

Where does our national economic interest really reside? Answer: Exports, imports, remittances and our debt profile.

Exports: What are the big-ticket items in our exports and what are their destinations? Our largest export items are: bed linen, table linen, toilet linen and kitchen linen collectively worth \$3.5 billion. Next biggest export item is rice; \$2 billion.

Then there's non-knit men's wear; \$1.7 billion followed by non-knit women's wear; \$1 billion. Lo and behold, our largest export destination is the United States to whom we export goods worth \$6 billion. Imagine; 20 percent of all our exports go to the United States. Followed by the United States, China, Germany and the United Kingdom are our largest export destinations.

For the record, the United States, the United Kingdom, Germany, the Netherlands, Spain, Italy, Belgium, France, Canada, Poland and Portugal take in close to 55 percent of all exports.

Imports: We import refined petroleum, crude petroleum and petroleum gas worth \$12 billion, which is the single-largest import. Then comes palm oil, \$2 billion followed by scrap iron worth \$1.5 billion. China is the largest importer into Pakistan followed by the United Arab Emirates, the United States and Indonesia.

Remittances: Our single-largest source of remittances is Saudi Arabia from where we get \$4.8 billion or 16 percent of all our remittances.

Next is the United Arab Emirates, \$3.5 billion. Intriguingly, the highest 10-year growth in remittances has been from Italy where remittances went up by 1,000 percent. Next is France where 10-year growth has

been 950 percent followed by Spain with a growth of 650 percent.

External debt profile: Almost 50 percent of our external debt comes from multilaterals, 15 percent is bilateral, 10 percent Paris Club, 10 percent commercial and the remaining 15 percent is Chinese debt.

Conclusion 1: Bilateral trade between Pakistan and the US hovers around \$8 billion and the US is the only country with which Pakistan enjoys a billion-dollar surplus. This is where our national economic interest resides.

Conclusion 2: Bilateral trade between Pakistan and China hovers around \$16 billion and China is the only country with which Pakistan suffers a trade deficit of \$11 billion a year.

Conclusion 3: Fifty-four percent of our exports are bought by a dozen countries that include the US, the UK, Germany, Netherlands, Spain, Italy, Belgium, France, Canada, Portugal and Australia. This is where our national economic interest resides.

Conclusion 4: Eighty-five percent of our external loans come from US-dominated multilaterals and commercial sources. This is where our national economic interest resides.

Conclusion 5: Russia produces less than 3 percent of the global GDP. As far as Pakistan is concerned, less than one percent of our exports go to Russia.

Pakistan's exports to Russia include citrus (\$60 million), non-knit men's suits (\$20 million) and leather apparel (\$17 million). As far as imports into Pakistan are concerned, 0.9 percent of our imports come from Russia - cereals \$287 million, vegetables \$138 million and rubbers \$29 million. Russia has little or no role in Pakistan's economy.

Trade ties



DR MUHAMMAD ABDUL KAMAL

Pakistan has been struggling with political and economic instability for decades, unable to chart a course towards long-term progress and prosperity for the country and its people.

In the face of the ongoing political turmoil, the current economic crisis in Pakistan is likely to increase to a level the emergent government might find extremely hard to cope with. The economy is already in shambles, owing to unprecedented rupee depreciation, dwindling reserves, rising international commodity costs, and growing current account and fiscal deficits.

A mounting challenge for the new government is to fix the trade imbalance. According to the latest data issued by the Pakistan Bureau of Statistics, the country's trade deficit surged by 70 percent to an all-time high of \$35.4 billion in the first nine months of the current fiscal year 2021-22 (July to March). This puts a strain on the State Bank's foreign exchange reserves, which at present can only cover two months' worth of im-

port bills. The EU and the UK are Pakistan's largest trade partners. Pakistan exports approximately \$9 billion worth of goods to these two regions, while its exports to the US are close to \$6 billion. The US, EU, and the UK account for more than 50 percent of Pakistan's exports.

Owing to Pakistan's duty-free access to the EU on 91 percent of tariff lines under the GSP Plus pact, the EU became Pakistan's most important trading partner, providing a lifeline to Pakistan's exports.

However, earlier, former prime minister Imran Khan lashed out at the EU ambassador for asking Pakistan to condemn Russia for its invasion of Ukraine, and lately, the conspiracy letter gate scandal tainted the economic relationship with the EU and the US.

Pakistan must strive to restore and strengthen bilateral confidence with the EU to ensure continuity of GSP-Plus trade preferences beyond 2023. In addition, Pakistan has the opportunity to capitalize on the EU's seven additional conventions which will help countries like Pakistan to apply for GSP-Plus status from 2024 to 2033. The new conventions are focused on improving accessibility for people with physical disabilities, preventing child labour, and protecting the environment.

Pakistan should aim to mature its trade ties with the US and Europe beyond politics. Pakistan's diplomatic relationships should be based on shared interests with each country. There are several examples of countries whose economic links remain intact despite

political or border conflicts. For instance, in 2021, overall trade between China and India stood at \$125.66 billion, up 43.3 percent from the previous year. During this time, there have been numerous military and political scuffles between India and China over Ladakh. The Ladakh impasse had entirely halted cooperation on all fronts except trade at the time.

Remarkably, China has surpassed the US as India's largest trading partner. Likewise, despite tariffs and a simmering regional conflict between the world's two largest economies, trade between China and the US surged by 28.7 percent to \$755.6 billion in 2021. Essentially, both countries have a great desire to engage and avoid outright conflict wherever possible. In other words, despite bitter economic and political disagreements, the economies and societies of China and the US remain inextricably connected.

Pakistan must learn political maturity and insight from these countries in order to avoid a chaotic situation. Politics, economy, and social well-being are all intertwined. These three elements must work together for any country to thrive.

Countries' relations are commonly referred to as 'ties', and this may be a reasonable exposition option to describe Pakistan's relationship with the United States and Europe - but only when the word is employed in an economic rather than an emotional sense.

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