[**Preserving democracy**](https://www.dawn.com/news/1684157/preserving-democracy)

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*“This country finds itself in the midst of another constitutional crisis and is looking towards the judiciary to once again preserve our democratic order from crumbling into tyranny and despotism.” — Justice Maqbool Baqar*

POST-DICTATORIAL societies are often characterised by the ‘judicialisation of mega politics’, a phenomenon where the public increasingly relies on the courts and judicial means to arbitrate in political controversies. The judiciary in Pakistan, therefore, frequently finds itself in the midst of political crises. With all paths fraught with risk, courts often endeavour to find the fabled middle ground in an attempt to preserve their institutional legitimacy in an increasingly polarised environment, often losing sight of their constitutional role in the process.

It was in this context that the Supreme Court took suo motu cognisance of the National Assembly deputy speaker’s ruling whereby he unilaterally rejected the vote of no-confidence against the prime minister on spurious allegations of foreign conspiracy without putting the same to vote. Holding that the ruling was contrary to the Constitution, the bench led by Chief Justice Bandial unanimously struck down not only the rejection of the vote of no-confidence but also the entire super structure built thereon. The National Assembly was restored and directions were given to carry out the vote of no-confidence, in accordance with the Constitution. In holding such, the court recapitulated that the doctrine of necessity was buried, upheld the supremacy of the Constitution, and refused to condone an attack on the very foundation of our democratic dispensation. The verdict ought to be celebrated by everyone who supports the rule of law and the supremacy of the Constitution for the following:

Upholding the Constitution: At the centre of the controversy before the court was the interpretation of Article 69 of the Constitution, which stipulates that parliamentary proceedings may not be questioned on the ground of irregularity of procedure.

The Constitution is critical for democracy to deepen.

Lawyers associated with the ruling PTI favoured an expansive interpretation of the said article, stating that the Speaker was the master of procedure and the court’s exercise of judicial review would be tantamount to usurping the Speaker’s functions. Nonetheless, the court refused to give short shrift to the principles of parliamentary democracy and limited government, which underpin our constitutional dispensation.

In holding that the deputy Speaker’s actions were unconstitutional, the court has conclusively settled that the Speaker’s immunity is not uninhibited and that Article 69 may not be invoked to legitimise blatant disregard for the Constitution.

**Doctrine of necessity:** As the court reserved its judgement, a section of commentators speculated that it may exhume the doctrine of necessity and, thus, while declaring the deputy Speaker’s actions to be unconstitutional, declare that fresh elections may be conducted. Nonetheless, in ruling that the superstructure built on the foundation of an unconstitutional ruling ought to come crumbling down and in restoring the assemblies, the court refused to embolden those who have scant regard for the express command of the Constitution and declined the invitation to act beyond its jurisdiction.

Apart from the merits of the Supreme Court’s decision, however, the current crisis has also laid bare the alacrity with which we are willing to condone the flagrant abuse of the Constitution. Legal protections and judicial interventions, however sacrosanct, are inadequate to preserve liberties in a society that values outcomes over due process and is happy to sacrifice constitutional guarantees at the altar of political expediency. The Constitution is critical for democracy to deepen, for diverse views to be taken into account, for religious and ethnic minorities to receive protection, and for citizens to hold the government accountable. Inevitably, as constitutional values crumble, all of us become collectively weaker. While the Supreme Court’s historic verdict may have preserved the Constitution, will we be able to preserve our constitutional and democratic order in an environment where citizens who are the ultimate custodians of the custodians of the Constitution, are willing to celebrate those who trample on its provisions?

As Benjamin Franklin was leaving the Constitutional Convention where framers of the US constitution had gathered, a woman asked, “Doctor, what have we got? A republic or a monarchy?” “A republic, if you can keep it,” Franklin retorted.

As we celebrate the Supreme Court’s decision to uphold the rule of law and the supremacy of the Constitution, let us also reflect on our own commitment to the Constitution. The fate of the republic hangs in the balance!

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