[Ahsan Jehangir Khan](https://www.thenews.com.pk/writer/ahsan-jehangir-khan)

December 26, 2020

**About the Senate elections**

The politicians we are ‘blessed’ with have an uncanny ability to set bad precedents. It is comical that a precedent exists for something as trivial as the arrest of the renowned D J Butt due to politically motivated reasons.

And now the government is on track to set a bad precedent by “holding” Senate elections in February by relying on Article 224 (3) of the constitution.

This move to ‘hold’ senate elections in February is presumably to counter the Pakistan Democratic Movement’s (PDM) long march to Islamabad. Some quarters feel this move is a political masterstroke by the PTI. However, those involved in this decision should be wary that such masterstrokes can come back to bite them.

The problem is that no sitting government can technically announce, let alone “hold”, any election. The Election Commission of Pakistan (ECP) is a constitutional body that governs independently. The ECP empowered by Article 218 of the constitution and the Election Act 2017 is responsible for holding elections in the country. Furthermore, even the notification for Senate elections is issued by the ECP under Chapter VII, Article 107, of the Election Act 2017. So, for the government to assume the role of the ECP by announcing they will hold elections early is not a political masterstroke. It is playing into the PDM’s narrative of election engineering. It also validates the PDM stance that the government uses these independent institutions for political gain.

The PDM can maintain that if the sitting government pressurizes the ECP into holding Senate elections in February, then these elections will not be a transparent process.

On the flip side, had the notification for Senate elections to be held in February come directly from the ECP, the PDM would have maintained the powers that be had a hand in this decision.

But for the PDM to say that the Senate elections are taking place earlier than scheduled is invalid. The constitution has given the flexibility of holding elections 30 days before Senate seats become vacant. This constitutional provision determines the timing of elections. Therefore, the elections are not taking place earlier than scheduled.

The current downplaying by the PTI of the PDM resigning from assemblies is another bad precedent. If the PPP dissolves the provincial assembly in Sindh, the electoral college would not be complete. This will then have ramifications for the Senate election. It is easy to state in theory that it will be the first time a province is skipped in the election cycle. However, there is not much deliberation on the kind of precedent this will set. Article 59 of the constitution provides for equal mandate to all federating units. The absence of a federating unit, Sindh, from the upper house of parliament is against this constitutional mandate of the Senate. This absence of Sindh would also be against the proportional representation principles under which the Senate is elected.

The other problem is that the government hastily has advocated for abolishing the secret ballot procedure. The constitution clearly states in Article 226 that all elections other than those of the prime minister and the chief minister shall be held by secret ballot. The intention behind abolishing the secret ballot for Senate elections is to overcome horse-trading in the Senate election. It is a sincere intention.

However, announcing that under Article 186 the Supreme Court’s advisory jurisdiction would be utilized in the matter of a show of hand or open ballot procedure shows a lack of constitutional knowledge. If it seeks validation to amend the law, the Supreme Court cannot give it. An amendment requires a bill to originate in either house. This bill then requires a two-thirds majority to pass. A majority of the PTI government will certainly not get it.

The Supreme Court cannot make or amend laws for the PTI government. It can merely interpret laws. There is no ambiguity on the secret ballot process in the constitution. So, it is unclear what kind of advice the government wishes to seek from the Supreme Court in this matter.

Also key to note is that an ordinance cannot override constitutional provisions. An ordinance is promulgated in an emergency when parliament is not in session. So, if the government wishes to get rid of the secret ballot, an ordinance is not the way forward.

Since the Senate election relies on a single transferable vote system under proportional representation, it is impossible to switch to a show of hands voting procedure. Deviating entirely from the single transferable vote will result in wasted votes and disliked candidates occupying a seat. Considering that the single transferable vote system is reliable, the government should instead seek to amend the constitution for an open ballot rather than a secret one. There is already a report of the Senate committee as a whole advocating for an open ballot system.

The PTI government has already suffered a setback in the 2018 election. Therefore, a certain lack of faith is justified. However, there is a need for more practical solutions to avoid horse-trading than just showing hands. Horse-trading can only be avoided if political parties develop internal transparency mechanisms. The supposed rigging in the election of the current Senate chairman did not result in any investigative commission or action by political parties.

If political parties wanted to take action, then Article 63A of the constitution already provides for disqualification on the grounds of defection. The real struggle is internal reflection and lack of implementation.

For the Senate elections to take place in February, the ECP needs to make an independent decision. If it does arrive at this decision independently, the ECP has massive work to do in crunch time.

The PDM may wish to to double-down on its narrative of the government influencing independent bodies like the ECP. The proposed Long March to Islamabad should not be the only outlet of this narrative. Immediate resignations from assemblies, instead of bringing resignations to the Long March, would be a more apt way to double-down on this narrative. It would serve as a distrust of the system and the ECP at the expense of setting a bad precedent.

The PTI government should not make decisions in haste. It should focus on what it is trying to communicate so as to avoid triggering confusion. Lastly, it should let independent bodies arrive at decisions like elections on their own. Any interventions by the government will set a bad precedent.

The writer is a Northern Iowa public administration graduate with a specialization in policy design and implementation.

Email: ahsanjahangirkhan@ gmail.com

Twitter: @ahsanjehangirkh