**Senate polls & political malaise**

BY U M A I R J A V E D 2021-02-22

RECENT controversies over the form and nature of the Senate election lay bare some long-standing and fundamental problems with Pakistan`s political landscape. The first, and what some may call the original,sinof thismomentistheissueof politicalcorruption: elected legislators taking money to produce outcomes that are out of step with either the proportionality of party position or the stated political strategy of parties. The ethos of these outcomes can rest on privatised interest ie some influential candidate trying to win on their own, without support from party leaders. Or as is fairly common, more substantive manipulation by parties in concert with the establishment to produce a favourable make-up of the legislature itself.

This is the fundamental problem that the ruling party has adopted as its rationale for an ordinancebased solution. The solution proposed is belated accountability by the party after a non-secret ballot.

It doesn`t offer anything more than a hypothetical deterrent, though that`s more than what the current system offers (which is zero).

An excellent column by Tahir Mehdi on these very pages from three years ago pointed out that India, when faced with a similar issue, legislated for a nonsecret ballot. Rule 39AA of the elections to the Rajya Sabha requires the electors to show their marked ballots to their party`s polling agent. However, as the article detailed, this hasn`t stopped vote-buying mechanisms, which continue to resurface periodically. The Election Commission of India cancelled the Rajya Sabha election on two seats in Jharkhand state in 2012 after it confiscated crores of rupees in cash from a candidate`s vehicle on election day.

On the other hand, as party positions were secure and clear on the other 55 (of 58 vacant) seats in dif ferent states in the same election, candidates on all of them returned unopposed, meaning that no polling was required.

What that means is that ending secrecy otherwise strengthened party proportionality. Meaning that the Senate is likely to reflect the underlying strength of parties in the electing legislatures.

In the absence of secret voting and no other mechanism of undermining proportionality, the Senate election would end up resembling a reserved seatnomination process rather than an election. As far as I`m concerned this is not the worst outcome imaginable, thoughit does strengthen even more the power of party leaders who hand out tickets, and would require some work to figure out how independent legislators and smaller parties in the provincial assemblies would have their preferences reflected. In the long run, it could turn out to be a reasonable guard against externalinterference of various stripes.

A better solution though remains a direct election with voters in provinces having multi-member constituencies at the divisional or regionallevel. Working out what that constituency would look like and bal-ancing out intra-provincial inequities in representation are key questions, but can be deliberated upon if the political elite (and the ruling party in particular) is serious about ending discrepancies in Senate voting.

These are technical/institutional fixes to the basic problem of political corruption identified at the start.

Recent events reflect two other problems as well, which actually inhibit the ability to implement sustainable fixes. One of these two is selective judicial overreach on political-institutional issues whose mandate is otherwise explicit in the Constitution.

Recent statements questioning the need for a secret ballot by the bench are perplexing in this regard, given how categorical the constitutional provision itself is. This also appears to be the view of most legal experts commenting on the matter at hand.

Similarly, the acceptance of a presidential reference (which was bizarrely filed alongside an ordinance contingent on its outcome) asking for a review on an issue that leaves no space for interpretation does not bode well for the demarcation of institutional responsibilities within the state as a whole.

This again is a persisting problem and one that hasbecome depressingly familiar these past couple of decades.

The second problem is the practice of the political elite more broadly, and ruling parties more specifically, to bypass parliamentary fora for deliberation, institutional design, and conflict resolution. The reasons are usually expedient, though they`re dressed up as `need of the hour` or `national interest`.

Ordinance after ordinance at both the national and provincial level is issued to tackle every issue that otherwise requires legislative attention. With each such step, the prescribed role of legislatures gets further pushed to one side, rendering them unable to carry out actual tasks of oversight, accountability, and representation. Little wonder then that elected representatives remain fixated on the issue of development funds, given that that`s what they`re largely expected to do.

Contrary to the assertions of those championing expediency here, Pakistan`s parliament has a history of working on electoral and constitutional reform. It is not perfect, and it is not always ef ficient, but it has produced reasonable outcomes, even in situations of extensive polarisation. Moreover, there are civil society organisations and international donors available to provide technical input to parliamentary bodies where and when needed. Just in the past four years, reasonable legislation has been introduced to improve gender-based voting representation, transparency of the electoral process, reallocation of seats, and facilitation of a difficult merger between Fata and KP.

These examples simply highlight that reform is possible if adequate time and energy is devoted to the matter. The ruling party stepped into power about two and a half years ago. The best time to make a parliamentary pitch for enhancing transparency and reducing corruption in Senate elections was then.

The next best time is right now. Regardless of its stated intentions, undertaking an ordinance-based step of dubious legality in considerable rush serves little purpose other than delegitimising parliamentary solutions and the constitutional process itself. The writer teaches politics and sociology at Lums.

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