**Should you ban a political party?**

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Adviser to the PM on Political Affairs Rana Sanaullah has stated that the PTI could be declared illegal and face a ban on its activities. This position has been reiterated multiple times by senior officials of the government, including the defence minister, but is this at all possible? I argue: not at all.

How can political parties be banned? Article 17 of the constitution of Pakistan entrenches the fundamental right of every citizen, not being in the service of Pakistan, to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the federal government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the federal government shall, within 15 days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final. This means that a political party can only be banned after a reference is made to the Supreme Court – the Elections Act, 2017 makes this categorical.

Under the Elections Act, a political party is defined as an association of citizens or a combination or group of such associations formed with a view to propagating or influencing political opinion and participating in elections for any elective public office or for membership of a legislative body, including an Assembly, the Senate, or local government. The Elections Act in perfect tandem with the constitution itself therefore provides that it shall be lawful for individuals or association of citizens to form, organize, continue or set up a political party.

But the said party should not propagate any opinion, or act in a manner prejudicial to the fundamental principles enshrined in the constitution; undermine the sovereignty or integrity of Pakistan, public order or public morality or indulge in terrorism; promote sectarian, regional or provincial hatred or, animosity; bear a name as a militant group or section or assign appointment titles to its leaders or office-bearers which connote leadership of armed groups; impart any military or paramilitary training to its members or other persons; or be formed, organized, set up or convened as a foreign-aided political party.

But what happens if a political party does in fact take part in such prohibited activity? Once again in perfect tandem with the constitution, the law provides that if the federal government is satisfied on the basis of a reference from the ECP or information received from any other source that a political party is a foreign-aided political party or has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or is indulging in terrorism, it shall, by a notification in the official gazette, make such declaration and then within 15 days of making the declaration refer the matter to the Supreme Court. Only where the Supreme Court upholds the declaration made against the political party would the party stand dissolved. So the final decision on whether a party has committed such prohibited activity or not rests with the Supreme Court.

What is expected of the Supreme Court? Historical instances can shed light on how the Supreme Court would decide on such a reference. The first is from 1964, the era of Ayub’s military dictatorship in which opposition parties were looked at with great suspicion and monitored by state agencies. There were waves of protests against the regime and Ayub blamed the Jamaat-e-Islami for fomenting contempt against the government. The governments of West and East Pakistan declared the Jamaat-e-Islami to be an ‘unlawful association’ under Section 16 of the Criminal Law Amendment Act, 1908 and banned the party. This was challenged by the Jamaat before both the West and East Pakistan High Courts; the West Pakistan High Court dismissed the petition but the East Pakistan High Court set aside the ban.

The government and Jamaat both appealed to the Supreme Court which held in the judgment reported as Abul Ala Maudoodi v Government of West Pakistan, PLD 1964 Supreme Court page 673 that both of the notifications were illegal and void for violation of the fundamental right of ‘freedom of association’ under the constitution and for other reasons set out in the judgement including not providing hearing of opportunity to the Jamaat, and the governments were directed to cancel and withdraw these notifications.

The second instance is from 1971. In March 1971 negotiations between General Yahya Khan and Shaikh Mujibur Rahman broke down as the federal government was not handed over to the Awami League despite it being the largest party in parliament. General Yahya then ordered military action to suppress the revolt of the Awami League and the Awami League was banned as a political party. Due to the situation in East Pakistan, the matter never went to the courts.

The third instance is from 1974, when the democratic regime of Zulfikar Ali Bhutto was in power. The Bhutto regime had projected the NAP-JUI governments in Khyber Pakhtunkhwa (then NWFP) and Balochistan as incapable of maintaining law and order, and the Bhutto regime blamed the NAP for being involved in terrorist activities. The federal government therefore issued two notifications; the first declared that the NAP was operating ‘in a manner prejudicial to the sovereignty and integrity of Pakistan’ and by the other notification declared that as a result of the first mentioned notification, the NAP ‘stands dissolved, properties and funds are forfeited to the federal government’.

The Supreme Court in the judgment reported as Islamic Republic of Pakistan v Abdul Wali Khan, PLD 1976 S.C. page 57 determined that the NAP was behaving in a manner detrimental to Pakistan’s sovereignty and integrity. It introduced a new line of reasoning, asserting that a political party shouldn’t be viewed as a separate entity from its members. The court explained that, while the actions of a few members might not necessarily represent the entire party, if a significant portion of members act in a certain way without objection from others, it can be presumed that they speak or act on behalf of the party. Therefore, if the party consistently fails to disavow the statements or actions of its leadership, it is deemed to endorse those views.

Yet a lot of water has flown under the bridge, and in this day and age of a fiercely independent judicial system, it is inconceivable that the Supreme Court could take a view similar to the NAP case.

There are also political reasons for this. When the NAP was banned by Mr Bhutto, it renamed itself the National Democratic Party (today known as the Awami National Party). When General Zia imposed martial law, all political activities in the country were banned. It was then the Pakistan National Alliance, Bhutto’s main competitor and an alliance of parties including the NDP that opposed the drastic step of a ban on all political activities. Although they wanted Zia to ban the PPP, Zia knew better. He knew that an outright ban would only make matters more complex and the party would come back with another name. He was much more interested in going after Bhutto.

In the same way, a look at Musharraf’s strategy with the proclamation of the Political Parties Ordinance 2002 also proves this point. Despite even having the power to enact constitutional amendments singlehandedly, he did not outright ban any political party. For example, the Political Parties Order, 2002, had declared that the head of a party must be present in the country to contest elections and that a political party headed by a convicted person could not participate in polls. The Returning Officer in Ratodero declared the two-time prime minister and PPP Chairperson Benazir Bhutto could not contest election for having failed to appear before a court in a corruption case. This led the party to change its strategy and fight electoral politics with a new name, the Pakistan People’s Party-Parliamentarians. So, while Musharraf was enacting strategies to keep political parties out he never contemplated outright bans because, as history proves, they never succeed.

Nobody in their right mind can argue that the Sunni Ittehad Council is not the placeholder of the PTI as the largest political party in parliament. Even when the PTI’s symbol was taken away people voted for them with or without it. Real political parties are not slaves of symbols or names but of feelings and emotions. What makes the government think that any attempt at a ban or dissolution will make a difference? It will only make things more troubling for the government. There will be public criticism and international pressure, and the government which is already seen as fearful of the PTI will be seen as far more afraid than it is. As for the PTI, it will come back, even if banned, under a different name and there’s no way that this will anyway hurt its political prospects.

My advice to the government would be to rethink a hundred times before taking a drastic step that will haunt its legacy in history books for centuries to come.

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