



PILDAT
Pakistan Institute of Legislative
Development And Transparency

State of Democracy in Pakistan 2022

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PREFACE

As an independent, non-partisan think tank, PILDAT has been analysing and publishing periodical reviews on state and quality of democracy in Pakistan for the past two decades.

The State of Democracy in Pakistan Report 2022 is a continuation of the same effort and presents an objective analysis on how democracy fared in Pakistan during the year. The report also raises questions on prospects of democratic consolidation in Pakistan based on the developments in 2022.

Lahore
January 2023

Abbreviations and Acronyms

ANP	Awami National Party
CEC	Chief Election Commissioner
CJP	Chief Justice of Pakistan
CM	Chief Minister
COAS	Chief of Army Staff
DG	Director General
ECP	Election Commission of Pakistan
ICT	Islamabad Capital Territory
ISI	Inter-Services Intelligence
ISPR	Inter-Services Public Relations
JCP	Judicial Commission of Pakistan
LG	Local Government
LHC	Lahore High Court
MNA	Member National Assembly
NA	National Assembly
NAP	National Awami Party
PM	Prime Minister
PML	Pakistan Muslim League
PML-N	Pakistan Muslim League (Nawaz)
PPP	Pakistan Peoples Party
PTI	Pakistan Tehreek-e-Insaf
SC	Supreme Court
VoNC	Vote of No Confidence

KEY HIGHLIGHTS

- i. 2022 was a *Depressing Year for Democracy!*
- ii. With so many tricks played with democracy by the establishment in the past seventy plus years in partnership with power-greedy politicians getting exposed one by one during the year culminating in the confession by the outgoing commander, the farce of democratic dispensation became all the more naked in 2022.
- iii. Pakistan, with the painful state of affairs in 2022, is reaping the bitter fruits of years old policy of establishment interfering in political affairs which nearly paralyzed almost all institutions including Parliament, Political Parties, Judiciary and Bureaucracy.
- iv. Serious soul-searching and developing zero tolerance for unconstitutional acts must start from the beginning of 2023 if we wish to stem the rot in body politic of the country.
- v. Long-awaited assertiveness of independence by the ECP and standing up to fascist attacks during the year was one ray of home for democracy but as the year ends, some court decisions, especially the one reversing ECP action against the accused Polling Staff at Daska by-election, have raised serious questions whether the ECP will be able to stay the course of independence.
- vi. It is too early to form a firm opinion but so far there seems to be no evidence of establishment's involvement in political affairs since the change of guard in the Army in November last year. This policy of no-interference-in politics will not yield quick results but if the establishment stands by its commitment to stay aloof from politics, there is hope for long-term improvement in the state of democracy.

Introduction

Global analyses speculate 2023 to be a year of destabilization. These predictions are based not just on a sense of foreboding on global economy with rising food and fuel inflation but also what the German Chancellor described as a global *Zeitenwende* or an epochal tectonic shift in power and influence in a multipolar world. Authoritarian onslaught on democracy may have shifted somewhat in some countries, it is not fully on the retreat and has cast long shadows on citizens' freedoms around the globe. Democracy's ability to deliver dividends of good governance pale in comparison to the global rise on elite capture.

Within Pakistan, 2022 might appear to have ended on a bit of a hurrah through successful transition of one Army Chief to the other but the painstakingly long-drawn suspenseful and speculative process leading to the appointment demonstrated once again just how central the office and the office-bearer are in Pakistan.

The change in political government through a vote of no-confidence in April 2022 has unleashed a new wave of populism while it has served little towards improving the state of democracy. While the continued crisis of Pakistan's economy is not only symbolic of the failure of the system of hybrid governance, in vogue for the last 70 years interspersed by periods of direct and absolute control by military governments, and lack of preparedness of political parties, it is the lack of a cogent solution for the economic future of Pakistan which is more frightening as Pakistan appears to be facing yet another wave of terrorism and security threats in 2023.

How has democracy fared in Pakistan in 2022 and what are the prospects of its consolidation in 2023 and beyond? A brief PILDAT analysis on quality of democracy in Pakistan in 2022 is presented in this report.

A Break from Authoritarianism



Pakistan had gradually plunged into an unspoken authoritarianism under the government of Prime Minister Imran Khan. Even though an elected government was in power at the centre, the country witnessed an active assault on free media leading to attacks on journalists, divide-and-conquer tactics on social media forcing self-censorship across society and a political witch-hunt in the name of accountability. The elected government paid little focus on engaging with the Parliament on leading policies to stabilize economy and governance so much so that the Prime Minister who owed his election to the National Assembly barely ever attended sittings of the National Assembly in his 3 years and 8 months in office and joined no sittings of the Senate except one after taking oath of office in August 2018. A quick view on attendance of Prime Ministers shows that the current PM Mr. Shehbaz Sharif has attended only 14% sessions of the Assembly so far. Mr. Imran Khan's attendance stood at 11% during his tenure; Mr. Shahid Khaqan Abbasi attended 19% sittings of the Assembly while in office while Mr. Muhammad Nawaz Sharif attended

only 14% sittings of the Assembly during his time in office.

It is difficult to argue whether personal proclivities of the Prime Minister dominated his style of authoritarian governance or the hybrid governance model actively aided by the military in his support was the leading cause behind the governance malaise. At least during his time in office, Prime Minister did not blame the military for his style of governance. It was only after his ouster that he publicly acknowledged that he sought the support of the military while being Prime Minister in passing federal budgets, passage of various laws by Parliament, in making constitutional appointments such as that of the Chief Election Commissioner (CEC) and others, thus verifying the existence of the model of hybrid governance in Pakistan.

It is paradoxical that Mr. Imran Khan's ouster from power both broke the control of authoritarian power in Pakistan and yet it negatively affected the continuity of democracy in Pakistan where no Prime Minister has

been able to complete their 5-year elected term in office so far.

Mr. Khan's departure from the office of Prime Minister was made possible through a constitutional and democratic process of the Vote of No-Confidence against him. He fell prey to the first-ever successful Vote of No-Confidence in Pakistan's parliamentary history through which he lost the confidence of the house by 174 votes an hour past midnight on Sunday, April 10. Only two previous Prime Ministers had faced votes of no confidence against them in National Assembly's history: Ms. Benazir Bhutto in 1989 and Mr. Shaukat Aziz in 2006 and both survived as the votes of no confidence against them were unsuccessful. Mr. Muhammad Shehbaz Sharif, MNA (NA-132 Lahore-X, Punjab, PML-N) was elected as Prime Minister on April 11 as Prime Minister by securing 174 votes. However, it is also a reality of the power of military in Pakistan's political process that Mr. Khan's government ended just when the support of the Army was withdrawn. For all its mantra of unified opposition, it is also a reality that the coalition government could not have assumed power without the support of the Army.

His departure from office has visibly removed the shackles of control from the media and the opposition leaders have begun to get relief from largely politically-engineered NAB cases against them. However, not allowing him to complete his elected term of 5 years in office has meant that the citizens are robbed of their right to vote out a political leader and party while his political fortunes have benefitted from the political martyrdom associated with a truncated term. In the final analysis, in fact, his involuntary exit from office has unleashed a renewed wave of populism and unprecedented polarisation with serious consequences for fledgling democracy and politics in Pakistan.

Apart from a breather to free media and a welcome caution in proceeding against Mr. Imran Khan in politically-motivated cases, there is little to the credit of the coalition government's 8 months in office in terms of any positive impact on quality of democracy and governance. While economic default is in no one's interest, the coalition government's management of an already beleaguered economy has given rise to loud and worrisome whispers on the likelihood of Pakistan's economic default. The forced, unceremonious and politically tactless departure of a Finance Minister within 5 months of assuming government only to replace him with a relative of the PML-N supremo has not only helped little in market and public confidence in Pakistan's economy, it adds little to the economic and political credibility of the PML-N compared to the PTI

which changed 4 Finance Ministers in 3 years and 8 months.

Army announces to follow a Constitutional Course



After facilitating in power, a popular leader and party in office through a managed general election in 2018, enjoying the 'same page' mantra while providing support to the government in office through a hybrid system and forcing abrupt exit of the same elected government, the Chief of the Army Staff (COAS) after his 6-year in office through a 3-year term extension, publicly pledged before his departure that the Army would never interfere in political matters again.

With the first such public acknowledgement of the political role of the Army from as high an office as that of the COAS, the outgoing Chief of Army Staff (COAS), General Qamar Javed Bajwa, in his address at the Defence and Martyrs day ceremony held on November 23, 2022, said that the Pakistan Army “is often made the subject of criticism,”... “a major reason for this [which] is the army's interference in politics for

the last 70 years which is unconstitutional.”

It is ironic that General (now retired) Bajwa's statement is celebrated not only as one of the most important statements of 2022, but by his own admission, the most important statement in 70 years political history of Pakistan whereby the Army has realised its interference in politics has not been helpful. He also said that “*this is why in February last year [2021] the army, after great deliberation, decided that it would never interfere in any political matter.*” He added categorically that “*I assure you we are strictly adamant on this and will remain so.*”¹

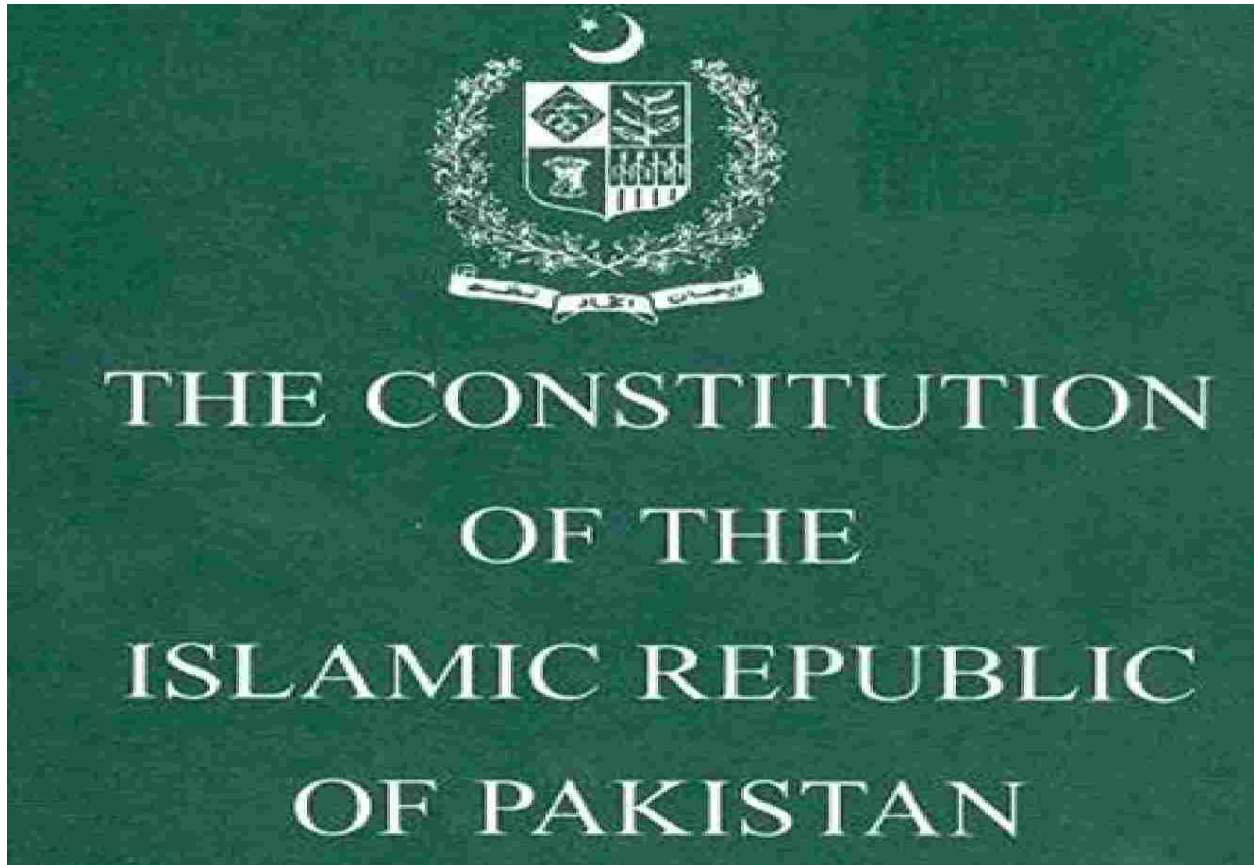
Apart from his own statement that appeared to be the echo of the earlier public statement of the DG ISI and DG ISPR on October 27,² there is little factual basis to his public claim of the Army refraining from politics of

1. “In his last public address, COAS Bajwa slams anti-army narrative, asks political stakeholders to move forward,” Dawn online, November 24, 2022, accessed November 24, 2022, <https://www.dawn.com/news/1722654/in-his-last-public-address-coas-bajwa-slams-anti-army-narrative-asks-political-stakeholders-to-move-forward>.

Pakistan in the 21 months since February 2021. While outgoing Prime Minister publicly acknowledged seeking the support of the Army and its intelligence affiliate in running the affairs of the state, leader of the Pakistan Muslim League (PML), Mr. Moonis Elahi also claimed that it was in fact the COAS Bajwa himself who advised the PML to support the PTI in the run-up to the vote of No Confidence in April 2022.³ Not only that, there are over 40 interactions of the Army Chief during these 21 months with foreign dignitaries in Pakistan and overseas that had no bearing on his role as the Chief of Army Staff.

2. "DG ISI Lt Gen Nadeem Anjum First Ever Appearance on Media | Important News Conference | Capital TV," YouTube, October 28, 2022, accessed November 23, 2022, <https://www.youtube.com/watch?v=3vZrTuS31eY>.
3. "Former COAS Bajwa advised PML-Q to support PTI during no-trust vote, claims Moonis," Dawn online, December 2, 2022, accessed December 14, 2022, <https://www.dawn.com/news/1724288/former-coas-bajwa-advised-pml-q-to-support-pti-during-no-trust-vote-claims-moonis>.

What Really constitutes Interference?



What is more ironic, however, is the lack of constitutional clarity reflected in the same speech of Gen. *(Retd.) Bajwa on what really constitutes interference and what is the constitutional role of the military.

As he pledged that the Pakistan Army would never interfere in politics, he boasted about the very role of the Army that it played while interfering in the domain of the civilian elected government. In his address, the outgoing Chief of Army Staff Gen. Qamar Javed Bajwa said that Pakistan Army has been in service of Pakistan beyond its mandate. He listed the following as some examples: *“Be it the issue of Reko Diq or the Karkey penalty, damages of FATF or to bring back the country on FATF white list, fencing the border or provision of cheap gas from Qatar, or facilitation of loans from friendly countries, managing COVID or elimination of*

*locust or flood relief operation, Pakistan Army has served the country beyond its mandate **and will continue to do so, InshaAllah.**”* He also added that *“I assure the people that despite carrying out these tasks, Pakistan Army will never falter on carrying out its basic duties and fighting terrorism.”*⁴

Just in identifying the areas in which Pakistan Army or the former Chief of Army Staff went beyond its mandate to work, he identified the key problem. Listing of these areas makes it abundantly clear that Pakistan Army is working in the domain which is the constitutional responsibility of elected federal government on whose initiatives the civil bureaucracy has to carry out these functions across various federal ministries. While the intent of successive services chiefs in entering into domain of federal government ministries would be to help the country, this help has

4. “General Qamar Javed Bajwa Last Speech as COAS | Defence and Martyrs Day Ceremony | 92NewsHD,” YouTube, November 23, 2022, accessed November 24, 2022. https://www.youtube.com/watch?v=eN3u_3keLRc.

rendered useless other arms of the state machinery constitutionally responsible for carrying out this job.

Constitution of Pakistan also has to be the basis of the commitment of the Pakistan Army for non-interference in politics and political process of Pakistan. As the oath of the Members of the Armed Forces given in the Third Schedule of the Constitution of Pakistan states 'upholding the Constitution of the Islamic Republic of Pakistan' and not engaging in 'any political activities whatsoever' are the key tenets of the service.

Interference in politics or the political process is generally understood to mean the military favouring one or another political party or leader and to influence or manipulate the electoral process in favour of a certain party or leader. This political interference has been expanded to include judicial interference also so as to facilitate judicial outcomes to support the mission of a political interference at the time. Various intelligence and military chiefs including General Bajwa have all but admitted to playing this partisan political role. Former Prime Minister Mr. Imran Khan has gone so far as to publicly share repeatedly that he sought and received the help of 'agencies' in passage of various bills including the annual federal budget.

It is important to underscore, therefore, that while military's interference in politics, political and the judicial process has gravely damaged democracy, military's interference has also critically affected nearly every aspect of every-day governance.

While welcoming the pledge of the Army to never interfere in politics, PILDAT believes it is of utmost importance that the Pakistan Army and its Chief lead by example of working solely within their constitutional mandate. This would not only facilitate other state institutions to work within their own remit, it would be the first crucial step towards elected governments and civil bureaucracy to take charge of their mandate and role in providing effective democratic governance to the citizens.

Unbecoming Conduct in the Assemblies



While the National Assembly was the house where the Vote of No Confidence (VoNC) originated and was passed, there is little that the Assembly has seen during the year that has strengthened democracy in Pakistan.

While the VoNC was pending before the Assembly, it witnessed some of the most bizarre political behaviour affecting the requirement of democratic conduct of the Assembly. Not only the presiding officers in-charge at the time made the Assembly proceedings undergo unusual delaying tactics, the National Assembly Deputy Speaker Mr. Qasim Suri also dismissed the no-confidence motion to be against Article 5 of the Constitution⁵ later resulting in the unconstitutional dissolution of the Assembly by the President on the advice of the PM.

Provincial Assembly of the Punjab witnessed even more catastrophic and embarrassing behaviour during the election to CM Punjab. The election of Chief Minister could only take place as per the orders of the Lahore High Court (LHC) on April 16 and was marred by disorder and violence on the floor of the Assembly largely due to negligence by the staff of the Assembly Secretariat as observed both PILDAT and FAFEN.⁶

5. Nadir Gurmani, "NA speaker dismisses no-trust move against PM Imran, terms it contradictory to Article 5," Dawn online, April 3, 2022, accessed April 27, 2022. <https://www.dawn.com/news/1683067/na-speaker-dismisses-no-trust-move-against-pm-imran-terms-it-contradictory-to-article-5>.
6. "Joint Statement by PILDAT and FAFEN on Election of Punjab Chief Minister," PILDAT.Org, April 18, 2022, accessed May 12, 2022. <https://pildat.org/parliamentary-monitoring1/joint-statement-by-pildat-and-fafen-on-election-of-punjab-chief-minister>.

Conduct of the Supreme Court



One of the rare and worth celebrating glimpses of holding up the Constitution was witnessed through the Supreme Court as it set aside the ruling of the Deputy Speak on April 7 and also ordered that Prime Minister's advice to the President to dissolve the Assembly was also contrary to the Constitution and of no legal effect.⁷

This momentum, however, was not maintained by the Court during the remainder of the year. Soon after on May 17, while interpreting Article 63-A of the Constitution, Supreme Court gave a verdict that votes cast by legislators in violation of their party's stance must not be taken into account while determining the outcome of a motion.⁸

The bench was hearing the reference filed by President of Pakistan relating to the approach to be taken to the

interpretation and application of Article 63A of the Constitution and was headed by the Chief Justice and comprised Justice Ijaz ul Ahsan, Justice Mazhar Alam Khan Miankhel, Justice Munib Akhtar and Justice Jamal Khan Mandokhail. The verdict was given by a majority of 3 out of 5 judges while Justice Mazhar Alam Khan Miankhel and Justice Jamal Khan Mandokhail dissented with the verdict. The majority verdict stated that *“the vote of any member (including a deemed member) of a Parliamentary Party in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63A cannot be counted and must be disregarded, and this is so regardless of whether the Party Head, subsequent to such vote, proceeds to take, or refrains from taking, action that would result in a declaration of defection.”*⁹

7. “Order of the Supreme Court of Pakistan on Suo Moto Case No. 1 of 2022,” Supreme Court of Pakistan online, April 7, 2022, accessed April 26, 2022. https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._1_2022_07042022.pdf.
8. Nasir Iqbal, “Defectors' votes on motion don't count, SC holds,” Dawn online, May 18, 2022, accessed June 12, 2022. <https://www.dawn.com/news/1690249/defectors-votes-on-motion-dont-count-sc-holds>.
9. “CONSTITUTION PETITION NO.2 OF 2022 (Re: restraining Political Parties from holding Public Meetings in Islamabad before Voting on No-confidence Motion),” Supreme Court of Pakistan, May 17, 2022, accessed June 17, 2022. https://www.supremecourt.gov.pk/downloads_judgements/refernce_1_2022.pdf.

In their dissenting note, Justice Mazhar Alam Khan Miankhel and Justice Jamal Khan Mandokhail noted that Article 63A of the Constitution is a complete code in itself and provides a comprehensive procedure regarding defection of a member of the Parliament. They stated that *“any further interpretation of Article 63A of the Constitution, in our view, would amount to re-writing or reading into the Constitution and will also affect the other provisions of the Constitution, which has not even been asked by the President through this Reference. Therefore, it is not our mandate. We see no force in the questions asked through this Presidential Reference, which are answered in the negative. However, if the Parliament deems fit or appropriate may impose further bar or restrictions upon the defectors. Similarly, Constitution Petitions No. 2 and 9 of 2022 are dismissed.”*

Failure to Evolve Clear Appointment Criteria for Judges of the Supreme Court



It is rather bizarre to record that at the end of 2022, the country's highest court, the Supreme Court of Pakistan, does not have, and resisted to evolve and agree on a clear appointment and elevation criteria for judges of the Supreme Court of Pakistan under the current honourable Chief Justice of Pakistan (CJP), Justice Umar Ata Bandial. It is even more unfortunate that this has persisted despite sitting judge of the Supreme Court, Justice Qazi Faez Isa and other members of the JCP had to resort to writing public letters to the CJP calling for a transparent, consistent, well-defined appointment criterion for judges of the Supreme Court and the public.¹⁰

As a constitutional forum, it is the job of the Judicial Commission of Pakistan (JCP) to recommend a person be appointed as a judge of the Supreme Court. The JCP, chaired by the sitting Chief Justice of Supreme Court, comprises 9 members including four most senior

judges of the Supreme Court, federal law minister, attorney general of Pakistan, a retired judge of the Supreme Court and a nominee of the Pakistan Bar Council. It is, however, the CJP that is solely empowered to first make the nomination of who can be appointed as a judge in the Supreme Court placing nearly absolute powers in the office of the CJP. The 2022 saw a fierce debate within the JCP spilling into the media and a resultant media debate on the requirement of an objective and transparent criteria for appointment. While the CJP stuck to his position of keeping the criteria open, it was criticized as arbitrary and subject to individual discretion. Others argued for a seniority-cum-fitness criteria. A bitter debate ensued through the year where a section of the SC judges and majority of bar associations advocated the principle of seniority to be the main criteria for appointment, the CJP and other judges insisted that a totally undefined criteria of 'merit alone' ought to dictate appointments to

10. Nasir Iqbal, "JCP session postponed till clarity on criteria for appointments," Dawn online, June 29, 2022, accessed December 15, 2022. <https://www.dawn.com/news/1697285>.

the apex court.

In the end, however, the PML-N led Federal Government, which initially opposed the CJP's nomination of some judges in the JCP and advocated for a seniority-cum-fitness criteria took a U-turn on its publicly-held position and voted in favour of the elevation of the two judges it had earlier objected to, namely Justices Shahid Waheed and Syed Hasan Azhar Rizvi of the Lahore and Sindh High Courts respectively who were fourth on the seniority list of their respective courts. The move by the government not only unfavourably impacted on the correct demand for a transparent criterion for appointment of judges, it also gave rise to wild speculations.¹¹

11. "SC appointments," Dawn online, October 26, 2022, accessed December 15, 2022. <https://www.dawn.com/news/1716938>.

The ECP Verdict in the Prohibited Funding Case



On August 2022, the Election Commission of Pakistan (ECP) finally announced its verdict on the eight-year long prohibited funding case against the PTI.¹²

The ECP ruled that the PTI knowingly and wilfully received unlawful funds from a number of foreign companies and foreign nationals and has withheld and concealed from the ECP party's financial information annually. The “*grossly inaccurate and wrong*” financial accounts of the party were submitted alongside certificates signed by the party chairman Mr. Imran Khan himself for five straight years from 2008-09-2012-13 validating that (a) no funds from any source prohibited under the law were received by the party and (b) the statements of accounts submitted by the party contained an accurate financial position of the party.

Through its order, the ECP provided a foundation for the federal government to take the charges of funding by foreign sources to the next stage by invoking Chapter III of the Political Parties Order, 2002. The federal government had the option to make a declaration that the PTI is a 'foreign-aided political

party' as defined in the PPO 2002 and refer the declaration to the Supreme Court within 15 days. The government, however, did not proceed to so as many agreed that the mere dissolution of the PTI would not really be the end of the party itself as it would start operating the next day by another name as was witnessed in the case of the National Awami Party (NAP) when it was outlawed in the 1970s but re-emerged as a functioning party to-date by the name of Awami National Party (ANP).

It appears though that the PTI has used the star power of its chairman Mr. Imran Khan and their stellar communication strategy to deflect much of a political impact of the ECP verdict on the party's popularity. It also appears that the coalition federal government did not proceed to take the verdict to its logical conclusion. But on the whole, the ECP verdict, though delivered after a long process spanning many years, has introduced a fresh dimension to the process of political finance where parties would wish to adhere to the existing law and its requirements in the future.

12. “7 years: A timeline of the convoluted saga that is the PTI's prohibited funding case,” Dawn online, August 2, 2022, accessed December 15, 2022. <https://www.dawn.com/news/1696149/7-years-a-timeline-of-the-convoluted-saga-that-is-the-ptis-prohibited-funding-case>.

More importantly, however, the case has brought into sharp focus serious lacunas in our system of political finance as well as the weaknesses in the ECP system to scrutinize annual financial statements of political parties.

Interference of the Courts in the ECP Domain



In another unfortunate turn, the Lahore High Court (LHC) has **declared invalid the action by the Election Commission of Pakistan (ECP) against officials allegedly involved in irregularities in the Daska by-election held on February 19, 2021. In a verdict by Justice Shujaat Ali Khan of the LHC setting aside proceedings against more than a dozen officials of the provincial departments initiated by the ECP for their role in the alleged rigging in the by-poll, the judge observed that the ECP does not have the authority to proceed as these officials do not fall within the definition of election officials.**¹³

The ECP enquiry reports into the NA-75 Sialkot IV by-election held in February 2021 or the Daska by-election, as it is popularly known, can easily be termed as the crowning glory or the defining moment for the ECP on its way towards exercising its constitutional power and independence. The Daska by-election held on February 19, 2021 were marred by controversy from the go as there was a fierce contest between the candidate of the ruling PTI at the time and the candidate of the PML-N in opposition at the time. However, the situation became murkier on election day with incidents of firing and later through mysterious disappearance of 20 presiding officers alongside ballot papers. The ECP withheld the announcement of

preliminary results and later ordered a re-poll while facing a bitter and fierce onslaught from the PTI government and its ministers, including the Prime Minister. The re-poll held on April 10, 2021 resulted in an easy win for the PML-candidate.

It is not the first time that such blatant rigging and electoral coercion took place orchestrated by an incumbent government in favour of its party candidate but probably it is the first time that ECP has taken resolute steps to stem the tide of future similar rigging attempts. Which is why the ECP inquiry that resulted in suspension and transfer of district administration officials and its reports establishing misconduct of officials asking for both disciplinary and criminal proceedings against some for their misconduct were welcomed as a much-required change towards assertiveness of the constitutionally-mandated independence of the ECP.

Despite this bold and right step by the ECP, it is unfortunate that the ECP was subjected to continuous undue criticism by the PTI while in government and even after its ouster from government. It is even more surprising that after routing the PML-N in 15 out of 20 seats in the by-election held on July 17, 2022 in Punjab despite being out of office, the PTI leader criticized the

13. Wajih Ahmed Sheikh, "Irregularities in Daska by-poll: LHC sets aside ECP action against election officials," Dawn online, December 22, 2022, accessed December 26, 2022. <https://www.dawn.com/news/1727566/irregularities-in-daska-by-poll-lhc-sets-aside-ecp-action-against-election-officials>.

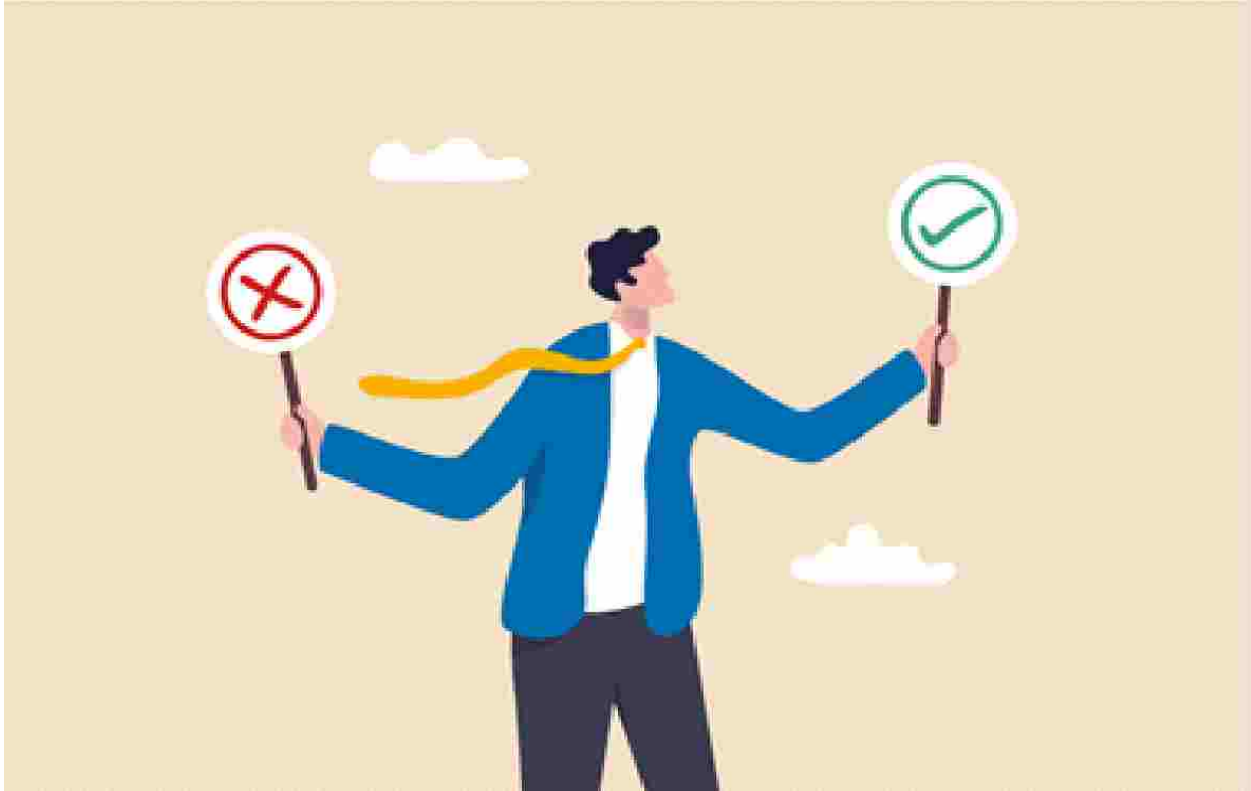
ECP and alleged it for playing a partisan role.

The LHC verdict is problematic on more than one count.

Article 218 (3) of the Constitution of Pakistan confers upon the ECP as its duty to “*organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.*” Section 55 of the Elections Act, 2017 further elaborates the powers of the ECP in terms of Disciplinary proceedings where the Parliament has authorised the ECP to initiate and finalise proceedings against election officials and may impose any penalty provided under Efficiency and Disciplinary Rules or any penalty provided under the Act.

That the LHC ruled against the ECP's clear constitutional legal mandate to do so and in favour of officials who had brazenly breached law and tried to rig the election at the behest of the provincial and perhaps also of federal government at the time would have long-term huge and disastrous impact on the future prospects of holding free and fair election in Pakistan.

Conduct of the President



In a bizarre turn of events following the turbulent ouster of Prime Minister Mr. Imran Khan, President of Pakistan, Dr. Arif Alvi, refused to take oath from Prime Minister Mr. Shehbaz Sharif and his Federal Cabinet on April 11 on health grounds and Chairman Senate had to administer oath on April 12.¹⁴ It was only after Prime Minister Mr. Shehbaz Sharif met with President Arif Alvi on April 20¹⁵ after which President administered oath to some of the remaining members of the Federal Cabinet on April 23.¹⁶

The refusal to administer oath to new PM and cabinet by President Alvi, who was former Secretary General of PTI, was considered quite unusual and politically partisan. It is unprecedented in Pakistan's history as previous Presidents, including Justice (Retd.) Mohammad Rafiq Tarar, (1998-2001) who

administered oath to Gen. Pervez Musharraf's cabinet, Gen. (Retd.) Pervez Musharraf (2001-2008), who administered oath to Syed Yusuf Raza Gilani as Prime Minister, and Mr. Mamnoon Hussain (2013-2018) who administered oath to Mr. Imran Khan as PM, have performed constitutionally-mandated duties even after the ouster of parties that nominated them for the role of President.

Later, President Alvi also refused to act on Prime Minister Shehbaz Sharif's advice to remove the governor of Punjab who had earlier been appointed by former PM Imran Khan. Even after the de-notification of the Governor, President delayed the appointment of the new governor accepting it only after a delay.¹⁷

Not only that President Alvi decided to play a

14. "Shehbaz – the second Sharif to become prime minister," Dawn online, April 12, 2022, accessed May 12, 2022. <https://www.dawn.com/news/1684605>.
15. "PM Shehbaz calls on President Dr Arif Alvi," Dawn online, April 20, 2022, accessed May 12, 2022. <https://www.dawn.com/news/1685948>.
16. Syed Irfan Raza, "President 'reluctantly' swears in four cabinet members," Dawn online, April 23, 2022, accessed May 12, 2022. <https://www.dawn.com/news/1686366/president-reluctantly-swears-in-four-cabinet-members>.
17. "President approves Balighur Rehman's appointment as Punjab governor," Dawn online, May 30, 2022, accessed July 30, 2022. <https://www.dawn.com/news/1692274/president-approves-balighur-rehmans-appointment-as-punjab-governor>.

politically-partisan role that the Constitution does not advise a President to play, he also advised Governor Punjab Mr. Omer Sarfraz Cheema¹⁸ who replaced Chaudhry Muhammad Sarwar sacked on April 2,¹⁹ to not administer oath to newly-elected Chief Minister Punjab. This partisan approach continued for a while as the President also refused to give assent to two pieces of legislation relating to amendments in the National Accountability Ordinance and the Elections Amendment law.²⁰

Article 48 of the Constitution binds the President to act in accordance with the advice of the Cabinet or the Prime Minister. A proviso however states that President has 15 days within which to reconsider that advice, although the President is bound to do so if the same advice is returned by the Cabinet within the period of 10 days. In a parliamentary democracy, President is the ceremonial head of State who performs functions on binding advice of Prime Minister. Major changes to Constitution of Pakistan were made through 18th Amendment in April 2010. However, it appears that the President has been taking undue advantage of language of the Constitution which requires amendment to remove confusion and to fully delineate role of President and Governors.

14. "Shehbaz – the second Sharif to become prime minister," Dawn online, April 12, 2022, accessed May 12, 2022. <https://www.dawn.com/news/1684605>.
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18. Imran Adnan, "Omer Sarfraz Cheema sworn in as Punjab governor," The Express Tribune online, April 3, 2022, accessed May 12, 2022. <https://tribune.com.pk/story/2350853/omer-sarfraz-cheema-sworn-in-as-punjab-governor>.
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Assassination Attempt on former Prime Minister



In a condemnable return to political violence, former Prime Minister Mr. Imran Khan narrowly escaped from an assassination attempt sustaining multiple bullet injuries in his leg on November 3. A PTI supporter lost his life while 14 party leaders and workers sustained injuries. The attack was widely condemned across the nation and by political leaders including the Prime Minister. Mr. Imran Khan's Haqeeqi Azadi March” was halted as he recuperated from his injuries.

Pakistan has a long and painful history of political violence where two former Prime Ministers and many political leaders have lost their lives. That 2022 witnessed a return to political violence shows once again the cracks in the societal capacity for respecting political dissent.

Threat of Populism



Populism might not be a new but a renewed challenge facing Pakistan's democracy. There is agreement that former Prime Minister Mr. Imran Khan is its foremost personification.

The phenomenon of populism is simple yet complex. It is simplistic to equate populist approach of a leader to his or her popularity. Despite danger to democracy, dictionary definition of populism appears benign as it's a type of politics that claims to represent opinions and wishes of ordinary people. Populism defines a political approach that projects itself to appeal to ordinary people who feel their concerns are disregarded by established political parties or groups. On the face of it, there's nothing wrong in that approach. Every political party/leader enter public sphere to offer alternative solution to existing public issues and grievances with the right to disagree with other parties' approach/ideologies. Trouble begins when populist leaders draw battle lines against political opponents as a fight between good and evil. A populist leader does not offer better governance model but uses existing public perception of injustice to personal political end. A populist uses existing public grievances by polarizing the society into followers who are right and virtuous people and opponents who are corrupt and evil. Add to this contest between virtue and evil personal charisma and good communication skills and

there is the perfect populist pied paper able to sway followers upon followers with empty promises.

The politics of Mr. Imran Khan is defined by what is defined as populism. He uses religion at will and weaponizes its use for petty, personal benefits. While he presents himself as a steadfast leader, he doesn't hesitate to call political opponents thieves, corrupt and even traitors. His entire political strategy is based on feeding the public with fluff slogans and skin-deep notions. He does not focus on his own governance performance but his rival leaders are certified as incompetent. So, when Mr. Khan roars in jalsas that *haqeeqi azadi* or real freedom is his ultimate political promise to people, he does not explain what that is and how Pakistan lacks it or how to achieve it. He does not even pause to add what did he do about it in his time in office. When he says that his self-respecting nation is chained to borrowing from IFIs and can't soar high, he is making people dream a dream that he doesn't have to break down on how to realize. It's a bit convenient to fit in the reality of his own government approaching IMF within this lofty narrative. When he accuses his political opponents to have sucked blood out of country due to corruption, his followers believe it despite the fact that reality of hybrid governance model imposed on country for most part is etched deeply in history. It is of course not in populist leader's own interest to explain

how he has benefitted politically from that. When he paints a picture of respect of green passport globally, horizon is beautifully lit but he does not draw painstaking steps required overtime to acquire that. From hallowed promises to stirring of religious sentiments, he is armed with all that he requires to use as irresponsibly as he likes. There is now a new Imran lexicon and it is in use indiscriminately to gain personal political advantage.

The biggest threat of populism is that populists “drag democracies down to fit their authoritarian personalities and ambitions,” in the words of US Political Sociologist Larry Diamond. They attack all forms of check on democracy such as media, civil society, independence of courts, parliament and finally try to take “effective control of electoral administration” to ensure their re-election.

While Mr. Khan and his party deserve a level-playing field like all other political actors in the electoral field, it is important to remember that the classic manifestations of a populist leader in him might mean more challenges than opportunities for consolidation of democracy in Pakistan.

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It is ironic how nearly every major political party vying for an elected role for itself, despite paying lip service to the constitutional requirement of devolving power to local level to empower people at the grassroots, has kept away from bringing the third tier of government to the local level. To fulfil the constitutional obligations for Federal and Provincial governments to devolve political, administrative and financial responsibility to LGs under Article 37 (i) and Article 140-A of the Constitution each province and the Islamabad Capital Territory (ICT) have passed LG laws in some shape and form to keep the LG system deliberately marginalised. As a result, a uniform and effective system of local governance has not yet been evolved in Pakistan.

PILDAT believes and has proposed that Pakistan requires Constitutional Amendment defining scope, role, responsibility and tenure of LG system. Local Governments are just as important a tier as National and Provincial Governments whose domain, term, role and subjects are defined in the Constitution in detail, same clarity is required in the constitution to define LGs. It has been now established that without a clear constitutional decree, the system of LG is left to the whims of successive provincial governments that have dragged their feet on effective devolution of financial and administrative powers to local governments. The case of 73rd and 74th Constitutional Amendments in the Constitution of India are instructive for Pakistan as having faced almost the same scenario for nearly five decades after independence, Parliament of India amended the Indian constitution to demarcate role, term, powers and financial devolution of rural panchayats and urban local governments in India.

Preparedness of Political Parties



With uncertainty on the timing of the next general election, the political humdrum has not yet taken on the pre-election excitement in 2022. However, as before, there are few markers that could generate faith of the populace in preparedness of the parties for meeting Pakistan's governance challenges.

There are little indicators, for instance, on whether leading political parties have invested in internal organization and of creating party think tanks that are to lead the way on a party's policy planning when in government. There are no signs that leading parties will not repeat the same exercise of creation of last-minute manifestos prepared by a handful of party elite which would again not be powered by the party's grassroots membership.

None of the parties even attempt to form something even close to a shadow cabinet to not only prepare the party for an effective role in governance if and when they come into power but also to provide informed and well-considered policy alternatives in various sectors of governance. A shadow cabinet also meaningfully serves the cause of democracy as it allows the powers

and resulting media attention concentrated in the person of the top party leader to get distributed among a group of senior party leaders.

The system of democracy, with all its procedural requirements of elections leading to electoral legitimacy, also requires functional legitimacy provided through good democratic governance. Not only the biggest loser in lack of preparedness of parties is the country and its people, the inability of parties to be alive to governance challenges is affecting the value of democracy for Pakistan.



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