

TAMPERING WITH THE CONSTITUTION IN PAKISTAN

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A motorcyclist rides past a billboard with the picture of Pakistan Prime Minister Imran Khan outside the National Assembly in Islamabad, Pakistan. | Photo Credit: AP

Can an unconstitutional act be considered a 'brilliant political move', a 'masterstroke'? That is how Prime Minister Imran Khan's subversion of both politics and the Constitution in Parliament on April 3 is being seen by many in Pakistan. As a consequence of Mr. Khan's action, the country has no National Assembly as of today and no federal Cabinet. Mr. Khan stays on as Prime Minister for another week. As Prime Minister, Mr. Khan asked the President of Pakistan to dismiss Parliament. As per the Constitution, a new caretaker Prime Minister and Cabinet need to be announced within the week, and elections must be held in 90 days. The dissolution of Parliament and the way it was done is being seen as 'brilliant', largely because it was not anticipated and also because of the manner in which the blow was delivered.

The events of April 3 will go down as one of the most interesting, clever, devious and blatantly unconstitutional (of which there have been many) steps taken in Pakistan's political history. Here is a micro history of the events of the last few weeks which led to the constitutional and political crisis which Pakistan now faces.

The combined opposition in and outside Parliament, constituting primarily of former Prime Minister Nawaz Sharif's Pakistan Muslim League-Nawaz (PMLN), former President Asif Zardari's Pakistan Peoples Party (PPP), and Maulana Fazal-ur-Rahman's Jamiat Ulema-e-Islam-Fazl (JUI-F), launched a movement some months ago to constitutionally oust Mr. Khan's coalition government headed by his party, the Pakistan Tehreek-e-Insaaf (PTI). This opposition created an umbrella grouping, the Pakistan Democratic Movement (PDM), in September 2020. It was clear that Mr. Khan's governance model, particularly with regard to the economy, was failing. Since he came to power in August 2018, the Pakistani Rupee has lost 35% of its value against the U.S. Dollar, inflation has been running in double digits for many months, and only loans from some countries and the International Monetary Fund have kept the economy barely afloat. There has been huge discontent against the worsening economic situation and the PDM made this the cornerstone of its anti-government strategy.

However, the PDM dilly-dallied on how the political process to oust Mr. Khan should continue. The two main parties of the PDM — Mr. Sharif's PMLN and Mr. Zardari's PPP — often had different intentions, ranging from members of the PDM themselves resigning from Parliament to forcing Mr. Khan to resign. After many weeks of political sagacity and unity, the PDM eventually reached a stage where it was able to break Mr. Khan's coalition government and create a majority in Parliament with the PTI's former allies, to table and pass a no-confidence motion against Mr. Khan. The intention, had the PDM won, was to elect a new Prime Minister from the group and, given the imploding state of the economy, to hold new elections within a few months. In any case, the new government would have had 17 months before the Parliament's five years would have come to an end. Mr. Khan was never going to give in so easily. As he said on many occasions, he would "fight till the last ball".

Mr. Khan went to the streets, held numerous rallies, kept taunting the opposition about its composition, and calling the three leaders of the PDM "crooks" and "convicts". He rallied his followers. It became clear that he had entered electioneering mode. While the opposition gained strength inside Parliament, Mr. Khan alleged that there was a "foreign conspiracy" against Pakistan and his government and that the U.S. had decided to oust him. He showed a letter,

said to have been written by a U.S. official, in which these threats were made. This later became a memo written by a Pakistani official in Washington, DC. Nevertheless, whether any such letter existed or not, Mr. Khan upped the 'foreign conspiracy' theory and this became part of his political narrative. He stated that the leaders of the opposition were part of this conspiracy and were, hence, traitors to the state and to the Constitution of Pakistan.

This is exactly what was stated in order to subvert the proceedings on April 3 when Parliament gathered to pass its no-confidence motion. The Law Minister stood up and cited Article 5 from the Constitution (Loyalty to the State and Obedience to the Constitution) to state that the opposition's no-confidence motion should be dismissed as it had conspired against the State of Pakistan. The Deputy Speaker read out a statement agreeing with the Law Minister's submission, and the Parliament session was ended instantly. The opposition parties, which had gathered in Parliament to pass a no-confidence motion against the Prime Minister, which would have certainly passed, were left stunned by the way the Law Minister and the Deputy Speaker of the National Assembly started and ended proceedings — all within a few minutes. Soon after the dismissal of the no-confidence motion, Prime Minister Khan went on television to inform the Pakistani electorate that he had asked the President of Pakistan to dissolve the National Assembly. Within minutes, the President, on the advice of the Prime Minister and according to the Constitution of Pakistan, did just that.

Numerous complications have emerged regarding the events of those few minutes. A question raised is whether the Deputy Speaker's action — he ended the Parliament's session without giving the Leader of the Opposition a chance to respond to the Law Minister — was legitimate. Given that all this happened within just a few minutes, it seems clear that the Speaker, the Deputy Speaker and the President had pre-planned and coordinated the manner in which the events would unfold. Moreover, while the Supreme Court of Pakistan is set to debate and sort out the manner in which the events related to the Constitution took place, legal opinion and precedents state that the Supreme Court cannot intervene in the proceedings held in Parliament. This would imply, at first reading, that the Deputy Speaker's ruling cannot be challenged by the Supreme Court, despite the fact that the Chief Justice of Pakistan has taken suo motu cognisance of the events of April 3 and constituted a Bench of the Supreme Court. Most lawyers have agreed that the Deputy Speaker's move was unconstitutional, yet also consider Parliament sacrosanct. They argue that the Deputy Speaker's ruling cannot be challenged.

Prime Minister Khan has repeatedly argued that since the opposition wanted him to resign and call elections, he has already done so and they should be grateful. While part of the opposition has got what it wanted, it knows it has been played. If elections are held under the fog of un-constitutionalism now, they will be as tainted as were the elections of 2018. At that time, there was much speculation that a particular state institution had ensured Mr. Khan's selection. That institution is conspicuous by its absence from the public discourse at the moment and one waits for it to make its move.

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