

## **Democracy and Pregnancy**

Nine months up, nine months down.

After women give birth, it is normal for them to assume that the various hormonal and physiological changes that they have experienced will be reversed instantly. Unfortunately, that is never true. Some women lose their weight within a few months, some never do, but for the vast majority, the simple truth is that the changes experienced by their bodies take as long to disappear as they did to accumulate.

What is true for the human body is equally true for the body politic. Pakistan today is a body which has experienced sixty years of traumas. Those traumas cannot be reversed through the single decision of any court, no matter how cathartic or wonderful that decision may feel. Similarly, the problems with Pakistan's democracy cannot be reduced to the absence of a credible leader and as such cannot be fixed through the decorative transplantation of a mediagenic personality, in the same way that a dessert dish is completed by placing a cherry on its top. No, we are a lot further away.

Much of the optimism in the air these days relates to a new-found faith in the independence of the judiciary. Yes, an independent judiciary is a wonderful thing. But it needs to be remembered that back in 1947, we also had an independent and competent judiciary: and look how far that got us.

My intention here is not to be cynical but to simply note that an independent judiciary requires protection to ensure that it remains independent. If we do not seize this moment and make fundamental changes, the opportunity presented by this brief shining moment in time will be lost. I have berated my elders enough for not doing enough to protect and preserve the Pakistan that they inherited. Sixty years from now, I would rather that the Pakistanis of 2067 did not look back at my generation and condemn us for our failures.

What changes then are necessary to protect and preserve the independence of the judiciary?

First, judges must be paid not just well but extravagantly well. If high court judges today were paid the equivalent of their 1899 salaries, they would be getting paid about Rs. 60 lakhs a month! That amount may be excessive but the fact remains that all judges in Pakistan are grossly underpaid.

Second, we have to move away from a judicial system in which all administrative powers are concentrated in the various chief justices of the four provincial high courts and the Supreme Court. The elevation of the chief justice to an exalted position, along with the concentration of powers in his hands, inevitably leads to problems. What we need instead is a system in which all major administrative decisions (including appointment, discipline, transfers and the fixation of cases) are overseen by a committee of the five most senior judges (both at the high court and the supreme court level). Not only will this add transparency to the workings of the judiciary but it will make it considerably more difficult for the executive branch to play one judge off against another.

But will that be enough? Again, the answer is no. An independent judiciary will make things better but it will not make things right. In the first instance, rule by judiciary is an inefficient way to proceed. To quote Bentham, judge-made law is the equivalent of teaching a dog by waiting for it to make mistakes and then beating it

There is also a deeper philosophical point at stake. An independent judiciary may well be good at punishing people but from one perspective, the punishment of criminals does not represent the triumph of the law. In this view, the rule of law is only truly respected when those who are bound by the law internalize its demands and obey it unthinkingly and unhesitatingly.

Let me try and restate this point. If law is regarded as the effective punishment of violators, a good society consists of a state in which there is a traffic policeman at every corner, meting out swift justice to every crosser of a red light. But if law is regarded as the internalization of rules, a good society is one in which people stop at red lights without checking to see if there is a policeman (with motorbike) at that particular corner.

What then should we do? In my view, the fundamental responsibility for a political system which honours and serves the people of Pakistan rests on the shoulders of our elected representatives. Our elected representatives, however, remain victims of a zero-sum mentality in which all progress under the aegis of a rival is seen as a threat to themselves. During the recent emergency scare, a senior opposition leader was asked if the government was deliberately creating confusion. His exasperated response was that “*confuse karna to Opposition ka kaam hota hai!*”

Unfortunately, *Opposition key aur bhi bohot kaam hotay hain*. With the single – and extremely honourable exception – of the PPP’s support for the Women’s Protection Act, I cannot recall a single instance over the past five years in which any member of the opposition took any constructive parliamentary step. It is an undeniable fact that the current assemblies have been in office for almost five years. During that period, there was no restriction on the members of the Opposition from participating in law-making. Had they wanted to, they could have introduced bills before Parliament. Most likely, those bills would have failed to pass. But at least, all those elected representatives would have earned their keep. Last time I looked, members of the honourable Opposition got paid as much as members of the Treasury Bench for being parliamentarians.

Today’s Pakistan presents an opportunity in which to consolidate the basis for a flourishing democracy. Taking advantage of that opportunity requires taking a sensible and long-term approach, not just a choice of different heroes to worship.

The most important task facing Pakistan today then is to work out a power-sharing solution between those who have power and those who want power. Such a solution, like most compromises, is unlikely to look pretty. But unless we want to repeat our mistakes, we have no option but to take the long view.