
A Frozen Democratic Transition: Pakistan's Hybrid Regime and Weak Party System

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I. Introduction

Multiple factors stand in the way of constitutional and democratic consolidation in Pakistan. The focus of this chapter is on the country's weak system of party politics, a fact that compromises electoral competition. Pakistan is a federal parliamentary republic. Since 2008, three different political parties – the Pakistan People's Party (PPP), the Pakistan Muslim League-Nawaz (PML-N), the Pakistan Tehreek-e-Insaf (PTI) – and, most recently, the multi-party coalition Pakistan Democratic Movement (PDM) have alternated control of the central government through multi-party elections and a no confidence motion (in the PDM's case). The entry of the PTI as a ruling party in the centre transformed Pakistan's erstwhile two-party system, dominated by the PPP and factions of the PML, into a three-party system. However, allegations of the PTI's collusion with Pakistan's powerful military establishment during the 2018 election period tainted the party's rise into the national mainstream. The Pakistan military has directly ruled the country for 33 non-consecutive years since the country's independence in 1947. This long history of military rule has hampered the consolidation and institutionalisation of Pakistan's political parties, and military rulers have often tampered with elections to disintegrate certain parties. The starkest examples in this regard were the non-party-based elections conducted by the government of Zia ul-Haq in 1985,¹ as well as the Martial Law Order 65 of 1985,² in which the military government of Zia appropriated the right to disqualify any candidate it deemed 'political' and thus undesirable. Post-2007, the Supreme Court and election tribunals have further undermined political parties by expansively interpreting and applying Articles 61 and 62 of

¹ In July 1985, international and domestic pressure for political reform forced the military government of Zia ul-Haq to call general elections that he had been promising but putting off since taking power in 1979. However, these elections were held on a non-partisan basis, ie without political parties and with independent candidates.

² S Aziz, 'Elections Held on Non-party Basis' *Daily Dawn* (9 August 2015) www.dawn.com/news/1199038.

Pakistan's Constitution, which require legislators to be 'honest' and 'truthful'.³ On a variety of grounds – including contempt of court, concealment of facts and concealment of assets – the apex court and election tribunals have disqualified former Prime Ministers Yusuf Raza Gillani, Shahid Khaqan Abbasi and Nawaz Sharif from elected office. Other methods of controlling political parties have included sending party leadership into exile while pressuring the second-tier leadership – who represent their parties in the media and are mostly members of national and provincial assemblies, but do not necessarily occupy cabinet positions – to switch sides through constant harassment or the offering of material incentives. This tactic proved successful in bifurcating the PML into two factions following General Musharraf's military coup in 1999, where not only the second tier but also former cabinet members joined the political coalition formed by the military. Similarly, in collusion with former President Ghulam Ishaq Khan, the military establishment undermined Benazir Bhutto's electoral prospects in the 1990 elections by doling out hefty bribes to her political rivals.⁴ More recently, the military establishment has faced allegations of pre-poll rigging or 'election management' by manipulating polling outcomes, tilting electoral competition in favour of one party (in this case, the PTI) through the control of the media.⁵ In the days leading up to the 2018 general election, there were strong indications that the military establishment was backing the PTI. These perceptions triggered the mass defection of 'electables'⁶ from the PPP and PML-N to the PTI and thus severely limited the chances of the former two. Furthermore, between 2008 and 2013, political parties faced pre-election and election day violence by militant Islamist groups, such as the Tehreek-e-Taliban Pakistan. The worst hit was the Awami National Party (ANP), which lost nearly 500 of its members, from party leaders to workers, in terrorist attacks. Smaller ethnic parties, such as the Muttahida Qaumi Movement (MQM), have suffered enormous disintegration in state-led violent action spearheaded by the military. Pakistan's political parties thus operate in a radically insecure environment.

Recent years have seen issues such as service delivery⁷ and, to a small extent, intra-party democratisation become central to voting preferences, which has further accentuated these insecurities. Urban working- and middle-class voters have taken issue with the dynastic leadership structure, centralised decision-making and corruption

³M Guruswamy, 'Adjudicating "Honesty": Prime Minister(s) and the Supreme Court of Pakistan' (*International Journal of Constitutional Law Blog*, 5 December 2017) www.iconnectblog.com/2017/12/adjudicating-honesty-prime-ministers-and-the-supreme-court-of-pakistan-i-connect-column/.

⁴Prominent names include Nawaz Sharif, Abida Hussain, Javed Hashmi and Ghulam Mustafa Khar, all of whom later denied the allegation.

⁵Pakistani press and media associations claim that the military uses various tactics, including violence and broadcast/circulation disruptions, to gag the media and force self-censorship in the news industry. See 'Pakistan Military "Quietly" Stifling Press through Intimidation' *Al Jazeera* (12 September 2018) www.aljazeera.com/news/2018/9/12/pakistan-military-quietly-stifling-press-with-intimidation.

⁶Locally influential candidates with fixed constituency support, who play a major role in determining electoral outcomes by switching from one party to another during election time.

⁷According to Gallup Pakistan, 'Pakistan's General Election 2018: Exit Poll Survey Report – Who Voted for Whom, Why, and What Does It Mean for Pakistan's Future?' (26 July 2018) <http://gallup.com.pk/wp/wp-content/uploads/2019/03/Gallup-Pakistan-Exit-Poll-Survey-2018-Report-1.pdf>, most of the surveyed voters (30%) in GE-2018 voted for parties and candidates they trusted to deliver on development commitments. In contrast, party loyalists, patronage seekers, legislation-focused, morality-bound and biraderi-bound voters comprised 11%, 23%, 14%, 12%, and 6% of the sample respectively.

within the PPP and PML-N.⁸ It is within this context that many saw the PTI as a viable alternative to these parties. Moreover, the failure of political parties to devolve power and conduct elections of local bodies has hampered good governance and consequently affected voters' perceptions of parties' willingness or capacity to entrench democracy. This has also increased the dependency of political parties on 'electables'. Additionally, allegations of corruption and willingness to strike backdoor deals with the military establishment have further dented the credibility of political parties. These issues – centralisation and dynasticisation of party structure, inconsistency between political rhetoric and action, corruption and failure to devolve power – are all symptoms of a weak party system. These deficiencies of Pakistan's political parties exist in a symbiotic relationship with the political interference of the military. Taken together, both contribute to the weakening of democratic rule in Pakistan.

Several regimes like Pakistan, which adopted electoral politics in the post-third wave of democratisation, are often referred to as 'hybrid regimes', where the elements of both liberal democracy and authoritarianism coexist.⁹ After the restoration of democracy in 1988, Pakistan's weak yet competitive multi-party system became overshadowed by the predominance of the military in certain areas of statecraft, particularly foreign and security policies. Poorly organised political parties and a weakly institutionalised party system enable military interference in politics.¹⁰ On the one hand, constitutional changes enacted by military regimes continue to determine inter-party interaction both within and outside Parliament. On the other hand, legislation sanctioning military involvement in politics has been enacted by recent democratic governments with full support from opposition parties. In the July 2018 elections, Pakistan marked its third consecutive transition of power from one elected government to another since the end of the last military rule in 2008. Nonetheless, Pakistan's transition to consolidated democracy is far from complete. The scholarly literature on Pakistan has linked its democracy deficit to the 'tutelary interference' by the military. Despite having more than one form, tutelary interference is often strictly understood as military intervention in studies on Pakistan. Not only has interference by other tutelary actors received scant attention, but a host of other factors influencing democratic consolidation remain under-studied. These include judicial interference, party system institutionalisation, level of cohesion in the organisation of the political elite and lack of elite consensus on democratic norms.

In this study, we focus on weaknesses in the institutionalisation of the party system. We employ a framework that combines the concept of party system institutionalisation¹¹

⁸Based on informal interviews conducted in-person and online between 2016 and 2020 with a mixed group of over 100 voters based in Karachi, Lahore and Islamabad.

⁹K Adeney, 'How to Understand Pakistan's Hybrid Regime: The Importance of a Multidimensional Continuum' (2017) 24 *Democratization* 119.

¹⁰For a contrarian argument, see FH Siddiqi, ch 16 in this volume. He contends that political parties in Pakistan are more averse to military intervention now than ever before. According to him, it is the 'fear' of the growing agency of civilian politicians which leads to tutelary interference instead of the perceived preponderance of tutelary actors.

¹¹S Mainwaring and TR Scully, 'Introduction: Party Systems in Latin America' in S Mainwaring and TR Scully (eds), *Building Democratic Institutions: Party Systems in Latin America* (Stanford, Stanford University Press, 1995).

with the two-dimensional typology of hybrid regimes¹² to explain weak democratisation in Pakistan.

Party system institutionalisation broadly refers to the degree of predictability regarding the behaviour of political parties as well as the political outcomes they seek to achieve. In full democracies, party systems normally reflect greater levels of predictability, and thus institutionalisation, compared to weak democracies. Research on democratisation in Pakistan has only recently begun to focus on political parties.¹³ This is a welcome change because political parties are key institutions of democracy. Pakistan's political history is marred by repeated military interventions, legalised by the courts. Among other factors, periods of military rule have contributed to a weak party system in Pakistan. For the political elite to reject military intervention and reclaim domains of governance traditionally appropriated by the military – for example, foreign and security policy – it is important to reconsider the institutional set-up of political parties.

II. Pakistan as a 'Hybrid' Regime

The third wave of democratisation significantly altered the world order by increasing the number of electoral regimes. This change was received with much optimism. Francis Fukuyama announced the triumph of Western values of freedom and the free market over its ideological rival, communism. However, it quickly became evident that many of the new electoral regimes were far from democratic consolidation and instead stuck in transition. A plethora of terminology has been coined to describe these regimes, including illiberal democracy, democracy with reserved domains, tutelary democracies and delegative democracies.¹⁴ These regimes are understood as diminished sub-types of democracy. Some scholars argue that, due to the high level of democratic deficit in certain regimes, they must be classified as diminished sub-types of authoritarianism. Semi-authoritarianism, competitive authoritarianism and liberalised autocracy are examples of the labels used to describe these regimes.¹⁵ However, this classificatory approach engenders more conceptual confusion than it resolves. For instance, one single regime is classified as a variant of democracy by some scholars and as a variant of authoritarianism by others.¹⁶ This approach also fails to capture the inherent stability of these regimes, as many fail to show signs of transition to either stable democratic rule or full-scale authoritarianism. As a result, a new strand of scholarship has emerged which

¹² M Wigell, 'Mapping Hybrid Regimes: Regime Types and Concepts in Comparative Politics' (2008) 2 *Democratization* 230.

¹³ See M Mufti et al, *Pakistan's Political Parties. Surviving between Dictatorship and Democracy* (Washington DC, Georgetown University Press, 2020).

¹⁴ See D Collier and S Levitsky, 'Democracy with Adjective: Conceptual Innovation in Comparative Research' (1997) 3 *World Politics*, 430; L Diamond, 'Elections without Democracy: Thinking about Hybrid Regimes' (2002) 2 *Journal of Democracy*, 21.

¹⁵ M Bogaards, 'How to Classify Hybrid Regimes? Defective Democracy and Electoral Authoritarianism' (2009) 16 *Democratization*, 399.

¹⁶ *ibid* 410.

prefers the term 'hybrid' for such regimes, and proposes that hybrid regimes must be considered and analysed as a separate regime type.¹⁷

To position hybrid regimes as a distinct category, it is essential to clarify what is meant by 'regime'.¹⁸ A regime comprises institutions that must project a certain degree of stability in terms of intra-institutional functioning and inter-institutional dynamics.¹⁹ Politics lacking minimal stabilisation can be considered to be in a transition phase.²⁰ As far as the term 'hybrid' is concerned, a regime cannot be considered democratic if it fails to fulfil any of the criteria of minimal democracy, which include free and fair political competition, universal electoral participation, free and vibrant media, no tutelary interference and guarantee of civil rights.²¹ Meanwhile, the existence of a significantly competitive electoral environment distinguishes hybrid regimes from authoritarian regimes. Though some scholars prefer the term 'competitive authoritarianism' for such regimes,²² the lack of scholarly agreement over whether to classify these regimes as diminished sub-types of democracy or authoritarianism leads us to consider 'hybrid regime' a more appropriate term for exploring the ambiguities found within these regimes.²³

A hybrid regime is one that follows a period of minimal democracy – characterised by tolerance, liberalisation and relatively unrestricted political pluralism – after the end of authoritarian or traditional rule but is still 'subjected to the intervention of non-elected bodies – the military, above all – that place restrictions on competitive pluralism without creating a more or less stable authoritarian regime'.²⁴

In competitive electoral regimes such as Pakistan, where the parliamentary process has been repeatedly disrupted by multiple military interventions, institutions exhibit a degree of ambiguity pertaining to their character, orientation and goals – an element specific to hybrid regimes. For instance, in stable democracies, the elected civilian leadership enjoys autonomy in policymaking while other institutions, such as the military, pursue those civilian-set policies after giving their input when required. In addition, the judiciary is expected to perform its duties in a non-partisan manner. However, in hybrid regimes, institutions do not necessarily operate within their constitutionally defined domains. Regular elections or the restoration of formal civilian rule do not guarantee the transition to a stable – or stabilising – democracy. Legal institutions, such as apex courts, may not necessarily oppose military rule out of a commitment to democracy or a concern for advancing constitutionalism, but may support its control over

¹⁷ See TL Karl, 'The Hybrid Regimes of Central America' (1995) 6 *Journal of Democracy*, 72; L Morlino, 'Are There Hybrid Regimes? Or Are They Just an Optical Illusion?' (2009) 1 *European Political Science Review*, 273; Diamond (n 14); L Gilbert and P Mohseni, 'Beyond Authoritarianism: The Conceptualization of Hybrid Regimes' (2011) 46 *Studies in Comparative International Development*, 270; M Mufti, 'What Do We Know about Hybrid Regimes after Two Decades of Scholarship?' (2018) 6 *Politics and Governance*, 112.

¹⁸ Morlino (n 17).

¹⁹ *ibid.*

²⁰ *ibid.* 277.

²¹ *ibid.*

²² S Levitsky and LS Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (Cambridge, Cambridge University Press, 2010).

²³ Diamond (n 14).

²⁴ Morlino (n 17).

elected governments.²⁵ Some courts interfere in executive functions under the pretext of their self-assumed role as 'guardians of the regime', but in fact they may be doing so to assert and expand their own institutional power.

Gilbert and Mohseni²⁶ propose a configurative approach to analyse and compare different hybrid regimes. In their conceptualisation, the nature and level of competitiveness, the extent of tutelary interference and the state of civil liberties are three important indicators relating to democratic deficits of different hybrid regimes. Their approach is suitable for comparative studies involving many cases, where analytical precision takes precedence over thick descriptions of individual cases. For single case studies such as the present one, conceptual intension is preferable to conceptual extension. In other words, we limit the scope of this chapter to Pakistan and examine this case using a denser, as opposed to minimal, conception of 'hybrid regime'. For this objective, we employ Wigell's two-dimensional approach to map political regimes.²⁷

A. Hybrid Constitutionalism and Democratic Deconsolidation

Wigell²⁸ outlines two key dimensions of liberal democracy: electoralism, which provides popular endorsement to the power enjoyed by the ruling elite, and constitutionalism, which limits the exercise of that power through the entrenchment of the rule of law. Electoral regimes, however, do not follow a linear path when it comes to the manifestation of these two dimensions. Some regimes can be widely popular but do not necessarily fare well on constitutionalism indicators. Here, constitutionalism is not just narrowly concerned with limited government or respect for civil liberties, but has a broad definition focusing on the balance and separation of powers between different organs of the state. Certain cases demonstrate that political parties or leaders, riding high on popularity, alter the rules of business to benefit their parties at the expense of political rivals. Hindutva-inspired policies of the Narendra Modi-led Bharatiya Janata Party (BJP) government in India, and the emerging possibility of single-party rule in Turkey due to Erdogan's proclivity towards centralisation, are two examples of 'abusive constitutionalism'.²⁹ Wigell³⁰ outlines several features of electoralism and constitutionalism that are not found in many electoral regimes. Under this schema, inadequate levels of either (or both) electoralism and constitutionalism render certain regimes as not fulfilling the minimum criteria of democracy.

The conditions of electoral empowerment, sovereignty, integrity and irreversibility³¹ are essential to ensuring that those who succeed in elections enjoy freedom from

²⁵ Y Kureshi, 'Judicial Politics in a Hybrid Democracy. Pakistan's Judiciary and Political Parties' in Mufti et al (n 13).

²⁶ Gilbert and Mohseni (n 17) 270.

²⁷ Wigell (n 11) 234–42.

²⁸ *Ibid* 234.

²⁹ D Landau, 'Abusive Constitutionalism' (2013) 47 *UC Davis Law Review* 189.

³⁰ Wigell (n 11) 234–42.

³¹ Following Wigell (n 11), we refer to electoral irreversibility as the general democratic concept that election outcomes should be accepted by all institutional and political players and elections should be the only legitimate means to assume government office. According to Wigell (240), 'the winners of elections must be able to assume office, exercise power, and conclude their term in accordance with constitutional rules.'

intervention by non-elected entities in their subsequent governance of a polity. On the other hand, the constitutional features of executive accountability and bureaucratic integrity impose necessary limits on the powers of elected officials, in order to keep them from abusing state machinery for the sake of their personal or party interests. Landau³² uses the term 'abusive constitutionalism' to explain a prevalent phenomenon among various hybrid regimes: that of mobilising constitutional changes to derail democracy. Furthermore, in hybrid regimes, arbitrariness in the exercise of executive authority persists due to the protracted weaknesses of institutions otherwise responsible for the consolidation of constitutionalism. Other accountability institutions may reduce their checks on the executive branch due to the material and non-material costs associated with holding the government accountable. In Pakistan's case, the systematic weakening of constitutionalism, or refusal by incumbent and opposition parties to submit to its tenets, has engendered restricted electoral sovereignty. Parties' quest for power is weakly confined by constitutionalism as party leaders often enable tutelary interference to secure a competitive advantage over their rivals. This is the condition of hybrid constitutionalism wherein rule of law is not upheld in an even, patterned and predictable manner, thus leading to a persisting condition of uncertainty in the electoral realm. This problem is indicative of poorly institutionalised political parties and weak party system institutionalisation more generally.

B. The Spoilers in Democratic Consolidation: Weak Political Parties and the Insufficient Institutionalisation of a Party System

The health of electoral democracy is significantly affected by the extent to which the population is politically empowered and organised, and the capacity of political parties to resolve disputes emanating from societal cleavages. Political parties play a central role in mobilising different interest groups and incorporating their demands in policy-making upon securing power via elections. Interactions between political parties create patterns of behaviour that impact the overall health of the party system.

A party system refers to:

systems of interaction resulting from inter-party competition. That is, the system in question bears on the relatedness of parties to each other, on how each party is a function of the other parties and reacts, competitively or otherwise, to the other parties.³³

The interaction among parties is affected by path dependencies relating to their emergence and internal organisation. In many post-colonial states, parties that had been instrumental in the freedom movement continued to enjoy a dominant position for a long period after independence. The same advantage is enjoyed by parties that played a central role in toppling an authoritarian regime. A feature also common to many parties

Losers must accept that the winners have the legitimate right to wield power on behalf of all citizens ... for the electoral method to function as expected by democratic theory, elections need indeed be seen as the only means of filling elected offices, and electoral outcomes as irreversible.

³² Landau (n 29).

³³ G Sartori, *Parties and Party Systems: A Framework for Analysis* (Cambridge, Cambridge University Press, 1976) 144.

in post-third-wave democracies is a lack of programmatic linkage with people – ie the pursuit of universalistic policy programmes that share benefits and costs with all citizens, including non-voters.³⁴ Most parties in Pakistan are poorly organised and highly personalistic in their orientation.

Personalistic parties can be categorised into two sub-categories: charismatic and non-charismatic.³⁵ In charismatic personalistic parties, the leader makes transformational promises. The intention is to inspire people to engage in coordinated action for social change instead of simply offering them another option in an existing electoral pool. In the non-charismatic category, the relationship is transactional and largely based upon promises of post-election patronage.³⁶ Intra-party organisation of personalistic parties can be analysed in terms of two key features. First, a dominant leader and weak organisational capacity as its consequence. The leader of the party enjoys permanent leadership authority, and his retirement or death creates an existential crisis for the party. The question of succession is central to understanding the prominence of another category of personalistic political organisations: dynastic parties.³⁷ In the cases of some leading parties in Pakistan, India and Bangladesh, the next of kin succeed deceased party leaders and continue to mobilise constituent support by inspiring feelings of reverence for themselves by emphasising familial links with their predecessors. Chhibber³⁸ argues that in the absence of independent party organisation or broader civil society associations, it is likely that dynastic succession determines party leadership. The size of the party is irrelevant as both large and small parties can be dynastic and non-dynastic. As in the case of India, the leadership structure of the Congress Party is dynastic, whereas this is not, arguably, the case for the Modi-led BJP. Similarly, also in India, the Shiv Sena party, a small party, is dynastic but other, smaller parties are not. In Pakistan, with few exceptions, most parties are dynastic, whether ethnically rooted or national parties. Where decision-making is centralised and unilateral, the organisational capacity of the party remains weak. This is due to a lack of intra-party democracy, with loyalty to the leader taking precedence over programmatic commitments.³⁹ Recruitment of party office holders or members is determined by the leader, and formal rules, if there are any, are no more than a smokescreen.⁴⁰

This takes us to the final broad category of ‘movement parties.’⁴¹ Such parties are less concerned about the internal organisation of their party.⁴² They seek their institutional share by means of electoral participation and combine it with the mobilisation of their

³⁴ H Kitschelt, ‘Linkages between Citizens and Politicians in Democratic Polities’ (2000) 33 *Comparative Political Studies* 846.

³⁵ T Kostadinova and B Levitt, ‘Towards a Theory of Personalist Parties: Concept Formation and Theory Building’ (2014) 4 *Politics and Policy* 490.

³⁶ *ibid* 494.

³⁷ See P Chhibber, ‘Dynastic Parties: Organization, Finance and Impact’ (2011) 19 *Party Politics* 277; K Chandra, ‘Democratic Dynasties: State, Party and Family in Contemporary Indian Politics’ in K Chandra (ed), *Democratic Dynasties: State, Party and Family in Contemporary Indian Politics* (New York, Cambridge University Press, 2016) 12–55.

³⁸ *ibid*.

³⁹ Kostadinova and Levitt (n 35) 500–01.

⁴⁰ *ibid* 502.

⁴¹ R Gunther and L Diamond, ‘Species of Political Parties: A New Typology’ (2003) 9 *Party Politics* 167.

⁴² Kitschelt (n 34) 845.

followers beyond Parliament. Green parties or anti-immigrant right-wing parties in Europe are key examples of movement parties. Mossige⁴³ also proposes the category of 'personalistic-movement parties,' which he places under the broader category of 'catch-all parties.' This type of party differs from traditional personalistic parties in terms of mobilisation during the inter-election period. These parties emphasise the mobilisation of their members and periodically engage in anti-institutional activities such as calling for strikes or taking control of public buildings to register their protest.⁴⁴ They tend to avoid a clear programmatic orientation and instead rely on populist slogans, such as eradicating corruption, massive job creation or rapid economic growth. Their main purpose remains to further the agenda propounded by their leader, who usually happens to be the founder of the party.⁴⁵ In Pakistan, the PTI is one such party. The leader of the PTI, Imran Khan, founded the party on the singular agenda of accountability. He believes that lack of accountability is a root cause of poor governance and pervasive corruption in Pakistan. After facing successive electoral defeats through three national elections, Khan struck alliances with many of Pakistan's traditional politicians, representing the same politics of patronage he stood up against, for the 2018 election.⁴⁶ This strategy attracted a lot of criticism and commentators were quick to identify how it contradicted Khan's political rhetoric of accountability.⁴⁷ In his defence, Khan stated that a fish rots from the head down – as long as he was not corrupt, he could keep his legislators and political allies in check.⁴⁸ Although the PTI has taken several traditional politicians into its fold, it nonetheless qualifies as a movement party because it has kept its populist agenda intact. Khan's repeated emphasis on the scrupulousness of political leadership indicates his belief that committed ideological leaders can constrain transactional behaviour by party members and allies within the framework of party ideology. Furthermore, the PTI's heavy and active social media presence indicates that the party does not view voter mobilisation as a one-off event taking place near election cycles, but as a consistent, discursive exercise to consolidate its control over the political narrative between elections.

In both full-scale democracies and hybrid regimes, one or both types of these political parties exist. The set of rules or norms determining their interaction with each other, with potential voters and how they respond to the interventions by different tutelary actors constitute the party system of a given regime.

A prominent feature which distinguishes advanced democracies from most of the post-third wave electoral regimes is the rootedness of political parties in society, or 'party system institutionalisation', which exists on a continuum, and where institutionalisation

⁴³ DD Mossige, 'The Personalistic Movement-Party and the Dangers of Duality' (PhD thesis, Ohio State University, 2009).

⁴⁴ *ibid* 18.

⁴⁵ *ibid* 22.

⁴⁶ We understand 'traditional politicians' as those politicians who are chiefly motivated by transactionalism, instead of ideology or programmatic commitments, in the conduct of their politics.

⁴⁷ See M Jumma, 'The "Electables" in Imran Khan's PTT' (*Global Village Space*, 14 April 2021) www.globalvillagespace.com/the-electables-in-imran-khans-pti/; D Jorgic, 'Political "Turncoats" Boost Imran Khan's Prospects in Pakistan Poll' *Reuters* (11 July 2018) www.reuters.com/article/us-pakistan-politics-electables-idUSKBN1K120Y.

⁴⁸ A Rehman, 'You Can't Win without Electables and Money: Imran' *Daily Dawn* (5 July 2018) www.dawn.com/news/1418060.

occurs to varying degrees.⁴⁹ Party system institutionalisation is the 'process through which practices and organisations become well-established and widely known, if not universally accepted'.⁵⁰ In an institutionalised party system, it is clear who the main parties are, and a high level of predictability exists about their expected course of action in the wake of an election or impending legislation.

Mainwaring and Torcal⁵¹ propose four indicators of an institutionalised party system. First, the patterns of competition should be stable. They consider it the most obvious element as stability and institutionalisation are interlinked. Second, party systems are rooted in society by means of strong party identification and close linkage with certain interest groups, such as labour or trade unions, political action committees, bar associations and so on. In advanced democracies, for example, political parties spearheaded the expansion of the electoral franchise by appealing to specific gender and race interests, while parties in new democratic regimes have not played such a role, which is critical to party rootedness and overall stabilisation of the party system.⁵² In the case of the latter, universal franchise was a given. Third, parties should be understood as the only legitimate source of representation. Fourth, parties should work as organisations composed of interdependent members, instead of being instruments to further the personal interest of a few leaders or individuals.

The volatility of new electoral regimes suggests that party systems in these countries are fluid, unlike the 'frozen' party systems of Western democracies.⁵³ Multiple factors determine this volatility, and improvement in human development indicators is known to reduce it.⁵⁴ At the same time and contrary to the assumption that volatility declines as the regularity of elections increases,⁵⁵ it remains high in developing countries despite the conduct of successive elections.⁵⁶

Drawing upon the literature on party-voter linkages informed by ideological proximity⁵⁷ and sociological positions,⁵⁸ Mainwaring and Torcal⁵⁹ contend that in post-third-wave regimes such voter linkages do not necessarily exist and thus voting can be personalistic. Voters choose a party or a candidate for a variety of different reasons, including expected clientelist favours, personal or kinship linkages, or the leader's charisma. A voter can also choose a candidate to advance his material interests

⁴⁹ S Mainwaring and M Torcal, 'Party System Institutionalization and Party System Theory after the Third Wave of Democratization' in RS Katz and W Crotty (eds), *Handbook of Party Politics* (London, SAGE Publications, 2006).

⁵⁰ *Ibid* 206.

⁵¹ *Ibid* 205–07.

⁵² *Ibid*.

⁵³ M Shamir, 'Are Western Party Systems "Frozen"? A Comparative Dynamic Analysis' (1984) 17 *Comparative Political Studies* 35.

⁵⁴ Mainwaring and Torcal (n 49) 207.

⁵⁵ PE Converse, 'Of Time and Partisan Stability' (1969) 2 *Comparative Political Studies* 139.

⁵⁶ S Mainwaring and E Zoco, 'Political Sequences and the Stabilization of Interparty Competition: Electoral Volatility in Old and New Democracies' (2007) 13 *Party Politics* 155.

⁵⁷ G Rabinowitz and SE Macdonald, 'A Directional Theory of Issue Voting' (1989) 83 *American Political Science Review* 93.

⁵⁸ SM Lipset and S Rokkan, 'Cleavage Structures, Party Systems, and Voter Alignments: An Introduction' in SM Lipset and S Rokkan (eds), *Party Systems and Voter Alignments: Cross-National Perspectives* (Toronto, The Free Press, 1967).

⁵⁹ Mainwaring and Torcal (n 49) 216.

irrespective of the candidate's professed programmatic or ideological platform.⁶⁰ Thus, in fluid party systems,⁶¹ individual candidates and their links with the voters becomes more important than political parties. The ability of individual candidates to win elections does not depend on their association with any specific party, but rather parties hunt for potentially winning candidates to increase leverage over rivals and guarantee electoral success. Additionally, the dismal service delivery of governing parties in post-third-wave regimes has discredited political parties altogether.⁶² This paves the way for non-party politicians to secure constituencies and sometimes the presidential office as well, as happened in Peru in 1990 and Colombia and Ecuador in 2002.⁶³

The impetus for party system institutionalisation also flows from partisanship.⁶⁴ Firstly, politics in new democracies or regimes that have experienced periodic disruptions in electoral politics due to military coups are not partisan enough. This is due to the short history of elections, which has prevented the development of clear political identities, and thus partisanship, among voters. Therefore, newer generations of voters do not get the 'partisan push' through their families and regions of residence.⁶⁵ Secondly, periodic disruption of the electoral process means that political partisanship that was developed earlier loses its impact on the next generation of voters. The problem of low partisanship among voters in new electoral regimes can be solved by a consensus among elites regarding the necessity for regular and sustainable elections.⁶⁶ The periodic participation of citizens in elections would inculcate the element of party identification among voters. In the absence of a consensus among the elite about democracy and periodic elections, tutelary interference emerges as a stubborn feature of hybrid regimes.⁶⁷

Tutelary intervention is a persisting pathology in Pakistan's political history, including its more recent democratic experience. It is understood as '[the ability of] unelected bodies, such as the military, religious authorities, or a monarch, [to] unduly constrain the agency of elected leaders or veto national legislation'.⁶⁸ The coexistence of authoritarian and democratic features of governance is a quintessential marker of hybrid regimes. Scholarly attempts to understand tutelary interference in Pakistan have produced divergent and contradictory approaches and have focused extensively on causes and forms of military intervention. A recent body of literature has explored tutelary interference by the judiciary.⁶⁹ Scant attention has been given to the role of

⁶⁰ *ibid.*

⁶¹ The fluidity of the party system can be measured by the number of anti-party or independent candidates contesting and winning elections. *ibid.*

⁶² M Tavits, 'Party System in the Making: The Emergence and Success of New Parties in New Democracies' (2007) 38 *British Journal of Political Science* 113.

⁶³ Mainwaring and Torcal (n 49) 216.

⁶⁴ RJ Dalton and S Weldon, 'Partisanship and Party System Institutionalization' (2007) 13 *Party Politics* 179.

⁶⁵ *ibid.* 184.

⁶⁶ *ibid.*

⁶⁷ GMD Dore, 'Democracy Is Not the Only Game in Town! Democratic and Authoritarian Attitudes in Indonesia, Korea, and Thailand' in GMD Dore, JH Ku and KD Jackson (eds), *Incomplete Democracies in the Asia-Pacific*, Critical Studies of the Asia-Pacific Series (London, Palgrave Macmillan, 2014).

⁶⁸ Gilbert and Mohseni (n 17).

⁶⁹ See, eg I Niaz, 'Judicial Activism and the Evolution of Pakistan's Culture of Power' (2020) 109 *The Commonwealth Journal of International Affairs* 23; P Oldenburg, 'The Judiciary as a Political Actor' in C Jaffrelot (ed), *Pakistan at the Crossroads: Domestic Dynamics and External Pressures* (Haryana, Random House India, 2016); Y Kureshi, 'When Judges Defy Dictators: An Audience-Based Framework to Explain the Emergence of Judicial Assertiveness against Authoritarian Regimes' (2020) 53 *Comparative Politics* 233.

party system institutionalisation in entrenching tutelary interference and consequently regime hybridity in Pakistan. This is not to suggest that political parties are primarily responsible for tutelary intervention, but that deficiencies in their structure and behaviour fail to create substantial buffers against such interventions.

In Pakistan, mobilisation by opposition parties against incumbent parties has been a constant phenomenon. The inability of the opposition and governing parties to reach a consensus over election results has facilitated tutelary interference in politics. In the pre-2008 period, such tensions, among other factors, created political instability subsequently exploited by the military to launch coups. In the post-2008 period, bitter wrangling between political parties and their refusal to accept their rivals' mandates has enabled the military to retain some of its prerogative powers in terms of policymaking by exploiting the contested legitimacy of the ruling party.⁷⁰ It can be observed from these examples that the Pakistani military often assumes the role of an arbitrator, which only serves to strengthen its position as an institution that has historically remained above parliamentary and judicial scrutiny. This results in the compromised protection of civil liberties and erodes the quality of democracy as military agencies continuously engage in authoritarian practices with full impunity.⁷¹ Due to their weak societal rootedness and poor organisation, political parties in Pakistan have always remained vulnerable to the strategies of the military establishment. The weak organisation makes opposition parties seek the military's patronage to pressurise the incumbent party to settle politically explosive issues a certain way or against structural reforms. As a result, the military's self-assumed role as a guardian institution is further consolidated at the expense of political parties.

Situating Pakistan's case in a party system institutionalisation framework allows us to capture structural flaws within Pakistan's political parties that contribute to – but do not fully explain – regime hybridity in Pakistan.

III. Pakistan's Political Parties: Flaws and Struggles

The post-2008 period of electoral democracy in Pakistan has been substantively different from the country's democratic moment in the 1990s, when consolidation of the older political parties, like the MQM, PPP and PML-N, suffered due to the self-serving nature of the party leadership. Party system institutionalisation was prevented due to party splitting, party switching and tutelary interference in the realm of electoral politics. Between 1996 and 2002, new parties – the Pakistan Muslim League-Quaid-e-Azam (PML-Q, a splinter group of the PML-N formed by the military ruler Pervez Musharraf) and the PTI (comprised of both new political faces and defectors from older parties) – emerged on the electoral scene. However, after the reinstatement of democratic rule in 2008, military interference in politics has become more subtle. Allegations of defections and the coercive undermining of political parties engineered by the military establishment are still prevalent. Nonetheless, the failure of political parties to ensure

⁷⁰ Z Hussain, 'Dynastic Politics' *Daily Dawn* (2 June 2013).

⁷¹ A Shah, 'How Pakistan's Politicians Help the Military' *New York Times* (23 January 2020).

the accountability of central leadership, to democratise intra-party decision-making, to engage in consistent inter-party interaction⁷² and to live up to their political rhetoric has also contributed to weak party system institutionalisation in Pakistan in the post-2008 period. Additionally, in the same period, openly partnering with the military establishment to ensure electoral success, such as in the case of the PTI, has also emerged as a novel example of weak party system institutionalisation. The PTI's electoral success in 2018 was due to the tacit support of certain sections of the military establishment, even though the party enjoys a support base in the urban middle class and among the Pakistani youth. Huge crowds attracted to rallies by its leader Imran Khan are a testament to the substantial voter base he relies upon. Although his electoral success cannot be reduced to the support he gathered from the military establishment, it was evident that the playing field was tilted against his political opponents in the lead-up to the 2018 elections. The PPP and PML-N, on the other hand, struggled to keep their act together as a united political front against the military-backed PTI. Both parties suffered from party switching, but somehow managed to retain their strongholds in Sindh (PPP) and northern and central Punjab (PML-N).

An analysis of the major political events beginning from the leak of the Panama Papers in 2016 – which implicated Nawaz Sharif (leader of the PML-N) – to Yusuf Raza Gillani's election in the Senate in 2021 demonstrates that a lack of accountability, political expediency and high levels of centralisation combine to undermine political parties by highlighting the inconsistency of their actions and their publicly made claims. These weaknesses expose and exacerbate the vulnerability of political parties, erode the institutionalisation of the party system and make it difficult to scale back the prerogative powers of tutelary actors.

IV. Inconsistency, Centralised Decision-Making and Weak Accountability in Political Parties

A. The Panama Papers Case and its Aftermath

One sociological reason for the army's dominance in Pakistan is the fact that its major recruitment base is the Punjab region. Due to its large population size and the rich tradition of army recruitment in the provincial hinterland dating back to the colonial era, Punjab sends more recruits to the army than any other province. Nearly 53 per cent of Pakistan's population resides in the Punjab province. Therefore, it is generally only if a party secures a majority in Punjab that it can comfortably form a national government. Hence, in the 2013 general election, the PML-N formed the central government by securing an overwhelming majority in Punjab. Punjabi politicians – mainly the landed elite – are often accused of enabling the sustained tutelary role of the military.

⁷²For example, Pakistani political parties frequently employ extremely polarising narratives against one another, but they sometimes form alliances when it may be politically expedient to do so. At the same time, being in a political alliance offers no guarantee of political cooperation or protection against violent contestation.

Therefore, when Nawaz Sharif launched his movement against the '*khalai makhloq*'⁷³ following his dismissal by the Supreme Court in 2017, he was received with much optimism and fanfare in sections of the intelligentsia.⁷⁴ This was because, for the first time, a sitting government dominated by Punjabis (mainly from central and northern Punjab) was mobilising its supporters by raising slogans of civilian and parliamentary supremacy. Nawaz's political tirade against the military establishment centred on two reasons. First, in the Panama Papers case, military officials became party to the joint investigation team (JIT) formed by the Supreme Court to investigate his family's offshore assets. Second, it was alleged that the PTI's 2014 sit-ins against the PML-N government in Islamabad were orchestrated with support from the Inter-Service Intelligence agency. During the Panama Papers trials, Nawaz constantly blamed the military establishment for keeping him from pursuing independent foreign and security policies. Nonetheless, when the Supreme Court attempted to block the extension of the army chief in 2019, Nawaz and his party thronged to support the military establishment ostensibly to secure relief in the corruption cases pursued then by the PTI government.

The political crisis triggered by the leak of the Panama Papers provides an understanding of inter- and intra-party dynamics and the state of the party system in Pakistan. In April 2016, the Panama Papers revealed details of offshore companies and undeclared properties of wealthy individuals around the world. Among others, the leaked documents named individuals from Pakistan, including the children of then Prime Minister Nawaz Sharif. Offshore companies and properties belonging to the Sharifs included a number of apartments in Avenfield House in London, which they have been accused of possessing since the early 1990s. The Sharif family denied ownership of the Avenfield apartments for nearly two decades; however, shortly before the Panama Papers were released in April 2016, Nawaz Sharif's youngest son, Hussain, appeared on different news channels and accepted ownership of the properties.⁷⁵ Meanwhile, Imran Khan, then opposition party leader of the PTI, launched a campaign for a judicial investigation to probe whether the Sharif family acquired their London properties by lawful means.⁷⁶ The PTI also demanded Nawaz Sharif's resignation. The PML-N continued to claim that the London properties of its leadership were rightfully owned and legally purchased. In his address to the national assembly on 16 May 2016, Nawaz Sharif confidently presented the financial trail detailing the purchase of the properties.⁷⁷ However, Imran Khan persisted with his demand for a judicial inquiry and filed a petition with

⁷³ *Khalai makhloq* (aliens) is one of many euphemisms used for Pakistan's military and its intelligence agencies.

⁷⁴ This includes prominent journalists, op-ed writers and academics, such as Najam Sethi, Murtaza Solangi, Ayesha Siddiqa and Raza Rumi.

⁷⁵ Hussain Nawaz accepted ownership of the Avenfield apartments in a talk show with journalist Javed Chaudhary on 7 March 2016, nearly a month before the Panama Papers were released. The Sharif family gained knowledge of the impending Panama leaks through Pakistani journalist Umar Cheema, who represented Pakistan in the ICIJ investigative consortium that spearheaded the Panama leaks. In his statement to the Joint Investigation Team recorded on 17 May 2017, Cheema stated that he disclosed this information to the Sharif family to get their response/clarification before publication of the Panama Papers. The Panama JIT report with Cheema's statement is available at www.dawn.com/news/1344640. Hussain Nawaz's interview with Javed Chaudhary can be seen at www.youtube.com/watch?v=akk0_fkVgWc.

⁷⁶ H Cheema, 'How Pakistan's Panama Papers Probe Unfolded' *Daily Dawn* (6 July 2018) www.dawn.com/news/1316531.

⁷⁷ *ibid.*

the Supreme Court.⁷⁸ Initially reluctant to take up the case, the Court had to eventually admit Khan's petition due to simmering political tensions between the PTI and the PML-N and the pressures of the court's self-identification as a harbinger of justice in Pakistan. This self-image is at the root of much of the Pakistani judiciary's activism.⁷⁹ The PPP, another major opposition party, maintained that the institutions of Pakistan were incapable of holding Punjabi politicians – especially the Sharif family – accountable.⁸⁰

Political temperatures soared as the judicial inquiry progressed. Day-to-day press conferences by political parties following each court proceeding became commonplace. While mainstream media contributed to creating highly charged narratives around this case, social media degenerated into an arena of harsh exchanges between PML-N and PTI supporters. In November 2016, Bilawal Bhutto jumped on the anti-Sharif bandwagon, terming the Panama Papers 'the world's biggest corruption scandal',⁸¹ whilst assuring Imran Khan of the PPP's commitment to 'fighting for accountability' if the PTI were to give up its anti-corruption legal mobilisation against the Sharifs.⁸² Senior PPP leaders perceived the Panama Papers investigation as a moment of poetic justice for the Sharif family and dispelled the PML-N's claims of being subject to 'revenge', insisting that the investigation was instead an instance of accountability.⁸³ For its part, the PML-N targeted the court through charged polemics, with some of its parliamentarians threatening members of the JIT and Supreme Court judges investigating the Panama Papers case.⁸⁴ This was not the first time that the PML-N had been at loggerheads with the Supreme Court. In 1997, supporters of the party stormed the Supreme Court premises shortly after Nawaz Sharif – Prime Minister at the time – appeared in court proceedings on contempt of court charges. President Farooq Leghari wrote a letter to the Prime Minister asking him to summon the army under Article 190 of the Constitution, to protect the Supreme Court premises and Chief Justice Sajjad Ali Shah; Nawaz Sharif rejected his appeal. There was a repeat of such pressure tactics to influence the JIT and related court proceedings as well, though they remained limited to verbal threats or disparaging remarks about the court in political rallies. In one such political gathering, the Minister of Railways, Khawaja Saad Rafique, from the PML-N, warned the judiciary against making humiliating remarks against the PML-N leadership.⁸⁵

⁷⁸ *ibid.*

⁷⁹ Kureshi, 'When Judges Defy Dictators' (n 69).

⁸⁰ The PPP leader, Aitzaz Ahsan, expressed this opinion in a television talk show with journalist Saadia Afzal, www.youtube.com/watch?v=6gKWF5dNIF4&feature=youtu.be.

⁸¹ 'Imran May Surrender on Panama Leaks but PPP Will Fight for Accountability' *Daily Dawn* (3 November 2016) www.dawn.com/news/1294045.

⁸² *ibid.*

⁸³ A Mahmood, 'PPP Leaders Say Sharif Deserves What JIT Is Putting Him Through' *Daily Dawn* (4 July 2017) www.dawn.com/news/1343030.

⁸⁴ Fiery statements against SC judges and members of the JIT were issued by the PML-N Senator Nehal Hashmi and the Minister for Railways Khawaja Saad Rafique. In a political rally, Hashmi discredited the accountability process and threatened the judges involved in these words: 'We will make this land (Pakistan) narrow for you and your children. You are now in service, but will retire one day. We will not leave you then.' The PML-N spokeswoman, Maryam Aurangzaib, distanced her party from Hashmi's remarks and clarified that they did not reflect official party policy. See 'PML-N Senator Threatens JIT Members, SC Judges of "Dire Consequences"' *Pakistan Today* (31 May 2017) www.pakistantoday.com.pk/2017/05/31/pml-n-senator-threatens-jit-sc-judges-of-dire-consequences/.

⁸⁵ See Khawaja Saad Rafique's statement in a talk show with journalist Arshad Sharif, www.youtube.be/g_cxtWL-5IA.

In the court's split 3:2 verdict, two judges found sufficient grounds to disqualify Nawaz Sharif as Prime Minister; however, three judges ruled in favour of forming a JIT.⁸⁶ The JIT comprised six members of different civil and military investigation agencies and was tasked with finding and authenticating the money trail of the Sharif family's London properties.⁸⁷ The JIT's mandate included interrogating the Sharif family and their associates. PML-N leaders and supporters erupted in celebrations as the party welcomed the court's decision with much enthusiasm.⁸⁸ Following the decision, the prevalent view among most commentators was that the JIT will fail to achieve any results.

After a two-month-long probe, the JIT recommended filing corruption charges against Nawaz and his children as they failed to satisfy the investigative body concerning financial transactions conducted during the purchase of the Avenfield apartments.⁸⁹ The JIT also found that Nawaz Sharif was the chairman of a Dubai-based offshore company and he was drawing a monthly salary amounting to 10,000 AED in this position.⁹⁰ He failed to declare his chairmanship in his nomination papers for the 2013 elections.⁹¹ The investigation also revealed that a trust deed dated 2006 submitted by Maryam Nawaz – Nawaz Sharif's daughter – as evidence of her ownership of the London properties was forged.⁹² A letter from Qatar's prince, submitted as evidence of Nawaz Sharif's financial transactions, was declared unverifiable and a 'fictional myth' by the chief investigator of the JIT, Wajid Zia.⁹³ Zia further stated that 'the Qatari prince tried to use delaying tactics when the JIT asked him to record a formal statement about his letter. Later he asked for assurances that he would not be ordered to appear in any Pakistani court.'⁹⁴ After hearing the arguments of both sides for two weeks, the court ordered the National Accountability Bureau (NAB) to prosecute charges against the Sharif family and disqualified Nawaz Sharif from partaking in electoral politics and holding public office for life.⁹⁵ Sharif was replaced by Shahid Khaqan Abbasi, a prominent PML-N minister. However, Abbasi continued to maintain that his Prime Minister was Nawaz Sharif.⁹⁶ In fact, according to party sources, Abbasi was a placeholder for Nawaz Sharif's brother Shehbaz Sharif.⁹⁷ The PML-N rejected the verdict as another setback for democracy

⁸⁶ Cheema, 'Pakistan's Panama Papers' (n 76).

⁸⁷ *ibid.*

⁸⁸ 'Dance, Dhol and Sweets as PML-N Supporters Celebrate Supreme Court's Verdict' *Daily Dawn* (20 April 2017) www.dawn.com/news/1328169.

⁸⁹ Cheema, 'Pakistan's Panama Papers' (n 76).

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² #Fontgate: Maryam Nawaz Accused of Document Forgery' *Al Jazeera* (13 July 2017) www.aljazeera.com/news/2017/07/fontgate-maryam-nawaz-accused-document-forgery-170713084436017.html.

⁹³ See 'Qatari Letter Seems to Be a "Fictional Myth", Court Told' *Daily Times* (19 October 2018) dailytimes.com.pk/311908/qatari-letter-seems-to-be-a-fictional-myth-court-told/. The report quotes Zia's explanation on how he arrived at the conclusion that the Qatari letter was fake: 'Hussain Nawaz had told the JIT that he had showed the documents of the settlement with the Qataris to his brother Hassan Nawaz. Hassan Nawaz, however, denied ever seeing these documents. The JIT came to the conclusion that these documents are fake and have been created just to fill a gap in the money trail.'

⁹⁴ *ibid.*

⁹⁵ Cheema, 'Pakistan's Panama Papers' (n 76).

⁹⁶ See Shahid Khaqan Abbasi's statement in a political rally at www.youtube.com/watch?v=-KltQHlj00.

⁹⁷ B Singh, 'Shahid Khaqan Abbasi Replaces Nawaz Sharif as Pakistan's Prime Minister' *NDTV India* (1 August 2017) www.ndtv.com/world-news/shahid-khaqan-abbasi-replaces-nawaz-sharif-as-pakistan-prime-minister-1732069.

and accused non-elected institutions of meddling with the will of the people.⁹⁸ Nawaz turned his disqualification into a political campaign and raised the slogan *vote ko izzat do* (respect voters' mandate). Nawaz Sharif and his daughter Maryam claimed that they were reprimanded for their unflinching commitment to civilian supremacy.⁹⁹

Meanwhile, the PTI gained popularity at the expense of the PML-N in Punjab. Several 'electables' switched to the PTI from the PML-N and Imran Khan was elected Prime Minister in the July 2018 general election. The PPP and PML-N declared the elections rigged in favour of the PTI but agreed to be part of the newly elected Parliament. The government set up following the election has been referred to as 'Project Imran',¹⁰⁰ 'Imran Experiment'¹⁰¹ and pejoratively as just 'selected',¹⁰² as opposed to elected. Weeks before the 2018 elections, Nawaz and Maryam were sentenced to ten and seven years imprisonment respectively by the accountability court.¹⁰³ The opposition parties continued to criticise the 'selectors' for installing an incompetent government. Chairman Jamiat Ulema-e-Islam (Fazal) and Maulana Fazal-ur-Rehman staged a sit-in in Islamabad demanding the Prime Minister's resignation and a fresh election. Initially, the PML-N and PPP supported the sit-in, but they did not actively participate. In their speeches, opposition leaders urged the 'backers' of the government to withdraw their support.¹⁰⁴ In this tense political environment, the Lahore High Court permitted Nawaz Sharif to travel abroad for medical treatment.¹⁰⁵ The media speculated that there was a 'deal' between the opposition and the 'establishment' as such relief for a convicted politician was unprecedented. Shehbaz Sharif, the younger brother of Nawaz, was largely perceived as the dealmaker, while Nawaz himself was portrayed by his supporters in the media and civil society as the figure standing up against the diktats of the military. However, to the surprise of many, it was Nawaz Sharif who wrote the letter to his parliamentary party to vote in favour of the amendments in the Army Act, enabling army chief General Qamar Javed Bajwa's extension for another tenure.¹⁰⁶ The PPP also fell in line as its leaders were granted bail in cases of money laundering. As a result, the PTI

⁹⁸ 'PML-N Rejects SC's Verdict, Terms It "Awful Example of Prejudice, Bigotry"' *Pakistan Today* (8 November 2017) www.pakistantoday.com.pk/2017/11/08/pml-n-senior-leaders-reject-scs-review-petition-verdict/.

⁹⁹ Maryam Nawaz made these remarks in a television talk show with journalist Iram Abbasi, www.youtube.com/watch?v=Ewy8h4k3OjI.

¹⁰⁰ A Zehra, '4 Years of Authoritarianism: Can Pakistan's Wounded Democracy Recover from Project Imran?' *The Friday Times* (11 April 2022) www.thefridaytimes.com/2022/04/11/4-years-of-authoritarianism-can-pakistans-wounded-democracy-recover-from-project-imran/.

¹⁰¹ A Siddiq, 'Imran Was an Experiment That Went Wrong. Now, Bajwa Has to Face Challenge from Within Army' *ThePrint India* (28 April 2022) <https://theprint.in/the-fineprint/imran-was-an-experiment-that-went-wrong-now-bajwa-has-to-face-challenge-from-within-army/933254/>.

¹⁰² "No More Selection": Bilawal Says Won't Accept Rigging in No-Trust Vote' *Daily Dawn* (23 March 2022) www.dawn.com/news/1681444.

¹⁰³ FK Pasha, 'Nawaz, Maryam Convicted' *The News International* (7 July 2018) www.thenews.com.pk/print/338538-nawaz-maryam-convicted. An accountability court is a specific type of Pakistani courts mandated to hear cases of corruption and abuse of office.

¹⁰⁴ Z Ali, 'Fazl Asks State Institutions to Stop Backing Govt' *Daily Dawn* (6 October 2019) www.dawn.com/news/1509290.

¹⁰⁵ R Bilal, 'LHC Allows Nawaz to Travel Abroad for 4 Weeks; Orders Govt to Remove Name from ECL sans Conditions' *Daily Dawn* (16 November 2019) www.dawn.com/news/1517068.

¹⁰⁶ 'Nawaz Sharif Writes Letter to Khawaja Asif over Army Act Amendment' *ARY News* (3 January 2020) <https://arynews.tv/nawaz-sharif-letter-khawaja-asif-army-act-amendment/>.

gained legitimacy for its 'selected' government when major opposition parties unconditionally came to rescue the 'selector' from criticisms that the PTI and Imran Khan lacked political legitimacy.

Political events during and after court trials in the Panama Papers case demonstrated the organisational weakness of political parties in Pakistan. Centralisation gives little room for parties to retain their political base in the wake of any crisis pertaining to their central leadership. If the main leader dies or faces disqualification, it paves the way for massive party switching due to a low degree of party identification not only among voters, but also among electoral candidates. The lack of programmatic linkage and the clientelist nature of politics provides space for the tutelary forces to manoeuvre to engineer electoral outcomes. The results of the 2018 elections are a testament to this weak party system institutionalisation, which is marred by personalistic political parties. The following section will further demonstrate how inconsistent political rhetoric further damages the already weak political parties and leaves their voters with uncertainty as to what course their leadership will take when it comes to tough political choices.

B. Rescuing the 'Selector' and Consolidating Military Presence

A constitutional crisis ensued for the PTI-led incumbent coalition government in November 2019, when the Supreme Court of Pakistan suspended the extension of the tenure of the Chief of Army Staff, General Qamar Javed Bajwa. The PTI, which had articulated an anti-extension position when it was voted out of Parliament in 2013,¹⁰⁷ was now bending over backwards to justify General Bajwa's extension due to 'geopolitical exigencies'.¹⁰⁸ It was not the first time that the military chief's tenure was extended, the PTI citing the need for 'continuation of leadership' in the wake of a geopolitical crisis. Ayub Khan, Pakistan's first military ruler, appointed General Musa Khan as his successor after relinquishing the post of Chief of Army Staff and assuming the role of Field Marshal and later President. Khan gave Musa two extensions to maintain his grip over the military through his handpicked general, who, as a Pashtun, shared the same ethnic background as him. Similarly, after imposing martial law in 1977, General Zia ul-Haq held dual offices of President and military chief. Pervez Musharraf followed suit and did not give up army command until November 2007, and only then due to the unprecedented resistance against his regime by the higher judiciary and bar associations. Musharraf's successor, General Ashfaq Pervez Kayani, was also given a three-year extension by the PPP government. The judiciary has generally not questioned the legitimacy of such extensions, instead providing legal cover to the excesses of military rulers.

¹⁰⁷ When the PPP government decided to extend the tenure of COAS General Ashfaq Pervez Kayani, Imran Khan had said that 'in order to curtail crime, national institutions needed to be strengthened, as opposed to individuals and therefore General Kayani's tenure should not be extended'. See 'Kayani's Term as COAS Should Not Be Extended: Imran Khan' *The Express Tribune* (12 September 2013) www.tribune.com.pk/story/603439/kayanis-term-as-coas-should-not-be-extended-imran-khan.

¹⁰⁸ M Afzal, 'The Curious Case of the Pakistani Army Chief's Extension' (*The Brookings Institution Blog*, 4 December 2019) www.brookings.edu/blog/order-from-chaos/2019/12/04/the-curious-case-of-the-pakistani-army-chiefs-extension/.

In the most recent episode of the military chief's extension of tenure, however, the judiciary set aside the precedence of being a silent observer by taking up the petition of a serial petitioner, Riaz Hanif Rahi. It is pertinent to note that Rahi had twice been fined by high courts for filing frivolous public interest litigation (PIL) petitions.¹⁰⁹ In 2005, Rahi was sentenced to imprisonment for one month for misbehaving with a judge.¹¹⁰ In 2010, he was temporarily banned from the premises of the Supreme Court for challenging the reinstatement of Supreme Court judges.¹¹¹ He also attempted to withdraw his petition against the extension of the military chief; however, the Supreme Court denied his right of withdrawal and seized the matter *suo moto* under Article 184(3) of the Constitution.¹¹² While Rahi filed this petition immediately after the government issued General Bajwa's extension notification in August 2019, the Supreme Court took it up only days before the general's retirement, provoking rumours of collusion between the higher judiciary and the general's presumed successor. In print and electronic media, this instance of judicial intervention generated a mixed response. One section of the media termed it a step forward on the path of civilian supremacy, while other commentators perceived this move as an instance of judicial overreach.¹¹³

In its detailed judgment, the Supreme Court highlighted several deficiencies in the Army Act 1952 relating to the tenure, age of retirement and extension of tenure of a general, and directed the government to amend the Army Act to include provisions regulating the tenure of the army chief.¹¹⁴ Given government assurances during multiple case hearings, the court set a six-month deadline to pass the necessary amendments and indicated that failure to do so would result in the end of General Bajwa's tenure as army chief.¹¹⁵ General Bajwa, whose extension notification was suspended by the apex court in November 2019, was now temporarily reinstated as army chief by the same court. The unprecedented decision of the Supreme Court raised questions about the capacity of the government to implement the court's order as the ruling party lacked the necessary majority in the Upper House of Parliament and had a razor-thin majority in the Lower House. The impression of weak parliamentary capacity was further reinforced by the dysfunctional conduct of legislative business in Parliament at the time, as was made apparent by the highly contentious environment in the Lower House. Several opposition leaders, including party heads, were either under arrest or facing corruption inquiries. Much to the surprise of political commentators and party members, both leading opposition parties, the PPP and PML-N, readily agreed to unconditionally

¹⁰⁹ M Asad, 'Petitioner in Justice Isa Case Fined Twice for Filing Frivolous Petitions' *Daily Dawn* (25 March 2018) www.dawn.com/news/1397311.

¹¹⁰ Z Gishkori, 'Frivolous Litigation Overburdens SC' *The New International* (5 April 2018) www.thenews.com.pk/print/300879-frivolous-litigation-overburdens-sc.

¹¹¹ *Ibid.*

¹¹² M Sarfraz, 'Pakistan Army Chief Extension Suspended by Supreme Court' *The Hindu* (26 November 2019) www.thehindu.com/news/international/pakistan-army-chief-extension-suspended-by-supreme-court/article30085645.ece.

¹¹³ For instance, prominent lawyer and former senator, Aitzaz Ahsan, repeatedly criticised the SC for encroaching upon the domain of the executive in his media appearances, www.youtube.com/watch?v=uQ3KKW-Ftz8.

¹¹⁴ 'Army Chief's Extension: SC Issues Detailed Verdict' *The News International* (16 December 2019) www.thenews.com.pk/latest/584318-army-chiefs-extension-sc-issues-detailed-verdict.

¹¹⁵ N Siddiqui and H Bhatti, 'Gen Bajwa to Stay On as COAS for 6 More Months: SC' *Daily Dawn* (28 November 2019) www.dawn.com/news/1519326.

support the legislative Bills legalising the extension of services chiefs' tenures, contradicting their earlier stance on the issue. When some PML-N legislators dissented against their party leadership's volte-face, they were reminded of their obligation to vote along party lines.¹¹⁶ The PPP intended to propose amendments to the Bills, but did not do so as a 'show of cooperation' towards the government.¹¹⁷ As a result, General Bajwa received another term of office with the near-unanimously passed amendments to the Army Act. This show of co-operation on the part of opposition parties was intriguing as they had relentlessly criticised General Bajwa for his role in the 2018 general elections, accusing him of pre-poll engineering to facilitate the PTI's victory. Long before the elections in July 2018, the PML-N had built a narrative accusing the PTI of receiving the military establishment's support at the expense of other parties. In the post-election period, opposition parties pejoratively referred to the PTI government as 'selected' and insinuated that the selectors were the military establishment, in collusion with the judiciary. This narrative was the mainstay of the opposition during the PTI's entire term in office until the proposed amendments to the Army Act were presented. Amid heavy criticism from its supporters in the media and civil society, the PML-N voted in favour of amendments as per the directions of their ailing leader, Nawaz Sharif, who sent a letter from London instructing PML-N parliamentarians to play their part and to play it quickly – a 10-day deadline was given – in the passage of the respective legislation.¹¹⁸

Khawaja Asif, a prominent PML-N leader, held party supporters responsible for the leadership's surrender after three long years of 'resistance' against the establishment. He stated that PML-N supporters wanted party leaders to stand up for civilian supremacy, but they are not willing to agitate on the streets to demonstrate their support.¹¹⁹ On the other hand, the PPP showed some 'resistance' by requesting the government to follow parliamentary procedures by first presenting the Bill to the parliamentary committees before voting could commence. That the PPP had upheld the 'democratic legislative process' was hailed as a 'victory' by the party chairman, Bilawal Zardari.¹²⁰ Both Houses of Parliament approved the amendments with an overwhelming majority of votes from three major parties, the PTI, PML-N and PPP.¹²¹ Lawmakers from the erstwhile FATA (Federally Administered Tribal Areas) and those belonging to religious parties with a smaller parliamentary presence boycotted the vote on account of political differences with the PTI government as well as the military.

General Bajwa's extension indicated a consolidation of regime hybridity in Pakistan where, despite two successive civilian transfers of power, the army continued to retain

¹¹⁶ Former defence minister and senior PML-N leader Khawaja Asif had reminded the dissenters that all were bound to follow party policy. See 'Senate Committee, NA Approve Services Acts Amendment Bills' *Geo News* (7 January 2020) www.geo.tv/latest/265990-Bills-formalising-tenures-of-services-chiefs-sail-through-national-assembly.

¹¹⁷ *ibid.*

¹¹⁸ 'Nawaz Sharif Writes Letter to Kh Asif over Amendment to Army Act' *Daily Times* (4 January 2020) www.dailytimes.com.pk/532254/nawaz-sharif-writes-letter-to-kh-asif-over-amendment-to-army-act/.

¹¹⁹ Khawaja Asif made these remarks in a talk show with Pakistani journalist Kashif Abbasi, www.youtube.com/watch?v=bNly9BYdpyg&ab_channel=ARYNews.

¹²⁰ A Yasin, 'Amendment to Army Act: Following Parliamentary Procedure Victory for Democracy: Bilawal' *The News International* (5 January 2020) www.thenews.com.pk/print/593830-amendment-to-army-act-following-parliamentary-procedure-victory-for-democracy-bilawal.

¹²¹ A Saeed, 'Army Act Approved by Pakistan National Assembly' *Arab News* (7 January 2020) www.arabnews.com/node/1609526/world.

its influence over the political leadership. Further, dissent within and among political parties on matters pertaining to the armed forces was not reflected in parliamentary voting. As much as this may be due to arm twisting by the army, other factors – including dynastic and personalistic party structures, and a politics characterised by cut-throat transactional interests instead of programmatic commitments – also play a role in sustaining tutelary interference in Pakistan. For example, dysfunctional parliamentary practices in the form of floor-crossing during crucial parliamentary votes remained a key feature following the 2018 general election. Such practices point to the lack of discipline within political parties and the propensity of legislators to sacrifice publicly stated party claims at the altar of political expediency. In this sense, party members are not entirely different from party leadership, as the discussion of the army chief's extension case shows. There is no evidence of accountability within political parties against compromised legislators or pliable party leadership for betraying their stated ideological claims and goals and instead voting to entrench military power.

C. Floor-Crossing: Indictment of Weakly Organised Parties

Floor-crossing is a form of party switching where certain members of a parliamentary party choose not to vote in accordance with their party's directives during a parliamentary session in which they are required by law to vote in accordance with party policy.¹²² Party switching is an under-studied phenomenon as most of the literature pertaining to democratisation and party systems focuses on established democracies, where party switching is rare, potentially due to entrenched ideological bonds between candidates and their parties. However, after the emergence of new electoral regimes in the non-Western world, scholars have started to study the phenomenon and advocated for anti-defection laws to discourage the practice to strengthen the institution of political parties.¹²³ Party switching may take place for several reasons, major ones being ideological alienation, dwindling chances of the party in elections and prospective personal gains.¹²⁴ In nascent electoral regimes, where party systems tend to be fragile, ideological resonance is not the main factor guiding legislators' behaviour.

The practice of floor-crossing is undemocratic.¹²⁵ In a democracy, if a candidate wins a seat on a ticket of a particular party but later develops differences with the party, he has the option to resign and seek a fresh mandate.¹²⁶ This is necessary because defecting while holding the seat that belonged to the party is a breach of faith.¹²⁷ Janda¹²⁸ highlights the positive influence of anti-defection laws on democratic health. Firstly, it

¹²² Under Pakistani law, parliamentarians must follow party policy during voting on money Bills, election of the Leader of the House, votes of confidence and votes on constitutional amendments.

¹²³ See GR Montinola, 'Parties and Accountability in the Philippines' (1999) 10 *Journal of Democracy* 126; SW Desposato, 'Parties for Rent? Ambition, Ideology, and Party Switching in Brazil's Chamber of Deputies' (2006) 50 *American Journal of Political Science* 62.

¹²⁴ K Janda, 'Laws against Party Switching, Defecting, or Floor-Crossing in National Parliaments' (World Congress of the International Political Science Association, 2009) 6.

¹²⁵ PM Kamath, 'Politics of Defection in India in the 1980s' (1985) 25 *Asian Survey*, 1039, 1051.

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ Janda (n 124) 16.

prevents larger parties from luring members of smaller parties and therefore hampers the formation of hegemonic party systems. It is observed that party defections mostly serve the interests of the party holding the executive office because they have more resources at their disposal to attract defectors from the opposition. This leads to the second impact, which is prevention of corrupt practices among parliamentary parties – as material incentives often play a key role in encouraging defections in electoral regimes where accountability remains weak. Thirdly, it promotes ideological coherence within parties which is essential for a strong party system, as parties should represent all sections of the society. However, this positive impact comes with a caveat that it might discourage dissent within the party.¹²⁹ Like all fragile electoral regimes, Pakistan also grapples with large-scale party switching and floor-crossing. In comparison to the 1990s and early 2000s, party loyalty among elected representatives has grown stronger, but some recent developments demonstrate there are still issues.

After the 2018 elections, opposition parties were looking for opportunities to embarrass the elected PTI and its coalition partners. They decided to introduce a motion of no confidence against the Chairman of the Upper House (the Senate) – Sadiq Sanjrani. The alliance of opposition parties, the PDM, had a collective majority in the Senate and were confident of replacing Sanjrani with an opposition-backed candidate. Sanjrani's election to the position of Chairman of the Senate in March 2018 was supported by the PPP in return for the position of Deputy Chairman. Before the Senate elections in March 2018, the PML-N was set to secure a majority in the Upper House but the defection of party members from Balochistan, and the consequent change of government in the province, reduced its chances of victory. According to some members of the PML-N, the military establishment allegedly orchestrated in-house change in Balochistan,¹³⁰ while the PPP's co-chairman Asif Ali Zardari was accused of political manipulation in that province to secure more seats for his party in the Senate.¹³¹ The PTI suggested Sanjrani's name for the position of Senate chairman. The PPP agreed only reluctantly, as it was also aspiring for the coveted position. After the PTI's rise to power in the 2018 elections, the PPP joined the PML-N and other parties to ally against the new government.

In their first attempt to pressurise the government coalition, opposition parties came up with a plan of de-seating the Senate chairman, who is also considered an establishment-backed appointee. On the day of the vote of no confidence, the opposition alliance had a clear majority of 64 seats out of 103, which was evident when the resolution to move the no-confidence vote was passed. Voting took place through a secret ballot and, to the surprise of many, the opposition alliance only received 50 votes in favour of the motion, falling three votes short of the required number of 53 votes.¹³² This was seen as a repeat of the politics of the 1990s, when floor-crossing was prevalent. However, the executive has not always been the beneficiary of floor-crossing in Pakistan.

¹²⁹ *ibid.*

¹³⁰ See MA Notezai, 'Analysis: PML-N Humbled in Balochistan' *Daily Dawn* (14 January 2018) www.dawn.com/news/1382777; 'Senate Elections: Zardari's Overtures in Balochistan "Amount to Horse-Trading"' *The Express Tribune* (26 January 2018) tribune.com.pk/story/1618956/1-senate-elections-zardaris-overtures-balochistan-amount-horse-trading.

¹³¹ *ibid.*

¹³² N Guramani, 'Sadiq Sanjrani Survives No-Confidence Vote in Shock Victory: Opposition Falls 3 Short' *Daily Dawn* (1 August 2019) www.dawn.com/news/1497466.

The opposition parties have also manipulated elections and utilised floor-crossing for their benefit.

The 1973 Constitution – the first to be framed by elected representatives – did not introduce anti-defection laws in Pakistan. Till the late 1990s, floor-crossing and party switching remained prevalent. It was during Nawaz Sharif's second tenure as Prime Minister that anti-defection laws were introduced through the Fourteenth Amendment in 1997. The Fourteenth Amendment gave the parliamentary leader of the party enormous disciplinary powers. Parliamentarians could be deprived of party membership if they voted against party policy. After the coup in 1999, General Pervez Musharraf introduced several ad hoc changes to the Constitution, including anti-defection laws to dilute sweeping powers of party leaders. For instance, termination of parliamentary membership was only permitted if a member voted against party directions on electing the Leader of the House, financial Bills or motions of no-confidence, and the head of the parliamentary party, instead of the head of the party, was given powers to initiate disqualification proceedings against party members. Furthermore, the Election Commission of Pakistan (ECP) could reject the parliamentary party head's appeal, which was not the case in the original Fourteenth Amendment passed by Nawaz Sharif. In the Eighteenth Amendment, passed in 2010, the powers to initiate disqualification proceedings were given back to the party chief.¹³³

Despite express legal prohibition, floor-crossing continues to be a problem. For instance, former Prime Minister Yusuf Raza Gilani was elected as Senator from the electoral college of the National Assembly in 2021 despite lacking the required votes. It was evident that some members of the government coalition either voted for him or deliberately wasted their votes to enable his election. Due to the use of secret ballots for elections to the Upper House, floor-crossing becomes easier for the compromised members of a party. Nevertheless, in the past, legislators have defected from their parties openly and no action was taken against them. Mufti¹³⁴ argues that the lack of legal action against defectors is due to the complicity of every party in promoting this malpractice. For instance, the PML-N also encouraged the defection of a majority of the PML-Q's parliamentary members after the 2008 elections to secure the office of Chief Minister of Punjab.¹³⁵

Floor-crossing is particularly entrenched in Senate elections in Pakistan. The Electoral College for the Senate is comprised of the members of provincial and national assemblies, and certain candidates manage to secure their seats without having the required number of votes from their party members. Parties do not usually punish the indiscipline of parliamentary members. One potential reason is the secrecy and non-traceability of votes. PTI leader Imran Khan was the first party head to expel provincial assembly legislators (he who expelled 14) from his party for taking bribes to vote in

¹³³ S Memon, 'Striking a Balance between Right to Vote and Discouraging Floor-Crossing' *The Friday Times* (23 March 2022) www.thefridaytimes.com/2022/03/23/striking-a-balance-between-right-to-vote-and-discouraging-floor-crossing/.

¹³⁴ M Mufti, 'Factionalism and Indiscipline in Pakistan's Political Party System' in RD Long, G Singh, Y Samad and I Talbot (eds), *State and Nation-Building in Pakistan: Beyond Islam and Security* (London, Routledge, 2015) 232.

¹³⁵ *ibid.*

favour of a PPP candidate in the Senate elections of 2018.¹³⁶ Imran Khan claimed that the PTI leadership possessed video evidence to substantiate its allegations against compromised party members. However, the ECP did not initiate any action against the expelled members. Before the Senate elections of March 2021, the PTI suggested that votes be made traceable to ensure transparency, but opposition parties, including the PPP and PML-N, opposed this recommendation. This was despite these two parties agreeing in the Charter of Democracy, signed between Benazir Bhutto and Nawaz Sharif in 2006, to ensure open ballots in Senate elections.¹³⁷ At the same time, the PTI itself benefited from floor-crossing when its candidate, Chaudhary Sarwar, secured a seat in the Senate from the provincial assembly of Punjab in March 2018 with a total of 44 votes, far more than his party's 30 members.

In March 2021, Yusuf Raza Gilani's election to the Senate was crucial on several accounts. First, he returned to the political scene after his disqualification for five years by the Supreme Court in 2012. Secondly, the PTI was struggling to keep its coalition intact due to differences within the party and with its coalition partners, the PML-Q and MQM. One of the PTI's candidates, Abdul Hafeez Sheikh, needed to be elected to keep his position as the Federal Minister of Finance as the law requires that a non-elected cabinet member (which Hafeez was) must be elected in either of the Houses within six months of their ministerial appointment. Hafeez, formerly an advisor to the Prime Minister, was appointed a federal minister after the Islamabad High Court issued directives that advisors could not exercise executive and administrative powers. The verdict stated that only elected Members of Parliament could exercise such authority.¹³⁸ Opposition parties characterised the Gilani–Sheikh contest as a vote of no-confidence against Prime Minister Imran Khan. Sheikh managed to secure 164 votes while Gilani got 169, with seven votes rejected. Prior to the Senate election, some videos emerged on social media in which Gilani's son, Ali Haider Gilani, could be seen giving a tutorial to a few PTI members on wasting their votes.¹³⁹ The ECP took notice, but no concrete action was taken against Gilani, his son or the PPP, who ostensibly undermined the integrity of the election. To dispel the narrative of the opposition parties, Imran Khan decided to introduce a fresh vote of confidence in Parliament, which he secured.

Gilani then stood for the position of Chairman of the Senate as the opposition parties had a majority in the Senate. History repeated itself and Sanjrani again managed to retain Senate chairmanship by securing 48 votes while Gilani secured 42 votes, with seven votes rejected.¹⁴⁰ The opposition parties protested, while the PTI and its coalition partners celebrated their 'success'. It is thus evident that all parties have been complicit

¹³⁶ F Shinwari, 'PTI Terminates Membership of 14 MPAs: Shaukat' *The Frontier Post* (9 May 2018) thefrontierpost.com/pti-terminates-membership-of-14-mpas-shaukat/.

¹³⁷ The Charter of Democracy was signed between Nawaz Sharif and Benazir Bhutto in 2006 while both were in exile. Both parties pledged in the agreement not to seek the support of military for political gains.

¹³⁸ M Asad, 'IHC Says Unelected Aides to PM Can't Run Ministries' *Daily Dawn* (27 August 2020) www.dawn.com/news/1576640.

¹³⁹ 'Ali Haider Gilani Video Where He Allegedly Tells Lawmaker to Waste Senate Vote Surfaces' *The News International* (2 March 2021) www.thenews.com.pk/latest/798056-ali-haider-gilani-video-where-he-allegedly-tells-lawmaker-to-waste-senate-vote-surfaces.

¹⁴⁰ A Shabbir, W Kamran and U Khan, 'PTI-Backed Sadiq Sanjrani Becomes Senate Chairman for the Second Time' *SAMAA English* (12 March 2021) www.samaaenglish.tv/news/2021/03/pakistan-senate-chairman-and-deputy-chairman-elections/.

in manipulating elections and promoting the culture of floor-crossing. The opposition's campaign about the sanctity of the vote became meaningless when they facilitated electoral malpractice and could not ensure party discipline during crucial votes. The reluctance of parties to take disciplinary action against defectors exposes their fraught commitment to democracy, and the rule of law more generally. Indifference on the part of the ECP also raises questions about bureaucratic integrity – an essential component of democratic and transparent governance.

V. Conclusion: Political Expediency, Weak Party System Institutionalisation and Regime Hybridity

When the PML-N came to power in 2013, the party had to grapple with an enormous energy crisis left behind by the PPP government. A significant debt of PKR 450 billion accumulated in the power sector and the government was a defaulter to different power companies. Then the PML-N Finance Minister, Ishaq Dar, paid back the government's debt to power companies with the assistance of the Governor of the State Bank. The Auditor General of Pakistan, Akhtar Buland Rana, objected to these payments and initiated an inquiry. Ishaq Dar halted the auditing process and got Rana sacked through the Public Accounts Committee of the National Assembly on charges of abusing his office for self-aggrandisement.¹⁴¹ This action by the PML-N Finance Minister ties into the largely weak financial regulation landscape in Pakistan.

In December 2018, a Supreme Court-sanctioned JIT submitted its report about mysterious fake bank accounts created on the basis of stolen identity cards for depositing laundered money whose beneficiaries included Zardari and his sister, Faryal Talpur.¹⁴² The JIT investigation revealed that a new banking group by the name of Summit Bank was specially created to launder money for Asif Ali Zardari, his sister and his business partners in the Omni Group. Not only that: the PPP government in Sindh arbitrarily changed or disregarded privatisation rules to transfer the ownership of government-owned industrial units, including a cement factory and three sugar mills, for low sale prices to benefit Zardari and his cronies.¹⁴³ Furthermore, revelations about dubious banking transactions have surfaced about Shehbaz Sharif – the former Chief Minister of Punjab – and his sons.¹⁴⁴

Such brazen disregard for the rule of law by civilian politicians makes them vulnerable to the pressures of tutelary forces. In the face of political scandal and impropriety,

¹⁴¹ 'Program *Muqabil*' (92 News, 19 July 2018) www.youtube.com/watch?v=qtRXVBHn9bM&t=215s&ab_channel=92NewsHD.

¹⁴² See WA Sheikh, '29 Fake Accounts Used to Launder Rs42bn, JIT Tells Apex Court' *Daily Dawn* (25 December 2018) www.dawn.com/news/1453414; 'Zardari, Omni Group Responsible in Fake Accounts Scam: JIT' *The News International* (24 December 2018) www.thenews.com.pk/latest/410276-zardari-omni-group-responsible-in-fake-accounts-scam-jit; '29 Fake Accounts Used for Laundering Rs35 Billion: JIT Report' *Dunya News* (31 December 2018) dunya.com/news/472204-29-fake-accounts-used-for-transaction-of-Rs35bn-jit-report.

¹⁴³ 'The Zardari System?' *Daily Times* (28 December 2018) dailytimes.com.pk/337660/the-zardari-system/ and dailytimes.com.pk/337660/the-zardari-system/.

¹⁴⁴ SI Raza, 'Shahbaz's 10 Front Firms Found: PM's Aide' *Daily Dawn* (14 May 2020) www.dawn.com/news/1556947.

they tend to resort to extra-parliamentary manoeuvring to sustain their power, which includes striking deals with the military establishment to secure relief from corruption charges and inquiries. This also means that accountability is eventually used as a stick to discipline civilian politicians in Pakistan. Military regimes in Pakistan have promulgated different ordinances to establish institutions, such as the EBDO (Elective Bodies Disqualification Order) in 1959 and the NAB in 1999. These institutions seem to co-opt politicians into joining the ranks of military-backed parties by means of selective accountability. Although civilian governments remained critical of these accountability institutions while in opposition, once in power, they have instrumentalised them to pursue discriminatory accountability against political opponents.¹⁴⁵

Further, the politics of clientelism inhibits party system institutionalisation in hybrid regimes. In a culture of clientelist politics, it becomes imperative for political parties to remain in power because their political survival becomes directly linked with their control of state resources. Thus, party-voter linkages become transactional and end up providing an undue advantage to the ruling party. In such a scenario, opposition parties seek alliances with non-political forces or tutelary actors to dislodge incumbents and level the electoral playing field. At the same time, clientelism is not only used to lure voters, but also to attract candidates who have better chances of winning elections.¹⁴⁶ Such candidates can be offered lucrative ministries, development funds or favourable policies for their businesses in return for their support of political parties. This kind of political culture negatively impacts the efficiency of bureaucracy and eventually the quality of democracy. Wigell¹⁴⁷ emphasises bureaucratic integrity as one of the key features of constitutionalism. He explains that in a liberal democracy, the bureaucracy should operate independently of partisan competition and interests. It should become neither a tool nor a part of clientelist politics. However, in hybrid regimes, bureaucratic integrity is not valued by the ruling elite. Bureaucracy becomes part of the politics of patronage, resulting in a dismal state of governance due to politically motivated allocation of state resources. Powerful interest groups, such as traders, and business or landed elite provide funds to political parties in return for favourable economic policies. Zulfikar Ali Bhutto, being the first elected Prime Minister, purged the bureaucracy and appointed party loyalists to ensure the bureaucracy's obedience. The culture of preferring loyal instead of efficient bureaucracy subsequently prevailed in both civil and military regimes. Undoubtedly, this has resulted in a corrupt state structure that is largely responsible for suboptimal governance as well as rent-seeking in politics, which makes parties less dependent on mass membership to raise funds for their electoral campaigns. Such lack of grassroots organisation and penetration costs them heavily during political crises.

This was evident during the Panama Papers case proceedings. Instead of distancing themselves from Nawaz Sharif and letting the legal process take its course, the top brass of the PML-N chose to defend him because their political fortunes were tied to him. The same was apparent when fake accounts associated with the PPP leadership emerged.

¹⁴⁵ A Naveed, 'The Dark Side of Authority: A Critical Analysis of Anti-corruption Frameworks in Pakistan' (2013) 15 *Law, Social Justice & Global Development Journal* 1.

¹⁴⁶ O Protsyk and ML Matichescu, 'Clientelism and Political Recruitment in Democratic Transition: Evidence from Romania' (2011) 43 *Comparative Politics* 207.

¹⁴⁷ Wigell (n 11) 234–42.

The party accused the NAB of being a tool of political manipulation. Some leaders demanded the dismantling of the NAB as a remnant of the military rule of Pervez Musharraf. Ironically, during their respective tenures, neither the PML-N nor the PPP introduced the necessary amendments to the NAB legislation, a fact which exposes their demands as politically opportunistic.

After facing a few tough years of corruption inquiries between 2016 and 2019 and mobilising extremely polarising rhetoric against the military establishment as well as the PTI, in a complete volte-face, both the PML-N and the PPP decided to extend unconditional support to the PTI government regarding the extension of the army chief's tenure. This matter had been a thorn in the flesh for the PTI government in November 2019, when the Supreme Court struck down army chief Qamar Javed Bajwa's extension as illegal. It ultimately culminated in early January 2020, when amendments to the Army Act to institutionalise tenure extension for the army chief were passed by full support from the PTI, PPP and PML-N. These events coincided with Nawaz Sharif being allowed to go abroad for medical treatment in November 2019 despite being convicted. Zardari also got bail in the fake accounts case in September 2020. In this instance, PTI leader Imran Khan also made a political compromise to secure and consolidate power. When General Ashfaq Pervez Kayani was granted an extension of tenure by the PPP-led government, he stated that such extensions weakened the institutional integrity of the army and that if he ever came to power, he would end this practice.¹⁴⁸ However, over time, he has learned to prioritise his survival in the government over institutional integrity. As a result, the military continues to enjoy its role of guardian institution, thus diminishing electoral sovereignty and the consolidation of constitutionalism.

Weak institutionalisation of the party system and political parties is essential to understanding the persistence of hybrid regimes. Political parties are the basic institution of any democracy.¹⁴⁹ Weakly institutionalised political parties result in a democratic deficit and facilitate the intervention of non-political forces into the political mainstream. In hybrid regimes like Pakistan, where tutelary actors hold a firm grip over the system due to their better-developed institutional capacity, a powerful institution can only challenge their intrusive behaviour. For this purpose, political parties will have to reach an agreement on the value of elections and democracy and honour it. While in power, they must move beyond the pork-barrel sort of spending and divert state resources towards human development. The benefit of such spending will be twofold. First, it will increase the trust of the masses in political parties, and second, party-voter linkages will grow beyond the client-patron relationship. Political parties should co-operate to transform the legislature into a meaningful institution legislating for greater social good rather than instrumentalising it for myopic political gains. The lack of internal democracy within political parties continues to weaken them and the overall party system. The Panama Papers verdict against Nawaz Sharif is telling about the culture of Pakistan's political parties. In this case, the entire party, instead of submitting to the notion of accountability, tried its best to keep Nawaz in the position of party leader. Despite multiple stints in power, political parties succumbed to the pressure of

¹⁴⁸ 'Kayani's Term as COAS Should Not Be Extended' (n 107).

¹⁴⁹ For a deeper analytical engagement with the role of political parties in arresting democratic consolidation by attenuating mechanisms and institutions for executive accountability, see T Khaitan, ch 7 in this volume.

the military. This exemplifies the weak roots of political parties in Pakistan. Instead of relying on their voter base, they must depend on the favours they grant to the military time and again. As long as politics remains a means to secure the end of personal gains by means of corrupt practices, the party system in Pakistan will remain weakly institutionalised and entrench a hybrid regime. Party loyalties will remain fragile, and turncoats will remain available to be manipulated by tutelary actors.