[Salman Akram Raja](https://www.thenews.com.pk/writer/salman-akram-raja)

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**E-voting: fools rush in**

In a rousing, if dramatic, moment in the justly celebrated documentary ‘The Ascent of Man’, the mathematician and historian – and all else in between – Jacob Bronowski moves his hand sharply, like a wedge etching a mark into the ambient air, and describes what has been key to the engagement between the human being and her physical surroundings.

Bronowski reminds the viewer that the hand is the cutting edge of the human soul. Till recent times, typical human activity has entailed hands, often aided by tools, acting on the material world to produce outcomes immediately visible to the eye. There is primordial satisfaction and trust in this.

This immediate visibility between action and effect is played out in the polling booth when a voter’s will is stamped in ink on the ballot paper. Pressing a button that activates streams of invisible electrons that are guided by software to leave an electronic mark on an unseen hard drive that will be read and collated by other software removes from the electoral process the immediacy of the stamped ballot paper inserted by the voter into a ballot box that will be opened before human eyes and counted by human hands. There are good reasons for paper balloting remaining the gold standard in the conduct of elections the world over.

In its judgment of March 2009, declaring electronic voting unconstitutional on account of being opaque to the voter, the German Constitutional Court emphasised that for the electoral exercise to engender trust and faith in its integrity it should be comprehensible to, and verifiable by, the ordinary voter. The court held: “Only if the electorate can reliably convince itself of the lawfulness of the transfer act, if the elections are therefore implemented ‘before the eyes of the public’ is it possible to guarantee the trust of the sovereign in parliament being in a manner corresponding to the will of the voters that is necessary for the functioning of democracy and the democratic legitimacy of state decisions.

“In a republic, elections are a matter for the entire people and a joint concern of all citizens. Consequently, the monitoring of the election procedure must also be a matter for and a task of the citizen. Each citizen must be able to comprehend and verify the central steps in the elections reliably and without any special prior technical knowledge.”

India is the world leader in electronic voting. While pilot projects were initiated in the 1980s, the use of electronic voting machines (EVMs) in state elections grew after 2002. By 2009, most national and state elections were being conducted through use of EVMs. The Indian EVMs are robust stand-alone modules, manufactured in India under strict security, that are not connected to any other information storage system through cable or internet. In the parlance of electronic voting, the Indian system is described as the DRE system (Direct Recording Electronic System) in which the electronic record of the voters’ preferences is maintained inside the module and is not transmitted to any other database. However, on the conclusion of voting the modules from each polling station are sealed and transported to a safe site for later downloading of the data in the hard drive.

The chief advantage of the Indian system is the speed with which results can be compiled and announced. This is considered critical for a country in which registered voters exceed 800 million individuals spread across continental distances. The point to note is that the advent of electronic voting in India was not a response to the menace of polling fraud. It was a response to delay. A point also to note is that electronic voting has not obviated the possibility of fraud.

‘An Undocumented Wonder’, a book by former chief election commissioner of India S Y Quraishi, on the Indian electoral exercise, describes the pivotal importance of the polling agents appointed by the different political parties to each polling station. Electronic voting machines are sealed at each polling station. These are de-sealed in the presence of the polling agents who are technically trained to assure themselves that the machine hard-drives do not contain electronic votes already recorded in favour of some candidate. The re-sealing of voting machines upon conclusion of polling takes place in the presence of the polling agents.

Mr Quraishi accepts the possibility of tampering with the electronic voting data recorded by each electronic voting machine. The success of the system has depended on three factors: faith in the technical prowess of the polling agents appointed by the candidates, the neutrality of the Election Commission and the absence of any real or presumed ethereal beings interested in ‘guiding’ the process in order to achieve ‘positive’ results for a favoured party. Take away belief in any of the three elements that underpin the Indian electoral exercise, and the whole system would collapse.

Can the three factors that underpin electronic voting in India be assured in Pakistan before the next general election in 2023? A brave soul or a meek fool might answer in the affirmative. Trained polling agents are the outcome of decades of growth and consolidation by political parties through stretches of democracy uninterrupted by its would-be saviours. The widespread faith in the Election Commission and its staff is not easily earned either. Prompt even-handed action by the Election Commission that foils attempts to capture an election by the powers that be is easier said than done. Equally important is the ability of the executive and the judiciary to act with restraint in allowing the dignity of the Election Commission to take root in the hearts and minds of the electorate. Defeated candidates and parties blaming the Election Commission in routine serve no dignified purpose. As regards the third ethereal factor, one takes shelter behind thinly veiled obscurity – whereof one cannot speak, one must remain silent.

In 2013, the Indian Supreme Court responded to the concerns that had troubled the German Constitutional Court. In the case of ‘Subramanian Swamy v Election Commission of India’, the court directed the introduction of the Voter Verifiable Paper Audit Trail (VVPAT) as an indispensable requirement of free and fair elections. The court held that the “confidence of voters in EVMs can be achieved only with the introduction of a paper trail.” In the 2019 general election in India 20,600 EVMs were connected to printers that generated a printout of the vote as cast electronically by the voter. The idea in having the VVPAT is to allow the voter to verify that the EVM has recorded the vote as intended by him/her.

While the VVPAT system as an adjunct to EVMs has been adopted in several jurisdictions, it has generated a further controversy. If voters are allowed to walk out of a polling station with a VVPAT copy of the electronic vote, they become amenable to threats and intimidation since the secrecy of their vote stands compromised. Those threatening a voter can demand to see the VVPAT copy. The technical response has been to encrypt the VVPAT paper trail so that it can be deciphered by the Election Commission in the event of verifiability demanded by a voter or a tribunal. This in turn compromises the ability of the ordinary voter to feel satisfied at the time of the casting of the vote that their vote has been correctly recorded. Electronic voting is complicated business. Care and caution are called for.

The Election Act of 2017 was enacted at a time when parliamentary politics was still a contest between adversaries with differing points of view, not a slugfest between enemies intent on each other’s destruction. Section 103 of that legislation had enabled the Election Commission of Pakistan to explore the possible use of electronic voting machines in general elections by initiating pilot projects and placing the outcomes of these projects before parliament. On June 10, the National Assembly passed the Elections (Second Amendment) Act, 2021 that replaces the original section 103 with a provision that makes it incumbent on the ECP to procure electronic voting machines for the casting of votes in a general election. This amendment was pushed through in a session in which a jar full of other legislative measures were similarly passed through the lower house.

The need for debate and acceptance across party lines was dispensed with some time ago. The Senate still has to accept the proposed amendment and therein resides the waning hope of sane deliberation.

The writer is an advocate of the Supreme Court of Pakistan.

Email: salmanr2002@hotmail. com

Twitter: @salmanAraja