

Pakistan's Long and Ordinary Crisis

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Summary

Longevity and ordinariness mark Pakistan's on-going crisis. Fluttering apart, nothing dramatic or decisive has happened in the recent past. This is because the institutions - the army, the judiciary and the political-executive - that could decisively impact the crisis have gone errant. They are not performing the functions they are mandated to perform. They aren't letting other institutions perform the functions the other institutions must perform. And though these institutions are being mutually meddling, they show no inclination to perform the functions of the meddled institutions. This functional derangement of key state institutions has produced Pakistan's stalemated, and thus ordinary, crisis. Tendencies of the crisis are traceable to the October 1999 coup and its aftermath. Regime actions against the political-executive and the judiciary distorted Pakistan's already wobbly institutional architecture. Apart from stoking general scepticism against the effectiveness of army rule, regime actions created incentives in whose pursuit the three institutions have become errant. The conditions that structure this crisis also diminish the effectiveness of policy anticipation. Whatever currently exists in Pakistan does not resemble democracy in any meaningful sense. In Pakistan, India faces an assembly of vigorously malfunctioning institutions, which should not be mistaken for a set of weak institutions servicing a fledgling democracy. Nor should Pakistan be considered a failed state. A decisive army coup could clear the space for Pakistan's domestic politics and for sustainable bilateral relations. But given the army's disinclination for a political role, India must adopt a studied indifference as its Pakistan policy for a while.

An unusual feature of Pakistan's on-going crisis is its ordinariness. Media speculation, bit theatricals, and a few self-induced bated breaths aside, nothing dramatic has happened. Not even by the measure of regularity with which crises affect Pakistan.

A possible coup by the armed forces topped the list of things that were expected to happen. It is now assumed that the coup took place in the minds of some people. Answers to the question—Why did the coup not happen?—would be rather unsatisfactory but must be attempted, especially since it is a legitimate question. Most descriptions of the crisis pit the judiciary and the executive against each other. This may be an apt description, but is in reality partial, because it doesn't include the army's role. Interestingly, the prevailing views in India and Pakistan over the latter's democratic prospects seem to not be very strongly affected by the events. This is puzzling.

The ordinariness of the current crisis is obscuring its peculiarities. Pakistan's major institutions have gone errant. This, however, does not mean that they have weakened or become fragile or are not working, as is generally suggested. To the contrary, they are vigorous and functioning, but they are not doing things that they are supposed to do. Moreover, they are not letting other institutions do what those institutions must do. Moreover, though they meddle with the authority space of other institutions, they are not doing the job of those institutions either.

This functional distortion of the arrangement of Pakistan's major institutions—principally, the executive, the army, and the judiciary—is the cause of the current crisis. The derangement is so complexly entrenched that the crisis is unlikely to blow over any time soon. This has implications for Indian interests, which are crucially dependent upon Pakistan's state institutions.

Background to the Crisis

Turmoil in Pakistan has been a constant for quite some time. Till early 2011, the dominant inclination in analyses was to retrace the turmoil to the Islamisation efforts of the 1980s. As terror groups targeted civilians, state installations and personnel with regular ease, it was widely surmised that the other edge of the terror sword was bleeding Pakistan. This aptly was the case; however, it was a side-effect of the crisis, not its cause.

The crisis did not begin with the revelations on the Memo Affair or with the US killing of Osama bin Laden inside Pakistan, both occurring in 2011. Though a specific date cannot be ascribed to the origins of the crisis, the processes that led to it matured during the regime of former President General Pervez Musharraf. Like strong coups, the one executed in October 1999 distorted Pakistan's already wobbly institutional architecture. It expanded the mandate of the army by properly infringing, and effectively squeezing, the political-executive, legislative, and judicial institutions. Late implications of these actions have emerged more significant than the immediate ones.

Institutional Infringements

The army rule's banishing of the civilian political leadership undermined the latter's prospects. The logic of its action required that the army dismiss the political-executive arm of the government. For much of the duration of General Musharraf's regime, the top brass of Pakistan's political leadership was either exiled, jailed, or barred from "outdoor political activities".

However, this treatment was unevenly and inconsistently meted out. The current President Asif Ali Zardari's time was split between jails, house arrests, unclear phases of "exile" and surprising "homecomings". The current Prime Minister Yousuf Raza Gilani spent five years in prison (2001–2006) on graft charges that were possibly politically motivated. Imran Khan, now being touted as a prospective political major, spent most of November 2007 partially jailed, partially free, or partially running and hiding. Nawaz Sharif was deposed, jailed, and subjected to a speedy military trial. Sharif accepted a decade-long exile in Saudi Arabia and a promise to keep away from politics for 21 years. He was back in November 2007, when the army regime itself was in severe crisis. Benazir Bhutto's "self-imposed exile" continued till the army gave signs of tolerating her presence, again amid crisis. Her return, a brief affair, ended with her death on December 27, 2007. All the above actors, barring the late Benazir Bhutto, are playing roles that complicate the present crisis. For example, Sharif has gone from being an ally of the present government to an opposition figure whose actions strengthen the army and the judiciary. In other words, there is the lack of a responsible parliamentary Opposition. Imran Khan, it is alleged, has the army's tacit backing. While the incumbent President and Prime Minister – Zardari and Gilani – should have focussed on governance, they appear to be caught up in the political turmoil in the country and unable to pay heed to the necessary, functional tasks of government. It can be said that Pakistan has always lacked good governance, but the contention here is that more than the political personalities, it is the institutions of government themselves that have deviated from their actual roles. This, along with the deviant roles played by the country's political leadership, is complicating the crisis.

The unevenness and the inconsistency came largely from regime compulsions. Towards the end of its rule, the coup leadership cut deals with the political class to cover regime excesses, secure its future, and avoid possible irritations from the political class for the army. These moves had crucial ramifications. When an institution abrogates the functions of another institution and performs the functions of the abrogated institution, it needs to appear to be doing the right thing. The unevenness and the inconsistency showed that the army's actions were not forthright. To the populace, these were compromised actions and they dented the contingent legitimacy enjoyed by the coup during its early period.

The army's possible optimum was to consolidate its popularity through the public discrediting of the political-executive leadership. That did not happen. Having breached the institutional autonomy of the political-executive, the army was expected to provide a

foundation for a relatively fresh governing institution. By colluding with the political class in the final years of its rule, it raised questions about the utility of the coup. Scepticism over the effectiveness of army rule, in general, has subsequently gained importance, which goes some way in explaining why the army currently appears reticent to take control of executive functions through another coup. This condition prevails when, ironically, a coup could produce the institutional clarity that Pakistan needs.

The army also comprehensively assaulted the legislative institutions alongside the political-executive. The Senate, National and Provincial Assemblies, along with their office-holders, were suspended through the Provisional Constitutional Order (PCO) of October 14, 1999. The party system in Pakistan, the basic ingredient of a parliamentary political setup, is weak and fragmented, and made more ineffective through the alliances Musharraf conjured when he reintroduced elections in 2002 under Supreme Court directives. He created his own version of the generic Pakistan Muslim League (PML), the PML-Q. A quarter of the popular votes cast and over 30 per cent of the seats in the National Assembly made the PML-Q a useful proxy of the regime. Musharraf's 98 per cent victory in the April 30, 2002 referendum, an insincere event, symbolised the ruin of Pakistan's legislature under army rule.

Having folded up the political-executive and the legislative, the army undermined the judiciary through actions that made it feel resentful and insulted. Distrusting the judiciary's loyalty to the regime, the army issued the Oath of Office (Judges) Order in January 2000. A part of the October 1999 PCO, it required all sitting judges to re-pledge their loyalty to the regime. Six of the 13 Supreme Court judges, including the then Chief Justice, refused to comply and were replaced. Many judges of the high courts and lower judiciary similarly refused to accept the PCO and, thus, the army's claim to executive authority.

Regime aggressions against the judiciary were periodic and gained gravity. With the Legal Framework Order (LFO) of 2002, the regime legally disqualified all questions and criticisms of its acts from the judiciary and the legislature. As the expansive LFO stated: "They [the regime's actions] are affirmed and will be adopted and declared, notwithstanding any judgment of any court, to have been validly made by competent authority and notwithstanding anything contained in the Constitution shall not be called in question in any court on any ground whatsoever."¹

This tendency of inflicting mutual harm on institutions turned critical when Supreme Court Chief Justice Iftikhar Muhammad Chaudhry was suspended in March 2007 after he refused to resign at the army's insistence. Chaudhry's unprecedented suspension

¹ Quoted in B. Muralidhar Reddy, "By, of and for Musharraf", *Frontline*, , September 13, 2002, available at <http://www.hindu.com/fline/fl1918/19180450.htm>, accessed January 27, 2012.

agonized the already-resentful judiciary, and rallied larger legal and popular sentiments against the regime. Though a July 2007 ruling by the Supreme Judicial Council reinstated Chaudhry, protests against the Musharraf regime continued. The Army responded by declaring another state of emergency and issuing another PCO in November of that year. Citing judicial interference in the army-executive affairs as a destabilising factor, the regime summoned the judiciary for a fresh loyalty test. An increased number of dissenting judges across the courts caused the regime to place Chaudhry and other senior judges under house arrest. General Musharraf backed down by mid-December, the regime folded up soon, and Chaudhry was reinstated in March 2009. By then, even the contours of functional differences that separated institutions were lost.

Complex Unravelling of the Crisis

Armies are not meant to govern, they are meant to fight wars. Even though they might have prior experience of governing a country – there are many examples beyond Pakistan – it is hardly an asset because lessons of governance are not very useful for them. Thus, the Pakistan army had no reasons to check the ways in which it abrogated or stifled other state institutions. The end of army rule enabled the judiciary and the political executive to regain their respective institutional spaces. However, despite having acquired their capacity to perform, they seem to have misplaced their functional orientation and priorities. Prolonged army rule created the incentives in whose pursuit Pakistan's institutions have become errant.

Since the end of the army rule, the judiciary, led by Chief Justice Chaudhry, has energetically pursued whoever it considers responsible for undermining it. It has entertained cases questioning the constitutional validity of 2007 PCO, which allowed the regime to carry out damaging actions against the judiciary. It has also sought clarifications from those members of the judiciary who broke ranks by taking oath under the 2007 PCO.

For reasons mentioned earlier, the army had cut deals with the political class through the National Reconciliation Ordinance (NRO), which was issued by General Musharraf in October 2007. An instance of executive action amassing girth through the necessity of survival, the NRO granted amnesty to over 8,000 political leaders, workers, and bureaucrats accused of corruption, murder, embezzlement, money-laundering, and terrorism. The list of alleged beneficiaries includes President Zardari.² Its initial attempt at suspending the NRO unsuccessful, the judiciary went ahead and declared it unconstitutional in December 2009, reviving cases that were disposed earlier under the directive. This has exposed the Pakistan President to a somewhat rare danger of being

² The complete list of beneficiaries is available at <http://www.thestatesmen.net/nro-beneficiaries/>, accessed January 27, 2012.

punished by the state he heads. It has also made Prime Minister Gilani, who is shielding his political and constitutional head in the NRO case, a potential target for the judiciary. The judiciary is also gunning for its own who succumbed to the army rule. Thus, Pakistan's judiciary is gunning for the country's top two political executives, with the prospects of its success not sure to benefit Pakistan in the immediate future.

The lack of internal cohesion is evident in the broader political class as well. Much was made of the reconciliatory spirit of the March 2008 Murree Declaration, which facilitated a governing coalition of the Pakistan People's Party (PPP) and the Pakistan Muslim League (N) or the PML-N, apparently to forge a common front against General Musharraf. It collapsed in August 2008 when the PML-N walked out. Now in opposition, its leader Nawaz Sharif has moved the Supreme Court to ensure the Memo Affair is considered seriously. It remains unclear if the move, like the affair itself, is trivial or substantial. It has, at any rate, helped both the army and judiciary target the political-executive—another example of institutional deviance.

The mutual suspicion and unhappiness evident in relations between the army and the political-executive is unsurprising. The army's pursuit of a separate investigation of the Memo Affair, and its responses to the Supreme Court on the matter, are seen by the political executive as the undermining its authority. To reassert that authority, the government sacked defence secretary Khalid Naem Lodhi. The army's response, which sent the media abuzz with speculations of a "creeping coup", only exposed the limits of government's authority. Once again, institutions are out to cut each other.

Thus, what marks the crisis is not the judiciary and the executive working against each other, but that both the judiciary and the army are questioning the political executive's authority and partially performing its functions. Moreover, both appear to be making smarter moves. To pursue the culprits of the PCO and the beneficiaries of the NRO, the judiciary must abandon its mandated function of dispensing justice and seek revenge as its goal instead. To sustain this breach, the judiciary requires the army's tacit support, which has been forthcoming. The army's under-actions, meanwhile, have kept the talk of a "creeping coup" alive. An unambiguous coup would most likely clarify the picture by rendering the deviance insignificant. Even if it is done out of prudence, the army's caution keeps equations between state institutions complicated. As an institution, the army is not letting the political-executive govern the country, and it is neither willing to govern nor capable of governing. Pakistan's High Commissioner to India, Shahid Malik, recently observed: "I don't see a coup taking place as all the state institutions are working according to the Constitution."³ It is quite clear, however, that none of the state institutions are working according to the Constitution, and yet there isn't a coup.

³ Jawed Naqvi, "Fans Mob Pakistani Women Writers in Jaipur", *Dawn*, January 23, 2012, available at <http://www.dawn.com/2012/01/23/fans-mob-pakistani-women-writers-in-jaipur.html>, accessed January 27, 2012.

Studied Indifference as India's Option

This atmosphere diminishes the effectiveness of policy anticipation. Pakistan's institutions breach their briefs, disallow fellow institutions to fulfil theirs, and do not carry out the brief of the others either. The distorted ways of its institutions have produced a stalemate. The more the three institutions cut into each other, the more they make the crisis ordinary. The crisis will not blow away unless something dramatic happens, and the only actor capable of clearing the space—the army—appears reticent. This could be attributed to the “fluid” situation in Pakistan as well as to the way the previous coup—and subsequent army rule under Musharraf—ended, which is still fresh in people's memories. Thus the incentives for a fresh coup are small and, moreover, the army's understanding with the judiciary is working well for it at the moment. In such a scenario, the army appears content to play the puppeteer and pull the strings to make the political-executive do its bidding.

This crazy-quilt waywardness of its institutions restricts the ambition of Pakistan's politics. It does not “derail”, “damage”, or “undermine” Pakistan's democracy, as Nawaz Sharif, Imran Khan, or members of its civil society routinely allege. Prime Minister Gilani recently reasoned that because all stakeholders—the civil society, the intelligentsia, the Parliament, the media, and even the military—want democracy in Pakistan, democracy is not under threat.⁴ Similarly optimistic notes about democracy in Pakistan have also appeared in Indian media.⁵ These, however, do not detract from the fact that there has been no meaningful democracy in Pakistan, or even a semblance of it, since October 1999. Given its institutional record, claims that the country's polity is democratic are difficult to accept.

High Commissioner Malik stated on the same occasion that all stakeholders in Pakistan are on the same page when it comes to wanting friendly ties with India. This should be taken with a pinch of salt. India faces neither a democracy nor a military dispensation. Pakistan has gradually become an assembly of vigorously malfunctioning institutions, one reason why it does not qualify as a failed state. The derangement of institutions is entrenched in complex ways, and this will cause the crisis in its utterly ordinary form to endure for some time to come, perhaps for the next few years. No engagement with whatever entity that currently exists in Pakistan would be sustainable.

India, therefore, cannot look forward to any substantial headway on important outstanding issues with Pakistan. To serve its own interests in the long run, India could

⁴ “Gilani Trashes Perception of ‘Creeping Coup’”, *Dawn*, January 27, 2012, available at <http://www.dawn.com/2012/01/27/interview-in-davos-gilani-trashes-perception-of-creeping-coup.html>, accessed January 27, 2012..

⁵ Mani Shankar Aiyar, “Coup That Never Was”, *The Indian Express*, January 21, 2012.

have supported democracy in Pakistan if efforts by democratic elements there held promise. It could deal more concretely with an army dispensation, but the army is itself gauging the situation and is disinclined towards categorical action. Thus, the two preferable policy options for India are either unavailable or uncertain. The current condition will likely last for some time. India would therefore do well to adopt a studied indifference as its approach towards Pakistan for now.