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A Musharraf Order Haunts Pakistan

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The spectre of Pakistan's embattled Prime Minister Yusuf Raza Gilani being convicted for contempt of court on 13 February 2012 – for flouting court orders to write to the Swiss authorities to re-open money laundering cases against President Asif Ali Zardari – threatens to plunge the country deeper into a political crisis. Benazir Bhutto, Zardari's slain wife and a former Prime Minister of Pakistan, was the co-accused in those money laundering cases.

It is widely believed that Gilani will now be formally indicted. Earlier, after a two-day preliminary hearing, the court was 'satisfied *prima facie* that there is enough case for further proceedings'.

Gilani, who 'had long stood convicted in the court of public opinion, guilty of crimes like incompetence and corruption' (in the words of the editor of *The News*), may become the first sitting Prime Minister of Pakistan to be convicted for contempt of court, to be imprisoned and to stand disqualified for public office for five years.

The contempt case stems from a ruling by the full-17-member Supreme Court on 16 December 2009 that the Musharraf-promulgated National Reconciliation Ordinance (NRO) of 5 October 2007 was illegal from the date of promulgation. As is well known, General

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Pervez Musharraf was formerly Pakistan's military ruler. And, under this judicial order of 2009, it was incumbent on the authorities to reopen all cases against the NRO beneficiaries.
National Reconciliation Ordinance

The NRO, admittedly brokered by the former United States Secretary of State Condoleezza Rice, allowed amnesty for crimes committed from 1 January 1986 to 12 October 1999 by thousands of politicians and crony bureaucrats. The NRO 'white wash' first paved the way for Benazir Bhutto's return to Pakistan from exile and later catapulted Zardari to the presidency.

The present government has remained mum over Zardari's cases in Switzerland, despite 16 compliance directives from the Supreme Court. Its lack of sincerity in other cases is evident from the virtual non-pursuance of trials in the courts which has led to the acquittal of many who were accused of corruption, nepotism, money laundering, and related crimes.

The Supreme Court's latest move has come amid intense political uncertainty in Pakistan which has been caused mainly by maladministration. The court's decision in the Gilani case is likely to aggravate tensions between the executive and the proactive judiciary just when the government's apprehensions about the army appeared to be subsiding. With the judgment on the NRO issue having been delivered over two years ago, the key element of which remains unimplemented, the court's credibility is also at stake. (Editor's Note: These arguments reflect the current mood in Pakistan.)

During the proceedings in Gilani's case, his counsel's arguments rested on Article 248 of the Pakistan Constitution, which grants immunity to the president. But the counsel exposed his real intentions by refusing to commit the government to writing the letter. The indictment process is, therefore, an inevitable consequence of institutional intransigence on the part of the present government.

Facing the prospect of a judicial indictment of the Prime Minister, his counsel, speaking to the media and evidently politicking, warned that a 'third party' (meaning the army) could take advantage amid the growing tension between the judiciary and the executive.

Democracy Mantra and a Counterpoint

While the government uses the 'democracy in danger' mantra, respected commentators agree that democracy is actually strengthened if the rule of law is upheld.

The main opposition Pakistan Muslim League (Nawaz), led by former Prime Minister Nawaz Sharif, whom Musharraf toppled in 1999 and established military rule, has vowed not to resort to any extra-constitutional measures to throw the present government out. The rising

political star, the cricketer-turned-politician Imran Khan, has declared his support for the Court. The main religious parties, though agitating against the government, are yet to translate their strength in the mosque into electoral success. The other parties – essentially regional and the Musharraf-rule remnants – are in the governing coalition. Despite their bitter differences, all seem united in their opposition to military intervention and agree on holding early elections.

The Chief Justice, who earned the respect of the country by twice standing up to Musharraf, has publicly stated that the Court will not condone a military takeover.

The army, under Chief of Staff General Kayani, has shown no appetite for a direct intervention. His restraint shows that the army wants the civilian system to work. The theory of conspiracy between the army and judiciary to oust the government is being promoted to deflect attention away from the ineptitude of the government.

Gilani has reportedly chosen to go down fighting by upholding the principle of presidential immunity under Article 248 and to become a political martyr. His conviction, considered likely, could in fact imply limitations on the immunity, opening another Pandora's Box. In a logical next step, Zardari's election to the office of the president could be challenged.

Gilani's disqualification, also considered likely, will mean that a new prime minister will have to be chosen. Given the present coalition's numbers in parliament, the new prime minister will also be from Gilani's party. So, the new prime minister may also refuse to write to the Swiss authorities. It will then lead to a real political deadlock.

In the parliamentary system of governance, snap elections are meant to unravel gridlocks like these. So, the answer lies in early elections.

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