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Musharraf's Indictment: Going through the Act?

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In a country where a military officer could not be charged for a traffic offence, a Pakistani court has now indicted former military strongman General Pervez Musharraf in the case relating to the 2007 assassination of former Prime Minister Benazir Bhutto.

Ms Bhutto returned to Pakistan under an infamous National Reconciliation Ordinance 2007, brokered by the-then US Secretary of State Condoleezza Rice and promulgated by President Musharraf. The deal pardoned Ms Bhutto and many others in all convictions, allowing her to become prime minister again if she were to win the then-imminent elections, with Musharraf remaining President.

Following her killing, however, the deal went sour; Musharraf was compelled to quit as President, and he then went into a self-imposed exile – returning to Pakistan earlier this year, after four years, ostensibly to contest in the general elections held in May this year. The election results brought Musharraf's nemesis Nawaz Sharif, whom he toppled in 1999, back to power.

Musharraf also faces a 'hostile' Supreme Court (SC), headed by Chief Justice Iftikhar Mohammad Chaudhry (CJ), whom Musharraf had dismissed and incarcerated twice. The tenacious CJ bounced back both times and still presides over the court. He retires in December.

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Charges against the Former Strongman

Musharraf faces four main charges. First, that on 3 November 2007, he declared a state of emergency, “suspending” parts of the Constitution, forcing ‘errant’ judges out of the court and ordering their house arrest. Article 6 of the Constitution provides for death penalty for anyone “subverting” the Constitution.

Second, that he did not provide Ms Bhutto with enough security, despite threats to her life, leading to her assassination.

The third charge relates to the security crackdown on the Red Mosque in Islamabad in 2007 which killed 103 people.

The fourth case is about the killing of the elderly Baluch tribal chief Nawab Akbar Bugti, who was arguably leading a campaign for greater provincial autonomy and control over Baluch resources.

Since the rejection of bail for Musharraf following his indictment now, he remains in his plush farmhouse, on the edge of Islamabad, which has been declared a sub-jail.

Rumours abound in Pakistan on Musharraf’s legal challenges. Some speculate that Sharif took the military into confidence before proceeding against Musharraf on a plethora of charges. Others say that Sharif’s return to power was conditional upon his commitment to leave Musharraf alone. Hence, allege these theorists, the recent general election was ‘rigged’ in Sharif’s favour.

The treason charge against Musharraf stems from a private petition to the Supreme Court which then ordered the government to frame charges under Article 6 of the Constitution.

The Constitution, under Article 232, empowers the President to declare a state of emergency. In doing so, Musharraf had held some parts of Constitution in ‘abeyance’, which became an offence under the 18th Constitutional Amendment that was enacted in 2010 – three years after Musharraf committed the impugned act. How do you try him retroactively?

Coup of 1999 is Not the Issue

Unsurprisingly logic does not prevail in Pakistan. Musharraf is not being charged for the original military takeover in 1999. The SC, which included the present CJ, validated that takeover. Another twist – Musharraf was flying back home from Sri Lanka, far from the other Pakistani commanders, when the military arrested Sharif in Pakistan and took over, leaving Musharraf with a *fait accompli*.

Musharraf's Emergency proclamation of 3 November 2007 lists the provincial governors, Chairman Joint Chiefs of Staff Committee, the other service chiefs, and the Corps Commanders as partners in the act. Then, why accuse him only? There are judges who legitimised the 2007 emergency too, but no charge is contemplated against them. Holding him alone responsible for these actions is a "carefully contrived legal justification for targeting one person alone, despite overwhelming evidence of wrongdoing by many", wrote *The Friday Times*, an independent Pakistani paper.

Musharraf's attorneys argue that such a course is not sustainable and can derail the civilian system again in Pakistan.

The prosecution's case over Ms Bhutto's killing reportedly rests upon a statement by Mark Siegel, her friend, who quoted her, after she hung up the phone on Musharraf, as saying that "she would be responsible for what happened to her". No secret that Musharraf continually warned her of her security before and after her arrival in Pakistan, and he may have used these words reminding her of the danger. This is no evidence.

On that fateful day, she made a public address, secured by over 1,300 security personnel. Later, while on the way out, she threw all the security cover aside, opened the hood of the car and sprung out, exposing herself to a suicide-bomber, as it turned out. Even Musharraf's worst detractors do not believe that he is culpable in the case relating to Ms Bhutto's assassination.

The Red Mosque case is weak. The clerics there were in effect challenging the writ of the state. An assault on a mosque to flush out the militants who were holding Islamabad hostage was no crime. Indian leader Mrs Indira Gandhi gave her life, too, in establishing the writ of the state, but no one ever accused her of killing those who died by rebelling against the state.

With hindsight many argue that Bugti could have been handled differently, but he too died in a military action of quelling a rebellion against the state.

The Pakistani society is deeply divided on Musharraf. One group wants to punish him to prevent future takeovers by the military. Facing existential issues, Pakistan cannot, however, direct attention to one man when hundreds aided and abetted him, argues another group. A sober assessment is indeed necessary.

The sensationalist media gloats every time there is an adverse decision against Musharraf. Sensibly, the politicians have publicly shown restraint.

The cases against Musharraf also raise serious questions about the power-equations in Pakistan.

Sharif's two previous terms as Prime Minister were marred by his conflicts with the military

that led to his eventual downfall. There are of course pressures on him from amongst his inner coterie to avoid another mess-up with the military over Musharraf.

Pak Army's Place in Society

This is the army, which did not even brook contempt of court proceedings against a former army chief. In an unprecedented move the Pakistan Army had restored three retired generals nominally back in service to be court-martialled within. The National Assembly's Public Accounts Committee had earlier accused the three of making illegal investments that led to heavy losses when they served in the National Logistics Cell. The message is clear from the Pakistan Army – hands off, civilians!

Many agree that justice must prevail. But it is also widely believed that this is a 'witch-hunt' against Musharraf, as both Sharif and the CJ are the aggrieved parties. Some are hedging their bets that the cases will fizzle out after the CJ retires in December.

Those who want Musharraf punished, giving examples of Latin America, miss out an essential difference – no such country faced an existential threat, and in no other country the army is eulogised to the extent it is in Pakistan.

The cases against Musharraf are not just a matter of law in Pakistan where civilian institutions are deeply troubled. The police and the civil armed forces have failed to quell militancy. Many a time, when the army could constitutionally be called in aid of civil power, the civilian leadership balked. The Pakistan Army – under its current Chief, General Ashfaq Pervez Kayani – has scrupulously kept away, awaiting a call only when worsening conditions need a unified civil-military action.

The army, being the only organised institution left, confronts a mounting militancy in the country. Over 4,500 men have been lost in fighting armed extremists. Five years of weak-kneed Zardari Government have actually widened fissures within the society. The new political dispensation is deeply divided between those who want to talk to these groups and those who want to take them head on.

In times like these, unless full backing is given to the army, the ordinary soldier who fights for the chief will not put himself in the line of fire if his chief is seen dragged to courts and insulted. The state of Pakistan cannot afford this kind of situation.

The civil authority, which struggles to provide security cover to hold elections or dispense polio vaccines, may stop short of pushing the cases against Musharraf to their logical end. They may only run through the motions up to a point.

Given Pakistan's security psyche and its internal challenges with wider regional implications, the country needs a motivated army which, despite its transgressions in the

past, must pursue an agreed national agenda in sync with the civil authority. This is needed now, more than at any other time. For now, this is for the larger good of the region. This, indeed, is the challenge facing Pakistan.

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