

## Can Judiciary Legalise Military Rule?

What is the guarantee that the Supreme Court can force Musharraf in holding the elections ninety days before the expiry of his three-year term? He must have reasons to be happy that the Supreme Court has not only legalised his taking over of power, but has also granted him a three-year tenure.

by Mansoor Mamoon

THE highest judiciary in Pakistan — the Supreme Court — has, indeed, set a very bad precedence by justifying the promulgation of Martial Law in that country. On May 12 the 120-member Bench headed by the Chief Justice Irfan Hussain Khan, in its unanimous ruling said 'the army coup is validated by a transitional period on the grounds of state necessity'. Pakistan has already come to be known as an 'exceptional' country and strange, in fact, are its manners. With the end of the period of Cold War liberal democracy is making its surge the world over and rule by military diktats is fast becoming a thing of the past. Pakistan has reverted back to the days of coup and rule by 'formans' (proclamations) from the GHQ. But what has come as a stunning surprise to the democratic world is the judiciary's coating of legality on the Martial Law.

Does the Constitution of Pakistan, or for that matter, of any democratic country permit imposition of martial law by ousting a popularly elected civilian government? The Constitution of Pakistan provides for mandatory death sentence for any attempt to capture power through extra-constitutional means. By any democratic norm the Supreme Court ruling should have normally come heavily on General Pervez Musharraf for violating the country's Constitution. It has instead legalised the October 12, 1999 Martial Law. What a tragedy and shame for the judiciary whose obligation had been to protect the Constitution and to ensure that people's democratic rights as enshrined in the basic law are not infringed upon by any coercive method.

Whatever might have been the reasons for the clamping of martial law — corruption, tax evasions, deterioration of law and order situation, perpetuation of default culture, worsen-

ing of economic stringencies, inept administration, attempted skyjacking of the plane with the General on board so on and so forth as claimed by General Musharraf — it cannot have any legality under democratic dispensation. The armed forces do not have any right to act as the arbiter nor the judiciary can pass any judgement in favour of unseating a government so long it enjoys the support of the majority of the members of the National Assembly. The people who voted the Nawaz Sharif Administration to power can alone decide its fate and that too in a fair hustings which normally would have come two years later.

This ruling has amply proved that the judiciary in Pakistan is neither independent, nor strong enough to thwart the encroachment by the usurpers of power. Earlier half a dozen judges of the highest judiciary including the Chief Justice preferred to tender their resignation rather than declare their allegiance to the Martial Law setting a model of their unflinching allegiance to the country's Constitution. Those who did not have the courage to show their thumbs to the military ruler have stayed on and are now acting perhaps to please and oblige him after taking oath to support military rule.

There are also instances of such direct collaboration of judiciary with the past military rulers in Bangladesh. Justice Abu Sadat Mohammed Sayem, Justice Abdus Sattar, Justice Nurul Islam and Justice Ahsanuddin Ahmed et al justified the promulgation and continuation of Martial Law in Bangladesh by being associated with General Ziaur Rahman and General Ershad respectively. Late President Justice Sayem in his memoir 'Bangabhan — the last phase' has described how late Justice Sattar, the then Special Assistant to the Chief Martial Law Administrator, worked jealously for

Ziaur Rahman and how he (Sattar) 'conspired' to hasten his (Sayem's) exit from Bangabhan and place General Zia over there. When Justice Sattar was ousted by General Ershad on March 24, 1982, Justice Ahsanuddin volunteered to become President, albeit till the time the ambitious army chief (Ershad) took upon himself the reins of the presidency by putting him to retirement. One judge dying with another for currying favour of the military rule is no doubt a black chapter in the annals of our judiciary. But the judiciary as a whole did not humble itself nor did it kow-tow before dictators. The ruling against the eighth amendment (decentralisation of the judiciary) of course formed a glorious chapter in protecting the country's Constitution. So also various other verdicts in which the executive was resisted from trampling down the people's rights. The highest judiciary has earned appreciation from all quarters for its boldness and courage. Even the present Prime Minister was not spared when she passed sweeping and baseless remarks against the High Court.

But as it may, the ruling of the Supreme Court of Pakistan is bound to be viewed with concern, particularly in the countries with fledgling democracies, where the foundations of democracy are yet to be stabilised and strengthened and which are still prone to succumb to the ambition and misadventure of the extra-constitutional forces.

Apparently to demonstrate its independence the Supreme Court of Pakistan has given a time-frame for holding elections and to transfer power to the elected people's representatives within three years from the date of promulgation of Martial Law. To the international community General Musharraf has consistently been telling that he was not in a position to give any fixed date

for holding elections. The Supreme Court has done this on his behalf. This might be a double pronged strategy and ploy for both domestic and international consumption. At home the political parties which were at loggerheads in the past are reported to be grouping together to start a strong united movement for the restoration of democracy. Drought in Sind and Baluchistan has exacerbated the economic situation. Internationally Pakistan stands almost isolated; the United States, once its close ally, has now turned towards India. Different international forces, particularly the Commonwealth has suspended Pakistan's membership. General Pervez Musharraf knows too well that three years is quite a long time and the sailing in the rough sea of Pakistan's politics for him will not be easy.

Apart from this, so many unforeseen events might happen within the period of three years. When General Ziaur Haque took over power on July 5, 1977 he had promised to vacate the seat of power within ninety days, that is three months. That three months turned out to be long eleven years. If situation permits, General Pervez Musharraf might follow the example of his predecessor General Zia in his holistic quest for what he is terming as 'real democracy' (meaning politics without the known politicians). If past history be any guide it can be safely concluded that in both Pakistan and Bangladesh rulers — military, quasi-military and civilian — do not at all feel the urge or obligation to keep their promises. What therefore is the guarantee that the Supreme Court can force Musharraf in holding the elections ninety days before the expiry of his three-year term? He must have reasons to be happy that the Supreme Court has not only legalised his taking over of power, but has also granted him a three-year tenure.

To nobody's surprise, Chief Justice of Pakistan Irfan Khan made the right noises from the bench that heard the constitutional petitions filed against the dismissal of the government and suspension of the assemblies. To nobody's surprise, the honourable Supreme Court has judged and on May 12, 2000, delivered yet another historic judgment upholding the army's action.

by Ardesir Cowasjee

changed to 'Parsi'. This is wrong. No such religion exists. (The religion) requirement was innovated by Zia-ul-Haq, despite the Master's dictum:

"You may belong to any religion or caste or creed — that has nothing to do with the business of the state." — MAJ, August 11, 1947

At the immigration counter a young Teuron sat examining passports presented to him, an older official stood by to guide him. He removed the leather cover on which my passport is kept, and looked at what is normally the front, which in the case of our passports is blank. He gave me a strange look as he turned the book over and found on what he took to be its backside the golden endorsement and crest of the Islamic Republic of Pakistan.

He mumbled, "Pakistan?" He looked towards his senior, who looked me up and down. The younger man opened the passport and saw the words printed on the inside of the cover which request and require him "in the name of the President of Pakistan to allow the bearer to pass freely without let or hindrance and to afford him/her all assistance and protection of which he/she may stand in need."

Had he seen a photograph of our president, I wondered? I hoped not, recalling how Queen Silvia of Sweden, soon after Tarar had been sworn in on New Year's Day 1998, had persuaded her husband, King Gustav, to cancel their official visit to Pakistan due to take place in March.

His eyes moved to the left, then down, scanning my personal details. They stopped at 'Religion'. He looked up. "Parsi?" Then seeing the Karakul collar of my cloak, "Afghan?" "No," I said. "Muslim?" "No, I am a follower of Zarathustra, a Zarathustrian." Our passport officials are dim, for each time I put down as my 'religion' 'Zarathustrian', it is inevitably

dubiously at each other. I hoped they would not go back five thousand years and ask where Zarathustra was born, in Balkh or Azerbaijan. They spoke, eying my beard; the one decipherable word was 'terrorist'. They found my visa, scanned it on their scanner, waited, and all being clear, stamped me in.

Reconstruct we cannot by remaining isolated. By repeatedly proclaiming that we are not isolated will not make us any less isolated than we actually are. We will not get the help needed from countries which can help us unless we get them on our side, in particular and most importantly, the United States.

China may be an ally but it is as fearful of Muslim extremism and fundamentalism as are the US and Russia, and this is now a problem afflicting its south-western front with which it deals in its own silent and subtle way. However, whether we, or anyone else for that matter, like it or not, the fact is that the US remains the sole ascending superpower. Their work ethics have boosted their economy. Working America rises at five in the morning. Nothing new.

In Class One, in my day, we were taught: "He who would thrive, must rise at five... Working Pakistan rouses at noon.

The US is like our legendary lion for 'lion': "Jungle ke badshah hai, kabhi baccha deta hai, kabhi unda deta hai." It supports sham democracies when it needs to, dictators when it needs to, even murderers of the Pol Pot mould if they serve its purpose. US-sponsored Asian dictators and generals include, but are not restricted to:

Cambodia — General Lon Nol.

Indonesia — General Suharto. The CIA brought him in and the Pentagon Defence Intelligence Agency saw him out.

Iran — the Shahanshah Aryamehr, the King of Kings of Iran, together with his SAVAK. At the end, they denied him a six-foot by two-foot plot of land for his dead body.

Laos — General Phoumi Nosavan.

Pakistan — Generals Ayub Khan and Yahya Khan; and then Generals Zia-ul-Haq and Agha Abdur Rahim Khan who, when they grew too big for their boots, were eliminated.

The Philippines — Ferdinand Marcos. Presidents Ronald Reagan and George Bush even hailed him as a democrat.

Taiwan — Chiang Kai-shek.

and his son Chiang Ching-kuo. But for American help and support and its hardworking population (today it can boast of reserves totalling US\$102 billion) Taiwan would long ago have been gobbled up by China.

Thailand — Marshals Pibul Songgram, Sanit Thanarat, Praphas Charusathien, and Thanom Kittikachorn.

Vietnam — Ngo Dinh Diem (slated assassinated on American orders), General Nguyen Khanh, General Nguyen Van Thieu.

With the exception of Nawaz Sharif and his cabinet of intelligent lawyers and thinkers, from 1997 onwards the rest of us acknowledged that "force begets force". Nawaz was supported by not only his followers but by the entire mixed bag in the National Assembly in his constitutional amendments which made him seemingly impregnable. To nobody's surprise, the army eventually took over.

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## POPULATION

## Worries, Not Celebration, as India Hits One Billion

"...the future is not as bright as was the past," the United Nations Population Fund warned in a recent report. "Its (growing population) can lead to hunger, even starvation, unless careful planning regulates both demand and supply levels to create the necessary balance."

by Sugita Katyal writes from New Delhi



India's billionth citizen: Ministry for Human Resources and Family Welfare Sumithra Mahajan holds the baby Aastha after she was born at a hospital in New Delhi on May 11.

— AFP photo

permanent damage to the country's family planning policy. As a result, family planning became a dirty word in India," says leading demographer Ashish Bose.

Meenakshi Datta Ghosh,

joint secretary in the ministry of family welfare, agrees. "Our experience with compulsion in the 1970s has been unhappy. It led to deep-seated anger and deferred the family planning programme by about two decades."

### Stigma of Coercion

So what went wrong?

Demographers say India failed to rein in its population because of a disastrous experiment with forced sterilisation during the two-year Emergency rule in the seventies when then prime minister Indira Gandhi suspended civil rights.

"Forced sterilisations did

she says. Experts say the policy also failed because it was too target-oriented and because sharp declines in death rates were not accompanied by a similar drop in birth rates.

The basic formula was that family planning equals to sterilisation, which equals to female sterilisation, which equals to target fulfilling. Since this is difficult, it led to cooking of data," argues Bose.

### Aiming for a Stable Population

Earlier this year, the government announced a new population policy, not bound by numerical targets but offering incentives for two-child families and for delaying marriage.

The new policy, which follows an earlier shift in emphasis from demographic control to health care and education of women, aims to bring fertility rates down to replacement levels by 2010 and achieve what it calls a stable population by 2045.

In patriarchal societies, men continue to determine reproductive choices. Here, the focus is on the role and responsibility of men," explains Ghosh.

But population experts slammed the policy, saying it did not address what are called the chronically backward "Bimaru" states of Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh — which account for 40 per cent of India's population.

"It is ridiculous for bureaucrats to put target on the reproductive lives of people. What we need is a minimum needs programme which includes roads, water, health and education," says Bose.

Agencies warn that the alarming growth levels are putting intense stress on the country's already creaking infrastructure and stretching food and water resources.

The government has difficulties enough with its current population. About half of India's adults are illiterate, a third lives below the poverty line and more than 15 per cent of its children under the age of 15 suffer from malnutrition.

Although the country has cut its fertility rate to 3.3 children per woman from six in 1951 and the birth rate has declined to 26.4 from 40.8 per 1,000, aid agencies are not impressed.

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— REUTERS

## Ground Reality

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