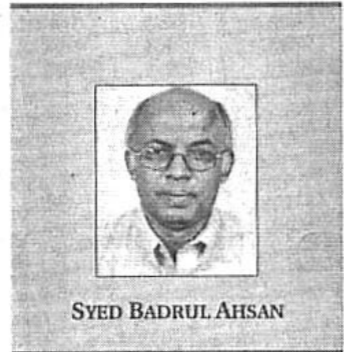


Of judges and generals, in Pakistan and Bangladesh



SYED BADRUL AHSAN

IT was Justice Kayani who spoke for all the people of Pakistan when he described Ayub Khan's military take-over in October 1958 as probably the first instance in history when an army had occupied its own country. Kayani remains one of the few men who dared to defy soldiers who saw nothing amiss in seizing a country and sending everyone else into the woods. General Ayub Khan certainly felt the slap that had been hurled at him and in subsequent times did all he could to humiliate Kayani. He did not quite succeed, as events were to show.

When you consider the political legacy that shaped up in Pakistan from 1958 onwards, one that was to be tragically adopted in Bangladesh in 1975, you cannot but wonder at the many curious patterns that have systematically developed, or unravelled, as the case may be, in relations between generals and judges. Ayub Khan met defiance from the Bengali Justice Syed Mahbub Murshed in 1961 when the judge, overriding every objection the junta may have had toward a promotion of Bengali culture in East Pakistan, presided over the Tagore centenary celebrations in the province. It was an unambiguous instance of a judge taking on a military ruler at a time

GROUND REALITIES
The bigger irony, or call it scandal, came when Musharraf's hand-picked new judges, with not a bit of shame in them, decreed that all the earlier petitions against the general were pointless and so could be thrown out of court. And they were, making the way clear for Musharraf to be sworn in as president of Pakistan for a fresh new, albeit controversial term in office.

when martial law had put a moratorium on free expression.

You could move on from there and suggest that when in early March 1971 Justice B.A. Siddiky refused to administer the oath of office to General Tikka Khan, who had just been appointed governor of a restive East Pakistan by General Yahya Khan, it was a demonstration of courage on the part of the jurist. One wishes one were greatly enthused by the act, but the fact remains that the same Siddiky swore in Tikka Khan to the governor's job soon after the genocide by the Pakistan army got underway on March 25, 1971. You could say that perhaps like many others the judge had been intimidated by the scale of the military operations at that point and had hardly any choice he could make on his own. Maybe there is much flesh in that kind of argument. But note that Justice Siddiky surfaced again in the early 1980s, to provide leadership to a Muslim League left an orphan by the death of Khan Abdus Sabur. That was all right, certainly. But what did not seem quite acceptable was Siddiky's acceptance of the offer from General Hussein Muhammad Ershad, by 1982 Bangladesh's new military ruler, to be the country's permanent representative at the United Nations. Siddiky was to return home from

New York in circumstances that have remained shrouded in questions.

Any reflection on the ties that have bound some judges to some generals in our part of the world quite naturally takes us back to Pakistan. Justice A.R. Cornelius was quite happy to please Ayub Khan where Kayani and Murshed had not. In the short-lived, disastrous regime of Yahya Khan, Cornelius cheerfully served as a legal advisor to the government and made significant contributions on the government's behalf at the abortive talks with the Awami League in March 1971. But the first decisive instance of the Pakistan authorities moving in force against the judiciary came when General Ziaul Huq ordered all judges of the Supreme Court and the High Courts to take a fresh oath of office under martial law regulations in 1977. Those who refused were simply dismissed. After that, it was largely a pliant judiciary that pandered to all of Zia's whims. Some of them, like Moulvi Mushtaq Hussain, behaved abominably. As Zulfikar Ali Bhutto fought back against charges of murder before Mushtaq's court, the judge unashamedly mocked the fallen prime minister and appeared to care a fig for the principles of justice. Bhutto was hanged by his

country's judges in what remains a disputed conviction.

General Pervez Musharraf has clearly taken a leaf out of Zia's book. When his first attempt to remove Justice Iftikhar Muhammad Chaudhry failed (and that was because Chaudhry was reinstated by his colleagues on the Bench after the president had tried sacking him), Musharraf went for a bigger operation, this time through the imposition of a state of emergency in Pakistan. It is an irony that the judges who had been lining up to tell him that his hold on presidential office was illegal, that he could not be head of state and army chief together, were themselves dismissed and placed under arrest by the man they had sought to banish into the woods. The bigger irony, or call it scandal, came when Musharraf's hand-picked new judges, with not a bit of shame in them, decreed that all the earlier petitions against the general were pointless and so could be thrown out of court. And they were, making the way clear for Musharraf to be sworn in as president of Pakistan for a fresh new, albeit controversial term in office.

Musharraf has done grave damage to Pakistan's judicial institution. It is a sin earlier perpetrated in Bangladesh by General Ershad, who dismissed a number of judges

of the High Court and then, by dictatorial fiat, decreed that the High Court be sliced into seven separate courts. It is to the credit of Bangladesh's higher judiciary that it refused to take the military ruler's decision lying down. Ershad's move was simply struck down and the High Court was thus restored to its old dignified place in the structure of the state. Speaking of dignity, quite a few judges in Bangladesh have in the course of their career seen it slip from their grasp. Justice Nurul Islam, chairman of the East Pakistan Red Cross Society during the Bangladesh liberation war, travelled abroad to trumpet the case for Pakistan and its army in 1971. In the Ershad years, he ended up being vice president of Bangladesh. He is a forgotten man today.

But not so forgotten is Justice Abu Sadat Muhammad Sayem. It was a hopeful Bengali nation that welcomed him to the presidency, per courtesy of General Khaled Musharraf, on November 6, 1975. The popular expectation was that he would lead the country back to a secular, democratic order following the tragic happenings of August 15 and November 3. In the event, he was overtaken by circumstances and found himself leading, nominally, a government in which General Ziaur Rahman was the paramount player. Sayem would have done himself and the country a favour if he had opted to walk away from the junta that seized the country on November 7, 1975. He did not, the consequence being that Zia eventually eased him out of Bangabhaban in April 1977 and finally had the whole country in his grasp. By then Sayem had clearly made himself controversial to a certain extent. It was he who had formalised the death warrant earlier served by a secret military

court on Colonel Abu Taher. What if he had refused to countenance the murder of the celebrated freedom fighter?

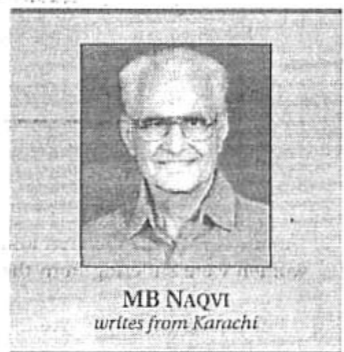
But let that be. General Ziaur Rahman plucked Justice Abdus Sattar, who had been chief election commissioner in Yahya Khan's Pakistan at the time of the general elections of 1970, from retirement and appointed him Bangladesh's vice president. General Ershad, having seized power in March 1982, placed Justice Ahsanuddin Chowdhury in presidential office. Pretty soon, though, Chowdhury was shown the door, in much the same manner Sayem was once, because Ershad needed to be known as president rather than as chief martial law administrator.

Justice Munir was happy to indulge General Ayub Khan. Justice Ibrahim, having initially gone over to Pakistan's first military ruler, quickly saw through the dictator's artifices and walked out of the regime. The story was a trifle different with three other men who readily agreed to sit in judgement on Bangabandhu Sheikh Mujibur Rahman and his co-defendants in the so-called Agartala conspiracy case in 1968. But then, Justice S.A. Rahman, Justice Mujibur Rahman Khan, and Justice Maksumul Hakim saw the trial collapse before the gathering onslaught of a popular denunciation of the entire questionable process.

Remember, if you will, that in December 1990 it was to a judge that a general handed over power in Bangladesh. General Ershad fell before a mass movement; and Justice Shahabuddin Ahmed went on to inaugurate a new democratic process in the country.

Syed Badrul Ahsan is Editor, Current Affairs, The Daily Star.

Lay of the land



MB NAQVI
writes from Karachi

UNENDING confusion grips opposition parties over assessing Musharraf regime Mark II, along with the scarcely neutral caretakers and the changes made under Emergency, PCO, and new media ordinances. It is a continuation of the previous government; it is sure to do what Musharraf wants. Thus the country is basically polarised between Musharraf partisans and those who claim to be anti-Musharraf forces, while everybody knows that his regime now intends to rule through naked force, with a deceptive facade of democracy-seeming institutions.

This new Musharraf regime is a creature of the virtual Martial Law of Nov 3 a logical reaction of his dictatorship when challenged and is engaged in two major operations: First, to acquire ever more powers than before for the recently retired general to rule repressively for another five years while claiming to run a democracy. Secondly, he wants to keep all his foreign and domestic supporters happy by his unchanged social, economic and foreign policies.

How strong is this regime? Musharraf's strength should not be underrated. He is supported formally by PML Q grandees, MQM,

PLAIN WORDS
This will be a clear regression. Instead of taking up the cause of the lawyers, judges, and journalists, and to accept the leadership of the new icons of the people, which would have enhanced their own, the political parties have responded to Musharraf's cause and George Bush's message. They deserted their own people's cause, as if Musharraf Mark II can be any better.

PPP (S), PPP (Patriots). Those who participate in the January 8 election -- being organised and managed by him in conditions created by the Emergency, PCO, and the muzzling of the media -- should be counted as his supporters, their opposition-sounding noises notwithstanding. JUIs of Maulanas Fazlur Rahman and Samiul Haq came under this category, as does Ms. Benazir Bhutto's PPP. For all the ballyhoo about reserving the right to boycott, her party's dogged resistance to making the restoration of pre-November 3 conditions, especially the SC judges' restoration, a pre-condition for participating in the polls shows her anxiety to strengthen Musharraf in accordance with the putative deal the US had brokered if only Musharraf does not renege on it.

So, who remains in the boycott camp? Under the mean and opportunistic principle of not leaving the field to "others," JI will participate because JUI is doing. PML(N) has also decided to play the game because PPP is doing it. Maybe a few small parties might finally remain in the boycott camp, though even that is not certain.

A via media has emanated from internet Aiteaz Ahsan of all people: let all opposition parties compel their candidates to sign a piece of paper pledging support for

reinstating all PCOed judges in the new parliament being elected by Musharraf-nominated caretakers. One was aghast at this: Aiteaz forgot the disconnect between the ongoing lawyers' and civil society's campaign to realise, as a pre-condition to participation, the reversion to pre-November 3 Pakistan, though later he returned to his original loyalty to the lawyers movement.

What the parties have done risks the ending of the momentum of the lawyers' movement. Shape of politics and immediate issues will look vastly different in post-election period. Politics will be all about government-making, deals and alliances under the smiling visage of the ex-general. Reviving previous year's issues will be so much more difficult. To recall, the Aiteaz proposal was a testimony of his loyalty to Benazir and readiness to sacrifice personal ambition for her uncertain favours.

But all this is superficial. Look closely. All Pakistan's social and economic elites support Musharraf. A large number of larger landlords simply love Musharraf -- so long as he is in power. All big industrialists, bankers, big business magnates, and conscience-less successful professionals have always been on the side of military dictators. This is an

awesome array of forces.

Who else is a supporter of dictatorship? Well, why forget the only hyper power there is. Look at the crowded drawing rooms of political leaders in Islamabad, Lahore, Karachi and Peshawar, waiting to be graced by western ambassadors and CJs. The latter group is rooting for Musharraf: "Be responsible transitionists, take part in elections and jointly build democracy." What the west wants is obvious: "War on Islamic Terrorists is on; horses cannot be changed midstream; let Musharraf lead the side but go and join him to prosecute the war more effectively; this election will lead Pakistan to democracy's goal; and that is where you and we want to be."

Finally, the strongest supporters of Musharraf was his military constituency. The army is tightly united and it was army, qua-army (in the absence of Gen. Musharraf) that it seized power on October 12, 1999. It has sound professional, economic, and even political reasons not to desert Musharraf: the entire officers corps stands to lose (some) perks and future opportunities if the people of Pakistan manage to overthrow Musharraf. Hence, the army is likely to remain loyal to Musharraf -- for some time anyway.

Those who want undiluted democracy, made by the people with independent judiciary, free media and the citizens' rights made enforceable, have to replace this regime by a more popular one without giving up their vigil. This is a challenge to a formidable foe. History shows that phenomenally powerful and cruel regimes can be overthrown by a people -- provided they become aware of both their rights and are prepared to fight for them. Nothing is more powerful than an aware and united people.

This is a simple truth, but is not the whole truth. A people's awareness needs leadership -- not for hero worshipping but for functional purposes. This role is normally played by a host of factors: political parties, intelligentsia, media, especially press, blogs, and what is now the worldwide explosion of knowledge, creating the climate of the time. In Pakistan, one says with a heavy heart that political parties have been too venal, too opportunistic (misusing the term pragmatism) and have hardly ever risen to a situation. One is aware that all the military dictators have demoralised political leaders as corrupt, inept, and inefficient. Much of it was self-serving. But not all of it was false. Anyway, how are the political leaders behaving today? Do they show any awareness of where they are being used by foreign powers and misled by their own opportunism?

The year 2007 saw a new star rising and a new saga was written after March 9. The show of force was necessitated by Mr. Justice Iftikhar Chaudhry having already proven to be a tough nut to crack. He stood his ground and demanded an open trial. Pakistanis

were startled and saw in him a symbol of resistance to tyranny. Lawyers' community -- led by men like Aiteaz Ahsan, Munir Malik, Ali Ahmad Khan, Hamid Khan -- rose to the occasion. The people were electrified and poured out of their humble homes to shower love and respect for the cause represented by lawyers and CJ. Where does this authentic leadership stand vis-à-vis the people's struggle for what is their liberation? It is all about the latter. It must continue and gather strength.

Well, it is nowhere being acknowledged. Because no big party in ARD and APDM insists on returning to pre-November 3 position or a really independent judiciary as a pre-condition to an election intended to renew Musharraf's presidency through an election that is meant to achieve a given result. Most of these parties will take the Musharraf-laid-down path to sanctify his October 6 "re-election" and to work under a constitution that will emerge after he has made all the changes he wants.

This will be a clear regression. Instead of taking up the cause of the lawyers, judges, and journalists, and to accept the leadership of the new icons of the people, which would have enhanced their own, the political parties have responded to Musharraf's cause and George Bush's message. They deserted their own people's cause, as if Musharraf Mark II can be any better. Why cannot lawyers form a party of a new kind to offer a new leadership for attaining democracy to save Pakistan, as Justice Wajihuddin has asked.

MB Naqvi is a leading Pakistani columnist.

Nationalism tirade

We don't have any illusions that the Maoists will capture power in the near future. So that's not why we are opposing them. We are opposing their megalomaniacal dreams and wrong judgment simply because we are bound by our duty to do so. And no one can stop us from doing that. A despotic monarch once tried and burnt his hands, never to recover. If you think you can do it, good luck!

LAST WEEK, Prachanda launched his nationalist tirade. God knows why. But common wisdom tells us that autocrats of all hues and colors use the nationalist card to trump democracy. The Maoists never had democratic credentials; now that their commitment to it is in serious doubt, it's quite natural for them to take refuge in nationalism (I am resisting from quoting Samuel Johnson who famously said that patriotism was the last refuge of scoundrels). Prachanda has called for a new

unity among "royalist nationalists," mainstream parties and the Maoists. His remarks raise two key questions:

- Who are these "royalist nationalists"?
 - Why is it important at this point to forge a new unity with them? Prachanda answered none of these questions. He wouldn't.
- His deputy commander Barsha Man Pun offered an explanation to this newspaper: The new nationalists are people in the military, police, and bureaucracy. Huh, does that make any sense?
- Two developments have taken place in the last few months that partly explain the Maoists' latest distraction. First, an army general who aspires to become army chief by replacing Rookmangud Katwal established contact with the Maoists and told them that he would facilitate integration of the Nepal army and the Maoists' combatants should he become army chief. Sources say the current army leadership quickly reached out to the Maoists and told them that the army was not averse to the integration process, and that it was an issue to be decided by the political leadership.
- Second, intelligence sources say Maoist leaders have held several

meetings with royalists, including some former ministers in the king's cabinet. It's unclear who initiated these meetings and what their agenda was.

The question why it is important to forge unity with "royalist nationalists" at this juncture is even more puzzling.

The Maoists have been obstructing the constituent assembly polls arguing that elections were not possible without first abolishing the monarchy. But now they say that the country can't move ahead without entering into an alliance with "royalist nationalists"? How are these people, whose very identity is "royalist," different from the king? And if they support democracy, want peace and defend nationalism, are the Maoists saying that the king alone -- one man -- is trying to and is capable of obstructing the polls? Have they gone crazy?

One reason why the Maoists are increasingly chanting the nationalism slogan has to do with the India

factor. During his last visit, former Indian Foreign Secretary Shyam Saran told the Maoists two things: First, the peace process and elections are inseparable, and if the Maoists shy away from the elections, it would rally the international community to encourage other parties to go for polls without the Maoists.

Second, the Maoists would no more be allowed to use Indian territory, as they did in the past, should they walk out of the peace process. The Maoists seem not only angry but increasingly nervous about India. Sources say that despite Prime Minister Girija Prasad Koirala's hesitation, it was Prachanda and UML general secretary Madhav Kumar Nepal who took the initiative to invite former US president Jimmy Carter to help with the stalled peace process. In the Maoists' calculation, Carter could offer some counter balance to the increasing Indian pressure on them.

Divorced from reality, the Maoists are making silly calculations about regional and international geopolitics. In his interview with Rajdhani daily on Thursday, Prachanda said: "If the United States tries to suppress us, Europe will provide us some help. If India tries to suppress us, China will oppose it; and if someone else tries to suppress us, Russia will support us." Does this make any sense?

"Nationalist royalists" who were unhappy with India for "orchestrating" the April Uprising -- millions of Nepalis coming out on the streets against the king means nothing to them just as seeking a fresh mandate from the people has no meaning to the Maoists -- now see the Maoists as paragons of nationalism. They have a common interest: Deny the people their sovereign right.

Prachanda even urged the "big media" to understand the compulsion of this new unity with the

"royalist nationalists" and act accordingly. Only a few weeks ago, Prachanda claimed that the "big media" had sold out to expansionists and imperialists. How come that now you are urging "puppets" of expansionists and imperialists to support the "nationalist alliance"?

As we in the media understand, the Maoists are increasingly losing their political senses. Politics is not just about tactical moves. It demands sincerity and honesty with the people. Politics is for the people, but the Maoists seem to believe that it is the other way around: People are just tools for politics. That's why the Maoists' nationalism tirade sounds so hollow, so cacophonous. Where do people feature in the Maoists' definition of nationalism?

George Orwell said: "Nationalism is power hunger tempered by self-deception." The media can't be

a party to the Maoists' self-deception. Instead, the media's role is to encourage them to face the truth and come to terms with it. That's why we write about the YCL's atrocities; that's why we criticise its excesses and any attempt to digress from democracy.

Unfortunately, Prachanda sees this differently. He recently argued that the media criticised the Maoists out of fear that they would be suppressed once the Maoists came to power. We don't have any illusions that the Maoists will capture power in the near future. So that's not why we are opposing them. We are opposing their megalomaniacal dreams and wrong judgment simply because we are bound by our duty to do so. And no one can stop us from doing that. A despotic monarch once tried and burnt his hands, never to recover. If you think you can do it, good luck!

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