

# Unravelling of the general's game plan

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General Musharraf today faces personal prospects far dimmer than those faced by any military dictator in the past prior to the holding of general elections. This includes Musharraf himself in 2002. Those writing off Chief Justice Iftikhar Mohammad Chaudhry should hold back and take stock. The Honourable chief justice's second coming to assume his rightful place as the head of the Supreme Court is on the cards. Consider.

The so-called emergency imposed by the increasingly misguided general on November 3 was an extra-constitutional measure and not the declaration of a state of emergency provided for in the Constitution itself. This so-called emergency entailed the subversion of the Constitution by force and a large scale purge of the superior judiciary, the Supreme Court in particular – 13 out of 17 judges of the Supreme Court were physically restrained, without the slightest legal warrant and in patent violation of the constitutional guarantee of tenure, from continuing to hold court. A constitutionally recognized term 'emergency' was maliciously used to obfuscate the reality of the martial law imposed by the general. Few, but some, have been fooled.

The difference between the present constitutional deviation and those of 1977 and 1999 is that the general in charge on those occasions was able to retain control over the military apparatus till after the general elections. This control enabled General Zia in 1985 and General Musharraf in 2002 to effectively coerce the elected parliament into ratifying actions taken during the period of martial rule. On both the occasions the 'lifting' of martial law, in the sense of moving the troops back into the barracks, was made contingent on parliament amending the Constitution so as to recognize as constitutionally valid the constitutional subversions of 1977 and 1999. On both occasions neither the internal nor the international environment posed any serious threat to the general concerned continuing with military rule in the event of parliament not granting the desired ratification and immunity. Not so this time.

In both 1985 and 2002 the elected parliaments were the result of much pre-poll engineering by the junta in control. In 1985 political parties were not allowed to contest and the Pakistan Peoples Party and its entire leadership had stayed away from the electoral exercise. In 2002, both Benazir Bhutto and Nawaz Sharif were in exile. This time Bhutto's presence in Pakistan free of the shackles of a deal designed to sustain General Musharraf has raised the prospect of a confrontation that the general cannot win.

General Musharraf's game plan so far has been to procure an order from the self-styled Supreme Court, cobbled together by him since 3 November, permitting the declaration of the result of the presidential election of 5 October. He would then announce his retirement from the army and proceed to make oath for the office of the president of Pakistan. General Kiyani would take over as army chief. The so-called state of emergency declared on Nov. 3 would continue, despite international pressure, while general elections will be held on 9 January 2008. Herein lies the rub.

Once general elections are held and a parliament formed comprising of a political leadership with strong roots in the people where would the pressure to recognize as legitimate the actions taken under the garb of the so-called emergency come from? By then General Musharraf would have lost, Article 58(2)(b) notwithstanding, the personal ability to hold a gun to the heads of the just elected lawmakers. Will General Kiyani then be in a position to announce that unless parliament ratifies, through a constitutional amendment, Musharraf's actions since November 3 he would send in the tanks? Would Pakistan's international handlers, in particular the US, who have kept Musharraf afloat thus far merely look the other way as the streets singe with rage? This is beyond the realm of sane contemplation. By standing their ground the People's Party and the PML-N leadership could block any proposed constitutional amendment.

The so-called emergency of November 3 is a nullity in the eyes of the Constitution and hence there is no legal need for it to be formally lifted. On the contrary it is the hapless author of the so-called emergency who needs ratification by the elected parliament in order to clothe the Proclamation of November 3 with legal authority. The parliament that comes into being after the general elections could simply choose to ignore that proclamation or, better, pass a declaratory act expressly pronouncing the so-called emergency a constitutional violation.

In the absence of a ratifying constitutional amendment orders passed by the judges who have taken oath under the PCO, including any validation made of the so-called Emergency and General Musharraf's election as President on October 5, will crumble for want of legitimacy.

Some will try and argue that a parliament elected pursuant to the proclamation of November 3 must ratify all actions pursuant to the so-called Emergency in order to endow itself with legitimacy. This is entirely fallacious. Elections will be held on January 9 in terms of the election laws, such as the representation of People's Act of 1976, that were already in place prior to the proclamation of November 3 and parliament will, unless foolishly thwarted by the establishment, be elected by the will of the people. General Musharraf's unconstitutional action is an illegal intervention that has dire legal consequences for him and his collaborators but not for the real constitutional order of the state.

Once the elected parliament has refused to ratify the so-called emergency there will be nothing to prevent it from passing an act directing all state authorities to facilitate the exercise of constitutional power by all judges of the superior judiciary who were put under illegal physical restraint on November 3, and barring those who proceeded to violate their constitutional oath by making an oath under the PCO. If defied by the authorities, the enforcement of the act passed by parliament will be in the hands of the people.

The future of Pakistan lies in the hands of an independent judiciary, supported by a consensus on democracy and personal freedom among the political parties and ordinary members of civil society. Also needed is an army obedient to the Constitution devoted to doing its duty to Pakistan under the direction of elected civilian authorities.

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