

The NRO and after

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By unanimously declaring it ultra vires of the Constitution, the Apex Court has finally buried for good the infamous corruption-laundering law, the NRO. Although the presidency has claimed immunity from persecution under Article 248 of the Constitution as its moral high ground, if there was any in the first place, it has been inexorably damaged.

Whether President Zardari can be prosecuted on the basis of corruption cases, as they existed before the NRO, is now open to legal interpretation. The court, by ordering the government to peruse money-laundering cases against him, has further eroded his position to remain in office. Similarly, the MQM will have to face the music in criminal cases that were closed under the controversial Ordinance. A Pandora's Box has been opened, which has grave implications for the government in days to come.

The detailed judgment of the court is bound to open the door for future litigants to challenge the eligibility of the president to remain in office. According to legal experts, cases against at least 37 who benefited from the NRO and are now part of the government will be reinstated. The honourable thing for them would be to resign their posts and clear their names in the courts.

It is generally acknowledged that the government legal team put up a very weak and haphazard case in front of the 17-members full bench. Its attorney general cut a sorry figure in front of the court, whereas the court in its short judgment has censured the maverick former attorney general, Malik Quyyum, and has ordered action against him. But the mea culpa was the stunning statement by its lawyer, Kamal Afzar, before the Supreme Court that the GHQ and the American CIA's involvement could derail democracy in Pakistan.

Mr Afzar, a senior politician and a barrister of considerable standing, is surely well aware of the implications of remarks made in front of the full bench of the highest court of the country. Despite his saying that the GHQ has been a bad boy in the past and that Kayani is a gentleman, his remarks inexorably damaged the already weak case of the government. Expressing his apprehensions about the democratic system Mr Afzar unwittingly exposed the fragile nature of relations between the military and the civilian set up and the US role in influencing events in Pakistan.

Admittedly, Mr Zardari and the military top brass have not had a smooth sailing. The first indications of fault lines in the relationship emerged when in March of this year the Presidency was forced to restore Chief Justice Iftikhar Chaudhry on

the intervention of Chief of the Army Staff Gen Ashfaq Pervez Kayani in the wake of the long march call given by the Nawaz Sharif-led opposition.

Later in the year, the corps commanders, taking the unusual step of issuing a statement voicing deep concerns over certain aspects of the Kerry Lugar Bill, especially those relating to civilian control over the Armed Forces and Pakistan's nuclear programme, did not auger well for harmonious civilian military relations. Although Gen Kayani has very cosy relations both with US Centcom chief Gen David Petraeus and America's top military officer, Admiral Mike Mullen, who are his frequent guests at the GHQ, the military is not very comfortable with the closeness between the civilian government and the US administration.

Perhaps the top brass feels that its basic strategic precepts are not fully shared by Mr Zardari and even the leader of the opposition, Mian Nawaz Sharif, both of whom initially were all too keen to have friendly relations with India, even at the cost of putting Kashmir on the backburner. On the other hand, the Army, to this date, feels that despite the successful operations in Swat and South Waziristan and the spate of terrorism plaguing the whole nation, India remains Pakistan's major strategic concern, whereas the Afghan Taliban in post-US Afghanistan are future allies and a strategic reality.

This was all relevant before the Mumbai carnage November last year. Since then New Delhi has been consistently refusing to open a meaningful, structured dialogue with Islamabad on the pretext that Pakistan has failed to nail the perpetrators of the attack whom it alleges were sent by the ISI. Since then, enthusiasm for India has waned considerably. Recent statements by the prime minister, the foreign minister and, not least, by the president espousing the Kashmir cause bear testimony to this shift in emphasis.

Poor governance and lack of transparency in running the affairs of the government are also another bone of contention. When a top sleuth of the ISI gave a list of patently corrupt ministers, after initial willingness to sack them, Mr Zardari had a change of mind. After the failure of the government to get the NRO approved by the parliament sacking of ministers was no longer a workable option. Although only recently Prime Minister Gilani ruled out a reshuffle, most of the controversial ministers have been politely shifted in the name of austerity and efficiency.

Does this mean that the Army or the ubiquitous establishment is out to get the president, come what may? And, more importantly, is it in a position to do so? The chief justice has already observed that the court was there to guard democracy and the rule of law and that he felt hurt when aspersions are cast upon what the judiciary has struggled for.

Despite these sanguine remarks courts have never been able to thwart a coup d'etat, of which have been aplenty in the country's chequered political history.

Without exception, coups in Pakistan, including the last one by Musharraf, have been legitimised and sanctified on one pretext or the other by the Apex Court. There is no reason to believe that Pakistan is ripe for another extra-constitutional change. However, there are dangers looming on the horizon that should be realised and guarded against by all and sundry.

Although Pakistan has a free and vibrant media, independent courts and an elected parliament, it is not an easily governable state, not least for the army. It has a fractured polity with relations amongst the provinces at the lowest ebb. There is a medium-level insurgency and aspirations for independence in Balochistan, notwithstanding the so-called Balochistan Package and the recent historic NFC Award. Prolonged and persistent military rules have left deep scars on our body politic.

Gen David Petraeus says that he is positive that the Pakistan military does not nurture any notion to destabilise President Asif Zardari and that he has been assured by Gen Kayani that the army is committed to a democratic civilian government, and there is no reason to doubt these assurances. The army, increasingly embroiled against the Taliban within Pakistan, is in no position to govern, nor is Gen Kayani a general in the takeover mode.

Judging by our history, how tenuous is the military-civilian equation, or rather lack of it, can be judged from a recently released book, *The Clinton Tapes*, which deals with President Clinton's years in the White House. Prime Minister Nawaz Sharif invited himself on July 4, 1999, to the White House to seek his help to extricate Pakistan from the Kargil debacle, without incurring the wrath of Musharraf. According to Clinton, "for him (Sharif) as the elected defender of Pakistan's fragile democracy, surrender has been worse than war. In the extreme, he faced a choice between ordering a nuclear attack as a patriot or being overthrown as a traitor by Musharraf."

Musharraf finally overthrew Sharif on Oct 12, 1999. Clinton writes, "when Sharif defused the nuclear brinkmanship in Kashmir, he lost his job, his constitution and perhaps his life." When Clinton visited Islamabad in March 2000, on the top of his agenda was to implore Musharraf to spare Nawaz's life. The book narrates: "Early in April days after Clinton's departure, Pakistani courts sentenced the deposed prime minister to life imprisonment, rather than the gallows."

Assurances by American leaders about democracy can only be taken with a pinch of salt. Shahbaz Sharif's dash to Washington in August 1999 could not save his brother. Nor can the present government depend upon US backing for survival. The strength for survival has to come from within by strengthening democracy and its institutions.

What stops President Zardari from taking the moral high ground to return the sovereignty to the parliament by scrapping the 17th Amendment and defend

charges against him, instead of taking refuge behind presidential immunity? Hopefully the politicians realise the historic responsibility upon their shoulders to save the incipient democratic from their own shenanigans.

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