The Business

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Rule of law or force?

BABAR SATTAR

Our reactions to events establish that we have lost our balance as a people. Let's start with the Special Court's order in the Musharraf case.

To put it politely, Para 66 of the presiding judge's opinion is a self-goal. To hold that a convict's corpse ought to be punished if he evades punishment in life isn't backed by law or reason. It is offensive to our legal and cultural sensibilities and renders the judge vulnerable to the allegation of having dispensed vengeance not justice. Why would a judge open himself to such criticism at the end of a fairly reasoned opinion is a wonder. Was the judge inspired by what the Britons did to Cromwell a few centuries ago? But back then folks used to burn witches too. The judge might have thought that the verdict is merely academic as the convict won't return to Pakistan alive and this addition might embellish the principle that to revolt against the supreme law is the highest crime. Para 66 has instead created sympathy for Musharraf, diverted attention from Justice Seth's otherwise reasoned opinion (and Justice Shahid Karim's lucid opinion) and subjected the judiciary to scathing attacks.

The singular focus of the critics of the judgement on Para 66 tells a story of its own. It is no secret that Para 66 is the opinion of one judge, and doesn't form part of the Special Court's order as neither of the other two judges concurred with it. As a legal matter, one part of a judge's opinion on sentencing doesn't undo his reasoning for returning a guilty verdict. Knowing full well that Para 66 is inoperative, using it as a tool to beat up the judge and the judiciary smacks of mala-fide intent.

It has been claimed that injustice has been meted out to Musharraf. But facts paint a different picture. Did those who were loath to Musharraf being tried for high treason in the first place suspect denial of justice even before the trial began? When Musharraf was on his way to court in January 2014 to be indicted, his cavalcade was diverted to a military hospital instead. After indictment a few months later, Gen Raheel Sharif visited the SSG headquarters to affirm support to Musharraf and express resolve to protect the army's honour. Musharraf didn't stay in jail for a single day. His farmhouse became sub jail. He was exempted from appearing in court. He was then allowed to leave Pakistan, which he claimed in an interview to have been managed by Gen Raheel Sharif. He refused to return to face justice, on health grounds, while being seen in photos dancing abroad and playing golf and attending cricket games etc. The Special Court ordered that the fugitive's passport be cancelled. But the then CJ Saqib Nisar intervened and ordered that it be restored to help him return to Pakistan. The Special Court and the Supreme Court literally beseeched him to return to complete the treason trial. But he refused on grounds of health or security. When the Special Court offered to send a commission to record his Section 342 statement, he refused. When offered to record his statement through Skype, he refused. He insisted he'd record it in person, but just wouldn't say when.

Musharraf got in trouble with the breach of the one-coup-per-dictator rule. The practice was to use PCO judges to get a coup validated early on and allow return of democracy upon the condition that parliament would grant immunity to previous subversive acts. Zia created the model and Musharraf followed it post-1999. It is when he tried his luck again in 2007, declared emergency as army chief, issued a Provisional Constitution Order and disbanded and detained judges, that he courted trouble. The desire then across the institutional board was to see him gone.

Those who now wish to argue whether Musharraf should have been found guilty for subversion of the constitution should read his declarations from Nov 3, 2007 onward, and refresh their memories of the events of the time. If Musharraf were to be acquitted on the charge of subversion that we all witnessed, we might as well pack up our justice system for its inability to see what is in plain sight. An event transpired in 2007. The trial began in 2013. Musharraf was indicted in March 2014. Evidence was recorded in his presence in 2014. He was afforded countless opportunities to confront the evidence and record his Section 342 statement, which he didn't avail. He left the country in 2016 and then became a fugitive refusing to return. A lot was done to scuttle the trial, with a number of rounds before high courts and matters going up and down to the SC. The decision finally came six long years after commencement of trial, and 12 years after the events under trial. Does this sound like a justice system acting in haste? Mustapha Impex requires the cabinet to make decisions for the federal government. But the decision to send the reference was made prior to Mustapha Impex and the SC has itself ruled that Mustapha Impex would apply prospectively. And then we have Musharraf's aiders and abettors (and past lawyers) crying hoarse at the injustice of aiders and abettors not having been tried and punished.

Under the High Treason Act, only the federal government can charge someone for treason. The federal government never charged anyone other than Musharraf. The SC clarified this in 2016 and left it for the federal government to add anyone it wished to prosecute. The PTI government that has sprung into action to defend Musharraf could have introduced aiders and abettors to the trial as accused over the last year. It didn't. The PTI government could have withdrawn the reference altogether to first investigate aiders and abettors. It didn't.

The PTI regime's too-clever-by-half legal team know that appeal is a continuation of trial and all objections regarding fairness of trial or conviction or sentencing can be taken up in appeal. But the wish is to conduct a media trial as a precursor to the appeal to bring the judiciary under pressure and make a few examples. The reaction to Musharraf's conviction is a natural corollary of the tension between the de facto and de jure systems simultaneously in force in Pakistan. The contradictions are laid bare with the suggestion that a soldier who has fought wars can't be a traitor. But Article 6 says that anyone who subverts the constitution is a traitor. This raises the obvious question: what happens when the constitution is subverted by someone who has fought wars? Musharraf subverted the constitution twice as army chief: once in 1999, but these unconstitutional acts were validated by both parliament and judiciary, and then in 2007, which actions weren't validated and for which he has been convicted. Even Musharraf's ardent supporters can't deny that he mauled the constitution. He had himself admitted in a BBC interview after the November 3 Emergency (which he imposed as COAS, not president) that he did so. So the present debate isn't really about right and wrong according to the law.

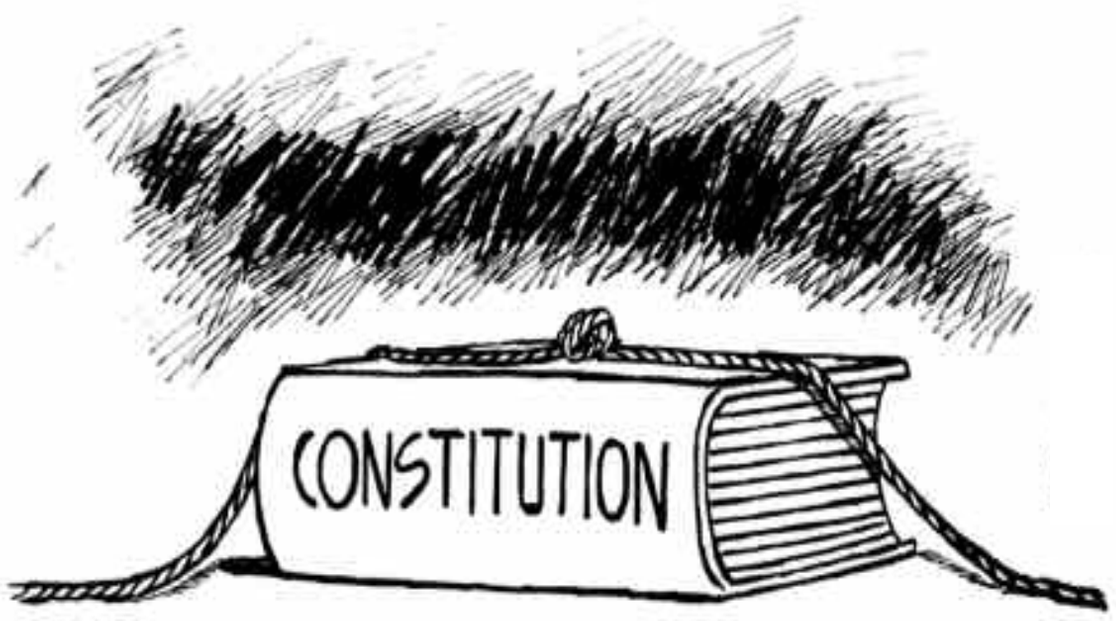
Should we amend Article 6 to hold that it applies only to civvies and that it is okay for the constitution to be subverted in supreme national interest every 10 years or so to set corrupt politicos right? Article 6 was introduced to deter adventurism by would-be dictators. It remained a dead letter of law and deterred neither Zia nor Musharraf. If Article 6 should never be used to punish a dictator if he has been army chief, so why keep it at all?

In a country ruled by a king, anyone rebelling against him is a mutineer. Within the military, a junior officer rebelling against a superior authority is a mutineer. Why then, in a state ruled by law, should anyone rebelling against the supreme law (the constitution) not be deemed a mutineer? After all, our constitution says anyone subverting the constitution is guilty of high treason. The Musharraf debate is really about entitlement to immunity against enforcement of the constitution that binds the rest of us. If the PTI regime feels we aren't ready to convict dictators just yet, let it take that position and grant Musharraf a presidential pardon. Using the accountability of a dictator to drum up hatred against the judiciary and the justice system doesn't serve Pakistan's interests.

Provincial surplus

The budgetary behaviour of the four provinces has a substantial impact on the overall fiscal position of the country. A consolidated surplus in their budgets could reduce the overall budget deficit of the country and vice versa. Mercifully, the FY20 has opened on a very positive note in this respect. Fiscal data released by the Finance Ministry indicates that the cumulative revenues available to the four provinces amounted to Rs 791 billion during the first quarter of FY20. The provincial development spending, therefore, remained less than nine percent of their available revenues. Province-wise, Punjab had a cash surplus of Rs 75.4 billion – almost 21 percent of its total revenues of about Rs 366 billion and its development spending at Rs 43 billion was less than 12 percent of its available resources. The KP government could spend only Rs 54.3 billion or about 38 percent of its available resources out of which Rs 8.4 billion or less than 6 percent was for development spending. Balochistan had a surplus of Rs 37.3 billion out of its total revenues of Rs 86 billion. In contrast, Sindh came out with the lowest surplus of Rs 35.3 billion accounting for less than 18 percent of its total cash resources and Rs 16 billion or eight percent of its resources were spent on development schemes.

Presently, the 7th NFC Award is in vogue in which the provincial share of the Divisible Pool was increased from 46.5 percent to 57.5 percent from 2011-12 onwards. The percentage share of Balochistan was determined at 9.09 percent, of KP at 14.62 percent, of Punjab at 51.74 percent and of Sindh at 24.55 percent. The multiple indicators and their respective weights were also revised on the new basis of population (82.0 percent), poverty or backwardness (10.3 percent), revenue collection or generation (5.0 percent) and inverse population density (2.7 percent). The 8th NFC Award was constituted on 21st July, 2010 but did not give any Award as the latest Award was just completed. The negative aspect of this fiscal development is that provincial governments are curtailing their development programmes. Their strategy, therefore, is causing a negative impact on employment creation, poverty level and living standards of the common people. In order to reduce this negative impact, the federal government as well as the provincial governments are required to mobilise higher levels of revenues which should be sufficient to meet both the current and development expenditure and also enable the country to remain within the parameters set by the IMF. Overall, it seems that at least the federal government is very much aware of the prevailing situation and also trying to persuade the provincial governments to join its efforts towards fiscal consolidation.



Legal challenges

M ZIAUDDIN

Attorney General for Pakistan Mansoor Ali Khan and Federal Law Minister Farogh Nasim have their work cut out for them. Indeed, the two would have to work overtime to extricate the government from the tight legal corner it is finding itself currently.

Let us take the Musharraf case first. It was first agitated in 2009 in front of a 17-member bench of the Supreme Court. The PML-N government joined the legal chase in 2014. Mansoor and Farogh were part of Musharraf's defence team. The PML-N prosecution team was led by Advocate Akram Sheikh.

After August 2018, Sheikh withdrew from the case pleading a conflict of interest and Mansoor and Farogh withdrew from Musharraf's defence team as the two had by then joined their respective offices in the PTI-led coalition government.

Still, as the government's top law officers and because of their earlier association with the case they were expected to keep their interest alive in it and monitor its progress closely. But it seems more pressing demands on their working hours kept them cut off from the case and as a result, they were taken by complete surprise on December 17, 2019, when the three-member bench of the special court headed by Justice Waqar Seth announced the guilty verdict against Musharraf, and two days later dealt a double whammy with paragraph 66 in the detailed judgment.

The two need to answer for what appears on the face of it to be their gross negligence. In fact, having defended Musharraf during the PML-N phase they should have known in what direction the case was proceeding and moved quickly to withdraw it instead of letting it continue.

One is not sure if by sending a reference against Justice Waqar Seth to the Supreme Judicial Council (SJC), as announced by the Law Minister on Thursday at a press conference, calling in question the Justice's state of mind and competence, would let the top two law officers off the hook. In fact, if one were to go by the current mood of the superior judiciary and the impeccable performance record of Justice Seth as the Chief Justice of Peshawar High Court, especially his rulings declaring secret internment cells maintained by the security agencies as illegal and overturning 74 death and life sentences passed by military courts, even the SJC is hardly likely to entertain a reference against him. The SJC perhaps would let him go back to his court after the very first hearing. But proceedings of the reference would once again create an unsavoury situation for the government which it would find politically too hot to handle.

The other case which is posing a serious challenge to the government concerns the question of the extension of General Qamar Javed Bajwa, the Chief of Army Staff (COAS). The government has to come up with the needed laws that would govern matters concerning appointment, tenure and extension rules, retirement age and even perhaps remuneration of the COAS, by May 2020. In case the government does not pass such a law by then, the current COAS would stand retired and a new one would be appointed. The question whether the needed laws could be passed with a simple majority or would a constitutional amendment need to be passed requiring a two-thirds majority is still being debated. And even if it could be done with a simple majority it would get stuck in the upper house for obvious reasons. That is perhaps why one is witnessing most high-profile opposition politicians in NAB's custody being bailed out in too much of a hurry. Perhaps behind the scenes negotiations are going on between the government and the opposition to strike a package deal. Political trade-offs of sorts, it appears, is in the offing. The package deal could include the appointment of the Chief Election Commissioner and the Commission's two provincial members. And for the same reason at the forthcoming meeting of the Council of Common Interest on December 23, the federal government is expected to be reasonably accommodative to the provinces' demands.

Let's talk diversity

STEPHEN CORRY

Could some of the most talked of solutions to climate chaos have the reverse effect and make things worse? Some critics think so, and they aren't "deniers" who think climate change isn't real.

The concept of "net zero" carbon emissions, for example, might actually help industry pollute, because one of the commonest ways to reach for it is through "carbon offsets." This means that if a corporation is responsible for a ton of carbon dioxide emissions — which is bad — but at the same time it funds a project which "captures" (or "sequesters") a ton of carbon — which is good — then the "net emissions" come to zero, as one is subtracted from, or "offset" against, the other. If the numbers could be accurately calculated (though that's impossible and offsets invariably exaggerate the amount of greenhouse gases absorbed or reduced), then the corporation could pollute as much as it liked because it would be funding someone else to do the equivalent "anti-polluting," and clean up its waste. It's like leaving a trail of litter as you walk and paying someone to sweep up a street somewhere else, usually on the other side of the world. The reality is complicated, but the simple truth is that the schemes routinely fail: The sweeper may be just pretending to clean, or even trying, but failing to cope with the mess.

The only reliable way currently known to "capture" significant carbon at a reasonable cost is to plant trees. But many offset projects sow fast-growing tree crops like eucalyptus and acacia, to make money. This actually increases rather than reduces carbon: Existing vegetation has to be cleared and the new plantations are more liable to fires, which spew out vast amounts of pollution. Many such crops will take decades before they start absorbing much carbon.

Equally damaging plantations, like oil palm and rubber which take over people's lands and destroy biodiversity, are passed off as environmentally friendly because the UN also defines them as "forest." Countries such as Madagascar and Indonesia claim to be increasing forest cover when they're actually clearing existing vegetation to sow these new plantations. Claiming such destruction is good for the environment would be comic if it weren't so tragic.

Another approach to offsetting is to get someone to agree not to cut timber which would otherwise be felled. This is supposed to avoid future emissions –though it's important to note that it doesn't actually reduce existing carbon at all. It's known in the jargon as REDD+ (Reducing Emissions from Deforestation and Degradation) and the "+" stands for the conservation of existing forests. Hundreds of such projects have been around for many years but with very scant results. One problem is that undertakings not to log are agreed by those who don't have the power, or perhaps even the intention, to stop it, and trees not felled one year can still be cut the next. Trying to bind communities into contracts lasting for generations is effectively impossible.

Overall, there are many reasons why offsetting is rarely what it pretends, and critics disparagingly call it, "payment to pollute." One study shows that almost all such projects — an astonishing 85 percent — simply fail. Nevertheless, in spite of the problems, offsetting remains a multibillion dollar industry, with lots of people capturing a lot of money for themselves rather than sequestering any significant atmospheric carbon.

Reducing carbon dioxide and other greenhouse gases — the thing needed to slow global warming – is a very different thing from supposedly reducing "net" emissions, but it would be a much more drastic step. It would entail cutting energy consumption, curtailing industrial growth, decreasing military activity — one of the biggest polluters of all but rarely mentioned by climate activists — and even using the energy-hungry internet less. One "artificial intelligence" training session, for example, burns about the same energy as five cars during their whole lifetimes, and even emails waste millions of tons of carbon (spam alone uses about the same as the entire population of San Francisco flying to New York every two weeks).

Genuinely reducing emissions would mean changing the overall direction of an industrialized society which has sought continual "growth" particularly over the last generation. It would also entail a massive erosion in the power of the oil industry which is so enmeshed with the world's major governments, and goes to great lengths to ensure leaders hostile to it are kept from high office. In spite of the criticisms around "net zero," it remains the stated goal of most climate activism — perhaps because "real zero" emissions are seen as unrealistic, and there's pressure to do something quickly. Calls for governments simply to "listen to scientists," or to "the public" at large, do not suggest concrete solutions, probably intentionally.

"Net zero" through offsetting is the wrong path, but could the current enthusiasm about a "green new deal" be just as bad? It's largely about job creation in new and supposedly "green" technologies, and it combines environmental concerns with the need to alleviate unemployment. The "green" part is largely focused on alternative, "clean" energy sources, such as solar and wind — the "renewables" — but there's a problem with them too: Production of the batteries they currently need to store their energy uses up yet more fossil fuel and wreaks yet more environmental damage. (Fuels such as oil or coal don't need batteries because the energy is already stored inside them.) Again, the thing which would guarantee to make a big and fast difference — a contraction of industry – forms no part of any proposed "deal."

An important criticism is that the green new deal is actually being encouraged by industry as a way to get more money diverted into stock market investments. This apparent trick begins with the 2008 financial crash when governments gave away huge amounts of ordinary people's money to inept and greedy banking corporations. The shock to stock markets prompted a tightening in financial regulations which resulted in more and more money being locked away inside the safest financial vehicles. This cash wasn't able to flow as easily to companies through investment in stocks and shares. That's bad for the elite because great wealth depends a lot now on stock market holdings and company buyouts.

Excerpted from: 'Diversity Rules Environment, OK?' Courtesy: Counterpunch.org