



Impeaching Musharraf Issues and Questions

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Since the first week of August, the main issue raging inside Pakistan is the decision taken by the two leading parties – PPP and PML-N to impeach the President – Pervez Musharraf, former Chief of Army Staff. It took more than five months since the February elections and numerous meetings and joint statements to reach this understanding. The week long debate so far inside Pakistan highlights the general expectation amongst the people - Musharraf should resign on his own.

Will he resign on his own, understanding the mood of the nation, as Pakistan celebrates its 61st independence day? Will he negotiate with the leading political parties and reach an understanding of his exit, perhaps at a later stage? What can the PPP and PML-N do, if Musharraf refuses to resign? Does the “go-Musharraf” lobby have sufficient numbers in the Parliament to impeach the President? More importantly, are there adequate reasons, constitutionally provided, to impeach the President that will withstand legal scrutiny in the judiciary, if Musharraf decided to go to the Court?

If the impeachment process succeeds, this will be the first time, an elected Parliament will be removing a President, who was earlier the Chief of Army Staff. What are the likely implications of such a move? How are the leading actors – the military, intelligence agencies and the opposition inside Pakistan and the US reacting and likely to react?.

I THE ROAD TO IMPEACHMENT

The decision to impeach the President is perhaps one of the toughest decisions that the PPP and

PML-N took, after the February elections. Asif Zardari and Nawaz Sharif in a meeting held during 5-7 August 2008 agreed that if the President refuses to resign, the Parliament will initiate the proceedings to impeach him. It was also agreed in the same meeting, that the deposed judges will be reinstated after the impeachment. Nawaz Sharif all along has been insisting the reinstatement first, followed by the impeachment.

This is not the first time that the PPP and PML-N agreed to make the vital decision on the President and restoring judiciary. There were at least two major agreements before; first one between Nawaz Sharif and Benazir Bhutto in London in May 2006 – referred rhetorically as the ‘Charter of Democracy’, and the second one between Zardari and Sharif after the 2008 elections, which has been referred to as the ‘Bhurban/Murree Agreement’. The Charter of Democracy was almost a blue print on how Pakistan should be governed and included many issues from strengthening judiciary, bringing the intelligence agencies under control, safeguarding nuclear weapons and conducting independent foreign policy. Unfortunately, the Charter became a joke, as much before the ink dried, the PPP was striking a secret deal with Musharraf.

According to the Bhurban/Murree understanding, “it was decided (between leaders of the PPP and PML-N) that the restoration of deposed judges as on November 2, 2007, shall be brought about through a parliamentary resolution to be passed in the National Assembly within 30 days of the formation of the federal government.” Unfortunately, after the Murree understanding, the PPP backtracked on restoring judges. While Sharif was adamant in restoring the judges first, followed by action against Musharraf, Zardari wanted to play safe.

It was even suspected that Zardari was in touch with the military establishment and Musharraf. To be fair to Zardari, he feared a backlash, if he moved too fast and too early. What if the President dissolve the Parliament and impose emergency, with support from Gen Kayani? This fear, perhaps forced Zardari to go slow on restoring the judiciary. Besides, unlike PML-N, PPP never took part seriously in the lawyers' movement. More than principle, there has been too much of populism and hypocrisy in Sharif's approach towards this issue. When Sharif realized Zardari's hesitation on this issue, after giving two deadlines, he asked the PML-N members to keep away from the cabinet.

Besides the pressure exerted by the PML-N, there was also a growing resentment within the PPP for adopting a go slow approach towards the President. A section led by Amin Fahim would like to adopt a cautious approach and not pursue an open confrontation with the President.

However, another section within the PPP, especially from Sindh is unhappy for sharing the power with the MQM and also on going slow on the twin issues of removing the President and reinstating the judges. This section fears that the populist approach adopted by the PML-N is

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impeach the President, followed by the reinstatement of the judges.

According to the joint statement, made after

three days of rigorous discussions between the two parties and consultations with their coalition partners, "the coalition has decided that it will immediately start the impeachment proceedings and the coalition leadership will present a charge-sheet against General Musharraf. It also resolved to restore all the deposed judges strictly in accordance with the Murree declaration immediately after the impeachment of the President."

II

IMPEACHMENT: ISSUES AND QUESTIONS

Clearly, going by popular sentiments, as expressed in numerous editorials and opinion articles in the media, the people of Pakistan expect the President to resign. Much before the two leaders met and decided in Murree in March 2008, the electoral victory of the PPP and PML-N was perceived as a direct victory vis-à-vis Musharraf; hence the people expected Musharraf would bow down to their wishes and resign. Musharraf has refused so far.

Will he leave on his own now, with the threat of impeachment looming? The following questions need to be looked into.

Does the Coalition have the required numbers in the Parliament?

Though the PML-N and PPP have made a huge political statement by making it public, their decision to impeach the President, do they have the required numbers in the Parliament? Though Zardari has stated publicly that they have the required number, it will not be that easy. Unless there are behind the scene manipulations, PPP and PML-N will not be able to impeach the President, with the current composition of the Parliament.

To impeach, the ruling coalition requires two-third majority in the Parliament, which is 295 votes, out of the total 442 (342 in the National Assembly plus 100 in the Senate). The ruling coalition as of now has 251 votes, while the opposition 88 votes. Besides the PPP and PML-N, ANP and JUI-F also agree to impeach the President. On the other side, PML-Q and MQM is against impeachment. Given this divide, the independent members of the Parliament, including those from the FATA play an important role in deciding the outcome. Besides, there is also a fear that a section of the

PPP under Amin Fahim may not vote in favour of the impeachment. Given the above basic issues regarding the number, getting the necessary 295 votes will not be that easy for the ruling coalition.

The decision to ask the provincial assemblies to pass a resolution asking Musharraf to seek for a confidence vote is not a constitutional requirement to impeach the President. This move seems to be more political – to pressurize Musharraf to resign, to create a political environment and also to find out whether the ruling coalition will be able to get extra support from outside. Once the four provincial assemblies pass such a resolution, then the issue will be debated in the Parliament and also in the streets. Thus, the idea of the ruling coalition seems to be aimed at creating a political and popular pressure forcing Musharraf to resign, along with pursuing the impeachment process in the Parliament.

Will the President use 58-2(b)?

Will the President use the option available under the Constitution to dismiss the National and Provincial Assemblies and impose emergency? Certainly, this is an option for Musharraf, but will depend on three issues. First, any attempt to dismiss the assemblies and impose emergency at this juncture will result in a huge national upheaval. Even the PML-Q, his own party is not in favour of the President using this option.

Second, the international community's perception towards Musharraf has changed now. The US, though will not state in public, would rather prefer Musharraf leave, than trying to hold power by dismissing the elected assemblies. Finally, any such dismissal would bring the military back into political scenario, which Gen Kayani may not be willing to pursue. Not now.

Given the above, it is unlikely that Musharraf will use the 58-2(b) option and dismiss the National and Provincial Assemblies.

Will the Military intervene?

More than the fear of 58-2(b), it is the question of military's reaction that has made Zardari to go slow on impeaching the President. Though he has made repeated statements that the military and the ISI want to see a truly democratic Pakistan, this

question remains the most important. True, Gen Kayani kept the military and the intelligence forces away from the elections and gave a clear instruction to the military and intelligence officials not to engage in a political maneuverings.

Kayani's support is not only important for the political parties, but also for the President, if he decides to dissolve the Parliament and provincial assemblies. How will Gen Kayani see this impeachment process? Will he see it as Parliament attempting to impeach the President, who is a former Chief of Army Staff, as a sign of civilian supremacy, affecting the balance of the Troika? Or will he like to remain neutral and force the Parliament and President reach an understanding?

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The general belief now in Pakistan is, Gen Kayani is highly professional and would like to keep the military away from politicking. Besides, he is aware that the popular mood in the country today is in favour of restoring democracy and strengthening the democratic institutions. Any negative role by the military will only make it even more unpopular.

Will the US standby Musharraf this time?

If the political establishment is serious about impeachment and if the military has no major opposition to it, then the US would also like to go along. For long, there has been a public debate in the US on Musharraf - as a liability than an asset. Even many moderates inside Pakistan has been questioning the American policy of supporting Musharraf and criticized the Bush for not allowing the democratic process to take its course.

Today, the US no more considers Musharraf in terms of "there is no alternative". To put it crudely, Musharraf is no more indispensable for the US. While, one is not sure whether the Americans

believe in the present ruling coalition to deliver or not, certainly they don't see Musharraf as the only option. At last, there seems to be a Plan-B for the US in Pakistan, or at least willing to think beyond Plan-A.

But the US would like to have a stable changeover and not a dramatic one. If not already told Musharraf, they will convey the same subsequently. And in that message will be the hint, that 58-2(b) is not acceptable to them.

Will the Judiciary approve impeachment?

What role will the judiciary play, if the President decides to refer to the Supreme Court, if the Parliament succeeds in getting the required numbers? Two issues will play important in the Supreme Court. First, whether the decision to impeach the President is in accordance with the spirit of the Constitution and second, whether the judiciary minus those who have been sacked, would like to see Musharraf go.

Musharraf has been accused of failure of his policies including inflation, shortage in flour, increase in prices of oil, power shortage, tampering with the constitution, undermining the federation and the failure to address the problems in FATA. However, the constitution, Article 47(1), stipulates that the President can be impeached only on the following three grounds: mental or physical disability, violation of the constitution and serious misconduct.

Will the above charges against Musharraf, mentioned by the ruling coalition amount to, what is being prescribed by the constitution as reasons for impeachment? Musharraf's side could argue, the 1999 coup has been validated by the Supreme Court and the Parliament later. Even the November 2007 emergency was validated by the SC. Perhaps, this is why Zardari has decided to charge the President, recently, for siphoning millions from the US war on terror fund. Legally, the arguments and counter arguments will create a huge and endless debate.

III CONCLUSIONS

If the impeachment process gets underway, it will witness massive horse trading within the Parliament, by every group followed by ugly accusations and counter accusations. Pakistan

cannot afford to witness such instability, especially when the violence in FATA is increasing every day. Inflation has touched the double digits; increased oil prices and power shortage are two other major issues which need the attention of the ruling coalition. The impeachment process should not undermine the government's efforts to tackle other serious issues. In fact, some have already commented that the impeachment strategy is to divert the attention of people from real issues.

Whether the Parliament has the required number to impeach or not, Musharraf should understand the mood of the nation. The easier option, which will save Pakistan from further instability, will be for the President to resign on his own. The February elections are clearly a vote against him. When compared it with the massive popular support he had in 1999, his popularity is so low, that some even want to hang him today! He would do a huge favour for himself and the country, if he resigns.. He could reach an understanding with the ruling coalition and have a safe exit. Though the PML-N in principle is against providing any safe passage, PPP should be able to reach an understanding both with Sharif and Musharraf, enabling the President to leave on his own.

Finally, the impeachment debate has relegated the restoration of judges' issue into background. The lawyers are upset with this latest development and consider the restoration of judiciary more important than the impeachment. The argument is, if the judges are reinstated and the judiciary restored to pre-November 2007 position along with making Iftikhar Chaudhary as the Chief Justice of the Supreme Court, the apex court will automatically slash the re-election of Musharraf as the President as void. In that case, there is no need for the impeachment process in the Parliament.

This entire drama, leading to political instability can be avoided, if Musharraf decides to do what he always says: Pakistan First. Will he?



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