

ISAS Brief

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Musharraf's Future – Legality versus Legitimacy

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On 28 September 2007, the Pakistan Supreme Court gave embattled President Pervez Musharraf a glimmer of hope when it dismissed, by a six to three majority, petitions by opposition members attempting to prevent Musharraf from continuing his reign of power. The court did not give reasons for its decisions, with the majority simply stating that the petitions were not maintainable under the law. The minority in the Supreme Court held that the petitions were maintainable under Art 184(3) of the Constitution on the basis that they involved matters of public interest and affected protected Fundamental Rights. The pro-Musharraf group views this as a vindication of Musharraf's campaign while the opposition claims the ruling was merely on technical grounds and has vowed to press ahead with further challenges in the days ahead.

The key legal issues that remain contentious are whether Musharraf can simultaneously hold the positions of President and Chief of the Army Staff and whether the upcoming elections are legal. Rightly or wrongly, many had hoped that the Supreme Court, which had in recent weeks delivered several judgments against Musharraf, would have stood against the government. That the court did not do so is not entirely unexpected. First and foremost, the role of a court is to impartially apply the law and not engage in politics. That it decided the case on technical grounds may well be appropriate. Unfortunately, its failure to give any reasons for its decision, given the enormity of what is at stake, gives rise to speculation as to why the majority decided as it did. Was it self interest in that the court did not wish to unnecessarily up the ante in the already tense relationship with the government? Or was it pragmatism in that the court did not want to trigger a possible declaration of martial law if Musharraf were to be disqualified from contesting?

The Supreme Court's decision is no doubt a victory for Musharraf but the Army Chief must clearly be aware that, while this battle may have been won, the war is far from over. The Court has not dealt with the substantive legal problems surrounding Musharraf's presidency and election campaign, and more challenges are in the pipeline. The other two presidential candidates, Makhdoom Amin Fahim and Justice (Retd) Wajihuddin Ahmad, are set to challenge the Election Commission's decision to accept General Musharraf's nomination papers for the presidential election. There is the possibility also that the Supreme Court may

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be asked to stay the 6 October 2007 elections, pending the resolution of these new petitions. Regardless of the outcome, Musharraf's credibility has suffered another body blow and, while he may survive the challenges based on strict issues of legality, he may well lose the battle on the legitimacy front.

The ruling of the Supreme Court, coupled with the acceptance of President Musharraf's nomination by the Election Commission, triggered widespread protests, particularly among the legal community. The protests turned violent the day after the decision when police used force against protesting lawyers and some journalists gathered in Islamabad outside the Supreme Court. This incident has further shown up the government – and Musharraf – as unnecessarily harsh in clamping down heavily on popular opinion and infringing on individual rights and liberties.

Musharraf is being increasingly alienated from most sections of the Pakistani society. His earlier action in storming the Lal Masjid in July 2007 as well as his support for the United States in the war on terror has angered the more conservative, Islamic elements, while the dismissal of Chief Justice Iftikhar Chaudhry in March 2007 provoked the secular and liberals elements into open defiance against Musharraf. Pakistan's key external supporter, the United States, is also showing signs of impatience with Musharraf's lack of progress on the war on terror and must surely be concerned if Musharraf continues to lose ground; in which case, the United States may, at some point, be forced to reconsider whether Musharraf is indeed its best bet.

Musharraf's bid for re-election is further complicated by the fact that opposition parties are beginning to smell blood and have intensified their efforts at ousting Musharraf. The All Parties Democratic Movement has announced that all its legislators will resign en bloc from the national and provincial assemblies to try and frustrate Musharraf's attempt to seek another five-year term as president. Musharraf could, in all probability, garner sufficient votes from loyalists, including the Pakistan Muslim League (Q) [PML (Q)] and the Muttahida Qaumi Movement, who constitute a majority in the present Electoral College (made up of members of the national and provincial assemblies). However, the resignations of opposition parties will raise questions of legitimacy of any such election and further weaken the standing of Musharraf, both domestically and internationally.

The current Parliament's term ends on the 15 October 2007 and Musharraf is desperate to force through his re-election as president before the end of this term, as his loyalists presently constitute a majority. That he is willing to be elected by an outgoing Parliament, constituted largely by his own loyalists, shows his lack of appreciation of the spirit of democracy. Musharraf has given an assurance to the Supreme Court that he will surrender his uniform if he is re-elected as President by the current assemblies on 6 October 2007. Clearly, he wants to have his cake and eat it too. If he wins, he becomes President; if he loses, he remains the Army Chief. This move also highlights the extent to which Musharraf has his back to the wall – that he is willing to trade his cherished uniform in order to hang on to the presidency.

Apart from agreeing to compromise on his position on his uniform, Musharraf has had to deal with his principal political foes, namely Benazir Bhutto and Nawaz Sharif. Musharraf had reportedly attempted to strike a deal with Benazir Bhutto and had fended off Nawaz Sharif's attempted return to politics. The deal with Bhutto would have had the blessings of the United States but has, apparently, fallen apart due to various factors, not least of which was the fear amongst many within Musharraf's own party, PML (Q), of the dangers of sharing power with

the Pakistan Peoples Party, an established and popular democratic party. The Supreme Court's ruling in favour of Nawaz Sharif was another blow to General Musharraf. Even though Nawaz Sharif was deported back, his brief return to Pakistan scored him some political points and highlighted the fact that, despite being in exile, Sharif remains a force to be reckoned with.

Musharraf will clearly have to pull out every trick in his bag to fight for his presidency. However, with the legality of his presidency in doubt and his legitimacy diving, he may, at some point, have to look in the mirror and ask whether he is fighting for Pakistan or for himself.

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