

REFERENDUM AND RESTORATION OF DEMOCRACY (PART-I)

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PROF. KHURSHID AHMAD



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By Professor Khurshid Ahmad

General Pervez Musharraf has at last taken the slippery slope that was being feared for quite some time. Despite tall claims and platitudes of selflessness, honesty, disdain for power, refrain from the paths of General Ayub, General Yahya and General Zia, and aversion to the ways of past politicians – he is bent upon doing what every self-appointed power-seeker does to consolidate and perpetuate his own rule. He first removed Mr. Rafiq Tarar as President and declared himself the President in the ‘national interest’, extended his own service tenure for an indefinite period as the Chief of the Army Staff, and then took a U-turn from his own roadmap for the restoration of democracy by making an announcement on 15th April for referendum. He ridiculed General Zia, called his occupation of the Presidency under the garb of the questions of his 1984 referendum as ridiculous and farcical, but then readied himself to follow in his footsteps and arrange for his own Presidency for five years. Quite haughtily, he declared that he had won the referendum even before it being held. He sees rivers of love and ‘like-mindedness’ in the eyes of those people who are kept at a distance of some 100 meters from him in his ‘public’ meetings. His conceit does not stop here: He has even declared that he has no intention of leaving the Presidency even if the result of the referendum does not turn out to be in his favor.

Apparently, the referendum is being held for ‘continuation of policies’ for which Pervez Musharraf is presenting his presidency as an inevitable necessity. To us, such a mentality is the cause of all rot and decay. Continuation is good only when it is a continuation of good, truth and justice. Even this continuation does not depend on individuals; rather it can be realized only through institutions, viable framework and rigorous process. The very basic difference between democracy and dictatorship is that democracy envisages continuation of policies through constitution, law and institutions while dictatorship seeks perpetuation of a despot or the ruling clique. In dictatorship, stability depends on an individual; in democracy, determination of duration of tenure not only for political leadership but for high administrative and military positions as well makes the ‘continuation’ subject to institutions and process, not individuals. When the French Premier under whom France had emerged victorious in the First World War was told that he was inevitable for France, he conveyed the spirit of democracy and an important lesson of history by saying that graveyard is full of such inevitable. The tragedy with Pakistan is that whoever came to power with military power or popular support tried to link continuation of policies and stability with his own self. It is self-perpetuation and self-aggrandizement that are at the root of the rot. Resultantly, institutions could not be strengthened and all the seemingly fortified forts came to ground the moment the individual who had made them left the scene.

Whatever might have been the contingency plans, Pervez Musharraf’s rule owes itself to a mere coincidence. After assuming power, he authored an agenda and laid out a seven-point program that he uses for prolonging his rule. But the nation had accepted his rule only because of the

background in which he had come to power, and had been demanding for across-the-board accountability and elections without delay from the very first day. It was only because of this background that the Supreme Court gave him a limited and well-defined reprieve for three years and mandated him to clear up the mess and hold elections. This gave his rule a 'conditional legitimacy'.

By removing Mr. Rafiq Tarar, Pervez Musharraf committed the first major violation of this mandate and started the process of destroying whatever legitimacy he had. Now, after confirming himself in the office and giving a schedule for elections (which said nothing about referendum), he has taken the course of referendum and securing five-year term for himself. By these antics, he has set in motion a dangerous game of destroying the body politic of the country.

To do all this, he got the nerve from another coincidence: the events of Sept. 11, 2001. Having allied himself with America, in the face of its warning, and becoming its associate and collaborator in its global agenda, he set out on a new course of 'reform' of his own nation and country. He started talking about new agenda and reconstruction of the political system of the country!

It needs to be understood quite clearly that the question is not about ascertaining public opinion on some important national issue; it is about changing and distorting the system on which our independence, sovereignty, democracy and Islamic character all depend. The real issue is: If an individual can arrogate authority to change the constitution, law and system of governance? Can a nation accept that the one who was entrusted with the task of protecting the borders of the country but who comes to rule it? Can an action of an individual or a group that is in violation of the constitution and the historical role of the country be tolerated just because he happens to occupy the seat of power? and because some foreign powers in general and the sole super-power in particular have made him an ally for their own respective interests?

These are some of the questions that need to be attended to and pondered over with cool mind – though they may pertain to any political party or opinion or about any sphere of life, civil or military.

The foremost point is: what is the need for this step? If restoration of democracy and transfer of power to the new leadership is the real aim, then holding of transparent elections is the only constitutional and viable way of realizing this goal. This is what the Supreme Court has ordered for and whose modus-operandi and procedure are clearly laid out in the constitution. Whoever wants to have a role in politics has a right and opportunity to participate in the process according to the constitution. Any course outside the constitution or in its negation amounts to the murder of democracy and can never be given a certificate of legitimacy. The deadline for elections is clear, resort to back-door tactics for assumption of presidency just a few months ahead of elections is dishonest and high-handedness with the nation.

The second point is that Article 41 of the constitution spells out a clear procedure for presidential election. This article clearly defines the Electoral College, process and qualities for presidential candidates. Whereas the Article about referendum has nothing to do with presidential election, it is about ascertaining public opinion on national issues. This is why it is dealt in Article 48 that is about president's powers and cannot be used for election purposes under the constitution.

It is said that there is precedence for holding referendum for election purposes. General Zia-ul-Haq used referendum in 1984 as a means for his election and Zulfikar Ali Bhutto had planned to opt the course of referendum for prime minister's election in 1977. But, both the precedents are wrong and irrelevant. It is right that General Zia had invented a trick, but he and the Parliament that came in the wake of general elections in 1985 both had to realize that mere referendum could not establish his as president. This is the reason why clause 7 was appended to Article 41 just to give constitutional and legal position to Zia's presidency. This is an acknowledgment of the fact that referendum under Article 48(6) cannot provide for presidential election, and that its use for the purpose was wrong. As for Bhutto's plan, the question was not about election; it was about sort of vote of confidence by the prime minister. This is why it was introduced as Article 96(A) of the constitution in the form of the 7th Amendment. Articles 95 and 96 are about no-confidence against prime minister and the 7th Amendment was intended for only four months and once-use in the backdrop of the PNA (Pakistan National Alliance) movement. But the Opposition did not accept it and it could not be acted upon: it became ineffective after four months. Even this amendment clearly said that vote of confidence would base on the list of voters and prime minister would be dismissed if majority voted against him. Compare this with what Pervez Musharraf' referendum: there are no lists of voters and there is no question of his resign or abrogation of office he somehow occupies even if he loses!

It is said that the parties that are now opposing referendum had not opposed Zia's referendum and their policy is, therefore, contradictory. This view is superficial and untenable because of the huge difference in the situations of the two times. At Zia's time, the issue was not about presidential election but about ridding the country of martial law so that democratic process could be restarted. This is not the situation today. There is no martial law in the country but a constitutional government that is functioning under the constitution and the system of judicial review according to the decision of the Supreme Court. The Supreme Court decision orders for elections within three years and elections include election for Parliament, provincial assemblies and presidency. The two situations are, therefore, entirely different. Secondly, it should be kept in mind that though General Zia held referendum but the fate of his presidency hung on Article 41(6) and not on the referendum, once the constitution was restored. This highlighted the wrongfulness of the erroneous step of holding referendum for presidential election as well as rectified it. In other words, the amendment clearly established that referendum cannot be the means for presidential election. Thirdly, some mistake of an individual or group or cannot be a precedent. To repeat the

error after it has been manifestly established is to commit a bigger blunder, it rather amounts to dishonesty.

General Musharraf wants to replace the present system with a new tripartite one where power would be shared by president, prime minister and the army chief. This would have dangerous and far-reaching implications:

First, this would send the parliamentary system packing and give birth to a setup that would be above the parliament where army chief, who is appointed by the prime minister and is subordinate to civil administration under the constitution (Articles 243, 244, and 245), would share power with president and prime minister. There is an effort that prescribes that in addition to being the supreme commander of the armed forces, president would be de facto army chief as well, and that deputy chief of army staff would also be a member of the National Security Council. Under this system, the position of prime minister and parliament would be secondary and merely titular and the country's system would take the form of a democracy under permanent military control. This is a form of dictatorship, as was in the communist system in Soviet Russia or China and which was witnessed in Indonesia and Burma. To call it democracy, rather parliamentary democracy, would be a cruel irony and negation of reality. Such a change is impossible under the Supreme Court's mandate: the court has declared constitution an 'organic whole' and showed concern for the protection of the basic system and structure of constitution.

Second, the hallmark of this system would be that army would play a permanent role in politics and thus reduced to becoming a party (with partisan views on issues). This is harmful for all – the army, the country and the political system. Army's training is meant for specific jobs and even its highest officials are fit only for professional matters. They are not trained for running the political system. Their training, conduct and temper, and experiences are of quite different nature than the ones required for managing political affairs. This is why there is no country in the world that could see good governance and good army, let alone democracy, after its army arrogated to itself the responsibilities of political leadership. The countries of Latin America and Africa present a worst example of this fact. Even Pakistan and those Arab and Muslim countries present a telling lesson: where military intervened in political matters, neither the country could make progress, nor could the army preserve its professional character. Israel's tiny-but-professional army has repeatedly defeated the politicized-armies of the Arab world. This should serve as an eye-opener. From General Ayub to General Zia, the period is of 'lost years' for the country, politics and development of democracy.

Turkey's example is often cited in the debate on the role of military in politics. It is not a worth-emulating model. The role of the Turkish army in the country's history and particularly in the establishment of a republican state on the wreckage of the First World War is unique. Yet, Turkey's experience tells that army's permanent role even there has proved to be an obstacle in the development and progress of democracy. However, there is no room for serving army chief's

becoming president even in Turkey. Turkey's National Security Council experiment too cannot be declared useful, and in Pakistan's peculiar conditions it could only complicate the situation even further and pave way for military dictatorship. Irony is that Pervez Musharraf in one breath says two opposite things: that army should not get involved in politics, yet it should have a permanent role in politics. It is a manifestation of confused mind and convoluted thinking and craving for army a role that is neither better for the country nor for the army.

A perilous aspect of the referendum is that it is becoming a means of dividing the nation. General Pervez Musharraf is dividing the nation into two, drawing a line on earth and challenging the fence-sitters. He is not only doling out favor to those who are siding with him but also luring them with future prospects. State officials, functionaries, teachers, military and police are all used in open violation of rules.

Referendum is a constitutional matter. If the intention is to ascertain public opinion on some important national issue, rather than rallying support for an individual, then parliament should pass legislation for holding of referendum. This is what the constitution demands. The Election Commission has nothing to do with it. Since parliament has not enacted any such law, the Election Commission is wrongly used for the purpose. This is a worst form of deceit and dishonesty, which compelled Justice Tariq Mahmud to resign first from the Commission and then from his position as a Judge. The dishonesty that General Pervez Musharraf and his colleagues are committing is constitutionally criminal, and they should be taken to account in this regard. The way official machinery and state's resources and media are being used along with the self-serving use of the system of local governments is a black chapter in our history. All platitudes and claims of cleaning the body politic from corruption and keeping administration from indulging in politics have evaporated. General Pervez says that mayors and councilors have pledged on oath that they would not indulge in politics and they would violate their oath if they did not cooperate in referendum on the demand of political parties. But, he forgets that by forcing them for his own election, he is himself forcing them to violate their oath. If election is not a political activity? If working for the president's party, rather all the parties that are siding with him, is not politics then how can refraining from referendum be termed as indulging in politics?

While General Pervez Musharraf is reminding to councilors their oath, does he himself remember that he had once taken oath as an army officer that read.

I do solemnly swear that I will bear true faith and allegiance to Pakistan and uphold the Constitution of Islamic Republic of Pakistan which embodies the will of the people, and that I will not engage myself in any political activities whatsoever and that I will honestly and faithfully serve Pakistan in the Pakistan Army as required by and under the law.

He claims to be a straightforward and truthful person, but he should see his picture in this mirror and find out what kind of picture the mirror shows.

The kind of referendum that the constitution provides for has two features. First is that it is about a national issue that can be answered in Yes or No. We can prove that such a question cannot be about a person's being able for presidency (that is, whether he is acceptable as president or not) because the constitution spells out a clear and specific procedure for presidential election. Presidential election cannot take place but through adopting this procedure. Then, there are certain conditions for candidates and it is the Election Commission that sees who fits the conditions and qualifies to stand in election. This is not a people's jurisdiction. Nobody can participate in election without screening. Then, it is necessary to arrange for a system where complaints could be submitted so that all people could discuss these conditions and their application. Moreover, a person can win election without contest only if there are no other contenders; otherwise contesting and winning all alone is mockery and violation of constitutional and legal framework.

In a referendum, the aim is to determine a stand on some important issue. An ambiguity about this referendum is that it asks five questions that cannot necessarily have the same answer. It is quite possible that a person holds one view about the local bodies system and another on the government's economic program, and yet another on what is being termed as sectarianism and extremism. There is quite of vagueness in each of the questions. How can such vague questions with multiple meanings be answered in Yes or No? Can one question be answered Yes, and the other No? If it is impossible, then it is against the commonsense. It is also a violation of the constitution because the constitution talks about an issue that can be answered in simple Yes or No; while you are posing five questions and trying to extract a result for president's confirmation just as the acrobat takes out a rabbit from under his cap!

(To be continued....)
