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At the completion of the term of the democratically-elected Government in 2008, this Monitor, even as it covers the period from October 2012 to March 2013 specifically, also analyses civil-military relations in Pakistan in the past 5 years.

### Treason Case against Gen. (Retd.) Musharraf

As the completion of 5 years of democratic rule in Pakistan and somewhat turbulent civil-military relations in Pakistan in the past years, the most significant aspect today is the treason case against our latest, and hopefully the last, military dictator Gen. Pervez Musharraf. He is the first and only one of Pakistan's former military dictators who has been summoned to Court to answer for his crimes against the Constitution of Pakistan.<sup>1</sup>

Mr. Musharraf seems to have provided this opportunity rather unwittingly by returning from his self-imposed exile just ahead of General Election. The former General appears to believe that he enjoys public popularity in Pakistan and hence hopes to win the election and rule the country once again, only this time through legitimate electoral means, and to be swept into power based on his perceived public support. Reality of public support to him, however, is evident to everyone in Pakistan except Gen. (Retd.) Musharraf. Considering how he is perceived in the public eye as responsible for so many crimes, it is only the maturity of the political system in Pakistan, as well as the political maturity of the public, that Mr. Musharraf has been able to return to Pakistan. This is certainly not the maturity Mr. Musharraf displayed when he was illegitimately at the helm of affairs and disallowed both late Ms. Bhutto and Mr. Sharif from returning to Pakistan for a long period.

An opportunity that due process of law can take place against a person who subverted the Constitution of Pakistan twice depicts yet another sign of maturity of Pakistan's political system. Pakistan will cross a psychological barrier once due process of law takes place against a former military dictator. This window of opportunity exists because neither the Parliament of Pakistan nor the Supreme Court have condoned the second subversion of the Constitution by General Pervez Musharraf on November 3, 2007. All previous subversions of the Constitution of Pakistan in 1958 (by General Muhammad Ayub Khan), 1969 (By General Yahya Khan), 1977 (By General Zia ul Haq) and 1999 (By General Pervez Musharraf) had been condoned by the Parliaments and the Supreme Court of Pakistan.

In 2010, Pakistan's Constitution, through the 18<sup>th</sup> Amendment, saw further strengthening of Article 6 that deals with high treason and says that: "Any person who abrogates or subverts or suspends or holds in abeyance, or attempts or conspires to abrogate or subvert or suspend or hold in abeyance, the Constitution by use of force or show of force or by any other unconstitutional means shall be guilty of high treason."

While countries with similar political history in the world have been able to initiate judicial proceedings against former military dictators, most such proceedings have remained at the trial stages and dictators such as Pinochet of Chile and Suharto of Indonesia departed this world on natural causes.

Mr. Musharraf's possible trial will not be without political turbulence. While Pakistan's military will certainly be uncomfortable with the trial proceedings, to say the least, the party that comes into power after the May 2013 General Election will have to tread very carefully on the issue. No leading party of Pakistan has taken a position on

*This Monitor of Civil-Military Relations covers the period of October 2012 to March 2013 analysing the key issues affecting Civil-Military relations in Pakistan during this period.*

*PILDAT wishes to acknowledge the support of Fredrich Ebert Stiftung (FES) Islamabad in producing this paper. The views expressed in this document, however, do not necessarily represent those of FES.*

*PILDAT and its staff have made their best efforts in ensuring the accuracy of the facts and events presented in this document. PILDAT, however, is not responsible for any error or omission as it is not deliberate.*

1. On April 10, 2013, a petition has been filed by the President of Rawalpindi chapter of the Lahore High Court Bar Association against the former dictator requesting the Court to direct the Federal Government to prosecute Musharraf under the High Treason Act 1973 for suspending the Constitution and imposing emergency rule in 2007.

the trial of Gen. Musharraf. PML-N, the party Gen. Musharraf ousted from power when he usurped power in 1999, has taken a rather cautious approach on democratic control of defence and civil-military relations in its latest manifesto, even though its perceived position, displayed by Mr. Sharif and his party since the ouster from power in 1999, is very clear in the public eye.

That the Court is ready to 'open the pandora's box'<sup>2</sup> through this trial is indeed an encouraging sign. Regardless of the turbulence, however, the trial has the potential to turn around the future of the country and close the doors on future military interventions.

### Party Pledges on Civil-Military Relations

Is establishing civilian authority on defence affairs on the radar of the key political parties? A look at the Election 2013 manifestoes of PML-N, PPP and PTI reveals that while some clear thinking exists in PML-N on this issue, the other two parties have largely relied on rhetoric on the subject.

In the PML-N manifesto, even though no specific section on 'Civil-Military Relations' has been created while outlining its policies on the issue in its 2013 manifesto, there is a greater articulation of its policies and pledges on the subject in the latest manifesto.<sup>3</sup> In comparison with its 2007 Manifesto, while PML-N has repeated its stance on instituting democratic control on defence and national security through setting up a decision-making body under the cabinet, i.e., the Cabinet Committee on Defence and National Security, it has taken a step further by pledging to resource the body with support from think tanks, a much-needed reform in this regard. Its key policy stance is its recognition to bring intelligences services under the ambit of parliamentary scrutiny. The party has also pledged to amend and make anti-terrorism laws more comprehensive.

The PPP, on the other hand, has mostly devoted its manifesto to showcase what it considers as its accomplishments in the past 5 years. The manifesto, therefore, does not carry many pledges. To the PPP's credit, it was for the first time in Pakistan's history since after 1965 that details of defence budget were presented in the Parliament. Standing Committees, where they wanted, received briefings on defence budget. Greater scrutiny of budget could have taken place, however, Parliament has remained largely stagnant on lack of effective powers and exercise of those powers in general budget scrutiny. In comparison with its 2007 manifesto, the specific defence-related pledges made in Charter of Democracy have not been repeated in 2013.

The Election 2013 manifesto of PTI is certainly an improvement over its 2002 manifesto<sup>4</sup> in terms of some outline of a policy on defence oversight and civil-military relations. The party has pledged that the defence spending would be rationalised and the defence budget would be debated in Parliament with in-camera sessions according to the

sensitivity of the issue. The PTI has also promised that a constitutional amendment will be sought to give Parliament authority to ratify all international treaties. The manifesto then moves on to strengthening institutions to contain terrorism and promises to make the National Counter Terrorism Authority (NACTA) effective as single authority with high level representation from the armed forces, para military, police as well as civilian experts and intelligence agencies.<sup>5</sup>

### Five years of Defence Committee of the Cabinet

For purposes of regular and systematic coordination and consideration of all matters related to defence and national security, the Defence Committee of the Cabinet (DCC) is the key body to establish a civilian democratic control on defence and national security. However, despite CoD pledges made by the Peoples Party, the DCC has remained largely dormant and under-utilised in the past 5 years.<sup>6</sup>

PILDAT analysis on the performance of Defence Committee of the Cabinet has revealed that keeping with its past trend of being reactive rather than proactive, the Defence Committee of the Cabinet met only three times in 2012-2013. A look at the 5 year performance of the DCC shows that despite serious internal and external security challenges facing Pakistan, the Defence Committee of the Cabinet met on an average only a little more than twice in a year from March 2008 to March 2013. Under the chairmanship of Pakistan's out-going Premier Raja Pervez Ashraf, the DCC met only once.

One of the major weaknesses of the DCC has been lack of a dedicated permanent secretariat as pledged under the CoD by the ruling PPP. Its reactive posture, that too only for selective incidents, does not indicate an effective role of the DCC.

### Institutional Solutions for Civil Military Relations

Analysing the balance of civil-military relations in Pakistan in the past 5 years, some experts believe the country has witnessed an improvement. Talking at a PILDAT Public Forum on the issue, Chairman of the Senate Standing Committee on Defence Senator Mushahid Hussain Sayed believed that institutional solutions for resolving civil-military relations in Pakistan have been sought in the past 5 years and the country has witnessed a movement forward in democratic control of defence and national security.<sup>7</sup>

While a broad consensus exists that there has been some improvement in civil-military relations over the past 5 years, the transition towards establishing a constitutional equation of civil-military relations has neither been as effective or fast-paced, nor as conclusive as citizens would have liked.

On major defence and national security issues, the democratic

2. SC ready to open pandora's box in Musharraf case, The News, April 10, 2013 <http://images.thenews.com.pk/10-04-2013/ethenews/t-22164.htm>

3. PML-N's Manifesto 2013 can be accessed at: <http://www.pmln.org/manifesto/>

4. For details please see: <http://www.pildat.org/Publications/publication/CMR/ComparativeAnalysisofElectionManifestoes-CMR.pdf>

5. Detailed Manifesto can be accessed at <http://www.insaf.pk/AboutUs/Manifesto/tabid/138/Default.aspx>

6. For details please see [http://www.pildat.org/Publications/publication/CMR/PerformanceoftheDefenceCommitteeoftheCabinet\\_Mar2012toMar2013.pdf](http://www.pildat.org/Publications/publication/CMR/PerformanceoftheDefenceCommitteeoftheCabinet_Mar2012toMar2013.pdf)

7. For details please see <http://www.pildat.org/eventsdel.asp?detid=616>

government abdicated its responsibility of leading from the front. Despite that policy of apparent appeasement to the military, civil-military relations have seen many skirmishes in the past 5 years. The most troublesome of these has been the issue of the alleged Memo<sup>8</sup> that came to be at the heart of the estrangement in civil-military relations. The same elected Government, which continually came to the public rescue of the military after the killing of Osama bin Laden, US targeting of the ISI and the NATO attack, resorted to an open confrontation with the Army. The Military took a diametrically opposite view of the Government in the Supreme Court resulting in a relatively weak civilian Prime Minister breaking the sound barrier on civil-military relations in Pakistan by terming Military as a "State within the State" – an open public position that has never before been taken by any other Prime Minister of Pakistan. While his words continued to change, the 13<sup>th</sup> National Assembly of Pakistan recorded an elected Prime Minister deprecating the dominant role demanded by the Armed Forces and the associated intelligence apparatus in national policy making.

The strain reached new heights when the then-Prime Minister fired the Defence Secretary Lt. General (Retd.) Naeem Khalid Lodhi for "gross misconduct and illegal action" which further intensified the wedge between civil and military institutions. For some time following the dismissal of the Defence Secretary, the exposed cleavages between the elected government and the military seemed reminiscent of the Kargil controversy in 1999 in which either the elected government could be sent packing or the military commanders' tenures could be curtailed. Eventually, however, better sense prevailed and both sides pulled back from the brink.

The past 5 years have recorded a positive movement in the Supreme Court's decision on the 18-year old Asghar Khan case<sup>9</sup> through which, for the first time in Pakistan, former Military officials at the highest level including former Chief of Army Staff (COAS) and Director General Inter-Services Intelligence (ISI), have been held responsible for violating rule of law and influencing the election outcome. Termed as a largely positive decision, many question whether the involvement of the Presidency and the ISI in the political process has ended in 1990.

Perhaps the most important lesson of the challenges faced in civil-military relations in the past 5 years is that democratically-elected leadership can not abdicate its responsibility of an effective policy-making role in the realms of defence and national security. The ability of

the elected political leadership to articulate a credible and comprehensive counter-narrative in combating terrorism is critical in Pakistan. Effective democratic and parliamentary control on defence is only possible when elected representatives are prepared to play that role effectively. Activation and effective utilisation of existing forums is needed to apply a holistic perspective covering the major sectors of civilian and military relationship.

### Revised Military Doctrine – not from Democratic Government

Pakistan Army has reportedly made a significant shift in its doctrine by stating that the biggest threat to the country is "internal" rather than "external."<sup>10</sup> While no official document has been made available publicly, it appears, as usual, that the paradigm shift has come about without the policy input of the democratically elected public representatives.

Many analyses have been written about the reported paradigm shift. Many in Pakistan also agree that traditional doctrine of the Military be changed to tackle internal threats. More important, however, is the fundamental issue that policies and doctrines require a systematic review and ownership of the people through the public's elected representatives and governments. The reported change, however welcome, depicts the stark and unsavoury realities of the equation of civil and military in Pakistan. Regardless of the public demand for a constitutional balance of this relationship, it appears that when it comes to this relationship on the ground, the more things change, the more they remain the same.

### Revelations made on Kargil Operation

Lt. Gen. (Retd.) Shahid Aziz, former Chief of General Staff, has made a revelation in his recently-released book that the plan of 1999 Kargil Operation was known to only four generals including then-Chief of Army Staff, General Parvez Musharraf, its architect. Many other officers in the top brass, including the Director General Military Operations, came to know of the news when the Indian objected infiltration from Pakistani side.

Kargil war had shut down the Indo-Pak peace process. The war serves as a classic case study of civil-military disconnect in the country, ultimately leading to the ouster of the former Prime Minister Nawaz

8. In October 2011 an American businessman of Pakistani origin, Mansoor Ijaz, wrote in the Financial Times, UK, that he helped deliver a memo to US Admiral Mike Mullen in which, allegedly, the President of Pakistan Mr. Asif Ali Zardari sought the help of the US administration in averting an imminent military coup. In return the President guaranteed a complete revamp of the national security team in accordance with United States' wishes. The memo was written and delivered by Ijaz allegedly on the behest of Pakistan's then Ambassador to the US Mr. Hussain Haqqani. Though the Government and the President's office have continued to officially deny it, this led to great furore in the opposition, media and the military. Mr. Husain Haqqani had to resign on November 22, 2011 after he was summoned to Pakistan. Prime Minister announced that the Parliamentary Committee on National Security will conduct inquiry into the Memo scandal but on November 23, 2011, opposition leader and PML-N chief Nawaz Sharif filed a petition in the Supreme Court requesting it to help unravel what he termed a "dreadful conspiracy" to demonise the armed forces. The Supreme Court accepted the petition and ordered an inquiry through a commission headed by the Chief justice of Balochistan High Court. Army and the Government adopted divergent stands on the Memo in the Supreme Court. The commission in its report stated that Husain Haqqani had authored the memo. Mr. Haqqani is out of country and not willing to comeback sighting security reasons. The case is still pending before the Supreme Court.
9. The Asghar Khan case was originally filed by Air Marshall (Retd.) Asghar Khan in 1994 after a disclosure about the distribution of funds was made on the floor of the House. In 2012, after hearing the 18-year old Asghar Khan case, the Supreme Court of Pakistan charged that two former Military officials in 1990 disbursed money among a list of politicians who were opposed to Pakistan People's Party, to influence the outcome of the 1990 Election.
10. "New doctrine: Army identifies 'homegrown militancy' as biggest threat," *Express Tribune*, January 3, 2013, <http://tribune.com.pk/story/488362/new-doctrine-army-identifies-homegrown-militancy-as-biggest-threat/>

Sharif who, he maintains, did not approve of the war. Even the late Prime Minister Benazir Bhutto revealed that during her first stint in the office, Maj. General Musharraf, who was then DG Military Operations, offered to her the same plan which we now know as Kargil.

What General Aziz said is not new; the fact that it is coming from a key officer of the Military merely shows that even the Military's house was not in order over the Operation.

### Lal Masjid Commission

As if the Military was not in a tight corner at the hands of the courts already, the Supreme Court ordered to constitute a Commission to probe into the 2007 Military's siege of Lal Masjid on December 04, 2012.<sup>11</sup> The Commission on April 01, 2013, presented its report to the Supreme Court.<sup>12</sup> The court adjourned the case for another two weeks, saying that jurists needed time to review the report. After detailed review the court will decide whether to make it open or keep it secret. Former Military ruler, General Pervez Musharraf, has refused to appear before the Commission.

The Lal Masjid siege was, and is to this day, one of the polarizing incidents of the society of Pakistan. While some wanted to hastily take on the militants who challenged writ of the state in the heart of its capital city, others accused the Government for the death of innocent women and children inside the compound. The social response to the Siege epitomized the social divide over ownership on Pakistan's involvement in war against terrorism. Many hardened militants are convinced that the State of Pakistan is no less guilty than the United States which evicted Taliban out in the neighbouring Afghanistan. There was thus, all of a sudden, a spike in terrorism-related incidents over the country after the operation.

The SC's desire to probe into the operation to ascertain fact from fiction is all too good, but some are also reminding the broader context in which the Operation was taken in the country.

They, for instance, point to the fear that the Military's anti-terrorism

operation may get jeopardized in case it continues to be grilled on the Siege. Many military men who were involved in the Operation are also presently serving the Military. Should they be dragged into the courts, the Military may well remind of how the morale of the ranks is getting low.

### Amend the Army Act, asks Supreme Court

The calls for review of the Army Act have been ripe in recent months especially as the Supreme Court has been hearing the case of Missing Persons. PILDAT, however believes, that any review in the services act should be led by the Parliament and its Committees. In its recommendations to respective Defence Committees of the Parliament, PILDAT has also pointed to the Defence Committees to review the existing Acts of the Military to see whether these conform to human rights and Constitutional requirements.

The Supreme Court of Pakistan has now asked the Federal Government to amend the Pakistan Army Act 1952, suggesting removal of an inconsistency that does not provide an accused the documents of Field General Court Martial (FGCM) due to which it is difficult for convicts or accused to file an appeal.<sup>13</sup>

Lack of progress on it in the past 5 months means that the issue will have to be part of the agenda of the incoming National Assembly as well as the Government elected to power. Most important aspect of this exercise will be that the amendments are made in consultation with the Army, which has agreed to amend certain clauses of the Army Act. An active media and assertive Judiciary in the past years has meant that the Military, like at times even the outgoing Government, may have felt that it is increasingly the target and the object under the judicial, public and media spotlight thus strengthening the 'us versus them' perception. It is important to understand that societies undergoing transition go through such developments. The objective of a constitutional equation of civil-military relations is not that either one of the two develop a perception of victimhood in the process. It is therefore important that the reforms in civil-military relations are brought about through mutual support and respect.



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11. Nasir Iqbal, "SC commission to probe Lal Masjid tragedy," Dawn, December 5, 2012, <http://dawn.com/2012/12/05/sc-commission-to-probe-lal-masjid-tragedy/>
12. Lal Masjid Commission presents report to SC, Pakistan Today, April 01, 2013, <http://www.pakistantoday.com.pk/2013/04/01/news/national/lal-masjid-commission-presents-report-to-sc/>
13. Nasir Iqbal, "SC wants Army Act amended," Dawn, November 13, 2012, <http://dawn.com/2012/11/13/sc-wants-army-act-amended/>