**Stretching mala fide to the limit**

Raoof Hasan

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Mala fide is defined as something which is carried out in bad faith or with an intent to deceive. This description does not fit anywhere else more appropriately than it does in the case of the Supreme Court (Practice and Procedure) Act 2023 moved by the government benches before the National Assembly on March 28.

The Bill has since been approved by the Standing Committee on Law and Justice and adopted by the National Assembly. By the time this piece appears in the paper, it may have been passed by the Senate to become a law. Will this move be the panacea for countless issues which the state institutions, including the judiciary, are afflicted with -- or is this only a means to tide over the immediate challenge which the government is faced regarding the implementation of the Supreme Court order to hold elections to the dissolved provincial assemblies of Punjab and Khyber Pakhtunkhwa within the constitutionally stipulated period of ninety days?

The matter is rendered even more controversial when one notices that the main thrust of the proposed bill is to curtail the powers of the chief justice (CJP) who, when it becomes law, shall no longer have the authority to take suo-motu notice of a case without first constituting a committee comprising, alongside himself, two senior-most judges of the SC. This will replace the earlier practice of the CJP taking suo-motu notice under Article 184(3). Similarly, invoking original jurisdiction under the same article has also been made subject to the approval of such a committee of three judges.

Notwithstanding the contents of the proposed bill and how far shall it go to remedy the crises that riddle the judicial arm of the state, it is the timing of moving this bill that renders it dubious. Having so far flaunted open defiance of the earlier SC injunction ordering the ECP to hold elections to the two provincial assemblies within ninety days of their dissolution, the government was faced with the prospect of reiteration of such an injunction from the SC which is now debating a petition moved in the matter.

This should also be viewed in the context of the statement of the federal interior minister who, in an interview duly telecast within and outside the country, went to the extent of stating that “the government has been pushed to the extreme (by the opposition PTI) and it was no longer possible for the two to co-exist. It is either us or PTI. In such circumstances, we shall do everything to eliminate them and shall not bother whether the actions we take are right or wrong, legal or illegal”.

This is literally turning political acrimony into a blood battle for survival of one party to the elimination of the other. The statement was broadcast extensively and there has been no effort to either disassociate from it or rebut its contents. Having repeatedly gone public with its intention not to hold elections as directed by the apex court, the proposed bill becomes a gross misuse of the parliamentary powers that the government is vested with in a bid to sabotage the expected injunction from the SC.

Some legal experts have also opined that such changes in the practice and procedures of the SC would require a constitutional amendment to become valid, not a mere act of parliament. The government does not have the numbers to incorporate such a constitutional amendment. Otherwise, under Article 191, making any such changes falls within the domain of the apex court. The fact that the government took upon itself the task of moving the bill in such great hurry speaks of patent mala fide intentions meant only to tide through this difficult phase by disinvesting the CJP of his powers. This fits in well with the fascist tactics which the incumbent government has been employing to tackle the surging popularity of the PTI.

One should also take note of this matter in the context of it being moved in an assembly which is only half its mandatory strength as the PTI is neither part of it, nor is it being allowed to come back. That simply means that the bill will not have the legitimacy such an amendment would require for acceptance. So, controversy is built into the bill at its very inception regarding the intentions behind it and the lack of legality it would carry even when approved by a truncated assembly.

While there is no looking away from the need for incorporating extensive judicial reforms to make the system more transparent, accountable and effective, geared solely to deliver justice to all across divides and divisions of faith, caste, colour, creed and financial affordability, it is the manner of its initiation which has rendered it controversial.

If the government were sincere about the move, it should have called a meeting of all political parties, including the PTI, for deliberations with a focus on building consensus before introducing it in the parliament. It should also have sought the opinion of the legal fraternity including the bar councils and bar associations. In its current form, and with palpable dubious intentions, it would remain shy of any broad-spectrum acceptability.

One should also take heed from what is happening in the rest of the world. When the Israeli prime minister tried to weaken the judiciary by introducing similar amendments in laws and procedures simply because he is accused of corruption and the judiciary can potentially deliver a damning judgment, it is the people of the country, across political divides, who descended on the streets in huge numbers and refused to go back unless the move was reversed. The Israeli prime minister was forced to oblige the protesting millions.

Such are the nations which refuse to accept individual-focussed changes in the system which would allow the corrupt political elite to escape the clutches of the law while the poor and weak would continue suffering its excesses. Justice means justice for all, with no exceptions. Nations step out to defend their rights simply because they are aware of the damage it would do if their liberties were curtailed and their freedoms impaired. They make the governments back off through the combined strength of their conviction and resolve.

Without doubt, I would say yes to the need for judicial reforms which are much needed, much overdue. But they should be comprehensive in nature focussing on improving the entire judicial system and its delivery mechanisms rather than disinvesting an individual of his powers simply because he is viewed as a challenge by the incumbent government.

In its present form, and the manner it has been moved, it makes for a travesty of the avowed objective the government wants to achieve through this amendment. Sanity is a commodity which is in depleting supply.

The writer is a political and security strategist, former

special assistant to former PM Imran Khan, and currently a

fellow at King’s College London. He tweets @RaoofHasan