

# A march for the rule of law

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Law & Justice

**T**HE defiance begun on March 9, 2007 with a 'no' to a military dictator by the head of historically timid and pro-establishment judiciary has now turned into a great movement for the rule of law — giving a new hope to Pakistani people to finally establish a true democratic setup and an egalitarian society.

There is a consensus amongst all the segments of society that without the dispensation of justice, for which an independent judiciary is a *sine qua non*, there can be no constitution, rule of law and democracy. The decision of the Muslim League-N, after meeting with the leaders of lawyers' movement in Lahore on February 20, to join *Dharna* (sit-in) on Constitutional Avenue, Islamabad, on March 16 till the restoration of Chief Justice Iftikhar Mohammad Chaudhry and other judges, has rekindled the entire movement.

This decision will not only pave way for reinstatement of the judges but also help in crystallising the verdict given by the masses on February 18, 2008 in favour of rule of law and democracy. If government fails to act responsibly before the proposed long march, the lawyers community may attempt to restore *status quo ante* of November 2, 2007 at its own. There are chances of a national alliance challenging the defenders of November 3, 2007 actions of Musharraf.

There are no two opinions that for establishing a representative democratic rule a free and independent judiciary is a prerequisite. It has to act as custodian of constitution and rule of law. The rule of law embraces at least three principles. The first is that the law is supreme over both government functionaries as well as private individuals, and thereby preclusive of the influence of arbitrary power.

The second principle requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order. The third principle requires that the relationship between the state and the individual be regulated by law.

The constitution determines the future direction of a nation, provided there is respect for the document and rule of law. The three constitutions, framed in Pakistan, proved to be just pieces of pa-

per. Their sanctity has been unashamedly and frequently violated by the men in power, and even by those who authored and approved these documents.

In a *bona fide* democratic set-up, the electoral process ensures the dominance of the people over those who hold political offices. If elections lead to authoritarian rule (as was the case in 2002 in Pakistan), it amounts to negation of democracy. It is the substance that matters and not the form. Since authoritarian rule can only be checked through a strong and independent judiciary, dispensation of justice is a *sine qua non* for democracy.

It is unfortunate and disturbing that in Pakistan no government has allowed the judiciary to work independently. On the contrary, physical attack was made on the apex court and judges were selected on purely political grounds. The acts of removal of judges, their detentions and espionage through agencies have proved that rulers of the day have always been irked by the rule of law and an independent judiciary.

Practically, every ruler in Pakistan has created impediments for the judiciary. Resultantly, it became handmaid of forces of the status quo. In the post-election scenario, the coalition government of PPP and PML-N collapsed on the issue of judiciary. The nation is now divided between pro-independent and pro-establishment judiciary.

Democracy — if truly practised — embodies some vital principles that are: fair and just electoral process, sovereignty of parliament, separation of powers and independence of judiciary, public accountability and rule of law. Elections alone cannot guarantee these principles. Those at the helm of affairs must realise that democracy is not electioneering *per se*. At the heart of the concept of democracy is the assurance for the citizens that their affairs are going to be managed by a responsible government.

If we look back at our history in the light of the above basic principles, there will be disappointment and frustration. Since the death of the Father of the Nation, Quaid-i-Azam Muhammad Ali Jinnah, no government in the country qualified to be called responsible. The blatant violations of rule of law — on the part of civilian and military rulers alike — negated the establishment of a demo-

cratic structure in the country. In the wake of elections of February 18, 2008 and failure of the coalition government on the very first issue of restoration of judges, there is a need to initiate a national debate to find out why the larger part of our history has been moulded by repeated constitutional hiatuses, prolonged through conspiracies and chicanery, and sustained whenever necessary by the political use of religion.

No doubt all this ultimately has led to the culture of intolerance. We must analyse the causes behind the present chaotic situation and then through national consensus and reconciliation try to establish a true democracy, which is not possible without a free and independent judiciary. A society without a trustworthy and speedy judicial system, which does not ensure effective dispensation of justice, cannot survive for long. The treatment meted out to judges of higher judiciary by Musharraf and Zardari is no doubt the most lamentable and dark chapter of our history.

The right of access to justice to all is a well-recognised inviolable right enshrined in the Constitution of Pakistan. It gives the right to be treated according to law, the right to have a fair and proper trial and right to have an impartial court or tribunal. Justice therefore can only be done if there is an independent judiciary which shall be separate from all clutches and controls. Nobody possesses an authority to deny constitutional guarantee of free access to justice to citizens.

The international community through the UN Human Rights Charter endorses these rights. Undoubtedly, administration and dispensation of justice in Pakistan has been a complete failure and, therefore, democracy has never taken roots. This is the time that masses, political parties, media people, intelligentsia and representatives of civic society acted collectively by supporting 'Long March' not only for restoration of judges, sacked by Musharraf, but also to counter and defeat the anti-people, obscurantist and anti-democracy forces that are bent upon derailing democracy in Pakistan. ■

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