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## Restoration of judges: The ball is in Zardari's court

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In all likelihood, the political move made by the Presidency, and supported by some elements within the PPP, to delay the bye-elections, will be reversed. The media exposed through the words of the ANP chief minister the "Rehman Malik factor" behind the delay game. Election Commission officials have also conceded that the Rehman Malik factor was at play.

Fortunately, the PPP co-chairman has moved with lightening speed to seek reversal of the delay in the bye-elections. The Presidency's strategy to drive a wedge between the PPP and the PML-N continues to be implemented by the president and the institutional implements he controls. Equally, the Presidency has continued to pressure the Chaudhrys to vacate the PML-Q leadership to accommodate those the president believes will be acceptable to the PPP leadership. The president has repeatedly said that Asif Zardari's message is that minus the Chaudhrys the PML-Q is acceptable as a coalition partner.

President's objective to have "his" political party become a player, and by extension himself becoming a political player, is evident. He wants the PML-N knocked out by "hook or by crook." Whatever he believes his motives to be, "patriotism" or personal survival in power, the net result of Gen Musharraf's political strategy is violation of the people's mandate, undermining of the democratic system, acting as president in violation of his constitutional role and, finally, the destabilisation of the country.

The only very critical caveat in all this is that unless Asif Zardari partners the president in implementing the president's political strategy Gen Musharraf can never succeed. The reversal of the bye-election decision is reassuring on this count. Zardari will continue to pass the test of credibility whenever new issues emerge questioning the PPP's commitment to genuine parliamentary democracy versus commitment to the Presidency and external players.

The crucial issue that needs to be astutely and credibly handled is the judges' issue, which indeed offers its own complexity.

Hours after the first joint public statement of intent by the coalition leaders on the agreement to restore the judiciary to the pre-Nov 3 position, a senior PPP leader had commented wryly that "there is many a slip between the cup and the lip." His was a response to our enthusiasm about the restoration decision. It then seemed to be a comment on the PPP leadership's real intent.

Subsequently what has happened to the restoration issue appears like a yo-yo: Now you see it happen, now you don't. Past the Murree Declaration deadline there is reason to not entirely bank on the ruling coalition meeting the May 12 deadline either. The public statements by the two parties after the Dubai negotiations have resulted in a new set of allegations against the two leaderships. Zardari, who himself has acknowledge his anger towards Chief Justice Iftikhar Chaudhry and whose mostly unproven cases have been withdrawn under the NRO, is the prime target.

He is being criticised in some circles for double-crossing Nawaz Sharif, he has been accused of playing the president's game and for delaying the restoration, for linking the restoration with the Constitution, for ensuring that the man he is not comfortable with is denied his complete tenure as the chief justice of Pakistan and ensuring that the man who he likes gets extended tenure as chief justice.

Nawaz Sharif, meanwhile, is being accused of wanting to save his party's government in Punjab by not leaving the coalition and giving the PPP the opportunity to enter into a coalition with the PML (Q). With Nawaz Sharif's decision to not contest in the by elections removes any personal political reasons for his wanting the pre-Nov 3 judiciary restored.

There may be political motivations and powers calculations, but there may also be sincere idealism influencing the maximalist demand from certain quarters that the perfect solution for the restoration of the judiciary of rewinding must be implemented; Supreme Court bench to exactly the Nov 2 position. This demand, which has been articulated by the Supreme Court Bar Association, is also supported by some others opinion-makers.

One of the seemingly reasonable concerns is that following the continuation the existing judges would immediately legitimise the otherwise controversial presidential election. After all, the existing Supreme Court has in its judgment upheld the president's election as constitutional. But the president's legitimacy is not solely dependant on this Supreme Court judgment. The fact is that there is no consensus within the ruling coalition on the future of the controversially elected Gen Musharraf. In case there was consensus the parliamentarians simply need to pass a simple resolution asking him to take a vote of confidence from the new parliament. There are political considerations within the ruling coalition that prevent them from tabling such a resolution.

This one question regarding the retention of the existing judges establishes the complexity of the broader restoration question. Clearly, there are four dimensions to the restoration challenge: the political, the constitutional, the legal and the

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personal. Together these through up the numerous factors that ultimately includes the entire context within which restoration has to be tackled. To a few the president and his political manoeuvring and the coalitions national considerations, including saving the parliament system, staying on the national reconciliation force and keeping the coalition intact, Zardari's Iftikhar versus Dogar preference, the PML(N)'s concern for its political future and the survival of its government in Punjab, the demands of the lawyers' movements, the parliaments constitutional prerogative to pass a constitutional packages, the US factor and, finally, the uncertainty factor making some political forces apprehensive of a completely independent judiciary, Justice Iftikhar Chuadhry's personal journey of movement politics, including house arrests, public speaking engagements and support of certain political parties.

In addition to these numerous factors is the reality of the position the three other coalition partners, the ANP the JUI and even the MQM, have taken on restoration questions. The JUI and the MQM have clearly stated their willingness to go along with the PPP position. The JUI chief, seconded by the MQM chief, has called for either the restoration of all PCO judges or the rejection of all. This means that, hypothetically speaking, if the PML(N) were to demand return to the Nov 2nd judiciary literally, it would not be able to carry a resolution demanding the same with its 91 members in the 348 members of parliament.

These factors all have an ability to unleash its own dynamic. How these factors are tackled will create chaos or stability, continuation or disruption within Pakistan's broader political scene. The only way forward on the judges' issue is the restoration of all the judges through a resolution and subsequently through an executive order. The PCO judges will also have to stay. The constitutional package can follow later. However, if the wisdom of a voice within the committee set up following the Dubai talks, that passage of the resolution will be sufficient to appease the people and the executive order leading to actual restoration can wait, prevails it can lead to unravelling of more than what the people and the country can afford.

The ball is squarely in Zardari's court. If yesterday Gen Musharraf called the shots, today it is Zardari. He has the parliamentary strength and the support of the political forces to capitalise on the opportunity that the Feb 18 elections have provided. He has to travel beyond his own and the party's past, including what many would argue is his indebtedness to President Musharraf and to Washington. If he moves with wisdom and political astuteness there is a "win-win" in today's situation for the people of Pakistan, the parliamentary system and for the genuine political forces.

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