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We have suffered the ignominy of four military coups. The fifth coup has taken place with the unanimous



*consent of members of the national parliament present and voting. Constitutional cover has been provided to this parliamentary betrayal of the Constitution. Parliamentary licence to amend the Constitution has prevailed over respect for the basic structure of the Constitution. Has an elected parliament the right to treat the Constitution and the country with contempt? Does the constitutionally elected executive have the right to gift its constitutional responsibilities to the military? Special military courts are a very dangerous option. The risks of irreversible miscarriage of justice are significant. There will be a category of Pakistanis who will not “deserve the same rights and safeguards as normal citizens”. They will be categorised as ‘jet-black’ before they are brought to trial. They will be denied due process. There will be no presumption of innocence. **They are to be executed, according to the prime minister, within 20 days of being brought to trial.***

There will be no appeals to appellate courts. The presiding military officer will be judge and juror.

*This would be a clear violation of the basic human rights constitutionally guaranteed to all citizens, including those accused of heinous crimes. According to Geoffrey Robertson in his book *Crimes Against Humanity*, a special military court “is not a court at all”. It is “an extension of the executive power, a prerogative as unacceptable today as the Star Chamber of the Stuart kings was unacceptable, in the dawn of modern democracy, to the [English] Long Parliament”. The “basic problem is that these courts lack even the appearance of impartiality, and more important, they lack independence”. They do not satisfy the fair-trial standards in the Geneva Conventions. It would, accordingly, be pertinent to ask whether the Supreme Court will uphold, ignore or reject petitions against the 21st Amendment and amendments to the Pakistan Army Act. **The Supreme Court’s decision will have a far-reaching impact on the future of the rule of law, democracy and human rights in Pakistan.** Were proper protections made available for judges, prosecutors and witnesses, and similarly finances, training and independence for police investigations, the need for special military courts would not have been felt. It may be argued that a minimum period of two years is required to put such arrangements in place.*

Meanwhile, the menace of terrorism has to be combated as best we can to prevent even greater violations of human rights than the risk of miscarriages of justice by military courts. A price has to be paid to root out this menace. A ‘sunset amendment’ allowing a trade-off between the need to ensure due process and the need to avoid delays in meting out justice to murdering monsters is unavoidable. However, the case for this argument has not been made. The Supreme Court has already issued ‘guidelines’ for the anti-terrorism courts that were established. If these are implemented it would probably take away any practical basis for special military courts.

We have, however, chosen a short-term ‘catharsis’ instead of a longer-term solution with arguments about ‘cowardly’ and ‘corrupt’ judicial and police officials — not to mention politicians. There have been references to ‘justice delayed is justice denied’ and the superior integrity and courage of the military, whose presiding officers would never allow a miscarriage of justice. The question of constitutionally guaranteed human rights, including the right to life, is simply set aside with the argument that public opinion insists on immediate, relentless and ruthless action to wipe out terrorism. Everything else, including constitutional niceties, must come second. This is also said to be the only way to restore the credibility of the government’s commitment to counterterrorism. The specious assumption is made that such a course of action will control, reduce and eliminate terrorism in a way that the course suggested by the Supreme Court cannot. There is no evidence for this assumption. Of course, if we assume our Supreme Court can never compel compliance with its decisions and recommendations whereas our military can implement its own preferred course, then we have made the saddest judgment possible on the state of our political society, and our political future. This is unacceptable and unnecessary. The menace of terrorism in Pakistan is a deep-rooted malaise that has developed as a result of arbitrary and malignant governance over several decades. It can only be overcome by a multi-pronged and integrated policy package, ranging from improved criminal justice and counterterrorism systems to transforming the current dysfunctional political, economic and educational milieu. This is the only way to reduce the whole range of political pathologies, including terrorism, to insignificant proportions.

Given this reality, short cuts to justice can only lead to swamps of injustice, from which pathologies emerge and spread. There are no simple solutions to complex problems. But a start towards a solution that is felt by society is not only possible, it is imperative. Military courts

cannot be that start since they preclude better constitutional alternatives. A retired Chinese diplomat once told me his country had learned a few things from its immense history. There were essentially three kinds of challenges.

The first were those that brooked no delay in tackling. Otherwise, they would become unmanageable very rapidly. The second were those that did not have any immediate solution. They needed study, preparation and planning. This required time to ensure rapid and successful implementation of agreed and appropriate policies. The third kind comprised those challenges for which there were no shorter-term answers. They had to be addressed over the longer term by enabling the next generation to develop an array of policy options that were not currently available. A ruler was judged by his ability to see which problem, and which aspect of a problem, belonged to which category, and to formulate and implement a comprehensive policy accordingly. This was sage advice that has proved beyond the moral capacity and imagination of our national leadership. The writer is a former ambassador to the US, India and China and head of UN missions in Iraq and Sudan. Courtesy: Dawn