

## The army and the rule of law

The army is on the back foot and not for the first time in the troubled history of this country. As an institution, it was almost considered down and out after surrendering in Dhaka and tasting defeat at the hands of the Indians in East Pakistan in 1971. But it fought its way back and not only regained its lost pride, but also accumulated enough influence, power, control and authority to rule this country for over 20 years out of the 41 that have passed since that event. This would not have been possible if the people of Pakistan had not accepted it as the premier institution of the state. If anything, the popularity of the army has remained linked to the nature of its task that demands surrender and sacrifice. Officers and men, who sign up to serve in the army, surrender the comforts of life to serve at the hardest and most difficult of locations, mostly under extremely challenging conditions and circumstances. They constantly and consistently offer sacrifices day after day, defending the state against enemies. It is for this purpose that most people admire and respect this institution. Naturally, the majority of Pakistanis consider any attempts to malign the army as unpatriotic and as a means to fulfill the enemy's agenda.

The best thing about the army is its institutionalised system of justice and accountability, as well as the across the board system of benefits and punishments that exists at all levels of service. An army that has a system of justice that awards the sword of honour to the son of a coachman (kochwan) and 30 years later, makes him a general as well, cannot be prejudiced. Similarly, an army that holds serving generals accountable and knocks out strong serving corps commanders, like Lt-General Tariq Parvez Khan and Lt-General Hameed Gul for lapses in discipline, cannot be discredited and accused of sheltering retired generals.

Traditionally, generals in the army are not punished for lack of competence, neither for exhibiting dissent, nor for policy failures or even for failure to implement a military strategy; a general is mostly punished when found guilty of making bad judgments that result in poor decision-making. Such decisions, when implemented, lead to negative consequences that cause individual, institutional and national humiliation and disrespect. It is up to the government to take such generals to task. Trying any retired general in civilian courts is not an institutional insult but a national obligation. This would do more good than harm to the army as an institution. It will also promote justice and the rule of law in society and would be a vital step towards ensuring military subordination to civilian authority.

The case of the army's premier intelligence agency, the ISI, is quite different. It uses clandestine and covert methods to achieve its goals. It is referred to as a 'secret service' because of the nature of its job, which is not only about getting battlefield information, but is also about doing the state's dirty job. It is designed and structured to execute unlawful missions like any other intelligence agency in the world — all in the name of 'state interest'. Therefore, can it be expected to operate under the law? Should the law prosecute it? Or should the role of an agency change from undertaking covert to overt operations? Aren't the agents of intelligence agencies the world over operating in hostile territories seeking information on the enemy's capabilities and intentions? Is this not unlawful? Should the law hold intelligence agencies accountable for this as well? Is a court entitled to question the ISI on how many of its secret agents are operating abroad and is the agency supposed to share this information with the court? If not, then it is in this context that intelligence agencies, due to the nature of their job, have almost an unwritten immunity to law all over the world and the ISI should be no exception.

What has given a bad name to the ISI is not its operational incompetence, but its overindulgence in politics of the state. Reforms, if any, in the ISI will not come through court orders; they may, however, result through the ongoing process of democratisation and the supremacy and rule of parliament. General Ashfaq Parvez Kayani may have offended many people with his recent forceful address but even his severest critics would agree with him when he says, "All systems in Pakistan appear to be in a haste to achieve something, which can have both positive and negative implications." The big question today is, will the state of Pakistan be able to absorb the consequences of the currently 'extremely active' judicial activism? Only time will tell.

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