

## **Scenario 99**

### **PM GILANI SENT HOME-II**

#### **'KHAT TO LIKHNA HI PAREY GA'**

[...have to write a letter]

PPP's stalwart barrister Aitzaz Ahsan who had gained heights of his career by saying that '*Khat to Likhna hi parey ga*' [..... have to write a letter] continuously for 32 months; but when given the senator's slot and asked to plead Mr Gilani's contempt case; he displayed so many somersaults, turnovers and gimmicks before the apex court that the whole nation laughed at him putting fingers on lips. It was the cheapest bargain of his political career in which he got his face 'greyed' for nothing.

Attorney General (AG) Maulvi Anwarul Haq followed a moderate line of proceedings but was suddenly sent home because PPP got angry with him. In his place another former NAB Prosecutor once charged by the apex court in NRO case and once shunted out PCO judge [Irfan Qadir] was brought forward as new AG and made to virtually throw filth over the judges sitting on the bench.

Outside; Mr Gilani was greeted by women activists of his PPP party with loud slogans of triumph; but the high drama ended at last in moaning cries. Keeping in view the overall political, economic and security situation of the country, it had not come as a surprise at all. Since the first day of revival of CJP Iftikhar M Chaudhry's team in March 2009, a perception kept growing that the top judiciary had been selective in its judgements, dealing harshly with the PPP leadership but being soft on the military and Sharifs.

After assassination of Benazir Bhutto, the elected government of PPP, which has traditionally been mistrusted by the military, spent its tenure with compromises and often fell upon lies while trying to survive but decided to strike back in December [2011] when the memo scandal broke out allegedly at the behest of President Zardari to invite US intervention to prevent a possible military coup. At last PM Gilani's unprecedented re-

marks [...state within the state] there; memo scandal was permitted to subside.

The contempt of court case against Mr Gilani came at the height of PPP's tension with the military and the judiciary; the case got a prolonged trial that stretched over three months. The apex court, however, left the matter of Mr Gilani's disqualification to others; the parliament, the media and the political opponents. Nawaz Sharif, Imran Khan, Jama'at Islami and the media immediately raised demands of resignation; the parliament's reaction was apparent. Astonishingly, all opposing voices were united in NOT calling the army to step in; such move could baffle the already brittle security situation of Pakistan.

The end result was that the PPP needed a sacrifice for the coming elections of 2013 so it got in the person of Mr Gilani; no matter he had lost all of his honour leaving a stinking page in Pakistan's democratic history.

The mockery of the democracy in Pakistan was seen when next day, **on 27<sup>th</sup> April 2012**, the convicted prime minister addressed the National Assembly saying that only parliament could unseat him. Challenging the opposition to bring a no confidence motion against him, Mr Gilani held that nobody could remove him from his office except National Assembly Speaker, Dr Fehmida Mirza.

Taking light from Dr A R Tariq [from his essay available on internet media] **dated 28<sup>th</sup> April 2012:**

***'These are sad days indeed; nothing to rejoice there. We have got a declared convict as President in the Swiss courts, and now a convict Prime Minister in the Pakistani courts. One convict is now trying to save other convict; corruption is at the heart of this whole issue.'***

The whole Pakistani nation, especially the ruler class, always endeavours to follow the footprints of Americans. However, how PM Gilani behaved after having been convicted from the Supreme Court was in fact alien to the American nation, too. What were the values prevailing amongst the Americans could be seen through a mirror of US Supreme Court's decisions in **Cases No: 73-1766 (USA vs Nixon) & 73-1834 (Nixon vs USA)** in which eight judges of the American SC unanimously announced their verdict against the then sitting US president Nixon.

The Watergate Scandal brought tremendous humiliation and hatred for the Americans from the whole civilised world and for the US President Richard Nixon from the whole American nation. He had to quit the White House in 1974 despite his heavy mandate in elections [getting 47 million votes for his 2<sup>nd</sup> term], top rated economic policies, his extreme skills in

US foreign relations and his known personal wisdom; he had to bow down his head before the US Supreme Court's decision.

President Nixon had tried to create hindrances in the judicial process but earned so much hatred and repulsive reaction from his nation that his advisors and aides all had to visit jails for different sentences being equally responsible for that episode. Till today none of them could feel courage to come into the electoral process of American politics. Nixon's political companions and the Republican Party are suffering from that loss even today, about 38 years since then.

The people compared the situation in Pakistan [with that of 1974's America] when PM Gilani made mockery of the judicial norms after getting conviction from the SC in April 2012. The difference was, however, visible that in America the pushing out of President Nixon after SC's verdict was hailed as the 'true democratic process' but in Pakistan the blatant flouting of the SC's orders, continuous sticking with power pole and next day addressing the Parliament being the first convicted prime minister, he was counting merits of **'true democracy'**.

It was so because the people of Pakistan had voted for the PPP four years earlier and the job and prerogative of defining democracy lied with the ruling party; astonishing it was. President Nixon had not taken the plea that because 47 million voters had stamped him in so the SC was not able to drive him away from the White House.

#### **SPEAKER NA KEEPS PM INTACT:**

But why all this drama! The people knew that Mr Gilani could not breathe his survival without the explicit indication of backing from the Presidency. The PML(N) boycotted the parliamentary sessions continuously, copies of agenda were torn out and burnt on the National Assembly floor, Nawaz Sharif and religious parties made announcements to launch another long march like of March 2009, PTI's Imran Khan openly instigated the masses to come out in favour of SC's decision, the army went for complete silence but Mr Gilani could not be convinced that he was a convicted person.

All the uproar could be subdued simply had President Zardari nominated any one of his 126 PPP MNAs to take over as the new PM which was an easy task for him; just a few minutes game.

Instead, Mr Zardari and PM Gilani opted to oppose and wipe out the Supreme Court as a matter of revenge, to humiliate them by reminding that

about ten years earlier the same judges could not find enough courage for accepting his bail which he legally deserved. Thus Zardari was bent upon causing wilful disgrace of the superior judiciary simply by patting his PM; throwing away the SC's verdict and consciously remaining silent but in fact was 'having a last laugh'.

It was not the once shown reaction; many more events were on their chequered record like:

Once in early 2010, a six-judge SC bench headed by the CJP heard the case filed against one PPP's MNA from Muzaffargarh (NA-178) named **Jamshed Dasti** in which his bogus & fake MA degree in Islamic Studies was challenged. During hearing of the case [**on 25<sup>th</sup> March 2010**] Dasti announced his resignation in front of the Supreme Court.

Just to humiliate the SC, the PPP nominated him as their party candidate in by-elections and got him elected as MNA again. During election campaign, PM Gilani had himself visited his constituency and announced a mega uplift package for that area, launched a free bus service operation in his area, promised sizable funding for its development and had performed ground breaking of Rs:1.25 billion Sui gas supply scheme.

**On 30<sup>th</sup> March 2012**, the CJP Iftikhar M Chaudhry announced the reserved judgment in Human Rights Case No. 7734-G / 2009 & 1003-G / 2010 (Alleged Corruption in Rental Power Projects) and other connected Human Rights Case No. 56712 / 2010 (Fraud in payment of Rental Power Plants detected by NEPRA). In this 90 paged judgment one former Federal Minister Raja Pervez Ashraf was found guilty of alleged corruption, NAB was asked to investigate him, his name was recommended for the 'Exit Control List' (ECL) but a week after he was given a portfolio in the Federal Cabinet again; why so, just to humiliate the SC.

In later months of 2012, the same Raja Pervez Ashraf was made Prime Minister of Pakistan; what a democratic norm it was.

When PM Gilani was convicted by the Supreme Court, it was a procedural requirement that his case be sent to the Election Commission of Pakistan [ECP] for onward necessary action. National Assembly Speaker, Dr Fehmida Mirza decided not to send the reference to the ECP against PM Gilani and held in her 5-page ruling that:

*'Charges against the Prime Minister were not relatable to the grounds mentioned in paragraph (g) or (h) of clause (1) of Article*

*63, therefore, no question of disqualification of PM Gilani from being a member arises under clause (2) of Article 63 of the Constitution.*

*Before proceeding further, I may like to show my serious concerns regarding letters through which Short Order and detailed judgment of the Supreme Court were separately conveyed by the Assistant Registrar and addressed directly to the Speaker.'*

It was held by the media that Speaker's verdict was the worst example of partisanship; quite illegal, and she had crossed her limits as speaker by giving administrative decision instead of forwarding SC's judgment to the Election Commission. It was PPP's decision and not the legal one setting a bad example in the parliamentary history. Bitter remarks were:

***'She [Dr Fehmida Mirza] is daughter of Qazi Abid who was Information Minister of Gen Ziaul Haq... Gilani was Tourism or Transport Minister of Gen Ziaul Haq.... Zardari's father was member Majlis e Shura of Ziaul Haq... what else you can expect from Zia legacy.'***

### **PPP DEGRADED BABAR AWAN :**

During contempt of court proceedings the die-heart PPP's legal hand and President Zardari's friend, [*subsequently a lawyer back – a poor guy*] Babar Awan, had refused to defend PM Gilani in the Supreme Court. He was asked to twist facts before the apex court while becoming a scapegoat for the government by taking all the blame on him. Babar Awan was wise enough to keep quiet at the particular moment.

The former law minister, Babar Awan, was '*directed*' by the high ups of the PPP to sign an affidavit which would have made him an outright 'accomplice' as it contained blatant lies, misstatements and incriminating matter; Awan had to say no to sign that draft affidavit meant to be submitted by him as a defence witness. The draft was faxed to him from the Islamabad [residential] office [Tel: 051-2206546] of Barrister Aitzaz Ahsan in Sector F-six on **5<sup>th</sup> March 2012** which Mr Ahsan denied next day.

The draft stated that Babar Awan was responsible for the whole 'lapse' and PM Gilani was never informed by him about the SC proceedings with regard to the implementation of the NRO judgment after Sept 2010. Aitzaz Ahsan had later told the media once that he had written to Babar Awan to become a witness in this case but he did not oblige.

The affidavit available with the media revealed a lot more than that. In addition to the PM's rescue plan as stated above, it also contained an 'admission' that he (Babar Awan) had obtained allegedly a fake degree from an Internet university, something which had already been denied many times. In fact, in his last assets declaration submitted to the Election Commission, Awan did not use the title of Dr with his name but the draft affidavit was showing him as Dr Zaheeruddin Babar Awan.

The two-page draft affidavit contained 10 paragraphs but the last two paras were full of lies. The para-9 was:

***'The accused / Prime Minister was never informed thereafter (after 23 Sept 2010) by me or any other official of any further proceedings on order by this Hon'ble Court for the entire period spanning Sept 2010 to January 2012. I had, however, assured him that there was no requirement to write the letter exposing the President to prosecution abroad.'***

Interestingly Babar Awan had resigned as law minister on 13<sup>th</sup> April 2011 but in his affidavit he was being asked to testify for a period ending January 2012. The para-10 was:

***'I am aware that under the Rules of Business, a Federal Minister as well as a Federal Secretary represent and personify, in legal terms, the 'Federal Government'. I was therefore fully competent in law to take all decisions on behalf of the Federal Government and did not seek any further instructions, nor felt the need to inform the accused / Prime Minister about any further direction or order of this Hon'ble Court after the Summary dated 21 September 2010.'***

The affidavit ended with 'verification' saying that '*Verified on oath this 6th day of March 2012 at Islamabad that the contents of the above affidavit are true and correct to my knowledge and the facts known to me and nothing has been concealed or suppressed hereir*'. DEPONENT.

The details available on the draft affidavit were clear; sent from:

*'AITZAZ AHSAN & ASSOCIATES ISB*

*FAX NO: 00 92 51 2206546 Mar. 05 2012 09:09 PM'*

***SPEAKER'S DECISION CHALLENGED:***

**On 8<sup>th</sup> May 2012**, few hours after Prime Minister Yousaf Raza Gilani's departure for United Kingdom on five days state visit, the Supreme Court of Pakistan issued its detailed judgment in contempt of court case. The detailed verdict was written by Justice Nasirul Mulk consisting of 77 pages while an additional six paged note written by Justice Asif Saeed Khan Khosa was also attached with the verdict. The Prime Minister was sentenced for less than 30 seconds imprisonment in short order on 26<sup>th</sup> April. Gilani was convicted by the country's top court for not implementing its orders of writing letter to Swiss authorities to reopen graft cases against Asif Ali Zardari. The verdict noted:

*'The court was deliberately ridiculed that might result in disqualification for five years. Gilani's counsel (Aitzaz Ahsan) didn't utter single word about the punishment for ridiculing the apex court. Judicial system would be destroyed if top official of the country would defy court orders.'*

**On 6<sup>th</sup> June 2012**, the Supreme Court admitted petitions of PML(N)'s Khwaja Asif MNA and Tehrik e Insaf's Advocate Azhar Chaudhry challenging the NA speaker's ruling of 28<sup>th</sup> May that there was no question of PM's disqualification even he was convicted by the SC on contempt of court charges. The notices were issued to all concerned including PM Gilani, NA Speaker Dr Fehmida Mirza and the Election Commission. A 3-member bench of the apex court, headed by Chief Justice Iftikhar M Chaudhry [Justice Jawwad S Khawaja and Justice Khilji Arif Hussain were the other two judges], heard the petitions.

On the next hearing **on 15<sup>th</sup> June 2012**, Aitzaz Ahsan appeared on behalf of PM Gilani. His proposal for formation of a larger bench was declined by the CJP. The subsequent conversation was interesting enough to be quoted here:

[PM Gilani's counsel Aitzaz pleaded that '*.... only a sentence of at least two years after conviction on charges of moral depravity, can result in disqualification of a parliamentarian*']

'Can anyone stay as Prime Minister in jail after being sentenced on corruption charge?' the CJP queried. Ahsan replied, "No, I am not saying this; the Constitution tells us this."

"How a man clad in white jail uniform, run the state's affairs from jail?" asked the CJP. But, Ahsan joked that the Constitution admits of this; though, the politics has it the other way.

The **Chief Justice Chaudhry** remarked, "How can the Constitution sanction that a corrupt man is allowed to rule the country?" *The charge of contempt of court is of three kinds and only one kind impacts the member of the Parliament; Aitzaz added.*

'The matter could have been raised in an appeal; but, you conceded to the sentence', the **Chief Justice Chaudhry remarked**. *Ahsan argued the PM Gilani acceded to the sentence not the disqualification, adding there was no need to file an appeal as the Prime Minister has served his punishment term.*

Chief Justice asserted that punishment in contempt of court case is directly related with disqualification.

While giving arguments in the case, Mr Ahsan said to Chief Justice, "*Sir, please agree to my point sometime.*" **Chief Justice responded**, "We have always agreed with you." Ahsan complained: "*you (Chief Justice) have stopped accepting my arguments*". On this **the Chief Justice said** "If we did so, there would be a perspective".]

The 3-judges bench observed that PM Gilani was the only parliamentarian who was unwilling to challenge his conviction because the Speaker was on her side. As the PM had accepted the sentence and '*since there was no issue of disqualification, there was no need to file an appeal*', Aitzaz Ahsan contended.

Mr Ahsan also held that the speaker exercised her exclusive adjudicatory powers. While arguing that the NA speaker's office was not a '*post office*' Mr Ahsan remarked that '*the attitude of the judges who took the decision was not objective.*' The Chief Justice immediately interrupted and warned:

***'I am a judge myself; I will not let you speak this way about judges'***.

There was no body to represent the NA's Speaker Dr Fehmeeda but when the bench enquired about, the Attorney General (AG) Irfan Qadir aggressively stood up from his seat and vehemently told the bench that Dr Mirza enjoyed supra-judicial powers, meaning the court could not summon her or question her authority.

***AG Irfan Qadir criticised the Chief Justice and called him biased*** for no apparent reason. The situation worsened when lawyers present in



the court chanted slogans against AG Qadir and the whole atmosphere went sour.

Mr Qadir AG then flipped the question on the Chief Justice, asking him what he would do if the NA speaker summoned him on any issue. Justice Chaudhry, as cool as a cucumber, replied: **'Don't worry, I will appear before her if the need arose.'** However, Latif Qureshi, Joint Secretary National Assembly, stood up and told the bench that Dr Mirza had asked him to represent her in the case.

### **PM GILANI FINALLY SENT HOME:**

**On 19<sup>th</sup> June 2012**, the Supreme Court, at last, disqualified a sitting Prime Minister Mr Gilani.

It was the culmination of about 3-year long clash between judiciary and executive starting from the question of implementation of the apex court's judgement on NRO dated 16<sup>th</sup> December 2009. No appeal was filed against the judgement so the conviction attained finality. The 3-members bench of the SC in its two page order [dated 19<sup>th</sup> June] said:

*'The Speaker of the National Assembly under Article 63(2) of the Constitution exercises powers, which are not covered by the definition of internal proceedings of Majlise - Shoora, therefore, this Court, in exercise of power of judicial review, is not debarred from inquiring into the order dated 25.05.2012.*

*Reference in this behalf may be made to the cases of Mining Industries of Pakistan (Pvt.) Ltd. v. Deputy Speaker, Balochistan Provincial Assembly (PLD 2006 Quetta 36), Madad Ali v. Province of Sindh (1996 SCMR 366), Shams-ud-Din v. Speaker, Balochistan Provincial Assembly (1994 MLD 2500), Muhammad Naeem Akhtar v. Speaker, Sindh Provincial Assembly (1992 CLC 2043), Farzand Ali v. Province of West Pakistan (PLD 1970 SC 98); Muhammad Anwar Durrani v. Province of Baluchistan (PLD 1989 Quetta 25); Jagjit Singh v. State of Haryana (AIR 2007 SC 590) and Rajendra Singh Rana v. Swami Prasad Maurya (AIR 2007 SC 1305);*

*As a Bench of 7 Hon'ble Judges vide judgment dated 26.04.2012 followed by the detailed reasons released on 08.05.2012 has found Syed Yousaf Raza Gillani guilty of Contempt of Court under Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ord-*

*nance, 2003 and sentenced him to undergo imprisonment till rising of the Court under section 5 of the said Ordinance, and since no appeal was filed against this judgment, the conviction has attained finality.*

*Therefore, Syed Yousaf Raza Gillani has become disqualified from being a Member of the Majlis e Shoora (Parliament) in terms of Article 63(1)(g) of the Constitution on and from the date and time of pronouncement of the judgment of this Court dated 26.04.2012 with all consequences, i.e. he has also ceased to be the Prime Minister of Pakistan with effect from the said date and the office of the Prime Minister shall be deemed to be vacant accordingly;*

*The Election Commission of Pakistan (ECP) will issue notification of disqualification of PM Gilani from being a Member of Parliament with effect from 26<sup>th</sup> April 2012.*

*The president of Pakistan is required to take necessary steps under the constitution to ensure continuation of the democratic process through parliamentary system of government in the country.'*

The SC observed that neither the speaker nor the Election Commission of Pakistan could sit on the SC judgements; also that the speaker should not have travelled beyond her authority to find faults in the apex court judgement. She should have sent the matter to the ECP and the 30-day time given in the constitution to the speaker had also lapsed.

The PPP admitted the SC decision this time though with reservations. Mr Gilani next day announced to quit and President Zardari summoned the Parliament for 22<sup>nd</sup> June to elect a new prime minister; Ahmed Mukhtar, Makhdoom Shahabuddin and Khurshid Shah were on the initial run but Mr Zardari had to decide alone. JUI(F) was offered three ministerial slots in new government but its Chief Maulana Fazalur Rehman refused to join.

*[Let us recall those moments when the superior judiciary was reinstated in 2009.*

*The superior judiciary of Pakistan was reinstated on 16<sup>th</sup> March 2009. A general perception prevailed that it was Pakistan's Army Chief who had forced the government to announce judges' reinstatement on immediate basis. The former premier Nawaz Sharif was brewing benefits out of the situation created by the Lawyer's Movement.*

*The facts were that the whole nation was united to get Justice Iftikhar M Chaudhry and his colleagues reinstated. Civil society had joined hands with the Lawyer's Movement which was at the peak with continuous boycott of all the courts throughout Pakistan by the lawyers since 16 months. The various world survey institutions had declared that 83% of Pakistanis had stood by Lawyer's movement.*

*Many of advisors to the President were of the opinion that they should go ahead with judiciary's reinstatement before civil society's gathering at Lahore but Zardari in person was seen reluctant.*

*When the news about '3 Lac gathering at Shahdara' reached presidency, Zardari had unwontedly signalled for go ahead. The question cropped up that **'what will happen even if the people continued their march despite the announcement of reinstating judiciary'**.*

*This was the moment after 11 PM that day when the Army Chief was invited in the Presidency to discuss the above proposition. Referring to **'the News' of 26<sup>th</sup> July 2010**; when Gen Kayani had reached the Presidency, Khurshid Shah, Rehman Malik and Babar Awan were already present there.*

*The meeting started with the key note that superior judiciary was being reinstated but what should be the steps to check people continuing with the march. PM Gilani did not wait for the final outcome of the talks even and rushed for the televised bulletin.]*

### **PRESIDENT ZARDARI HITS BACK:**

**On 12<sup>th</sup> July 2012**, President Zardari signed a new bill, Contempt of Court Bill 2012, into law providing blanket immunity to top government functionaries for their executive actions. Under this law, had an accused or convict of contempt of court filed an appeal, his / her show cause notice or original order was to remain suspended till final disposal of the matter. It also stated that an accused person could [at any stage] submit an apology and the court, if satisfied, would discharge him or remit his sentence.

Besides protecting powers and performance of holders of public office mentioned in Article 248 of the Constitution, which included the president, prime minister, governors, chief ministers, federal and state ministers, the contempt of court act 2012 also shielded 'any authority' against the contempt charges. Numerous petitions were filed in the apex court against that discriminatory law.

The Supreme Court initiated hearing on those petitions challenging the new ordinance. **On 25<sup>th</sup> July 2012**, the CJP Iftikhar M Chaudhry observed that the opposition should have resisted the passage of the said Contempt of Court law in the parliament instead of walking out of the house; the opposition should have stayed in the parliament to resist the ruling party's move. The apex court described walkouts as an injustice with the electorate.

Only two clauses of the new law – one pertaining to immunity for holders of public office against contempt of court proceedings and the other about an automatic stay on the filing of an appeal – were the major areas of concern. It was taken as a 'stillborn' piece of legislation; a constitutionally dead law as the parliament had the power to make laws only with respect to the matters mentioned in the federal legislative list. The definition of contempt in Article 204 (2) was not to be altered by a simple law.

Justice Shakirullah Jan, one of the 5-members bench, had observed that the offices mentioned in Article 248 (2) had been given immunity against criminal proceedings whereas provisions of the Article 204 dealing with contempt of court referred to any person without any classification whatsoever. In fact it was malafide legislation enacted without a proper debate and argued that in a way the entire parliament was made hostage and its independence usurped.

It is also available on the pages of history that once, **on 2<sup>nd</sup> March 1993**, the Frontier Post reporter *Murtaza Haider* [later an *Associate Dean of research at Ryerson University Toronto*] asked the then Chief Justice M Afzal Zullah if the Contempt of Court conformed with the Islamic principles of equity and accountability. The CJP got irritated saying angrily that:

*'I will have you arrested for contempt; don't you forget that I am the Chief Justice not only in the Court, but outside as well.'*

The occasion was a gathering at Holiday Inn Islamabad where the CJP was surrounded by the Islamabad's elite, mostly women. The journalist was referring to a famous event related with the second Caliph, Hazrat

Umar Farooq (RA) as he was also the Grand Mufti (equivalent to the CJP of today).

The above scenario can be seen in the backdrop of events in February 1993 when the Supreme Court had issued a contempt notice to the former Chief of Army Staff, Gen Mirza Aslam Beg who was accused of trying to influence the Supreme Court in October 1988. The General, while addressing journalists at the Lahore Press Club **on 4<sup>th</sup> February 1993, revealed that in 1988 he had advised the Supreme Court** not to restore the deposed government of Prime Minister Junejo and instead urged the Court to allow the general elections to take place.

General Beg's trial started with fireworks with the retired General and Justice Zullah ended up in several confrontational exchanges. At one point Justice Zullah prevented Gen Beg from leaving the Court. **"We command you to stay here, you can't withdraw,"** warned Justice Zullah who had already accused the General of **"talking too much"** and being **"so careless"**. However, in later weeks the mood changed at the Supreme Court when Gen Beg's lawyer, Fakhruddin G. Ebrahim (later Pakistan's Chief Election Commissioner) argued before the court that:

*'The General did not intend to bring the Supreme Court into hatred and ridicule and that he had advised the Supreme Court because he believed holding the elections would be in the best interest of the nation.'*

Later in March 1993 the Supreme Court found Gen Beg guilty of contempt, but released him with a warning. Whereas, two judges on the bench, wrote dissenting notes and argued that *"a severe reprimand should be administered."* The judgement however cited *"mitigating circumstances of the case"* and observed that *"the reprimand administered during the proceedings was sufficient."*

Decades later, the same power struggle between the judiciary, executive and military was seen in Pakistan but this time the Court was not in a forgiving mood.

**On 3<sup>rd</sup> August 2012,** the Supreme Court struck down the said contempt law which was hastily passed by the Parliament to protect PM Raja Perwaiz Ashraf from being charged and ousted from office, like his predecessor, for refusing to write letter to Swiss Authorities against president Zardari. The court abolished the law because it violated the basic principle of equality among the country's citizens. The Supreme Court declared the law unconstitutional and illegal adding that:

*'... the new law was contrary to the provisions of several articles of the Constitution, including Article 63(1)(g), Article(25), Article 204(1) and Article 204(2) of the Constitution. While enacting CO-CA 2012... [an] attempt has been made to reduce the powers of the Court. No immunity can be granted to the public office holders in violation of Article 25 of the Constitution.*

*A section of the Contempt of Court Act 2012 on the hearing of appeals compromises the dignity and independence of the Courts while another section encourages & promotes the commission of Contempt of Court by postponing cognizance of a contempt of Court.'*

The verdict summarized that the only constitutional option left to the bench was to declare the Contempt of Court Act 2012 unconstitutional and void in its entirety.

A five-member bench of the apex court, led by CJP Iftikhar M Chaudhry and comprising Justice Mian Shakerullah Jan, Justice Khilji Arif Hussain, Justice Jawwad S Khwaja and Justice Tassadduq H Jilani, announced the judgment on 27 identical petitions challenging the act. The court, in its 21 page short order, announced that the petitions were maintainable under Article 184(3) given that questions of public importance with reference to fundamental rights were involved therein. The short order ruled:

*'Incorporation of Article 248(1) in proviso (i) to section 3 is tantamount to amending the constitution, which cannot be done without following the procedure laid down in articles 238-239.'*

Zardari's supporters accused the apex court of relentlessly pursuing the matter because of tussle between the CJP Chaudhry and the president whereas the opposing elite held that Zardari and his spouse Ms Benazir Bhutto were found guilty in absentia in a Swiss court in 2003. Zardari appealed, but Swiss prosecutors dropped the case after the Parliament passed the politically motivated NRO giving the president and others immunity from old corruption cases.

Interestingly, the striking down of the Contempt of Court Act 2012 by the Supreme Court did not come as a surprise to anybody, not even to lawyers committed and loyal to the ruling PPP because they had made it public that the law could not stay on the statute book for being violative of the Constitution.

Barrister Aitzaz Ahsan, Babar Awan, Fakhruddin G Ebrahim and even Afzal Sindhu had cited this law as malicious on its first appearance. **One of the oldest diehards of the PPP Afzal Sindhu took it as the main reason for leaving the PPP and joining the Pakistan Tehrik e Insaf (PTI).** Only Federal Law Minister Farooq H Naek and Attorney General Irfan Qadir held the said law viable because they were on the cabinet perhaps.

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**POINT TO PONDER:**

Referring to ***Beena Sarwar's essay dated 21<sup>st</sup> June 2012***, appeared on electronic media; Justice Markandey Katju, former Mr Justice of Supreme Court of India and then Chairman, Press Council of India, once wrote in his article that:

*"In my opinion the Pakistan Supreme Court has gone totally overboard, flouted all canons of Constitutional Jurisprudence, and is only playing to the galleries and not exercising judicial restraint. It is thereby upsetting the delicate balance of power in the Constitutional scheme."*

In his article, Justice Katju explained the concept of immunity referred to in Article 248(2) of the Pakistan Constitution which states: "*No criminal proceedings whatsoever shall be instituted or continued against the President or Governor in any Court during his term of office*". In Justice Katju's opinion, the language of the above provision was clear, and when the language of a provision was clear the Court should not have twisted or amended its language in the garb of interpretation, should have read it as it was. Mr Justice added that:

***'I therefore fail to understand how proceedings on corruption charges (which are clearly of a criminal nature) can be instituted or continued against the Pakistan's President.***

***Moreover, how can the Court remove a Prime Minister? This is unheard of in democracy. The Prime Minister holds office as long he has the confidence of Parliament, not confidence of the Supreme Court.'***

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In Justice Katju's opinion, the Pakistan's Supreme Court, particularly its Chief Justice [Iftikhar M Chaudhry], had shown utter lack of restraint which was expected of the superior Courts. In fact the Court and its Chief Justice had been playing to the galleries for long; thus flouted all canons of Constitutional Jurisprudence.

Coming back; Pakistani Supreme Court's drastic intervention; the court disqualified Yousuf Raza Gilani because of his conviction by the court of contempt. To add to the confusion, it ruled the disqualification dated from the conviction on **26<sup>th</sup> April 2012**, meaning that all subsequent decisions by Gilani's government, including the new national budget, were invalid.

The ruling PPP drastically scrambled to put up a replacement; complicated when an anti-narcotics court ordered the arrest of the leading contender, Makhdoom Shahabuddin [*for allegedly clearing imports of a chemical used in stimulants*] while serving as federal Health Minister.

A new prime minister was found in Raja Pervez Ashraf, previously Minister for Water & Power who was also notoriously named in Rental Power Projects scams. Thus the switch was unlikely to defuse the constitutional standoff for long because the appointing authority of prime ministers, President Zardari, himself was under high criticism over allegations of corrupt history and practice. PM Gilani was ousted for refusing to seek details of Zardari's money from Swiss authorities; his successor was likely to behave in the same way.

Those were the days when Barack Obama's US administration had ridden over the Pak-Army's sensitivities, taking out or killing Osama bin Laden in Abbotabad, not stopping drone strikes in the border regions, refusing to apologise for Salala event in which 24 Pakistani soldiers were killed - more fundamentally, Washington was gradually shifting to India as preferred strategic partner in South Asia as its new ally.

In such circumstances the Supreme Court's cleanout of the corrupt and discredited political class could lead to a younger, clean, more worldly and better educated strata coming to leadership. The need of the time was that a spotless new PM could bring Pakistan out of its morass of corrupt "feudal" politics, militarism and religious extremism – but the PPP totally disappointed the nation by showing another disgruntled face in the form of new PM Raja Pervez Ashraf. What a climax it was.

**LATE POST:**



**Former PM Gilani & Turkish Necklace**

**On 11<sup>th</sup> June 2015;** Interior Minister Ch Nisar Ali Khan told in a media interview that an investigation had been initiated into the reports of leakage of National Database and Registration Authority [Nadra]'s data and its transfer to some foreign countries through international NGOs.

In reply to a question about a scam about issuance of computerised national identity cards (CNICs) to aliens, he said over 25,000 such cards had been cancelled and intelligence agencies had been given the task to investigate reports about issuance of more than 75,000 CNICs to foreign nationals; around 500 employees of Nadra were suspected to be involved in the scam.

The Interior Minister also told that some of the Nadra employees assigned to verify thumbprints of voters from counterfoils of ballot papers had deliberately issued incorrect reports. In one such case, the initial report on a constituency mentioned 3,000 unverifiable votes, but after scrutiny all the votes were found valid. He alleged that it had been done by some employees under a conspiracy to tarnish the reputation of an honest Director General [DG] who was in charge of the project. The minister also claimed that the audit of Nadra's accounts for the PPP government's period had exposed irregularities and action was at hand against the officials responsible for causing losses to the authority.

Ch Nisar said foreigners were banned from visiting Nadra offices unless they obtained permission from the interior ministry. *"Even an ambassador cannot visit a Nadra office nor can an employee of the authority meet any foreigner without permission from the ministry."* The step had been taken in view of sensitivity of the data.

The most important item on press conference agenda on that day was about orders given to the Federal Investigation Agency [FIA] to investigate the disappearance of a precious necklace donated for flood-stricken people by Emine Erdogan, the wife of the then Turkish prime minister, in 2010.

The necklace had gone missing from the warehouse of the National Database and Registration Authority [Nadra]. The necklace was purchased by the then Chairman of Nadra, Ali Arshad Hakeem, for Rs:1.6 million and the media was told that the amount had already been distributed among the girls. Then the necklace was given by Mr Ali to Mr Gilani which remained on display in a showcase in the Prime Minister's House as a symbol of Pak-Turk friendship.

The Turkish people bought the necklace in an auction and gave it back to Ms Erdogan. But she again donated it to flood victims, when she, accompanied by her husband and Mr Gilani, arrived in a camp of flood-affected people near Dadu in Sindh where they found that eight girls were going to get married.

Since many days, the FIA's investigation launched in this context could not bring exact clue to the necklace except that some footprints were leading the enquiry team to NADRA's former Chairman Ali Arshad Hakeem. Due to lack of authenticity, mystery prevailed that who had taken it and how it disappeared.

*[Ms Erdogan had personally donated 10,000 Turkish liras and some pieces of jewellery, including the necklace given to her by her husband at the time of their wedding. She had given the necklace to Fauzia Gilani, wife of the then prime minister Yousuf Raza Gilani, asking her to give it to a flood-affected girl for her dowry.]*

During the second week of June 2015, former Prime Minister Yousaf Raza Gilani admitted before the media correspondent that it was in his possession. Mr Gilani said he had close ties with the Erdogan family and Mrs Erdogan was like a sister to him. He narrated the context:

*'The necklace belongs to my sister and is with me. After the necklace was donated by the Turkish first lady, he visited a flood-relief camp in Sindh where he was greeted by eight girls waiting to get married. He got the necklace evaluated and the market price was put at around Rs:200,000.'*

***[The Turkish First Lady was donating a necklace worth \$2000 only – astonishing?AND it was also on Nadra's record that the then Chairman Mr Hakeem had bought it for Rs: 1.6 million.]***

Mr Gilani further confirmed that the necklace had been donated by Mrs Erdogan, but was bought back by the Turkish people so they could give it back to her. 'It was with me and it is still with me' he remarked.

Referring to the visit of the then PM to mass wedding ceremony in a Sindh flood-relief camp, the former Chairman NADRA said that photos from the ceremony were also prepared so they could be sent to Mrs Erdogan to let her see how her gesture worked. However, both the neck-

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lace and the albums were **'somewhere lost'** in the Prime Minister House.

Stressing his close ties with the Erdogan family, the former prime minister told that his son Ali Haider's honeymoon had also been arranged by the Erdogan family in Istanbul.