

Scenario 64

JUDICIARY RESTORED 2009:

Prime Minister of Pakistan, Syed Yousaf Raza Gilani, in a televised address to the nation, in early morning hours of 16th March 2009, announced reinstatement of the deposed Chief Justice Iftikhar M Chaudhry and other judges saying:

'I restore the deposed chief justice and others according to the promise made by me and the President; a notification to this effect is being issued now. Chief Justice Chaudhry would replace Justice Abdul Hameed Dogar, who retires on 21st March.'

The deposed Chief Justice Iftikhar Chaudhry was removed from service by the former President Gen Musharraf on 9th March 2007, once re-instated on 20th July 2007 after Supreme Court's decision; then with another spill of removal of 60 judges after they refused to take fresh oath of allegiance on 3rd November 2007.

The saga ended with sparkling wave of protest against Gen Musharraf that led to his resignation from his office on 18th August 2008. The prime minister also announced reinstatement of other judges of the Supreme Court while the number of judges for the apex court had already been increased through legislation to accommodate the reinstated judges.

Let us trace out its historical back ground whatsoever.

CONST'L PACKAGE OF MAY 2008:

By denying Benazir Bhutto's words and pledges, her husband A A Zardari negated BB's whole mission and sacred assignment. Not only this, Zardari had forgotten his own 62-point constitutional package of 31st May 2008, which was approved under his signatures. As PPP's Co-Chairman, Zardari had suggested and got incorporated some changes in the constitutional package designed for country's political structure. Immediately after, PPP's Federal Law Minister Farooq H Naek had distributed copies of that package to all their coalition partners.

Some of the amendments proposed in the constitutional package — such as the removal of presidential power to dismiss government and Parliament at will under the controversial article 58(2b), raising the age limit for retirement of Supreme Court judges by three years, and the revival of the Council of Common Interest (CCI) — were indeed long overdue.

However, the proposal to fix the tenure of office of the Supreme Court chief justice to three years was a major stumbling block in the passage of the constitutional amendment bill, which Asif Zardari and his PPP intended to bring before the Parliament after the budget session of 2008.

Some of the proposed amendments, such as withdrawal of the president's power to appoint army, navy or air force chiefs, and also provincial governors etc annoyed Gen Musharraf who was in saddles then. The principal campaigner for Justice Iftikhar M Chaudhry's restoration in office, Aitzaz Ahsan, who was also the President Supreme Court Bar Association then, had already registered his opposition.

"It is not acceptable to us," he told a cheering crowd at a lawyers' convention in Faisalabad on 25th May 2008. The procession taken out by the deposed CJ Iftikhar M Chaudhry and his supporters were determined to show their strength to the PPP, Zardari and the PM that they disliked the intention to reduce the tenure of the chief justice to three years, meaning thereby that even if restored, Justice Chaudhry would retire on 30th June 2008. A mockery of justice it was.

The issue of judges' reinstatement was tactfully evaded by Zardari. He knew that Nawaz Sharif, who had withdrawn his ministers from the federal Cabinet on the issue of the restoration of judges on 30th April, would not agree to limit the tenure of chief justice. At that moment, even the combined strength of PPP & PML(N)'s senators in the Senate were not able to get the bill through.

Even so, the JUI's Chief had congratulated the law minister, terming the constitutional package a great victory for democracy. PML(N) considered the package immediately in their party meeting at Raiwind. It was conveyed that changes could be made in the constitutional package as per suggestions from all the coalition partners and others.

Some of the **proposals, finally agreed** to be given in the constitutional package were:

- *Restoration of judges through a constitutional amendment, and not a parliamentary resolution, with retrospective effect.*
- *Withdrawal of presidential authority to appoint judges in the superior judiciary.*
- *Appointment of judges will be finalised by the prime minister on the recommendation of names by a parliamentary commission (headed by the PM) comprising six members of the National Assembly (three each from the government and the opposition) and two senators (one each from the government and the opposition).*
- *A Supreme Judicial Commission, not the Supreme Judicial Council, will decide the removal of judges. Any judge taking oath under any PCO shall stand removed.*
- *As proposed, the president will be bound to act upon the advice of prime minister in 15 days.*
- *The authority to declare war will be given to the prime minister.*
- *Tenure of the chief justice will be fixed in consultation with all coalition parties.*
- *Violators of the Constitution will be tried under treason charges.*
- *Removal of the concurrent list will take effect to strengthen the provinces.*
- *Distribution from the Federal Divisible Pool to provinces will be made on the basis of population and resources.*
- *Balochistan Levies will be revived.*
- *Equal representation of provinces will be made effective in the Supreme Court.*
- *Repeal of the 17th Amendment except seats of women and minorities will be ensured.*
- *Reserved seats for minorities in the Senate will be ensured.*
- *If any chief minister resigns, the provincial governor would invite senior provincial minister to take oath of the office of CM till the next is elected.*
- *Any no-trust move against the prime minister must give the name of the new prime minister.'*

The draft had some relief for bureaucracy and police as it proposed that only a five member bench of the Supreme Court would be able to hear a *suo motu* notice against them.

[It may be recalled that the suo motu notice hearings by the Supreme Court under the then chief justice Iftikhar M Chaudhry and the ensuing resentment in the officialdom had been cited by the Army Chief Gen Musharraf when he imposed his PCO by holding the Constitution in abeyance in November 2007.]

But Mr Zardari again turned around pushing his own package in dustbin.

ASPIRATIONS OF INDEPENDENT JUDICIARY:

Had Mr Zardari obliged his promises of reinstating the judiciary as per Benazir Bhutto's vision and her announcement of October 2007 at his doorstep [**that J Iftikhar Ch would be our CJ**], the NRO issue could have been dealt with in a different way. The two petitions challenging the NRO, from Roedad Khan and Dr Mubashshir Hassan each, which were still pending in the Supreme Court were intentionally being ignored by the then CJ Abdul Hameed Dogar, perhaps to be taken up later as a part of 'deal' with the PPP or Mr Zardari in the wake of pressure from the public or the party.

The whole nation was sentimental for the re-instatement of defunct judiciary back to the day of 3rd November 2007, and the whole nation was suffering from the nostalgia of 'independent judiciary'.

Quote of facts from print media that "*To talk about independence [of judiciary] is a cruel joke on the people of Pakistan. Its rulers have reduced the country to the lowest form of slavery.*" A writer named Zia Sarhadi of 'Muslim media' had commented on the situation in daily '**Dawn**' of 2nd June 2008.

SG Jilaneer while casting his ideas on '**Myth of Judicial Independence**' said that:

'..... the ongoing agitation about an 'independent judiciary' would appear totally misleading. That Mr Chaudhry's reinstatement deserved unqualified support, but to treat it as synonymous with judicial independence is sheer hokum and a cruel joke.

Mr Chaudhry may be an exemplar of judicial independence. But first, the attitude is personal to him. History is witness that not even the greatest leaders have been followed literally by their disciples.

Second, Mr Chaudhry's display of 'independence' has been Musharraf-specific. The big question is, will he, (indeed, can he) demonstrate the same 'independence' vis-à-vis Nawaz Sharif?

The plain truth, therefore, is that the current agitation is actually not so much for 'judicial independence' as it is a vent for the seething anger against Gen Musharraf. It is a fig leaf for vendetta. And it is not Nawaz Sharif only who is obsessed with settling scores.'

Keeping this hard and cogent reality in mind, the PML(N) had considered the package of the PPP dated 31st May 2008 in their executive meeting, and assured PPP of its support to indemnify the controversial NRO, much to the relief of Zardari's person but in return sought early reinstatement of the pre-Nov 3 judiciary, making it clear that PML(N) would not accept any link between the constitutional package and the issue of the judges.

The PPP under the guidance of Mr Zardari had not taken any risk because the non-operational CJ Mr Chaudhry's consent was not seen amongst this vague and blurred assurance. However, the PML(N) Chief, in a meeting with Law Minister Farooq H Naek at his Raiwind residence, had revived that his party would continue pressing for restoration of the deposed judges through a National Assembly resolution.

Nawaz Sharif had also resolved that the PML(N) would not only extend its moral support to the forthcoming 10th June 2008's long march of the lawyer's fraternity but would also be an enthusiastic part of that major event. However, one would be sorry for Pakistan's ancestral and inherited politics, the people of Pakistan were kept in dark on the **'hidden' proposals** made in the package on the three main issues of public concern:

- *The restoration of the deposed judges.*
- *The question as to whether Gen Musharraf would get indemnity for the unconstitutional steps he took on 3rd November 2007.*
- *The fate of the NRO, which completed its four-month life on 5th February 2008 and therefore stood repealed from that day under Article 89 of the Constitution.*

The PPP's lawyers, constitutional experts and CEC members had considered that the NRO was to be reshaped as permanent law making it beyond any judicial review. This could only be achieved if amendments made to the Constitution under the PCO and the judgments given by the PCO judges were to be validated. Additionally, the deposed CJ Mr Chaudhry would either be kept out or his powers and tenure were to be curtailed. This arrangement was unacceptable to the PML(N) as it would amount to giving legitimacy to Gen Musharraf's 3rd November's order and his election as president in October 2007.

Contrarily, there were plenty of reasons and common understandings on constitutional issues between the PPP leadership, the PML(Q), JUI(F), ANP and the MQM. They were all in favour of indemnity for Gen Musharraf [*for the PPP leadership it was a fair price for saving the NRO but if dealt with intelligently*] and against restoration of the pre-3rd November judiciary.

Asif Ezdi, in his article titled **'Make no mistake' appearing in The News of 3rd June 2008** referred to the same proposition saying that:

'There was no difficulty in mutually agreeing (amongst PPP, PML(Q) & MQM) on the text of a constitutional amendment under which Gen Musharraf gets indemnity, Zardari gets constitutional protection for the NRO and the PCO judges keep their jobs, while Iftikhar Chaudhry is kept out in the cold.

With the support of the PML(Q), the MQM, the ANP and the JUI, such a bill would also be able to muster the two-thirds majority in both houses of Parliament that is needed for its passage.'

But PPP's advisors did nothing concrete in that direction.

At that time, some members of intelligentsia held the opinion that after the PPP's acceptance of the Murree Declaration, the civil society increasingly demanded not only that the deposed judges be restored but also that the sitting CJ Mr Dogar and the other PCO judges must go and be made accountable for taking oath under the PCO and later upholding Gen Musharraf's second coup.

The deposed CJ Mr Chaudhry had publicly expressed his will & confidence that these judges would be punished. To protect them from the charge of high treason under Article 6, Law Minister Mr Farook H Naek's constitutional package of May 2008 included a clause that only future judges who validate an abrogation of the Constitution would be guilty of this crime, but the present violators of their oath would not be held answerable.

Astonishingly, article 6 of the Constitution since it was adopted, the country has gone through three military coups d'état but this article remained dead because twice the military dictators got their actions indemnified by the respective Parliaments. The Eighth Amendment (1985) gave indemnity to Gen Ziaul-Haq and the last Parliament did the same for Gen Musharraf's October 1999 coup through 2003's Seventeenth Amendment.

It was another story that on 2nd June 2008, the PML(N) parliamentary party came up with categorical rejection of certain parts of the PPP's constitutional package dealing with indemnification of Gen Musharraf's 3rd November 2007 act and reinstatement of the judges, particu-

larly seniority of the deposed CJ Mr Chaudhry but it could have been resolved amicably while sitting on the table.

Mr Zardari had not chosen that way but at the same time, did not complete his home work to face the counter attack of worse form because CJ Mr Chaudhry vowed not to leave any stone unturned to drag the PPP in the saline mud of accusations, trials, intrigues and blames.

Mr Zardari and his colleagues themselves had chosen this way irrespective of possible consequences. Nobody took stand by him not even his Prime Minister because they all felt helpless over the issue.

GOVERNOR RULE IN PUNJAB (2009):

On 25th February 2009, a 3-member bench of the Dogar's Supreme Court decided that the Sharif brothers were not qualified to be members of the parliament. The petitions on their electoral eligibility were dismissed. Justice Moosa K Leghari, Justice Sakhi Hussain Bukhari and Justice Sh Hakim Ali also de-seated the sitting Chief Minister Punjab Shahbaz Sharif in a short order announced after the Attorney General Latif Khosa [who had assisted the court as amicus curie] completed his arguments.

The SC held that *'for the reasons to be recorded later on, all the petitions are dismissed and the June 23, 2008 order of the Lahore High Court (LHC) is upheld'*.

[A full bench of the LHC had disqualified PML(N)'s Nawaz Sharif from contesting a by-election on 23rd June 2008, citing his conviction for conspiring to hijack the plane boarding the then Army Chief Gen Musharraf to Pakistan. Gen Musharraf was coming back from Sri Lanka after attending an official assignment. Initially he was not allowed to land in Pakistan.

The coup succeeded, and Nawaz Sharif was convicted on hijacking charges and opted to go into exile to Saudi Arabia after being confined in Attock Jail for some months where he allegedly kept on weeping & crying all the time unlike any mature politician.

The court had conditionally allowed Shahbaz Sharif to hold the Chief Minister's office until an election tribunal decided his case.]

Shahbaz Sharif vacated the Chief Minister's House after the SC verdict, and returned to his Raiwind residence without protocol. In the later of the same day, President Zardari imposed a 2-month Governor's Rule in Punjab and Governor Salmaan Taseer had taken over the affairs of the province. However, Sharif brothers declared war on the Presidency the moment the SC announced its verdict; a revolt was immediately seen in various parts of Lahore.

The intent of Nawaz Sharif was obvious in his open calls of anarchy and rebellion. He demanded the police and other civil servants to disobey the orders of the government. On at least one occasion, Nawaz Sharif even promised to restore these civil servants to their previous posts once he was in power and promised to give them "gifts" in addition to their salaries as a reward for disobedience at his call.

Referring to the Breaking News at all TV Channels dated 25th February 2009, Nawaz Sharif was quoted as saying:

*'We do not accept the decision of the court because it is fake. **I have ordered the police not to obey the government's orders and wage jihad against them, and today I raise Alam-e-Baghawat.** I urge you join me in the long march and we will bring revolution in the country.*

I have asked Shahbaz Sharif to go to Assembly and establish your government again. He is the Constitutional Chief Minister of Punjab province.'

Interior Minister Rehman Malik had declared Nawaz Sharif and Shahbaz Sharif accused of **"...committing sedition for giving a call of revolt..."** adding that Nawaz Sharif sunk so low that he disregarded the well-being of the nation in order to have things his way.

President Zardari had imposed Governor Rule in Punjab under Article 234 of the Constitution, following the Supreme Court decision disqualifying the Sharif Brothers. PPP's Central Executive Committee (CEC) told the media that they had been left with no other constitutional alternative and thus endorsed the proclamation of Governor Rule by adopting a unanimous resolution of support for Zardari.

Mr Zardari and PM Gilani had chaired the CEC meeting. The CEC had empowered the PPP leadership to name a new Chief Minister and also to establish contacts with the PML(Q) for power sharing in Punjab and the Centre. Qasim Zia, Tanvir Ashraf Kaira and Foreign Minister Shah Mehmood Qureshi jumped in the run for Punjab's top slot whereas Zardari had called another immediate meeting of the party's MNAs and MPAs from Punjab to share with them the new political developments.

On the same day of 25th February 2009, JUI's Chief Fazlur Rehman called on President Zardari to discuss future plans after the SC's decision to disqualify the Sharifs. On the other hand the crisis was more deepened by the fact that the Punjabi population resented Mr Zardari's imposition of 'Governor Rule' or a federal take-over of the Punjab province, which had an elected provincial legislature in which the PML(N) was the leading party. The Sharifs were not going to put up with being excluded from politics, which Mr Zardari and his Dogar court tried to do as per traditions in Pakistan.

[However, on the similar lines, Sharif family's pet Chief Justice of Lahore High Court, Khawaja Sharif, had immediately issued stay order for that Governor's Rule reinstating the PML(N)'s government back.

That was another interesting aspect of our judicial partisanship that throughout their tenure till March 2013 the PML(N) continued to rule Punjab on the basis of the same 'stay order'; Pakistani justice hurray!]

While comparing Nawaz Sharif's second stint of premiership with AA Zardari's presidential canon in the then prevailing scenario, the intelligentsia of the PML(N) believed that Nawaz Sharif's rule had two aspects:

- Much of the heavy-handedness in Sharif's premiership was actually his attempt to impose the prime minister's [so called] legitimate powers *vis a vis* the military and characterized as civil dictatorship by military media versions.
- Nawaz Sharif's crackdown against the press as well as his half-hearted imposition of Islamic laws was done under a certain context where, despite being 'dictatorial' and having a 2/3rd majority in the Parliament, he had to constantly appease and repress certain segments of society in order to confine civil agitation.

[This was the same strategy which the PPP had adopted when they were in power; they did not remove Shariah laws from the legal system and acted in similar ways towards journalists & opposition.]

The nutshell comes that if the political parties are confident about the length of their term and non-interference by the military; and if there is rule of law, they will not have the capacity to crackdown on opposition.

The fact remains that after his come-back from exile in the last quarter of 2007; Nawaz Sharif had done and said things that irrevocably changed the political landscape of this country. He might not sincerely believe in them but was seen inclined to inculcate the rule of law and the democratic process as norms of society, might be for the time being at least.

BLACK COAT REVOLUTION:

Resuming with the opening paragraphs of this chapter, the judiciary was in fact reinstated by continuous and concerted efforts of all the lawyers making it a '**Lawyer's Movement**' which had actually taken start on 9th March 2007, when the CJP Iftikhar M Chaudhry was called in the Army House and then was dethroned in the same evening.

The government arrested detained and tortured lawyers on different occasions. For the first time in the history of Pakistan, armoured police vehicles entered the premises of the Lahore High Court (LHC) to attack the protesting lawyers who had sought refuge within the high court building. Several lawyer leaders were kept under house arrest for several months.

In Karachi, anti-lawyers groups and allegedly the government's ally MQM torched a lawyer's office in which **seven lawyers were burnt alive**. In Sahiwal, police acting on the orders of Gen Musharraf regime attacked the lawyers with a petrol bomb, causing several lawyers to suffer major burns. Even then the movement continued with intervals and the processions of lawyers remained the order of the day even after Gen Musharraf's departure.

The last spill started on 21st January 2009 when the LHC Bar Association carried out a '**Million Signature Movement**'. As the name suggests, the purpose of the movement was to get millions of signatures on a large white cloth which was to be presented to the parliament at the end of long march. Political party workers, concerned citizens and lawyers participated and signed the petition.

On 15th March 2009 the Lawyers' Community had given a call for nationwide '**Long March**'. Many political parties like the PML(N), Pakistan Tehreek e Insaf (PTI), Jamaat e Islami (JI) and others supported and participated in the Long March. All the supporters of the 'restoration of judges' participated in the Long March despite a ban imposed on protests and rallies under Section 144 by the government. See a media report:

'It is very sad situation in my beloved country today. The roads have been blocked by placing containers all over. The families are stuck up in the way to their destinations and food has been exhausted. Gas stations are closed. Businesses are no more operative since the last four days.

The ships are waiting in the Karachi harbour but the containers are either hauled up by the police or the same have been grounded by the owners or drivers. The lawyers and the political activists are being continuously harassed and arrested. Many details are available on the media channels and newspapers, I'll not repeat them.'

CJP Iftikhar M Chaudhry assumed charge of his office on 24th March 2009 with a call for the lawyers that *'there is rampant corruption in this institution (judiciary) and this cannot be eliminated without your help.'* While addressing the lawyers after he arrived in the main courtroom amid thunderous clapping and standing prolonged applause by all those present in the room, he continued saying:

'You people (lawyers) should come forward to point out such cases right from the level of civil judges to the judges in the Supreme Court; if there is any complaint, lawyers can substantiate it with evidence.'

As the CJP along with other top judges arrived in front of the Supreme Court gate, hundreds of lawyers and civil society members, who were lined up there since early morning, showered petals on his car and escorted all of them to the building where police guards presented the guard of honour for the re-joining Chief Justice.

Gen Musharraf declared emergency in the country on 3rd November 2007 and had put all these deposed judges under house arrest until PM Mr Gilani, whose PPP came to power and formed a coalition government with Nawaz Sharif's PML(N) after 18th February 2008 elections, announced to release all the judges in his first address to the national assembly.

However, the PPP failed to restore judges throughout the year 2008 despite repeated reminders by the PML(N), which forced Nawaz Sharif to quit the coalition government afterwards. He also announced full support to the long march that the lawyers' fraternity had launched from 11th March 2009 till restoration of the judges.

As the pressure mounted on the government allegedly from the country's powerful military, Mr Gilani had to announce restoration of the judges on 16th March 2009 at last. Subsequent news indicated that the COAS, Gen Kayani, had played a decisive role in compelling PM Gilani and President Zardari to make that historical announcement on immediate basis.

Meanwhile, a Pakistani lawyer petitioned the Supreme Court on the first day of independence of judiciary, challenging appointment of the judges of superior judiciary under Provisional Constitutional Order (PCO) after declaration of emergency in the country in November 2007. Mr Nadeem Ahmad, an associate of Sheikh Akram Senior Advocate and the petitioner, asked the apex Court to stop PCO judges from working as they were appointed without consultation of the [lawful] Chief Justice.

Juan Cole, President of the Global Americana Institute, expressed that:

'Pakistan Muslim League (N) leader Nawaz Sharif had defied the attempt of the government of President Asaf Ali Zardari to confine him to house arrest and was leading a procession to the capital from Lahore when he heard the news at Gujranwala. He then called off the "Long March", which aimed at rallying for the reinstatement.

Sharif was himself an extremely high-handed and dictatorial prime minister who violated press freedom and tried to move the country toward more Islamic laws, and he wasn't exactly a friend to poor people, so I personally don't trust his pledge to help Pakistan achieve real democracy.'

(Ref: Juancole.com)

The intervention of US Secretary of State Hillary Clinton was important in moving the government toward this historical but false-hearted compromise. The most conspicuous and obvious was that the Punjab police and judicial authorities more or less mutinied against the Federal government on this occasion, allowing Nawaz Sharif to escape house arrest and to lead big protests and to set out for Islamabad gathering millions of people on his way. Historically that move should have been taken as a prelude to revolution as it was done in Iran in 1978 before fall of Shah's regime.

Juan Cole further opined that *'certainly the overturning of Musharraf's illegal dismissal of (Justice) Chaudhry has an up side if it begins to undermine the edifice of arbitrary military dictatorship from which Pakistan has so often suffered. It would be more promising if (Justice) Chaudhry had himself opposed that dictatorship before he was dismissed.'*

[How Justice Chaudhry could oppose that move?

Historically, mention may be made of the rising of Justice Iftikhar M Chaudhry to the Supreme Court making him senior to Justice Falak Sher, the former Chief justice of the Lahore High Court.

Justice Chaudhry was then given an out-of-turn edge [irrespective of the details that who actually deserved] to which he had reciprocated within one year of his office, by blindly okaying CJP Irshad Hasan Khan's decision that Gen Musharraf could at once hold the offices of the President of Pakistan and the Chief of the Army Staff under the Constitution. ***Was that observation of any judge reasonable?]***

Critical analysts of Pakistani politics have always insisted that the restoration of CJP Iftikhar M Chaudhry and his colleagues such as Khalil Ramday, Khawaja Sharif etc in 2009 was not possible without judges' NRO (agreement) with Pakistan Army.

Myra MacDonald in one of her articles under '**Pakistan: Now or Never**' [see Reuters of early 2009] appeared in internet media, had given very candid opinion about the CJP Justice M Chaudhry saying:

"The quiet, patient man is on his third life, having been deposed twice previously by former President Pervez Musharraf. Let's hope he serves his term completely, without obstruction, and for the public good. The lawyers' movement was in some ways a triumph for civil society.

(CJP) Mr Chaudhry himself was first appointed by Musharraf after he launched a military coup in 1999, so he cannot say he has always been a loyal servant of civilian democracy. And the deal to reinstate Chaudhry may have been achieved as a result of prodding from the Pakistan Army, which begs the question of how well civilian democracy can flourish in Pakistan if it has to be underwritten by the country's powerful military.

His promised reinstatement — announced after days of negotiations — may also carry with it a political deal whose outcome and required allegiances we are yet to discover."

Nevertheless, as a result of CJP Justice Chaudhry's reinstatement, many people saw him as a savior even though the lawyers' movement was essentially aimed at upholding the rule of law. The fact remained that such unrealistic hopes were bound to produce disappointments because some expectations are always frustrated.

Analyst Ikram Sehgal had opined in ***The News of 26th March 2009*** that great expectations were vested in Justice Chaudhry's person but could he be able to assuage the people's aspirations? Rebuilding the stature of the Supreme Court, he can either play to the gallery and follow the path of retribution or take the high road of reconciliation. The writer further elaborated that:

'Mian Nawaz Sharif kept his party together after the dark period in mid-2008 when he was outsmarted lock, stock and barrel by Asif Zardari. He consolidated politically by converting the floundering lawyers' movement into the most political hot potato in the town, then courageously leading from the front when the chips were down.

The "breakout" from his Model Town home on March 15, 2009, raised the political stakes to an extraordinary height, the media force-multiplying the sheer effect in pulling the masses in their thousands out from their homes and into the streets. The rest is political history.'

In nutshell; the series of judgments announced by the SC during 2009-11 are witness to it where most of them made in favour of PML(N) and against PPP's politicians, against PCO judges, mysterious silence over FATA killings because of strong local political factions etc made the people believe that they got an 'independent judiciary' in a sense that the judges should do what ever they like ***to take revenge*** not what was justified.

The ***New York Times***, dated ***28th March 2009***, had given details of would be problems for the reinstated Chief Justice; thorny legal issues awaiting Mr Chaudhry's concentration included many politically charged cases, like those regarding hundreds of people who got disappeared after they were detained without charges by Gen Musharraf's agencies on suspicion of terrorism. Allegedly these persons were picked up by the intelligence agencies of Pakistan; most of them were shifted to Bagram Air Base near Kabul in Afghanistan to be handled by American CIA without any diplomatic note of formality or anything on record for any.

On the next stage, two cases bear directly on the fortunes of the nation's most prominent political leaders, President Zardari and Nawaz Sharif of PML(N). In one, the Supreme Court was expected to review the amnesty from corruption charges [***referring to the NRO***] that Gen Musharraf gave to Benazir Bhutto and her husband Mr Zardari. The other case was a petition regarding Mr Sharif's ability to run for the public office as discussed through above paragraphs.

PM GILANI BRINGS BACK SHARIFS:

Sharif Brothers disqualification issue was solved by PM Mr Gilani himself, by making announcement on behalf of the PPP that the federal government would file a review petition in the Supreme Court seeking reversal of the order of disqualification of Nawaz Sharif and Shahbaz Sharif, and addressing all issues in the light of the Charter of Democracy. He also asked the provincial governments to lift Section 144 immediately and release the arrested persons. He declared that the PPP had made a lot of contribution to the lawyers' movement and rendered numerous sacrifices so the same should not go waste.

However, the reinstatement of judiciary was loaded with potential conflicts of interest because Nawaz Sharif had rightly decided to brew benefit out of the Lawyer's movement to bring back Justice Chaudhry to office. CJP Justice Chaudhry defused some of the controversy by appointing a five-member bench excluding him, to hear such cases. Sharif Brothers case was examined in the backdrop of political negotiations between Sharifs and the PM Gilani where it was resolved that Punjab government would be repatriated to PML(N) by finding out a mid way.

This resolve saved the Supreme Court from expected embarrassment as the Bench had accepted a petition from the Sharif brothers demanding a status quo, which was gladly granted. The Punjab government was immediately restored through a stay order pending full hearing at some later stage [which remained pending till 16th March 2013 at least].

Contrarily, the review of President Zardari's amnesty was another issue in which CJP Mr Chaudhry was manifestly seen going partial and interested. Mr Zardari had blocked Justice Chaudhry's reinstatement because he feared that the judge would repeal the amnesty. The constitutional lawyers held that Mr Zardari, as president, had immunity from prosecution. President Zardari and Ms Bhutto had maintained that the corruption charges were politically motivated. CJP Justice Chaudhry should not have heard the case but he opted to head that bench.

Other potential minefields included cases involving the judges appointed by Gen Musharraf and Mr Zardari to replace those judges of higher Courts which were recruited in contravention of Judges Appointment Rules framed by the Supreme Court in March 1996 (Judges Case). Petitions were filed with the apex court to remove them, the same were admitted, heard and decision released to send them home. [*Details are available on other pages separately*]

The most important issue for CJP Justice Chaudhry was that as he had taken an oath to uphold the law, he had to consider the legality of Gen Musharraf's actions. The first petition was filed in the first week of his reinstatement asking to hold Gen Musharraf guilty of high treason. The Court had to carefully decide where it should exercise restraint or not. The petition was either silently dismissed or was buried in the piles of pending cases; the General was allowed to leave for abroad and with an un-precedented guard of honour from the PPP's government.

On the 'missing persons' issue, the bench held some proceedings under the chair of Justice Javaid Iqbal; some persons recovered but then the file was sent to cold storage. The credit goes to a most deserving lady named Amina Masood Janjua, who led the campaign to locate the missing persons including her husband. But she recognized that justice so long awaited might not come instantly. Her lawyers kept on telling her to hold on, not to be impatient. Case still goes pending [in mid 2013 at least].

In this whole scenario the Army, particularly its Chief, came out smelling roses because Gen Kayani was the sole person in the whole crisis visible from distant. He gave no statement. Neither the ISI nor MI got involved in the political brawls as they usually did in the past. Their reports were informational and routed through proper channels. In Gen Ziaul Haq's era the media got access to the military hierarchy and Gen Aslam Beg provided them extraordinary access. This time army appeared graceful and calculated and did not spare even one moment to gain its old pride assuming a guiding role for power thirsty politicians.

Coming back & cutting the story short, the PM Gilani and Gen Kayani paid a last determined visit to the President House at 11 PM on 15th March 2009 and apprised Mr Zardari about the procession or long march of 2/3 hundred thousand people leaving *Shahdara* Bridge of Lahore under the lead of Nawaz Sharif.

The President was also told that from all cities at GT Road on the way to Islamabad, thousands of people were likely to join this long march and Islamabad would be flooded with people. The technique devised by the Interior Minister Rehman Malik, to block the roads and streets by placing heavy containers on them, was totally flop; the president was briefed.

This was the moment when President Zardari had to issue green signal for reinstatement of the Chief Justice Iftikhar M Chaudhry along with his team of judges.

Astonishingly, playing with the history on record (and as reported by a columnist ***Rauf Klasra on 25th December 2009 in 'the News'***); in a meeting with anchor persons from all the leading media channels of Pakistan on 24th December 2009, PM Mr Gilani finally disclosed that, contrary to the general perception, it was he, and not the Army Chief, who had restored the defunct CJ Iftikhar M Chaudhry along with his team on 15th March 2009. The meeting of media persons was perhaps called for that disclosure!

PM Gilani had also asserted that neither he nor the President (Mr Asif A Zardari) had asked the Army Chief Gen Kayani to make late night telephone call to Aitzaz Ahsan to terminate the long march. The anchor persons had raised their eyebrows that how an Army Chief could send a call for a lawyer (Aitzaz Hassan) at his own on such a big issue if he was not authorized to speak by any. Whereas it was in the knowledge of those anchor persons that Aitzaz Ahsan also had a secret meeting with the Army Chief in that connection.

The PM Gilani was denying the whole scenario altogether. The PM had once again tried to convince the media that Mr Zardari had ever resisted CJ's restoration, arguing that without President's sweet discretion the restoration of judges was not possible. The PM was bent upon asserting that *'only he deserves credit; not any body else'*.

PM Mr Gilani, while trying to dismiss the general impression, that the judges were restored on the intervention of Gen Kayani, said that:

'The decision to restore the Chief Justice was taken by him at 11pm and then he met President Zardari. Gen Kayani was asked to meet him and Mr Zardari in the Presidency at 12am so that he could be informed about the decision of the chief executive.'

However, no sane person believed the prime minister.

PM Mr Gilani had also admitted that the statement of Federation's lawyer Kamal Azfar (that the GHQ and the CIA were hatching conspiracy against the PPP's democratic government) had damaged the government case. The PM revealed that Kamal Azfar was sitting with Gen Kayani and the US General Petraeus when the said statement was made. The PM was also trying to convey that *'so far the judiciary has not interfered in his executive authority.'* However, the ground realities went altogether different since that day.

Let us hope some true historian would bless us with the actual facts.

PAKISTAN'S NEW JUDICIAL POLICY:

In the **first week of May 2009**, the Registrar Supreme Court Dr Faqir Hussain told the media men that the apex court was hearing 19055 cases; 18700 in NWFP now Khyber PK, 7654 in Balochistan and in Sindh this number had reached 44924. Highlighting salient features of new Judicial Policy, Dr Faqir Hussain said that the people would experience a positive change; a special cell would be set up to eliminate corruption from the judiciary and the judges would neither serve as acting Governors nor accept any other positions in Executive.

The Registrar told all the judges deputed to various departments had been called back and no judge would be appointed in his / her native district; bail-able cases would be heard on preferential basis while murder and narcotics related cases would soon be settled.

Every citizen keeps fundamental and inherent right to seek speedy and affordable justice, the provision of which becomes a state's duty and responsibility. In this regard, the announcement of "New Judicial Policy of 2009" was welcomed by masses, among many of them were made waited into their pending cases in the courts for years. Since the higher rate of pendency of cases, uncertain time limit for courts' decisions, remote accessibility to courts and affordability of legal fees were the main reasons for the demand of judicial reforms in the form of "**Nizam-e-Adal Regulation" in Malakand Division**. The Supreme Court of Pakistan's realization for the need to bring reforms in the judiciary was opening the doors of justice to a common man.

Since Pakistan's judiciary had started a new journey towards independence just two months earlier, so the other associated areas also needed vibrant shake. The SC then aimed to add further extensions in the Judicial Policy which included:

- The appointment and dismissal of the judges of SC and those of High Courts would need clarity and should be acceptable to every stakeholder of the state. This would require suitable amendments in the constitution.
- The practical implementation of the reforms introduced in the new policy was the most important task as ***'justice not only been done, but seemed to have been done.'***
- Code of ethics for judges would revisit and were to be brought to the level comparable to that of judiciary in the developed countries.
- Remuneration and benefits provided to all the judges should be sufficient for their living to minimize the chances of corruption. The establishment of anti-corruption cell was appreciated by the higher courts.
- There was a need to bring improvements in the administration to ensure due dispensation of justice by the courts.
- The problems of uncertain time limit and the pendency rate of cases would be appropriately addressed with following steps:
 - (a). Establishment of new courts and increase in the number of specialized courts particularly in remote areas to make justice easily accessible to every citizen.
 - (b). A reasonable maximum amount of legal fees were to be specified for specified cases to make justice affordable.
 - (c). There was a need for public awareness about courts legal system of the state to make dispensation of justice easily understandable for a common man.
- Alternative Dispute Resolution (ADR) Forums on each separate legal area were to be established to encourage settlement and resolution of disputes through alternative means.
- There was a need to respond to the complaints and timely feedback to redress the grievances of the masses quickly.

- Minimum numbers of jail inspections in a specified period by authorized judges were to be prescribed to stop human rights violations and mal-practices in jails.

The general populace of Pakistan and especially the media are being requested to raise their hands if any of the point mentioned in the aforementioned Judicial Policy of May 2009 has been implemented till mid 2013 at least.