

The Living History of Pakistan Vol-I

POLITICS GOVERNANCE JUDICIARY PAK-ARMY

The Living History of Pakistan

[2011-13]

Volume - I

INAM R SEHRI

G H P
Grosvenor House
Publishing
Ltd

The Living History of Pakistan Vol-I

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This book is published by
Grosvenor House Publishing Ltd
28-30 High Street Guildford
SURREY GU1 3EL [UK]

A CIP record for this book is available
from the British Library

[All page with usual statements ending with]

ISBN 978-1-78623-705-7

The Living History of Pakistan Vol-I

- Greed in relationship
- Hypocrisy in religious beliefs
- Believe Jesus but burn churches
- Do corruption even in charity
- Say prayers for show-offs
- Do Hajj & Umras on public funds
- Sermons of Murder on *Mimbers*
- Hatred for each other's sects
- Feel pride in using fake degrees
- Chant slogans for brief-case leaders
- Die for politicians living abroad
- Throwing acids on women faces

*AND yet complaining that RULERS are not good –
Only Pakistanis can afford to behave like that.*

The Living History of Pakistan Vol-I

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The Living History of Pakistan Vol-I

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[in English] (2013)

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[in English] (2013)

{The FOUR volumes of '*Judges & Generals in Pakistan*' are not the stories or facts about only the honourable judges or respectable military Generals of Pakistan but also an authentic record of contemporary history.

Living History of Pakistan Vol-I is a continuation of the same series with only a change in name of the same product. It is just for the change of taste otherwise the SCENARIOS and the PAGE NUMBERS are in the same continuity. All the above books deal with Pakistan's chequered history of massive financial & intellectual corruption, abortive rule by two political parties in succession with higher judiciary's gimmicks during 1971 onwards; Constitutional Amendments which made political parties as family businesses & apex court's nexus making the politicians more corrupt.}

Published by

Grosvenor House Publishing Ltd
28-30 High Street, Guildford
SURREY UK GU1 3HY

It's me; my Lord!

Inam R Sehri

- Born in Lyallpur (Pakistan) in April 1948
- First Degree from Government College Lyallpur (1969)
- Studied at Government College Lahore & got first Master's Degree from Punjab University Lahore (1971);
- Attachment with AJK Education Service (1973-1976)
- Central Superior Services (CSS) Exam passed (batch 1975)
- Civil Service Academy Lahore (joined 1976)
- National Police Academy Islamabad (joined 1977)
- LLB from BUZ University Multan (1981)
- Master's Degree from Exeter University of UK (1990)
- Regular Police Service: District Admin, Police College, National Police Academy, the Intelligence Bureau (IB), Federal Investigation Agency (FIA) [1977-1998] then migrated to the UK permanently.

A part-script copied from the earlier volumes:

Just spent a normal routine life; with hundreds of mentionable memoirs allegedly of bravery & glamour as every uniformed officer keeps, some

The Living History of Pakistan Vol-I

times to smile at and next moment to repent upon but taking it just normal except one or two spills.

During my tenure at IB HQ Islamabad I got chance to peep into the elite civil and military leadership of Pakistan then existing in governmental dossiers and database.

During my stay at FIA I was assigned to conduct special enquiries & investigations into some acutely sensitive matters like Motorway Scandal, sudden expansion and build-up of Sharif family's industrial empire, Sharif's accounts in foreign countries; Alleged Financial Corruptions in Pakistan's Embassies in Far-Eastern Countries; Shahnawaz Bhutto's murder in Cannes (France); Land Scandals of CDA's Estate Directorate; Ittefaq Foundry's 'custom duty on scrap' scam, Hudaibya Engineering & Hudaibya Paper Mills enquiries, Bhindara's Murree Brewery and tens more cases like that.

[Through these words I want to keep it on record that during the course of the above mentioned, (and also which cannot be mentioned due to space limits) investigations or enquiries, the then Prime Minister Benazir Bhutto, or [late] Gen Naseerullah Babar the then Federal Interior Minister, or G Asghar Malik the then DG FIA, had never ever issued direct instructions or implicit directions or wished me to distort facts or to go malafide for orchestrating a political edge or other intangible gains.

Hats off to all of them!]

I should feel proud that veracity and truthfulness of none of my enquiry or investigation could be challenged or proved false in NAB or Special Courts; yes, most of them were used to avail political compromises by Gen Musharraf's government.

That's enough, my dear countrymen.

CONTENTS

AN URGE – AN APPEAL	(1461)
Scenario 91 <u>TWO DEADLY INTERVIEWS</u>	(1467)
<ul style="list-style-type: none">• One Page for The Conspiracy Killers• Ilyas Kashmiri Wanted – Dead or Alive• Ilyas Kashmiri Declared Dead• Munizae's Dreadful Interview• Vinod Sharma on ISI	
Scenario 92 <u>SALEEM SH'D KILLED BY ISI [NO]?</u>	(1482)
<ul style="list-style-type: none">• Saleem Shahzad's Two Interviews• Saleem Shahzad Killed• Judicial Commission on SS's Murder• Insecure Media in Pakistan	
Scenario 93 <u>US SENATE REPORT ON Mr. ZARDARI</u>	(1499)
<ul style="list-style-type: none">• Benazir Died For Democracy?• ARY Gold License Deal [1994]• Surrey Palace From A Sugar Mills• Swiss Legal Proceedings• Benazir Bhutto Denied Allegations• Surrey Palace Fiasco• Bilawal Zardari House Lahore	

The Living History of Pakistan Vol-I

- Scenario 94
ISAF CONTAINERS SCAM (1520)
- Pak-US Signed New MOU
- Scenario 95
SC REF – BHUTTO’s JUD KILLING (1534)
- Background of 2011’s Reference
 - SC Starts Hearing
 - Media Move Against Babar Awan
 - Proceedings At SC Went On
 - Judiciary Itself On Trial
 - Bhutto’s Ref – An Analysis
 - Side – Benefits Of 2011’s Ref
 - PPP Side–Lined Babar Awan
- Scenario 96
PAKISTAN: MEMO-GATE SCANDAL-I (1554)
- Contents of memo
 - Civil vs Military Strides
 - Hussain Haqqani Called Home
 - Supreme Court Moved
 - *‘State Within State’* – PM Gilani
- Scenario 97
PAKISTAN: MEMO-GATE SCANDAL-II (1569)
- Judicial Commission Formed
 - Mansoor Ejaz Spills the Beans
 - Mansoor Ejaz Termed Lier
 - Memo-gate in Foreign Media
 - Commission Concludes its Findings
 - SC Proceedings & Memo-Gate Ends
- Scenario 98
PM GILANI SENT HOME-I (1588)
- Army vs PPP Once More
 - A PM Appears in Court
 - PM Found Guilty Of Contempt
- Scenario 99
PM GILANI SENT HOME-II (1601)

The Living History of Pakistan Vol-I

- *Khat to Likhna Paray ga*
- Speaker NA Keeps PM Intact
- PPP Degraded Babar Awan
- Speaker's Decision Challenged
- PM Gilani Finally Sent Home
- President Zardari Hits Back
- Former PM Gilani – Necklace Issue

Scenario 100

DR ARSALAN IFTIKHAR CASE-I

(1619)

- *'Aapis ki Baat'* by Najam Sethi
- Malik Riaz's Hot Press Conference
- Apex Court's Verdict

Scenario 101

DR ARSALAN IFTIKHAR CASE-II

(1635)

- Pandora Box Opens
- SC's One Man Saddle Commission
- How The Foreign Press Viewed It
- Anchors of *'Dunya TV'* Alleged
- SC's Commission on Media

Scenario 102

A M ASGHAR KHAN CASE JUDGMENT

(1651)

- AM Asghar Khan vs ZA Bhutto
- SC's Judgment In Asghar Khan Case
- Brig Saeed's Personal Diary
- Gen Aslam Beg Got Upset
- Gen Ehtesham Zamir Speaks Loud
- Keep Record Straight – Gen Hamid Gul
- Dr Qadeer Khan's Opinion
- The Practice Continued[?]
- FIA's Investigation Starts
- Another Threat of Pandora Box

Scenario 103

2 MNAs + FED MINISTER IN DRUG COURT

(1677)

- MNA Musa Gilani Scandal
- Son's Cor'n Case in Dad's Cabinet
- MNA Hanif Abbasi – Brutus Too

- Scenario 104
JUDGES & JUDICIARY IN FOCUS (1691)
- SC on Business Affairs
 - *Suo Moto* for Murder in Sialkot
 - SC vs [Mostly] the PMs
 - Independence Under CJP Chaudhry
 - Islamabad HC's Activism
 - Aitzaz Exposes CJP Chaudhry
 - Pakistan's Judicial Pandora Box
- Scenario 105
PAKISTAN's DEMOCRACY HURRAY (1707)
- PPP's Gimmicks on BB's Murder
 - Hidden Historical Facts
 - SC on Rehman Malik's Dual Nationality
 - State Level Cheats in Swaiss Cases
 - PPP's High Blown Democracy
 - PPP Minister's White Lie
- Scenario 106
DIVIDING PUNJAB (1723)
- Vicious Drama Starts
 - Saraiki Sooba Voice
 - Saraiki Province or Bahawalpur
 - Bahawalpur South Punjab
 - Mutiny Grows in Punjab
- Scenario 107
JUDICIAL AUTOCRACY IN PAKISTAN (1741)
- Character of Judges
 - Pakistan's Judiciary in 2012
 - Babar Awan's Licence Suspended
 - Brig Ali Khan's Appeal Rejected
 - SC On Waheeda Shah
- Scenario 108
JUDICIARY vs PAK-ARMY [2012] (1758)
- Fairy Tale of IHC Judges
 - Contempt Notice to MQM's Altaf Bhai
 - Army Act 1952 Prevailed

The Living History of Pakistan Vol-I

- Gen Kayani Speaks Out

Scenario 109

CJP CHAUDHRY'S JUDICIARY

(1782)

- A Salute to CJP Chaudhry
- SC Attacked Again – by Lawyers
- Ind Judiciary – Conflicting View
- Mixed Feelings Went On
- Justice Khosa's Daring Precedent

Scenario 110

POLITICAL ATTACKS ON PAK-ARMY

(1800)

- Attacks From A A Zardari
- Gen Pasha Of ISI Retired
- Siachen Tragedy [2012]
- Royal Palm Club Lahore Case
- Fresh Efforts to Tame ISI

Scenario 111

BREAKING PAKISTAN PLAN

(1818)

- US's Breaking Pakistan Plan
- Why US Wanted Pakistan's Break
- Pak-Army Delegation Humiliated
- Gen Musharraf Was Loud Enough

AN URGE – AN APPEAL

'CHEHRAY NAHIN NIZAM KO BADLO':
[Change the system NOT faces]

*The below essay was published in media in August 2013 –
but it is correct even after two years
In Pakistan two years are not enough to give you true smiles
Even 20 years are not sufficient – think for 200 years*

Once, Pakistan's Federal Interior Minister Nisar Ali Khan, in his press conference made a hint to constitute a Joint Intelligence Body to deal with the terrorism menace effectively. Good job - but what the new body will perform. Some intelligence directorates would work together to share the information collected about the terrorists, suicide bombers and hardened criminals etc. Consider the next step now.

The intelligence would be passed on to the Rangers or Police or FC or BC or FIA or alike department to conduct raids, arrest the terrorists with recovery of their suicidal jackets, rocket launchers, grenades, Kalashnikovs and bags of bullets. Consider the next step now.

The police would take arrested persons on remand; send them to judicial lock-ups, then to jails; the police case would remain under investigation for months and years and the arrested lot would be released on bail by the respective courts due to LACK OF EVIDENCE or FAULTY EVIDENCE.

The police mostly consider it better to sell out the culprits for little money or fear of TERRORIST GROUP behind them or on instructions of their political bosses. If police stands, the courts would let them off again due to broken EVIDENCE.

We all Pakistanis, as a nation, are fond of STATUS QUO. We are all DISCUSSION loving people; see our TV live programs, news editorial pages and even our Senate, National & Provincial Assemblies – all are the discussions and debating FORUMS to keep that status quo in place.

The Living History of Pakistan Vol-I

Since the last 14 years, how many terrorist events and suicide bombings have been reported; thousands of people died, burnt or mutilated – but NOT A SINGLE CONVICTION.

Reasons – police officer's evidence is NOT ADMISSIBLE. There may be more countries like India or BD where this 160 years old law prevails but there the terrorism menace is negligible. The Pakistani magistrate is made to record statement under Sec 164 CrPC but even then 99.99% cases end up in zero convictions.

Not a SINGLE MALE has been convicted under Haddood Laws since 1979; tens of women have been '*sangsarred*' [death by stoning].

CCTV recordings, camera photographs, TV footages, DNA tests, medical opinions, forensic reports, finger prints AND all expert analysis are considered SECONDRY EVIDENCE in Pakistani laws – is there any other country in the world which keeps such nasty law.

The same drama is being repeated daily and in all places of Pakistan where the terrorist attack occurs. Net result comes that police, Rangers, FIA, IB, ISI and other concerned departments may be wrong but MORE FAULT LIES WITH LAW & COURTS.

See the following media reports [covering very limited time] for a while:

On 12th March 2013; the media, both print and electronic, told the nation that Sindh Rangers apprehended more than 460 suspects and recovered hundreds of weapons by conducting 15 major operations in Karachi and 96 raids during the past three months.

Ranger's Col Shafiq Niazi said - those taken into custody included 49 major targeted killers besides extortionists affiliated with various proscribed outfits as well as political parties. During the operations against criminals; 7 of the Ranger's men had been martyred and 14 wounded.

On 17th June 2013; the Rawalpindi police saved the city from a major terrorist attack by seizing an explosives laden car and nabbing two terrorists. SSP Sikandar Hayat informed the media that the police stopped a Toyota Corolla at the Naseerabad picket. The two young men in the car did not stop and tried to speedily exit the scene. The police then intercepted them successfully, recovering two suicide jackets from their car's CNG cylinder, 20 bombs, 4 Kalashnikovs, 4 pistols and a huge cache of bullets from them. The criminals were arrested and investigated; the terrorists confessed during preliminary questioning that they belonged to Miranshah and

The Living History of Pakistan Vol-I

were planning on targeting Rawalpindi. They were shifted to an undisclosed location by the police.

On 5th July 2013; eleven suspects, including a suicide bomber, were arrested during several hours search operation in Karachi's Manghopir area by Rangers and police. During the raid, Rangers officers seized a huge amount of arms, a few motorcycles, a monitor, mobile phones and threatening pamphlets. According to initial investigations, the suicide bomber had reached Karachi from North Waziristan a day before.

Around 1,500 Rangers officers took part in that operation, which was conducted on a tip off.

On 2nd August 2013; Khyber PK's Lakki PS held two men Gul Wahab and Imranullah on main bus stand in Lakki city and recovered a Kalashnikov, a Kalikow and 129 bullets from them. Separately, another police party of Tajori PS arrested a man Amanullah in Adamzai market and seized a Kalashnikov rifle and 20 rounds from him. Police registered separate cases against the arrested persons under relevant section of law.

What else Pakistanis expect from their police or Rangers. What else the courts need to get convinced. In the above cases Police or Ranger's evidence would not be accepted under Pakistani LAW; so from where the INDEPENDENT WITNESSES would come up. Courts are weak – Laws are weak. After a week, all were bailed out Scot free. The terrorists and miscreants know it so the whole Pakistan is suffering since twenty years and would continue to suffer; one can apprehend.

The Assemblies only convene their sessions for friendly discussions or question - answers; no law making ever done in right directions; long policy statements and media briefings – nothing beyond.

Former FIA's Chief, Tariq Khosa, in his essay of 6th August 2013 in print media have suggested following measures.

- Inter-agency intelligence coordination between the federal and provincial institutions should be notified with well-defined terms of reference.
- A counter-terrorism joint task force must be launched with selected ones from the Anti-Terrorism Force of the police and SSG of the military.
- Joint Interrogation Teams (JIT) should be notified by the home department.
- Provincial monitoring committee should be constituted under the law ministers.

The Living History of Pakistan Vol-I

- All militants and undertrial accused should be held in high-security prisons.

BUT IN ADDITION the Pakistani nation needs to stand up for SUMMARY JUSTICE. The 173 years old Police Act, 160 years old PPC, CrPC, Evidence Act [though little reformed in Gen Zia's times negatively] have to go now. The British had given you these laws but are not practised even in their own territories – abandoned since long.

PML(N) should have considered the new legislation in their first parliamentary session. 19th century evidence act and court procedures, as we still see in Pakistan would not work now. See how many terrorist cases have been worked out or gone through successful trials in our courts; if a single mass killer has been punished during the last 14 years - NO. The people arrested and jailed are then 'facilitated' to flee away through jail breaks - see the Bannu & DIK jail events.

How Iran, Saudi Arabia, UK or other developed states have dealt with such menace. Simply that if a killer is identified, he is taken through *summary trial procedures [no gimmicks of 150 years old evidence requirements like in Pakistan – waiting for the eye witnesses]*, and next week he is hanged in the main square. Whether Islamic Laws or English Laws; both equally effective. Judge has to convince himself and decide about the culprit - not the procedural lacunas.

What a mockery of Pakistani social values; daily TV news tell that gangs with illicit arms captured, bomb making devices recovered but the TV video recording is not accepted in court. CCTV footage is there but no punishments; what else a judge should need to deliver justice.

Why all this fuss - Change the laws please. Shelve the Pakistani evidence act and court's procedural code. Select the TOP quality judges in all respects; law knowing & God fearing with courageous backgrounds [even one in a district will be enough]; let them accept all evidence what appeals them to decide, no flaws in policeman's arrest process or recording statements etc should be able to take away the killer free.

Give those judges new law to decide through summary procedures. Where there is TV or CCTV footage, should be used to send the killer to gallows straightaway. Appeal should be decided in three days and execution in a week in open. There are more than 3000 mercy petitions with the Presidency, some pending decisions since 15 years - is it justice and is it Islamic Republic by the way?

Radical changes are needed now; otherwise let the killings be on. They

The Living History of Pakistan Vol-I

are separatists, nationalists, terrorists or sectarian activists or what else - when someone knows that if *'I kill the other, I'll be immediately taken to gallows* [when arrested]' - the things will go different.

Since long killers in Pakistan know that the courts and laws are favouring them, and lawyers are there to save them through EVIDENCE gimmicks - the appeals - then mercy petitions - till then they would otherwise be out through jail breaks.

Books can be written and months can be consumed on this debate but the only solution left that we have to go 180 angle to the famous maxim [*that 'don't punish an innocent - 1000s actuals can be freed under benefits of doubt'*]. But think; TV & CCTV footage and camera eyes do not leave any doubt. Be radical - change the laws and procedures please; much will be OK.

Families of dying officers from Police and Rangers also demand JUSTICE; it should not only be the prerogative of criminals whom the courts set free daily under this maxim.

The Pakistani nation should rise up now for *'CHEHRAY NAHIN NIZAM KO BADLO'* – where is Imran Khan's high trumpeted shouts for INSAF. He can at least bring radical changes on above lines in his Khyber PK through provincial legislation.

The Supreme Court has already settled in its own verdict cited as 2012 SCMR 1258, in these words, *"Justice at no cost and at no stage should be allowed to fall prey to the procedural technicalities, which may be ignored if they tend to create hurdle in the way of justice"*. But *Hathi ke dant khane ke aur Dikhane ke aur.*

SC itself is confined to 'Contempt Notices', it should have raised itself high. In general we follow the English Law, but in that originating country [UK], the last Contempt case was heard in 1946 [for details *Judges & Generals in Pakistan Vol -I & Vol -II* are referred]

MNAs & MPAs are there only to deal with RRP's and Nandipurs. But the SC should have worked out summary procedures and summary courts to deal with the above exemplified cases of Rangers raids. If you do not believe police – OK; believe Rangers, TV eyes & media at least; the persons arrested with illicit lethal arms should have been hanged till now.

Have a sweet dish after the meal – it is going to be another sunset in Pakistan now.

The Living History of Pakistan Vol-I

{published at pkhope.com on
16th August 2013}

Roedad Khan had also agreed, more or less, [*'the News'* dated 12th December 2013 is referred] through an illustration that:

'.....one Marshall Court in the US. Marshall made the Supreme Court 'a driving force' for change. Marshall employed the law as a means to attain the political and economic ends that the people favoured. The judge was to use his power to mould the law in accordance with the needs of the American people. Marshall moulded his decisions to accord with the "felt necessities of the time". For Marshall, the constitution, like the law, was a tool to serve the needs of the nation.'

Will some judge rise from Pakistani soils to do the same like job [*given the parliament is impotent*].

"Change happens by listening and then starting a dialogue with the people who are doing something you don't believe is right." - Jane Goodall

.....So the goal should be to stay open-minded, be comfortable with being wrong. Broaden your horizon with new areas of interest. It is more beneficial to you to open your mind and consider a different perspective.

Abraham Lincoln said: "*I walk slowly, but I never walk backward.*" So, please keep moving forward.

Inam R Sehri
12th November 2015

Scenario 91

For *The Conspiracy Killers*

This chapter is to pay respects, regards and tribute to Pakistan's Army Chief Gen Raheel Sharif who is fighting at various internal and external sectors with an undying determination, audacity and fortitude – keeping the visionary nationalist approach in sight.

Gen Raheel Sharif, with the help of his commanders' team, successfully restrained the terrorists of all sorts including political, criminal, economic and sectarian etc, where the civil governments in succession had miserably failed to deliver; rather the political elite remained implied partners to the menace.

This chapter is here to salute Gen Raheel Sharif that how he tackled the dissident voices within the armed forces – to which phenomenon the India and US, in the garb of friendship, tried to label as 'mutiny in Pak-Army' during the previous decade.

Gen Raheel Sharif's effective leadership coupled with the forces' morale helped the establishment to redress those orthodox dissenting elements from ranks and files of the Pakistan Army.

This chapter would give an insight to the historians to keep their records straight while pondering that how some media persons' misconception or misuse of their narrative abilities can harm the state – half truth is more dangerous, we all know.

The ending lines of this chapter contains briefs of an Indian Intelligence columnist Vinod Sharma, published in Indian media – directly admitting that ISI is, and has been, the most professional, proficient and nationalistic corps of the Pakistan Army.

[DEADLY] INTERVIEWS OF 2011:

On 9th October 2009, a high-level meeting at the Presidency of Islamabad between Pakistan's civil and military leadership endorsed a military operation against the Pakistani Taliban and al-Qaeda in the South Waziristan tribal area.

At the same time, al-Qaeda was seriously implementing its game plan against its main targets, the United States and its ally Pakistan; in that context the militant activity in Pakistan had expanded manifolds.

A week earlier, a car loaded with explosives had rammed into the compound wall of the Indian Embassy in Kabul, killing at least 17 people. Just three days after that Kabul episode, the militants staged a daring attack on the Pak-Army's GHQ in Rawalpindi. Two days after, a suicide bomber detonated a bomb in market town in the Swat Valley region, killing 41 people and injuring 45 others – chaos all around.

Pakistan was at critical juncture, with around 60,000 armed troops deployed in South Waziristan to flush out the Pakistan Tehrik e Taliban (TTP), al-Qaeda and their allies from the Pakistani tribal areas.

ILYAS KASHMIRI WANTED – DEAD OR ALIVE:

During the same tense times, an al-Qaeda related leader Ilyas Kashmiri, released much threatening messages to Pakistani military through certain media members. It was because during the past few months, certain leading figures of the TTP had been killed in drone attacks including Osama al-Kini, a Kenyan national and Chief of al-Qaeda's External Operations; Khalid Habib, the Commander of the *Lashkar al-Zil* [al-Qaeda's fighting force]; Tahir Yuldashev, an Uzbek leader of al-Qaeda; TTP leader Baitullah Mehsud, and many more. A little background of Ilyas Kashmiri:

On 26th February 2000, Ilyas had conducted a guerrilla operation against the Indian army in Nakyal [AJ&K] sector after crossing the LoC with 25 fighters of 313 Brigade. [*It was retaliation to an Indian attack in which they had killed 14 civilians a day earlier*] They kidnapped an Indian army officer who was later beheaded - his head was paraded in the bazaars of Kotli back in Azad Jammu & Kashmir [AJ&K].

Ilyas Kashmiri, was a fighter since Soviet occupation of Afghanistan. He learnt his military skills from those turbulent days while roaming around in

The Living History of Pakistan Vol-I

the Pak-Afghan border regions but later engaged in militant activities in Kashmir after the Afghan war. He was a member of Harkat-ul-Jihad-al-Islami (HuJI) but disagreements with its leader Qari Saifullah Akhtar in 1990s led Kashmiri to establish his own new unit [within HuJI] known as the 313 Brigade.

During the mid-1990s, Kashmiri was near Poonch when he was seized by the Indian Army and sent to prison, where he spent two years before escaping and returning to Pakistan.

Ilyas Kashmiri was named and arrested in late 2003 in an attempt to assassinate President Gen Musharraf but was released in February 2004. Until the 2007 he apparently did little, but later returned to the 313 Brigade which, till then, had been closely tied to al-Qaeda. Kashmiri rebuilt its strength while collaborating with the Taliban and he moved to Waziristan along with his personnel from his Kotli (Kashmir) training camp. Till then he was in regular contact with *al Qaeda* high command through Mustafa Abu al Yazid....

Ilyas Kashmiri was also named in 2008 Mumbai attacks, the 2010 Pune bombing, the assassination of Benazir Bhutto and the killing of Ameer Faisal Alavi. Kashmiri was also once named behind a 2008 plan to assassinate Gen Kayani while the General stepped out of his car during daily visits to a gym; however, the al-Qaeda leadership had rejected the claim. In early 2010, Kashmiri became the new leader of al-Qaeda's *Lashkar al Zil*, [*Shadow Army*], following the death of its former leader Abdullah Said al Libi by an American drone.

On 6th October 2009, Ilyas Kashmiri, the Al Qaeda Commander, called a media person named Saleem Shehzad at Mir Ali in North Waziristan. Next day he reached there after travelling for seven hours, where he was kept confined for two days and then briefed that:

"The commander [Ilyas Kashmiri] is alive; the news of his death in a drone attack [on 7th & 14th September] was not true."

Ilyas Kashmiri had himself once divulged that in 1994, he launched the al-Hadid operation in the Indian capital, New Delhi, to get some of his *jihadi* comrades released. His group of 25 people included Sheikh Omar Saeed [*named for abduction of US reporter Daniel Pearl in Karachi in 2002*] as his deputy.

The group abducted several foreigners, including American, Israeli and British tourists and took them to Ghaziabad near Delhi. They then demanded

The Living History of Pakistan Vol-I

that the Indian authorities should release their colleagues, but instead they attacked the hideout. Sheikh Omar was injured and arrested. Ilyas escaped unhurt and Omar was later released in a swap for the passengers of a hijacked Indian aircraft.

In reply to a question about the then upcoming South Waziristan operation [June – October 2009], Ilyas Kashmiri had said:

'Those who planned this battle actually aimed to bring the world's biggest Satan [US] and its allies into this trap and swamp [Afghanistan]. Afghanistan is a unique place in the world where the hunter has all sorts of traps to choose from.

It might be deserts, rivers, mountains and the urban centres as well. This was the thinking of the planners of this war who were sick and tired of the great Satan's global intrigues and they aimed for its demise to make this world a place of peace and justice.

This was the illusion on which a great alliance of world powers came to Afghanistan, but due to their misplaced conceptions they gradually became trapped in Afghanistan.

Today, they have lost the war in Afghanistan. Now, when they realized their defeat, they developed an emphasis that this entire battle is being fought from outside; from the two Waziristans. To me, this military thesis is an illusion; a daydream to create reactions and counter - reactions.'

Why this all bloodshed?

"Because the entire game was in the hands of USA; organs like the UN and countries like India and Israel were simply the extension of its resources. The defeat of American global hegemony is a must if I want the liberation of my homeland Kashmir, and therefore it provided the reasoning for my presence in this war theatre.

The RAW [India's Research and Analysis Wing] has detachment command centres in the Afghan provinces of Kunar, Jalalabad, Khost, Argun, Helmand and Kandahar. The cover operations are road construction companies.

For instance, the road construction contract from Khost city to the Tanai tribe area is handled by a contractor who is actually a current Indian army colonel. In Gardez, telecommunication companies are

The Living History of Pakistan Vol-I

the cover for Indian intelligence operations. Mostly, their men operate with Muslim names, but actually the employees are Hindus."

Answering a question that 'what impressed you to join al-Qaeda'; Ilyas Kashmiri had replied that:

'We were both victims of the same tyrant. Today, the entire Muslim world is sick of Americans and that's why they are agreeing with Mullah Omar or Sheikh Osama.'

When asked that if it was so then why you were against the Pakistani military establishment; to which Ilyas comprehended:

"Pakistan is my beloved country and the people who live there are our brothers, sisters and relatives. I cannot even think of going against its interests. It was never the Pakistan army that was against me, but certain elements who branded me as an enemy to cover up their weaknesses and to appease their masters."

On 13th February 2010 at 7:15 pm, a bomb exploded at the German Bakery in Pune town of Maharashtra, India; 17 people were killed and 60 injured including an Italian woman, two Sudanese and one Iranian student. The German Bakery was located near the Jewish *Chabad* House and the Osho *ashram*, an international meditation resort in Pune. The ashram and the bakery were frequently visited by foreigners, tourists and locals alike. It was then believed that Ilyas Kashmiri had planned it or controlled it while sitting back – but during investigations his name had not surfaced up.

Next day, the Indian Home Minister stated that responsibility for the blast had not yet been determined, but that Indian authorities were making attempts to interview *David Headley*, accused of involvement with terrorism who was then undergoing trial in the United States.

On 18 April 2013, a Pune court awarded death sentence to one Indian Mujahideen operative Himayat Baig, for his involvement in the blasts.

ILYAS DECLARED DEAD:

On 3rd June 2011, Ilyas Kashmiri, the head of al-Qaeda's Operation Wing, was killed in a drone attack in Pakistan's FATA, the most wanted man in the Pak-Afghan region those days. Aged 46, born at village Samahni of Bhimber AJK, the Commander of its 313 Brigade of the banned *Harkat ul Jihad e Islami* [HuJI], was reportedly killed in a drone attack near Wana in

The Living History of Pakistan Vol-I

the South Waziristan Agency at Pak-Afghan border, along with his nine companions leaving three seriously injured.

Ilyas Kashmiri's legendary 313 Brigade had grown into the most powerful group in South Asia and its network was once strongly knitted in Afghanistan, Pakistan, Kashmir, India, Nepal and Bangladesh. According to CIA, the footprints of 313 Brigade were also seen in Europe and other countries too. On 31st August 2011, *Asia Times Online* reported that a well known Taliban commander named Shah Sahib had replaced Kashmiri as commander of the Brigade 313.

Despite what some reports claimed, Ilyas was never a part of Pakistan's SSG unit, nor even of the army. Nearly 30 years ago when he joined the Afghan jihad against the Soviets from the platform of the HuJI, he developed expertise in guerrilla warfare and explosives.

This highly trained militant had twice been reported killed previously, on 7th & 14th September 2009. Kashmiri was reported killed along with Hanifullah Janikhel and Kaleemullah in Machikhel, North Waziristan on 7th September 2009 when they were hit by a drone attack. However, in mid-October Kashmiri was reported to have survived the air strike and granted an interview to Saleem Shahzad. He was outside for a while when the house he was staying at was hit by drone thus he survived.

Reportedly, he was also wanted in connection with a number of major terrorist attacks in Pakistan and India, including an attack on Mumbai on 26th November 2008 in which 163 people were killed.

Ilyas Kashmiri was the mastermind of the barefaced attack on the naval air base in Karachi on 22nd May 2011. Kashmiri, the only known Pakistani militant to have raised high into al-Qaeda's ranks, was appointed 'Acting Chairman' by Saif Al Adel, the Egyptian Chief Military Strategist of al-Qaeda and Deputy of Osama bin Laden.

Kashmiri, an expert in guerrilla warfare, had lost a finger and an eye during the fight against the Soviet Union in Afghanistan in the 1980s. He was once a hero of the Kashmir movement, but when Islamabad, under pressure from the United States, wound down operations in Kashmir, he went underground.

He had left the Kashmir region in 2005 after his second release from detention and he headed for North Waziristan. He had previously been arrested by Indian forces, but he broke out of jail and escaped. He was then detained by the ISI as the suspected mastermind of an attack on President Gen Musharraf [in 2003] but was cleared and released.

The Living History of Pakistan Vol-I

The ISI then picked up Ilyas again in 2005 after he refused to close down his operations in Kashmir. Kashmiri was declared as 'most dangerous' due to his training skills and commando expertise; the US had placed a bounty of US\$5 million on his head.

His death news was aired on all private Pakistani channels; Express TV & Sama TV released special features on him. Federal Interior Minister Rehman Malik told the media: *'All ground intelligence shows that he is dead; 98% chance he is dead.'*

On 27th October 2009, the US Department of Justice declared Ilyas Kashmiri as a conspirator with whom an American citizen from Chicago named David Headley [later arrested on terrorism related charges] reportedly had deep contacts.

The US government noted that Kashmiri had issued a statement the same month that he was alive and working with al Qaeda. He was in regular contact with Headley for some time. Headley was reportedly distraught at news of Kashmiri's death, but after receiving confirmation that he was still alive, set off for Pakistan, at which time he was arrested by the FBI.

Kashmiri was officially indicted on two counts, for *"conspiracy to murder and maim against the newspaper Jyllands - Posten and conspiracy to provide material support to terrorism in Denmark"*. During court testimony on 31st May 2011, Headley indicated that he had conducted preliminary research for Kashmiri in a plot targeting Robert J Stevens, the CEO of Lockheed - Martin and the defence contractor.

On 6th August 2010 the United States labelled Kashmiri a *"Specially Designated Global Terrorist"* while the United Nations added him and his group HUJI to its blacklist established under UN Security Council Resolution 1267. The label allowed the United States to freeze any of his assets in US jurisdiction and to *"prohibit US persons from engaging in any transactions with him."* The UN resolution required UN member states to freeze assets, ban travel and ban the sale of arms to Kashmiri and HUJI by or through any means.

However, on 10th May 2012, the United Nations Security Council officially labelled Kashmiri as "reportedly deceased" on the Al Qaeda Sanctions list and made it clear that they would treat him as dead until it could be proven otherwise.

MUNIZAE'S DREADFUL INTERVIEW:

One PAUL JAY, the Senior Editor of 'the Real News Network' at Washington had once approached veteran TV reporter of Pakistan media named Munizae Jahangir; the very next day when the news about one Saleem Shahzad's death reached the outer world. Paul Jay's *Interview* with Munizae Jahangir dated 1st June 2011 is placed here verbatim:

PAUL JAY: On Tuesday in Pakistan, the journalist Syed Saleem Shahzad was brutally murdered in Islamabad. Saleem was the bureau chief for Asia Times Online. He was also an often contributor to The Real News Network. Now joining us from Pakistan talk about the murder of Saleem Shahzad is Munizae Jahangir. Munizae is a journalist and a host of a show on Express Media Group Television, which is the second largest television network, English network, in Pakistan. Thanks for joining us, Munizae.

MUNIZAE JAHANGIR: *Thank you for having me.*

JAY: So, first of all, what do we know about what happened?

MUNIZAE: *Well, what we do know is that Saleem Shahzad was working on certain stories which were related to al-Qaeda and al-Qaeda's involvement with the army. Now, he had written several stories on al-Qaeda, one of them being on al-Qaeda number two Mullah Baradar, who was taken into custody in Karachi by the army.*

He wrote a story saying that Mullah Baradar was taken into custody by the Pakistan army so that he could be offered for negotiations with the Americans. After that, apparently, he was called in by the ISI, the intelligence agency of Pakistan, the secret intelligence, and he was questioned, after which he wrote a long email to Human Rights Watch saying that he is being threatened by the ISI.

And he said that several times and confided several times to the HRW, Human Rights Watch, here in Pakistan, to the local representative here in Pakistan. And he said that if I disappear or something happens to me, please release an email. So he actually did send out an email saying that his life was under threat.

Recently there was an attack on PNS Mehran early in May, the Navy attack on PNS Mehran and -- in Karachi. He wrote a story saying that basically there were people within the Navy who were in some ways -- I wouldn't say collusion, but they were arrested by the Na-

The Living History of Pakistan Vol-I

vy for having some links with al-Qaeda, after which al-Qaeda reacted and they launched an attack on PNS Mehran airbase. That was the first part of his story. The second part of his story was going to be published.

Meanwhile, he was on his way to a local TV station when he went missing. His family went and lodged an FIR. They found his car close to Islamabad with his ID card and an ID card of another person. They found his body floating in the river yesterday. And there was this organization, nongovernmental organization that actually found the body and buried it, because nobody came forward to claim it.

So today, when his photograph started appearing on television, they realized that this was the man that people are looking for, Saleem Shahzad. And that's when his family was brought to identify the body.

JAY: Now, there's been some kind of report that the ISI had actually picked him up and that Human Rights Watch in Pakistan had received some information from them. What is that?

MUNIZAE: Yes, absolutely. When he was picked up, the Human Rights Watch received a call from his wife. And he had told his wife that if I go missing, the first person that you must call is the local representative of the Human Rights Watch here in Pakistan, called Ali Dayan Hassan, which his wife did.

And that's when Ali Dayan Hassan remembered that he had written him an email saying that in case I go missing or something happens to me, please release the email. And in that email he suggested that he had been called in by the ISI many times for questioning on the stories that he was writing. There were also suggestions that he had been picked up by the ISI.

Now, Saleem Shahzad has also had a history. He was actually kidnapped by the Taliban back in 2006, and some reports suggested he was taken to Helmand. So he was somebody who knew the whereabouts of the Taliban; how the network worked inside out. We don't know what happened after he was kidnapped. You know, this is all very murky. But he was a journalist who was working on these kinds of stories.

JAY: Now, was he the only one doing this kind of reporting? Or were other people doing similar things?

The Living History of Pakistan Vol-I

MUNIZAE: *Well, there were certainly a lot of suggestions. I, in fact, in my own show, raised the question of whether there was a split within the army, simply because chief of army staff General Kayani had already admitted to the Americans that they need to do some soul-searching, that they need some introspection, that they need to clean their own house, quote-unquote.*

And the Americans had suggested that it is a time--in fact, we heard from Admiral Michael Mullen just yesterday saying that we've had very frank discussions with the Pakistan army, that they realize that they will have to do some soul-searching that they will have to do introspection that they will have to clean out their own house.

So these are statements that were coming suggesting that there was in fact a split in the army. It was very clear that there was an insider in the army who had actually squealed and had given the kind of information that had been given on the PNS Mehran air-base, because the attackers knew exactly where to go and they were very focused in their attack.

We also saw the bin Laden attack. And, you know, if you go to Abbottabad, where bin Laden was found, it's a garrison town. There are training centres, army training centres all around. And we had one of our former DG ISI, General Ziauddin, saying that at the time of Musharraf, there were several raids made in Abbottabad.

In fact, in January, early January of this year [2011], there was a senior al-Qaeda leader who was picked up from -- Umar Patek, who was picked up from Abbottabad. And, in fact, he was trying to get a meeting with bin Laden. So they obviously knew that there was some kind of activity in Abbottabad, where bin Laden was eventually discovered and shot down.

There were indications that there were people who were going there -- that Abbottabad was a town where high-level al-Qaeda leaders would go [snip] baffling that the Pakistan army did not really find bin Laden.

Several news reports suggest that in fact General Kayani said that I find it very strange also, it also came as a rude shock to me that bin Laden was found in Abbottabad.

JAY: Now, what Saleem had told us in the interview he did with The Real News just a few days before he was killed was that there was this serious

The Living History of Pakistan Vol-I

splits developing in the Pakistan military, that after the killing of bin Laden, that the Americans had greatly increased their pressure on the Pakistan military to collaborate with the US, and that this was driving a wedge in the Pakistan military, people who were more sympathetic to the Taliban or al-Qaeda or Islamist ideology. Do you think that's true? And what are the signs of that?

MUNIZAE: Well, there are certainly signs of it, because after bin Laden was shot down, the first thing that the chief of army staff, General Ashfaq Parvez Kayani, did, that he went on a kind of a tour into all the garrison towns that he has, meeting all his troops, as to say, and, you know, having frank discussions with him.

And we saw one of the reports quoting him saying that, you know, the morale of the troops is down, that there is a lot of anti-American sentiment within the troops.

And at the same time, there is a lot of public condemnation of the Pakistan army as such, because it is seen as a usurper of power and it's seen as somebody that is a government-in-waiting that wouldn't think twice before toppling democratic governments, which they have done in the past, which wouldn't think twice before--they're called sometimes -- they're called by hard critics plunderers of this country.

So they have lost that kind of credibility as well. And then to have something like Osama bin Laden found in Abbottabad, this completely made them lose their credibility. And followed just within a month, there was an attack on PNS Navy airbase, which is one of the most sensitive installations.

And just the day before, we heard General Kayani say that, you know, all our nuclear installations are safe. In fact, even before the bin Laden attack, he went to Kakul Academy in Abbottabad and said that we have broken the back of the Taliban. And then comes, emerges Osama bin Laden after Abbottabad.

So the army faces, let's say, a huge credibility issue. There's a huge question mark on their credibility at this time. Their image has never taken the kind of beating that it has in the country. And there is a general resentment amongst people against the army, who they see as a self-serving army.

JAY: Tell me about the situation facing journalists in Pakistan. Saleem is certainly not the first journalist to be killed. What is the atmosphere for a

The Living History of Pakistan Vol-I

working journalist? How is it for you? I mean, you're speaking quite courageously right now.

MUNIZAE: *Well, there are certain no-go areas in our country for journalists. Physically there are no-go areas. There is a whole strip where the war against militancy is being fought where journalists are not allowed to go. If they do go, they're sent back, you know, dead. Body bags are found.*

So we have to tread our way very softly. And if you're reporting on conflict areas, it becomes very frustrating not to be able to go there. So when we do go there, we are working on the fringes. We go in the mornings; come back, you know, before the sun comes down.

JAY: Saleem was in Islamabad when he was killed.

MUNIZAE: *Absolutely. Saleem was in Islamabad when he was killed. But I'm talking about there are threats from all sides. There's not just threats from intelligence agencies. There's also threats from the Taliban, there are threats from al-Qaeda, there are threats from criminal gangs, there are threats from -- in Karachi, you know, from political parties who have criminal gangs.*

We are dealing with various forms of violence in Pakistan. We don't know who is going to come at us, you know, whose feathers we are going to rub the wrong way. So it's a very difficult situation for us. We have to be very careful in what -- we have to weigh our words very carefully. We have to constantly look back.

And ten of our colleagues have died last year, just last year. And according to international agencies, the media networks are perhaps one of the most dangerous places for journalists to work. But at the same time, this is also a place where you find the stories that you do. And so it gets that kind of media attention as well.

JAY: Now, is there going to be an inquiry? There's already been calls for a public inquiry. Is there likely to be one? And if there is one, do you think that it's likely to come to anything?

MUNIZAE: *Well, just this evening, the prime minister of Pakistan, Yousaf Raza Gillani, strongly condemned the murder of Saleem Shahzad. And at that time, we had the advisor to the prime minis-*

The Living History of Pakistan Vol-I

ter come on to my show and asked to her the same question: can we expect a clean and a transparent inquiry?

But then I felt almost silly asking her that question, considering that their own leader, Benazir Bhutto, was killed in broad daylight, you know, and by all witness accounts and in front of live television camera, the evidence was washed down, hosed down. They are in government today. They make claims, they say that they know exactly who killed her, and yet they don't have the strength, the guts to actually bring the perpetrators to justice.

So what hope do I have of Saleem Shahzad killers being brought to justice? I don't know. If they can't bring the -- you know, they owe everything to that woman. They came into power, you know, on the strength of Benazir Bhutto. But they still can't find her killers. What hope do we have?

JAY: Thanks very much for joining us, Munizae.

MUNIZAE: *Thank you so much.*

JAY: Syed Saleem Shahzad left behind his wife and three small children. Everyone at The Real News and on behalf of all our viewers, we send our condolences to the family.

The Living History of Pakistan Vol-I

ISI: Pakistan's Formidable Force Multiplier:

by VINOD SHARMA at www.centreright.in of 19th AUGUST 2013

One has got to admire Pakistan. Is there any other example in history where a small nation has simultaneously taken on two much bigger countries.....[including] one super power..... that they have created the Inter Services Intelligence [ISI]. This covert arm of the military has been developed and honed..... to become a huge force multiplier that has almost rewritten the rules of war.....It is this institution alone that has given Pakistan the luxury of playing game on battlefields of its choosing in a manner that it wants, without exposing its troops to danger and its culpability to the enemy.....Pakistan sees ISI as its first line of defence.....for the Pakistani establishment—both military and civil— the ISI is not engaged in any hostile or offensive actions there, like the Americans and the Indians believe.

When the US invaded Afghanistan after 9/11, it probably thought it was going for a stroll in a park bombed flat by it..... it would have..... but it failed to factor in Pakistan's tenacity.....[then] expanding the war was not an option.....the Pakistanis assessed the situation far more accurately than the Americans thought they were capable of..... US is being defeated by a very clever and determined Pakistan. The divided *Pashtuns* were trounced by the ISI after the Soviets invaded Afghanistan, without a bullet being fired.

Despite the serious challenge posed by the presence and pressure of the Americans in Afghanistan, the ISI has not significantly let up its campaign in Kashmir.....should have made the Indians realise that they are dealing with an exceptionally clever, ruthless and never-say-die leadership.....but, just as the Americans failed to learn the right lessons from what Pakistan was doing to India, the Indians seem to have failed to learn too from it has done to the Americans in Afghanistan...

...that the 26/11 attack [*alleged as 'Bombay Attacks'*] was controlled and coordinated by the ISI from start to finish, the sort of information that Pakistan would have twisted with a knife in India's gut....what did Pakistan do?.....actually demanded that any progress on 26/11 investigations be linked to progress on Siachen, Sir Creek etc. Yet, leading establishment intellectuals like Ram Guha want to mislead India into believing that the ISI is a non-state actor and is no worse than VHP or Bajrang Dal.

The Living History of Pakistan Vol-I

India's own covert operations outfit, rightly named RAWhas singularly failed to nail the ISI, despite being on this very job for decades, with a huge budget to boot.....This is further proof that the *ISI, whose DG reports to the Army Chief, conducts its many dangerous businesses with clinical professionalism*, and knows how to keep them under wraps from amateur Indian eyes. [whereas] RAW is a poorly-led-by-police-officers and driven-by-babu-culture set up that lacks the political direction, professionalism, commitment and motivation required facing, tackle and defeat a fanatic force multiplier like the ISI.

.....Once Pakistan achieves the primacy it is on its way to in Afghanistan, all but drives India out from there, and makes full use of the infrastructure that India's much touted 'soft power' has created in that country, the ISI's energies, spurred by its spectacular success in Afghanistan, will focus almost wholly on India.

Does India have a plan to defeat the challenges that it is almost certain to face?the way some of our leaders brainlessly dismiss any other option, no matter what Pakistan does, by invoking the fear that Pakistan is a nuclear powered state. Much of the *credit for the fact that Pakistan has fearlessly bled India.... given to the one outstanding creation of Pakistan's military, the ISI*. This covert military outfit is an innovative and powerful instrument of war, an invisible and formidable force multiplier.

To counter it, India has not been able to find an answer is unlikely to do so in future too. Much as India's ineptitude hurt me as an Indian, I have to admire what Pakistan – a nation that is 1/6th India's size and with 10th India's GDP – has achieved through the ISI, whose successes have been nothing short of spectacular.

Wish we could learn what it has been trying to teach us.

Scenario 92

SALEEM SHAHZAD's TWO INTERVIEWS

Senior Editor of *The Real News Network (TRNN)*, Paul Jay, called Saleem Shahzad from Washington on 19th & 21st May 2011 asking him about the reaction of Senator John Kerry's recent visit to Pakistan on a fence - building mission in the backdrop of Osama's killing and accusing Pakistani military and ISI in that connection AND that why the Pakistani politicians were being pushed into turmoil.

Here is an *Interview dated 19th May 2011* of Saleem Shahzad, Pakistan's Bureau Chief of Asia Times online with Washington based *'the Real News.com [TTRN]* given verbatim:

PAUL JAY [SENIOR EDITOR] of TRNN: Senator John Kerry was in Pakistan on what was called a fence - building mission. Fence building necessary because the US after killing bin Laden [incompre.] accused Pakistani military and Intelligence agencies of being incompetent or, worse, perhaps protecting bin Laden. This has also sent Pakistan politics into quite a bit of turmoil. [*Saleem Shahzad is being welcomed to join TTRN*]

S SHAHZAD [PAKISTAN BUREAU CHIEF of ASIA TIMES ONLINE]:
Thank you.

PAUL JAY: So, first of all, is there any doubt amongst the military, the intelligence agencies, or Pakistan public opinion that it was in fact Osama bin Laden who was killed?

SHAHZAD: *Yes, I mean, undoubtedly it was bin Laden who was killed in Pakistan. There is no doubt about that.*

JAY: Now, you've written extensively over the last few years about a division in the military -- I guess the ISI as well, the intelligence service -- that before 9/11, people that were very Islamic and very connected to the Taliban in Afghanistan who were very religious were very well promoted in the military and the ISI, and after 9/11, many of them quit in opposition to

The Living History of Pakistan Vol-I

Musharraf's alliance with the United States, some were even arrested, and there was a purge of the more senior pro-Islamist elements. But you've talked about this division, how some of these retired officers continued to work with mid-level cadre in the army. How are they responding to the killing of bin Laden? And what does this mean for Pakistan's politics?

SHAHZAD: *Well, as far as my understanding is concerned, many of the military officers who had a religious inclination resigned or took their retirement soon after 9/11. Some of them silently sat at their home, but many joined forces with the different militant groups.*

I personally interacted with some of the officers who joined Commander Ilyas Kashmiri, who is now the member of al-Qaeda's shura. And some of those retired army officers were also behind the Mumbai attack in 2008. And, of course, bin Laden's killing is a big event for them. And they are also assessing the new situation after bin Laden's killing, and that is a new collaboration between the Pakistani security forces and the US military establishment.

And as you can see in yesterday's joint statement issued in Islamabad after John Kerry's visit, that both countries have reiterated that they would launch joint operations against al-Qaeda, new targets. And the security forces -- [an] Islamabad security forces official personally told me that it means that now Pakistani forces and the Americans would jointly work to crack high-profile Afghan Taliban leaders and the Pakistani militants and as well as al-Qaeda leaders.

So the thing is that now I can clearly see a disturbance within the Pakistani establishment. And I understand that many of those retired officials, army officials, who'd use their clout inside the Pakistan army and instigate the [incompr.] officers, tried to manipulate them to work with the jihadi forces and instigate the rebellion against the state apparatus.

JAY: To what extent do you think the Pakistan military was simply posturing about not knowing about the attack on bin Laden? I mean, it is hard to conceive that, number one, they didn't know he was in the house down the road from their military base. It's also hard to conceive that even the American intelligence agencies wouldn't have known something. You've written before about how much the FBI and some of the other American intelligence agencies have become kind of connected to working very closely with, even sometimes controlling, you've written, the Pakistan ISI. What do you think happened here?

The Living History of Pakistan Vol-I

SHAHZAD: *Well, as far as Osama bin Laden's hiding cave is concerned, I don't have any qualified opinion to share with you. But given my interaction and my exposure with some of the retired army officials who were hand-in-glove with the jihadi forces, I can safely guess that it is quite possible that some retired army officers, use their connections to keep Osama bin Laden in Abbottabad, although I'm not sure that he was living over there for the last five years.*

I'm not sure about the time period which is mentioned by the Americans. But I think that if he was living in Abbottabad for several months, I think it was not possible without the help and connivance of some of the elements who were directly or indirectly connected with the military establishment.

JAY: Now, the leaders of the army and the intelligence service spoke in Pakistan's Parliament a little while ago, I guess just a few days ago, in an unprecedented presentation. But you wrote what they said there was essentially riddled with contradictions. What were the contradictions?

SHAHZAD: *There were many contradictions. First of all, they vent their anger; they vent their anger against the American strikes inside Abbottabad. But I think that they were very much onboard, they were very much onboard.*

As far as my understanding and my information is concerned, Americans did inform them about the arrival of the Navy SEALs inside Pakistan, but they did not share the information that--where they would strike and what is their exact high-value target. The name of the high-value target, that was Osama bin Laden.

So that is very much in line of the previous American tactics in Pakistan. They did send Navy SEALs inside Pakistan in past years, and they did share the information with Pakistan, and Pakistan did back those initiatives. But the thing was that -- they made lot of hue and cry about the drone strikes and everything, but immediately after the parliamentary resolution, there were at least two drone strikes inside Pakistan. And there was not even a formal protest by Pakistani military establishment or by the Pakistani foreign office.

JAY: Saleem, I thought you had written that the head of the Air Force, I think, had said to Parliament that you should give us orders to shoot these drones down.

The Living History of Pakistan Vol-I

SHAHZAD: *That's true. That's true. He said, actually, actually, Armed Forces chief tried to take parliamentary cover. But they did not mean that, no. They give the option to the Parliament, and at the same time, they also warn the Parliament that if you allow us and Pakistani Armed Forces would retaliate, we're waiting for the American reactions, that Americans would also react in the same way--in more harsher way, rather.*

So, I mean, they put the option in front of the Parliament, but at the same time, they also warned the Parliament. So it was--I mean, it was a sort of a defective briefing, I must say. So there were a lot of--I mean, the whole of their statement was completely riddled by contradictions.

JAY: Now, the--what exactly is the strength and role of al-Qaeda now in Pakistan? You hear everything from there's, like, 50 al-Qaeda fighters left and they really don't play much of a role. On the other side of it, you hear that al-Qaeda's actually reborn itself, has new leadership, and has a very close connection with the Taliban. Where is the truth in this as you know it?

SHAHZAD: *There are two aspects. Number one, there are--first you have to understand this fact, that there are 17 Arab-Afghan groups which are operating inside Pakistani tribal areas and in Afghanistan, and most of the groups are allied with al-Qaeda, but they are not part of al-Qaeda. They have alliance with al-Qaeda, but they are not a part of al-Qaeda, number one. And the strength of those 17 Arab-Afghan groups is, like, over 1,000, approximately.*

Second, those who are the members of al-Qaeda are hardly, like, 100, not more than 100.

The third thing is--and this is the most important thing, and that is the phenomenon of neo-Taliban, the new generation of those Afghan fighters, of the Pakistani fighters, or the fighters coming from the Pakistani tribal areas who were--previously pledged their allegiance to Mullah Omar and the Taliban.

But now they--in the last ten years, they completely absorbed al-Qaeda's ideology inside-out, and they are more loyal to al-Qaeda than Mullah Omar or to the al-Qaeda leaders or to their jihadi commanders. So this is the new group, this al-Qaeda horizontally, not only in Pakistan, Afghanistan, and the tribal areas, but all across the globe, like in Yemen, in Somalia, and other parts, even in America.

The Living History of Pakistan Vol-I

So this is the new generation, on which al-Qaeda is heavily banking on. And not only those, but it also includes the new converts, white Caucasians, which are living in North Waziristan and in South Waziristan. And many of them were sent back to their countries of origin in Europe, Canada, and America, and different countries. So this was completely a new phenomenon. Al-Qaeda grew horizontally in different directions.

JAY: Now, al-Qaeda's relationship and the Taliban's relationship with the ISI and the Pakistan military has also been a matter of great debate. Many people have suggested that there's kind of a dual policy going on, that the Taliban at the very least, if not al-Qaeda, but the Taliban, are a sort of a lever, a card that Pakistan gets to play in Afghanistan.

And there's also been talk about this split, the Pakistan Taliban versus the Afghan Taliban, that the Afghan Taliban are focused on Afghanistan, and they have the links with the Pakistan military. But the Pakistani Taliban is closer to al-Qaeda, and they're more targeted at overthrowing the Pakistan regime itself. So what do you make of that?

SHAHZAD: Over the last ten years, things have become very complicated. You cannot say that in any categorical terms, that Afghan Taliban are the same person as the Pakistani establishment. Yes, part of Afghan Taliban is still in contact with the military establishment, but all their top commanders, all the top commanders of Taliban, Afghan Taliban, are now completely in the hands of al-Qaeda.

For example, the biggest Taliban Afghan commander is Sirajuddin Haqqani. He is very close to al-Qaeda. Similarly, Commander Nazir who runs the largest anti-NATO, anti-Western coalition network in Afghan province of Paktika--he has also influence in the Afghan province of Zabul and Helmand-- is completely part of al-Qaeda.

People say that he is Afghan Taliban. He is very close to the military establishment. But when recently I interviewed him, he said to me in categorical terms that "I am part of al-Qaeda," and he -- and his very close lieutenant handed me check in which it was written that anybody who would be friendly with Pakistan would be considered as Taliban and al-Qaeda's foe.

So that actually showed that the currents have completely changed in the last ten years. Asia has completely changed in the last ten years.

The Living History of Pakistan Vol-I

JAY: Thanks very much for joining us Syed and we will continue to do this conversation in Part 2 of this interview and please join us for that on The Real News Network.

The second stint of that *Interview dated 21st May 2011* of Saleem Shahzad with Washington based *'the Real News.com [TTRN]* is given below verbatim:

PAUL JAY: Based partly on what you've written, it seems that the more pressure the US puts on the Pakistan army to participate in the Afghan war and to deal with the al-Qaeda Taliban elements, the more it splits the army. How serious a division is there?

SHAHZAD: *There are several dimensions of this split. Number one, you have to appreciate the Pakistani military establishment supported the Taliban regime for the last--for five years from the middle to late '90s and early 2000. So the thing is that they not only supported the Taliban regime but they had also some agreements with the Taliban. And they had even the agreements with al-Qaeda before 9/11.*

JAY: In some of your articles you have mentioned the possibilities of even a kind of mutiny. Is that possible now?

SHAHZAD: *Well, it is quite possible. And if you remember, immediately after the 9/11, there were several attacks on then chief of the army staff and the president, Mr. Pervez Musharraf. And each of those attacks, there was a connection of Pakistani Armed Forces. In some cases there were southern Pakistan Air Force officials were involved. So you just cannot set aside the element of a limited mutiny in Pakistan army.*

There would certainly be a backlash, because you have to appreciate this fact, that Pakistan army has always been closely allied with Islamist forces. They had agreements with the Taliban in the past when they were ruling Afghanistan, and they had even agreements with al-Qaeda when they were living in Afghanistan under the Taliban regime.

They had, even, agreement with al-Qaeda, when Lieutenant General Mahmud, of the ISI, visited Kandahar after 9/11, and he met with the Taliban government. And he verbally assured Osama bin Laden that Pakistan would not mount any operation against al-Qaeda, they would not try to arrest them, and al-Qaeda would not, you know, retaliate against Pakistan, either.

The Living History of Pakistan Vol-I

So, under the same very agreement, you know, Osama bin Laden and all the top al-Qaeda members were allowed to sneak inside Pakistan. And the crackdowns have mounted only in 2003, when Pakistani intelligence wrongly reported to General Pervez Musharraf that al-Qaeda was behind the attack on his motorcade in 2003.

As a reaction, then Musharraf ordered a crackdown against al-Qaeda and all the jihadi organizations. And then, I mean, of course al-Qaeda also retaliated against the Pakistani military establishment and against Pervez Musharraf. So the thing is that the element of a limited revolt or mutiny within the Pakistan army is there, and you just cannot, you know, ignore that.

JAY: Now, how have the broader sections of Pakistani public opinion reacted to the killing of bin Laden and what's going on in terms of the controversy with the military and the ISI? I mean, what do--I know there's no such thing as *most Pakistanis*, but in terms of the sort of majority of urban Pakistan public opinion, you could say, what do they think?

SHAHZAD: *The majority population of urban Pakistan are completely disillusioned with the Pakistani military establishment. They are least bothered about anti-Americanism. They are least bothered about al-Qaedaism. They are least bothered about Pakistan's military role. But they do bother about two, three things. One is the economic meltdown in the whole country, the economic crisis in the country.*

They do bother about and they do concern about--on the question of Pakistan sovereignty, which is under siege from all sides, not only from the American side, but also from the militant side.

I mean, they are very much concerned that Pakistan has turned into a proxy battleground by all sorts of forces, not only from the al-Qaeda side and the American side, but also Iranians and the Saudis are very active inside Pakistan, and they are paying money to different groups in different militant outfits to settle the score against each other.

So the thing is, they are completely disillusioned with everybody, and they are looking for some new leaders who would, you know, take the country out of the crisis, of economic crisis, of the political crisis.

The Living History of Pakistan Vol-I

And the issue -- and the identity crisis. Pakistan's identity crisis that what the Pakistan is really up to. Is it a republic? Is it an Islamic Republic? Is it democratic state? Or what? So they are actually-- they're completely disillusioned with the situation.

JAY: Now, just let me ask you one final question, which I haven't asked you before. The 9/11 attacks themselves, if in fact they were organized from bin Laden and al-Qaeda, and he was in Afghanistan but he was closely tied to at least elements, if not important sections, of the leadership of the Pakistan military and intelligence, clearly bin Laden was closely connected with sections of the Saudi royal family. Has there ever been an inquiry or a call for an inquiry into what was behind 9/11 and whether or not Pakistan or Saudi intelligence played any role in it?

SHAHZAD: *You have to appreciate two things when you would investigate the 9/11 plot. Number one, the broader ideas.*

The broader ideas actually came from Dr. Ayman al-Zawahiri, who actually wanted a friction between the West and the Muslim world on very broad lines. And for that, he actually wanted a flashpoint to be created.

And the second element was Khalid Sheikh Mohammed. Khalid Sheikh Mohammed was not al-Qaeda's member. He was a standalone jihadi. And he came up with this idea of 9/11. And then he proposed that idea to Dr. Ayman al-Zawahiri and Osama bin Laden. Ayman al-Zawahiri was the most happy person.

And if you study Dr. Ayman al-Zawahiri's personality, you would be knowing that he is a silent manipulator. He cunningly manipulated Osama bin Laden's mind, and that way he made sure that 9/11, like, even would happen in America, but because it would guarantee a massive friction in the world, and massive polarization in the world, and would divide the world on ideological lines, and that is what he was precisely looking for.

So I don't think that there is any question of the Saudi involvement, Saudi establishment's involvement or the Pakistani military establishment involvement. No matter how close they were to the Taliban or Osama bin Laden or any other personality -- even Osama bin Laden was very well manipulated by Dr. Ayman al-Zawahiri.

JAY: There certainly was some evidence of connections between the Saudi royal family. There was a document from a congressional investigation that the *LA Times* reported on, that there were at least individual members of

The Living History of Pakistan Vol-I

the Saudi royal family that have helped to finance certain members of the 9/11 participants. Has this ever been actually investigated or looked into within Pakistan? Because as you've--you've reported yourself that the ISI and military had very close connections with al-Qaeda before 9/11.

SHAHZAD: *There were proofs; there were evidence of financial linkages between the Taliban and al-Qaeda and the Saudi royal family, and even within the Pakistani military establishment. But, actually, those linkages were presented larger than the life.*

Most of that financial assistance was meant for the NGOs which were operating in Afghanistan. And several royal family members donated the funds to those NGOs. But it was presented in a different light, in a different angle, as the royal family donated the money, royal family members donated the money to al-Qaeda for launching 9/11 operation.

So that was -- I don't, you know, give much break to those evidences. Al-Qaeda is completely an anti-establishment and anti-state element. And this is the same for the whole world. Al-Qaeda is not loyal to any single state of the world. So I don't subscribe, actually.

JAY: Okay. Just one thing, finally, then. The Americans have positioned the death of bin Laden as a possible opening for negotiations with the Taliban, that now the Taliban can separate itself from al-Qaeda and there's some kind of a process that can now be negotiated. Do you think there's any merit to that argument?

SHAHZAD: *I don't think so. I don't think so. They are grieving, actually. Number one, they underestimated the--or you can say they have wrongly interpreted Taliban's sentiments. Taliban, whether they are different from al-Qaeda or they have differences from al-Qaeda on strategy and may be on the ideology, but they are very courteous people.*

And since Americans have assassinated Osama bin Laden, this is no occasion for the Taliban that they would ditch al-Qaeda and they would switch to Americans. It is quite possible that after five, six years, after many years, they would behave differently. But on this particular occasion, on this particular occasion, I don't think that Taliban would behave in a friendly way towards Americans. I don't think so.

JAY: Alright. Thanks very much for joining us, Saleem.

SHAHZAD: *My pleasure.*

JAY: And thank you for joining us on The Real News Network.

SALEEM SHAHZAD KILLED:

Investigative journalist Saleem Shahzad was abducted on 29th May 2011 from Islamabad while going from home to the TV station in his own car. He was taken away two days after his story on *'infiltration of al Qaeda into the Pakistan Navy'* had been published in all the media sections.

On 31st May 2011, his tortured dead body was found lying in a canal near *Sara e Alamgir*, a place about 120 km away from Islamabad. Nearby, the police found a white Toyota Corolla that had been abandoned by the canal, in the shade of a banyan tree. The police discovered that the car belonged to Shahzad; its doors were locked, and there was no trace of blood. There were voices that the agencies had kidnapped him and beaten to death; which was subsequently never proved.

Saleem Shahzad, the missing journalist, was abducted by un-known people from the busy F-6/2 area of Islamabad around 5:45 pm. At the time, he was on his way to the studios of Pakistan's Dunya News channel to discuss the contents of his latest report about the naval-base attack. On his way, Shahzad had responded to a call from a producer at Dunya News and said he was on his way; but Shahzad's phone went dead twelve minutes later.

Saleem Shahzad was killed and some people declared it as Al-Qaeda or Taliban's job but they did not make demands of ransom in return for his release, nor did they claim credit for his assassination. In fact, no terror group or NGO or agency had claimed responsibility for Shahzad's murder.

Daily *'the Telegraph'* of 31st May 2011 had added that:

'He [Saleem Shahzad] had been contacted by the agencies and the media groups last year after writing that Pakistan had released Mullah Baradar, who was second-in-command of the Afghan Taliban until he was detained in Karachi.'

The background of the above mention event remains that on 17th October 2010, Saleem Shahzad was summoned to the ISI HQ to discuss the contents of an article published the day before with two officials from the agency's media wing. That report, published in *Asia Times Online*, alleged that Pakistan had quietly released Afghan Taliban commander Mullah

The Living History of Pakistan Vol-I

Baradar, Mullah Omar's deputy, to take part in talks through the Pakistan army. One of the officials of 'that intelligence agency' told Shahzad they had recently arrested a terrorist and recovered a lot of data, diaries and other material during the interrogation. The terrorist had a list with him but if they found his [S Shahzad's] name in the list, they would certainly let him know.

Incidentally, the two ISI officials present at the meeting, Rear Admiral Adnan Nawaz and Commodore Khalid Pervaiz, were both from the navy. Commodore Pervaiz was then appointed as the new commander of the Karachi naval base that was attacked.

The meeting was held in an extremely polite and friendly atmosphere and no words were minced. During the conversation, however, Shahzad told the officers that he got the information [regarding attack on the Naval Base Karachi] from an intelligence official and later confirmed the story from *'the most credible Taliban source'*.

Referring to *'the News' dated 4th June 2011*; Babar Sattar, an advocate by profession but a free lancing essay contributor to the print media, was also called by the agencies to know the background of an article *'reforming khakis'* penned down by him. In his article he had written on multiple aspects of the army commands including:

'.....mainly about an undaunted sense of righteousness felt by the military with the belief that its vision and definition of national security and national interest is the perennial manifestation of wisdom and truth.

And that the Civilians have no authority to talk about national security, if doing so, would be termed as interference.'

During his meeting with officials of the ISI's Information Management Wing Babar Sattar was told that *"it is part of the Wing's mandate to remain in touch with the journalist community...the main objective behind all such interactions is provision of accurate information on matters of national security."*

The citizens at large had been questioning *'Pakistan's National Security Policy'* because they worry about the direction in which it was pushing this country. Mr Sattar believed that:

The Living History of Pakistan Vol-I

'It is not allegiance to an enemy but the love for their homeland and concern for their future, and that of their kids that motivates them to demand course correction.'

Coming back to Saleem Shahzad account, 'The New Yorker' dated 19th September 2011 remarked later:

'A hallmark of Shahzad's reporting was that it frequently featured interviews with Islamist militants, including Al Qaeda fighters. His work was sometimes inaccurate...

Perhaps because he had cultivated so many militants as sources, he occasionally seemed to glorify the men who were carrying out suicide bombings and assassinations.

In 2009, he published a breathless account of a meeting with Ilyas Kashmiri, a top Al Qaeda leader. Shahzad noted that the terrorist

At times, he seemed to spare the intelligence services from the most damning details; but on several important occasions—as in the case of the Mehran attack—he wrote what appeared to be undiluted truth about the Pakistani state's deepest dilemmas.'

It has been on the record since a decade that most of the terrorist activities on Pak-Afghan borders, in the far off places of Balochistan and inside Karachi city were found linked with the India-sponsored NGOs. All the recoveries of illegal weapons, arsenals, automated guns, 9mm revolvers and the bombing gadgets were invariably marked made either in USA or in India – why so. Yet the civil governments in succession, especially the PML(N), were always seen keen to establish business ties with India.

Once the PML(N) was bent upon allocating the title of 'Most Favoured Nation' [MFN] to India, it was the army establishment which came in between with the statistics of atrocities in hand, which Pakistan suffered through its 'beloved neighbour'. The civil government had no answer.

Recall the famous academic perception also that *'the next war with India is ahead due to Kashmir or over the Water Resources.'*

JUDICIAL COMMISSION ON SS MURDER:

The Living History of Pakistan Vol-I

On 13th January 2012, the Judicial Commission comprised of Justice Mi-an Saqib Nisar, Justice Agha Rafiq Ahmed Khan, Javed Iqbal [IG Police Punjab], Binyamin Khan [IG Police Islamabad], and Pervaiz Shaukat [PFUJ's President] finalized its report in seven months after interviews of 41 individuals in 31 formal meetings.

[The media & journalists believed that the Commission's Chairman Justice Saqib Nisar lacked credibility. The government appointed him and the CJP endorsed him. He was once alleged for writing one of the most controversial judgments in Pakistan's legal history; Mukhtaran Mai Case. CJ Iftikhar Chaudhry himself claimed that the issue could be resolved in four days.]

'Business as usual' was the main decree what the Judicial Commission, formed to investigate slain journalist Saleem Shahzad's murder case, concluded at the end. Saleem Shahzad was allegedly receiving death threats from various terrorist groups for his investigation spree but mostly for stepping out his domain and, above all, on the charges of passing on one groups' secret information to the other rival faction.

The 140-page report had recommended the PM Gilani to make the report public while making its due observations. The Judicial Commission wrote a very interesting and sarcastic conclusive sentence in its final report that:

'It seems that Saleem Shahzad committed self-torture and suicide and later his dead body drove a car to the canal and dumped itself there.

The commission found no involvement of any security agency, including the ISI, in the killing of the journalist. Moreover, none of the journalists interviewed gave any evidence or shared information about the involvement of agencies. No one even blamed any intelligence agency of involvement.'

The Commission further directed the Islamabad and Punjab police departments to continue their respective investigation process to identify the perpetrators of the crime. Numerable media reports of next day commented that the Judicial Commission had made a mockery of justice. *'The commission, despite its clear mandate, failed miserably and disappointed all'*, the media mainly held.

The matter had touched the boundaries of sentiments in fact. The people at large and especially the media wanted to hear the JC's version as per their perceptions. They wanted to hear the outcome as the country's intelli-

The Living History of Pakistan Vol-I

gence agencies had murdered Saleem Shahzad. The fact remained that no judge would ever give judgment on the basis of media reports or the hearsay among the general public. Here too, the JC members needed convincing evidence of some body's involvement, individual or intelligence agency or terrorist group.

The media reporters and journalists came out on roads all over Pakistan protesting against the JC's report. The Commission blamed the victim for violating responsible and ethical conduct of journalism. The press reporters furiously wrote that:

'JC's report is a white-wash; it has given license to some one to continue its kill and dump policy against the dissenting voices with impunity across the country. The abduction and killing of daring journalists would continue and their families should expect no justice. What sort of a country are we living in?'

According to the Asian Human Rights Commission (AHRC), during the last year, five out of 16 journalists killed in Pakistan were allegedly abducted and murdered by political parties sponsored killing groups or the secret agencies.

No wonder our country is considered the most dangerous place for journalists in the world. The Judicial Commission on Saleem Shahzad murder case has only left journalists feeling even more insecure.'

The other side of the picture was worth consideration too.

Saleem Shahzad was the Pakistan bureau chief of Asia Times Online and the author of the upcoming book *'Inside al-Qaeda and the Taliban: Beyond Bin Laden and 9/11'*. If one dissects the minute details of the interviews between the two media-men, Saleem & Paul Jay, it would suggest the intelligentsia that any one else like a member of Taliban or Al Qaeda or secret CIA or Afghan Intelligence working in Pakistan clandestinely could have picked Saleem and killed him.

By the details of two interviews, one can ponder that Saleem Shahzad had spoken less about Pak-Army (though seldom appeared negative) and more he spoke about Taliban & al Qaeda's behavioural traits; *the ISI might be standing at a remote place to be blamed*. The JC had also pointed towards the same 'belligerents' involved in the war on terror for his murder.

The Living History of Pakistan Vol-I

Referring to daily the 'Dawn' dated 13th January 2012, the JC didn't single out any person or organization, which could have killed him, leaving the room open for further probe. In its set of recommendations, the most important was to rein in the ISI or other alike agencies and the IB to make them accountable.

According to the executive summary of the JC, Saleem's writings probably did, and certainly could have drawn the ire of various belligerents in the war on terror which included the Pakistani state and non-state actors such as the Taliban and Al Qaeda and US or Afghan or Indian secret players; as clearly, he was also in close contact with all of them.

Some of the witnesses examined had also pointed towards his links with Ilyas Kashmiri, who was subsequently killed in a drone attack on 3rd / 4th June 2011. The commission said it had been unable to identify the culprits despite having looked very substantial material, direct and circumstantial, because "Yet such evidence has not surfaced," to single out the culprits above doubts.

The Commission urged that the agencies like ISI and IB be made more law-abiding through legislation, carefully outlining their respective mandates and role; that their interaction with the media be carefully streamlined institutionally and regularly documented. They should be made more accountable through a suitably tailored judicial forum to redress grievances against them.

Polly Truscott, South Asia Director at Amnesty International said later:

"Shahzad's killing last year highlighted the perils faced by journalists in Pakistan. This country remains one of the most dangerous countries for media workers with at least three journalists killed in the past five months. Last year, at least six lost their lives.

The commission's failure to get to the bottom of the Shahzad killing illustrates the apathy of the Parliament in the field of proper law making as per needs of the day - Pakistan's criminal justice system is alarmingly useless.

No government official or public office holder should be above the law and they should be subjected to proper scrutiny whether the allegation of corruption by civil authorities or abductions by the intelligence services or funding of NGOs and religious schools through foreign sources."

INSECURE MEDIA IN PAKISTAN:

The disappearance of Saleem Shahzad was a reminder of the multiple hazards faced by journalists working in Pakistan. On 13th January 2011, Wali Khan Babar, a respected reporter for Geo News, was gunned down in Karachi [Later found out in 2015 that it was target killing by MQM's dissident]. In June 2011 reporter Abdullah Bhattani cheated death after being shot three times in Rawalpindi, while a radio station in the northwest town of Charsadda was bombed. Bhattani recovered subsequently.

With 10 slain journalists in 2010 year, the Newsier in Washington, D.C. called Pakistan "the deadliest country in the world for journalists."

'Reporters Without Borders' ranked Pakistan at 151 out of 178 countries when it was counted at press freedom in 2010-11. Five more journalists & media men were killed since Saleem was murdered, including one Razzaq Gul, a reporter with the Express News in southern Balochistan.

On 3rd February 2012, the last supplementary statement of Saleem Shahzad's case FIR no; 192 dated 30th May 2011, was written by DSP Sadar Circle, Mandi Bahuddin, Hafiz Ataur Rehman. The case was declared closed due to 'lack of evidence'. The irony of fate was that till Saleem's 2nd anniversary in May 2013, their family was still waiting for the succession certificate.

On 1st anniversary of Saleem Shahzad's murder, the *daily 'Independent' of UK* dated 30th May 2012, wrote:

'A year has somehow charged past since the abduction and murder of Pakistani journalist Saleem Shahzad, a full 12 months in which no suspect could be identified, no-one charged with his killing and nobody brought to justice. As per post-mortem report he had been tortured and that his corpse had sustained at least 17 injuries.

'What was it that Saleem was on his way to talk about? Two days before he went missing, he had published an article about the 22nd May 2011 attack on the Mehran naval base in Karachi, claiming al-Qaeda had carried out the assault after the break down of talks between the military and militants over the release of naval officials earlier arrested on suspicion of having al-Qaeda links.'

Saleem Shahzad could not get justice, albeit, his wife, Anita, got 3m Pakistani rupees (£20,000 then) by means of his compensation. Shahzad's col-

The Living History of Pakistan Vol-I

leagues suggested that Saleem had brought events upon himself – reflected the fact that their country was one of the very deadliest for the media to work in. The Judicial Commission could not go beyond suggesting that:

“The Pakistani state, the non-state actors such as the Taliban and al Qaeda, and foreign actors could all have had a motive to silence him, it concluded.”

On 2nd anniversary of Shahzad’s killing, the ‘Express Tribune’ of 30th May 2013, wrote:

‘Police have closed investigation into the murder of journalist Saleem Shahzad, taking a stance that no clue has been found’.

The tail piece now:

‘There is one mother who spoils her kids rotten. And there is another who disciplines them, grooms them, and nurtures their character by teaching them to distinguish right from wrong. Both these mothers are acting out of love; but only the second is being constructive.’ [Babar Sattar]

US Senate Report on ZARDARI's Money Laundering

which was placed before the US Congress – well before when the NRO was being coined in America in 2006 to get negotiations between Benazir Bhutto and President Gen Musharraf – which was then agreed in July 2007 in a Middle Eastern state

Mian Nawaz Sharif & Mr Asif Ali Zardari,

The owners of the Pakistan's two biggest political parties PML(N) & PPP, always claimed that the media has been maligning their reputation by discussing the mega – corruption stories wrongly attributed to them.

Both the leaders and their cronies take shelter behind the respective court verdicts. The investigations into all the cases against both of them were duly investigated whether by the police or FIA or NAB - the files were authentic in all respects.

Both the leaders have brewed maximum benefits out of the 170 years old CrPC & Evidence standards and Pakistan's bogus 'Court – Kutchehry' system. All they were let off with connivance of some rogue judges like Malik Qayyum and CJP Iftikhar M Chaudhry.

Pakistan's poor populace believed that the two leaders were innocent – not at all. They were let off by the Kangaroo Courts and slave judges sitting inside wrapped in black. Clearance by the courts does not mean that they were not corrupt. Here are the authentic reports.

BENAZIR DIED FOR DEMOCRACY?

The Living History of Pakistan Vol-I

Many of my friends may differ from this viewpoint but this is the picture of BB what the western media have gradually developed for the Bhuttos; one should have courage to analyse it, too.

Pakistan saw Bhutto dynasty emerge after the judicial murder of Zulfikar Ali Bhutto in April 1979 at the hands of Gen Ziaul Haq and Benazir Bhutto was his political heir who lived and died a controversial figure.

An insecure and inexperienced young woman at that time, Benazir was named political successor by her father from his death cell. From an apprentice to run Bhutto's political legacy, she matured into a perceptive politician, aggressive and enlightened, riding the sympathy wave created by her father's tragic death and the 'Bhutto' name she inherited.

Benazir Bhutto, the first woman prime minister of Pakistan, had soon lost the gentle womanly touch in her personality, becoming manipulative and callous. She was a brilliant, charismatic, shrewd, ambitious, self centered and autocratic but with instinctive hatred for dissent like her father. Machiavellian in mindset, both father and daughter behaved identically but with one difference that Z A Bhutto had no greed for money.

Referring to [Shahid R Siddiqui](#)'s essay available at '[Axisoflogic.com](#)' dated 27th December 2009, written on BB's 2nd anniversary:

'Despite her claim that she stood for the poor, Benazir remained an elitist. She preferred to live in Cannes after her father's death – an expensive resort city of French Riviera. And when came time to contest her first election, she chose the slums of Lyari (Karachi) as her constituency.

How ironic: someone who lived in one of the richest places of Europe came to represent the poorest of the poor in Pakistan? But [even then] Lyari remained the poorest slum in Karachi and a hub of crime, despite her two stints as prime minister.'

After assuming power, Benazir Bhutto mastered the art of manipulation and deception – forget democracy. She ran [rather ruled] her party as an autocrat; appointed herself as party '*chairperson for life*' – no dissent and no challenge to her authority. The authority then passed on to her husband Mr Zardari and then to her son Bilawal.

The Living History of Pakistan Vol-I

During her two stints as prime minister, Benazir Bhutto was dismissed prematurely on charges of mismanagement, corruption, nepotism and social injustice. She nominated her spouse, Asif Ali Zardari as minister in her cabinets twice and gave him a free hand to indulge in unfettered corruption that earned him the name of Mr Ten Percent. Her own younger brother Murtaza Bhutto was murdered in Karachi during her premiership. Murtaza, after returning to Pakistan from exile, had demanded party leadership and his share of the family fortune from Benazir, it was widely believed.

An absconder from law, Benazir Bhutto termed her absence as 'self exile'. In this 'self exile' she continued to maintain her stranglehold over the PPP, knowing that emergence of alternate leadership would mean her political demise. After 2002 elections she refused to let PPP's senior vice chairman Makhdoom Amin Faheem accept Gen Musharraf's offer to become the PM. Feared she would lose her ability to bargain her return to Pakistan with the Army.

Benazir Bhutto's safest bet was to ride the shoulders of Americans and was willing to carry forward their agenda of 'war on terror'. Amidst rising voices of 'do more' against the Taliban, she en-cashed the moments to sell her services. She used her charm in the Western capitals to cultivate the political elite and the media, presenting herself as a thoroughbred Western educated lady struggling to restore democracy. For the Americans, she built her image as a brave Muslim woman, secular and liberal.

Benazir Bhutto recited before the Americans her theme song: *"without her, democracy in Pakistan would be a lost cause"* and cut a deal with them. She believed that:

'Washington is behind me. I can't lose this opportunity. I have been waiting for it for nine years. We need to get Pakistan democratic again. I am needed here. It is now or never.'

Politically devastated Gen Musharraf fell before the American pressure and accepted a power sharing formula, absolving her of all corruption charges through US brokered legislation called '*National Reconciliation Ordinance [NRO]*' that washed off her and her spouse's sins.

She returned to Pakistan amidst chants of "long live Benazir"; democracy never figured in the deals she had made in Washington – but she died on 27th December 2007 while chasing power. Her death remained a mystery. *Many attribute her death to Al Qaeda or Taliban but the more popular belief was that she paid the price for breaking her promises with the US.*

The Living History of Pakistan Vol-I

Benazir Bhutto had inherited the PPP from her father and passed it on as family heirloom upon her death. Zardari pulled out and gestured 'her will', scribbled on a piece of paper and waved it before the party's executive council whose members were too stunned to challenge it and the party went usurped. Most ridiculously, her teenage son Bilawal hastened to suffix his name with 'Bhutto' to secure Pakistan's throne in the future; which he got at Benazir's 6th anniversary on 27th December 2013 at last.

To disinfect their image, Benazir Bhutto's political successors coined slogans such as "*Benazir died for restoration of democracy*"; even the Americans branded her a '*champion of democracy*'.

But contrarily, "*the obituaries painting her [Benazir Bhutto] as dying to save democracy - distorting history*", said William Dalrymple in '*New York Times*' dated 4th January 2008.

{ Published at PKhope.com on 27th December 2013 }

Let us move a step further.

US Senate Report on Corruption and Money Laundering, provided to the media in April 2006, alleged that Asif Ali Zardari had stolen over one billion Dollars from Pakistan and Citibank helped him in money laundering. According to this report, during the period 1994 to 1997, Citibank opened and maintained three private bank accounts in Switzerland and a consumer account in Dubai for three corporations under Mr Zardari's control. Some of these accounts were used to disguise million in kickbacks for a gold importing contract to Pakistan.

ARY GOLD LICENSE DEAL [1994]:

Mr Zardari's relationship with Citibank began in October 1994, through the services of Kamran Amouzegar, a private banker at Citibank in Switzerland and Jens Schlegelmilch, a Swiss lawyer who was the Bhutto family's attorney in Europe and close personal friend for more than 20 years.

According to Citibank, Mr Schlegelmilch represented to Mr Amouzegar that he was working for the Dubai royal family and he wanted to open some accounts at the Citibank branch in Dubai. Mr Schlegelmilch had a Dubai residency permit and a visa signed by a member of the Dubai royal family.

The Living History of Pakistan Vol-I

Mr Amouzegar agreed to introduce Mr Schlegelmilch to a banker in the Citibank branch in Dubai.

At Dubai Citibank, Mr Schlegelmilch told the banker that he wanted to open an account in the name of M S Capricorn Trading, a British Virgin Island PLC. The stated purpose of the account was to receive money and transfer it to Switzerland. The account was opened in early October 1994. Mr Schlegelmilch also informed the Dubai banker that he would serve as the representative of the account and the signatory on the account. Under Dubai law, a bank is not required to know an account's beneficial owner, only the signatory.

Citibank told the US Senate Sub-committee that Mr Schlegelmilch did not reveal to the Dubai banker that Mr Zardari was the beneficial owner of that PLC, and the account manager never asked him the identity of the beneficial owner of the account. Instead, the bank assumed that the beneficial owner of the account was some member of the royal family who had signed Mr Schlegelmilch's visa. Shortly after opening the account in Dubai, Mr Schlegelmilch signed a standard referral agreement with Citibank Switzerland.

On 27th February 1995, Mr Schlegelmilch, working with Mr Amouzegar, opened three accounts at the Citibank Switzerland. The accounts were opened in the name of M S Capricorn Trading, which already had an account at Citibank's Dubai branch, as well as Marvel and Bomer Finance, two other British Virgin Island PLCs established by Mr Schlegelmilch. Each private bank account listed Mr Schlegelmilch as the account contact and signatory.

Citibank informed the US Sub-committee that the Swiss Form A (beneficial owner identification form required by the government) identified Mr Zardari as the beneficial owner of each PLC. The decision to allow Mr Schlegelmilch to open the three accounts on behalf of Mr Zardari involved officials at the highest levels of the private bank. The officials were:

- Mr Amouzegar, the private banker;
- Deepak Sharma, then head of private bank operations in Pakistan;
- Phillipe Holderbeke, then head of private bank operations in Switzerland (who became head of the Europe, Middle East, Africa Division in February 1996);
- Salim Raza, then head of the EMEA Division of the private bank; and
- Hubertus Rukavina, then head of the Citibank private bank [he left the private bank in 1996 and left Citibank in 1999].

The Living History of Pakistan Vol-I

Citibank informed the US Sub-committee that the private bank was aware of the allegations of corruption against Mr Zardari at the time it opened the accounts in Switzerland. But the bank officials believed that the family wealth of Benazir Bhutto and Mr Zardari was large enough to support a large private bank account, even though Citibank was not able to specify what actions were taken to verify the amount and source of their wealth.

Bank officials were also aware of the M S Capricorn Trading account in Dubai but there had been no problems with that account. Thus Mr Amouzegar informed his superiors that Mr Zardari was the beneficial owner of the Capricorn account in Dubai when they were considering the request to open the accounts in Switzerland. However, the Dubai account manager was apparently still operating under the assumption that the beneficial owner of the Dubai Capricorn account was a member of the Dubai royal family.

Sub-committee was unable to determine whether Citibank officials were unaware of the serious inconsistency between Citibank Switzerland and Citibank Dubai with respect to the Capricorn Trading account.

Citibank told the US Senate Sub-committee that they decided to allow Mr Schlegelmilch to open the three accounts for Mr Zardari on the condition that their accounts would not be the primary accounts for Mr Zardari's assets; it would function as passive investment accounts only. It was one Mr Holderbeke who signed a memo delineating the restrictions placed on the accounts, including a million aggregate limit on the size of the three accounts, and transaction restrictions requiring the accounts to function as passive, stable investments, without multiple transactions or funding pass-throughs.

None of the other Citibank could be identified with these types of restrictions; in fact they had never accepted a client on the condition that certain restrictions be imposed on the account. One bank representative explained that if the bank felt that it needed to place restrictions on the client's account, it didn't want that type of client. The existence of the restrictions was in themselves proof of the bank's awareness of Mr Zardari's poor reputation and concerns regarding the sources of his wealth.

Movement of Funds; Citibank told the US Senate Sub-committee that, once opened, only three deposits were made into the M S Capricorn Trading account in Dubai. Two deposits, totaling million were made into the account almost immediately after it was opened. Citibank records show that one million deposit was made on 5th October 1994, and another was made exactly the next day. The source of both deposits was A R Y Interna-

The Living History of Pakistan Vol-I

tional Exchange, a company owned by Abdul Razzak Yaqub, a Pakistani gold bullion trader living in Dubai.

The fact remains that after receiving those transactions, the Bhutto government awarded Mr Razzak an exclusive gold import license in December 1994. In an *interview with the New York Times* during same days, Mr Razzak had acknowledged that he had used the exclusive license to import millions worth gold into Pakistan. Mr Razzak though denied making any payments to Mr Zardari but could not explain the two million payments in Zardari's accounts with Citibank.

Late *Benazir Bhutto had told the US Senate Sub-committee* that since ARY International Exchange was a foreign exchange business, the payments did not necessarily come from Mr Razzak, but could have come from a third party who was merely making use of ARY's exchange services. When the Senate staff invited Ms Bhutto to provide additional information on the M S Capricorn Trading accounts, she was not able to do so either.

On 25th February 1995, a third deposit of eight million was made into the Dubai M S Capricorn Trading account. That payment was made through American Express, with the originator of the account listed as Morgan NYC; the Citibank indicated it did not know who Morgan NYC was, nor about the source of that eight million.

All of the funds in Dubai account of M S Capricorn Trading were moved to the Swiss accounts in the spring of 1995. *On 6th March 1995, \$8.1 million was transferred; on 5th May 1995 another \$10.2 million was transferred;* both transfers were in US dollars and were routed through Citibank's New York offices. Citibank informed the Senate's Sub-committee that M S Capricorn Trading closed its Dubai account shortly after the last transfer was completed.

SURREY PALACE FROM A SUGAR MILLS?

Citibank further indicated that significant amounts of other funds were also deposited into the Swiss accounts. As described below, the \$40 million cap was reached, and millions of additional dollars also passed through those accounts. However, Swiss bank secrecy laws prevented the US Senate Sub-committee from obtaining the details on the transactions in the Zardari accounts. In 1996, the Swiss Citibank conducted a number of reviews of the Zardari Swiss accounts, finally deciding in October to close them.

The Living History of Pakistan Vol-I

The first review was taken in early 1996, triggered by increasing publicity about allegations of corruption against Mr Zardari. Citibank's Holderbeke, Saleem Raza, Deepak Sharma and Amouzegar participated in the review, and apparently concluded that the allegations were politically motivated and that the accounts should remain open.

In March or April 1996, Mr Amouzegar asked that the overall limit on the Zardari accounts be increased, from \$40 million to \$60 million, apparently because the accounts had reached the previously imposed limit of million; Holderbeke considered the request but declined to increase the limit.

In June 1996, as per press reports, Mr Zardari had purchased real estate in London triggered still another review of the Zardari accounts. Swiss Citibank internally discussed the source of the funds for the property purchase. Mr Amouzegar and Mr Raza then met with Mr Schlegelmilch, who had informed them that funds were deposited into the Citibank accounts, then transferred to another PLC account outside of Citibank and used to purchase the property.

Mr Schlegelmilch had indicated the funds had come from the sale of some sugar mills [in Pakistan] and were legitimate; but no one else validated the information about the sale of the sugar mills. In addition, even though this account activity violated the condition imposed by Citibank that the accounts were not to be used as a pass through for funds, the accounts were kept open.

In July 1996, after Mr Amouzegar left the private bank to open his own company, another private banker, Cedric Grant, took over management of the Zardari accounts. Mr Grant reviewed the Zardari accounts about one month later to familiarize himself with them.

In September 1996, print media in Pakistan repeatedly raised questions about corruption by Mr Zardari and Ms Bhutto. On 20th September, Ms Bhutto's only surviving brother, Murtaza Bhutto, was assassinated and *Nusrat Bhutto accused Benazir Bhutto and Mr Zardari of masterminding the murder, because the brother had been leading opposition to Ms Bhutto.*

In October 1996, Mr Grant completed his review of the Zardari accounts and provided a written analysis to Holderbeke, Sharma and Raza; indicating numerous violations of the account restrictions imposed by Citibank, including multiple transactions \$40 million and other dubious funding pass-throughs. The accounts had functioned more as checking accounts than

The Living History of Pakistan Vol-I

passive investment accounts, directly contrary to the private bank's restrictions.

[The above exercises seemed to be all paper work; otherwise the Swiss bankers were not kids – they knew that A/C holders Zardari & Benazir Bhutto's government had gone.]

Apparently, well over million had flowed through the accounts, though Senate Sub-committee staff was unable to ascertain the actual amount because Swiss bank secrecy law prohibited Citibank from sharing that information with the Sub-committee. Citibank had indicated that Mr Amouzegar had either ignored or did not pay attention to the account activity. Mr Grant recommended closing of the Zardari's accounts which were subsequently closed by January 1997.

SWISS LEGAL PROCEEDINGS:

On 8th September 1997, the Swiss government issued orders freezing the Zardari and Bhutto accounts at Citibank and three other banks in Switzerland at the request of the Pakistani government.

Since Citibank had closed its Zardari accounts in January 1997, it took no action nor did it make any effort to inform US authorities of the accounts until late November 1997. Citibank contacted the Federal Reserve and OCC in anticipation of a *New York Times* article of January 1998, alleging that Mr Zardari had accepted bribes.

On 8-11th December 1997, Citibank briefed the OCC and the Federal Reserve about the accounts and the steps it had taken in the Zardari matter. These steps included:

- Closing all of the accounts that had been referred by Mr Schlegelmilch;
- Terminating his referral agreement;
- Reviewing all of the accounts opened in the Dubai office;
- Tightening up account opening procedures in Dubai.

Citibank did not identify any changes made or planned for the Swiss office, even though the majority of the activity with respect to the Zardari accounts had taken place in Switzerland.

The Living History of Pakistan Vol-I

On 5th December 1997, Citibank prepared a Suspicious Activity Report on the Zardari accounts and filed it with the Financial Crimes Enforcement Network at the US Department of Treasury. The filing was made fourteen months after its decision to close the Zardari accounts; after Mr Zardari was arrested in November 1996 on corruption charges. Two months later, the Swiss government ordered four Swiss banks (including Citibank Switzerland) to freeze all Zardari accounts.

In June 1998, the Swiss government indicted Mr Schlegelmilch and two Swiss businessmen, the former senior executive vice president of SGS and the Managing Director of Cotecna, for money laundering in connection with kickbacks paid by the Swiss companies for the award of a government contract by Pakistan.

In July 1998 Mr Zardari, and in August 1998 Benazir Bhutto were indicted for violation of Swiss money laundering law in connection with the same incident.

In October 1998, Pakistan government also indicted Mr Zardari and Ms Bhutto for accepting kickbacks from the two above named Swiss companies in exchange for the award of a government contract.

On 15th April 1999, after an 18-month trial, Pakistan's Lahore High Court convicted Ms Bhutto and Mr Zardari of accepting the kickbacks and sentenced them to 5 years in prison, fined them \$8.6 million and disqualified them from holding public office. Ms Bhutto, departed for London then and denounced the decision. Mr Zardari was sent in jail; additional criminal charges were pending against both in Pakistani courts till late and the echo continued to stir media and the Parliament till 2013.

Going back for a while; on 11th December 1997, Citicorp's Chairman John Reed wrote the following to the Board of Directors:

"We have another issue with the husband of Ex-Prime Minister Bhutto of Pakistan. I do not yet understand the facts but I am inclined to think that we made a mistake. More reason than ever to rework our Private Bank."

Mr Reed held that it was the combination of the Salinas and Zardari accounts that made him charge Mr Aziz, bank's new head, with taking a hard look at the bank's public figure policy and public figure accounts. The Zardari case history had raised issues involving due diligence, secrecy and public figure accounts.

The Living History of Pakistan Vol-I

The Zardari case history started with the Citibank Dubai branch's failure to identify the true beneficial owner of the M S Capricorn Trading account. In Switzerland, Citibank officials opened three private bank accounts despite evidence of impropriety on the part of Mr Zardari. *Citigroup's John Reed was once advised by Citibank officials when going to Pakistan in February 1994 that he should stay away from Mr Zardari; that he was not a man with whom the bank wanted to be associated.* Yet one year later, they opened three accounts for Mr Zardari in Switzerland.

Citibank were unable to confirm that if the bank employees verified that Mr Zardari had a level of wealth sufficient to support the size of the accounts that he was opening. In addition, the Swiss managers took no action to validate the legitimacy of the source of the funds that were deposited into the account. For example, there was no effort made to verify the claims that some of the funds derived from the sale of sugar mills.

Citibank also performed no due diligence on the client owned and managed PICs that were the named accountholders. Because the PICs were client-created, the bank should have gathered knowledge of the activities, assets or entities involved with the corporations.

One of the PICs, *Bomer Finance*, had been determined to be a repository for kickbacks paid to Mr Zardari, and those kickbacks tainted funds deposited at the Geneva branch of Union Bank of Switzerland. Documentation was not made available to the US Senate Sub-committee about Bomer Finance's transactions of illicit funds sent to the Citibank accounts.

Another due diligence lapse was the Citibank's failure to monitor the Zardari accounts to ensure that the account restrictions imposed on them were being followed. When officials were presented with evidence in 1996 that the restrictions were being violated, they nevertheless allowed the accounts to continue.

The Zardari accounts in Switzerland were opened one day before *Raul Salinas of Mexico was arrested*. The account was repeatedly reviewed in 1996, after the Salinas scandal became public. Yet there is no evidence that anyone in the private bank had been sensitized to the problems associated with handling an account of a person suspected of corruption.

[In November 1995, Raúl Salinas's wife, Paulina Castañón and his brother-in-law, Antonio Castañón were arrested in Geneva, Switzerland after attempting to withdraw \$84 million USD from an account owned by Raúl under an alias. Their capture led to the unveiling of a vast fortune spread around the world and

summing to hundreds of millions of dollars, even though he never officially received an annual income of more than \$190,000.

*A report by the US General Accounting Office indicated that Raúl Salinas transferred over \$90 million out of Mexico and into private bank accounts in London and Switzerland, through a complex set of transactions between 1992 and 1994, all with the help of **Citibank** and its affiliates.*

In 2008, the government of Switzerland turned over \$74 million, out of the \$110 million in frozen bank accounts held by Raúl Salinas, to the government of Mexico.

The Swiss Justice Ministry had indicated that the Mexican government had demonstrated that \$66 million of the funds had been misappropriated, and the funds, with interest, were returned to Mexico. The bank accounts were held at Pictet & Cie, Citibank Zurich, Julius Baer Bank, and Banque privée Edmond de Rothschild in Geneva and Zurich.

Other funds were returned to third parties, including Mexican billionaire Carlos Peralta Quintero, who had given the funds to Raúl Salinas to set up an investment company. The Salinas family received back nothing out of the frozen funds.]

From the Salinas scandal in 1995, to the Zardari scandal in 1997, then to the Carlos Gomez fraud in 1998; of the 40 private banks reviewed by the Federal Reserve during its industry wide examination of private banking, only one -- Citibank -- was reviewed in detail by Federal Reserve examiners three years in a row.

The Zardari example also demonstrated the practical consequences of secrecy in private Swiss banking. Citibank claimed that its decisionmaking in the Zardari matter would not be fully explained or documented, since all Citibank officials were subject to Swiss secrecy laws prohibiting discussion of client-specific information.

The Zardari case had invited a series of critical internal and federal audits between 1992 and 1997 of the Swiss office. The shortcomings identified in the audits included policies, procedures, and problems that affected the management of the Zardari accounts. They included:

The Living History of Pakistan Vol-I

- Failure of the “corporate culture” in the Swiss office to foster “a climate of integrity, ethical conduct and prudent risk taking by US standards”;
- Inadequate due diligence;
- “Less than acceptable internal controls”;
- Lack of oversight and control of third party referral agents such as Schlegelmilch; and inadequate monitoring of accounts.

In December 1995, the Swiss Citibank Branches received the lowest audit score received by any office in the private bank sector during the 1990s. These audit scores indicated that the office’s poor handling of the Zardari accounts was part of poor account management.

In the Senate Report ‘Los Angeles Times’ dated 17th May 1994 is also referred saying that:

“The Troubled Reign of Bhutto II: Many Pakistanis blame Bhutto’s abrupt removal in August, 1990, on the unsavory reputation acquired by her husband, Asif Zardari, a polo-playing contractor dubbed ‘Mr. Ten Percent’ for the rake-off he was said to take from government contracts.”

The said report had summarized the Minority Sub-committee staff investigation into the US private banks and their vulnerability to money laundering. Zardari’s investigation had guided them that *‘the products, services and culture of the private banking industry present opportunities for money launderers, and that without sound controls and active enforcement, private banking services have been and will continue to be used by those intent on laundering money.’*

The above Zardari Report was not out till mid July 2002 even. Despite so many cases tried in Pakistani courts against former PM Benazir Bhutto and her husband Asif Ali Zardari, no body knew how much money did the couple make or what was the exact size of the accounts.

BENAZIR DENIED ALLEGATIONS:

Ironically, Citibank, which hosted some of these accounts, officially released detailed information about the amount parked with it, a figure well over \$60 million, accumulated between 1995 and 1997; the prime time of Benazir Bhutto’s second tenure as prime minister. Some patchy details of

The Living History of Pakistan Vol-I

those accounts emerged in various cases, but nothing credible until the Citibank revealed it all.

Referring to *SA Tribune [since died] dated 20-26th July 2002*, ISSN: 1684-0275, late Benazir Bhutto staunchly defended her husband and denied there existed any Zardari accounts with Citibank, saying that:

"The (Pakistani) regime has alleged that some companies belong to my husband. There's a difference between company accounts and Senator Zardari's accounts. So, I have still to see a statement where it has been said Senator Zardari has 60 million dollars.

But, even if Senator Zardari had 60 million dollars, I would put the question, where is the corruption? From where did the proceeds come? But that is a separate issue."

The facts which emerged from the Citibank statements to the US Senate Sub-Committee, however, established that Asif Zardari was the beneficial owner of the above discussed company accounts, according to Swiss government records. But Benazir continued to say that:

"It is all baseless. Its incorrect, its baseless and its incorrect. I have seen the Citibank and nowhere has it been said. The Pakistani regime has alleged that certain companies belonged to Senator Zardari and in the period that we were.....these accounts were started...not when we were there...the period when these accounts were opened were times when laws were different.

The beneficial owners were not there. Ok? So, there was an absolute lack of evidence linking Senator Zardari to the disputed accounts. These are disputed accounts, they are disputed properties."

In an interview with the Senate Sub-committee, Citigroup's John Reed told that when he learned of the Zardari accounts he thought the account officer must have been "an idiot." The information was not given to any Pakistani accountability court or officials but to the US Senate Subcommittee on Investigations, supervised by Senator Carl Levin of Michigan, which was probing international money laundering activities. [see www.levin.senate.gov/issues]

On the US Senate Sub-Committee record, there exists one of the case histories titled as '*Asif Ali Zardari*' (*Full text*). Chairman of the Citibank gave statements before the Committee and Benazir Bhutto also spoke to

The Living History of Pakistan Vol-I

the Committee staff, and thus knew well about what they were doing and saying.

Pakistan Finance Minister Shaukat Aziz had given written testimony before the Committee staff as he was handling the Citibank shortly before he came to Pakistan as Finance Minister.

By late 1999 the US Senate Sub-committee staff had conducted almost 100 interviews and reviewed tens of thousands of pages of documents. The interviews included meetings with almost 50 Citibank personnel, including private bankers, their supervisors, auditors, senior bank management and board members.

The Sub-committee had interviewed and obtained information from more than two dozen government agencies and organizations, including the US Departments of State, Treasury and Justice, the Federal Reserve, Securities and Exchange Commission, International Monetary Fund, World Bank, and law enforcement personnel in Mexico, France, UK and Dubai.

It was part of this probe that Citibank executives were called to testify before the sub-committee. The Citibank's case histories illustrated the vulnerability of private banks to money laundering; then the largest bank in the United States with over \$700 billion in assets. Citibank had over \$100 billion in client assets in private bank offices in over 30 countries, which was the largest global presence of any US private bank; still was expanding world over amidst controversies.

Later it was revealed that Mr Zardari had on record:

- Twenty-five Swiss bank accounts of Zardari were frozen in 1990s, subsequently de-frozen in 2008 after NRO. These included accounts in the Union Bank of Switzerland (UBS), Citibank Private Limited and Citibank Dubai.
- Among the confiscated properties belonging to the couple were 150 acres of land in Sanghar, Nawabshah and Hyderabad; eight acres of land at Hawksbay and one-acre plots each in Clifton and Saddar, Karachi; six sugar mills, two textile units, one cement, two chemical and one ice factories.
- 365 acres of Rockwood Estate (Surrey Palace), apartments in the posh Queens Gate Terrace and Hammersmith of London, four shops in Brussels and two apartments in Brussels. The Surrey Palace was subsequently sold to a Qatar-based billionaire.
- The Texas Stud Farm, properties in Wellington Club East and West Palm Beach.

SURREY PALACE FIASCO:

In November 1999, Gen Musharraf's military government asked the British home office for paperwork relating to the purchase. Meanwhile, builder Paul Keating had also launched court action to recover more than \$300,000 for refurbishment work carried out at the house, known as Rockwood Park [Estate]. The work was carried out on behalf of the London agent of Asif Ali Zardari.

Zardari's business associate in Britain, Javaid Pasha, denied any responsibility for the refurbishment work.

As per *BBC Report dated 10th December 1999*, the front entrance to the house was covered in ivy and holly. There was a large parking area in front. With a total of about 20 rooms it was set in a substantial estate of 365 acres, including two farms, lodgings, and staff accommodation. It was worth \$8 million then.

Builder Paul Keating was in trouble then because no-one was prepared to pay the bills for his work on the unoccupied mansion; though Mr Zardari was responsible for it.

As per Paul Keating's version, the Rockwood was bought by Mr Zardari in the early 1990s through an offshore company called Romena Properties. As the company had no registered shareholders so Paul was in problem for the costs of renovation.

Inside the mansion, the BBC had seen an Italian table, worth \$120,000, ordered by Mr Zardari through the interior designers, made in Italy and shipped over to Rockwood House.

In the master bedroom, the ceiling was created to achieve an evening sky with stars in it; especially designed to reflect Mr Zardari's taste.

Paul Keating told that Mr Zardari visited Rockwood three or four times but staying only for very short periods; *"I would describe him as flamboyant, eccentric,"* he said.

Bhuttos, in fact, had bought Rockwood House estate with 365 acres through a web of Isle of Man registered companies in 1995 at a cost of £2.5 million and in 1996 refurbished by Zardari at a cost of £2 million.

The Living History of Pakistan Vol-I

Gen Musharraf's Minister of State for Information Tariq Azeem, referring to the reports published in international newspapers regarding the alleged looting and corruption carried out by Benazir Bhutto and Zardari, pitched a challenge [in 2003] to the PPP for an open debate on Surrey Palace. Speaking at a press conference, he mentioned:

"International dailies New York Times, Sunday Times and BBC have given reports on the corruption and looting (carried out) by Benazir Bhutto and her spouse Asif Zardari. Asif Zardari and Benazir Bhutto have admitted ownership of Surrey Palace in a court in London".

The Surrey Palace case was opened by PM Nawaz Sharif in his 2nd stint. Tariq Azeem confirmed that Mr Zardari's friend Javaid Pasha and his wife Shabnam Pasha's company refused the payments when demanded by the interior decorators of the Palace. Subsequently those decorator companies sued in the respective court for the payment.

In 2004, when the estate was sold [for £4.35 million] under liquidation, those contractors were paid first and the remaining amount was given to the Government of Pakistan. There were three companies which had filed cases for liquidation. Barrister I Cock appeared before the court from Zardari's side and lost at last.

In spite of this scenario [late] Benazir Bhutto has been saying since 1999 that she had nothing to do with Surrey Palace.

Giles and Vanessa Swarbreck bought the same estate for £4.35 million in July 2004 after the Pakistan government had pressurized the British authorities to appoint liquidators to sell the property. 53 years old Giles, a former West End jeweler-turned-property developer told that:

'It was still full of the Bhuttos' furniture and was like a Dubai vision of The Arabian Nights. It is incredible what they spent their money on, with no coherent plan and having their whims interpreted by their builders. The result was a total eyesore.'

The most permanent Bhutto addition was what Giles described as '*a cheap Karachi-style concrete veranda*' stuck on the back of the house in order to enjoy the stunning views over the Downs.

The domed master bedroom with inset lights that twinkle like stars was basically transformed as bomb-proof 'sky' with steel and reinforced concrete. In the basement, Zardari had his own snug bar, copied from the

The Living History of Pakistan Vol-I

nearby Dog and Pheasant pub, but marked to entertain certain 'waderas politicians' from Pakistan to make negotiations & bargains easy.

[Once on a visit to Rockwood, Asif Zardari called at the village pub, the Dog and Pheasant, and liked it so much that he offered to buy it. Informed that it was not for sale, he asked the builder to produce a replica of its bar in the basement of Surrey Palace.]

When it came up for sale in 2004, the Swarbrecks, who were local land-owners, scented a bargain and put in a sealed bid offer and left for South Africa on holidays; they were the under-bidders. Suddenly they were contacted by the estate agents and told to come back and complete the deal in ten days or lose the deposit.

For the next two years the couple could do little more than watch the house disintegrate. Aggrieved unpaid builders had taken up residence, and unknown intruders plundered the fixtures and fittings. It was actually quite intimidating even visiting the place as, down the passageways there were terrifying, lurking people, who were pretty angry not to have been paid.

The Giles couple had intended to make Rockwood their home, but the sudden deaths of Vanessa's mother and brother hindered. A range of farm buildings were then converted and sold off and now what remains of Rockwood was for sale, including 60 acres, a couple of gatehouses and a separate indoor swimming pool complex that had planning consent to be turned into a five-bedroom house.

Rockwood, originally had about 20 bedrooms; then converted into 15 by Zardari's men, had a total of 12,000 sq ft, but Giles obtained permission to extend this to a truly palatial 22,000 sq ft.

It was July 2010, when the same Rockwood House was floated in the market for £7.5 millions; Fifteen years after it was a shadow of the extravagant atrocity when the Bhuttos were in residence; the \$120,000 Lalique glass dining table, the crystal chandeliers and gilded furnishings were no more there.

Most of the original door knobs, bathroom fittings and even roof tiles on the coach house were taken away by the Bhuttos' unpaid builders.

For British visitors, Rockwood House was a beautifully situated Arts and Crafts Home County house of the sort where television period dramas might unfold.

The Living History of Pakistan Vol-I

Both Mr Zardari and Benazir Bhutto staunchly denied owning Rockwood saying that *'many allegations of corruption made against them - including the purchase of Rockwood - are politically motivated lies.'*

After winning the elections of 18th February 2008, the NAB had sent the request for the High Court of London to drop the Surrey Palace case against PPP Co-Chairman Asif Ali Zardari. The Chairman NAB wrote a letter to the Bureau's London solicitors in the third week of February instructing them to immediately withdraw proceedings. Curiously the letter was written within 72 hours of Zardari-led PPP emerging as the single largest political party in those general elections.

NAB had refused to divulge the exact amount that was to go back to the then owner of the Surrey Farmhouse, Giles to the tune of about £4 million.

During the first week of August 2010, Mr Zardari's trip to UK received roaring criticism in Pakistan, it was a wonder for Britons that how he dared appear in public. He had left the country at a time when the death toll from the monsoon floods was mounting, millions had gone homeless, and more flooding was expected, but his visits to Paris and London had drawn attention to his wealth and luxurious lifestyle.

It was a fact that during his visit to Paris, while TV images of the flood victims and their rescuers were being shown across the world, Zardari took time out for a helicopter trip to visit the fabulous chateau owned by him and his late wife Benazir Bhutto in Normandy [France] apparently to see his ailing father then residing there. The Manoir de la Reine Blanche was built in the 16th century for the widow of King Philippe IV which Mr Zardari owns now.

In the words of Ayaz Amir appeared in *'the News'* during the same week:

'It hardly helps when Pakistan is once again holding out the begging bowl that its President is showing off his French country pile. The chateau is a reminder like nothing else of the president's enterprising spirit, the same huge talent which long ago earned him the imperishable title of Mr Ten Percent.'

As the President travelled on from Paris to London for last night's dinner with the British PM David Cameron, the Pakistani papers had the chance to remind readers of Zardari's property holdings in Britain, the Rockwood House estate, better known in Pakistan as 'Surrey Palace'. There were other London properties, too, in the Zardari UK portfolio, but nothing as palatial as this. Zardari & Benazir had originally denied all knowledge of the

The Living History of Pakistan Vol-I

place, but finally admitted to owning it when he was still in jail in 2004 and the palace was sold through NAB's pressurized deal.

BILAWAL - ZARDARI HOUSE LAHORE:

A bomb-proof state-of-the art Bilawal House, spreading over 116 *kanals* of construction on a 200 *kanal* [*one kanal is equivalent to 500 sq yards in Lahore*] piece of land in Bahria Town Lahore, was complete for Bilawal and his father, President Zardari, taken over in the 1st week of February 2013. The whole project was constructed under the supervision of the property tycoon, Malik Riaz; a fort-like purpose-built building with spacious lawns, conference rooms, staterooms, bed rooms and offices.

It has been made as a residence - cum office building also housing Secretariat of the PPP's Chairman, Bilawal; completed at a cost of around Rs:5 billion, the house also keeps a helipad and airstrip for landing of small planes. The 22 ft high boundary wall, having thickness of 30 inches, has been built using concrete and steel material to make it bomb-proof. A 3-layer security system has been provided to ensure fool proof security for the residents.

A bunker also exists in the basement for security purposes. It also houses offices for Asif Ali Zardari, Bilawal, Faryal Talpur and their personal staff. The residential compartment comprises six bedrooms and an equal number of drawing / sitting rooms. Reportedly, Malik Riaz presented this house as gift to Bilawal to strengthen his friendship with the Zardari family.

The house was completed in a record period of eight months; too short a time for such big building perfect in all respects. As the place has the capacity of accommodating around 10,000 people, Bilawal may use it for addressing party workers and other meetings. As President Zardari avoided politicking because of court verdicts, Bilawal was able to supervise party's election campaign of 2013 in Punjab while sitting here.

No one, even Bilawal House's immediate neighbour and the Opposition Leader, Nawaz Sharif, would not move the higher Court or the Tax masters to ascertain that from where Malik Riaz had taken out 200 *kanals* of precious land and the construction money of Rs:5 billion and how it would be accommodated in tax books because Malik Riaz was President's friend. In Pakistan it is a routine practice.

The Living History of Pakistan Vol-I

The fact remained that immediately after his release in 2004, Mr Zardari had made Bilawal House in a rented premises near old airport (in 2005), but later shifted to another building in Model Town. Neither Bilawal nor Benazir Bhutto ever visited the two houses as they were in exile during the period.

ISAF CONTAINERS SCAM

A Wikileaks cable sent on 17th November 2008, told the world that US military containers that pass through Pakistan on their way to Afghanistan never contain weapons or ammunition..... that the Pakistani media often reported that ammunition and arms off hijacked US convoys and being sold in Pakistan.

The US government's official note commented on those media reports that:

"....to be clear, no weapons, ammunition or sensitive electronics are shipped to Afghanistan by land routes through Pakistan.

.....that after the hijacking of two US military contracted trucks in 2008, the Pakistani rumour mill has generated reports about weapon caches supposedly stolen from US military and Nato convoys complete with elaborate descriptions of non-existent contents of containers".

The US Ambassador in Islamabad had assured Washington that:

".....any reports of agents buying weapons from stolen US military or Nato containers are false".

Once the Federal Interior Minister Rehman Malik and IG sindh had told the media that Israeli weapons were being used in Karachi by '*elements from Africa*' [pointing towards MQM's South Africa Terror Cell] then obviously all those weapons were not simply dropping there from sky. Those were being smuggled or imported into Karachi by someone. MQM's ex MPA Nisar Panwar had once picked up for smuggling of weapons and was later released on pressure from Governor House only.

When the noise of missing containers spread in the Pakistan Customs Directorates then the news started pouring in that more than 2,000 containers carrying goods imported for the International Security Assistance Force [ISAF], based in Afghanistan had gone missing; customs officials and some business tycoons had successfully hushed up the probe into the matter.

The Public Accounts Committee of the National Assembly headed by the Leader of the Opposition, Ch Nisar Ali Khan had taken up the matter; and the involvement of a former Chairman of the Federal Board of Revenue [FBR] named Abdullah Yusuf was widely discussed being responsible for

The Living History of Pakistan Vol-I

patronizing the racket – but then, getting him transferred from the slot in July 2008, the matter was pushed into the cold room.

The Customs Intelligence Directorate had traced the missing containers and record of the 1,390 vehicles was collected from the Port Qasim Karachi and Karachi Port. The evidence on record told that all the containers were issued with fake TR Permits (TPs) for inland transportation to various dry ports. By custom rules; goods destined for dry ports had to be carried only by the carrier companies registered with the FBR, but in this case the un-registered carriers transported the containers. [*A copy of that Permit is sent to the dry port and the same is verified through the Pakistan Revenue Automation Ltd (PRAL)*], but the authorities made no verification for those Permits issued and received back for ISAF containers.

Ultimately, on 23rd April 2010; the *ISAF, Nato and US Army authorities in Kabul confirmed to the Pakistan Customs Intelligence that its suspicions* regarding an international syndicate operating to transport billions of dollars worth contraband goods into Pakistan under the protection of the ISAF food shipments *were correct*.

It might be a coincidence that on the same day, a search at the Karachi Port confirmed the suspicion when a consignment of 28-ton alcoholic beverage was seized, its items were listed and investigations were launched against the involved elements. There were 30 more shipments on the list, and the Customs Intelligence (CI) was carrying out exhaustive investigations - some arrests had already been made. The former DG Customs Intelligence, Lutfullah Virk, confirmed the media later that he had provided the '*related documents*' that was why he was denied promotion to Grade 21 since August 2010 and thus no meaningful posting.

The intelligence sources had revealed that one suspected company, a listed sub-contractor in Afghanistan, was operating under the cover of ISAF - transporters of food items to Kabul from the Pakistani ports. They had obtained proof that 31 such shipments were made by this company and others. It was later confirmed that a container parking yard on the Ring Road Peshawar was used as a workshop till last week for not only disposing the shipments but also for breaking up the containers in which the contrabands were transported from Karachi to remove all criminal evidence.

The FIR at Peshawar was lodged after the confirmation that the Customs Intelligence had found the suspected container's seal after a search from Karachi to Torkham. Then the Torkham Customs Station had confirmed it to the intelligence that a number of other consignments never reached the border for onward transportation to Kabul.

The Living History of Pakistan Vol-I

Initially, the Diplomatic Bonded Warehouses in Islamabad were being used for cover, and then the Afghan Transit Trade Agreement (ATTA). Then those companies ganged up to exploit the ISAF, Nato and US Army shipments. These were thoroughly connected gangs and they had penetrated the Pakistan Customs, without the connivance of which they were not able to operate so boldly. Focussing on three aspects: firstly - the shipments that were made (could be in hundreds; 31 were confirmed); Secondly - the companies involved; and thirdly - the rogue Customs officials.

On 19th January 2011, referring to *'the news'*; an official report prepared on the directives of Supreme Court of Pakistan (SC) revealed that about 7,922 transit containers of ISAF and others worth billions of rupees were pilfered within Pakistan during the previous four years and this could be just a tip of the iceberg.

[On the same day's report by Umar Cheema, in the same *'the News'* dated 19th January 2011; told that *'more than 50,000 transit containers were pilfered within Pakistan, many with the collusion of the Federal Board of Revenue (FBR) and National Logistics Cell (NLC)'*.]

Which figures were correct – 'the News' never made it clear; media's bluffs?

This Lost Containers case first came to attention after Senator Mushahid Hussain Syed of the Pakistan Muslim League [Q] appealed to the chief justice through a newspaper item on 29th June 2010, to take *suo motu* notice of the ISAF containers' disappearance. The containers, meant for supplies to ISAF and Nato forces in Afghanistan, entered Pakistan in the last four years under the Afghan Transit Trade Agreement [ATTA]. The disappeared containers had caused a whopping loss of between Rs:19 billion to Rs:37 billion to the national exchequer; as per Senator Syed's belief.

The Federal Tax Ombudsman (FTO), Dr Shoaib Suddle, had prepared a detailed report in the wake of *suo moto* action taken by the SC regarding *"ISAF Containers Scam"* and the report was duly submitted to the apex court. For fixing the responsibility over the individuals involved, criminal investigation was required under Section 17 of the FTO Ordinance. The SC had taken up the hearing after declaring it a *suo moto* case.

The senior management of customs had failed to take necessary steps to put in place appropriate counter measures against repeatedly occurring scams. The investigation of four mega scams of containers in past few years had indicated a clear pattern. The phenomena of pilferage was not

The Living History of Pakistan Vol-I

new - manipulation of record and data, diverting focus by 'fact finding committees' and other hindrances were identified earlier, too. Deliberate attempts to diffuse focus of investigation against corrupt and influential officials through '*fact finding committees*' were clearly determined earlier but no action.

In one [lunar] case the collector had failed to prevent wrong clearance of 52 containers laden with liquor as was mentioned by the 'fact finding committee'. The leadership of customs seemed to be a part of that scam. The modus operandi in those mega scams remained the same; fake / forged documents, primitive and manual clearance and processing systems, wide discretion in the hands of unscrupulous customs officials, lack of transparency and effective accountability, involvement of seniors otherwise responsible for oversight.

The picture that emerged was of gross inefficiency, mal-administration and corruption in an organisation that was geared to further principally individual and communal self-interest of a few at the cost of Pakistan, its reputation abroad and its people. That report was an exploratory start-up tool. Although it provided some answers but it raised many questions, too.

In the said *suo moto* case No:16 / 2010 regarding "ISAF Containers Scam" was referred by the SC on 7th October 2010 for investigation to the FTO. Incorporated in the SC order was a set of 14 specific questions ranging from the nature and extent of misuse of transit trade facilities, procedural vulnerabilities causing the misuse and fixing responsibility thereof to suggesting effective countermeasures to control such scams in future. In its recommendations, the FTO had stated that customs clearance, cross border certification and reconciliation procedures needed massive improvement, consolidation and rationalisation.

Cross checks needed to be upgraded, diversified and externalised. Transport system used for Afghan Transit Trade (ATT) needed to be organised on competitive basis and transporters given a level - playing field. Only bonded carriers should be allowed to transport ATT cargo. The vehicle fleet used for the purpose must be upgraded in terms of technology input for safe transportation of transit cargo. There was need to enhance security of cargo through RFID seals and live monitoring through Global Positioning System (GPS).

It was recommended that the ATT cargo should bear bar code embeddings for ease of detection and to minimise the chances of its smuggling back into Pakistan. ISAF / UN / Nato should adopt the same technology and transport precautions as were being used by US forces (e.g. RFID seals and

The Living History of Pakistan Vol-I

effective tracking / monitoring through GPS). Any collusion by and corruption of customs officials should be effectively discouraged and deterred in a sustainable manner. A specialised and dedicated Collectorate needed to be created to deal exclusively with the entire cargo in transit to Afghanistan.

According to investigators this organised crime had been done in connivance with the FBR officials who instead of taking preventive measures set up fact - finding committees *"to buy time to confuse the real issues."* Their findings noted a record rise of 60% in pilferage in 2010 as compared to 2009 when it was 36%.

As per the FBR figures, 306,267 containers had landed at Karachi port from January 2007 to 15th October 2010. The figure of 7,922 was of minimum lost containers. Likewise, the NLC data *"was also total disappointment."* The report told further that:

'.....going by the FBR data meant that out of total 306,267 containers landed at Karachi port, as many as 71,202 transit containers never left the Port, 27871 were received at border station "without departure from Karachi", 55140 left Karachi but never reached the border, 152054 left Karachi, arrived at border but did not cross the border.'

Regarding the data provided by NLC, the report said it was data for transport of containers from Karachi to border stations with *"no container number, date, time, truck number etc either for departure from Karachi, arrival at border customs - station or cross border. It was a meaningless exercise for our purposes. NLC data was also a total disappointment."*

The investigators estimated that a round trip of Karachi – Peshawar - Karachi took 11 days and could be 9-10 days for Karachi – Chaman - Karachi round trip. According to the report, 70% containers had taken the Karachi - Peshawar route and only 30% travel through Chaman.

When this formula was applied to the data gathered from terminals, it was discovered 11 containers incredibly returned to the terminal within one day, after discharging their transit cargo at the border stations, let alone entering into Afghanistan. Another 29 containers were back at the terminal within two days, 54 in three days, 128 in four days, 494 in five days, 1784 in six days, 4565 in seven days, 7922 containers completed the round trip in eight days, 11629 in nine days, 15314 in 10 days, 18846 in 11 days and 21935 containers in 12 days.

The Living History of Pakistan Vol-I

One could guess that the containers going to Peshawar or Chaman and coming back within nine days or less were all unloaded within Pakistan.

On 28th March 2011; the explanation of FBR Chairman Salman Siddique appeared telling how his office failed to make recoveries of taxes and duties to the tune of Rs:16 billion as per the promise he made a month ago. In the missing ISAF containers case, the FBR was to explain why over 600 officials put on the suspect list in the Customs Department in that scam were not removed from their posts where they continued to handle the Afghan Transit Trade and ISAF containers as usual.

The FTO office believed that the Customs at Karachi connived with the importers as the former, over the past 4-5 years, used to de-seal the import consignments for Afghanistan, sent up the seals to Customs at Torkhum and Chaman to fake the crossing over of these consignments.

On 13th April 2011; Chairman Salman Siddique of the FBR told the Supreme Court that the national exchequer had faced a whopping loss of Rs:7 billion in the last two and a half years on account of evasion of customs duty on the ISAF containers that went missing at Chaman border only. Chairman explained that a total of 2,981 containers were missing, out of which records of only 408 containers could be traced. These containers never crossed the Pak-Afghan border at Chaman.

One of the most important aspects of the ISAF Containers' Scam was the non-availability of data on the movement of ISAF containers. In that regard, Mr Siddique submitted that the Pakistani Ministry of Finance [MoF] had asked the Afghan Ministry of Finance to provide the relevant data. The Afghan government was reluctant to grant Pakistan access to this information, rendering premature the attempts to ascertain the exact percentage of losses. However, Siddique assured the court that the FBR would collect further materials and inform the court within four weeks.

The FBR Chairman also revealed that the US was assisting the Afghan government in checking transportation. The fact remained that the Afghan government had in place an electronic system to monitor the pilferage of containers while Pakistan didn't have such facilities. Astonishing it was.

Interestingly; at times the SC was continuously misled by different officers of the FBR. One former Chairman FBR, Sohail Ahmed had submitted that only 463 containers were missing from the list (by 21st September 2010) and that was the total number which had not crossed the Pak-Afghan border. In reality, this submission was not based on any reconciliation.

The Living History of Pakistan Vol-I

One Former Chief Collector Customs Muneer Qureshi misled the court telling that there was no widespread use of forged Cross - Border Certificates and that only 52 containers had acquired such fake documents and had never crossed into Afghanistan. This issue was referred to Federal Tax Ombudsman (FTO) as the court was not satisfied with Chief Collector's report.

Meanwhile in the FBR itself, Member Taxpayer Audit was appointed as investigator by former Chairmen, Salman Siddique. Investigation concluded that 28,000 ISAF containers went missing and the report was also presented to the Supreme Court and formed a part of the SC order as well.

Later, the National Accountability Bureau (NAB) and the then incumbent FBR top notch changed the report's version from 28,000 missing containers to just 2000 containers, and told the apex court that 26,000 containers had subsequently been reconciled. The latest submission however ignored the SC order to explain as to how the 'Cross Border Certificates' (CBSs) were manipulated.

On 21st September 2011; the CJP directed the Member Customs FBR to file a comprehensive report on permission of contraband items under the garb of food supplies to the ISAF in Afghanistan through the ATTA and also about the latest position of the missing containers. A 3-member bench of the apex court, comprising CJP Chaudhry, Justice Tariq Parvez and Justice Ghulam Rabbani, was hearing the bail application of driver of one container loaded with foreign liquor bottles.

[In July, DG Customs Peshawar, had seized a container with a declaration of assorted beverages. On investigation, it was found that the container did not belong to ISAF - was also confirmed by the ISAF HQ in Kabul. Detailed inspection by intelligence of Customs revealed that the container carried liquor and contraband items.]

The court observed that the company whose container was carrying liquor was a licence holder of the NLC. The court grilled Chief Collector Mr Qureshi for expressing helplessness to make any observation on NLC. *"If you cannot dare to ask NLC then do not stay in this job,"* the chief justice maintained. *"This is not a trivial thing that smuggling is being done in the name of NLC."*

On 22nd October 2011; a constitutional petition was filed in the Supreme Court Lahore Registry, seeking inquiry into alleged disappearance of 19,000 NATO containers, carrying weapons which, according to the petitioner, caused serious terror threats to the country. Petitioner Zafarullah submitted that the ATTA of 1965 was being misused with connivance of the NATO

The Living History of Pakistan Vol-I

and ISAF to damage Pakistan's solidarity and economy. The situation resulted in smuggling of all kinds of military wares into Pakistan under the garb of ATTA.

The petitioner said a declaration was made to save the custom authorities and FBR personnel. The customs department, in connivance with the FBR, had come up with a method to eluding the main issue by introducing the concept of recovery of loss of Rs:55 billion. The FBR had issued notices to the importers and FIRs had been registered against some lower grade officials who were initially suspended and then restored to their duties without further advancement in criminal cases against them.

The petitioner said that NATO/ISAF smuggled weapons through such arrangements in Pakistan and were misusing Pakistani roads to maintain the supply line to Afghanistan free of cost without paying any toll tax. NATO had never protested or felt need of such desire to intimate the customs department for loss of such missing containers.

On 29th March 2012; the NAB in its report took a stand in the missing Nato - ISAF commercial containers case that 26,000 out of 28,000 containers had reached Afghanistan and its record was available with Peshawar and Quetta Collectorates. It was further stated in the report that investigation into the remaining 2,000 missing containers was being conducted. The NAB had, however, demanded report of FBR's investigation committee that it should hand over the evidence of 28,000 missing containers, but the committee did not provide those documents to NAB.

PAK-US SIGNED NEW MOU:

On 27th July 2012; a 16-clause memorandum of understanding (MOU) was signed between Pakistan and the US on the restoration of Nato supply. The transportation of commercial cargo to Afghanistan was allowed through the land route – road and railway – but the movement of arms was disallowed. The written accord was drafted in accordance with the UN charter saying that the transportation of non-lethal cargo, including food, medicines, equipment and material, would be allowed through 20 or 40-foot container trucks according to Pakistani laws - no small or heavy weapons or dangerous / harmful materials, including arms and ammunition, was allowed.

The accord also said that the Ministry of Defence would work as the Central Coordination Authority to examine the operations and implementation of

The Living History of Pakistan Vol-I

the MoU on daily basis. The cargo routes were also defined in the MOU. It was also settled that warehousing or storage of the US goods in Pakistan would not be allowed. Pakistan had to provide facilities for the safe and rapid transit of cargo while the US government was bound to inform about effective monitoring and transit points and the containers going to Afghanistan would be bound to return through Pakistan.

Under the accord, no tax or custom duty was to be charged, but commercial carriers had to pay fee. In case of any misunderstanding, the issues were to be resolved through mutual understanding instead of involving a third party. It was clarified in the MOU that the commercial carriers would be responsible for any damage to the US cargo. It was made effective till 31st December 2015 and was renewable for one year after mutual consultation. Both the countries were bound to inform each other in writing about the MOU's discontinuation while the parties were made bound by the MOU as well as the laws, rules and regulations in vogue.

On 30th August 2012; the SC observed that the NAB was not serious in the missing Nato containers case as it appeared all, from head to bottom, were involved in it. The remarks were given by the two-member bench of the apex court, comprising Justice Jawad S Khawaja and Justice Khilji Arif Hussain. The SC directed the NAB to produce all the details pertaining to issuance of Cross Border Certificates (CBCs). The Customs had no record of those containers which did not reach Afghanistan during the last two years.

The NAB authorities, while seeking more time from the apex court, pleaded that in order to check the status of a total of 112,000 CBCs, which were issued manually, four more months were required. At this, Justice Khilji Arif Hussain said that the NAB could be given more time but there would be a condition that during the granted time it would recover all the embezzled money with interest. He further observed that had Rs:50 billion been spent on the education sector, it would make every child of the country literate.

The FBR told the court that the national exchequer had incurred a loss of Rs:53 billion according to the FBR report, while according to the NAB's report, the loss was estimated as Rs:69 billion. Meanwhile, the court was adjourned.

On 2nd October 2012; the Supreme Court admonished [once more] the NAB for making no progress over the recovery of billions of rupees, devoured in tax evasion in the ISAF missing containers case. Once again the 3-member bench of the apex court comprising CJP Chaudhry, Justice Jawad S Khawaja and Justice Khilji Arif Hussain resumed hearing on the ISAF containers; expressed dissatisfaction over NAB and FBR reports whereas

The Living History of Pakistan Vol-I

the NAB asked for two more months. Justice Jawwad observed that Rs:69 billion were digested in tax evasion and the Election Commission of Pakistan [ECP] was provided Rs:13 billions only to bear the expenditures of the general elections of the whole country.

The FBR told the court that 150 cases had been registered while owners of some 31,000 containers had been issued notices. CJP Chaudhry had rightly observed that investigation in the instant case was in progress for the last two years however, no progress had been made so far.

On 6th March 2013: Supreme Court announced the interim order in ISAF containers implementation case - FBR Chairman was ordered for recovery of the losses from the accused within two weeks and personally report compliance during the next hearing of the case. Earlier, the Court was informed that an amount of Rs:54.73 billion had been embezzled in the ISAF containers' case and *the people involved in looting money had got stay orders from High Court*. Till then it was settled that about 28,000 containers were missing.

On 12th March 2013, the Karachi Customs Agents Association (KCAA) appealed the SC that the clearing agents having no role in ISAF containers scam should not be harassed or arrested by investigation agencies. The NAB had issued them notices for fresh inquiry regarding missing containers scandal – and also to the importers and officials of the FBR. The notices were issued after the directives of the Supreme Court in the latest order.

The clearing agents said that there were two type of Afghan transit trade; including commercial (offloaded within Pakistan territory at Amangarh / Chaman) declared customs exit stations and non-commercial (going beyond border inside Afghanistan). Thus there were possibilities of completing a trip by a container in less than eight days in the case of non-commercial transit cargo. A trip from Karachi to Amangarh and back to Karachi can be completed in four to five days and Karachi – Chaman - Karachi trip could be completed in two to four days.

During June 2013; in a surprising move, the Intelligence Directorate of FBR opposed its own FBR HQ, and supported the Supreme Court and FTO's report in the missing containers case. The FBR had been suffering from confusion and shifting positions on the said issue. The official position finally taken by FBR for over two years was of denial, that *'insignificant numbers of containers were missing and that all Customs employees were free of blame'*.

The Living History of Pakistan Vol-I

Under instructions from the then Chairman FBR, Ali Arshad Hakeem, to determine undiluted facts in the issue, the Customs Intelligence took another approach to the whole issue. Instead of focusing on the movement of containers by their serial numbers, they focused on the movement of trucks / tractors that were carrying the containers. They found that certain trucks, supposedly carrying the containers to Afghanistan, never left Karachi. Customs Intelligence team maintained that:

"The trucks were simply taking the containers out of the ports and dropping these at various godowns in Karachi or other parts of country, and that the Collectorates at Peshawar and Quetta were simply generating fictitious record to provide legal cover to the crime.

.....the same truck which picked up an Afghan Transit container has subsequently picked another container during the same time as it is supposed to be in the Afghan transit trip – thus lead to detect 3000 such trips for 2010 alone."

Whereas FBR's team headed by Hafiz Anees held that:

"28,802 containers of commercial cargo or Afghan Transit Trade (ATT) never left Pakistan and were consumed within the country without paying duties and taxes. As many as 3,742 containers of ISAF / NATO stationed in Afghanistan and more than 6,000 containers of American troops never crossed the border."

The finding of the report also said:

'.....If the de-sealing registers of the Collectorates are correct, the question arise about the whereabouts of the container for 19 days after leaving Karachi, which in any case erodes the department's existing stance that the Afghan transit trip takes less than 6 days; or the customs registers are fabricated in which case we would have to determine the intent, interest, motive and involvement of the customs officials at Quetta and Peshawar. In either case pilferage of the consignment within Pakistan is confirmed."

After identifying the trucks the next step was to identify the drivers and record their statements, which led to discovery of the godowns where the containers were offloaded. The record of the godowns was taken into custody and the statement of the godown owners led to uncovering the identity of the basic beneficiaries of the crime.

The Living History of Pakistan Vol-I

The investigation team revealed that custom officials from grade-12 to grade-22 all were thickly involved in fracturing the economy of the country. The interim report of the Directorate of Customs Intelligence had been presented to the apex court, which contained irrefutable evidence.

On 6th September 2013; the US Embassy made a startling statement saying none of the 19,000 containers claimed to be missing belonged to Nato / ISAF in Afghanistan. The statement said:

"We have engaged the appropriate Pakistani authorities on this topic. We have underscored that the United States is able to account for all shipments that have arrived in and transited Karachi ports.

The United States and ISAF use carriers who are licensed and bonded by Pakistani customs authorities. The United States tracks and accounts for all military cargo shipments worldwide, including those shipments entering and transiting Pakistan."

The key question being asked after this statement in Islamabad was why did it take so long for the US to clarify that 19,000 US / ISAF containers had not been stolen from Karachi ports?

Earlier, on 30th August 2013, DG Sindh Rangers Maj Gen Rizwan Akhtar had confirmed the Supreme Court that around 19,000 shipping containers having weapons and vehicles had gone missing. The court was told that those containers went missing when an MQM senior party official [Mr Babar Gauri] was federal minister for ports and shipping in the PPP government.

If indeed the 19,000 containers did not belong to the US or ISAF, and Gen Rizwan Akhtar insisted that these containers were missing, then who else was importing weapons on such a massive scale – a question never answered nor the stalwart media anchors ever bothered to talk on it.

Referring to *'the News'* dated 11th September 2013: MQM Senator Babar Khan Gauri filed an application before the Supreme Court seeking expungement of DG Rangers's remarks in the SC's dated 30th August order regarding connivance of former minister of ports and shipping in disappearance of arms and ammunition containers. The MQM's Senator, who had twice held portfolio of the ministry of ports and shipping during Gen Musharraf and PPP's governments, submitted that allegation against him was totally false as minister had nothing to do with clearance of any cargo as its role was only limited to the policy - making, approval of port authorities budgets and planning schemes etc.

The Living History of Pakistan Vol-I

Mr Ghauri held that clearance of such containers had got nothing to do with the ministry of ports and shipping but the FBR, Customs equally responsible for their clearance. At the same time when the goods arrive for clearance multiple intelligence agencies were present at the ports. The fact remained that in the inquiry report of the FTO on the alleged Nato / Afghan transit scam, minister of ports and shipping was not held responsible. The court was prayed to expunge the said remarks which had been pointed out by the DG Rangers.

On 2nd October 2013; the NAB confirmed that they were continuing conducting inquiries against the officers of the National Logistic Cell [NLC] for their alleged involvement in the multi - billion ISAF containers scam and decided to file a supplementary reference in due course if sufficient evidence was found against them. Till then; *44 references relating to 7918 containers on the basis of report of the FTO had already been filed before the accountability courts while no investigation was pending regarding missing containers.*

The 44 references were related with evasion of customs duty of Rs:19 billion filed before the Accountability Court in Karachi against 349 accused persons including 223 clearing agents, 121 border agents and 5 custom officials. Whereas, the FBR Probe Committee had referred 25 complaints relating to commercial Afghan Transit Cargo in three different batches against 271 clearing agents having mention of 28,802 missing containers. In addition, one more complaint regarding 3542 non-commercial containers was also received from FBR against 54 clearing agents and others.

The matter suddenly lost importance then because CJP Chaudhry had proceeded on retirement in December 2013. After him the SC, if heard the case, simply could not exhibit zeal and interest in moving further. NAB did not tell about even those 2000 missing containers which figures it dragged down from 28000. So many FIRs were registered but not a single arrest made – not a single case submitted in the respective court with final report. No Custom officer or sub-official was removed – the findings of committee reports never made public. Only FTO's 44 reference were echoed. MoF never bothered for the loss; Parliament and its committee went sleeping over the issue.

It could be presumed that the respective 'Action Takers' used the SC's high trumpeting calls, FTO's Report, FBR's Committee Report and FIRs for extortion more currency from the transport companies, goods owners, importers and custom officials involved.

The Living History of Pakistan Vol-I

Scenario 95

SC REF - BHUTTO's JUD KILLING:

The Living History of Pakistan Vol-I

Once in Pakistan's Judicial History, an event occurred in early 2004 that a petition [*by one Mian Hanif Tahir of the People's Lawyers Forum*] against a Former Chief Justice of Supreme Court of Pakistan was filed, seeking registration of a case against him on charges of abetting in the 'murder' of former Prime Minister Zulfikar Ali Bhutto. A division bench comprising Justices Sheikh Abdur Rashid and Bilal Khan of Lahore High Court held that the petition hardly qualified for processing – full details of it are given in '*Judges & Generals in Pakistan VOL-I*' (Chapter 5) on pages 44-49.

The bench of the Lahore High Court, *on 12th February 2004*, had dismissed the petition *in limina*.

BACKGROUND OF 2011's REF:

Seven years later, an 18 page reference seeking to reopen the case of former prime minister and PPP founder Zulfikar Ali Bhutto was signed on 1st April 2011 by President Asif Zardari, after the approval of PPP's Central Executive Committee and the federal cabinet.

This Presidential reference was filed under Article 186 of the Constitution of Pakistan seeking a revisit of the prejudiced trial of Z A Bhutto to pronounce if the country's superior judiciary had conducted itself in an illegal and unconstitutional manner. The SC constituted an 11-member bench for the hearing.

The reference was submitted to the Supreme Court on 3rd April 2011 and was registered by the SC registrar as 'Reference 1 of 2011'. It requested the SC and the CJP to pass observations against the judges of the Lahore High Court [LHC], headed by the then CJ Maulvi Mushtaq, and wherein an essential tier of judiciary – the Sessions Court – was bypassed. This was the most unique murder trial in the legal and judicial history which denied ZAB the basic opportunity of trial by the Sessions.

Another request made was that the SC, if desired, might re-open the murder trial to conclude if capital punishment passed in the case was fair keeping in view that no murder accused was convicted to death under the provision of abetment of an approver, Masood Mahmood. Legally speaking, no murder accused was ever awarded capital punishment before Bhutto and courts never passed such sentence after that event.

The reference annexed a statement of Justice Naseem Hasan Shah, a member of the then SC bench which had confirmed the LHC decision, that the court pronounced its decision under pressure by Gen Ziaul Haq regime.

The Living History of Pakistan Vol-I

The SC office did not raise any objection to the reference and the SC accepted it for hearing.

The same was placed before the Chief Justice Iftikhar M Chaudhry next day and the SC had confirmed its filing in a formal way. A 7 - judges SC bench had upheld the Lahore High Court verdict of awarding death sentence to the former PM in March 1979 during the military regime of Gen Ziaul Haq, who had overthrown the PPP government on 5th July 1977. (*PLD 1979 SC pages 38-53*)

Mr Babar Awan, the then Federal Law Minister held that the reference to reopen the case could not be filed during the previous two governments of the PPP due to their eventual dismissals by the then presidents Ghulam Ishaq Khan and Farooq Leghari. The critics took it as a blurred excuse because PPP's both tenures were long enough to file such reference at least but this time Mr Zardari had opened that venue to *'teach a lesson to all institutions that collision with PPP would not let them have a fast sleep'*.

The fact remains that this reference was a very smart move from the Presidency. The intelligentsia opined that Mr Zardai was in trouble from all the four corners because of the Supreme Court's various decisions and thus he needed a strong antidote to survive in the given situation.

The game started from the SC's decision of July 2009 in which Gen Musharraf's Emergency Orders of 3rd November 2007 were reversed and *the PPP's favourite judges were sent home*. It was an indirect blow to the ruling political party and its government. The direct attacks started with the knocking down of NRO in ending 2009, reversing availed benefits of PPP's all NROed persons including alleged PPP's favourite government officers while belonging to other parties especially of MQM went safe.

Amongst all, the most pinching aspect of that 16th December 2009 decision was SC's direction for the government to:

- *Firstly; write a letter to the Swiss authorities for withdrawal of GoP's earlier letter of Justice Qayyum for reopening of old cases of money laundering against Mr Zardari.*
- *Secondly; the Supreme Court once ordered to post six judges in the high courts of Punjab and Sindh which was declined by the presidency on which the SC felt deeply injured.*
- *Thirdly; the Supreme Court had passed judgment for removal of Mr Waseem Ahmed DG FIA, which order was kept pending for months; and when the DG retired, the PPP gave him better slot in Sindh government.*

The Living History of Pakistan Vol-I

- *Fourthly; the Supreme Court had conveyed to the executive that the posting of the Chairman NAB should be done in consultation with the SC, but the orders were ignored. When the government appointed Justice Deedar Hussain Shah as Chairman NAB, the SC had to send him home declaring him permanently disqualified.*
- *Fifthly; a situation developed when the SC called PPP's two responsible persons from Sindh, Sharjeel Memon and Taj Haider, to explain that why they had called a general strike in Sindh against SC orders. Both the PPP leaders came with whole of the Sindh Assembly vowing that they would give arrests but would not bow their heads before the apex court. It was embarrassing for the superior judiciary.'*

Once there was a general feeling among the politicians that if that atmosphere of non-cooperation prevailed, the Lahore High Court could declare another odd decision against Mr Zardari where a reference was pending for keeping two portfolios; of party co-chairman and of the President, in his possession simultaneously which was unconstitutional. Thus PPP and Mr Zardari in particular, played a very intelligent move using their famous 'Sindh Card' again though without naming it.

Coming back to Z A Bhutto's reference, the execution had been widely termed as 'judicial murder' [*as has been discussed in detail in Vol – I of this book*] by the jurists world over. The media men were accurate to understand that the PPP regime had initiated this spectacular act to divert their worker's attention from:

- Benazir Bhutto's murder which case was purposefully distracted, miss-handled, shelved and after three years given to FIA just to keep crawling with the file. No clue traced, no responsibility fixed except that two police officers arrested and the entire burden was shifted upon their shoulders to keep the actual culprits safe.
- Power shortage, load shedding of gas, rising unemployment rate, shortage of fuel and energy, closing factories and production units, un-ending target killings in Karachi, un-controllable drone attacks in FATA, escalating suicidal bombings on shrines and scarcity of food etc – all those menaces throughout the country.

The filing of the reference had disturbed many patriotic countrymen and top jurists fearing that its acceptance might open floodgates for many similar cases. Somebody would cry for implementation of Hamood ur Rehman Commission report, someone may raise a question of investigating the famous slogan of '*Idhar ham Udhar tum*' ultimately causing an episode of breaking Pakistan. There may be voices from DG Khan for reopening of Dr Nazir's murder case, orders for Balochistan Operation in 1974 etc. If it be-

The Living History of Pakistan Vol-I

comes a routine practice then every government in case of an adverse decision against it would institute a review petition whenever 'their favourable' judges would be in high positions.

Going by the history of Pakistan's 65 years jurisprudence, it was the 10th reference. The last one was filed by Gen Musharraf against the Hasba Bill (2005-06), adopted by the then NWFP Assembly to enforce its own version of Islamic morality through an anti-vice ombudsman enjoying sweeping powers.

President Farooq Leghari had filed a reference in 1996 to determine whether the president could appoint judges in the superior courts without the prime minister's advice. Benazir Bhutto was the prime minister at that time. The apex court had held that the president was bound to follow the advice of the prime minister on the appointment of judges.

Mr Leghari had also filed a reference through Shahid Hamid about the appointment of judges, but later withdrew it when the then Attorney General objected that he had been by-passed.

A similar reference was filed by President Ghulam Ishaq Khan asking the SC whether the president or the prime minister was competent to appoint judges in the superior judiciary. He then withdrew the reference after the matter was amicably resolved between the head of the state and the then Prime Minister Benazir Bhutto.

President Ghulam Ishaq Khan had earlier filed another reference in the Supreme Court in 1989 which was about the utilisation of federal and provincial consolidated funds after the lapse of 120 days.

Through Special Reference No.1 of 1955, the then Governor General Ghulam Mohammad had asked the Federal Court for an advisory ruling regarding his powers. Justice Munir, relying on Bracton's maxim '*that which is otherwise not lawful is made lawful by necessity*', and on the Roman law maxim urged by Jennings, '*the well-being of the people is the supreme law*' declared that:

'Subject to the condition of absoluteness, extremeness, and imminence, an act which would otherwise be illegal becomes legal if it is done bona fide under stress of necessity, the necessity being referable to an intention to preserve the Constitution, the state, or the society, and to prevent it from dissolution, and affirms..... that necessity knows no law...necessity makes lawful which otherwise is not lawful.' (Ref: PLD 1955 FC240)

The Living History of Pakistan Vol-I

Governor General Ghulam Muhammad had filed in 1955 another reference seeking the then Federal Court's opinion whether the then provincial assembly was rightly dissolved or not.

In 1974, Zulfikar Ali Bhutto had filed a reference seeking Supreme Court's opinion whether or not to recognise Bangladesh, the former East Pakistan. It was a very ticklish, thorny and problematic situation because the masses all over Pakistan were not ready to hear this phrase of recognition and Mr Bhutto wanted to announce recognition. Ultimately he got the apex Court's approval and went ahead.

SC STARTS HEARING REF :

Concentrating on the Reference 1 of 2011 now; during the initial hearing on 4th April 2011, when the said reference on retrial of ZA Bhutto came before the SC Bench, the Court asked the government to frame specific questions of law which could be answered by the court on the controversial death sentence handed down to Mr Bhutto.

[The then Federal Law, Justice and Parliamentary Affairs Minister Babar Awan sought permission from the bench to argue in the reference case but the court refused by saying that 'being Law Minister you cannot be allowed to do so'.

Babar Awan then presented his resignation before the Supreme Court on 13th April 2011 during the hearing. Awan told the court that it was the prime minister's advice that he should resign and plead the case. The apex court had appreciated his gesture.

The Chief Justice then asked Babar Awan to present the resignation to concerned authorities and plead the case upon revival of his license.]

Justice M Sair Ali, one of the three members bench told Mr Babar Awan, former Law Minister representing the case before the Apex Court that 'perhaps no question of law has actually been referred to in the reference'. CJP Iftikhar M Chaudhry, who was heading the bench, had also pointed out that 'there must be some specific questions in terms of Article 186 so that the court can answer.'

The apex court was reminding Babar Awan about shortcomings in such an important case and was evident from the chief justice's remarks that the reference had been drafted by someone who had mixed up political and legal aspects of the issue.

The Living History of Pakistan Vol-I

The Learned Counsel read out the entire reference before the bench and then quoted books of former CJP Dr Nasim Hasan Shah, Z A Bhutto's own book '*If I'm assassinated*' and of Col Rafi's book but was not able to answer the Court's questions. The case was adjourned with instructions for Mr Awan to carefully study the new concept of curative jurisdiction of the courts developed elsewhere in other countries.

The main testimony with Babar Awan was the reliance on the admission of former CJP Dr Nasim Hasan Shah in a media interview that '*the decision of Mr Bhutto's appeal was given under coercion*'; determined, strong-willed and executed by the then ruler Gen Ziaul Haq.

Dr Nasim Hasan Shah was a member of the bench that had upheld the death penalty awarded to Mr Bhutto. He had admitted in an interview that there was not enough evidence to take Mr Bhutto up to the gallows and that he should have voted against the hanging at least. This admission might be wrong in legal framework but it also spoke that how clean CJP Nasim Hasan was in his soul.

The reference 1 of 2011 also pointed out that Justice Ghulam Safdar Shah, who wrote a dissenting judgment in the Bhutto case, was subsequently 'witch-hunted', chased so vigorously that he had to leave Pakistan one day.

The reference also questioned why Mr Bhutto was not first tried by a Sessions Court. Never in the judicial history of Pakistan was a murder trial of an accused conducted by the high court in its original jurisdiction, thereby denying the accused a valuable right of appeal before the high court in its appellate jurisdiction.

In fact, up to the time of trial and conviction, there was absolutely no precedent of a conviction and sentence of capital punishment awarded on the testimony of an approver.

A cogent question that what exactly were the PPP leadership's intentions; were they serious in finding out the truth which was otherwise known to every student of law and politics that it was a glaring example of miscarriage of justice.

In a live TV program of DM Digital Manchester dated 15th April 2011, Barrister Amjad Malik was there to give much convincing and forceful arguments ending with:

'The PPP may not be really interested in retrospective justice but is definitely playing a strategy to drag the apex court into controversy amidst the possible reprimands in forthcoming NRO or missing persons or Hajj Scandal or alike cases of financial corruptions.'

The Living History of Pakistan Vol-I

Another point; that if the PPP chiefs were so much serious to dig out the 32 years old truth then why they were depending upon one lawyer [Mr Babar Awan]; why not others to help him and to accomplish that job collectively. PPP leader Barrister Aitzaz Ahsan himself told the media that:

'I would love to assist the court in such an important case if called as amicus curiae and I wish I had been consulted before the reference was filed.'

MEDIA MOVE AGAINST BABAR AWAN:

At that moment, the electronic media opened a special campaign against Babar Awan quoting his old affiliations with Gen Ziaul Haq. It was all a manoeuvred move from the PPP's opponents because in politics no one can put an embargo over the political worker's changing mind with the passage of time. Pakistan's whole history is stuffed with such accounts. The crux of media's move is given in the following paragraphs.

Either President Zardari himself wanted to settle some old scores with Bhutto's family by pulling the dead ZA Bhutto in controversy or his team had mislead and miss-guided him. It was because all PPP workers knew the fact that during Gen Ziaul Haq regime Mr Awan was often seen and pictured while shouting *slogans of 'Hang Bhutto'* and marching with play cards carrying the same and alike phrases. When Bhutto was actually hanged, then he was one of the persons who was seen and photographed while distributing sweets in the streets. Libraries still keep that record of publicly hating instances for Bhutto in which Babar Awan was also seen.

Ejazul Haq, the eldest son of late Gen Ziaul Haq, had once told to the media that Babar Awan was one of the staunch and die-hard workers with his father and he was so near to the General that he was the stage secretary in the '*jalsa*' held at the first anniversary of Ziaul Haq on 17th August 1989 and those were the days of Benazir Bhutto's first premiership.

Cutting short when Babar Awan had joined the PPP in ending 1990s, he was not accepted open heartedly by the then PPP workers but he continued to strive and smile because [*as some media persons had negatively propagated*] by displaying his attachment with PPP; his clientele and business was catching unprecedented boom and thus wealth.

Another live TV program of Dr Danish at *ARY News dated 17th April 2011* gave a very appealing suggestion for the legal experts to ponder. In most of the rational investigations and by all maxims of justice, the authority or person extending harm to or causing death of other becomes equally potent culprit and deserve the same kind of punishment by law. Had the

The Living History of Pakistan Vol-I

Supreme Court, while deciding the Reference no: 1 of 2011, reached the conclusion that Maulvi Mushtaq Hussain, or Dr Nasim Hasan Shah and other two judges were guilty of Bhutto's judicial murder, then Gen Ziaul Haq and some American office bearers would also be declared wrong doers of the same kind.

Had the SC taken this line of action then where would Babar Awan stand who had strengthened Gen Ziaul Haq's hands and endorsed his wrong cause by taking out processions in streets shouting slogans of '*Hang Bhutto*' and afterwards disbursing sweets to celebrate a leader's death.

The fact remains that Babar Awan might not be interested in forwarding that reference but he was forced to launch it under the Presidency's directions. It was a party decision and Babar Awan had to carry it over. Some party intrigues were also smelt in the matter because after putting in so much labour and sleepless nights by Babar Awan, what the poor party loyalist got at the end. Just a year later, Awan was sidelined in the party unceremonially while the SC had suspended his license to practice.

It was thus evident that the most suspicious and detracting intentions were at work. If the PPP were genuinely seeking to at least undo the legal mockery of the past that led to the hanging of its founder, it would be hard to argue against. But there were plenty of reasons to be doubtful because of the manner and timing of the reference, the PPP government had chosen to place the reference before the SC. Some tricks were likely to backfire leaving behind nothing but regrets, repentance and shame.

PROCEEDINGS AT SC WENT ON:

Chief Justice of Pakistan (CJP) Justice Iftikhar M Chaudhry said during preliminary hearing that in order for the death sentence of Mr Bhutto to be revisited, the case would have to be sent to the trial court. The CJP was heading an 11-member larger bench [initially it was 7-judges bench but subsequently enlarged] of the SC hearing the presidential reference to revisit Bhutto's death sentence.

Babar Awan's arguments engulfed one main point that the SC had given a wrongful death sentence to Bhutto, thus it had the responsibility to undo the injustice and correct the error in judicial history. Further questions of fundamental rights, due process of law, and independent and unbiased judicial proceedings in his reference were to be argued later.

To a court query, Babar Awan said that the then CJP Anwarul Haq, in contradiction of admitted facts, had written in his order that in both cases of the state as well as the prosecution, only Bhutto was accused whereas, in

The Living History of Pakistan Vol-I

fact, two more accused were presented by the prosecution; one was the then IGP [late] Rao Rashid Ahmed and the other was Saeed Ahmed, Special Assistant to the PM.

Babar Awan said that the CJP gave the benefit of doubt to LHC Justice Maulvi Mushtaq Hussain, setting aside the global legal principle that the slightest benefit of doubt should go in favour of the accused. He further said that when Maulvi Mushtaq was hearing the murder case against Bhutto, he had filed a complaint with the police that he was afraid Bhutto would kill him, and that Mr Bhutto would be responsible if anything happened to him.

Babar Awan questioned how a judge who had become a complainant against Bhutto could give him justice.

Babar Awan cited 10 verdicts from various countries where the courts, legislature, and the executive acquitted various convicts posthumously. To a court query, Babar Awan said most of these cases were decided by the courts of ultimate jurisdiction and not the trial courts. Justice Javed Iqbal told Babar Awan that the cases he had cited were reopened on the basis of new evidence coming to light, whereas no new evidence had been produced in the said Bhutto's case / reference.

Justice Jawwad S Khawaja told Babar Awan that the cases he had cited were related to pardon, and Babar Awan clarified that Bhutto had never asked for pardon, even when he was in prison, and he had also not permitted his family to file a mercy petition for his life.

Babar Awan said that Justice Dorab Patel, one of the three judges who had written dissenting notes in the Bhutto case verdict, had said that there was no case against Bhutto. At that moment, Justice Sarmad Jalal Osmany pointed out that why Justice Shafiur Rehman's report had not been made public yet.

Though it is never too late but the eminent jurists maintained that the said reference of Mr Bhutto's judicial murder should have been taken up by Benazir Bhutto on assumption of her first power in 1988. She made a deal with the army and Ghulam Ishaq Khan that she wouldn't be vindictive against them. She needed courage which she lacked in; after all Hasina Wajid had also brought an army General to justice after 32 years in Bangladesh for the murder of her father.

President Zardari could have issued an ordinance instead of moving the reference in the apex court, incorporating in it the actual spirit of Article 188 of the Constitution which he had used only to move Mr Bhutto's retrial. The intelligentsia pointed out that the PPP was beating a dead horse after thirty years but, due to unknown reasons, avoiding seriously picking up

The Living History of Pakistan Vol-I

investigation of Benazir Bhutto for which the PPP had been making continuous announcements that *'they know about the culprits'*.

Najam Sethi, in his interview with TV host Munib Farooq, referring to the daily *'Jang'* of 5th April 2011, opined that Mr Zardari had played a 'cunning game' by moving Bhutto's retrial case in the SC. If the SC reached the conclusion that Mr Bhutto was wrongly hanged, it would leave a black spot on judiciary's face for ever and if the court upheld the earlier decision, the people would come out in the streets with anti-judiciary slogans. In both ways, Zardari would emerge as a winner.

In fact the PPP government had chalked out its strategy to use the reference as a 'double - edged' weapon against the superior judiciary. Any court decision on the reference could be used as a catalyst for winning public sympathies for the PPP which had lost public confidence due to its malfunctioning. The top PPP leaders later revealed that the reference was to be used to mobilise the general public against the superior judiciary if the court termed it *"non-maintainable"*. The brain involved in the preparation of the reference told media that:

"We will win the next polls if the court accepts our plea and terms the Bhutto hanging a judicial murder or a decision closer to that. But if the court rejects this reference, we will get a two-thirds majority in next elections riding the sympathy wave."

However, a sharp contrast between the extraordinary enthusiasm and interest shown by the PPP stalwarts towards the hearing of the ZA Bhutto reference and total ignorance coupled with lack of attention to court proceedings of Benazir Bhutto assassination case raised many questions – but no PPP leader came out to explain the reasoning for that. The older PPP lot had called the contrast *"very strange and hazardous"* for the party.

Astonishingly, the PPP chief ministers, provincial and federal ministers, MNAs, senators and MPAs were directed by the PPP leadership to ensure their presence at the hearing of ZA Bhutto reference in the Supreme Court premises but no one was seen at the Adiyala Jail where the in-camera proceedings of the BB's case were in process. Most of the PPP ministers did not even know what the dates of the hearing of Benazir Bhutto murder case were and claimed that they could not attend the hearing.

– But alas, the history witnessed that none of Zardari's two propositions came true. The reference died at its own.

JUDICIARY ITSELF ON TRIAL:

On 18th April 2011, a special cabinet meeting allowed Babar Awan, the counsel of President Asif Ali Zardari, to place the questions before the apex court. Next day Mr Awan accomplished that uphill task. After the presentation of the questions, the SC bench comprising CJ Iftikhar M Chaudhry, Justice Mohammad Sair Ali and Justice Ghulam Rabbani observed that the preliminary hearings had been completed and now a larger bench, the composition of which would be announced later, would take over the hearing.

Before postponing further proceedings for 2nd May, the SC nominated ten senior jurists as *amicus curiae* from the four provinces to assist it in view of the significance of the case. The names were: Ali Ahmed Kurd, Tariq Mahmood, Abdul Hafeez Pirzada, Fakhruddin G. Ebrahim, Khalid Anwar, Makhdoom Ali Khan, S. M. Zafar, Aitzaz Ahsan, Barrister Zahoorul Haq and Abdul Latif Afridi. Supreme Court Bar Association President Asma Jahangir, Attorney General Maulvi Anwarul Haq and Advocates General of all the provinces were asked to assist the court too.

The five questions read out by Babar Awan before the court were:

(1) Whether the decision of the Lahore High Court as well as the Supreme Court in the murder trial against former prime minister Zulfikar Ali Bhutto meets the requirements of fundamental rights as guaranteed in the Constitution under Article 4(1) and (2a) (right of individuals to be dealt with in accordance with law), 8 (laws inconsistent with or in derogation of fundamental rights to be void), 9 (security of persons), 10A (due process), 14 (inviolability of dignity of man), 25 (equality of citizens)? If it does not, its effect and consequences?

(2) Whether the conviction leading to execution of Zulfikar Ali Bhutto could be termed as a decision of the Supreme Court binding on all other courts being based upon or enunciating the principle of law in terms of Article 189 that asks the courts to follow apex court's judgment? If not, its effect and consequences?

(3) Whether in the peculiar circumstances of this case awarding and maintaining of the death sentence was justified or it could amount to deliberate murder keeping in view the glaring bias against Zulfikar Ali Bhutto?

(4) Whether the decision in the case of murder trial against Zulfikar Ali Bhutto fulfils the requirements of Islamic laws as codified in the

The Living History of Pakistan Vol-I

Holy Quran and the Sunnah of the Holy Prophet (SAW)? If so, whether present case is covered by doctrine of repentance specifically mentioned in different Suras of Holy Quran: Sura Al-Nisa: verses 17 and 18, Sura Al-Baqara: verses 159, 160 and 222, Sura Al-Maida: verse 39, Sura Al-Aaraaf: verse 153, Sura Al-Nehal: verse 119, Sura Al-Taha: verse 82 as well as Sunan Ibn-e-Maaja, Chapter 171, Hadith No. 395. What are effects and consequences of doctrine of repentance?

(5) Whether on the basis of conclusions arrived at and inferences drawn from the evidence / material in the case an order for conviction and sentence against Zulfikar Ali Bhutto could have been recorded?

The court, however, declined to accept a request made by Babar Awan, based on a desire of the president to allow at least one camera to video record the entire court proceedings in a similar fashion as was done in the O. J. Simpson murder trial held by the US superior court and the Nuremberg trials.

'We are not so advanced,' the chief justice observed but requisitioned the original record of the trial of Mr Bhutto's case from the Lahore High Court to enable the counsel for the referring authority (Mr Awan) to obtain copies of the same, if need be, for preparation of arguments.

In retrospect, it was apparent that not only Mr Bhutto but also the judiciary itself had been on trial; denoting miscarriage of justice, the details of which have already been given in chapter *'Bhutto's Judicial Murder'* in *volume-1 of this book*. Pointing towards the earlier observations of the apex court on this reference of 2011 that questions of law were needed from the government for the court's consideration, the following queries [as opined by one Tariq Hasan on the media pages] were worth consideration:

— Whether the following constitutional rights of Mr Bhutto have been violated or usurped?

a. To enjoy the protection of law and to be treated in accordance with law [Article 4(1) & 4(2)(a), which, interalia, states that *"no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law"*].

b. Security of person [Article 9, which provides that *"no person shall be deprived of life or liberty save in accordance with law"*].

c. Right to fair trial [Article 10A, which, in relevant part, provides that “*a person shall be entitled to a fair trial and due process in any criminal charge against him*”. This would necessitate a determination of whether the right to a fair trial extends to a person who has been wrongfully executed and whether this right would apply to Mr Bhutto retroactively.

— Whether there has been any manifest injustice or miscarriage of justice in the conviction of Mr Bhutto by the LHC or the Supreme Court of Pakistan?

— Whether there has been unjustified execution of death penalty or wrongful execution of Mr Bhutto particularly in view of his acquittal by the dissenting judges in the Supreme Court appeal and the well-established judicial guidelines and precedents for the award of capital punishment?

— Whether the manifest injustice or miscarriage of justice or unjustified execution of death penalty or wrongful execution, if any, was intentional or unintentional and the legal consequences thereof?

— Whether Mr Bhutto's family has the right to be compensated for his wrongful execution?

— Whether the following legal maxims are applicable to this matter:

a. *Actus curiae neminem gravabit* (an act of court shall prejudice no man)

b. *Ubi jus ibi remedium* (where there is a right there is a remedy)

— Whether the Supreme Court considers the violation or usurpation, if any, of Mr Bhutto's constitutional rights to be a matter of public importance for which it is able to make an order under Article 184(3) of the constitution?

The given questions were based on constitutional, judicial, and international legal norms. In particular, the right to fair trial was well established and recognised universally and its addition in the Pakistan constitution by virtue of the 18th Amendment was only a reaffirmation of that right.

The quest for truth & justice and public interest, however, demanded that the Supreme Court had to exercise and demonstrate its fairness in undertaking the trial of its own judiciary through the aforementioned legal questions at least.

The Living History of Pakistan Vol-I

Many jurists were of the opinion that the PPP should have done a more solid job for the Pakistani populace in general by moving a bill in the Parliament on similar lines so that hundreds of those innocent prisoners, who might have been convicted wrongly, could avail access to the justice. Instead, the PPP opted to take up only one case of Z A Bhutto which was nothing but just to keep the Pakistani nation busy in expressing blind sentiments rather to think that what they got from the PPP government since 2008 till then.

[As per world media reports; the PPP was unable to deliver even a single relief for the general populace except up to 20 hours load-shedding in power, scarcity of gas, rising graph of unemployment; virtual closure of Railways, PIA and Steel Mills; continuous and massive target killings in Karachi, loot sale of OGDCL like organisations by placing them under control of PM's jail-mate criminals having GCSE fail education only and on many more counts.]

The PPP could have brought a bill in the Parliament, like of America, from where he had picked the idea of agitating the SC in Mr Bhutto's retrial.

Long ago, in 1912, an article on 'state security in the US criminal justice system' appeared in American newspapers which had attracted immediate attention of Dean of School of Law at North Western University. The disciples of that Dean started investigating various closed cases of murder where there had been hue & cry in the legal or print - media circles. Those cases were in hundreds but many of them were placed before the courts just as a piece of knowledge [& of course warning] asking them to remain careful while taking the relevant evidence into consideration.

When the electronic media and modern investigation techniques, especially the research done in the DNA field, and with hundreds of revisited files proved that many prisoners were decaying in the jails on wrong decisions by the courts, the American Congress passed 'Innocence Protection Act' in 2004.

Relying upon provisions of Section 411 of this Act, most of the prisoners were subjected to DNA test and many of them were released free even their death sentences were confirmed by the American Supreme Court. Referring to statistics gathered by Barrister Sh Akram; for the period 1973 – 2005, 123 convicts from 25 States were ordered to be released to lead their remaining lives as honourable citizens.

An interesting comparison may not be out of place to mention here; that is regarding Mr Zardari and of Nawaz Sharif, the chiefs of two ranking one political parties of Pakistan. During the said reference of April 2011 revisiting Mr Bhutto's case, certain voices were also raised before the Supreme Court that the then judges of the apex court who were responsible for the

The Living History of Pakistan Vol-I

judicial murder of Mr Bhutto should be tried under Article 6 of the Constitution [dealing with treason], might be not alive.

Because of the fact that all the four judges of the appellant bench of the SC who had upheld the LHC's judgment in 1978-79 were from Punjab so the whole scenario was seen in the perspective of 'Sindhi Nationalism'. Sindh Card was frequently discussed at all forums, in all contexts and at all places by the PPP stalwarts and sometimes by Mr Zardari too.

Now recall the sentences awarded to Sharifs in the 'Plane Hijacking Case' instituted by Gen Musharraf in 1999. On 6th April 2000, a judge of Anti Terrorist Court (ATC) named Rehmat Hussain Jaffery had announced punishments for Nawaz Sharif. Mr Jaffery was born, educated, and practiced in Larkana but Nawaz Sharif never criticised over his origin. Nawaz Sharif's appeal was rejected by a 3-judges bench [J Syed Saeed Ashhad, J Sarmad Jalal Osmany & J Wahid Bux Brohi] of the Sindh High Court.

After seven years exile when Nawaz Sharif came back in Pakistan and moved the SC against his sentences, he had not prayed for any action against any of the Sindhi judges. His petition was heard by 5-judges bench [J Tasadduq Jilani, J Nasirul Mulk, J Moosa Leghari, J Sh Hakim Ali & J Ghulam Rabbani] of the SC and on 17th July 2009, Nawaz Sharif was exonerated from the punishment in a 55 pages judgment.

Though the CJP Iftikhar M Chaudhry was not on the bench but the critics were of definite opinion that Nawaz Sharif's long march of March 2009 had brought him fruit and it was an 'influenced decision, but the hallmark of that judgment was that Nawaz Sharif never agitated for Article 6 like thing against any of the judges for being part of Gen Musharraf's B team.

[That was another maxim which some jurists believed that the SC bench should not have admitted Nawaz Sharif's petition after eight years on a legal principle. This type of admission is not normally available to all petitioners.]

All the three earlier mentioned judges of the Sindh HC were subsequently elevated to the Supreme Court in routine and no one was objected by the Punjabi leaders.

SIDE BENEFITS OF 2011'S REF:

On 4th January 2012; Chief Justice Iftikhar M Chaudhry, while hearing the presidential reference for revisiting the murder trial of the PPP founder ZA Bhutto, said that *'the system is being run according to the Constitution,*

The Living History of Pakistan Vol-I

not the rulings of military courts’. The chief justice also stood up for the Supreme Court’s role in applying the law, remarking that the SC had ended the law of military courts, after ruling against them in the 1990s.

It was a charged day of hearings. Sindh Advocate General Fateh Malik, while speaking in defense of the reference, submitted that Bhutto was hanged by a dictator, thus the case demanded justice; the SC would decide whether to revisit the case or not based on Article 186 of the Constitution. Fateh Malik forgot that hundreds of mercy petitions were pending with the president. Had the presidential reference be defended on legal and constitutional grounds instead of emotional arguments, it was easier for the apex court to understand the case.

Malik contended that the apex court had heard Nawaz Sharif’s case, even after a delay of EIGHT years, by expanding its jurisdiction but he again went astray because Nawaz Sharif’s case was not filed under Article 186 of the Constitution. Meanwhile, Justice Saqib Nisar remarked that *the parliament was authorized to declare the judicial decision null and void, adding that parliament was an appropriate platform to review the presidential reference*.

One of the *amicus curiae*, Fakhruddin G Ebrahim, said that the court had to decide whether Bhutto’s trial was legal or illegal, as well as deciding the jurisdiction of the court in the presidential reference. He once again repeated that Justice Nasim Hasan Shah had confessed in a TV program that he was under immense pressure to deliver a verdict against the former premier. Hence it was enough evidence of a biased approach in Bhutto’s trial. Ebrahim also said that during martial law, judges had one eye on the law and the other on GHQ, and judges were in the pockets of the military ruler then.

Abdul Hafeez Pirzada held that it was a prerogative of the president to decide which matter was of public importance. In SC’s judgment in the Sindh High Court Bar Association Case, for restoration of the Constitution and to uphold its sanctity, the Chief Justice of Pakistan Iftikhar M Chaudhry, had declared the appointment of 102 judges illegal.

Once commenting on the reference case, Supreme Court Advocate Ahmed Raza Kasuri, who was a key party in the reference case as Bhutto was hanged on his FIR, said:

“As per law of the land, only a current issue can qualify for a reference. I think Zardari sahib has not prepared the reference as the

The Living History of Pakistan Vol-I

president of Pakistan, rather as the son-in-law of Zulfikar Ali Bhutto which does not hold any valid ground.

If such outdated judgments start reopening or getting reversed then there will be a flood of references; why there are two laws – one for Bhutto and the other for the general public.”

SM Masood, a former law minister, however, believed that:

“Under clause 211 of the Pakistan Penal Code (PPC), any person could be tried under the same article if he or she prepared false charges or provided false evidence to the court which caused harm to an innocent person.

Under this provision, the decision of Bhutto’s conviction could be reversed and responsible elements, who prepared false charges, could be tried. If [some] judges themselves confessed [for being under immense pressure] of such a blunder, then why has a trial not been initiated against those judges and the victim proven innocent?”

PPP SIDE - LINED BABAR AWAN:

On 5th January 2012, the SC, headed by the CJP Iftikhar M Chaudhry, issued contempt of court notice to Babar Awan during hearing of 2011’s Reference on Mr Bhutto’s verdict. The apex court said:

‘Prima facie, we are of the view that the conduct of Dr Babar Awan is unbecoming of an advocate of the Supreme Court; therefore, we issue notice to him under Rule 30 of Order IV of the Supreme Court Rules 1980 to explain why his name not be removed from the Roll of the Advocates of this court.’

Putting off the hearing of the ZAB reference and issuing a second notice to Babar Awan for contempt of court, the court also sought Awan’s past record. Mr Awan had allegedly used some derogatory words for the Supreme Court while talking to the media persons in the Court premises after his last hearing.

Soon after losing his bar licence on 17th January 2012, Babar Awan drove off to the Presidency to redeem his post as the law minister from which he had resigned a few months earlier to pursue the Bhutto reference in the apex court. In a meeting that was attended by the sitting Law Minister, Maula Baksh Chandio, the president seemed willing to take his friend back as the law minister.

The Living History of Pakistan Vol-I

This perception was strengthened by the fact that later, in the evening, Mr Chandio refused to take up his business in the Senate. Leader of the House Senator Nayyer Bokhari had to ask the chair to defer the 20th Amendment, which was under discussion for want of Senat's consent, since there was no law minister, despite the fact that Mr Chandio was sitting right next to him.

However, Babar Awan was not re-instated to avoid a confrontation with the judiciary. Some had gone so far to suggest that Senator Awan's days in the party were over. The fact remained that Babar Awan was the president's top confidant and also that:

'Mr Awan's opinion prevails all other opinions from party men and even though Mr Chandio is the law minister, Mr Awan controls everything in the ministry.'

Babar Awan's opponents within the PPP, however, off the record, attributed the majority of the PPP's on-going mishaps to his influence over the president. Many cabinet members had categorically asked Mr Zardari not to choose Babar Awan to represent the prime minister in the court [*in January 2012's Contempt Case*] because he himself was facing two contempt charges and that would not help the government's case.

Many did concede that with Aitzaz Ahsan's coming back to the party, there was a change of hearts and Babar Awan was no more able to command his earlier influence on the party. The PPP's better lot flared in derogatory terms that in the 1970s and 1980s, Mr Awan had tried his luck with different political parties before becoming part of the PPP. During his college days in the 70s, he was associated with Jamaat e Islami (JI). Then through Raja Zafarul Haq, a senior PML(N) leader, he remained close with the Gen Ziaul Haq regime. He picked PPP in the 90s when the late BB was facing court cases where he represented her in courts that earned him respect within the party.

Later on, he acted as the chief counsel of President Zardari during his long imprisonment, which further strengthened his position within the party. All his efforts paid off when Benazir Bhutto awarded him a Senate ticket in 2006, and then he turned out to be the most powerful figure when the PPP came into power in March 2008 – but the other PPP fellows had gone jealous with his person.

No further proceedings were seen after that SC's hearing of 5th January 2012 and the reference died in the record rooms of the SC without any verdict of any kind; the PPP itself never raised its voice thereafter.

On 27th November 2012, in a letter to the CJP, President Zardari urged him to fix an early date for the reference's hearing on a day-to-day basis in order to conclude it soon. The plea was made through a special messenger

The Living History of Pakistan Vol-I

a day after the apex court had rejected the federation's petition for a review of its decision to declare the controversial National Reconciliation Ordinance (NRO) illegal and unconstitutional.

It was expected that the Supreme Court's opinion in Z A Bhutto's reference would decrease tension between two organs of the state, judiciary & the Executive, but the matter went *sub-judice* for two years; till the departure of the CJP Chaudhry in ending 2013 at least. Legal experts had urged the CJP many times to decide the said reference before his retirement but no heed.

Pakistan Bar Council [PBC] reminded the SC to take the matter about the implementation of its judgement in Asghar Khan Case for eradicating the perception that superior courts had a soft corner for PML(N) – but had never been considered worth.

Throughout the years 2012-15, till this volume going to press at least, no progress in the said reference was heard.

Scenario 96

The Living History of Pakistan Vol-I

In Pakistan, successive military regimes allegedly promoted gun culture and a militarised society; whereas the successive civil regimes of two political parties introduced corruption, nepotism and non-accountability syndromes. After being sworn in early 2008, the ruling PPP government tried to bring the military and its ISI under civilian control, but had to retreat.

In Pakistan, PPP government's tensions with the military (re)surfaced after the 2nd May 2011's killing of Osama bin Laden by US forces in Abbottabad. Some political groups called for top military officials to be sacked for failing to detect both bin Laden's presence in Pakistan and the raid by US Special Forces to kill him. These simmering anxieties spilled into the visible tensions over a memo seeking US military help to avert a possible coup in Pakistan in the wake of bin Laden's death. Since those days the PPP government opted for allowing itself to be booted out and its leaders thrown in jail; as it would wash off the stigma of bad governance, corruption and economic disaster openly felt, seen and recorded.

In ending 2011, another controversy arose in Pakistan when the Army Chief Gen Ashfaq Kayani held an emergency meeting with the President Zardari and the Prime Minister Yousaf Raza Gilani asking them to sack their envoy in the United States Husain Haqqani.

The issue was that a memorandum was leaked by one Mansoor Ijaz, an America based Pakistani businessman, who told the *Financial Times* that he had been asked by Husain Haqqani to deliver 'a special message' to top American officials. Mr Ijaz explicitly told that:

'Husain Haqqani, whom I have known for over 10 years, asked me to assist him in privately delivering his message to Admiral Mike Mullen. Phone and email contacts between me and Mr Haqqani in May [2011] are available with me as we finalized draft of the memorandum and awaited the boss's approval. The boss was obviously the President Zardari, I believed'.

Financial Times [FT] of 10th October 2011 had also observed that:

'... Ijaz wrote that a senior Pakistani diplomat telephoned him in May, soon after Bin Laden's death, urging him to deliver a message to the White House bypassing Pakistan's military and intelligence chiefs. The president feared a military takeover was imminent and needed an American fist on his army chief's desk to end any misguided notions of a coup and fast.

A memo was delivered to Mullen on May 10, offering that a "new national security team" would end relations between Pakistani intel-

ligence and Afghan militants, namely the Taliban and its Haqqani faction.'

CONTENTS OF MEMO:

The memo was taken as an indirect request from President Zardari to Admiral Mike Mullen for conveying a '*strong, urgent and direct message to Gen Kayani*' demanding the two Generals [the other Gen Ahmed Shuja Pasha, DG ISI] to shun the ideas of sending PPP home. The memo was allegedly delivered to Mullen a week after the Osama's raid of 2nd May 2011 and was reportedly sponsored by President Zardari who at that time feared a military takeover in Pakistan. The memo contained that:

'Pakistan may become a sanctuary for Osama's legacy and potentially the platform for far more rapid spread of al Qaeda's brand of fanaticism and terror.

That an opportunity also exists for civilians to gain upper hand over the army and intelligence directorates due to their complicity in the Osama bin Laden matter.

That in the event of Washington's message to Gen Kayani, the new national security team is prepared to do the following:

- *An independent inquiry into the bin Laden's stay in Pakistan will be ordered.*
- *The inquiry will be independent and accountable.*
- *The new team will implement the policy of either handing over those left in al Qaeda leadership or other affiliated groups on Pakistan soil. The team also gives the US military "green light" to conduct necessary operations to capture or kill them on Pakistani soil.*
- *The new national security team is prepared, with full backing of the Pakistani government, to develop an acceptable framework of discipline for the nuclear program.*
- *The new team will eliminate Section S of the ISI allegedly charged with maintaining relations with the Taliban and Haqqani network.*
- *Government of Pakistan will cooperate with new national security team and Indian government to bring perpetrators of Pakistani origin to account for Mumbai attacks 2008,*

The Living History of Pakistan Vol-I

whether outside or inside the government, including its intelligence agencies.

The said memo contained six mutinous articles and was revealed after Admiral Mike Mullen also confirmed its existence. In addition to memo, the electronic correspondence between Husain Haqqani and Mansoor Ijaz was also made available with account of dates, time lines and about 3700 words subsequently transcribed from the cell phones for media.

Referring to *'the News' dated 18th November 2011*, see one harsh opinion here:

'The Memo has reached The News from more than one source, both within Pakistan and from abroad, and is nothing short of being offensively repulsive, offering an alarming insight into a power - corrupt mindset willing to compromise national interest for petty personal power gains.

It is, arguably, a document crafted by soul-less conspirators who clearly have no shame and dignity, no national pride or respect. The originator, writer, approver and the ultimate beneficiary of the Memo all look like vicious anti - state collaborators and traitors to craft 929 words of the Confidential Memo.'

The whole game was being played to demolish national security apparatus of Pakistan, play havoc with its nuclear assets and allowing American boots on Pakistani soil. To make an investigation the memo also invited US authorities to hand pick the investigators panel assuring that the investigation process 'will result in immediate termination of active service officers' including Gen Kayani & Gen Pasha both. Albeit, on record there were two unanimous resolutions of the national parliament, last one dated 13th May 2011, which categorically forbade any violation of Pakistan's sovereignty by a third country.

The authors of the memo also promised to bring Pakistan's nuclear assets under a "more verifiable, transparent regime". For knowing persons, this translated into retooling the entire setup and providing unrestricted control of Pakistan's nuclear assets to United States, something that has long figured high on the US wish list. And understandably so because their only concern was to stay in power no matter how. Let the poor people pay the price.

[Husain Haqqani was known for his anti - army ideas since long and he never hesitated to place his philosophy open in media and public deliberations. He contended that army rule had spoiled Pakistan more than politician's. (Ref: 'the News' et al)]

The Living History of Pakistan Vol-I

The above details apparently made sure that President Zardari had yelled before Obama administration and the people of Pakistan were kept in dark. PPP's chiefs held that no secret letter was written; adding that *'Mansoor Ijaz is neither a diplomat nor part of Pakistani foreign ministry or the government.'*

However, details published in *'the News' [London] dated 19th November 2011* should be kept in mind while referring to Mansoor Ijaz's phone calls made to and received, allegedly, from Husain Haqqani and his US contact between 9-10th May 2011, when the controversial memo was prepared and sent. Mansoor Ijaz told that:

'I presented my original telephone company records to the senior Pakistani official [Gen Pasha, DG ISI] whom I met [in a London Hotel on 22nd October 2011] to verify and validate the evidence in my possession. I asked him (the official) to independently verify and check that the numbers of the individuals concerned were in fact their telephone numbers.

I further asked him to put the calls in sequence with both e-mail and Blackberry Messenger (BBM) messages that had been sent to the ambassador and my US contact so that he could develop a comprehensive picture of the entire set of events.

The data was transferred to his (DG ISI's) secure e-mail address directly from my computer, and he verified in front of me that the original telephone bills and original e-mail and BBM traffic were authentic and forensically unaltered.'

The US businessman Mansoor Ijaz had also recalled a Blackberry Message conversation in which Mr Haqqani had stated that: *'you can keep saying you delivered a message and show BBM conversations to prove it... Basically, you don't get it.'*

Husain Haqqani, however, contended again that the said phone calls and BBM record were fake, whereas on 11th November 2011, he had lastly communicated with Mansoor Ijaz saying that: *'I have just changed BBs...I may never trust you or your judgment again...'* Despite the said phrases on record Husain Haqqani told *'the Guardian'* of UK [news appeared on 17th November 2011] that:

'I've not written or delivered the memo, but have offered to face an inquiry in order to put an end to the matter. I do not want this non - issue of an insignificant memo written by a private individual and not considered credible by its lone recipient to undermine democracy.

The Living History of Pakistan Vol-I

A spokesman for Gen Mullen, who has just retired as chairman of the Joint Chiefs of Staff, had this week confirmed a letter was received but added that Mullen did not find it at all credible and took no note of it then or later.

Pakistan's opposition has seized on the story. But, so far, there is no evidence that Zardari or his representatives [might have] authored the letter.'

Mansoor Ijaz met the ISI Chief Gen Pasha on 22nd October 2011 and that the full data and evidence was given to him including records of phone calls, SMS messages, BBM chat exchanges, e-mails etc. The meeting, which started around 6:30pm and lasted for over four hours, took place in a Park Lane Intercontinental hotel room in London. The records were subsequently put through a verification process and the DG ISI was convinced about their authenticity.

After his [DG ISI] arrival back in Pakistan, Gen Pasha briefed the Army Chief who ultimately discussed the matter in his one to one meeting with Mr Zardari on 15th November instant. The COAS had impressed upon the President to call Husain Haqqani home to explain his alleged role in the said memo affair.

It was a coincidence or otherwise that the memo's hullabaloo suddenly started soon after the DG ISI's meeting with Mansoor Ijaz and a host of television shows abruptly aired and a number of articles started appearing in media.

Next day, on 16th November 2011 another top meeting was held on the issue in which PM Gilani was also present; decision to call Husain Haqqani home was taken. Till that weekend, the GHQ had sent a formal letter to the presidency to order an enquiry into the memo issue. The significance of this communication was not lost on the political leadership. *The situation went worse with the admission by US Defence Secretary Leon Panetta that he too was in know of the memo.* In one of the messages exchanged between Mansoor Ijaz and Husain Haqqani, Leon Panetta was also mentioned.

On 28th October 2011 Mansoor Ijaz had written that:

['Tell me one important thing. Who likes you and who hates you in the US establishment? Who wants you to stay and who wants to xxxx you up? Husain Haqqani responded: 'The debate abt your oped has caused my detractors to put pressure on my boss.' He then sent this message - Husain Haqqani: 'In US estab, I can count on Leon and Petraeus.]

The Living History of Pakistan Vol-I

It was then decided, that the government of Pakistan would officially contact the Blackberry Company to obtain certified data (Pin codes) and to *'spare no influence, including cessation of Blackberry services in Pakistan, were the company to act reluctant in complying with the request'*. The political and army leadership was seen determined on two things:

- The memo issue carried risks of national proportions and therefore must be thoroughly investigated and taken to its logical conclusion.
- No politics would be played or allowed to be played in deciding the matter.

CIVIL VS MILITARY STRIDES:

The close circles around Mr Zardari believed the letter was being used to drive a wedge between the civilians and the military bosses. Considering Haqqani's connections in Washington, it was unclear why he would choose Mansoor Ijaz to deliver the said message. Zardari's spokesman accused Ijaz, who said he had once negotiated between the government of Sudan and the Clinton administration in 1990s successfully; *'the Guardian'* observed.

The media did not rule out the possibility of 'America's big game' behind the curtain because since the early days of Pakistan, the decisions of the next ruling regime have always been taken in Washington.

After the death of Pakistan's first Prime Minister Liaqat Ali Khan, when America had manoeuvred to send Pakistan's Ambassador in Washington M Ali Bogra as Pakistan's next prime minister, the Americanization of Pakistan had started and the process successfully run at least till 2007 when Benazir Bhutto was sent to Pakistan after a successful deal on NRO. None of the previous rulers like Ayub Khan, Gen Yahya Khan, Gen Ziaul Haq or Gen Musharraf could hold the reigns of the government without America's prior approval.

Amongst the politicians; Zulfikar Ali Bhutto went against the American will while opting to develop his nuclear program, but first got fired then hanged. In 1988, Gen Ziaul Haq declined to accept the American solution of Afghan issue, they got it done through PM Junejo and Geneva Accord was signed. Gen Ziaul Haq angrily fired his PM Junejo but was also sent to heavens in an air crash just after 75 days. Similarly Gen Musharraf was forced to sit on the table with Ms Bhutto [July 2007 in Emirates] and within a year was expelled from the presidency by her husband, Zardari

After Mirza Aslam Beg's departure from the Army House, all the army chiefs who headed the Pakistan Army, tried to formulate their own priorities of

The Living History of Pakistan Vol-I

governance; every time new. Whenever America interfered, there has been strong reaction to that. Though there were civilian rules of PPP and the PML for ten years but the successive army chiefs always prevailed in decision making.

Gen Aslam Beg used to say openly about Benazir Bhutto that *'both husband & wife came to his drawing room to beg the rule in 1988'*. Gen Asif Nawaz Janjua always received his PM Nawaz Sharif without cap just to avoid saluting him.

Gen A Waheed Kakar was going to get extension in his tenure from the then prime minister but there was so strong reaction prevailing within GHQ that he had to seek retirement as per schedule.

Gen Jehangir Karamat was so disciplined that he generally opted to go by the constitution and respecting his civilian Prime Minister Nawaz Sharif but the later, instead of giving him reciprocal respect, considered him weak and sent him home in an un-ceremonial way. The reaction in the army escalated with the time and ultimately the same PM himself was sent to Attock Jail in October 1999.

During Gen Musharraf's tenure as Army Chief, quoting the daily *'Jang'* of 20th November 2011, the army had mounted so much pressure on Nawaz Sharif that Shahbaz Sharif and Ch Nisar Ali once had to visit the Army House to beg soft corner for the prime minister. Gen Musharraf as COAS had sent one Corps Commander of Quetta home in 1999 just because he had met PM Nawaz Sharif in private without his permission.

It was an irony of fate that during the whole decade (1990-99) of civilian rule the America used to talk directly with Pakistani Army Chiefs bypassing the political governments. Like Gen Ziaul Haq, Gen Musharraf went smooth with America in his early years of governance but when he tried to argue with his American counterparts after 2005, the US played to bring all political parties together against Gen Musharraf with one point agenda of 'Go Musharraf Go'. All Parties Conference of Summer 2006 at London can be taken as reference, where PPP, PML(N), JUI and others were all there; participating to kick out Gen Musharraf.

PPP's later regime and Mr Zardari were in a way lucky to get America's full support against the previous practices where army used to get the focal attention but his party PPP continuously and miserably failed to exhibit good governance throughout its tenure from 2008-13. Rampant corruption in all departments & state functionaries coupled with acute nepotism in the name of *'reinstating the deprived PPP workers'* mutilated the whole economy of the country. Load shedding and energy crisis brought gradual closure of all industries and production units creating immense unemployment and inflation amidst shortage of basic food and clothing.

The Living History of Pakistan Vol-I

Docile media groups were compelled by the PPP to voice that ONE MAJOR cause of corruption by politicians in Pakistan was the fear of army control itself. In the political tenures even, the army used to control some foreign affairs of strategic nature like Pak-India relationship, Kashmir Policy, Afghan issues only and nothing beyond. Through NLC, Defence Housing Schemes, Fauji Foundation, Askri Bank etc the Army run their own welfare projects and the civil governments could follow those patterns.

However, the above fields did not constitute even a fraction of the whole executive powers. One could consider the whole set of civil secretariats and all functions of federal and four provincial governments; for instance affairs concerning with Power generation and distribution; Gas extraction and distribution; policing, NAB and FIA, all corporations like PIA, Steel Mills, Shipping & Ports, Trading Corporations, Imports & Exports, Health, Education, Production, Highways, Roads, Bridges, Banking, Taxes, Excise and Custom collection, Housing, Railways ...and countless other fields remained with the civil governments but they miserably failed to deliver.

Just to cover their corruption, nepotism and inefficiency, the civil governments were seen raising hue and cry that due to army control or interference, the political leaders did not feel safe in Pakistan and stashed their wealth abroad for their rainy days. Truth remained otherwise. What an explanation for their corrupt practices – quote any other democracy in the world doing that.

As per PPP & PML(N&Q)'s on roll media persons, it brought mass corruption as the political leaders did not know how long they would stay in power and how long they would survive. No other country in the world had their leaders fleeing for safe havens abroad. At one time leaders of all three major parties, Benazir Bhutto & Mr Zardari, the whole Sharif family and Altaf Hussain were abroad and remained so for years. Gen Musharraf was also exiled as soon as he took off his uniform and became civilian.

Messages of the PPP [*mostly through their loyal media analysts and think tanks*] were conveyed that the Army should ponder to contain itself to its security functions, eliminate the terrorists and work under the command and control of the civilian governments. On the other hand, feeling that the political government was not delivering the required facilities and fruit to the common people, the army itself started conveying to the whole world that '*their [PPP's] civil government is corrupt and maintains no guts or acumen to guide the army as an institution*'.

The irony of fate was that the PPP government, instead of providing amenities to the people and earning good reputation by putting economic reforms and showing good governance, concentrated on non-issues like:

The Living History of Pakistan Vol-I

- That ISI should be under the control of Ministry of Interior [referred to July 2008 episodes].
- The sidelined superior judiciary should not be reinstated [referring to March 2009's developments].
- That Kerry Logar Aid should be linked with pinching clauses for the army [referred to 2009's strategic negotiations with Americans in Washington].
- Gen Durrani should be kept associated with the PPP.
- There should not be any elections in the political parties [referred to 18th Amendment].
- Jamshed Dasti, a fake degree holder MNA, was brought back in the Parliament just to make mockery of democracy and judiciary.

There was a long list of such like 'mounting' functions with the PPP.

In nut shell, PPP was contesting that democracy was being targeted. Needless to say that Pakistan has never experienced democracy after 1951; either there has been military dictatorship or civil aristocracy of a few big families.

The unanimous vote in favour of 18th Amendment had stamped and locked the general population of Pakistan as slaves because now by constitutional provisions there cannot be elections in the political parties AND the then Chief Justice Iftikhar M Chaudhry kept mum on such basic violation of fundamental rights given in Pakistan's Constitution.

Pakistan's next prime minister would be either Bilawal Zardari, or Moonus Elahi, or Hamza Shahbaz Sharif or Hussain Nawaz or Captain Safdar or Qasim Gilani and nobody else; let the fight be on between military & civil dictators; people would continue to be fooled in the name of democracy.

HUSAIN HAQQANI CALLED HOME:

Coming back to memo-gate; the original subject:

President Zardari summoned Husain Haqqani, Pakistan's Ambassador in Washington, to Islamabad to solve the enigma and find out some solution. However, Haqqani in an interview with a US journal refused to admit sending of the memo to any and wrote a letter to President Zardari in this regard in which he offered his resignation; Haqqani was blamed to play a key role in that issue.

The Living History of Pakistan Vol-I

Husain Haqqani was received at Islamabad on 19th November 2011 with the best possible protocol [in the name of security] as was seen during Hillary Clinton's state visit to Pakistan. Haqqani was also considered as *the US Ambassador in United States* looking after the US-Pak relations desk and giving performance suitable for and acceptable to both the countries. The US government could not go angry with Mr Zardari because they were not feeling easy with Gen Kayani.

President Zardari had successfully delivered all those materials needed or wished by the US ranging from Raymond Davis to Osama's alleged killing; much more than they were having during Gen Musharraf's regime. The US was finding Pak Army at a distance because despite numerous open and covert threats, Gen Kayani had not bothered to move a single troop against alleged anti-American network at Pak-Afghan borders. See one media comment:

'Husain Haqqani is also a CIA man and he does not need another CIA guy to contact US administration or give a written memo. He can easily discuss this issue in person as he is doing now with Grossman. This whole thing is a game by CIA to expose its moles in Pakistan who have become useless to them.'

Husain Haqqani claimed that allegations made by Mansoor Ijaz were baseless but at the same time offered to resign over the scandal. Hours after Haqqani offered to resign, the representative of Mike Mullen, Captain John Carbie, while talking to an *American journal 'Foreign Policy'*, told that Mike Mullen recalled his memory and had investigated from the concerned people and confirmed that he was given a copy of the secret memo but he had not concentrated on it considering it 'not trustable'.

South Asian News Agency [SANA] also confirmed the same version on 18th November 2011. Previously the Admiral had denied remembering the receiving of any such letter.

PPP's stalwarts held that if Mansoor Ijaz's version was correct then one should also believe in his allegations against ISI. He constantly used to write against Pakistan Military and ISI to please his American masters. If Mansoor Ijaz claimed and Mullan admitted, it might be a case of fabrication; a thorough investigation must be conducted to unveil the facts.

In present day diplomacy, the dodgy attitudes, lolls and compromises are considered the cannons of success. The issue of the subject memo was once raised before the US Secretary of State Hillary Clinton when she was on Pakistan's tour in late 2011 but she had denied its existence. She had told that *'it is not possible that if Mike Mullen gets such an important reference and he would not bring it in the notice of White House team.'*

The Living History of Pakistan Vol-I

When Mullen was in service, he had refused to acknowledge its receipt; when he was retired he recalled its admission. No where in the world, neither in military nor in civil departments, a retired officer is given access to the official records, not at all. The question arises that what was the sudden necessity to blow air into that dead balloon after five months; nothing but to widen the gulf between political and military leadership of Pakistan; a well smart move from America, isn't it.

The contents of the said letter comprised of material against the army chief and ISI which echoed in the National Assembly as Mr Zardari was made target of severe criticism by opposition. The issue not only turned into a hot topic in the parliament and political circles but also created rift between the government and army.

In fact, Husain Haqqani had once again proved that he was an American loyalist; more loyal to the US than Pakistan. He had earlier inserted anti-military clauses in the Kerry Lugar Bill. Even the media considered him a traitor of Pakistan by his deeds and actions.

The above memo indicated at least one thing that Pakistani politicians always sought aid from the US to help them out when they feared of losing their power. Benazir Bhutto did so, Nawaz Sharif did so, Gen Musharraf did it and then Zardari was also sailing in the same boat. No ruler had ever shown respect for nationalism and rule of law.

SUPREME COURT MOVED:

A petition was filed in the Supreme Court (SC) on 19th November 2011 requesting it to constitute a judicial commission to investigate the authenticity of the said secret memo raising questions against Pakistani armed forces. The petition was filed in the SC Lahore registry by one Hashim Shaukat Khan (President of the Watan Party) and Barrister Zafar Ullah Khan. The petition said that:

'Mansoor Ijaz is a US national who acted as an agent for Americans, and that the memo seems like an attempt to create differences between various institutions of Pakistan trying to label them as corrupt and unreliable. Thus it becomes necessary to investigate the issue as it targets the Pakistan army and may lead to further tensions in the civil-military relationship in the country.'

Simultaneously, Nawaz Sharif of the PML(N) and others invoked original jurisdiction of the Supreme Court by means of Constitutional Petitions which all were taken up for hearing on 1st December 2011. The petitioners

The Living History of Pakistan Vol-I

were heard, notices issued and to conduct a probe into the Memo, Mr Tariq Khosa [former DG FIA] was approached to act as Commission.

On the same day, by means of press conference held in PID office by Babar Awan along with two other ministers, the order of the apex court was criticized contemptuously. Mr Tariq Khosa declined to act as Commission because his brother Justice Asif Saeed Khosa of the same SC was being criticized un-necessarily though was not member of the concerned Bench.

[The SC bench comprised of CJP Iftikhar M Chaudhry, J Mian Shakirullah Jan, J Tassaduq Hussain Jilani, J Jawwad S Khawaja, J Tariq Pervez, J Mian Saqib Nisar, J Ejaz Afzal Khan, J Ijaz Ahmed Chaudhry and J Ather Saeed.]

Concerned parties, including the Chief of Army Staff, DG ISI, Mansoor Ijaz as well as Husain Haqqani and the Federation of Pakistan filed their replies. No separate reply was filed by Mr Zardari being the President of Pakistan though was also issued a notice.

The apex court reached the conclusion that the said Memo existed. Earlier on 16th November 2011 Husain Haqqani had addressed a letter to the President of Pakistan wherein after giving his side of story; he desired to tender his resignation from the post of Ambassador of Pakistan in United States and himself expressed for probe into the matter. A series of meetings were held between the Prime Minister, Chief of Army Staff, DG ISI and the President thereafter; Husain Haqqani tendered his resignation on 22nd November 2011, which was accepted next day.

Husain Haqqani categorically denied his role in the memo and also relied upon an affidavit tendered by Gen James Jones, to establish that Mansoor Ijaz had concocted that story.

[Gen James Jones in his affidavit had given that he did not recall whether Mr Ijaz claimed that Ambassador Haqqani had anything to do with the creation of the memo. He had no reason to believe that Ambassador Haqqani had any role in the creation of the memo, nor that he had any prior knowledge of the memo.

On the other hand, in his affidavit before the court, Mansoor Ijaz directly disputed Jones' account of events saying that he did tell Jones about Haqqani's involvement during their 9th May phone call. Mansoor's affidavit mentioned that:

'I made clear to him near the end of the call that Pakistan's ambassador to the US was the originator of the message. He responded by saying he would do it if the message would be in writing.'

The Living History of Pakistan Vol-I

In the meanwhile *on 28th November 2011*, PM Gilani referred the matter to the Parliamentary Committee to conduct probe on the subject issue. Mansoor Ijaz in his reply and in counter affidavit contradicted the stand taken by Husain Haqqani.

Interestingly Haqqani had lost [*or managed it to be lost*] his black berries. Secondly; RIMS did not share its data with Pakistan as it needed a request from the concerned parties, Haqqani and Mansoor Ijaz in this case. As Haqqani was the defendant, he should have requested RIMS to provide data to prove his innocence but he did not.

“STATE WITHIN STATE” – PM GILANI:

After 2nd May 2011's Abbotabad episode the power game in Pakistan got momentum. Though the US spokesmen repeatedly told the world media that the Pakistan army or the ISI did not have any knowledge about Osama's stay in the country but they believed that Osama was in the shelter of the 'Establishment'. The Americans started tightening screws around the Pak Army knowingly that still they badly needed Pakistan in Afghan war. They resorted to their tested tactics of carrots and stick; stopped all dollar and arms supply to Pakistan followed by covert threats of 'sanctions'.

The Pak Army firmly believed that Osama was pointed out by some one from the Presidency thus they picked up the thread of Memo-gate to eliminate the source through judiciary. PPP's legal minds had identified certain contradictions in Mansoor Ijaz and James Jones affidavits; thus the Memo-gate case lost its credibility.

Towards ending 2011, PPP's stalwarts had reached the conclusion that the Establishment wanted PPP government no more and Zardari could be ousted. PM Gilani brought himself forward as the major political martyr by giving open and fiery speeches to defy the Supreme Court orders and criticizing the Pak-Army. PM Gilani's speech at the Parliament's floor on *22nd December 2011* is referred.

'We are being asked by the Judicial [Abbotabad] Commission about issuance of visas (to Americans); but I want to ask how Osama bin Laden lived here for the past six years? On what type of visa was he living here?'

The Living History of Pakistan Vol-I

PM Gilani had roared. The army had to make an immediate announcement that *'there would be no military take over'*; the dust of Memo Case appeared to be settled temporarily at least.

Referring to the Ministry of Defense MOD's reply of a day earlier, *21st December 2011*, to the Supreme Court, which had suggested that the army and the ISI were not under its control, the PM Gilani had said that:

'There can't be a state within the state; [and that] they [the establishment] would always be answerable to the Parliament.'

All institutions of the country are answerable to the parliament and that it was the civilian government which had put its full weight behind the establishment after the 2nd May's raid in Abbotabad or after the Salala raid of 26th November [2011]. For that, he feels, it is getting a very raw deal.'

Referring to one media source report of *23rd December 2011*, in the aftermath of Memo-gate issue, the ISI officials [of brigadier rank] shuttled back and forth to take the PML(N) on board. They held detailed sessions with three key leaders of the PML(N), days before SC started hearing on Memo-gate case, during two nights between 27-29th November; the first one in Islamabad and the second one in Murree. Allegedly Senator Ishaq Dar of the PML(N) had been one of the three interlocutors in those late November meetings.

The opposition party was given blueprints of a possible scenario pushing out President Zardari & an 'emergency plus' situation, with a pledge of holding fresh polls within three months. One of the ISI's high rank officers tried to contact a top judicial officer during the same period; succeeded or not, was not confirmed. PML(N)'s secret contacts with the security establishment were denied by their spokesperson Mushahidullah Khan; mildly terming it as *'misconception'* but saying next moment that *'who isn't fed up with Zardari?'*

The Living History of Pakistan Vol-I

Scenario 97

PAKISTAN: MEMO-GATE SCANDAL-II

JUDICIAL COMMISSION FORMED:

On 30th December 2011, the Supreme Court of Pakistan passed the judgment that the petitions on Memo-gate issue were maintainable under the Constitutional provisions of Article 184(3). The ending paragraph of the memo sent to Adml Mike Mullen was that:

The Living History of Pakistan Vol-I

'We submit this Memorandum for your consideration collectively as the members of the new national security team who will be inducted by the President of Pakistan with your support in this undertaking.'

The SC held that in exercise of powers of Judicial Review, the said petitions merit justice. Question of public importance with regard to enforcement of fundamental rights was involved under Articles 9, 14 and 19A of the Constitution. As the due process of law is the entitlement of all the stakeholders, therefore, to ensure probe into the matter in a transparent manner the Commission shall be comprising of:

- Mr. Justice Qazi Faez Isa, (Chairman) CJ Balochistan High Court.
- Mr. Justice Iqbal Hameed-ur-Rehman (Member) CJ Islamabad High Court.
- Mr. Justice Mushir Alam (Member) CJ High Court of Sindh.

Raja Jawwad Abbas Hassan, District & Sessions Judge, Islamabad was appointed as Secretary to the Commission. The Commission was required to complete this task within a period of four weeks.

On 2nd January 2012, the Judicial Commission held its first meeting at Islamabad High Court (IHC). The meeting was chaired by its head CJ BHC, Justice Qazi Faez Esa; the other two CJs attended as members of the commission. During the first meeting, the Judicial Commission had framed its own questionnaire and the core issues in the public minds were like that:

- Why Mansoor Ijaz leaked the memo and wrote an article for the Western press?
- As Ambassador Husain Haqqani had direct access to highest civil authority in USA so why he would choose a betraying businessman for that job?
- Mansoor Ijaz was known to Husain Haqqani since ten years; on what basis?
- What has been the actual bone of contention between Mansoor Ijaz & Mr Haqqani while they were associates since a decade?

[In police it is a well versed saying that the clues of a crime surface up when the thieves start fighting over distribution of the looted booty.]

The Living History of Pakistan Vol-I

- SMS record of calling each other was OK but what were the actual transcripts of those conversations; did it contain the memo's wording or substance.
- How and what stage Mr Zardari allegedly conveyed such instructions to Husain Haqqani.
- Why would Husain Haqqani send the memo to Mike Mullen, a person who was retiring shortly as American Army General?
- Why would Mr Zardari as President go through some one else in such delicate matter, he could have gone to USA on any pretext to see some more relevant tycoon in US admin?
- Why Mr Zardari had not preferred to call the American Ambassador in Presidency to convey that much weighty message directly to the American bosses?

There were tens of more questions to be added but the given time was short to get plausible answers of all.

The reply submitted before the SC by Mansoor Ijaz, interalia, comprised of certain documents including exchange of e-mails using the BlackBerry Messaging (BBM) service and voice calling between him and Mr Haqqani showing that they remained in constant touch with each other from 9th to 12th May 2011. In fact during these days, as many as 85 BBMs, voice calls and e-mails were exchanged between the two, forming the most important piece of evidence for purposes of drafting the alleged Memo. In addition to these dates, Mansoor Ijaz also claimed that he had telephonic interactions with Husain Haqqani on 28th October and 1st November 2011. [*A company known as Research in Motion (RIM) based in Canada was the sole and exclusive custodian of BBM Service*]

Vide SC's order dated 1st December 2011, Husain Haqqani was directed not to leave the country without the permission of the apex Court. This order was kept intact.

The Federal Interior Minister Rehman Malik had, however, admitted that Husain Haqqani was involved in communication via text messages with an American national but there was no written letter, neither from presidency nor from any government organization. Haqqani has been a close aide of President Zardari, no doubt. Mr Malik told the media that the matter was open for investigation; as also to sort out that who initiated SMS messages; M Ijaz or the Ambassador.

Over an uncalled but such a harmful deliberation from Rehman Malik, a media spokesman had rightly observed that *'the GOP and Haqqani do not need enemies if such friends are available to them.'*

The Living History of Pakistan Vol-I

The opposition leader Nawaz Sharif demanded an independent commission to investigate the issue roaring that why the army was subjected to the worst suspicions? He declared the said memo authentic as had been confirmed by Gen Mullen's own office.

[Nawaz Sharif, was not inclined to recall his own times of 1999 when on Kargill issue he himself had flown overnight to the United States to request President Bill Clinton for direct interference in Pakistan affairs; urging to snub the then Army Chief Gen Musharraf who had played around allegedly without his consent as prime minister.]

One may recall a statement of US Attorney General '*Pakistani rulers can sell their mothers for money*' [Live TV program 'Capital Talk' by Hamid Mir dated 6th September 2011 is referred]; it was another instance of the same kind to stay in power. What credibility does Pakistan's political leadership possess?

It was sad that PPP politicians talked big about solving critical issues but failed to solve simple mysteries despite being in power for nearly four years [till then]; murder of Benazir Bhutto, NICL scam, Hajj scam, energy crisis, Railways, Steel Mills and PIA affairs etc. For masses in Balochistan and in Khyber PK provinces, the successive governments, both leaderships, had done nothing. They, of course, generated more wealth for them own by desecrating Pakistan's name through their greed of staying in Power.

MANSOOR EJAZ SPILLS THE BEANS:

Referring to the '*Dawn*' of 5th December 2011, Mansoor Ijaz said that:

'It is my view...The United States has done this (arm twisting) in Iran. They've done it in other countries where they've labelled certain organisations as terrorists.'

We have strengthened Pakistan. May be we haven't strengthened the civilian side of Pakistan's government. But there may have been a rot there that needs to be cleaned up. And if that rot is cleaned out, you might find a very strong Pakistan emanating out of this, in which the judiciary does what it's supposed to, the military does what it's supposed to.'

Media analysts were able to take consideration of Mansoor Ijaz's video testimony of 22nd February 2012 from Pakistan High Commission London] that '*he is American, would not speak against American policy and would*

The Living History of Pakistan Vol-I

safeguard America's interests'. The media men had whispered that he [Mansoor Ijaz] might be advocating the memo issue because Husain Haqqani had eaten up his share of the million dollar bugs received for him from Mr Zardari. Of course if a media consultant or broker is not paid his negotiated price, he goes more dangerous while in possession of 'secrets'.

Prime Minister Yousuf Raza Gilani once told *'China's People's Daily online'* that the army chief and head of intelligence services had acted unlawfully by making unilateral submissions to an ongoing Supreme Court inquiry [in Memo-gate Scandal].

APP issued a statement *on 9th January 2012* giving details of the interview when the COAS was also on an official visit to China. PM Gilani, inter alia, termed the responses given by COAS and DG ISI in the alleged Memo Case to the SC as 'unconstitutional and illegal'. These were in fact the serious charges pointing towards the violation of the country's Constitution.

The Army Chief Gen Kayani felt so disturbed over those comments that he immediately rushed to the Presidency and asked President Zardari: *'ask the PM Gilani to spare me if I'm no more needed or ask him to take back his words'*. Gen Kayani had added that critical comments made by the prime minister could have 'serious ramifications' and could inflict 'potentially grievous consequences for the country'. *'Express TV talk' of Dr Shahid dated 2nd March 2012* is referred.

The PM's statement did not take into account the following facts:

- The COAS and DG ISI were cited as Respondents in the Petitions as such and after hearing the parties the Supreme Court served notices directly to the Respondents. This was not objected to by the learned Attorney General of Pakistan.
- The replies by the respondents were sent to the Ministry of Defence for onward submission to the SC, through the Attorney General. The same were not submitted to the apex court directly by the two Respondents.
- Responsibility for moving summaries and obtaining approvals of Competent Authority thereafter was of the relevant ministries.

Astonishing aspect was that in an earlier mutual meeting of the two heads, the PM and the Army Chief *on 16th December 2011*, the PM had categorically stated to the press that *'the replies of the Army Chief & the DG ISI were given by them in response to the notices of the Court through proper channel and in accordance with the rules of business.'*

The Living History of Pakistan Vol-I

No objections were raised then rather the media was briefed that the COAS and DG ISI in their replies to the Supreme Court were obliged to state facts as known to them. The issue of jurisdiction and maintainability of the Petitions was between the SC and the Federation. An expectation that COAS will not state the facts was neither constitutional nor legal. An essay published at *Pakspectator.com* on 22nd November 2011 is referred for more details.

Referring to 'the Nation' of 14th January 2012, Mansoor Ijaz had told his American go-between Gen James Jones that there were three people who 'prepared' the said memo; Husain Haqqani, Gen ® Jehangir Karamat and Gen ® Mahmud Ali Durrani, a former National Security Advisor for PM Gilani, who was fired in 2009 over some dispute. Ijaz Mansoor also wrote in his statement that:

'There was only one author of the memo and that was Haqqani, but the way Haqqani presented it to me was that there was a team of people back in Pakistan involved and the two names he gave me were Karamat and Durrani.'

My impression at the time I wrote the email to Jones was that they [Jehangir Karamat & Mahmood Ali Durrani] had been probably a part of the thinking process about the ideas in the memorandum. They were probably involved at least in thinking through how you execute these things.

.... What I put down in the e-mail was what Haqqani told me. [Haqqani] said there was a like-minded group of people in Islamabad that would be brought on board by 'the boss' {Mr Zardari} as the new national security team once tensions had dissipated. He mentioned two names I recognized; Jehangir Karamat & Mahmud Durrani.'

In his affidavit, Ijaz again claimed that Haqqani was the sole author of the memo. 'The content of the Memorandum originated entirely from Haqqani, was conceived by Haqqani and was edited by Haqqani,' Mansoor Ijaz wrote in black & white.

MANSOOR IJAZ TERMED LIAR:

The most attracting statement on memo issue was of US Ambassador to Pakistan Cameron Munter [referred to various *media reports dated 6th December 2011*] who said that 'Mansoor Ijaz is liar; his recent allegations were nothing but "a pile of lies".' On the same dated media reports also mentioned PPP's leadership saying that:

The Living History of Pakistan Vol-I

'Mansoor Ijaz is a crook and an enemy of Pakistan. He loves cheap publicity. He [Mansoor Ijaz] actually wrote and delivered the memo and we made him SC's only witness; says a lot about our national character.'

'The nuclear powered Islamic Pakistan is so weak that an American can shake its foundation and any invader can come in and our defences do not act at all for two long hours. This happened not once but twice recently.'

The US media on 19th January 2012 circulated a statement from a South Asian expert named Aziz Haniffa in Washington DC saying that:

'Mansoor Ijaz, the man who has triggered off a political crisis in Pakistan, is a 'dubious character,' who is sowing 'seeds of dissension'. The issue has led to intense tension between the civilian government and the Pakistani military.'

'This is really a trial by the media circus. It is Pakistan's free and most vibrant media that you can buy -- Anyone who knows Pakistani journalists will back this up.'

In another development, Leader of the Opposition in the Punjab Assembly, PPP's Raja Riaz, filed an application before the Commission to become a party in the matter urging that Mansoor Ijaz was a liar and a conspirator who had already accepted his involvement in toppling the first government of Benazir Bhutto.

On parallel lines, the apex court also considered Rehman Malik's statements that *'Ijaz's name may be put on the exit control list (ECL) if the Parliamentary Committee on National Security so directed'*. The Commission was told that the day when Mansoor Ijaz was planning to visit Pakistan's High Commission in London a news item was published, attributed to and never rebutted by Rehman Malik, that *'Ijaz could be detained and investigated under Article 6 of the Constitution for hatching a conspiracy to topple Benazir's government in 1989'*.

Mansoor Ijaz maintained that on the last date of hearing [9th January 2012], an undertaking regarding security arrangements was agreed; one DIG Mujeebur Rehman, Security and Counter - terrorism, Islamabad, was deputed for his security but then the Attorney General backed out that Ijaz's security should be ensured by the armed forces.

On the other hand, Rehman Malik's team did not want Mansoor Ijaz to appear before the Judicial Commission as that would spell their political death. PPP threatened to register a fake case against Mansoor Ijaz to stop

The Living History of Pakistan Vol-I

him from entering Pakistan. He and his family had received killing threats since the last proceeding of the case.

US authorities also tried to obstruct justice. Haqqani's wife Farahnaz Ispahani, who is an American - Pakistani and PPP's MNA [in absentia], was in Washington using her connections in US to pressurize Mansoor Ijaz not to testify. Mansoor Ijaz, confided to *'the News'* [paper dated 14th January 2012 is referred for details] that:

'Besides the security-related threats that he has received, directly or indirectly from Pakistan, Washington is also influencing him not to go to Pakistan in this situation'.

These threats continued unabated till date in some form or the other. To make matters worse, on 21st January 2012, Rehman Malik said Mansoor Ijaz could be involved in other cases also and could be stopped from leaving the country if the legal situation demanded.

In nut shell, Mansoor Ijaz refused to appear before the Judicial Commission, citing security concerns; it was enough relief for the PPP leadership. He was given three chances to appear with proofs he claimed to have, however, all the times he refused to come citing different reasons.

On 28th January 2012, his Counsel Akram Sheikh made last request to the JC to record Mansoor's statement and examine his evidence either in Zurich or London, which was rejected. Husain Haqqani was not charged yet.

Husain Haqqani's counsel, Zahid Bukhari [a retired justice himself], confirmed that his client was under threat and *'has taken refuge in the compound of the Prime Minister's residence'*. It created another plethora of criticism speaking about the PPP government's partisanship giving enough indication that whatever Haqqani had allegedly done on memo issue was a fact or at least triggered by the high personalities sitting in Islamabad.

However, during the last hearing of Judicial Commission, Husain Haqqani's counsel said that *'both he and his client have 100% faith in the judicial system and that meticulous investigation can prove whether Haqqani drafted the memo or not'*. The Judicial Commission was extended for another four weeks.

Ultimately, on 22nd February 2012, the Judicial Commission probing the memo scandal sent its Secretary Raja Jawwad Abbas to UK to question Mansoor Ijaz and record his statements at the Pakistan High Commission in London. A week before Ijaz had submitted his 83-page statement to the

The Living History of Pakistan Vol-I

Commission through his counsel Akram Sheikh; then he was called in video - conferencing so that the petitioners and members of the commission could question him as per court procedures.

In his statement, he confirmed his meeting of 22nd October 2011 with DG ISI in London. Mansoor Ijaz had also given details of his interaction with President Zardari in May 2009 at the Willard Intercontinental Hotel in Washington DC; he was invited there by Husain Haqqani. Ijaz requested the Commission for an in-camera briefing to record certain comments, which he claimed were not appropriate to be disclosed to others.

Hamid Mir, in 'the Jang' dated 5th March 2012, had given very interesting remarks about the memo affair that:

'..... Mansoor Ijaz was a liar and fraud but when some responsible media persons in Pakistan pointed out towards his chequered past, they were labelled as 'enemies of Pakistan' just because he [Mansoor Ijaz] was exposing another brother liar named Husain Haqqani.'

The fact remains that memo-gate scandal though went successful in creating rifts between key pillars of the state [Presidency, Executive and the Army] but none of the mainstream political party or notable figure agreed to share that dirty game; not yet clear who had sponsored it.

May not be out of place to mention that All Parties Conference held at PM House on 30th September 2011 had brought [as a side benefit] unity amongst the political parties in and outside Parliament though it was mainly called to discuss American attacks and aggression in the backdrop of Pak - Afghan border events.

Another advantage brewed by the PPP was that Nawaz Sharif's memo petition had changed the whole political scenario; an inadvertent mistake it was though he had distanced himself far away from its proceedings later when he realized that Army would be the main beneficiary of that nutritious game. PTI openly and the ISI secretly tried their level best to drag PML(N)'s Chief into the memo pond again but he bravely abstained; thus the apex court was left with only one witness named Mansoor Ijaz, allegedly a compulsive liar.

Mansoor Ijaz's latest and remarkable lie surfaced during his statement of 1st March 2012 when he divulged a 'breaking news' that on 2nd May 2011 night, when the American choppers were heading for attack on Abbotabad, president Zardari had 'proposed' Gen Kayani on telephone that 'Americans should not be checked or blocked'. This statement was immediately denied by both the presidency and the GHQ. This statement of Mansoor Ijaz came just a day before the Senate elections of Pakistan agitating 'another top

The Living History of Pakistan Vol-I

pillar [Army Chief]' to block the elections way but they had not taken it seriously.

Just a passing reference from the little past; *'the Friday Times' of 30th Dec 2011 to 6th Jan 2012 issue:*

'World famous military strategist and ex-army chief Aslam Beg told Daily Express that to avoid getting into more trouble President Zardari should submit his resignation. He said Memo-gate was actually an effort to stage an uprising within the army for which the army was very angry.

He [Gen Aslam Beg] said Osama was not in Abbotabad when the US operation took place and some people in government knew about the US attack [but still no evidence to corroborate this claim has surfaced].'

The whole Pakistani nation and the world media started pondering over a veteran Pakistani General's statement that weather Osama was actually found and hit there in Abbotabad on 2nd May 2011 or it was wholesome drama only – Memo-gate comes later.

During the memo proceedings, once Asma Jahangir while advocating on behalf of Husain Haqqani, called those petitions *'benami'* (anonymous) because two of its respondents were actually the petitioners. She was pointing towards DG ISI and the Army Chief. She had also questioned a meeting between the ISI Chief and Mansoor Ijaz asking that why did the DG ISI investigate the matter without permission of the PM; also that the judiciary should not intervene in civil-military issues as the prime minister keeps the right to sack the DG ISI.

In the affidavit submitted to the Supreme Court, the Army Chief Gen Kayani said that the news regarding the memo was correct and evidence was available of the contacts made in the context of the conspiracy. It was clarified that DG ISI did not meet any Arab leader in between 1st to 9th May 2011 *as mentioned in the article*. DG ISI's visits to Kingdom of Saudi Arabia and UAE only, prior to or after this period, were part of routine intelligence sharing activity, during which he interacted with his counterparts only.

[An article was published in the 'Independent' of 13th December 2011 in which Omar Waraich made false assertions regarding DG ISI's visits to Arab countries; saying that the DG met senior Arab leaders and asked permission for a military coup in Pakistan. The story was published without verification at any level.

The Living History of Pakistan Vol-I

Contents of Omar's article were strongly and categorically denied. A legal notice was served to the newspaper to retract the story and apologize.

The ISPR had further clarified that why the ISI Chief had to go to foreign countries to urge or beg the government. It was very easy for them to move their 111 brigade from 20 miles away and take over the Presidency and the PM House; that was enough.]

MEMO-GATE ISSUE IN FOREIGN MEDIA:

The American press had circulated that Mr Zardari used Husain Haqqani to employ Mansoor Ijaz to interact with the American authorities. Mansoor Ijaz was also a guru in deceit and demanded advance money of \$1 million. Mr Zardari paid him through Haqqani via the Global Lobby; the Neo-cons & the 'Project for the New American Century' (PNAC), but Haqqani just paid \$ 200,000 to Mansoor, and kept \$ 800,000 with him and Ijaz went furious.

That was the reason that Zardari himself hinted Husain Haqqani to resign. And so Mansoor Ijaz exposed everything and everyone was on the run; he leaked everything to the DG ISI who had agreed for writing the article of 10th October 2011 in *Financial Times*.

Referring to '*the Telegraph*' of 2nd January 2012:

'Miss [Asma] Jahangir accused the judges of the Supreme Court of falling under the influence of country's army chief after it established a judicial commission to establish whether Husain Haqqani had violated the constitution by colluding with a foreign power against state officials. They've set up a commission not to probe what is already there but to go further and create more evidence the case is stacked against Haqqani.'

Former senior Pakistan Army officer Lt Gen Talat Masood said in a TV talk that the military had already achieved its objectives when Husain Haqqani was forced to resign, but the truth should be established, regardless of the political fall-out. '*They want to see whether it was done at the individual level or whether it had the blessing of anyone in the presidency. Whatever the political consequences, they still think it's worth it,*' the retired General opined.

The Living History of Pakistan Vol-I

On the subject issue, the *BBC media* on 11th January 2012 had observed that:

'Pakistan's main organs of state and other players are heading for an inglorious showdown. The powerful military has heaped pressure on the civilian government by participating in a Supreme Court (SC) inquiry which could see President Zardari condemned as a 'traitor'. The government has retaliated by accusing the military top brass of flouting the rules of business.

It has warned them against setting up a 'state within the state'. The SC appears to have thrown its weight behind the military, recently questioning the honesty of PM Yousuf Raza Gilani. It wants corruption cases against hundreds of politicians, including the president, reopened.'

PM Gilani and President Zardari had publicly said their government would not implement some of the court's decisions; the politically motivated ones like NRO. On the other end, after 15 years of dabbling in politics without making an impression, Imran Khan suddenly started attracting massive crowds to his public rallies [he used word *tsunami*] hoping that it would wash away all the "corrupt politicians and plunderers".

However, the historians kept the record of what a year earlier [on 12th January 2011] the Pakistan's envoy in America, Husain Haqqani had told the media that *'Pakistan has already amassed 38,000 military and paramilitary forces in the tribal area in the past few months. Pakistan does not want US troops on the ground there. Only Pakistan will determine what to do and when to do it. Putting US boots on Pakistani soil is not going to happen, and it's not needed at all.'*

But actually Haqqani's PPP government never meant it seriously. From inside they had been fighting America's proxy war in continuation of Gen Musharraf's policies. Similarly, during the first week of May 2011, Husain Haqqani had said on ABC's *'This Week'* program that:

'Some heads will roll after his country finishes its investigation into how Osama bin Laden managed to hide out near the capital city of Islamabad in the compound where he was killed by US forces. If those heads are rolled on account of incompetence, we'll share that information and if, God forbid, somebody's complicity is discovered, there will be zero tolerance.'

Husain Haqqani had also said in *CNN's 'Fareed Zakaria GPS'* program the same day that:

The Living History of Pakistan Vol-I

'He didn't know whether the al-Qaeda leader had help from his country's government or military to stay concealed in Abbotabad. What we need now is for Pakistan's elected leaders to exercise the leadership and get to the bottom of the matter.'

In the wholesome memo's scenario, the general populace vowed not to kill the messengers but to go after the big thugs. Major question was that why Mansoor Ijaz out of the blue turned coats. Something must have happened for him to spill the beans otherwise problems between the Army and the civilian heads were not new in Pakistan.

Some considered it a brilliant move by Mr Zardari. He got himself a perfect shield against a pre-empted coup. The whole show was to keep Gen Kayani on back foot; neutralized just like the CJP Iftikhar M Chaudhry. During the last six months, between May [the memo was drafted & sent] and November [the memo issue caught fire] of 2011 and especially after the publishing of Mansoor Ijaz's memo in the *'Financial Times'* of 10th October 2011, PPP's intelligentsia have been trying to justify the contents of that memo by elaborating that:

- The memo said that there was a possibility of a military coup but with so many coups in the past, no one could assure that there won't be another one.
- The memo promised an honest inquiry in Osama's killing episode but hosting Osama should be taken as 'treason' if it was in Pakistan Army's knowledge.
- The memo said that 'S' wing of the ISI would be wound up and support to the terrorists would be stopped. If the wing is meant to keep liaison with militant groups then it should be the wish of each Pakistani to abolish it. It also referred to a commitment Pakistan had repeatedly given to the world and should also be done for the sake of protection of Pakistani citizens.
- The memo indicated that the attacks on Mumbai would be investigated. No harm; Rehman Malik had repeatedly and openly urged the Indian Courts during the SAARC session of 2011 that *'Ajmal Kasab should be hanged'*.

It is available on record that once in 1996 Mansoor Ijaz had written an open letter in the Wall Street Journal against Benazir Bhutto; she was sent home two months later.

On 4th January 2012, President was also issued a 'notice' from the Judicial Commission to file a reply in the memo affair but Mr Zardari refused to file a statement terming it an 'unnecessary publicity' by Mansoor Ijaz.

The Living History of Pakistan Vol-I

On 6th January 2012, President Zardari formally negated the said Judicial Commission saying that the government would only accept a parliamentary panel's decision on the authenticity of alleged memo; setting the stage for a fresh confrontation with the Supreme Court who had announced that Commission just a week earlier. 'Let both [SC & Parliamentary Panel] decisions come. In my view, parliament is sovereign,' he said in an interview with Geo News TV channel.

Worth mentioning that the CJP Iftikhar M Chaudhry had indicated in his remarks in the apex court that *'he believes the Supreme Court is better placed to investigate a matter like the Memo-gate scandal'.*

COMMISSION CONCLUDES ITS FINDINGS:

The 3-member Memo Commission once ordered Husain Haqqani and JKL leader Yaseen Malik to appear before the commission on *5th April 2012* for cross examination. The commission also directed the Foreign Office to appear along with the encrypted correspondence of Haqqani when he was the ambassador to the United States. The SC had extended the commission's deadline to submit an inquiry report till *15th May* instant.

Notices were issued to all the parties including one Sohail Khan DG 'America Desk' in the Foreign Office Islamabad to produce the confidential correspondence of Husain Haqqani with them from January 2011 till Haqqani's resignation. The Commission had observed earlier that Husain Haqqani in his undertaking before the SC had assured his availability in four days but did not appear on *26th March* despite the serving of notices on *2nd & 18th March 2012*. The order said the Commission could have issued arrest warrants for Husain Haqqani.

In Memo Scandal, the US got itself involved voluntarily as President Zardari allegedly having been of great help in giving clearance to Abbotabad operation. Husain Haqqani and Mansoor Ijaz did their job by originating and delivering the Memo. It fetched result, as there was no military coup.

However, the Zardari's government failed to do its part of the deal [*what was the promised deal; not known*]. Having waited from May to September 2011, the Pentagon got furious and decided to punish it for its failure. As a rule [*the rogues abide scrupulously by their code of conduct*], all stake holders should have waited but the Pentagon could not; and asked Mansoor to spill the beans.

The Living History of Pakistan Vol-I

The Memo Scandal killed two birds with one stone: it provided proof of treason against Zardari, enough to frighten him in that political scenario; and absolved the army of accusation of incompetence in Abbotabad operation. However, it could have been a white paper, not a whitewash.

At its last hearing, the Commission recorded the statement of its Secretary District and Sessions Judge Islamabad East Raja Jawad Abbas Hassan who had submitted the forensic report of electronic evidence - BlackBerry messengers and email exchanges of Mansoor Ijaz and Husain Haqqani. The Secretary was cross - examined by Ijaz`s counsel Akram Sheikh and the deputy attorney general. Haqqani`s lawyers did not attend the hearing because the former ambassador had boycotted the Commission`s proceedings.

Advocate Akram Sh said the forensic report proved that Mr Haqqani had engaged his client for drafting and delivering the memorandum to Admiral Mullen. He, *inter alia*, accused Hussain Haqqani of paying \$30,000 per month to American lobbyists Harlen Ullman and David Frum from his \$7 million discretionary fund for damage control after the memo-gate scandal came into limelight.

Later on, Secretary of the Commission, Raja Jawwad had proceeded to London for the forensic test of electronic evidence contained in laptop and BlackBerry handsets of Mansoor Ijaz through a British company, System Technology Consultants Limited (Sytech), for the forensic test because of its reputation, accreditation, cost-effectiveness and their promise for expeditious processing,` the secretary added. The experts started their work on 11th May and submitted reports, along with their affidavits, on 14th May 2012.

The Commission also took up an application of Barrister Zafarullah Khan who requested it to treat the evidence as completed and placed them before the Supreme Court for further proceedings.

SC PROCEEDS ON MEMO REPORT:

On 10th June 2012, the 3-member Commission on Memo issue, headed by Justice Qazi Faiz Issa, submitted its report in the Supreme Court. The Commission held 24 marathon sessions recoding statements of scores of concerned persons including that of the prime character Mansoor Ijaz`s on video link, while the statement of Husain Haqqani could not be recorded as he like Ijaz on the pretext of security demanded video link facility, which

The Living History of Pakistan Vol-I

the commission didn't accede and, thereafter, Huqqani despite repeated summons refused to come to Pakistan.

Reacting to the Commission's report, Husain Haqqani tweeted on the social media that *'he will challenge the Commission's report'* whereas most of the politicians opined that *'Haqqani should be tried for treason'*.

In the analytical report formulated by 'Systems Technology Consultants Ltd [SYTECH], released by Simon Lang in American media on 23rd July 2012, once again reiterated that *Haqqani and his government in Islamabad were guilty of high treason.*

The CJP Iftikhar M Chaudhry observed that when Haqqani was leaving Pakistan, he had assured the court that he would come back within a period of four days if summoned.

The Commission, however, determined that the memo was not a farce, but a reality. The motive of the memo was to ensure the US that the civilian [PPP] government of Pakistan is its ally and that being an ambassador, it did not "suit" Haqqani to give such assurances to a foreign country.'

The Supreme Court ordered that the Commission's report be made public. The Memo-case was being heard at the Supreme Court's 9-member bench, comprising Justice Mian Shakirullah Jan, Justice Jawad S Khwaja, Justice Khilji Arif Hussain, Justice Tariq Parvez, Justice Asif Saeed Khan Khosa, Justice Amir Hani Muslim, Justice Ijaz Ahmed Chaudhry and Justice Azmat Saeed.

Part of the report, read in the apex court, said:

"Mr Haqqani sought American Help; he also wanted to create a niche for himself making himself forever indispensable to the Americans.

He lost sight of the fact that he is a Pakistani citizen and Pakistan's ambassador to the United States of America, and therefore his loyalty could only be to Pakistan."

This was the sin of the CJP and the SC too that he delayed the judgement on memo high treason case and refused to listen to a petition against the treacherous forces including media. Husain Haqqani did NOT act alone. He had the full backing of Zardari and Gilani and then all of them were after the CJP's for the mistakes his son committed.

MEMO-GATE ENDS:

Memo-gate issue is dead but it may be repeated again in some other shape as has been happening before in the chequered history of Pakistan. Some cases are not decided in the courts but the history notifies their judgments; as has been in the case of Mehran Bank Scandal of 1996. Asghar Khan Case can be taken here as reference. The same like scenario was developed by both, Gen Pasha and Nawaz Sharif, in 2011 by using the superior judiciary through memo-gate proceedings.

Summarizing the whole episode; memo scandal actually started on 2nd May 2011 when the sovereignty of Pakistan was seen at stake in the backdrop of American raid at Abbotabad. The Osama Ben Laden's story was known to all in which Gen Kayani and Gen Pasha were substantially beaten on all fronts and their tall claims of bravery and strategic planning were defeated in just an hour's operation by the US intruders.

After three weeks, an attack on Naval Base Karachi, destroying Pak Navy's two intelligence planes, exposed Pakistan's tactical armed capacity before the whole world. The global voices had pushed Pakistan to the wall making the general populace believe that the army which were not capable of protecting their own strategic assets then; how would they safeguard the people of Pakistan; forget ruling the whole country or running the governments as had been in Gen Ziaul Haq or Gen Musharraf times.

After 2nd May 2011's episode, the second launching pad of memo-gate torpedo was the Financial Times issue of 10th October 2011 when Mansoor Ijaz got his essay published therein pointing towards another dubious character Husain Haqqani, the '*American Ambassador in America*' but sitting in Pakistan's Embassy premises in Washington and drawing his salary from the Foreign Office Islamabad.

The third blow and the final roars were trumpeted on 30th October 2011 at Lahore through Imran Khan's memorable public address. ISI, on one side provided moral support to the PTI but on the other end conveyed message to Nawaz Sharif for getting ready to kick out Zardari from the Presidency. This task was to be accomplished by firstly attracting favours of the MQM, JUI and dissidents from PML(Q) from within the Parliament and extending hands to Imran Khan's PTI outside Parliament premises.

Nawaz Sharif, as ever before, was not shrewd enough to understand the game. He, instead of moving ahead through political negotiations, preferred

The Living History of Pakistan Vol-I

to depend upon 'his judiciary' which he had brought in March 2009 through his so called triumph in long march; *thus himself walked into the Supreme Court with memo-gate petition*. He was welcome by the apex court but had to move a step back at last feeling that memo-war was not at all staged for him.

During this memo-gate show, the PPP time and again tried to commit suicide as 'political martyr' but Nawaz Sharif every time provided them shelter, relief and protection; and saving PML(N)'s government in Punjab also. In the mean time three factors appeared almost simultaneously:

- Firstly; Imran Khan bravely announced that his PTI would not accept any other course of political change except through polls & democratic means.
- Secondly: the SC unambiguously announced that no unconstitutional measure would be upheld or even tolerated for change of government.
- Thirdly; Nawaz Sharif had realized that the 'hidden hands' were using the shoulders of PML(N) and the SC to fire their guns.

In nut shell, when Gen Kayani & Gen Pasha felt that their memo-exercise, though got proved in Judicial Commission and the SC, but went fruitless due to cumbersome centuries old procedures of the SC, they got frustrated. Ijaz also preferred not to land himself in more controversy and the result was that in the last week of January 2012, the SC allowed Husain Haqqani's name removed from the ECL. Three days later the special guest staying originally at Presidency and later at the PM House left for his home land, the America.

Nawaz Sharif's memo-case was not finished in the SC when the live shows at electronic media, long articles in the newspapers and the '*lunger gup*' in army messes had come to an abrupt end. Soon it sank deep into the history and the poor people of Pakistan were shown new versions of PPP's '*roti, kapra aur makan*' and PML(N)'s '*qarz utaro mulk sanwaro*' and Gen Musharraf's '*above board accountability*'.

An essay appeared in *Pakspectators.com* on 5th February 2012 is referred for detail.

POST SCRIPT:

Referring to '*the Jang*' dated 23rd November 2013; Husain Haqqani had started his politico media career by joining Jama'at e Islami [JI], through which he entered in first line journalism in Gen Ziaul Haq era. He

The Living History of Pakistan Vol-I

continued to appear on Pakistan's official PTV for weeks weeping and crying after General's crash in August 1988 – declaring him the '*martyr of Muslim Umma*'. From there Nawaz Sharif picked him and got included in his talented team as 'inmate advisor' because of his plans against Benazir Bhutto. Nawaz Sharif also blessed him with an esteemed slot of Pakistan's Ambassador in Sri Lanka for a year in 1992-93.

In Benazir Bhutto's regime, Husain Haqqani manoeuvred to land in the PPP through tens of his articles in media against Nawaz Sharif. When Gen Musharraf took over the reigns in October 1999, he went in self exile to America; from there he tried his level best to come close to the military command but could not succeed due to his chequered history. Gen Musharraf once told in a press conference that:

'Husain Haqqani is writing articles against my military rule while sitting in America because I had refused his request for a media related slot in my government'.

While settled in America, Husain Haqqani continued writing against Pakistan's institutions, then brought his first book '*Pakistan: between Mosque & Military*' sponsored by an American think tank NGO. Then in his latest book, Haqqani wrote against Qaed e Azam [father of the nation] Mr Jinnah for which Zafar Hilali, another former ambassador of Pakistan severely criticized Husain Haqqani [daily '*the News*' dated 20th November 2013 is referred] while saying:

'Husain Haqqani has done a fresh try to blame Pakistan for the destabilized diplomatic relationship between the US & Pakistan and what else he could do while sitting in Washington.

'He knew it well that if he presented an objective analysis of the things, based on truth, he could be deprived off all the amenities and facilities provided by the US government; he would be kicked out from America next day.'

Scenario 98

PRIME MINISTER GILANI SENT HOME-I:

The inner circles of the PPP believed that, in January 2012, the two prime institutions, Pak-Army and judiciary, had joined hands to agree in principle to inflict fatal damage to their government by removing Asif Zardari from the Presidency. In the likely event that the Prime Minister Yusuf Raza Gilani and the parliament might hit back, the Supreme Court indicated to help in dissolving the parliament and installing a technocrat government to run the country till ending 2012. Perhaps, Pakistan's powerful army was fed up with publicly unpopular President Zardari and wanted him out of the office, but through legislative or legal means and without a coup this time.

The Living History of Pakistan Vol-I

Tensions were rising between PPP's civilian leadership and the Generals over a number of issues like Osama bin Laden's killing on 2nd May 2011, memo-issue of Husain Haqqani, Salala episode of 26th November 2011, blockade of NATO supplies, intending normalcy of relations with India and finally the PM's Contempt of Court question in the SC. In every subject the army was accused of plotting a coup after the US raid that killed Osama in Abbotabad. Controversies developed and the trust diminished with every passing day. In Senator Mushahidullah's words:

'Who isn't fed up with President Zardari and Prime Minister Gilani? It's not just the opposition and the man on the street but people within the government too.'

A general perception prevailed in all *lunger gups* near military's kitchens and media live discussions.

ARMY VS PPP ONCE MORE:

The SC once again signalled to the army Generals that it was ready to take (de facto) legal (but *de jure* illegal and unconstitutional) action against President Zardari; memo case proceedings witnessed that observation. On the question of constitutional immunity to President Zardari, CJP Iftikhar M Chaudhry had given the verdict that:

'Immunity to anyone did not apply automatically as it ruled in clear terms that in order to benefit from this constitutional provision, the court had to be asked for it. In a case wherein a high personality is involved, but claims to have constitutional immunity for submitting replies to the court, there is a legal principle which says that the court has to be asked for it.'

It was explicitly told to the Attorney General Maulvi Anwarul Haq during the hearing of the memo case. A nine-member larger bench headed by the CJP Chaudhry was hearing the petitions. Inter alia, it was also hinted that *'immunity to the president under Article 248 of the Constitution was still an undecided issue'*.

On 15th January 2012, one former SC Judge, J Khalil ur Rehman Ramday said in an interview to the GEO News that in order to claim immunity one had to appear before the SC as it was the duty of the apex Court to interpret the constitution. He reminded that the judiciary had sent the NRO case to the parliament but it did nothing. The NRO review petition from the PPP government did not state anything about immunity.

Justice (rtd) Ramday further commented [on the letter to be written to Swiss authorities] that this issue or the immunity had no relation to criminal

The Living History of Pakistan Vol-I

cases. Aitzaz Ahsan, the PM's counsel, retaliated immediately to that interview and reiterated that President Zardari enjoyed blanket immunity in and outside Pakistan under the constitution and Vienna Conventions. Barrister Ahsan maintained that:

'There is no need to go to any court for seeking immunity by the President. The apex court should also accept this 'protective' clause in the Constitution. If a writ petition against the Chief Justice of Pakistan or the Chief Justice of High Court is filed, the court office would not accept it because applications could not be filed against them and neither the CJs would come to claim the immunity.'

Earlier On 22nd December 2011, the PM Gilani had said in the Parliament that there was a 'conspiracy' to overthrow his elected government and, in unusual candid remarks, reminded the powerful army Generals that they were subservient to elected politicians. It was taken as a newfound assertiveness in the PPP to push back against the coup planners in the Pakistan Army. The PM vowed that all the State institutions were answerable to the Parliament and:

'There should not be a State within State; if the Army considers itself so then it is unacceptable. We will have to come out of this slavery. If we will remain subordinate to this system, then there is no need of the parliament.'

The PM asserted that the government had made the armed forces accountable to the Parliament saying that:

'We have the highest regard for the armed forces and assumed ownership on war on terror and stood shoulder to shoulder with our armed forces in difficult times [Referring to the 2nd May episode of Osama bin Laden and the NATO attacks of 26th November 2011 at Salala check post in Mohmand Agency].

The government firmly stood with the institutions and fully protected them after the Mumbai incident. I even sacked Gen (Retd) Mahmood Durrani for giving an irresponsible statement on the issue.'

The PM also made mention that the joint session of the Parliament was convened soon after the 2nd May 2011 incident to probe how Osama had managed to live in Pakistan for six years and on which visa he came here. It may be kept in mind that the Abbotabad Commission had questioned the issuance of thousands of visas from Washington by the PPP government in 2009-10 without scrutiny of security agencies.

The Living History of Pakistan Vol-I

[Barrister Aitzaz Ahsan had shown his concerns over contradictory statements of the PM regarding Pakistan Army when PM Gilani, while touring foreign countries had said that 'army obeys the democratic government,' but contradicted himself by saying 'it does not' in the Supreme Court.

In those days there were baseless rumours of Martial Law in the country which the Army Chief Gen Kayani had categorically dis-carded. Aitzaz Ahsan had observed that there were few "friends" who wanted clash between army and the government.]

The PPP government of PM Gilani left no stone unturned to propagate that it was the army which had been shaking the cord from the backdoor aspiring for another term of military rule. The intelligentsia, however, could not buy the idea due to many factors. See a few lines from 'The Economist' of 12th January 2012:

'This week the PM Gilani denounced as "unconstitutional and illegal" affidavits that the Army Chief Gen Kayani, and the ISI Chief Lt Gen Pasha, filed in December [2011] in connection with the memo-gate proceedings. Mr Gilani was furious that the testimony of the Generals, which was at odds with the government's position, was lodged without consultation. Then Mr Gilani fired the retired General had been serving as the top bureaucrat at the defence ministry, and replaced him with a civilian loyalist.

But in fact a coup now is unlikely. The army has enough on its plate: a conflict against Pakistani extremists in the north-west; a resolution for Afghanistan left to stitch up; and then an apparent lack of solutions for the country's dire economic problems.'

In early January 2012, a 7-judges bench had issued a 'show cause' notice to the PM Gilani to explain his government's failure to implement its earlier verdict to reopen cases closed under the controversial National Reconciliation Ordinance (NRO). The government continued its policy of negligence and avoidance to implement the order. Viewing this attitude, the court gave six – options ruling on 10th January which the general populace hailed as a midway solution to the deadlock; no adequate response from the government to those six options either.

On 16th January 2012, finding no headway, the apex court bench, which was ridiculed and taken through a mockery amidst public speeches and news articles, issued contempt of court notice to PM Gilani; again no response. The PPP's Government indicated willingness to seek reconciliation with the judiciary by fielding a pro-judiciary lawyer Aitzaz Ahsan but half heartedly. The selection of Barrister Ahsan as the defence counsel for PM Gilani had in fact suggested a move to lower rising tensions since the court

The Living History of Pakistan Vol-I

had accused the 'PM Gilani of not being honest to his oath' the previous week.

A script from 'the guardian' dated 16th January 2012 also reflected the odd situation around:

'..... Relations between the army and the civilian leadership are poor and deteriorating fast. President Asif Ali Zardari, the widower of Benazir Bhutto, is deeply unpopular and seems incapable of acting to bring his nation out of a cycle of violence, economic failure, and administrative incompetence. Prime Minister Yusuf Raza Gilani has no power base of his own.

There is no longer a straight fight for power between the military – who claim that their frequent interventions in politics are rendered sadly necessary by the poor quality of civilian rule – and the politicians – who claim that repeated bouts of military rule have fatally undermined democratic institutions.

Though the furore surrounding [Haqqani's] memo made the tensions between the civilian leadership and the military very clear, it is in fact the courts that are hounding Zardari and Gilani.

The Pakistani PM was ordered to appear before judges; could be disqualified from office. His alleged offence is to refuse to reopen corruption investigations into president Zardari, who was dubbed "Mr Ten Percent" for his rumoured propensity for demanding kick-backs on government contracts, has presidential immunity.

..... That the judiciary, though justly accused of partisanship, is an important player in its own right.

Military commanders believe that a coup would force a total rupture with Washington. The international community is no longer as permissive of military takeovers as it once was. Secondly, the army is aware of public opinion that the unpopularity of the civilian government does not necessarily translate into support for a military takeover. Thirdly, Pakistan's extremely vociferous media makes military rule unfeasible.'

A PM APPEARED IN COURT:

On 19th January 2012, the PM appeared before the SC along with leaders of the coalition parties including PML(Q), ANP and MQM which had collectively decided that PM Gilani should honour the SC verdict. The PM was also accompanied by ministers and advisers who were received [and encountered] with pro-SC slogans from the legal community.

It might be interesting to note that Aitzaz Ahsan had worked for the judiciary's independence after Gen Musharraf had sacked almost 60 judges of higher courts on 3rd November 2007, including the CJP Iftikhar M Chaudhry. On the other hand his relationship with the PPP remained debatable. His leading role in seeking restoration of the Chief Justice and his team had earned him the displeasure of President Zardari as well as other PPP leaders. In February 2009, PPP's Secretary General Jahangir Badar had once expelled Aitzaz Ahsan disgracefully from the party's Central Executive Committee (CEC), though his basic membership [*and of course his loyalty*] remained intact.

However, the tensions between the two faded away [on 27th December 2011] at the death anniversary of Benazir Bhutto, when President Zardari invited Aitzaz Ahsan to address a gathering of party workers at Garhi Khuda Bux after he had delivered his own speech. Since then, *Barrister Ahsan played a key role for the PPP in covert negotiations with PML(N) to evolve a consensus* for holding fresh parliamentary polls later that year amidst a standoff between the civilian and military leadership.

Referring to *the 'Dawn' of 6th January 2012*, Aitzaz Ahsan from the PPP and Senator Ishaq Dar of the PML(N) played the main role in this connection. Their last meeting in which details were finalised was held on 3rd January; PPP admitted the meetings between the two leaders focussed mainly on Senate polls in which both sides desired that their candidates for Senate seats should be elected unopposed [like in the previous electoral exercise] to check 'buying of voters (members of national and provincial assemblies)' by the candidates.

The above referred policy was earlier followed in the 2009 Senate polls too, but this time the three major political parties {the PPP, PML(N) & the PML(Q)} feared that some wealthy candidates, especially from the Pakistan Tehrik e Insaaf (PTI) of Imran Khan, would try to make use of their coffers to 'win over' voters. The PML(N) claimed that holding early general elections was also part of the understanding reached between Mr Dar and Mr Ahsan who were given the mandate to decide an interim set-up acceptable to the PML(N) and the PPP both.

Coming back; before the SC, Aitzaz Ahsan had to divulge that Article 248 of the Constitution [which gives immunity to the president] could be termed as a 'discriminatory law' but *'cannot be discarded without a constitutional*

amendment' as 158 heads of state, including the Pakistani president, enjoy immunity. Ahsan had charged only Rs:100 (about 75 pence then) as his [token] fee from the government but on the conditions that the PM would present himself respectfully before the court and that officials would refrain from issuing statements against the judiciary & army. [*Aitzaz Ahsan generally takes fee up to Rs:10 million to fight a case*]

Regarding PM's standpoint on the NRO's implementation case, Aitzaz Ahsan said the President enjoys the immunity and thus there is no contempt of court charge is liable on the PM. However, the legal community did not endorse Aitzaz Ahsan's viewpoint thus shouted strong anti-government slogans on the SC premises on 19th January 2012 when he was talking to the media after the SC adjourned the hearing of the said contempt case. The lawyers' community was charged up, expressing solidarity with the judiciary and raising slogans in favour of the CJP Iftikhar M Chaudhry.

When Aitzaz Ahsan was talking to the media to present his contention on the contempt case, anti-government lawyers stormed the area and chanted slogans against Ali Ahmed Kurd, Justice (ret'd) Tariq Mehmood and Aitzaz Ahsan for supporting the government. Aitzaz Ahsan left the court building without completing his press talk.

On 2nd February 2012, it was the second time in the country's history that the SC had brought contempt charges against an incumbent PM. The 7-member bench of the SC was headed by Justice Nasirul Mulk also comprising Justice Asif Saeed Khan Khosa, Justice Sarmad Jalal Osmany, Justice Ejaz Afzal Khan, Justice Ijaz Ahmed Chaudhry, Justice Gulzar Ahmed and Justice M Ather Saeed. The media was told that:

'The party has decided not to write the letter come what may, [as the president had said in a TV interview some days earlier]'. Justice Nasirul Mulk had observed that:

'.....After the preliminary hearing, we are satisfied that prima facie there is enough case for further proceeding into the matter. The prime minister is required to remain present in the court on 13th February.'

Aitzaz Ahsan had failed to convince the 7-member bench of the SC about the question of the president's immunity from criminal proceedings under Article 248 of the Constitution. He had appraised the court about the Rules of Business over the advice taken by the PM saying that the premier was authorized to reject a summary; however, if the PM did not reject the advice, it was not a crime.

Ahsan said the premier had approved a new summary on 23rd September 2010, which was drafted and put up by the Federal Law Secretary Aqil Mir-

za. According to the summary, the Swiss cases against President Zardari and Benazir Bhutto were not closed in response to the letter written by former Attorney General Malik Qayyum. Instead, these cases were closed by the Swiss authorities because of insufficient evidence.

On 4th February 2012, PM Gilani once more reiterated that he would honour any decision of the SC even if it involved his being handcuffed and sent to jail. The issue of writing a letter to the Swiss authorities, however, continued to hang fire. The apex court had shown enough judicial restraint on the issue of the implementation of the NRO verdict over the last two years, though the question regarding the basis for its selection of the cases would remain an issue of debate in days to come.

While the government had taken the stand that the PM was advised by highly qualified legal experts not to write the letter to the Swiss authorities but the government should not have ignored the point that the injunction by 17 judges of the apex court should carry greater weight.

[Many believed that if at all the said summary was submitted to the PM by Justice @ Aqil Mirza then he must have been screwed and pressurized to put up that summary. It might be a concocted or forged summary because Mr Mirza had long ago proceeded on retirement on 7th May 2010.

Federal Law Secretary Justice (rtd) Aqil Mirza had resigned a day after he was summoned by a 5-members bench of the SC hearing a case relating to non-implementation of its 16th Dec 2009 verdict revoking the National Reconciliation Ordinance (NRO).

The bench headed by Justice Nasirul Mulk had asked the law secretary and NAB Chairman Nawid Ahsan to appear before it on 13th May after Attorney General Maulvi Anwarul Haq stunned the court with his statement that the matter relating to Swiss cases had ended and there was no need to revive mutual legal assistance in probing \$60 million money laundering cases involving President Asif Zardari.

Aqil Mirza was the fourth senior official who had resigned since the Supreme Court started hearing the case regarding non-implementation of its judgment against the NRO. Others were NAB Chairman Nawid Ahsan, Attorney General Anwar Mansoor and Senior Joint Secretary Akbar Khan Achakzai.... accusing Law Minister Babar Awan of obstructing attempts to write letters to Swiss authorities for reopening the cases.

The Living History of Pakistan Vol-I

Sources said that the Federal Secretary had recorded his statement in the Supreme Court under the government's pressure therefore he had to resign.'

The SC bench, of course, knew the facts.] {Ref: the daily 'Dawn' of 8th May 2010}

However, the apex court observed and noted that:

'The PM preferred the summary over the court orders; the court had asked for correction of the error that had been committed; everyone knows, the advice given to the premier is not correct; during the hearing of the NRO review plea, the government had not said that the cases had been closed; why has the letter not been written so far?'

Justice Asif Saeed Khosa said the sole proprietary was that the trial of the case should be conducted in Switzerland. Justice Mulk told Mr Ahsan that:

'You are pleading that the Swiss cases were closed while the premier said the president enjoyed immunity.'

Mr Ahsan had no answer. Justice Osmany said:

'You (Mr Ahsan) are saying that you were mistaken... conceived misconception ... and seek opportunity.'

And Aitzaz had to admit that:

'You (judges) have pushed me to a cul-de-sac & indicted.'

Surprisingly, all of a sudden on 8th February 2012, Barrister Aitzaz Ahsan filed an appeal against appearing of the PM Gilani before the Supreme Court on contempt charges. The appeal was not only admitted but immediately fixed for hearing on the next day; to be heard by an eight member's bench to be headed by Justice Iftikhar M Chaudhry CJP.

Though Mr Ahsan had raised 54 points spreading over more than 200 pages of appeal but his main objection was *'that the court in its order on 2nd February cited no specific reasons for initiating contempt of court proceedings against the prime minister.'*

Mr Ahsan also said that:

'The court should also hold those Generals responsible for contempt who had not only dismissed judges but also arrested them along with their children.'

The Living History of Pakistan Vol-I

He was referring to the sending home judges exercise conducted by Gen Musharraf on the evening of 3rd November 2007; they were kept locked in their residences for about three months.

On 9th February 2012, an eight-member bench of the SC, headed by CJP Iftikhar M Chaudhry, [other members included Justice Mian Shakirullah Jan, Justice Jawwad S Khawaja, Justice Anwar Zaheer Jamali, Justice Khilji Arif Hussain, Justice Tariq Parvez, Justice Mian Saqib Nisar and Justice Amir Hani Muslim] hearing an intra-court appeal against PM Gilani adjourned proceedings conveying the remarks that the chief executive had embarrassed himself.

An attempt was made to influence the court by raising certain points in the appeal. The apex court had, however, observed that *'if the PM writes the letter to Swiss authorities we will end contempt proceedings. The money in the Swiss banks belonged to the people of Pakistan.'*

However, concluding the proceedings, the court upheld the previous ruling of 2nd February by 7-member bench, saying there was no need for the apex court to interfere with the proceedings already on board. The court held that the cases abolished abroad, would be revived and a letter was sought from the government which it never opposed on any stage. PM Gilani was called upon to implement this order in the capacity of Chief Executive of the country; but, he failed to perform his duty in this regard.

On 13th February 2012, the 7-member bench of the Supreme Court framed formal charges of contempt against PM Gilani. Justice Nasirul Mulk heading the larger bench read two page charge sheet against him signed by seven judges of the apex court bench. According to charge sheet, PM Gilani was indicted for not complying with paragraph No 178 of Supreme Court's verdict in NRO case.

"Have you read the charges framed against you?" asked the bench. "Yes, I have read. I understood," he replied adding "I will plead innocence."

The 2-page charge sheet stated that the PM Gilani violated Article 204 of the Constitution by not writing a letter to the Swiss authorities in accordance with the court orders.

Once, PM's attorney Aitzaz Ahsan presented two summaries of Law Ministry as evidence to SC in PM contempt case. The defendant's witness Nargis Sethi also got her statement recorded in the court verifying the summary sent to the PM on 21st May 2010, along with other documents. She also verified Justice Aaqil Mirza's provisional report. Mr Ahsan maintained that summaries were presented to prove that the prime minister had acted upon the rules of business.

The Living History of Pakistan Vol-I

Earlier, Mr Ahsan submitted a list of witnesses in the SC which also included the names of Babar Awan and Law Secretary Masood Chishti. He prayed the court to call them as witness in the case. However, Babar Awan declined to oblige, saying he had been a lawyer in the NRO review case; therefore, he was not eligible to appear as a witness. He said if he appeared as a defence witness, it would tantamount to professional misconduct. Similarly, Law Secretary Masood Chishti offered regrets to appear as a court witness, saying he too had appeared as a counsel in the NRO review petition.

PM GILANI FOUND GUILTY OF CONTEMPT:

On 26th April 2012, the Supreme Court found Prime Minister Gilani guilty in the said contempt of court case giving him only a symbolic sentence till the rising of the court; the sentence lasted for about 30 seconds only. The said contempt case was part of a stand-off between the government and the judiciary, which many believed, was being backed by the military; however, no cogent evidence was there.

PM Gilani arrived at the SC premises with his fellow cabinet members and supporters, some of whom showered him with rose petals. The court found PM Gilani guilty of contempt for *'wilfully flouting and disregarding'* its order directing him to contact the Swiss government over corruption cases against President Zardari. Even though Mr Gilani was found guilty, the PPP viewed the verdict as victory worth celebration despite the conviction. Former PM Nawaz Sharif applauded the SC's decision saying that:

'The court verdict is based on truth and reality. The prime minister himself invited this situation'.

It was the first time in the history of Pakistan that a prime minister appeared before the court thrice and maintained his innocence but was convicted of contempt. The entire proceedings in the courtroom lasted for less than 10 minutes; the judges left the court immediately after announcing the verdict. Following orders were announced:

'For the reasons to be recorded later, the accused Syed Yousuf Raza Gilani, Prime Minister of Pakistan & Chief Executive of the federation, is found guilty of and convicted for 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 Ordinance (Ordinance 5 of 2003) for wilful flouting, disregard and disobedience of this court's direction contained in paragraph number 178 of the judgment delivered in the case of Dr Mubashir Hasan versus the Federation of Pakistan (PLD 2010 SC 265).

After our satisfaction that the contempt committed by him is substantially detrimental to the administration of justice and tends to bring this court and the judiciary of this country into ridicule.

As regards the sentence to be passed against the convict, we note that the findings and the conviction for contempt of court recorded above are likely to entail some serious consequences in terms of Article 63 (1) (g) of the Constitution which may be treated as mitigating factors towards the sentence to be passed against him. He is, therefore, punished under Article 5 of the contempt of court ordinance (ordinance 5 of 2003) with imprisonment till the rising of the court today.'

Former law minister Babar Awan told the media that according to Article 63 (3) of the Constitution, the Speaker of the National Assembly and Chairman Senate would decide whether the premier should be disqualified or not. The general perception was that if the speaker and chairman senate could not take a decision in 30 days, the case would automatically go to the Election Commission of Pakistan.

Babar Awan said it was wrong interpretation; the case would only go to ECP if the Speaker and Chairman Senate would send the same to them for decision in this regard. Initial media reports had created enough panic by saying *'that the premier was convicted for violating Article 63 (1) (g) and that he will be disqualified from taking part in elections for five years.'*

Aitzaz Ahsan, immediately after the judgment, had argued that the bench was not eligible to hear the case as it had taken the notice itself. He, however, said the charge against the PM was disobeying of the court and not scandalizing of the court. He said the charge of obstructing the administration of justice is also not there in the charge sheet; thus, as per Aitzaz's contention, *'the Prime Minister was not disqualified'*.

Immediately after hearing his conviction a special meeting of the Federal Cabinet was held in Islamabad to express 'solidarity with PM Gilani'. The cabinet noted that Mr Gilani had tried his best to take the political system forward with patience and perseverance. These efforts led to enhancing prestige of the parliament and the judiciary and strengthening of the institutions as he was not convicted for a moral crime but on the issue of interpretation. PPP was once again crucified; it was held.

The Federal Cabinet unanimously decided to file an appeal against conviction of the Prime Minister; however, Aitzaz Ahsan held that *'there is also no disqualification if the conviction is less than two years.'*

Mr Gilani had previously said on many occasions that he would step down if he was found guilty but when the judgment was announced he immediate-

The Living History of Pakistan Vol-I

ly called his cabinet meeting, headed it as PM and continued his routine business as if nothing happened. A detailed judgement from the court was awaited. The BBC news bulletin held that: *'The short order from the court was very lenient and also rather vague.'*

Mr Gilani flanked by supporters, when left the apex court gave appearance as his public image had improved. Presumably, the powerful military threw its weight openly behind the judiciary in the backdrop of memo scandal but the judiciary charged Mr Gilani for contempt of court in a separate case, proving him *'prima facie a dishonest man'*.

That *day of 26th April 2012*, the prime minister was seen in Pakistani national dress, *shalwar, kameez & shervani*; accompanied by his cabinet colleagues and allied party leaders, he drove himself up to the SC gates then Courtroom No 4 in a relaxed mood waving to dozens around showering rose petals on him till outside the court. When the guilty verdict was read out to him, he uttered three times over; *'A submission, my lord'* but the rising bench paid him no heed. Till then he had completed his custodial term while watching the judges going back.

Strange enough that when the PM Gilani entered the courtroom no:4, he was given a send off showered with rose petals because he was simply an accused. When he came out after 15 minutes he was a convicted person, that too from the highest court of the country, but again he was given the same honour by his party workers. Rather more than that because he was convicted for the sake of his president Mr Zardari [not for the PPP], but labelled as PPP's sacrificial victim, Bhutto dynasty's martyr.

Instead of giving honour to his Constitutional oath as the Chief Executive, Mr Gilani preferred to dishonour that while keeping oath with the party & Presidency dearer. Perhaps he had done a better decision because had he written the said letter [asking to revive Mr Zardari's cases] to the Swiss authorities, he would have been sent home the same day. He should have obeyed the orders of the SC, should have sent letter to the Swiss authorities, could be sent home by Zardari then; he was bound to earn more respect in the history of Pakistan – would have saved disqualification too.

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.

The Living History of Pakistan Vol-I

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 Benezir 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 remarks [...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 27th 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 28th April 2012:

The Living History of Pakistan Vol-I

'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 2nd 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 25th 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 30th 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

The Living History of Pakistan Vol-I

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

The Living History of Pakistan Vol-I

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 5th 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 13th 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 /

The Living History of Pakistan Vol-I

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 herein'*. 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 8th 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 26th 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 6th 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 28th 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 15th June 2012, Aitzaz Ahsan appeared on behalf of PM Gilani. His proposal for formation of a larger bench was declined

The Living History of Pakistan Vol-I

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'*

The Living History of Pakistan Vol-I

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 19th 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 16th 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 19th 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 Provin-

The Living History of Pakistan Vol-I

cial 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 Ordinance, 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 26th 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 22nd June to elect a new prime minister; Ahmed Mukhtar, Makhdoom Shahabuddin and Khurshid Shah were on the initial run but Mr

The Living History of Pakistan Vol-I

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 16th 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 26th 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 12th 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 25th 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 2nd 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

The Living History of Pakistan Vol-I

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 4th 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."*

The Living History of Pakistan Vol-I

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 3rd August 2012, the Supreme Court struck down the said contempt law which was hastily passed by the Parliament to protect PM Raja Pervaiz 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 COCA 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

The Living History of Pakistan Vol-I

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.

[Published at Pakspectator.com on 30th April 2012 under title: 'Gilani Drama is over']

POINT TO PONDER:

Referring to *Beena Sarwar's essay dated 21st 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:

The Living History of Pakistan Vol-I

'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.'

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 26th 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

The Living History of Pakistan Vol-I

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 11th 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 Living History of Pakistan Vol-I

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.]

The Living History of Pakistan Vol-I

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 necklace 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.

Scenario 100

DR ARSALAN IFTIKHAR CASE-I:

In the first week of June 2012; a private news spool appeared on YouTube containing certain eye-opening revelations concerning with a new business tycoon of Pakistan named Dr Arsalan Iftikhar, who happened to be the son of the then sitting Chief Justice of the Supreme Court of Pakistan. Immediately, the hot cake was picked up by all the media channels of the country and there were live talk shows invariably available all around and through the whole evening.

The Living History of Pakistan Vol-I

Next day, the YouTube reel was considered by the CJP Iftikhar M Chaudhry to be fit for the *suo moto* action. Immediately the notices were issued to all the concerned including a veteran journalist Shaheen Sehbai, the alleged originator of the subject issue.

On 6th June 2012, for the first time in Pakistan's judicial history, a son was summoned to the Supreme Court by his father Chief Justice to probe a scandal that threatened the CJP's so-called integrity; scores of people thronged the apex court that morning to witness the historic proceedings. Shaheen Sehbai was also asked to attend the apex court but he was abroad then; though had managed to communicate his 6-page statement with affidavit during the court hours.

Dr Arsalan Iftikhar stood before a three-judge bench headed by his father, Chief Justice Iftikhar M Chaudhry as the proceedings began. The CJP, aware of the dilemma, promised that if found guilty, his son would be convicted in the case, though the Supreme Court of Pakistan had never been a trial court.

Supreme Court summoned Malik Riaz and his son Ali Riaz for next day with the record against Dr Arsalan Chaudhry. Malik Riaz was in London for medical check-up that day. On the first day, Hamid Mir, anchorperson of the Geo News, appeared before the apex court and contended that neither he nor Shaheen Sehbai [*Group Editor of 'the News', who had aired an interview from Washington allegedly implicating Dr Arsalan Iftikhar*] had any material regarding the allegations against Dr Arsalan. The fact remained that Malik Riaz Hussain had shown 'the related file' against Dr Arsalan to Hamid Mir but did not provide any video documentation concerning the scandal. Perhaps a conspiracy was cropping up.

The apex court summoned another Geo News anchor Kamran Khan with the material on which he had conducted his programme on 5th June 2012. The apex court also directed the Securities and Exchange Commission of Pakistan (SECP) to appear before the court with the relevant record of Malik Riaz's company. One Col Khalil, Principal Staff Officer of Malik Riaz, told the court, *inter alia*, that executive members of the board were Commander Ilyas, Gen (rtd) Ihtisham Zameer, Major Gen (rtd) Khalid Sultan, Mariam Rehman, etc and that Malik Riaz was no more the Chairman of Bahria Town. Commander Ilyas, who headed the project of Bahria Town, told the court that there was no mention of the alleged business deal in the five projects under his command & control.

Meanwhile the Attorney General Irfan Qadir objected that the Chief Justice should not hear the case against his son. The CJP Iftikhar M Chaudhry was

The Living History of Pakistan Vol-I

heading the bench on 6th June 2012 in the first hearing because under the constitutional provisions only Chief Justice could take the *suo-moto* notice of any issue [the other members being Justice Jawad S Khawaja and Justice Khilji Arif Hussain].

Next day the CJP had quit the bench and allocated the case to the other judges for probe and proceedings. On 9th June 2012, Malik Riaz's Counsel Justice (rtd) Zahid Hussain requested the apex court to make a larger bench which was turned down under Order XXV, Rule 2 of the Supreme Court Rules 1980.

Dr Arsalan was accused of allegedly receiving over Rs:342 million from property tycoon Malik Riaz, against whom several cases were pending in the apex court.

In his five-page concise initial statement, placed before the Supreme Court on 10th June 2012, Dr Arsalan denied in the strongest terms any intimacy or acquaintance with Malik Riaz, his daughter or son-in-law, saying their names were also not known to him. He had never met any one of them in relation to any business or for any other purpose in or outside Pakistan; thus the allegations were strongly denied. Dr Arsalan submitted in writing that:

'The claims of Kamran Khan, Shaheen Sehbai and Hamid Mir that some material was shown to them by Malik Riaz had serious contradictions. Whatever Kamran Khan submitted before this honourable court is an absolute contradiction to what he had said in the programme aired on June 5, 2012.

Kamran Khan has improved his statement subsequently, which is evident from the material brought on the record. Hamid Mir in his statement has exonerated me saying the material shown to him was not worthy of acceptance as evidence, although such material has not landed in this court nor is in possession of anyone except Malik Riaz.'

Dr Arsalan claimed that in 2009 he travelled at his own expense to London and hired a flat, details of which were available with him. Similarly, for the years of 2010 and 2011, Dr Arsalan contended, the same practice was adopted and an amount of Rs:45 lakhs was deposited through (cheque number 1287353 of Standard Chartered Bank, Lahore) on 15th August 2011 by his cousin, Muhammad Aamir Rana, [*Note: Chaudhrys and Ranas cannot normally be true cousins in Pakistan*] into Zaid Rehman's account (No.020502000003244 Meezan Bank, Gulberg Lahore).

Dr Arsalan further contended that:

'I do not know from whose credit card the rent of the flat, which I remotely remember was around 3,200 pounds sterling per week, was paid. Perhaps I had stayed for four weeks, so the total rent, amounts to about 10,000 pounds.

When he reached London, he had to sign an occupancy agreement, by submitting the copies of his passport, therefore, the formalities as per rules were completed; however, the rent had already been paid. Likewise in 2011, the same person arranged accommodation for him and subject to final settlement as mentioned above through his cousin, he paid the above mentioned amount.

As far as Zaid Rehman is concerned, he is known to me through Ahmed Khaki, who happens to be his cousin Assertions to the contrary are strongly denied.'

Malik Riaz was allegedly involved in litigation with scores of persons and companies [once in 2011 the respective civil courts had given verdicts against him in 42 cases] and had moved certain press reporters on his pay roll to agitate for him. Malik Riaz had shown some media members the documentary 'proof' against Dr Arsalan for financing his three trips to London adding that he had 'video' evidence of the allegations he was making but had not shown to any one till then.

In September 2011 Barrister Aitzaz Ahsan had also visited CJP Iftikhar M Chaudhry in private, keeping in view the old relationship of Lawyer Movement days, to apprise about Dr Arsalan's dubious conduct and [allegedly] the CJP was much disturbed over that discussion. Referring to 12th December 2013's live TV program of Asima Shirazi, Barrister Ahsan himself told that:

'The CJP had heard me patiently but from inside got angry; the relationship went sour and could not be repaired till that day. I had gone bitterly disappointed.

Many of my friends and colleagues had also got angry with me for that fruitless visit to the CJP.'

The Living History of Pakistan Vol-I

On GEO's live TV program 'Aapas Ki Baat' dated 13th December 2013, Najam Sethi, while commenting on the retirement of the CJP Iftikhar M Chaudhry, confirmed that:

'..... A judge has passed away and a politician has born.'

Mr Sethi further elaborated that during CJP Chaudhry's tenure, he had constantly been labelled as 'a politician in CJP's robes'; but he never bothered and continued to display his character as such.

Let us travel into the recent past for a while.

On GEO's live TV programs 'Aapas Ki Baat', of 11th, 12th & 13th June 2012, Najam Sethi asserted that Dr Arsalan was not so innocent that he did not know why the son in law of Malik Riaz was trying to cultivate him and financing his tours abroad; it was intended to influence the CJP in turn. Since there was no evidence of the CJ having been influenced, there was clearly a more ominous and threatening purpose – not bribes but blackmail.

Through this timely move the entire leadership of the PPP was hoping rewards; think President Zardari's case in the backdrop of Swiss letter syndrome and PM Gilani's conviction for 'contempt of Court'. Najam Sethi's last program concluded that:

'Who else had the required capability of chasing Dr Arsalan and collect documentary and video evidence of reckless [& wasteful] expenditure by him; the Intelligence Bureau [IB]'s team permanently located in Pakistan High Commission London AND Rehman Malik's company for private investigation named Shaffaf Ltd London.

Clearly, the 'sting operation' against Arsalan Iftikhar was the work of Rehman Malik as he had once been disqualified to be a member of the Senate (and Interior Minister in consequence) because of his dual nationality, under apex court's decision.'

To keep his judicial house in order and to exhibit faithfulness to his impartiality and fair-play, the CJP Iftikhar M Chaudhry called his son in the dock through *suo moto* case. Five years earlier there were cries that, upon securing an overall C grade in the intermediate examination (a fact), Arsalan Iftikhar was granted admission in Bolan Medical College upon the influence exerted by his Chief Justice father; years later, he was made Section Officer in the Health Department Quetta, only days after his initial appointment.

In August 2005, the then Federal Minister of Interior Aftab Sherpao, issued notification appointing Dr Arsalan as Assistant Director (later Deputy Director) in the FIA. In 2006 he was 'picked up by the high ups' for permanent

The Living History of Pakistan Vol-I

induction as Superintendent of Police [SP] giving an unprecedented twist to the Police Service of Pakistan Rules in vogue.

Hue and cry surfaced from all corners especially from already deprived career police officers but the Chief Justice was found standing behind this unjust episode. In March 2007, it was Naeem Bokhari, a veteran advocate of the Supreme Court who tried to block that floodgate of nepotism in the higher judiciary; the case was referred to the Supreme Judicial Council but the civil society guided by the Lawyer's Movement rescued the CJP.

It was only natural that amidst so much controversy concerning Dr Arsalan, the Chief Justice Iftikhar M Chaudhry [after regaining his seat in March 2009], apparently dissociated himself from the professional and career growth of his son. Peeping into the vacuum prevailing in CJP's home affairs, Malik Riaz jumped in and allegedly spent millions on Dr Arsalan.

Arsalan was living in CJ's official residence in Islamabad, at least until his marriage that year, so the CJP should have worried about the latest model BMW type cars driven in, the Gucci cufflinks or the Rolex watches or about lavish trips abroad while staying in costly holiday flats of London and Monte Carlo.

The general populace was not at all inclined to give CJP Chaudhry a relaxation for his blemished cause of justice. The CJP was blamed for not knowing where his family had been vacationing during the summer, or who was paying for it while he constantly chased the PM's sons [Qadir Gilani in Hajj Corruption Case & Musa Gilani in Ephedrine Case], Pervaiz Elahi's son [Moonis Elahi in NILC & Punjab Bank Case] and Asif Zardari in person.

As the people never allowed PM Gillani, Pervaiz Elahi, Nawaz Sharif or Asif Zardari to ever plead that they did not know what their sons were doing, so they allocated zero allowance to believe that the Honourable CJP, over the past three years, even had a slight hint of Dr Arsalan's (mis)deeds; totally a non-professional conduct.

The intelligentsia did not bother about the sentimental phrases from some media men and certain members of PML(N) or Imran Khan's PTI describing that *'ISI & Army or the PPP are hunting the CJP and the higher judiciary is being maligne purposefully'*. Not at all; they simply wanted an independent enquiry into the conducts of both Malik Riaz and Dr Arsalan Iftikhar in an un-biased way irrespective of the references pointed towards the CJP or the Army or the PPP.

The Registrar Office of the SC, in the meantime, rejected the application filed by Dr Arsalan Iftikhar to register an FIR against Malik Riaz as the case was in the apex court. Dr Arsalan had asked the court to direct police au-

thorities to register an FIR against Malik Riaz for running a campaign against him in the media.

On 12th June 2012 Malik Riaz appeared before the Supreme Court with his statement of allegations [spread on 83 pages] and documentary evidence against Dr Arsalan. It was yet to be considered that if Dr Arsalan was guilty of criminal misconduct while accepting excessive hospitality from Malik Riaz but the intention of those who collected documentary and video evidence was termed to constitute a crime.

The sitting CJP labelled it blackmail; a conspiracy to hijack the independent judiciary. Malik Riaz had told Hamid Mir in confidence about Rehman Malik being the central character in that 'sting operation' with special reference to video recordings. When Hamid Mir asked Rehman Malik for confirmation, the later had categorically denied it.

Rehman Malik and one PPP parliamentarian Farahnaz Ispahani were already ousted by the apex court whereas Husain Haqqani was under the process of being declared as a state rogue. Malik Riaz, being a seasoned and perceptive business tycoon, was not simple enough to drag himself into that sand grave of controversy but his friends in the government called him on the stage intentionally while putting the blame on the shoulders of Pak-Army and ISI in the backdrop of 'missing persons case' in the SC. The author of the 'sting operation' might have been identified by Malik Riaz for future reference but he denied such perceptions in his press conference on 12th June 2012 by swearing on the Holy Qura'an.

On 5th November 2011 a brief was circulated [by an unknown source] amongst GHQ branches and also sent to some media lords through an e-mail at 12.53 AM. The same was repeated on 07th June 2012 21:03, a day after Dr Arsalan Case surfaced in the court.

'To: [undisclosed recipients] Sad to say, but probably some in the leadership are worthy of contempt.... [this kind of rogue] democracy be damned, Pakistan needs to be salvaged and saved. To be silent is to be complicit. [Ardeshir].

Rehman Malik, the Interior Minister uses the offices and facilities of Malik Riaz for his private business....both have common interests. When Rehman Malik shifted to Islamabad from his London exile, Malik Riaz refurbished one of his Islamabad houses in F-8 for RM [fact: the latter had not occupied it].

Malik Riaz made certain that the higher judiciary did not remain deprived of his beneficence; he owns the entire brood of our higher judiciary. About 18 months ago, son of the CJ [Dr

The Living History of Pakistan Vol-I

*Arsalan] was on secret tour of Bahria Town to select properties -
- perhaps there was a follow-up tour as well.*

This was a great conquest deserving of celebration. And Malik Riaz celebrated it by giving an advertisement in all the major papers of Pakistan inviting 'recently retired' Judges of the Supreme Court and Lt Generals to apply for a job in Bahria Town.

Malik Riaz was provided protection through a platoon of Frontier Constabulary (FC), which comes under Rehman Malik's Ministry of the Interior.

Referring to MNA Khwaja Asif's deliberations in *ARY's live TV program with Kashif Abassi dated 6th June 2012* that once the then Chief of Pakistan Navy, Admiral Faseeh Bokhari, had requested him on telephone not to agitate the issue of Bahria Town on the Parliament's floor because of his close association with Malik Riaz. Later, Malik Riaz brought Admiral Faseeh Bokhari in NAB as the Chairman by making a special recommendation to President Zardari despite PML(N)'s objections.

In most TV live programs of 7th June 2012, it was told that most army Generals & Naval Commanders in the past, politicians, and some media anchors were on the pay-list of Malik Riaz. Amongst the politicians, CM Shahbaz Sharif's son Hamza Sharif MNA was using bullet proof vehicle given to him by Malik Riaz.

Malik Riaz had also contributed [through heavy finances] in giving concrete shape to famous '*Ashiana Scheme*' of the Punjab government. Mir Shakeel ur Rehman had arranged first meeting of Malik Riaz with Shahbaz Sharif for that 'business relationship'.

Next; how Malik Riaz got introduced to President Zardari. It was Rehman Malik who brought the two tycoons closer to each other. In 1995, two enquiries were registered in FIA related with Mr Hashwani [*regarding a piece of land wrongly allotted to him by CDA which was lying behind the Marriot Hotel in Islamabad*] and Malik Riaz for allegedly illegal grab of lands with peoples money in villages now Behria Town Islamabad. Investigations were on but files were suddenly called back from the 'branch' by the then Director FIA Rehman Malik and shelved when the investigations against the two tycoons were at full swing.

Since then the two giants were born amongst the fast (& investor) friends of Rehman Malik. Being Advisor on Interior, then Federal Minister for Interior, then again Advisor on Interior during PPP's regime RM had apparently

The Living History of Pakistan Vol-I

been living in Frontier house but since March 2008 his meals were sent [and continued to be] from nearby Marriot Hotel owned by Mr Hashwani; guests were accommodated there in 'all time reserved' rooms.

Coming back to the main talk; the statement submitted in the apex court on 12th June 2012 by Malik Riaz said that Dr Arsalan had assured him to be of assistance in different cases against Bahria Town pending in the courts but he did not get any relief. He said Dr Arsalan had blackmailed him and his son-in-law for a long time.

Malik Riaz had further alleged in writing that Dr Arsalan was accompanied by a woman on his trip to Monte Carlo whose identity Dr Arsalan did not reveal at that time. Malik Riaz alleged that he paid over Rs:2.5 million for the apartment Arsalan rented in Monte Carlo and over Rs:3.4 million for rental cars [*should one believe this figure work?*]. Three foreign tours of Dr Arsalan's family with full details of travel and stay were mentioned in the documents.

Dr Arsalan's family once had a foreign tour of London and the total expenditure incurred was over Rs:8 million; the 2nd London tour had expenses of Rs:5.94 million and was paid cash of over Rs:32 million in instalments.

Malik Riaz raised a cogent legal objection that it was inappropriate for the SC to take *suo moto* notice of this issue as Dr Arsalan committed fraud and did corruption which should have been considered in the ambit of anti-corruption laws. He had also emphasized that all of his cases and enquiries should be sent to an independent agency like NAB or FIA. *The point was not entertained because the apex court knew the relationship of earlier days between Malik Riaz and Admiral Fasih Bokhari of the NAB.*

Bahria Town's Chief Executive Ali Riaz submitted his statement to the apex court in the said case confirming his director Comdr Ilyas's earlier statement dated 6th June that the Bahria Town had nothing to do with the allegations against Dr Arsalan case. He distanced himself from the allegations of any deal between CJ's son and Malik Riaz.

[By documents Malik Riaz was actually the ex-Chairman of Bahria Town because his shares had been transferred to his wife and his son Ali Riaz had taken over as Chief Executive of the Bahria Town in July 2008]

MALIK RIAZ'S HOT PRESS CONFERENCE:

During the evening hours of 12th June 2012, Malik Riaz held a scorching press conference in Islamabad mainly to declare [amongst other allega-

tions] that the Chief Justice himself [in the past] had been meeting him during the evening hours. The Registrar SC Dr Faqir Hussain immediately had confirmed the ARY TV channel on phone that:

'Yes; there were three meetings amongst the two but those were before 16th March 2009 when J Iftikhar M Chaudhry was made defunct and the judiciary was deposed. After assuming charge of the CJP office in 2009, there was no meeting between them whatsoever.

'When Malik Riaz had offered his bullet-proof car, the CJ had immediately turned down the offer; when he tried to force the Chief Justice to meet President Zardari, the CJ had refused it as well.'

In fact Malik Riaz used to meet the CJ to bring him to some agreement with President Zardari; as Mr Malik used to negotiate deal with the defunct CJ in favour of Gen Musharraf. It was also on record that Malik Riaz had successfully bargained and bridged the distances between Zardari and Nawaz Sharif during the same days. During subsequent years Malik Riaz played a similar vital role in getting connected the PPP with Ch Shuja'at Hussain and his PML(Q); he was a king maker in fact.

[On 24th April 2012, President Zardari had issued an ordinance just two days before a regular session of the National Assembly was scheduled. The main clause in the said ordinance was that 'if someone invests money in Pakistan's any Stock Exchange for at least 120 days, his all invested amount of black money would be taken as white'.

There were criticism from all corners of Pakistan and from the world financial organizations but no body bothered for those open 'official loots' because it was specially made and meant for Malik Riaz and Mr Zardari himself.

It remains a fact that Malik Riaz mainly blessed Askari Bank, a Pak-Army sponsored bank, to keep his accounts worth billions but the four officials who used to deal with those accounts of Bahria Town had died of 'un-natural deaths' during the past few years.]

On 13th June 2012, the SC took *suo moto* notice of the press conference held by Malik Riaz and issued show cause notice to him over his bluster. Allegedly, this *suo-moto* was taken on the report of the Registrar Supreme Court, Dr Faqir Hussain, on the silent directions of his CJP Iftikhar M Chaudhry.

Heading the 3-member bench hearing that *suo moto* case, Justice Shakirullah Jan [J Tariq Pervez & J Amir Hani Muslim were the other two

The Living History of Pakistan Vol-I

judges] read out the draft of Malik's press conference carrying derogatory remarks directed against the judiciary and adjourned the hearing for next day. Earlier, the informal full court session [12 judges present] summoned by the CJP Iftikhar M Chaudhry, solicited the record consisting of footage of Malik Riaz's press deliberations. After detailed discussions, the said 3-member bench was constituted. Next day Malik Riaz appeared before the SC but the case was adjourned till after a week.

During the press conference Malik Riaz went totally un-predictive and quite opposite to his stance he adopted in the SC during the early hours of that day. Earlier, he had submitted 83 pages statement and other evidence against Dr Arsalan of receiving bribes and foreign trips' sponsorships from him which Dr Arsalan had denied.

For the main issue concerning Dr Arsalan Iftikhar, Malik Riaz had submitted his reply to the apex court through his counsel Zahid Hussain but on press conference subject he did not bother to consult his lawyer Mr Hussain. Clutching the Holy Qura'an in his hand, a visibly angry Malik Riaz had asked questions from the SC:

- 'He [the Chief Justice] should explain how many times he met me in the dead of the night and whether or not Arsalan Iftikhar was present there?
- Was the Chief Justice not present at several meetings that took place at the residence of my business partner Ahmed Khalil where the Prime Minister [Yousuf Raza Gilani] and a sitting judge of the Supreme Court were also present?
- I ask the chief justice to hold the Qura'an and clarify how long he has known about the [dubious] role of Dr Arsalan and why he failed to take notice of his activities until now?
- Why in Punjab we are nailed by Chaudhry Nisar [of PML(N)] and in the federal capital the Supreme Court is screwing us.
- Why the Supreme Court had not given him enough time in person to speak before them today.
- There is no free judiciary in the country and it is being run by a 'don' named Arsalan Iftikhar; SC should admit it.
- Blackmailers were sent after me. Where should I go? Why was I pushed against the wall?'

The *three main charges* were taken as an uncalled for direct attack on the judiciary whereas his allegations against Dr Arsalan were being looked into on so called merits. The Pakistani populace was being made to believe through pro-CJP media persons that there was a deep conspiracy being hatched against the apex judiciary for obvious reasons and Malik Riaz was

The Living History of Pakistan Vol-I

being used by the Presidency under direct planning and control of Advisor on Interior Rehman Malik.

In the words of one Mushtaq Sethi [referring to *'the Nation'* dated 13th June 2012]; the dice were loaded and rolled through the favoured few in media in the form of a whispering campaign to sink or rock the Captain's boat by creating a storm. But the way it was planned fell like a house of cards and apparently turned the tables on the conspirators. They had tried to hit the bull's eye in the opening round.

The general populace in Islamabad also witnessed an abnormal scenario that day that when Malik Riaz came to the SC in the morning there was hundreds of personnel from Islamabad Police & FC; the *Shahrah e Dastoor* was blocked for normal traffic and the apex court premises was full of white clothed men on duty. Who had ordered for such fabulous security arrangements even more than the PM himself; salute to the then Federal Advisor on Interior for that show.

Malik Riaz, while speaking in conference claimed that he did not give any bribe to anyone; rather was blackmailed but despite being blackmailed, he continued to 'bear' the trouble to avoid destroying his credibility and his career. Malik Riaz said that:

'I cannot see this country collapsing. I have helped built it. Even today I respect the Chief Justice. I wrote a book in 2007 in favour of the Chief Justice during Musharraf's tenure. I also offered him my bullet-proof vehicle at one time.'

Earlier, Advocate Zahid Bukhari had warned the nation on media that Malik Riaz was going to 'drop bombshells' which finally appeared in the form of serious insinuations against the Chief Justice Iftikhar M Chaudhry during that press conference at Islamabad. Malik Riaz had also refused to answer the rhetoric questions of the journalists who were there to defend Dr Arsalan for no reasons. Malik Riaz threatened to hold another press conference later to reveal still more incriminating evidence that would jolt the citizens, alluding that it would also be directed against the CJP.

Malik Riaz's three much trumpeted questions orchestrated by him in his press conference dated 12th June were alarmingly highlighted as 'very important questions'. With clear heads for a moment, most of the populace were able to reach the truth. Analysis was:

1st Question: CJP should tell Malik Riaz how many times CJ met in the darkness of the night. It was an open secret that Malik Riaz used to meet the CJ [only during his days of suspension in ending 2007 to early 2009] to assure him of restoring the deposed judiciary, including him, *if only he promised firstly, not to take up the NRO issue and second-*

The Living History of Pakistan Vol-I

ly, he would not run a parallel government; both the issues were, however, on priority when the CJP was reinstated along with his team in March 2009.

2nd Question: that CJ should tell how many times CJ met the PM. Facts were that Ahmad Khalil and Arsalan Iftikhar were 'friends' and it was upon insistence of Ahmad Khalil that Arsalan persuaded his father to attend an Eid party in his house. Quietly a little later the Prime Minister also turned up there. Here, a point to ponder; the defunct CJP visits Ahmad Khalil's party because of his son Dr Arsalan but in what capacity or relationship the Prime Minister Gilani entered that place.

Was it not a fact that it was all pre-planned game? Even otherwise, Iftikhar Chaudhry was not in active service then, thus was open to meet any one including the PM or Malik Riaz or Ahmad Khalil – then why such hue & cry.

3rd Question: that how long ago CJ knew this case and why he didn't take *suo moto* action earlier. The judiciary held that because the things appeared on news media only then [in June 2012]. The CJP could have taken reins of the issue in September 2011 when his old hard timer colleague Aitzaz Ahsan had met him in private with the said documents in possession. The CJ took that action nine months later when it started hitting on his person and the credibility of the apex court was at stake.

Another video [13 seconds] dated 7th June 2012 was also available on the internet in which it was detailed that GEO's anchor person Kamran Khan got Rs:62 Lacs from the office of Malik Riaz whereas he was promised Rs:20 million and a constructed house in Bahria Town. See the daily '*Dawn*' dated 9th June 2012 in this respect:

'At least six — or was it seven or eight? — Journalists who have met the mesmerising man [Malik Riaz] have said he wanted them to talk about him. It is ironical that none of the journalists were impressed sufficiently with the 'evidence' Malik Riaz purportedly exhibited before them [concerning Dr Arsalan] to make it the subject of a story.'

Yet the irony of fate was that *some of those media men* played their active role to please Malik Riaz to justify their [alleged] bribes and not to dig out the truth behind the curtain.

Dr Arsalan enjoyed excursions in England and Monte Carlo; Salman Ahmad [son in law of Malik Riaz] paid all expenses while he was a British citizen. The British authorities ignored the issue because it was not an obstruction of justice in England. Moreover, Salman did not file a case against Dr Arsalan for extortion or blackmail, nor did Dr Arsalan complain about an attempt to bribe him. Malik Riaz did not say anything against the Chief Justice open-

The Living History of Pakistan Vol-I

ly or in writing before the apex court except what he said in the press conference.

Ironically, no one of the judges in the high judiciary, neither the NAB nor the FIA could launch a legal catch for Dr Arsalan though he was not an innocent entity; not at all. A fishy smell from his character was persistently felt around the whole apex court including his CJP father's court room whatsoever but everyone went mum.

The disclosure about Malik Riaz's factual deliberations surfaced quite suddenly due to delayed payments for some media anchors otherwise the stage was set for about a month later. The real persons behind the scene, the PPP stalwarts, in fact wanted to kill two birds with one shot.

The Pandora box was opened when the SC was regularly hearing the missing person's case. When the CJP took *suo moto* action against his son Dr Arsalan, the live TV shows of 6th June 2012 and after raised many hot questions. The CJP sponsored media anchors tried to sell the theory that Malik Riaz had done so on the instigation of Pak-Army or the ISI but the truth jumped out soon. No one in the Pak-Army was holding the cord from the back stage.

The media anchors could only point out that the ISI had record of Dr Arsalan's activities in England which was not the whole truth; yes, Rehman Malik's private company [Shaffaf Ltd] had got enough evidence against Dr Arsalan regarding his activities abroad.

APEX COURT'S VERDICT:

On 14th June 2012, the two members' bench of the Supreme Court, comprising J Jawwad S Khwaja and J Khilji Arif Hussain, while issuing a 14-page short order, announced their verdict [authored by Justice Khwaja with a short note by Justice Khilji] in *suo moto* case of Dr Arsalan Iftikhar declaring it a business deal between Malik Riaz and Dr Arsalan Iftikhar. The apex court also held that Malik Riaz's deliberations, however, tried to influence the judicial process and ridiculed the Supreme Court. What kind of business deal it was or it could be – the two partisan judges never divulged.

The SC ordered the Attorney General of Pakistan to launch an enquiry or investigation into the whole affair and take strict action against the main characters of the case. The bench observed:

'This suo motu action has been brought to an end in view of the material considered above; the learned Attorney General who has assisted us in this case is fully abreast of all aspects of this case.

It is our expectation that he will set the machinery of the state in motion so that all those who may have committed any illegal acts,

The Living History of Pakistan Vol-I

including Malik Riaz, Dr Arsalan, Salman Ali Khan etc are pursued and brought to book with the full force and rigour of the law....'

The Supreme Court bench also ruled that Malik Riaz tried to buy justice through bribery, which was an offence under law.

[But the fact remained that the court's name and reputation was sold by a dissolute son and the said SC verdict was simply a sigh of relief on having avoided the embarrassing criticism].

The apex court rejected a plea of Malik Riaz's counsel Zahid Bokhari of forming a commission to probe the case. *'God is guardian of the institution of judiciary which is not under any threat'*; Justice Jawwad said while concluding the case.

Regarding the role of media, the apex court observed that the series of events, which comprised the run-up to this *suo motu* case, also raised concerns about the issues of media law and ethics. The SC order said:

'The ethic and legal framework of the media requires fairness and objectivity; it requires that journalists conduct due diligence before reporting any news so that rumours and insinuations are filtered out, particularly in matters of grave significance such as ones arising in this case. Even when they have come across particular information, fair conduct requires it is checked and rechecked.'

Saad Rasool in *'Pakistan Today'* of 17th June 2012 analysed that the judgment adopted the following line of argument:

1. That the events of this case were holding field in the backdrop of the Lawyer's Movement of 2007 which ultimately brought back the CJP in the apex court.
2. Malik Riaz had told that he *"did not get any relief whatsoever in the Suo-Moto / Human Rights cases pending before August Court contrary to the assurances and promises made by Dr Arsalan"*. That is why the issue exploded.
3. It criticized (though not stringently) the role of media in creating a hype over the veracity of the alleged claims of Malik Riaz *but no one bothered to investigate that how Dr Arsalan got fortune of millions of rupees within three years of his CJP father in place.*
4. It declared that the issue of *"national importance"* stood resolved, whereas the matter was of far more importance.

5. The SC directed the Attorney General to pursue the matter against Malik Riaz and Dr Arsalan in the relevant trial courts.

Whereas the matter was simply hushed up because Dr Arsalan was the CJP's son; the two SC judges did not play justice at all. When there was no explanation with Dr Arsalan for accumulating so much wealth within three years – the CJP should have resigned immediately.

The said judgment of the SC was drafted to defend the legitimacy and so-called honour of the apex court and finally the '*Black Coat Movement*' of 2007-09. The authenticity of the judicial process should have been based on impartiality which was frequently doubted.

The CJP's open relaxations in favour of PML(N) could be cited in that regard. Keeping in view the recent past of the SC; imagine Malik Riaz paying bribes to a son of any top politician in order to influence State's executive authority and the event reported to the SC – what could be the apex court's behaviour.

AG Irfan Qadir was asked to probe into Riaz Malik's matter on merits, however, his behaviour on 15th June 2012 during the proceedings of PM Gilani's contempt and NA Speaker's ruling [*saying openly that CJP is biased, more details in next paragraphs*] made the whole judicial process doubtful, too. Most of the people opined that Rehman Malik's FIA or Malik Riaz's NAB in association with AG Irfan Qadir had dragged the SC's role into investigations; though not called for at all – but the facts were there.

[Attorney General (AG) Irfan Qadir wanted to refer the matter to the National Accountability Bureau (NAB) under the provisions of Section 9A of the NAB Ordinance 2000 but the NAB Chairman immediately rejected the proposal by saying that the government had suffered no loss so the matter did not come under NAB's purview. You never know when the stances are changed in Pakistan and on what contexts.]

The Living History of Pakistan Vol-I

Scenario 101

DR ARSALAN IFTIKHAR CASE-II

THE PANDORA BOX OPENS:

The forces which were out to provide a blanket cover to Dr Arsalan Iftikhar's dubious character, his monetary sins and corruption in the name of his CJP father got activated using certain media stalwarts. They tried to thwart the claims of Malik Riaz by blowing the horns that the military establishment and the PPP government were trying to malign the SC and the CJP Chaudhry's independent judicial activism. They excavated out the past rivalries of Malik Riaz and placed them on media pages; another blackmailing tactic in the row.

The Living History of Pakistan Vol-I

[Recall the contents of an earlier paragraph when Admiral Faseeh Bokhari was helped appointed as Chairman NAB by Malik Riaz. PML(N) had raised objection to this name but in very weak tone because Malik Riaz was equally dear to Sharifs. There was a strong inner retaliation within PML(N) that time because Ch Nisar Ali Khan was deadly against Malik Riaz and he knew that Admiral Bokhari was Malik Riaz's choice.]

On 13th June 2012, another move cropped up. The lawyers defending Malik Riaz in 62 cases, registered in connection with Bahria Town lands and their development, in the respective local courts were warned by the Bar Associations of Rawalpindi & Attock to dissociate themselves from pleading; subsequently similar resolutions were passed by all Bar Councils and High Court Bar Associations in Pakistan.

Malik Riaz was the complainant in four civil suits about land disputes pending in the courts of Rawalpindi while he was facing 57 criminal and civil cases regarding land grabbing, land fraud or their appeals or company matters in the Lahore High Court Rawalpindi bench and in the Session's Courts of Rawalpindi. Despite the campaigns against him and his Bahria Towns, Malik Riaz remained the kingpin in the Pakistani politics.

Referring to the daily '*Jang*' of 14th June 2012, Malik Riaz tried to get another extension for Gen Pasha, the then outgoing DG ISI, and used his 'friendly pressure' to convince President Zardari and PM Gilani in his favour but could not succeed because the Army Chief Gen Kayani could not add his weight to his efforts. The later developments proved that Gen Kayani wanted to get rid of his DG ISI on the instructions of his American counterparts and due to maneuvered foul play in memo-gate episode.

During the final days of PPP regime, the people of Pakistan were generally feeling unrest that how 'rule of law' was made a joke as even lawyers were seen insulting judges while the politicians also ridiculed them in the media. The worst display of 'contempt of court' occurred on 15th June 2012 when the Attorney General [AG] Irfan Qadir shouted at the bench presided over by the CJP himself while hearing the case regarding the Speaker's ruling for PM Gilani.

AG Irfan Qadir interrupted the proceedings and started shouting; '*The judges fled from the court after convicting the PM [Mr Gilani]*'. He made rude gestures at the judges who were helpless until other lawyers present in the court out-shouted the AG. The whole event was pointing towards the legal cum judicial anarchy the country was heading to.

'STING OPERATION'

The above odd behaviour could be viewed in the backdrop of Malik Riaz's press conference of three days before which had targeted the whole apex court and higher judiciary with insulting shouts. Then appeared his outburst against the CJ on *Dunya TV* [referring to the video clip of YouTube dated 13th instant] indicating that how media owners and TV anchors joined hands with high class state friends. They were hitting Pakistan's military and judiciary both; two preys with one stone.

One could see the media owners, stalwart anchors, Malik Riaz, Abdul Qadir Gilani and Maryam Nawaz kidding together in one wholesome scenario; PPP government and half of the PML(N) were parties in pushing back the SC due to CJP's son; it was confirmed.

[Half of PML(N) meant that Nawaz Sharif, his family members and some stooge office bearers were playing hypocrisy by criticizing the PPP government in public but were standing by Zardari and Malik Riaz from inside. His brother Shahbaz Sharif, Ch Nisar Ali Khan, Khwaja Asif and Sa'ad Rafiq were openly taking side of the judiciary. Most live TV shows of 7th June to 14th June are referred.]

Malik Riaz repeated his three disclosures: firstly, he spent Rs:342 million on Dr Arsalan Iftikhar; secondly, his accomplices tried to get broken that story by Christina Lamb in the UK during CJP's visit on 27th May 2012; and thirdly, it was Interior Minister Rehman Malik who provided photographs and video records of the three visits of Dr Arsalan abroad.

Christina Lamb refused to go with the 'sting operation', taking it as immoral or might be a crime. Regarding sting operation organizer Rehman Malik – *Dunya TV* clip is enough to define his person [*Malik Riaz said that Rehman Malik 'swears on his sons' several times every day*]. The lynchpin of the conspiracy, Rehman Malik, was exposed by Malik Riaz himself and in a very amusing way.

The hotly debated controversy surrounding the leaked footage of an off-camera interaction between two anchors of '*Dunya TV*' and Malik Riaz was taken up on 15th June 2012 by the SC which set up a two-judges committee to look into the possibility of initiating [another] contempt proceeding. A full court meeting presided over by the CJP Chaudhry and attended by all the 16 judges of the apex court took strong exception to the off-air conversation and nominated Justice Jawwad S Khawaja and Justice Khilji Arif Hussain to look into the matter.

The Living History of Pakistan Vol-I

Both the judges of the apex court had already been on the bench to look into the financial wrongdoings of Dr Arsalan Iftikhar. *Both the said SC judges were known as 'yes-men' of CJP Iftikhar Chaudhry* as they were always taken as members of Bench no:1 presided by the CJ himself.

Before commencing the closed-door meeting, the full court summoned Acting Chairman of PEMRA Dr Abdul Jabbar and asked him to provide footage and script of the interview which he did. Dr Jabbar told the apex court that on that scandalous program notices were issued to the said TV channel and the two anchors. The judges had observed that:

'On the face of it, the footage showing conversation behind the scenes smacked of a planned conspiracy to shake public faith & confidence in the administration of justice and undermine the prestige of the court, thereby tending to bring the court & judges into hatred, ridicule or contempt. It further tends to prejudice the determination of pending cases before the Supreme Court.'

[The honourable judges could feel that all those humiliations were coming up due to Dr Arsalan Iftikhar's corruption in their name. Yet none of the judges had courage to put a dissenting note on record that 'why Dr Arsalan was not being treated at par with Musa Gilani, Moonus Elahi or others' OR at least CJP could have proceeded on leaveit was an Islamic Republic.]

SC judges meeting had also recalled the court's order of 11th June 2012 in which Attorney General Irfan Qadir was asked to arrange security for Dr Arsalan. The Islamabad police was made responsible for necessary protection of Dr Arsalan who had already been allocated a room in the Balochistan House for being more safe and secure. Rehman Malik had confirmed through an unsolicited telephone call to the Registrar SC informing him about the allotment of accommodation there along with adequate security arrangements.

Coming back; President Zardari always respected '*contempt of court*' charges as an acid test of loyalty to the system; starting from Sharjeel Memon and Babar Awan, then PM Gilani, Malik Riaz and finally the AG Irfan Qadir. All were trying to ridicule the Supreme Court by either flouting the verdicts & decisions or through fiery speeches & comments.

In between them Ms Asma Jahangir took chance to disrupt the court proceedings as additional weapon showing contempt of court while representing Husain Haqqani in 'Memo-gate Case'. She was assigned the job of taking away SC's attention from Rehman Malik and focus on the ISI.

The Living History of Pakistan Vol-I

In this milieu *Brig (Rtd) Usman Khalid's analysis* deserved appreciation. Days before Malik Riaz's deliberations; Asma Jehangir in a press conference 'leaked' a plot by the ISI to kill her which was basically a threat. She did succeed in creating a perception that the ISI was unhappy at the CJP's dealing and FC's involvement with missing persons in Balochistan.

Two live shows on GEO TV were aired to link Malik Riaz's whole activity with the ISI & Pak-Army portraying it as '*backing of powerful forces*' without which Malik Riaz could not have challenged the CJP directly. Soon the cat was out of the bag when Rehman Malik was named by Malik Riaz himself as mastermind behind the curtain; additionally, RM was known for uttering not even a single word without approval from the Presidency.

ONE-MAN SUDDLE COMMISSION:

The Suddle Commission was formed by the Supreme Court on 30th August 2012 to inquire into Malik Riaz vs Dr Arsalan affairs. The one-man commission was given full judicial powers under the Supreme Court Rules of 1980 and authorised to collect evidences either at local level or internationally, and directed to submit its findings within 30 days.

[The general populace of Pakistan knows that when the government or any institution want to throw an important matter in the dust-bin, a commission or committee is announced; months would lapse and till then the people will forget the issue..... *tain tain....phish*.

Take example of any commission - from of Justice Hamood ur Rehman in 1971 till of Justice Javed Iqbal's Osama bin Laden in 2012]

'According to the preliminary report, the CJP's son had admitted before the Commission that he had availed two of the three foreign visits sponsored by Malik Riaz's sponsors. Dr Arsalan Iftikhar had also confessed that he had received 'favours' from Malik Riaz, his friend or his son-in-law, but remained silent on that why he was 'favoured'.

When Dr Shoailb Suddle submitted his Commission's interim report about the alleged Rs:342 million business deals between Dr Arsalan and Malik Riaz, the 2-member bench of the apex court, headed by J Jawwad S Khawaja, on 7th December 2012, dissolved the Suddle Commission while allowing findings of the report to be made public. Many opined that the purpose of the *Commission was to 'clean the dirty laundry of Dr Arsalan Iftikhar'* as the apex court could have decided the legality of the Commission on Malik Riaz's review petition much earlier.

On the other hand, the report was silent about how Dr Arsalan Iftikhar became a millionaire in no time and entered into telecom contracts worth Rs:945 million. The *Suddle Commission implicated Dr Arsalan and Malik Riaz in massive tax evasion of Rs:51.3 million and Rs:119.4 billion* respectively and recommended imposition of a penalty for concealment of assets in wealth statements filed with income tax returns. [*Malik Riaz's CNN interview of 2010, where he himself told his net worth to be around \$2.5 billion, is referred.*]

The dissolution of the Suddle Commission came as a big surprise on the plea that this was an issue between two individuals. However, the matter boiled down to the amount of money paid to Dr Arsalan. *Malik Riaz said he paid Rs:342 million but provided the evidence of paying Rs:5.58 million only and Dr Arsalan also accepted it.*

It was certainly a fit case of illegal transaction and an offence cognizable by police and Dr Arsalan should have been taken through trial for this; also for the fact that he had maligned the name of the country's top judiciary in this scandalous affair. The Suddle Commission itself could have suggested the criminal proceedings against the two; but perhaps it was not included in its terms of reference [TOR].

An analysis of Suddle Commission [interim] Report, as appeared in *'the News'* of 16th December 2012, speaks about its worth:

'Malik Riaz and Ahmed Khalil had not given statements to the Commission on the basis that the Commission was "inclined in favour of Dr Arsalan Iftikhar" (para 3). Dr Arsalan filed his statement on 19th October 2012 saying that one Mr Ahmed Khalil ("a man of considerable means") had "ingratiated" himself with Dr. Arsalan for over a year and a half.

In this period, in 2010, when Dr. Arsalan "consulted" Ahmed Khalil about travelling to London, he "voluntarily offered to provide full facility by arranging the stay in London" (how gracious!), and Dr. Arsalan remained under the "impression" that "no formalities" were required for the apartment, the "bill" for which "too nominal" to ask for (para 4).

Similarly, Dr. Arsalan informed the Commission that during this trip to London, the young and enterprising Doctor was flown to Monte Carlo and put up in Hotel D' Paris by the same Ahmed Khalil. And while Mr. Khalil may have had nefarious intentions of "ingratiating"

The Living History of Pakistan Vol-I

the honourable Chief Justice's son, Dr. Arsalan had believed that all this was just being done as a "friendly gesture" (Para 14) to a young man who, just a few years ago, had trouble graduating from college and finding a job.

[However] the Commission did not ask Dr Arsalan as to why some villainous people of "considerable means" extended such exorbitant favours to him. Astonishingly; all that expenditure was done through Malik Riaz's son in law.'

Theoretically, a saint father cannot be punished for the sins & follies of his adult son. Going a little back; the appeal of a restored judiciary [*in the aftermath of 3rd November 2007's 'emergency'*] stemmed from its promise of 'independence' - which necessarily entailed the idea of being dauntless and unbiased – an aspiration that justice should remain unadulterated by passion or prejudice but '*to what extent has the restored judiciary been able to live up to its glorious promise'* remained a key question.

For instance: the Supreme Court did not turn its back for taking on 'troublesome' cases such as the NICL scam, Harris Steel corruption and the Hajj scandal etc – wonderful job. Though the exercise of inquisitorial proceedings could not practically harm the political mafias that plagued our nation for over six decades but the judgments succeeded in causing a fear amongst the politicians & the supporting bureaucrats both that they were not beyond the reach of law.

In their next move, the then superior judiciary delivered more than any of its predecessors in trying to rope in the '*khakis*', taken them as untouchables. While not fully succeeding, the court's efforts in the missing-persons cases, the killing of a boy by Rangers in Karachi, the Balochistan issue and most vigorously the Asghar Khan case were commendable; especially when the executive and the parliament both exhibited nothing except their impotent characters, shame & sorrow.

But exceptions were there. The Supreme Court of Pakistan, most of the time, praised the media for calling 'important' issues to the court's notice but in the Dr Arsalan Iftikhar judgment, the court took a virtual U-turn in criticizing the media for reporting without due-diligence, and refraining from exercise of any inquisitorial power. This left the apex court open to criticism for defending a 'reckless son' of the Chief Justice whereas the apex court had behaved differently in Moonis Elahi and Musa Gillani's cases; the sons of two known politicians.

The Living History of Pakistan Vol-I

Astonishingly, the Registrar of the Supreme Court once asked the Islamabad Police to stop media channels from airing talk-shows that criticize or defame the judiciary; the Islamabad High Court had religiously acted upon those baseless instructions and surprisingly there was no voice of dissent whatsoever.

The end story was that Dr Arsalan vs Malik Riaz case apparently ended 'smoothly' but leaving behind numerous questions about Pakistan's 'honest business culture' glorifying under the tender hands of the top civil and military bureaucracy & the high judiciary; rest is the history now.

{An essay published at Pakhope.com on 19th June 2012 is hereby referred}

HOW THE FOREIGN PRESS VIEWED IT:

Referring to 'the Economist' of 6th June 2012:

'..... Pakistan has been transfixed by a dark tale: that one of the country's richest men was able to bribe the son of the Supreme Court's celebrated chief justice, Iftikhar Chaudhry, in the expectation of getting court cases decided in his favour. Mr Chaudhry is regarded by many as a national hero, for standing against government corruption as well as the unbridled power of the army.

The would-be briber, a tycoon named Malik Riaz, made the accusation himself, claiming that he paid bribes of \$3.6m to Arsalan Iftikhar, son of Chaudhry. On June 14th, the Supreme Court rejected them outright. The problem with the charges introduced by Mr Riaz, according to the court, was that he admitted that he "did not get any relief whatsoever" from the courts.'

The Economist had further observed that it might be 'a fair point, on the face of it' but the trouble for the chief justice was that his son, wife and daughters were taking lavish holidays paid for by someone else—by a friend of a friend, on Arsalan Iftikhar's account.

How could CJP Mr Chaudhry fail to ask who was picking up the tab for trips his family made to London and Monte Carlo in 2010 and 2011? For someone in his position, with the moral burden he had taken on, against a government that was woefully corrupt even by Pakistani standards, it was crucial that he must have kept his name clear of any conflicts of interest. Even with the court's vindication, his public image was badly tarnished.

The Living History of Pakistan Vol-I

According to the Economist, Malik Riaz lavished holidays worth \$163,000 on Dr Arsalan. He kept the receipts for hotels, car rents and other expenses to prove it. The largesse included a stay at the luxury Hotel De Paris in Monte Carlo, and stay at a posh apartment on Park Lane London, while a Range Rover was hired to ferry the family around London in style.

Dr Arsalan said he paid back his generous friend an amount of \$47,000 but for how much true means. For the rest of the \$3.6m, allegedly given to Dr Arsalan in cash, Malik Riaz claimed that he got video footage to prove the cash payments.

More importantly; that how could Dr Arsalan \$47,000 in his accounts – its sources and transactions and taxes paid etc – if Dr was to be believed.

The Economist, however, concluded that for CJP Chaudhry's supporters, entire sordid episode was a conspiracy backed by Mr Zardari or the army or both, to bring down the meddling judge. They saw CJP Chaudhry as '*all that stands between Pakistan and a state of complete anarchy*'.

The PTI Chief Imran Khan had then issued a cogent statement saying that the sequence of events indicated the target of the entire conspiracy and that was supreme judiciary. He said that:

"Since the CJ himself was incorruptible, those wanting to weaken him chose to target his son. Riaz Malik paid for vacations and shopping sprees of Dr Arsalan Iftikhar. Why did he do this? [How] that all the receipts of the transactions and reportedly some video clips were carefully retained.

Arsalan Iftikhar also has much to explain, and that if evidence establishes that he accepted favours by making promises of influencing his father, then he must bear the consequences."

[Astonishingly; hundreds of TV scripts and videos of Imran Khan's public speeches and statements displayed after general elections of May 2013 termed CJP Iftikhar Chaudhry as the 'MOST CORRUPT JUDGE' of Pakistan. Mr Khan's speeches went so intense in disturbing the retired CJP's life that he had to file a defamation suit for Rs:25 billion in the court against Imran Khan. Till the publication of these pages, the suit was still pending hearing.]

CJP Chaudhry was no more there on the SC's seat to influence the Arsalan vs Malik Riaz case after 12th December 2013, but the general popu-

The Living History of Pakistan Vol-I

lace were expecting that the said case should be re-opened to dig our certain hidden facts; especially that:

- When the SC itself had nominated one-man Suddle Commission then why Dr Shoaib Suddle's interim report was not released for public information.
- Why Suddle Commission was suddenly ended on 7th December 2012 and was not allowed to complete its report even.
- When the interim report had declared that both Dr Arsalan and Malik Riaz were guilty of concealing their wealth and NOT paying tax on the moneys they owned – why the SC kept silent on that part at least.
- What was the logic of that *suo-motu* initiated in June 2012 by the alleged accused's father CJP?
- The matter was shelved by the SC declaring it '*two men's private affair*'. Why that whole drama for six months to befool the nation if it was not to be taken to its logical conclusion.

Even a student of law could arrive at that conclusion within first or second day's proceedings for which the two SC judges took months and ultimately became a laughing stock for the whole world.

ANCHORS OF 'DUNYA' TV ALLEGED:

On 13th June 2012, a candid video [26 minutes] of what running on behind the scenes during a 'planted show'; one of the mega media scandals in Pakistan's history, was seen on *Dunya TV* in which anchors Mubashir Lucman and Miss Meher Bokhari talking to Malik Riaz during their live talk show. It surfaced on social media pages under the title:

- Video leak: Lucman, Bokhari run 'planted show' with Malik Riaz
- Leaked TV Show Video Leave Questions on Pakistan's Media Credibility
- On News channel; anchors for sale?

The footage showed conversations between M Lucman, Miss Bokhari and Malik Riaz focused on the kind of questions they would be asking. Both anchors were also instructed against interrupting Malik Riaz during the interview. Malik Riaz narrated that he had a '*PLAN*' to twist the SC and the CJP after a month but the CJ got air of the issue much earlier and the plan failed when he immediately announced for the *suo moto* action.

The Living History of Pakistan Vol-I

Miss Bokhari was heard saying *'a question is planted towards the end of the video.... Say what you want... what question we should ask. as though it is planted... it is, but it shouldn't appear it is.'*

The video started with general conversation followed by Malik Riaz questioning the anchors on *'why they are not asking why he is part of deals'*.

M Lucman was once seen on the phone asking if the interview was going fine and defending himself by saying *'Riaz is being given a chance. Who is he speaking to? Abdul Qadir Gilani'*, he said.

The anchor told 'A Qadir Gilani MPA and the eldest son of the former PM Yousaf Raza Gilani' that he wanted to clear his name from taking money and he wanted to talk about Hamid Mir's allegations, but Malik Riaz was not allowing him to take his name. Malik Riaz then asked 'MPA Gilani' to pray for him.

In between Lucman's smoke break, Meher Bokhari turned to Malik Riaz to discuss what she would ask next. A brief discussion and a *"khul kay poochain [ask openly]"*, Meher said that they would discuss journalists at the end of the show, so as to 'clear her name' at least.

Lucman told Malik Riaz: *'today I'll ask you to give me [a gift] in front of everyone. Give me a villa like you gave Hamid Mir'. "No, no,"* was Malik Riaz's response once again, followed by a *'why not'* from Lucman.

Yet another break later, both anchors and Malik Riaz were once again seen talking about what the next discussion would be. Malik Riaz mentioned that he wanted them to ask why he was in every deal, and was told by Meher Bokhari that she was not interested in asking that question.

Malik Riaz was choosing topics of his choice, focusing on the Chief Justice as well. He was also visibly upset during one part of the video, where he said that most of his questions were left and the work was not properly done. Again smoke breaks; thumbs up from both the anchors; a high five [sign of victory] and more questions settled.

Little arguments between the two anchors were regularly seen during the video, mostly on order of asking questions and the time each anchor was taking to win Malik Riaz. Lucman also told Malik Riaz that he would ask a *'conspiracy theory'* question that he once wanted to become the prime minister. Lucman and Malik Riaz settled that they would not discuss that

The Living History of Pakistan Vol-I

question before 10PM, as this would make people wait for it - otherwise they won't come back to the show.

During informal conversation, Miss Meher Bokhari invited Malik Riaz to dine with her. In reply Malik Riaz stated his liking on which M Lucman suggested Meher Bokhari to get barbecue.

The second part of the video had strict instructions coming in for both Lucman and Meher Bokhari that Malik Riaz should not to be interrupted; both anchors gave their assurance not to do so.....also settled that they should not be pressurized for a break and would go over time if needed.

[Meher Bokhari also delivered a message then received on her mobile phone during program from Maryam Nawaz, the only daughter of PML(N) Chief Nawaz Sharif, that 'Malik Riaz should say on air that a car was offered to her but she had declined it with thanks'.]

In the second part both anchors were seen exchanging hot words over camera time. Meher Bokhari called Lucman childish who then took his mike off and left the scene. Malik Riaz went desperate when Lucman walked off and shouted him to come back, saying it would be unfair for him. Angry Lucman returned to tell Malik Riaz that he would say live on air that he was pressurized into doing the show. Malik Riaz at last urged both anchors and said that the program would be spoilt and that his life was at stake.

There was a cogent question in media circles after the said press conference concluded that why Malik Riaz didn't file the FIR or went to the appropriate court for this case earlier as he had some of the top lawyers in hand including Aitzaz Ahsan? Why the whole higher judiciary was placed on target whereas the issue was only with the CJP's son and not with the CJP's person even.

The actual game had already commenced when PM Gilani openly came out with media briefs that his son Musa Gilani was being dragged in Ephedrine Case as a conspiracy against him; and Malik Riaz, trying to prove his loyalty to the PPP government, had started calling certain anchors to show material against Dr Arsalan amidst passing comments against the CJP.

In the backdrop of the above events, the known media guru Shaheen Sehbai on 16th June 2012, placed his article on media pages with the title 'Who will Bell the Bad Fat Cats'; a few lines here:

The Living History of Pakistan Vol-I

'..... Every one in the present morally, intellectually and financially depleted Pakistan -- the print media and its well-entrenched "gurus" among the foremost --- is shouting from the roof top for accountability of every one else. In the lopsided Pakistani context, financial accountability of journalists, columnists, newspaper owners, publishers and editors also needs to be promptly and urgently undertaken [by the] State investigative apparatus.'

Shaheen Sehbai pointed out that almost all opinion writing, analysis and interpretation work had been taken over by "lateral entrants" --- people who had no journalistic training and who never went through the professional grinding. The said "lateral entrants" were mostly comprised of spent cartridges from defence forces, disgruntled politicians, retired bureaucrats and opportunists having no reporting or editing skills.

In Sehbai's opinion Pakistan's so-called free press could be labelled as *'a beggar's market where cheap and shoddy journalism is sold to the highest bidder --- whether political or military.'* Cases of open and blatant government cash handouts to favourite journalists, newspapers, and news agencies were no secret in Islamabad and Lahore. A deceased news agency owner, a small time reporter not long ago, was awarded two costly plots of land in Lahore to set up his news agency by the first Nawaz Sharif administration.

Once in Washington DC, Mr Sehbai had seen Gen K M Arif with the then opposition leader Nawaz Sharif, US columnist Mansoor Ijaz and Editor Najam Sethi speaking together at a conference on nuclear proliferation in South Asia. Off the session, Sehbai asked the General [in presence of US Assistant Secretary Robin Raphael and the then Pakistani ambassador Maleeha Lodhi]:

"Have you, General, ever thought of apologising to the people of Pakistan for the years and years of rape of democracy and institutions that you committed in collusion with military dictator Gen Ziaul Haq, virtually as his No 2."

Gen K M Arif whisked away with his cup of coffee and distorted face instead of coming up with an answer.

[Later Gen K M Arif was known as the most outspoken authority on democracy in Pakistan's media and named as a member of the think tank on foreign affairs by Gen Musharraf.]

SC's COMMISSION ON MEDIA:

On 20th June 2012, two journalists, Hamid Mir and Absar Alam, knocked at the doors of the Supreme Court demanding constitution of a National Media Commission to hold the journalists and media - owners accountable and to formulate a code of conduct. They urged that the proposed commission should also look into the secret fund distributions [known in Pakistan as '*Lafafa Culture*'] to buy or malign journalists; also that journalists and media house - owners should also submit their asset declarations, statements of income and wealth tax returns each year like politicians and civil servants.

In fact, the petitioners were referring to a well-known hushed up scam of misusing government funds amounting Rs:640 million by the Government of Punjab concerning M/S Midas (Pvt) Ltd, inquiry of which was put on the back burner because the same was allegedly influenced by owners of media houses. The said scam was also placed before the CJP by the Transparency International Pakistan.

With about six months uproar in media, a 2-member Supreme Court bench ultimately appointed [On 15th January 2013] a 'Media Commission' with Justice (r) Nasir Aslam Zahid as its head to formulate a code of conduct for the media. Javed Jabbar was unanimously agreed upon to constitute the other member of the said Commission. The Sindh High Court was asked to depute a Judicial Officer to act as Secretary of the Commission.

The two members Media Commission finalized its recommendations in two parts; the first part was placed before the Supreme Court on 21st March 2013 and on 31st May 2013 its Part-II was presented whereas during 2nd week of July 2013, the report appeared in public. Amongst many findings, the most pinching observation was regarding lack of financial transparency in most of the media concerns. The report said that:

'Non-transparency in financial aspects of media, e.g. advertising rates charged, grants or support received from overseas sources, fees and salaries paid to staff, assets and income of media owners etc.'

'Channels which come to Pakistan under landing right license should not be allowed to compete with local channels by dubbing programs in Urdu language. The said license was granted to Musa Gillani, son of former PM Yusuf Raza Gillani and Faryal Talpur, sister of President Zardari.'

[Page 230 of Media Commission Report Part-II is referred]

THE ENDING LINES:

The CJP Iftikhar M Chaudhary's son, Arsalan Iftikhar was extended 'royal protocol' at the Allama Iqbal International Airport on 3rd July 2013 when he arrived there by flight PK-615. The protocol was reserved for the most esteemed public personalities; not extended to parliamentarians and ministers even. A special vehicle was detailed to pick him up as soon as he stepped on the airport right from the stairs descending from the plane – but under what provisions.

Sarah Khan assesses the said perks in her essay dated 6th September 2013 on internet media saying that it is a well-known fact that whoever is in power in Pakistan, abuses its position for personal gains. May it be the political class which gets the bad name while during the past eight years, the judiciary under CJP Iftikhar M Chaudhry remained another holy cow that could not be touched. CJP Chaudhry left no stone unturned to gobble up power and benefits for himself and his family – even till to day he is enjoying the same protocol and staff cars in the name of security.

Simply go through lines if the zigzag puzzle is solved. Nawaz Sharif, on assuming office of the PM, brought major changes in the aviation sector in general and PIA in particular to stabilize the company – eventually to privatize it. Immediately after, one Shujaat Azeem was appointed as his Advisor on Aviation in June 2013. Sweeping changes were made to the Board of PIA. Unfortunately, CJP Chaudhry hounded him for being dual citizen of Canada and also that he had been court martialled while serving in Pakistan Air Force. [*Shujaat Azeem was forced to resign then but still he is in the same saddles.*]

Background facts were that Dr Arsalan Iftikhar with the then Acting Chairman of PIA, Syed Ali Gardezi, had manoeuvred the removal of Shujaat Azeem to send a message to the PM to leave the PIA alone.

Reportedly, PIA was then wet leasing various planes in which about \$2 million per month were being netted as a kickback by Dr Arsalan and Gardezi in an unwritten joint venture. A deal for buying of 5 planes was also on cards in which PIA was going to purchase 2005 model planes at \$47 million each - quite an inflated figure. One could get 2013 models of the same planes at \$60 million each. It was an expected earning of \$23-25 million per plane by the parties involved.

In fact, Dr Arsalan was forcing the deal to be completed and money to be transferred before 11th December 2013, a day before his father finally to be retired. Earlier, a Board proposed by PM Nawaz Sharif comprising of

The Living History of Pakistan Vol-I

heavy weights like Mian Mansha, Arif Habib, Aslam Khaliq etc was not allowed to be formally constituted.

The PM Nawaz Sharif tolerated this high handedness of CJP Chaudhry to save the humiliation of hearings on the payments made to power companies to the tune of Rs:510 billion; paid out in one go; the CJP could have demanded the money be returned by the power companies as they had not gone in losses at all. In essence, CJP Chaudhry twisted the situation for the gains of his abled son.

After all, the judiciary in Pakistan was being trumpeted as independent.

Scenario 102

JUDGMENT IN ASGHAR KHAN CASE:

{Air Marshal (Rtd) Asghar Khan had filed his petition with the Supreme Court of Pakistan in 1996. Till 1999 it was occasionally heard

The Living History of Pakistan Vol-I

just to push away the time. During the same year Justice Saeeduz-zaman Siddiqui, the then Chief Justice of Pakistan concluded the hearing but could not find courage to announce the final decision. The file was shelved in the cold room.

The said Asghar Khan Case [challenging unlawful distribution of Rs: 140 million amongst 'some chosen' politicians by the Pakistan Army's ISI in 1990's parliamentary elections] caught momentum when the apex court was moved once again in December 2011 [may be just by coincidence] on the basis of an article 'Similar Looks wanted please', appeared on internet media through www.Pkhope.com on 8th October 2011.

It is an educated guess that the PPP's high command had picked up that article; asked some of its veteran lawyers to make out a fresh reminder for the Supreme Court, not to malign the army or its ISI but to drag certain politicians [with special ref to Sharif Brothers] into slippery mud of mockery and contempt who were the recipients of huge amounts of money from government exchequer through the then president GIK's planning.

Later the same essay was made part of a book titled 'Judges & Generals in Pakistan: Vol-I' published in UK in January 2012 [its chapter no: 18, pages 165-178 under head 'Is Hamam Main Sab Nangay...' is hereby referred].

The apex court cited that book openly in its hearing held in the first week of February 2012 and made it part of the judicial record. Of course, it is never too late.}

A M ASGHAR KHAN VS Z A BHUTTO:

Air Marshal (Rtd) Asghar Khan criticized Late Mr Bhutto on numerous occasions, holding him responsible for tyranny during the 1970 elections. During the Bangladesh Liberation War, Asghar Khan did support the East-Pakistan morally, alleging the West Pakistan under Bhutto, of depriving East Pakistan from their political and economical rights. He also demanded power to be handed over to the people of East Pakistan. In 1972, after Mr Bhutto was made president, Asghar Khan accused him for the break-up of the country.

During Pakistan People's Party [PPP]'s rule from 1971 to 1977, Air Marshal Asghar Khan played a major role in opposition to Z A Bhutto. During the

The Living History of Pakistan Vol-I

1977 elections, Asghar Khan allied his party, the *Tehreek-i-Istiqlal* [TI], with the Pakistan National Alliance [PNA] against PPP. During this period he faced frequent attacks by PPP supporters and the Federal Security Force [FSF]. He was imprisoned in Kot Lakhpat and Sahiwal prisons from March to June 1977.

In 1977, AM Asghar Khan won elections from two seats by a huge margin, from Karachi & Abbotabad; despite alleged rigging by the PPP. The PNA rejected the election results and launched a nationwide agitation against the results. Asghar Khan resigned from both the National Assembly seats as a mark of protest against massive rigging in elections.

When Mr Bhutto felt that Pakistan Army was trying to get benefit out of that political chaos, he started negotiations with Mufti Mahmood of JUI [father of Maulana Fazalur Rehman]. With days of deliberations, on 2nd July 1977, Mr Bhutto accepted all the demands of the opposition and an accord between the PM and Mufti Mahmood was ready to be signed. *During all the sessions of negotiations Asghar Khan advised the opposition NOT to go for any deal with Mr Bhutto.*

While imprisoned, Asghar Khan wrote a much criticized letter to the GHQ, asking them to denounce their support for the 'Illegal regime of Bhutto', and asked them to '*differentiate between a lawful and an unlawful command... and save Pakistan.*' This letter was considered by the historians as instrumental for take over by Gen Ziaul Haq. *[However in later television shows, Asghar Khan strongly defended his stance.]*

AM Asghar Khan was there to assure all the leaders of opposition that '*he has contacts with Gen Ziaul Haq, the then COAS, who has assured to get them new elections within 90 days – so do not believe Mr Bhutto.*' Mufti Mahmood, on the instance of Asghar Khan and Jama'at e Islami [JI]'s Chief, delayed the negotiated accord till Gen Ziaul Haq took over the reins of the country on 5th July 1977. Intelligentsia understand that Asghar Khan had played a major role to fetch eleven years dusk and darkness of Gen Zia's military rule in Pakistan.

In summer 1978, Asghar Khan was offered a cabinet post by Gen Ziaul-Haq, which he refused. He had, perhaps, expected to be the future prime minister after Bhutto's political demise; allowing Gen Ziaul Haq to continue as the president. Many people kept the view that Air Marshall's own past was not 'so clean' in political field. There were questions that if he had done the right job by agitating the Supreme Court in 1996 in connection with Mehran Bank affairs and in fact tried to blow the image of his own person by dragging the ISI in the trial - dock.

The Living History of Pakistan Vol-I

It remains a fact that a retired army officer [Gen Naseerullah Babar] was the first person to highlight this issue on the parliamentary floor. After taking the portfolio of Federal Interior Minister in 1994, during Benazir Bhutto's second term of premiership, he first time raised question of scrutinizing the deposits of the poor people in Habib Bank & Mehran Bank which were allocated to the ISI without any legal authority by Yunus Habib, bank's president then.

On 20th April 1994, Gen Babar had also delivered a fiery speech against Gen Mirza Aslam Beg demanding an enquiry against the General and Yunus Habib for which Gen Abdul Waheed Kakar, the then Army Chief, had provided all the moral and material help. Then Gen Asad Durrani was contacted and an affidavit having all the details of names and moneys was obtained from him. For providing the moral and documentary help to the Benazir Bhutto's government against his own previous organisation ISI, Gen Durrani was made Pakistan's Ambassador in Germany.

In 1996, a tussle cropped up between CJP Sajjad Ali Shah and the PPP government [over Judges Appointment issue]; AM Asghar Khan filed a petition in the Supreme Court which ultimately got decided in 2012.

SC's JUDGMENT IN ASGHAR KHAN CASE:

On 19th October 2012, the Supreme Court announced a landmark ruling 16 years after Air Marshall (Rtd) Asghar Khan had filed a case, accusing the Inter-Services Intelligence (ISI) of doling out money to a group of politicians in the 1990s. The apex court ordered legal proceedings against former heads of the Pakistan Army & ISI over allegations that politicians were bankrolled to stop the Pakistan People's Party [PPP] from winning the 1990 election.

[It should be kept on record that Air Marshall (Rtd) Asghar Khan was the petitioner in the court for this case. On Gen Nasirullah Babar's orders, FIA had started investigations against Yunus Habib, the then President Mehran Bank, for 'bribing' ISI to raise an army backed political faction in the name of Islami Jamhoori Ittehad [IJI].

When news of rift amongst the PPP and the then Chief Justice Sajjad Ali Shah surfaced in 1996, AM Asghar Khan gathered all news clippings and moved the said petition in the Supreme Court.

The Living History of Pakistan Vol-I

During the same period [November 1996] PPP's government was sent home. In November 1997 when Justice Sajjad Ali Shah was disgracefully removed, PM Nawaz Sharif brought Justice Saeeduz-zaman Siddiqui as CJP. Justice Siddiqui tried to find out a midway of this case {the 'Jang' of 22nd October 2012 is referred} and wanted to get away the Generals after issuing a censure but Gen Babar did not agree at all.]

A 3-judges bench comprising the Chief Justice Iftikhar M Chaudhry, Justice Jawwad S. Khawaja and Justice Khilji Arif Hussain issued the short order after hearing the said petition alleging that Rs:140 million of poor people's money were illegally spent to create the *Islami Jamhoori Ittehad* (IJI). [*Only Rs:60 million were distributed amongst the politicians and the rest of the funds remained with the ISI's Accounts or the said two Generals*]. *The petition was based on an affidavit of Gen Asad Durrani, himself a former head of the ISI.*

The Supreme Court ruled that there was ample evidence to suggest that the 1990 election was rigged and that a political cell maintained by the then President Ghulam Ishaq Khan [GIK] supported the formation of the IJI to stop the expected victory of the PPP. The apex court held that:

'The election cell was aided by Gen (R) Mirza Aslam Baig who was the Chief of Army Staff and by Gen (R) Asad Durrani, the then Director General ISI and they participated in the unlawful activities of the Election Cell in violation of the responsibilities of the Army and ISI. Further that the 1990's elections were [of course] influenced monetarily.

The political cells of the ISI and the President House should be abolished; the Defence Services not to participate in politics.

The government should take legal action against former two retired Generals involved in corruption as well as against Younus Habib, former president of the defunct Mehran Bank.

The money that was illegally disbursed among the politicians by the then president and the ISI should be recovered and deposited in the Habib Bank along with the accumulated interest on it; legal action should also be taken against the politicians who received the money.'

For some legal experts, the order, authored by the CJP himself, was 'declarative' in nature. The declarations made therein were:

The Living History of Pakistan Vol-I

- that “in view of the overwhelming material”, the 1990 election was “subjected to corruption and corrupt practices” through an “Election Cell” created in the Presidency, “aided by” the then COAS, DG ISI and Younus Habib;
- that “the President of Pakistan, the Army Chief, DG ISI or their subordinates certainly were not supposed to create an Election Cell or to support” any political party or individual;
- that Ghulam Ishaq Khan [GIK], Gen (R) Aslam Beg, and Lt Gen (R) Asad Durrani “participated in the unlawful activities of the Election Cell” and violated the Constitution “by facilitating a group of politicians and political parties, etc”;
- that the “ISI, MI or any other Agency like IB have no role to play in the political affairs of the country”, nor must they “facilitate or show favour to a political party” or individual; thus “violative of oath of their offices”;
- that any Election Cell in the Presidency or ISI or MI or within their formations “shall be abolished immediately”;
- that recovery proceedings be instituted against the “persons specified”, and Rs:80 million deposited in Account No:313, titled “Survey and Construction Group Karachi”, maintained by MI, be returned with profit.

These declarations, especially the ones relating to the guilt of former two Generals were fascinating for the PPP workers at least while holding them accountable for their actions. However, the apex court also made certain opposing observations.

While declaring the activities of the then COAS and DG ISI as “unlawful”, the order stated that these were “*acts of individuals but not of institutions represented by them respectively*”. However, in the words of one, Saad Rasool, as opined in the ‘*Pakistan Today*’ dated 20th October 2012, ‘*what about if an army General captures an enemy post; would it be an individual act.*’

The CJP Iftikhar M Chaudhry, being the head of the bench, tried to kill two birds with one stone by cursing the retired Generals on one side but appeasing the sitting army elite at the same time; see the words: ‘*The Armed Forces have always sacrificed their lives for the country to defend any external or internal aggression for which it being an institution is deeply respected by the nation.*’ Basically, the CJP had successfully narrated the nation’s voice but with heavy heart otherwise the CJP’s open hatred for the Pak-army was known to many.

The Living History of Pakistan Vol-I

The other part of the order from Supreme Court was more interesting. No politician was declared guilty even while making mention of guilt of those who accepted the money, sometimes twice and thrice. The apex court declared that:

'Rs:60 million was distributed to politicians... however, without a thorough probe no adverse order can be passed against them in these proceedings.'

The post-retirement behaviour of the CJP Iftikhar M Chaudhry reflected that during his assignment in chair he had been extending all the help and judicial romance to the then political opposition PML(N) with particular attention to the Sharif brothers which ultimately helped the later party to win 2013's general elections.

The fact remained that the list of the 'beneficiaries' of alleged bribed money was there on record; most of those belonged to PML(N) [*beyond doubt the CJP's favourite*]. For eye-wash the FIA was directed to commence 'legal proceedings' against all such 'politicians'; the order was not to be followed ever opposite to many like NRO's implementation case.

A step further; the apex court pointed out that the President 'represents unity of the Republic under Article 41 of the Constitution,' and that partisan politics by the President (e.g. establishing an Election Cell) violated the Constitution. It was correct and everyone got the message that reference to 'action against' the President for partisan activity was not for Ghulam Ishaq Khan, but for Mr Zardari; as the dual-office case was pending before the Lahore High Court at that moment.

The Attorney General, while pleading the said case, had forwarded the remarks that:

'Judges had taken oaths under the PCO in the past and had also allowed the military to step in, in violation of the Constitution; adding that the Asghar Khan case had been pending for the past 15 years and the judiciary should take the blame for its delay.'

BRIG SAEED'S PERSONAL DIARY:

A day earlier [18th October 2012], former head of the MI Sindh chapter Brig Hamid Saeed submitted his statement claiming that '*the 1990 operation was initiated by the army and supervised by the MI for na-*

The Living History of Pakistan Vol-I

tional interest'. The court decided to keep his written statement confidential. Brig Saeed claimed that it was not an ISI operation and that the MI was supervising it when Lt Gen Asad Durrani was its Director General [Gen Durrani was probably made DG ISI on 20th August 1990].

Brig Saeed contended in his written affidavit that he had received money from the GHQ directly, out of which he distributed Rs:19.1 million among politicians in Sindh and returned the remaining / left over amount directly to the GHQ.

Brig Saeed submitted in the court that the then army Chief Gen Mirza Aslam Beg was in contact with him regarding the distribution of money among politicians; adding that:

'Once, I brought something to the notice of my immediate boss, Gen Durrani, who told me to report to Gen Beg, and not bring such things to his (Durrani's) notice.

During the hearing, he also presented his 21 years old diary before the judicial bench, which had details of all accounts saying that:

'He did not possess any official document revealing any secret information'; all I mentioned in my written statement is based on my diary, which I maintained on a daily basis.'

Brig Saeed had assured the apex court that he was making this statement with absolute responsibility. He had not requested the apex court to keep his statement confidential; the court itself decided *'not to make it public in the national interest'*; the media critics held that the CJP did so because certain important politicians were named in the diary – some from Balochistan and some who had later made or joined PPP & PML[N].

The Pakistan Army, however, endorsed the landmark Supreme Court judgment, insisting that the military should not interfere in politics admitting that Gen (rtd) Mirza Aslam Beg and Gen (rtd) Asad Durrani were rightly held guilty for overstepping their authority by interfering in the country's politics. A top General then in uniform [March 2012] told the media that:

'During the last four and a half years, there were occasions when the army could have overthrown the civilian government, but it did not do so. A clearly defined policy of the current military leadership is that they will not seek any direct or indirect intervention.'

The Living History of Pakistan Vol-I

No political cell exists in the ISI, or any other military related institution. If anyone has evidence, they should come forward with it.'

The Inter-Services Public Relations [ISPR] didn't speak on the judgment.

The dissection of the said ruling of the Supreme Court revealed that in fact the PPP stalwarts wanted to smudge the image of superior judiciary by pointing towards Asghar Khan Case which was lying pending there since 16 years but the same judiciary was adamant to conduct the NRO proceedings on immediate basis in which PPP's Chairman was being dragged on thorns. Understandably, the bullet which was fired at (late) GIK - actually aimed to hit Mr Zardari because:

- President Mr Zardari was barred to hold a dual office [*for which certain people were agitating since four years in Lahore High Court but could not avail*].
- The President was asked to shun his intimate relations with politicians; who were none other than PPP's stalwarts.
- The President was advised to refrain from conducting political sessions and party meetings in the Presidency.

Immediate and cogent response to the judgment came from the sitting PM Raja Pervaiz Ashraf that the PPP government would do the best to implement the decision. The first hurdle appeared when the FIA investigation team found that most of the dignitaries [*80% as per media reports of 9th, 17th & 28th March 2012* with reference to Yunus Habib's affidavit] who had availed benefits from ISI's charity were later welcomed by the PPP and awarded seats in the Parliament. When these reports were read with magnifier, the Federal Information Minister [Mr Qamar Zaman Kaira] issued a press statement that '*nothing will happen as it would be termed as political revenge*'; *Tain....Tain.... phish*.

[*Gen Aslam Beg, in his live tele-interview with ARY News on 24th October 2012, told the nation that the original affidavit given to Gen Babar by Gen Asad Durrani had contained four names of PPP's high ranking stalwarts but when Gen Durrani was made approver and was asked to take over ambassador's slot in Germany, those four big names were removed from the list. Astonishingly neither Gen Beg named those four persons nor Gen Durrani offered any comments on this statement.*]

GEN ASLAM BEG GOT UPSET:

The Living History of Pakistan Vol-I

The Prime Minister Raja P Ashraf, Federal Information Minister and the PPP politicians all went extremely joyful while pointing fingers towards PML(N)'s Nawaz Sharif & Shahbaz Sharif [as they were named to accept ISI's money] and demanded their resignation from Chief Minister's slot in Punjab. The PPP also asked for a public apology from both because one brother had ruled over Pakistan as prime minister and the younger one had reigned Punjab province as Chief Minister using the shoulders of IJI which faction the Supreme Court declared 'illegal' in the said judgment.

[The facts may be kept on record that it was Gen Aslam Beg who had argued with President GIK in 1988 to get Benazir Bhutto as next prime minister of Pakistan; press interview of Brig Hamid Saeed dated 18th October 2012 is referred.

That the pad & stage of IJI was launched by Gen Hamid Gul in 1988 with the approval of high ups to bring late Ghulam Mustafa Jatoi as the future prime minister of Pakistan because he was a tested friend of the establishment.

Mr Jatoi had lost his own seat in 1988 elections but the Generals managed to get a seat for him in the Parliament as a result of by-elections held in 1989 from Kot Addu vacated by Ghulam Mustafa Khar. Mr Jatoi was made 'Leader of Opposition' in the Parliament to play the Sindh Card against Sindhi PM Benazir Bhutto.

That on 1st August 1990, during his meeting with President GIK at Islamabad, Mr Jatoi was categorically told that soon he would be the PM. That on 4th August 1990, Mr Jatoi addressed a press conference to tell the nation that soon Benazir Bhutto would face a 'no confidence move' in the parliament.

Tow days later, on 6th August 1990, Benazir Bhutto was sent home and Mr Jatoi was made the interim prime minister.]

Kanwar Dilshad, the Election Commissioner of Sindh in 1990, told the pressmen on the same day [18th October 2012] that:

'President GIK and the Establishment got their desired results in 1990 elections and wanted to nominate G M Jatoi as the PM but then suddenly the circumstances changed and Nawaz Sharif got that slot'.

The Living History of Pakistan Vol-I

The fact remains that throughout the interim premiership of Mr Jatoi, the presidency and the army continued their blessings upon him.

On 24th October 1990, Mr Jatoi was told that the election results would come to the 'Election Cell' at the presidency first and then the same would be passed on to the press & public. Mr Jatoi was more than satisfied and confident but the winning results from Punjab and Khyber PK provinces were of the candidates belonging to the PML. Nawaz Sharif was gaining strength in comparison with Mr Jatoi. The presidency got upset and in - charge of elections in ISI was reprimanded.

An immediate decision was taken then that a public rally of IJI would be taken out under the lead of Jatoi and would travel from Rawalpindi to Multan. When this rally was crossing Lahore, the Sharif brothers managed to instigate the PML workers which started raising loud slogans of '*Our PM – Nawaz Sharif*'.

The changing colour of the rally disturbed all including the army and the IJI leadership. In despair Mr Jatoi left the rally at Okara, proceeded back to Islamabad direct and the procession dispersed. There was no option left for the Generals and the President GIK except to nominate Nawaz Sharif as the next prime minister.

Coming back again to Asghar Khan Case, the media successfully pointed out that the money allegedly distributed by the ISI amongst politicians was \$0.56 million as per 1990's dollar exchange rate whereas during Mr Zardari's regime only one Ambassador, Husain Haqqani in Washington was given \$8 million as secret fund [*Daily 'Jang' of 22nd October 2012 is referred*], forget the other Pakistani missions abroad. Haqqani never divulged the details of expenditure when he left the office in ending 2011.

There were many mega scandals about Mr Zardari, PMs Gilani & Ashraf & Makhdooms & Maliks spread on media pages, open like RPPs and secret like eating up state money through IB Secret Fund & Pakistani Missions abroad [*mentioning London, Washington & Dubai in special*], the PPP government could not find courage to touch *Gen Beg & Gen Durrani because there was no allegation of personal gain on any of them.*

A few days after the Supreme Court ruling, Gen Beg said that *he has been dealt with injustice and that the list of beneficiaries provided by former Gen Durrani was fake*; he was speaking in a live TV program of ARY News on 24th October 2012. Gen Beg maintained that:

The Living History of Pakistan Vol-I

'I do not accept this judgment ... apex court says that criminal liability has been proved – without any proof. The money used in 1990 elections was not public money and that he has proof for that. I knew from where that money had come; the president also knew about it but to whom the money was given to; I don't know.'

When asked whether the money was given to Nawaz Sharif, Gen Beg said: *'Why only Nawaz Sharif, everyone who is on that [Gen Durrani's] list did take money; he definitely believed that the then ISI chief had lied in court.'* Gen Beg also pushed aside the facts presented by Younus Habib, the former chief of defunct Mehran Bank.

Interalia, Gen Beg, in his televised live interview, revealed that Air Marshal (rtd) Asghar Khan [petitioner in the said case] had sabotaged the PNA government deal by instigating Gen Ziaul Haq to stage a coup of 5th July 1977. Gen Beg told that:

'He [Asghar Khan] wrote to Gen Zia that if Bhutto was not immediately removed, he would destroy the country. Gen Zia sent the letter to his formations to create public opinion and a few days later he installed martial law.'

The former army chief further revealed that it was on Asghar Khan's insistence that Z A Bhutto was hanged in April 1979.

GEN EHTESHAM ZAMIR SPEAKS LOUD:

The interference in politics by some ambitious army Generals is not a new phenomenon in Pakistan's history; the army as institution was used later by those individuals being the heads. Many books are written on meddling by Gen Ziaul Haq and Gen Musharraf; analysis of all elections would lead us to the same conclusion. Gen Musharraf and his four associates in person had planned to bring Ch Shujaat Hussain's PML(Q) in power in 2002 elections and used the Pak-Army as tool.

[In fact PML(Q) was coined and made by Gen Musharraf for this very purpose through Tariq Aziz & Maj Gen Ehtesham Zamir, the then head of Political Wing in ISI; Gen Musharraf's Autobiography is referred for details]

Not only this, creation of Patriot PPP [PPPP], formation of MMA [*Mutahida Majlis e Amaf*], doing away with BA Degree in 2002 elections, admission of *'Madrissa's Certificates'* equivalent to graduation and many

The Living History of Pakistan Vol-I

more steps were all taken as intrusion from Gen Musharraf's personal team in politics.

When Maj Gen Ehtesham Zamir & Tariq Aziz could not get desired strength of PML(Q) members in 2002 elections to lead the Parliament, the Ulemas of Muttehidat Majlis e Amal (MMA) approached Gen Musharraf to get PM's slot and met him many times in pitch dark nights. Gen Musharraf did not want to see political *Ulemas* at so high echelons so kept them in waiting queue.

In the meantime, the ISI succeeded in breaking the PPP and a new wing in the name of PPPP was launched with winning PPP members like Faisal Saleh Hayat, Rao Sikandar & Aftab Sherpao etc. They were made to join hands with PML(Q) and that mixed squad of Gen Musharraf went good till 2008 elections allegedly under the able guidance of ISI.

Furthermore, in Senate elections of 2003, the Awami National Party [ANP] of Khyber PK province had no chance to get any Senator's seat because of hopeless numbers in the provincial assembly but even then Asfandiyar Khan Wali (who could not get his own seat in the Parliament in 2002 elections even being ANP's President) and Ilyas Ahmed Bilore were the contestants. Due to ISI's blessings [*for details daily the 'Jang' of 23rd October 2012 is referred in which Fareed Toofan's frequent visits to Shami Road Peshawar are mentioned*] both the members of ANP got seats in the Senate and then never spoke even a single word on the floor during their whole stay during Gen Musharraf regime.

The main wheeler and dealer of the ISI during the 2002 elections, the then Maj Gen Ehtesham Zamir [later retired and died], came out of the closet and admitted his guilt of manipulating the 2002 elections, and directly blamed Gen Musharraf for ordering so.

Gen E Zamir once termed the defeat of the King's party PML(Q) in 2008 elections:

'.....a reaction of the unnatural dispensation (installed in 2002). The ISI together with the NAB was instrumental in pressing the lawmakers to join the pro-Musharraf camp to form the government to support his stay in power.'

Responding to a question regarding corruption cases which were used as pressure tactics on lawmakers, Gen E Zamir said:

'Yes! This tool was used, not only by the ISI, the NAB was also involved in this exercise. I was a serving officer and I did what I was told to do. [Q: if you were committing a

[crime at public expenses] I never felt this need during the service to question anyone senior to me.'

The General was ready to admit their blunders if there were any – but the succeeding government of PPP performed so poorly that the people started looking back once again. Even though, the former No: 2 of the ISI, Gen E Zamir, called for the closure of political cell in the agency [which had already been closed by Gen Kayani] confessing that might be its involvement in forging unnatural alliances like of the IJI in ending 1980s, pose a problem for progressive democratic values.

Another officer, (late) Lt Gen Jamshed Gulzar Kiyani had also disclosed that majority of the corps commanders, in several meetings, had opposed Gen Musharraf's decision of patronising leadership of the King's party. Gen J G Kiyani had spoken while Gen Musharraf was still in power:

'That the PML(Q) leadership was the most condemned and castigated personalities. They are the worst politicians who remained involved in co-operative scandals and writing off huge bank loans. But Musharraf never heard our advice; Kiyani said while recalling discussions in their high profile meetings.

One of their colleagues, who was an accountability chief at that time, had sought permission many times for proceeding against the King's party top leaders but was always denied.'

[Ref: 'The man, who rigged 2002 polls, spills the beans' at www.Defence.pk dated 24th February 2008]

The intelligentsia termed the 2008 elections 'fairer than 2002' because there was relatively less interference of intelligence agencies this time but zero interference was never assured.

It should also be kept on record that [earlier] Maj Gen Ehtesham Zamir had also played a key role in organising the referendum in April 2002. Under intense pressure to admit a presidential referendum which he won was heavily rigged, Gen Musharraf had to apologise in public after ballot boxes were stuffed with yes votes and government employees were ordered to vote 'in positive manner'. Official figures gave him 97% of the vote, with a huge turnout.

In fact, Gen E Zamir was blamed and afterwards made the scapegoat because it was his idea to hold the referendum. As a cover up, Gen Musharraf in his speech before the nation had intended to announce an investigation into the allegations and the sacking of the Chief Election Commissioner,

The Living History of Pakistan Vol-I

Irshad Hassan Khan, a former chief justice who had organised the vote but two hours before the speech, aides encouraged him to tone down his apology and kept Justice Khan in place.

A sketch of that era appeared in *'the guardian'* dated 28th June 2002:

'Gen Zamir, who until last August was a divisional commander in Karachi, became a powerful figure and influential aide when he was elevated into the top ranks of the ISI. He was one of a handful of advisers who suggested a referendum would give Gen Musharraf the nationwide endorsement he sought.'

'For years, the feared ISI has covertly manipulated political parties and politicians. In the past 10 months Gen Zamir, the son of a respected Pakistani poet, has secretly tried to engineer an expedient alliance of politicians to support Gen Musharraf in the upcoming elections. But he has failed to create a solid pro-government political platform and opposition parties, particularly Benazir Bhutto's Pakistan People's party (PPP), remained a significant force.'

KEEPING THE RECORD STRAIGHT:

Gen Hamid Gul, the former Chief of ISI himself admitted in so many live TV interviews that he had made IJI in 1988; himself used to say *'kar lo jo karna hai – why don't you call me in the court'*. The history would also prefer asking another former Chief of ISI, Gen Ahmed Shuja Pasha, allegedly giving new birth to Imran Khan's PTI in 2011, to dig out the facts or allegations whatsoever. Let us wait for those manly moments.

Referring to an e-mail available on media [Salman Khaliq (salmankhaliq@yahoo.com), Sent: 27th October 2012 23:59 To: usmankhalid@rifah.org] one can ponder that how the intelligentsia in Pakistan were feeling disturbed over the continuous rupture in the social hierarchy of the country.

'..... May I say that I am surprised at the inaccuracy and illusion.....'

It is NOT the job of the Army to make or break Governments. This excuse / ruse have been used many times to undermine the constitution of Pakistan, although the Army is not the only organization responsible for doing so.

The Living History of Pakistan Vol-I

[Gen] Ayub Khan appointed Yahya; the duffer and alcoholic fell into a drunken stupor and halted the onslaught and we could not reach Akhnur and later on half of Pakistan (Primary reason being Yahya's lust for power with the connivance and abetment of the Fascist Bhutto)... It is a sad story and is too painful to repeat.

While ZA Bhutto was never a democrat (contrary to the propaganda by his Party), Benazir was NEVER a security risk. That is complete nonsense and this story was invented by a certain category of officers to justify their illegal and unwarranted intervention for which they had always been scheming... Gen Aslam Beg and Asad Durrani have a reputation (right or wrong) of being very devious people....

In a recent interview with Mr Badami of the ARY NEWS, Gen Aslam Beg said that any action against him amounts to an action against an institution (meaning the Army).

Does it mean that the Head of an organization can do anything and no action can be taken against him EVER because it will bring that organization into disrepute? It is the same excuse which is being given by the big wigs of the present Government [PPP] who say that any action against them will mean action against the grave of Benazir. What xxxxx; all officials who commit questionable acts forward similar ruses.'

But the question arises that why the said amount of Rs:140 million was distributed by the ISI amongst Benazir Bhutto's opponents. What personal benefits Gen Beg & Gen Durrani could derive from this whole exercise while they were already heading the Pakistan Army & ISI respectively and the IJI could not give them more than that? However, the fact remains that though the PPP was winner in 1988 elections but Benazir Bhutto was allowed to take oath as prime minister only after 'making her to accept certain conditions from the Army, ISI & the Foreign Office' after going through harsh negotiations. It was because:

'Benazir Bhutto had been declared a 'security risk' by the army Generals; the main 'risk' was that she had started negotiations with Indian Prime Minister Rajev Ghandhi to mutually agree on reduction in their respective armies so that the residual expenditure could be spent on welfare of the poor in both countries.'

This wholesome game was played in the name of 'American Plans'. Within the country the PPP was labelled as anti - army political party: see two par-

agraphs of the written statement of Brig Hamid Saeed, former Chief of Military Intelligence Sindh Chapter, submitted before the Supreme Court on 18th October 2012:

[7. Earlier that year the PM [B Bhutto] had also publicly criticized the army for crossing the red line by enriching uranium to the levels which were not acceptable to big powers. She also gave an interview to BBC in which she mentioned of her support to India in crushing Khalistan movement. Sometime later the PM also criticized the army for conducting annual exercise in the Sindh province without her consent. ISPR had to clarify through a press release that under the law COAS was not obliged to seek anyone's permission for conducting training exercises in any part of the country. All such incidents were reported by the press media.

8. During the same year, the government also gave attractive jobs to the Al-Zulfiqar activists in Railways, PIA, Customs, KPT, Immigration, Exercise and Taxation and other sensitive departments, thus endangering national security. These activists of AZO had been imparted proper training by India, in sabotage, arson, bomb blasts, mass killings and other acts of terrorism. The authentic record of these terrorists was available with all the intelligence agencies. All these matters were reported to higher ups through normal command channels.]

Another issue: incorporated in Asghar Khan Case judgment, the Supreme Court announced that it would separately hear the case regarding 'Rs:500 million Intelligence Bureau (IB) funds' allegedly misused to buy loyalties of dissenting politicians and Punjab's MPs in 2008-09. One of the major characters of this mega scam, Wing Commander (Rtd) Tariq Lodhi, enjoyed a lucrative job in Europe [GM NADRA for UK & Europe based at London] gifted to him for his 'services' to the PPP, costing the government of Pakistan more than £10,000 per month. Earlier, he served as DG National Crisis Management Cell (NMC). Incidentally, NADRA and NCMC both were under the administrative control of Federal Interior Minister Rehman Malik.

Referring to '*the News*' dated 10th November 2012, the issue of Rs:500 million embezzlement first came to light when Dr Shoaib Suddle was made the DG IB. Suddle confirmed the withdrawal of the said amount, and also that he had informed the then PM Mr Gilani about it.

The said amount of Rs:500 million was sanctioned by PM Gilani in June 2008 and was immediately withdrawn by the then IB Chief, Tariq Lodhi, not

The Living History of Pakistan Vol-I

for the intelligence purposes at least. PM Gilani had whispered Rehman Malik's name, however, did not explain why the Interior Minister got this hefty amount out of the secret fund of the IB.

The apex court in fact had mentioned Rs:270 million of the IB, an amount used allegedly for toppling the Punjab government through buying political favours in March 2009 when Dogar court had disqualified Chief Minister Punjab Shahbaz Sharif, resulting in the imposition of Governor Rule. That was a different case.

Rs:500 million withdrawn in June 2008 was a clear case of embezzlement as there was no odd political situation in sight in June 2008 concerning Punjab at least. The informers held that the whole amount was 'disbursed' amongst the two bigs - Mr Zardari and Rehman Malik; *its spending to buy the Punjab's MPs was a concocted drama to keep silent the PPP's other shareholding cabinet members.*

A draft law framed by Dr Suddle later to check such embezzlement and other unauthorised practices in the IB, also went missing like the Rs:500 million. How this money changed hands and where it had gone made a big question mark on PPP's credibility but in Pakistan who bothers for such 'small' peanuts of corruption.

DR A QADEER KHAN'S OPINION:

Referring to the *daily 'Jang' dated 5th November 2012*; Dr A Qadeer Khan, the veteran nuclear father of the nation, described the actual happenings during those days of 1990. He portrayed the President GIK as the most honest and 'loyal to Pakistan' person who never uttered a single word against any politician or ruler; civilian or from army. Illustrating a mutual meeting with Gen Aslam Beg [the then COAS], Dr Khan wrote:

'Once I was with Gen Beg at GHQ Rawalpindi when the then Chief Election Commissioner Justice (Rtd) Nusrat Mirza came there to see him. During general discussion on Pakistan's politics, Justice Nusrat said that, in his opinion, Benazir Bhutto and her PPP was likely to win the elections. Gen Beg immediately replied that if she wins she would make the government; it is her constitutional prerogative.'

Dr Qadeer Khan added another phrase in his essay that he had never heard any negative opinion from Gen Beg's lips against Benazir Bhutto. In Dr Khan's opinion there was no clue of differences found from the Presidency

The Living History of Pakistan Vol-I

or the GHQ against the PPP before 1988's elections but afterwards the situation changed because:

- *'Soon after the take over by Benazir Bhutto in 1988, stories of Mr Zardari's corruption started flying high and he got an international reputation and title of Mr 10%. IB, ISI, FIA and other departments were sending documented evidence of his corruption to the President GIK and the Army Chief Gen Beg.*
- *Secondly, PM Benazir Bhutto provided details of Sikh activists and Khalistan's leadership to her Indian counterpart through her special envoy [right or wrong; the opponents had quoted in press the then Federal Interior Minister Aitzaz Ahsan] which was never condoned by the GHQ and the Presidency; it was taken as an anti-national move by all.*
- *The most alarming step taken by Benazir Bhutto was to freeze the enrichment of Uranium in Kahoota Research Laboratories at 5% level without indicating the basis of that wish.*
- *This proposal appeared just a few months after her take over during a meeting at Presidency in which only five concerned were present; President GIK, Gen Beg COAS, Gen Imtiaz, Dr A Q Khan and Benazir Bhutto was in key chair. She was going to America after few days then and she wanted to please them by this decision.*
- *This proposal was never liked by any one because they knew in what inconvenient and tiresome circumstances Mr Bhutto and Gen Ziaul Haq had continued with this project. That was why immediately after, the whole nuclear program was taken under Pak-Army control by Gen Waheed Kakar.'*

Making of the IJI was done in 1988 but it was probably boosted and used in 1990 due to above cogent reasons.

THE PRACTICE CONTINUED [?]:

On 8th November 2012 the Supreme Court issued the detailed judgment comprising of 141 pages which was drafted by the Chief Justice Iftikhar M Chaudhry declaring that doling out money to a group of politicians was an individual act rather than of the institution itself.

The verdict also said that the duty of secret agencies was to protect the borders instead of forming election cells. The diary of Brig (Rtd) Hamid Saeed was also included in the detailed verdict which carried names of the

The Living History of Pakistan Vol-I

politicians who allegedly received money and the amount they accepted. The judgment noted that:

'Political cells in the army and the President House should be abolished as the army and ISI chiefs unfairly used authorities bestowed upon them and also violated the constitution of Pakistan'.

Asghar Khan Case was no doubt a tragedy with the whole Pakistani nation but the practice had not ended there. In 1994, the same practice was allegedly re-invented and repeated by the ISI when millions of rupees in cash were once more taken out from the same Mehran Bank of Peshawar to remove the PML's Chief Minister Sabir Shah. Through a dubious move the then establishment wanted to bring Aftab Sherpao as the new CM through *buying provincial members of the then NWFP [now Khyber Pakhtunkhwa] Assembly.*

On top of it, when the game plan was over, an officer of FIA approached the provincial Director of Mehran Bank Peshawar, named Hameed Asghar Kidwai, and asked for the whole record concerning with those tainted transactions. He got the files, filled in a big carton and departed with the intentions of 'further investigations'. That record was never found later, no investigation report on record, neither of the FIA nor of bank, and the history is still silent on that issue.

Referring to the words of Umar Cheema as appeared in *'the News' of 9th March 2012:*

'The Swiss cartons drama led by Pakistan High Commissioner in London, Wajid Shamsul Hasan, in which potentially fatal evidence was whisked away by the ruling party [PPP], was just an action replay of a similar operation carried out in 1994, when the evidence was taken away by the then PPP government in the then NWFP and was never seen again.

Documents of the Mehran Bank case, some available, revealed that a senior official of the FIA [Rehman Malik was the Director Peshawar then] collected the evidence under the pretext of 'inspection' in 1994, took it away in cartons from Peshawar to Islamabad and never sent them back.

He had travelled all the way from Islamabad to Peshawar in his black official car on April 13, 1994.'

The Living History of Pakistan Vol-I

The Mehran Bank later went under control of the State Bank of Pakistan. After the arrest of its president, Younus Habib on 24th March 1994, Shafiqullah Siddiqui's team of the SBP conducted the audit and sought production of the missing documents. Later a criminal case was registered against Mr Kidwai and during the court proceedings it was placed on record that *'the FIA should have returned the papers but they didn't.'*

Mr Kidwai was acquitted on the basis of the above statement of fact.

Ayaz Amir, a veteran columnist contested Gen Musharraf's 2002 elections on PML(N) ticket and lost though got respectable 70,000 votes against the winner's 71,500. The Nawaz Sharif and his family was much fond of reading his columns during their days of self chosen exile – the result of a Saudi and Hariri-mediated deal, whereby they washed their hands of national politics for ten years in return for generous Saudi hospitality – *see its full details in VOL-II of this book.*

In February 2008 elections, Ayaz Amir contested on PML(N)'s ticket and won the seat for the Parliament. In May 2013 general elections, he was not given the ticket again by that party due to his critical stance against the PML(N) policies in his columns. Ayaz Amir had refused to turn his columns into living party propaganda.

The particular episode was regarding the Asghar Khan judgement by the Supreme Court in which *'a long line of politicians headed by Nawaz Sharif and Shahbaz Sharif were caught with their pants down receiving ISI money, from ISI officers, in the 1990 elections. But no follow-up action, no prosecution, no accountability – the culprits behaving as if they had been washed in holy water,'* Amir wrote bluntly.

Imagine if the Asghar Khan Case was about the PPP and not the PML(N); all hell would have broken loose, the fire and thunder from the Supreme Court of CJP Chaudhry. One could recall Raja Pervaiz Ashraf, the former prime minister, who was disqualified on the basis of a CDA transaction, but the recipients of money in Asghar Khan Case were ignored rather given salutes - the wholesome naked double standards on display in that case.

CJP Chaudhry's SC had repeatedly told the nation that bank defaulters would be out of the elections but the 'sacred' politicians knew about the inside game; so laughed openly. The Chaudhrys of Gujrat had their loans written off, everything in order on paper but the Sharifs went one step further, not going to the trouble of getting anything written off and instead simply refused to pay anything on nearly Rs:3 billion loan taken by them

The Living History of Pakistan Vol-I

from the National Bank and eight other banks in the 1990s – hats off to Pakistan's upright courts.

[Ayaz Amir could not find time to go through Justice Qayyum's three decisions of mid 1997 in which he had given the clean chit to Sharifs.]

Referring to Ayaz Amir's essay in 'the News' dated 20th April 2013:

"All this was 'regularised' when Nawaz Sharif became prime minister in 1997 and he went on television and proudly declared that his family was clearing the loans by offering assets in lieu of them. Sharifs had suggested that this was an act of unrivalled sacrifice.

That the collateral offered was in the form of their most rundown assets. The echoes of that announcement had hardly died down when a Sharif's relative went to court saying he was a shareholder in the properties offered and that Sharifs had no right to dispose them off. This matter is still pending in the Lahore High Court for the last 15 years."

In Ayaz Amir's words; after Asghar Khan Case, one was at liberty to ponder about other expensive and directionless gimmicks: *sasti roti*, laptops, *Jangla* Bus, *Daanish* schools etc – choose anything for praise in Pakistani perspective.

What to speak about CJP Chaudhry's 'independent' judiciary: think Gen Musharraf's episode - the judiciary validated his coup of 1999 not once but twice and there was no shortage of judges who took oath under Gen Musharraf's PCO. But it is the continuing tragedy of living Pakistan.

FIA's INVESTIGATION STARTS:

On 18th November 2013; the Federal Investigation Agency [FIA] formed a special committee under its ADG M Ghalib Bandesha to probe the Asghar Khan Case. In the said case, the former Army Chief Mirza Aslam Beg had filed a review petition almost a year earlier claiming that he had no role in distributing money to political parties. It is on record that the SC had concluded that the then President Ghulam Ishaq Khan, along with Gen Beg and former ISI Chief Lt Gen Asad Durrani, had distributed funds among various political quarters to influence the 1990 general elections.

On 5th December 2013, Pakistan Tehreek e Insaf (PTI)'s MNA Shafqat Mahmood urged the government to implement the SC's judgment in Asghar

The Living History of Pakistan Vol-I

Khan case and to direct the FIA to investigate all politicians accused of receiving money for the 1990 poll fraud. Astonishingly, during PPP regime the said case was not taken up due to PPP – PML(N) secret alliance for loot & plunder in the name of democracy. Mr Mahmood held that:

'It was pity that the PPP, who had blamed Nawaz for receiving money from the ISI to rig the 1990 polls, was now covering up PML-N's malpractices. Now the PTI would decide its future strategy accordingly.'

On 20th December 2013; Air Marshal (Rtd) Asghar Khan giving his statement to the FIA had reiterated the 4-member investigation team to probe the then Pak-Army Generals. The FIA team got documentary evidence from Asghar Khan in connection with the case. Asghar Khan had emphasized that Gen Baig and Gen Durrani had breached the army discipline. The FIA team confined itself to the listening of versions only and just kept the balls rolling to gain more time. After all it was the matter amongst the Generals themselves with no probable outcome. The leadership of the PPP & opposition of PML[N] were one from inside.

Notable thing was that the PPP government did not order any investigation into the ISI money distribution scam [despite the apex court orders] due to the then opposition leader Ch Nisar Ali Khan's outright rejection of an investigation by the FIA.

Interestingly, at a press conference in Islamabad two days after the court verdict, Ch Nisar expressed surprise over the court move to give responsibility of the investigation to the FIA despite knowing its "poor performance" as a reliable investigation agency. A year later, he was heading the same FIA with pride & honour.

While voicing reservations over paragraph 14 of the judgment in which the government was directed to carry out a thorough investigation through the FIA, then [in 2012] Ch Nisar had questioned the FIA while saying; *"Did the FIA carry out a transparent probe into the NICL, OGDCL and Haj scams?"* But a year later [2013], Ch Nisar in his capacity as the Interior Minister in PML(N) government deemed it fit to implement the apex court ruling and constituted a team of his own choice to investigate the scam; just to get an eye-washed investigation report from FIA – saying that *'nothing proved'*.

During the hearing of the Asghar Khan case, *Younas Habib had deposed before the apex court on 8th March 2012 that he had himself handed over Rs:3.5 million to a PML(N) leader [after the 1990 elections] at his Lahore residence while Rs:2.5 million had been sent to*

The Living History of Pakistan Vol-I

another PML(N) leader through a Telegraphic Transfer through one Asif Jamshed on 27th September 1993.

Although the PML(N) had described Younas Habib's deposition as a pack of lies, *Gen Aslam Beg and Gen Asad Durrani did confirm in their respective affidavits that PML(N) leaders were among the recipients of the funds* arranged by Younas Habib and distributed by ISI under President Ghulam Ishaq's orders.

The PML(N) leader, *on 25th October 2012*, had not only strongly refuted allegations of having received money from the ISI but had also announced taking legal action against Younas Habib on defamation charges; saying in a talk show on a private TV channel:

"I neither met Younas Habib nor received money from him. I can recall that the industries owned by my family had paid Rs:920 million in taxes during the year 1990, and considering this, accusing me of having received meagre amount of Rs:3.5 million from the ISI was a joke."

On 10th April 2013, the PML(N) leaders had sent a legal notice to Younas Habib on defamation charges, worth Rs:10 billion. The notice stated that Younas Habib had levelled fabricated and unsubstantiated allegations to defame their political and social standing. Served through Cornelius, Lane and Mufti Advocates, the notice sought a formal apology from Younas, in print and electronic media, within 14 days. But the very next day, Younas responded to the notices, saying *'he stands by whatever he has stated about the PML(N) leaders in the apex court.'*

Not only this, at a press conference in Islamabad, Sheikh Azfar Ameen, the counsel for Younas Habib, said his client would not be afraid by the threats and notices from PML(N) leaders. He said his client won't apologise to anyone and he would be ready to prove each and every word of his statement about the PML(N) leaders once they sue him.

Following Younas's refusal to apologise to the PML(N) leaders, the likely course of action for their lawyers was to file a civil suit of damages against the banker in the court of law for defaming their clients. But since no such civil suit has been filed so far by the lawyers of the PML(N) leaders, Younas's attorney Sheikh Azfar Ameen maintained that *'it amounts to the admission of guilt on part of the PML(N) leaders.'*

ANOTHER THREAT OF PANDORA BOX:

The Living History of Pakistan Vol-I

Referring to Rauf Klasra's column in the *daily 'Dunya' dated 22nd December 2013*; Gen Aslam Beg, the most important character of the said scandal, told the media that *'if the FIA would take up the case, another Pandora Box would be opened before the nation.'*

Those were the days when every wrong doer in Pakistan when approached by NAB or the FIA threatened about 'opening of a Pandora Box'. Earlier the Pakistani nation was endangered by the Pandora Box of *'3rd November 2007's Emergency'* when Gen Musharraf was being tried for the follies committed by his associates.

Though Gen Beg had admitted his guilt before the SC bench in open that *'he was involved in the distribution of money to the politicians through ISI under the command of the then President GIK'* but even then he was ready to open a Pandora Box for the nation. Extending threats to the poor Pakistani population had become a routine talk by the crocodile public figures.

On 23rd December 2013, National Accountability Bureau [NAB] decided to take up the inquiry of scandal regarding issuance of more than 2,000 blue passports [*passports issued to the government officers to travel abroad for official job or duty only*] to unauthorized persons by Rehman Malik during the PPP regime of 2008-13. The PML(N)'s Interior Minister Ch Nisar, when asked to divulge the names of those 2000 persons, told the media that *'had he made those 2000 names open, many people would hold their heads AND a Pandora Box would be opened'*.

The fact remains that the judges, Generals and the politicians have made the whole Pakistani nation terrified. They are threatened with Pandora Boxes of various kinds each day with in fact no substance in them. Result; that citizens have equipped themselves with guns and grenades. The state departments were sufficiently corrupt but then gradually started feeling threatened. The height of the syndrome was that Gen Beg sponsored a wrong practice in 1990, then admitted his guilt in the Supreme Court and then started extending threats to the whole nation through media and TV live programs – that new Pandora Box was ready.

Of course, it was not the mandate of the SC to investigate the details of the Asghar Khan Case. When FIA started investigations, the threat of Pandora Box was once more repeated. FIA wanted to know the answers of certain odd questions like:

- In 1990s, why an amount of \$2,50,000 was transmitted from Gen Aslam Beg's account in Younas Habib's Mehran Bank, then to an American bank account; and what activities were going on there.

The Living History of Pakistan Vol-I

- Why the hefty amounts were continuously being paid from Gen Beg's account to Fakhruddin Ebrahim Jee and for what services.
- Why a named major of the army was being paid large amounts of money from above mentioned accounts of Gen Beg.
- How many bulky amounts of payments were being continuously received by his NGO titled 'FRIENDS'; and from where the amounts were coming; and why those amounts were finally transferred into Gen Beg's personal account.
- How an ex-army chief had managed to send continuously heavy amounts to America even after retirement to one named person.

There were tens of more questions to be added, the details of which were available in detailed judgment of the SC. The SC was quite angry when Gen Beg went silent on above questions. Further; the said details were given to the apex court by none except his own colleague Gen Durrani.

Gen Beg remained contended throughout the court proceedings that he had done nothing wrong; only distributed money amongst the politicians on orders of President GIK to cause defeat of the PPP and Benazir Bhutto. Three years later, the same GIK was found taking oath from Benazir Bhutto's husband Zardari as federal minister under a new deal with PPP.

Some bureaucrats were also equally culpable along with Generals in that dirty game of 1990. Younas Habib had stated before the SC on oath that one *Roedad Khan*, the most powerful Secretary of those days and attached with the Election Cell of the Presidency, had called him from Karachi and ordered for releasing required funds. *'When I showed my inability to do any more, I was picked up by an FIA team from the Karachi Airport the moment I landed back'*; Younas Habib had divulged in open before the media.

Every thing is already out on record; what is left in the Pandora Box for which the nation was being threatened. Is it on the court record that son of an Advisor to PM Nawaz Sharif was also mentioned on the list of Mehran Bank eaters because he had managed to finally approve the license of the said bank.

Amongst the other eaters and looters, there were names of numerous relatives of PM Nawaz Sharif who were all issued large amounts of loans on phone call from the PM House. Mehran Bank was 'advised' to approve loans against those names on phone and the compliance report regarding money transfers into the respective accounts had to be conveyed on phone during the same night.

So what is left behind in the Pandora Box.

The Living History of Pakistan Vol-I

The PPP stalwarts had known about the weak points of Younas Habib much later. One PML + Gen Beg looted the Habib Bank through Younas Habib and later the PPP + others plundered the Mehran Bank through the same person. That was why the PPP did not issue green signal to FIA to start investigations as per SC orders during their regime.

After going through the history of Habib Bank and Mehran Bank, the tradition of loot and plunder was sincerely followed during Gen Musharraf's times under the active advice of the then PM Shaukat Aziz. During that army regime the loans worth Rs:60 billion were made zero while during PPP's rule of 2008-13, the loans worth Rs:130 billion were condoned. This time the National Bank of Pakistan was targeted and the beneficiaries were intimate friends and family members of Mr Zardari and PM Gilani.

PM Gilani's wife got relief of Rs:550 million while the Speaker Fehmida Mirza got her Rs:870 million pardoned from five scheduled banks.

So what more to be seen in the Pandora Box by the poor Pakistanis except that some more cruel faces of bureaucrats and politicians would be there – not of any Rahim Bux or Faqero or Tony or David; so why to worry any more.

[Part of this essay was published at pkhope.com on 9th October 2015]

Scenario 103

2 MNAs + FED MINISTER IN DRUG COURT:

The Living History of Pakistan Vol-I

'Pakistan has ratified the Single Convention on Narcotics Drugs 1961, the UN Convention on Psychotropic Substances 1971, the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 and the SAARC Convention on Narcotics and the Protocol of Drug Matters with ECO countries. The International Narcotics Control Board (INCB) is the entity that implements UN drug conventions and Article 12 of the Single Convention gives INCB the "responsibility of allocating quotas..."

According to the INCB, Pakistan's "annual legitimate requirement" for Ephedrine – based on population and historical trends – stands at 22,000 kg. (Source: www.incb.org)

Referring to Dr Farrukh Saleem's opinion expressed in 'the News' of 12th April 2012:

'Here are the facts: Pakistan ended up importing 31,000 kg [during 2010] which simply could not have been done without the complicity of the entire civil bureaucratic chain. A group of Pakistanis has made a few billion rupees. The Parliament remains in deep hibernation - and totally indifferent to what is going on.'

The superior judiciary was proactive then but as the investigative agencies were under the command of the executive, the judiciary's reactivity was not bearing much fruit. Fingers were pointed at the uppermost crust of the ruling PPP government and topmost bureaucrats.

Some other facts: Till 2012, one out of every 20 Pakistanis was abusing drugs – that's more than 9 million drug users. As per reliable estimates 600,000 additional Pakistanis join the drug club every year. The statistics for college / university students were even worse. One out of every 10 college or university student was a drug addict – there was one university in Karachi where 20 out of 30 students were using *charas* then. Then there was the prison population where four out of 10 prisoners used to consume drugs. Cocaine kills - so does Ephedrine. The World Health Organisation reported a total of 250,000 deaths worldwide due to illicit drug use.

MUSA GILANI SCANDAL:

Pakistan's Anti Narcotics Force (ANF) had done a wonderful job.

The Living History of Pakistan Vol-I

On 29th March 2012, the Supreme Court of Pakistan heard another case of PM Yusuf Raza Gilani family's corruption in which an alleged corruption of Rs:7 billion was involved. This time Gilani's younger son Musa Gilani, who was also a sitting MNA in the Parliament, was echoed in import of a chemical illicitly used in 'heroin making' process. In *GEO's live TV program 'Aaj Kamran Khan ke Sath' dated 29th March 2012* its full details were discussed.

'Oman Times' dated 31st March 2012 noted that the Supreme Court (SC) turned down a request by the Anti-Narcotics Force (ANF) for withdrawal of that case against the import of a proscribed chemical worth \$77 million in a scandal that allegedly involved the prime minister's younger son, Ali Musa Gilani.

A 3-judge bench, comprising Chief Justice Iftikhar M Chaudhry, Justice Khilji Arif Hussain and Justice Tariq Parvez, had taken up a civil petition moved by the regional director of ANF Islamabad. The court ordered the ANF to submit an investigation report on out-of-turn quota for import of the raw material granted to two pharmaceutical companies by the Federal Ministry of Health under the influence of Musa Gilani.

The ANF Commander, [a serving officer of Pakistan Army] Brig Faheem, informed the court that a quota of 9,000 kg, had been granted to Berlex Labs International and Denis Pharmaceutical. The two companies of Multan and Islamabad were given the quota of 6,500 kg and 2,500 kg respectively by the then Director General Health, Dr Rasheed Jooma.

Pakistan has signed international conventions that whatever is its need, it intimates the International Drug Control Authority and then gets the quota to import ephedrine, but in the case at hand, first both the companies told the Ministry of Health that they had the license to export ephedrine to Afghanistan and other countries and later sought the permission to use it locally, which was given without taking any safety measures.

The matter was once raised in the National Assembly in 2009 where the then Federal Health Minister Makhdoom Shahabuddin had formed a committee under the then Joint Secretary Ministry of Health Mohsin Haqqani, to give recommendations. Later, on the committee's recommendations, the ANF initiated investigation against about ten people, including Dr Rashid Jooma, Iftikhar Ahmed Babar, Rizwan Ahmed Khan, Ihsanur Rehman, Tanvirul Hassan Shirazi, Chaudhry Abdul Waheed, Ansar Farooq Chaudhry, Col (r) Tahir Lahoti, Muhammad Hashim Khan and Tauqir Ali Khan.

The Living History of Pakistan Vol-I

[Pakistan annually needs 10,000 kgs of 'ephedrine' and names of 20 companies are short listed by the Ministry of Health to get 500 kg each per year after submitting necessary certificates regarding previous consumptions. In 2010 apart from the normal import of 10,000 kg, the Ministry had dubiously allowed two firms to import 9,000 kg of that chemical ephedrine without scrutiny of the above mentioned two firms of Multan.]

Deputy Director ANF told the court that he had issued a notice to MNA Ali Musa Gilani on 12th March 2012, adding that neither Musa nor Tauqir appeared so far.

Commonly known as poor man's cocaine, the chemical is also used to manufacture a medicine called 'Ephedrine' to cure common cold, flu and asthma. The said import permits for 9000 kg substance were issued by the then Secretary Health Khushnood Akhtar Lashari, later the Principal Secretary to the PM. Afterwards, Nargis Sethi was especially asked to [in addition] look after Health Ministry's affairs those days and frequent calls from Musa Gilani were accommodated by her during the year 2011; the ministerial staff told the investigators.

Nargis Sethi became a party to that dirty game by pushing the case into the cold room. Subsequently Nargis Sethi was transferred to PM Secretariat as Secretary In-charge after giving her un-warranted and out of turn promotion in grade 22. Advocate Raja Shahid Abbasi, representing ANF, submitted before the court that Brig Faheem intended to withdraw the petition.

'Who gave you the authority to withdraw the case and under what reasons you have decided to withdraw it; something is wrong in the bottom,' the CJP asked. 'Are you scared when you should be setting an example?'

Brig Faheem told that he was not scared and added that one Tauqir Ahmed Khan; personal secretary to Musa Gilani had surfaced during investigations. He got the quota approved by the Health Ministry against rules and regulations. The apex court was also told that an inquiry committee had determined that the two pharmaceutical companies had misused the quota and allegedly sold it to smugglers, instead of using it for the medicine.

Ali Musa Gilani was then elected as member of National Assembly from Multan on a seat vacated by former foreign minister Shah Mehmood Qureshi after joining the Pakistan Tehrik e Insaaf.

The Living History of Pakistan Vol-I

PM Gilani's elder son, named Abdul Qadir Gilani, was member of Punjab Assembly (MPA) and was waiting a proper moment to be the Chief Minister of 'Saraeki Suba' which was on cards those days. MPA Abdul Qadir Gilani, was also involved in mega scandals like National Insurance Company Limited and Hajj Scam; still pending before the SC for final verdict. Referring to 'the News' of 30th March 2012:

'To the bad luck of prime minister when he was busy saving the scion of Chaudhrys of Gujrat in NICL scandal, and removed the then Secretary Establishment Sohail Ahmed, an officer of honest repute, and Supreme Court directed the PM to give a posting to Sohail so, the officer was appointed as Secretary Narcotics Control Division. The first briefing which they gave to Sohail Ahmed was regarding the "ephedrine" scandal amounting over Rs:7 billion and allegedly involving the son of Prime Minister.'

Sohail Ahmed, the former Secretary Narcotics Division, gave the written orders to ANF to lodge FIR against the culprits; thus in October an FIR no: 40, under section 9c, 14, 15 and 16 of Narcotics Act was formally lodged. The following alarming facts later surfaced:

- The former DG Health who gave away this illegal quota to PM's son had written a letter to Secretary Narcotics Control Sohail Ahmed alleging that the former Secretary Health, Khushnood A Lashari, was also involved and that all was done as per his wishes.
- The then sitting Secretary Narcotics Division had taken an adverse stance so that the case might become too weak to be trailed.
- It came on record during investigation that the distributor which the *Multan based company referred to, did not exist*; thus no record could be traced to show *where 9,000 kg of ephedrine had gone*.
- Dr Rasheed Jooma, former DG Health who was on interim bail in the Rs:7 billion scandal, told the media *'that nothing has been done against rules and laws'*.
- Dr Jooma also told that the Secretary Health and Chief Drug Controller were also there so why only DG Health was being inquired.

'The situation is bringing a bad name for the country as such things are happening at the official level,' the Chief Justice Iftikhar M Chaudhry regretted and adjourned the matter to 20th April. On the same day the court was told that eight new suspects in the case, including Musa Gilani and the prime minister's Principal Secretary, Khushnood Lashari, had also been charged. ANF's Colonel (ret'd) Syed Akhtar Abbas told the media that:

The Living History of Pakistan Vol-I

"Documentary evidence shows that Khushnood Lashari, used to allocate quotas for ephedrine in the presence of Ali Musa Gilani. It can be safely assumed that this [ephedrine] was issued for him [Ali Musa Gilani]."

The media cried desperately that how the family of PM Gilani, for the second time in barely a year, had become enmeshed in a corruption scandal, this time with the other son Ali Musa Gilani accused of being involved in a near-US\$8 million scam of a controlled drug.

The charges came amid growing concern at the levels of corruption surrounding PM Gilani's government while it failed to raise sufficient legitimate tax and other revenues to cover country's needs. Finance Minister Hafeez Shaikh in Washington that week was seeking to secure a new \$4.3 billion loan from International Monetary Fund [IMF] to repay its foreign debts.

MNA Ali Musa Gilani failed to appear before the 3-member Supreme Court bench; he was abroad in South Africa. The charges, laid by Pakistan's ANF come after another son, Abdul Qadir Gilani, was summoned to appear before the Federal Investigation Agency (FIA) in January 2011, accused of receiving Rs:20 million as kickbacks related to hiring of accommodation for Hajj pilgrims.

An ANF report submitted to the court said the accused allegedly allocated 6,500 kilograms to Berlex Lab International, based in Multan, and 2,500kg to Islamabad-based Danis Pharma (Pvt) Ltd in 2010-11 for export to Iraq and Afghanistan. The allocation also violated a United Nations convention that set the export quota for Iraq at 3,000kg and Afghanistan at 50kg. Ephedrine was allocated to the said two companies out of turn, despite the fact that there were 20 companies waiting for allocation of their usual quota in routine. The two accused companies claimed to have manufactured 218 million and 85 million tablets respectively, from ephedrine, but failed to produce proper sale records.

The irony was that the drug scam had cost senior ANF officials their jobs, echoing events around the Hajj case involving Gilani's other son, Abdul Qadir. *ANF's DG, Maj Gen Shakeel Hussain and two colleagues investigating the ephedrine case were removed from their positions the same month. Gen Hussain was removed after he assured the Supreme Court that he would proceed against all influential people involved in the scam in accordance with the law.*

[The same evening, the PM spoke to Gen Kayani expressing his inner grief; the Army Chief got it managed on immediate basis con-

The Living History of Pakistan Vol-I

sidering it head of the Executive's personal request. The transfer order was signed by Lt Gen Naweed Zaman of GHQ's MS Branch.

The order stated: *"The COAS is pleased to order following posting and apt: PA-17141 Maj Gen Syed Shakeel Hussain from DG ANF to MLRC 10 Corps..... in an existing vacancy and for 'pre-retirement' facilities."* After a week or so, Maj Gen Shakeel had proceeded on retirement.]

A year earlier, one Director of FIA, Hussain Asghar, was removed after he issued a notice to Abdul Qadir asking him to record a statement before the FIA team investigating the Hajj scam. Daily the 'News' of that day commented:

"There it is again: another corruption scandal that stretches out into the highest sanctums of power. The memory of how the head investigator in the Hajj scam was transferred after he summoned the son of the Prime Minister, Abdul Qadir Gilani, to record his statement is still fresh.

The present [PPP] government is one of the most corrupt in the world, according to Transparency International of Pakistan (TIP). In 2010, the value of overall corruption rose to 223 billion rupees, from 195 billion rupees a year earlier, according to the organization's national corruption perception survey.

The government could raise \$10 billion additional revenues every year by curbing corruption from government departments and through honest collection of taxes, according to TIP."

The PPP government's failure to secure adequate tax and other revenue had driven up its borrowing; government loans from the central and local banks passed 1.01 trillion rupees as of April 6, up 143% against the corresponding period of the last year, according to the State Bank of Pakistan's own Monthly Report.

SON'S COR'N CASE IN DAD'S CABINET:

On 26th April 2012, Ali Musa Gilani appeared before the investigation officer of the Anti-Narcotics Force [ANF] and recorded a statement while his lawyer was with him. Musa Gilani denied any connection with the Deputy

The Living History of Pakistan Vol-I

Drug Controller named M Tanvir, former DG Health Dr Jooma and former Health Secretary Khushnood Akhtar Lashari.

MNA Ali Musa was in South Africa on his honey-moon and was scheduled to come back on 2nd May but had to come back earlier. He had landed back on 22nd April to appear before the ANF's team as per directions of the SC. Before the ANF's team, he took a new stance claiming that his phone number was misused of which an investigation could be conducted.

[Brig Faheem Ahmed Khan and Abid Zulfiqar were also present on the occasion. On 9th April 2012, their boss Maj Gen Shakeel Hussain and another officer who were investigating the Rs:7 billion scam involving illegal sale of ephedrine were removed by the Ministry of Narcotics Control. How they could survive after chasing and implicating (in a corruption case) son of the sitting prime minister Mr Gilani – it was taken as a blow to the democracy; forget corruption – it was their right.]

A tribute & salute to the Pakistani justice and democracy.....]

Earlier, the ANF had submitted a report before the Supreme Court formally naming eight accused persons, including Musa Gilani, for their alleged involvement in the scam. According to the ANF report presented in the apex court, the accused managed to convert the allotment of drugs intended for export into local use with the help of the health ministry staff and under alleged political pressure from Musa Gilani and Mian Abdul Sattar.

It is unusual for a country's Cabinet to comment on or take up criminal cases; it is even more unusual for the highest decision - making body in the land to rise to defend an accused. But then we are getting accustomed to more and more unusual events in Pakistan – an Islamic Republic.

The placing of the case of illegal ephedrine quotas allegedly involving Ali Musa Gilani before the cabinet by his father, the prime minister, amounted to nepotism – and a gross misuse of power. It is globally virtually unprecedented for the cabinet of any country to take up a criminal matter pending before the courts and claim that the accused is the victim of a media campaign which has caused a scandal. Ali Musa Gilani was in South Africa at that moment and was claiming much the same.

The task of any cabinet is to make decisions on crucial issues. It should be focusing its energy on working for the welfare of the people of the country and determining matters which are of key significance to them. It should

The Living History of Pakistan Vol-I

not have taken the role of a jury determining the guilt or innocence of an individual, regardless of who he or she is. This is what the criminal justice system stands for.

It was also pointless to accuse the media of gunning for the PM's son. There was no reason why it should indulge in this. Such stories usually have elements of truth in them, which is why they stick. The Anti Narcotics Force had already claimed it was in possession of substantial evidence in that case. Let this evidence be analysed in a court of law.

The issue whether Ali Musa Gilani was guilty or not, should have been determined by the courts alone. Bringing the cabinet into the affair was completely unjustified. It made a mockery of the norms according to which a country should be run. It was also a sign of desperation on the part of PM Gilani and his family.

The cabinet's involvement was to complicate matters and to make it even more difficult for ordinary citizens to believe that everyone was equal before the law. If the matter of the younger Gilani could be taken up by the cabinet the why every person accused was not given the same importance and defended in a similar fashion by our ministers and other top officials of the land.

But the analysts forget that Ali Musa, the culprit, was the son of the sitting Prime Minister Y R Gilani.

Due to ANF's high positioned officer's removal from their respective posts and then Cabinet's interference the investigation of the case was put on slow track.

Another important factor cropped up – the Prime Minister Gilani was sent home by the Supreme Court in a contempt court in the last week of April 2012 - 26th April when the final hearing was given to the case. Musa Gilani had to join the investigation as and when required by the ANF authorities. He was on the interim bail.

On 22nd June 2012; the Special Anti-Narcotics Magistrate, Rawalpindi, Shafqatullah Khan, issued non-bailable warrants in the ephedrine case for the arrest of Makhdoom Shahabuddin, once the candidate of the PPP for the office of prime minister, and MNA Ali Musa Gilani. The court had summoned the accused on 16th June and when they did not turn up, the court issued their arrest warrants.

The Living History of Pakistan Vol-I

The DG ANF, Maj Gen Malik Zafar Iqbal, said it was a coincidence that the court had issued the arrest warrants when the PPP nominated Shahabuddin as its candidate for the slot of prime minister. He said it was a court procedure to summon an accused first and if the accused did not appear before the court, then the arrest warrant was issued. The ANF had also sent a letter to the Ministry of Interior to put the name of the accused on the Exit Control List (ECL).

After the issuance of warrants, the ANF also conducted raids to arrest the accused. A Supreme Court bench, headed by CJP Chaudhry, had earlier directed the ANF to arrest Shahabuddin, who had approved the ephedrine quota for Danas Pharma with Ali Musa Gilani allegedly being the principal beneficiary of the sanction.

On 14th September 2012, Ali Musa Gilani was arrested from the gate of the Supreme Court while he was on his way to appear for a hearing of his case. The ANF personnel took Musa Gilani into custody when he arrived at the apex court's gate to appear for the hearing in the ephedrine quota case. Musa Gilani had offered some resistance when ANF personnel tried to take him into custody.

Though Yousaf Raza Gilani was no more the prime minister after April 2012's SC orders but the whole PPP government was found at Ali Musa Gilani's back meaning thereby that corruption was fair or legalised during political regimes – if done by party's patrons and high positioned members.

Station House Officer (SHO) of Secretariat Police station, Inspector Haq Nawaz Ranjha was removed from his post and censured over his involvement in assisting the Anti Narcotics Force (ANF) in arresting the former premier's son, Ali Musa Gilani in a hostile manner. The order was issued from the Central Police Office (CPO) over the government and interior minister's displeasure.

Over the displeasure of the ruling party, the senior police officers in CPO obtained the details of the incident which revealed that the SHO Secretariat, Inspector Ranjha had acted at his own after the ANF official had verbally asked him to '*maintain law and order*' during the arrest. In the eyes of law, the SHO was duty bound to act like that but the act of helping ANF in that arrest of an accused was not liked by the then Interior Minister Rehman Malik – because the accused was Ali Musa Gilani.

[Ali Musa Gilani, a sitting member of National Assembly, was picked up at the gate of the Supreme Court. He was roughed up, and dragged out from his vehicle and bundled in the ANF's official vehi-

The Living History of Pakistan Vol-I

cle, after being handcuffed. During the hostile treatment, he suffered injuries and blood stains smeared his trousers, above the left knee.

The fact remained that in practice the ANF keep their operation a secret on the pretext that the accused would escape from the spot if police is told. However, the ANF after successful operation or arrest, got help from CrPC's section 48 & 49 and justified their act for not informing the local police in fear that the accused could escape.]

In short; a 3-member bench of the Supreme Court (SC) headed by Justice Nasirul Mulk granted interim bail to MNA Ali Musa Gilani in the ephedrine case till 25th of that month. The court also directed Musa Gilani to submit two surety bonds of five hundred thousand rupees each. Musa Gilani was produced before the court by the Anti Narcotics Force [ANF] after his arrest earlier morning from outside the Supreme Court building.

He tried to agitate the court by saying that:

'.....he had faith in the Supreme Court, but not the ANF. I respect the courts and used to think that everyone else does, too. But, today, the camera's eye witnessed that uniformed men committed contempt of court while being in the vicinity of the Supreme Court....';

But the judges could only give a smile. Later, while talking to the media persons after his interim bail, Musa Gilani said he was not the main accused in the case and on him there were charges of putting pressure only.

On 29th January 2013; the assets of former pm Mr Gilani's son Ali Musa Gilani; wife - Fozia Gilani and other accused including Makhdoom Shahabuddin and Khushnood Lashari were ordered to be seized in ephedrine quota case by the Anti-Narcotics Force court and also issued summons to the accused allegedly involved in this case.

According to the ANF's fourth challan [final report u/s 173 CrPC] in the ephedrine case, there were 17 accused persons including two approvers, Dr Rashid Jooma, former DG Health, and Rizwan Ahmed Khan, former Director of the Danas Pharmaceutical Company, who obtained 2,500 kg ephedrine quota. Initially named as accused, *Dr Jooma and Rizwan Khan turned approvers in July that year and alleged the involvement of Makhdoom Shahab, Federal Minister for Textile Industries, Ali Musa Gilani, son of former pm Mr Gilani, and Federal Secretary Khush-*

nood Lashari. The two approvers were to be treated the prime witnesses then.

On 22nd March 2013; Judge Arshad Mehmood Tabassum of the Anti-Narcotics Court ordered that Ali Musa Gilani and former federal minister Makhdoom Shahabuddin should be indicted in the ephedrine scam case. On the next hearing [5th April 2013], the court was given compliance and also informed about the arrest of Tauqir Ali Khan, the main accused in the case. Khan had been declared an absconder by the Islamabad High Court in the case and was arrested upon his return from Dubai.

On 9th February 2014; the Control of Narcotics Substances Court (CNSC) formally indicted Ali Musa Gilani and Makhdoom Shahabuddin among 13 accused in the said case. The CNSC Judge Akhtar Bahadar expressed his anguish over Ali Musa's non-appearance in the court and had to warn his counsel about consequences. The case against Ali Musa Gilani and others was strengthened after *Tauqir Khan also became a state approver*. According to the ANF, Khan was Ali Musa's front man and the mediator between health officials and Berlex and Danas, pharmaceutical companies in the Ephedrine case.

In the meantime, Ali Musa Gilani approached the Lahore High Court [LHC] to get his name removed from the Exit Control List (ECL); his petition was accepted for regular hearing. On 14th April 2014; the LHC summoned the final arguments by the Interior Ministry and Anti-Narcotics Force (ANF) in his case.

LHC's Justice Manzoor Ahmed Malik was in chair; and the Prosecutor told the court that the name of Ali Musa Gillani was added as the main culprit in the Ephedrine case. The accused could flee the country if his name was removed from the ECL and would affect the hearing of the case. The court summoned the final arguments by the Interior Ministry and Anti-Narcotics Force (ANF) and adjourned the hearing till 15th May.

On 15th May 2014; Ali Musa Gilani told in the court that he had joined former president Gen Musharraf while he urged the court to remove his name from Exit Control List (ECL).

The Living History of Pakistan Vol-I

On 30th July 2012; The Anti-Narcotics Force (ANF) registered a case against a Pakistan Muslim League-N [PML(N)] legislator, MNA Hanif Abbasi and his partner Zafar Bakhtawari, owners of Gray Pharmaceutical, for their alleged involvement in misuse of 500kg of a controlled chemical ephedrine which they obtained in 2010. MNA Abbasi's pharmaceutical company had procured that ephedrine surpassing the legal quota limit by leaps and bounds. The FIR was registered in an ANF station.

MNA Abbasi regretted the action terming it as a blatant political victimization as the quota he had acquired was legal. It is mentionable that it was the same scam, which prevented Makhdum Shahabuddin from vying for the premiership of the country as an arrest warrant was issued for him hours before he could even take oath of the next premiership.

On 14th August 2012: MNA Abbasi had sought an eight week long protective bail on the ground that *he was a resident of Karachi* and needed time to travel to the trial court in Rawalpindi. He also requested the court to grant him time to engage a lawyer and to appear before the anti-narcotics court. Court granted him a bail till 7th September 2012. On 7th September 2012; the LHC granted pre-arrest interim bail to Mr Abbasi.

On 23rd September 2012; Hanif Abbasi placed allegations on army stating that Pak-Army was putting pressure on ANF Chief and wanted to defame him. Next day, DG ANF Maj Gen Zaffar Iqbal said that the Pakistan Army had nothing to do with the activities of the ANF, nor was the army involved in any case being investigated by his directorate.

On 1st November 2012; The Rawalpindi Bench of the Lahore High Court (LHC) confirmed the bails of PML(N)'s MNA Hanif Abbasi, former Drug Controller, Sheikh Ansar and owner of the Lahore Pharmaceutical Company, Nadeem Zafar in the said Ephedrine quota case. A 2-member bench comprising Justice Sagheer Ahmed Qadri and Justice Ali Baqir Najafi had confirmed the bails of the accused against surety bonds of Rs: 500,000 and two guarantors each.

Prosecutor General of the ANF, Raja Shahid contended that the record submitted by Hanif Abbasi about usage of the allotted quota was 'bogus'. There were indications that the quota was sold to the smugglers of Afghanistan instead of using it in manufacturing medicines locally. Abbasi and other accused had pleaded there was complete record of the medicines manufactured with the Ephedrine chemical and its distribution.

On 22nd January 2013: the Supreme Court of Pakistan (SC), lifting ban on transfers in ANF, transferred the case of bails of Makhdoom Sha-

The Living History of Pakistan Vol-I

habuddin, Hanif Abbasi and Musa Gilani to another bench. Hearing the ephedrine case, a 3-judge SC bench headed by CJP Chaudhry also disposed off a petition seeking fresh probe into the said case. ANF's Commander Fahim said ANF had earlier reservations about the transfer of Zafar Abbas, which had been addressed. On that, the CJP remarked that court would not interfere in transfer matters.

On 29th May 2013; The ANF requested the SC to initiate proceedings against Hanif Abbasi, Ali Moosa Gilani, Makhdoom Shahabuddin and other five accused in ephedrine quota case. Till that moment, though PML(N) had won the general elections and Nawaz Sharif had grabbed the premiership of the country but MNA Hanif Abbasi could not win back his seat.

On 11th July 2013; The ANF submitted a challan against former MNA Abbasi in the local court and declared his brother an absconder; the challan was forwarded to the Control of Narcotics Substances Court (CNSC) where the hearing was to be scheduled. On 9th October 2013; the said CNS Court granted bail to Abdul Basit Abbasi, the brother of the PML(N)'s Hanif Abbasi. Basit Abbasi and a local distributor of the medicine, Ahmed Bilal, had been added in the challan and despite repeated notices; they had not appeared before the ANF investigation team.

On 19th October 2013; The ANF filed a petition in the Lahore High Court Rawalpindi bench requesting the cancellation of Hanif Abbasi's bail in the said case. Hanif Abbasi claimed he had used the 500kg ephedrine in the production of DSM tablets, and also provided a few samples to the ANF as evidence in his defence. On the other hand, the ANF maintained that the specification of the capsules produced by Mr Abbasi did not match the actual specifications of the medicine. Allegedly, Mr Abbasi had produced DSM tablets containing ephedrine from elsewhere.

On 12th November 2013; Hanif Abbasi approached the Lahore High Court (LHC) Rawalpindi bench to quash criminal proceedings against him in the ephedrine case. In his defence, Hanif Abbasi had included statements of two officials of Arafat Traders, the Karachi-based medicine distribution company, to whom Abbasi claimed to have supplied 11,000 ephedrine - containing tablets. *The tragedy happened with Abbasi that the officials of the distribution company denied Abbasi's claim, the challan revealed later.*

On 2nd July 2014; the CNS Court had summoned Hanif Abbasi [then Chairman Metro Bus Project Committee and not the MNA], on 4th August for indictment in ephedrine case. The ANF in the challan submitted in the

The Living History of Pakistan Vol-I

CNS Court had re-affirmed Hanif Abbasi, his brother and five employees of his Grey Pharmaceuticals as accused persons.

Hanif Abbasi had lost the 11th May 2013 elections from NA-56 to PTI chief Imran Khan; it has already been written in the earlier paragraphs.

On 4th July 2014; an LHC division bench, comprising Justice Ijaz Ahmed and Justice Ch Masood Jahangir, issued notice to the ANF after hearing preliminary arguments on Mr Abbasi's petition, and adjourned the matter till a future date.

On 29 August 2014; the CNS Court rejected bail petition of former MNA Hanif Abbasi in the said ephedrine quota case. Abbasi's counsel had submitted a fresh application under section 256 requesting the court to acquit his client. The counsel claimed that his client was innocent and that the case was fabricated and politically - motivated.

On 29th October 2014; the CNS court of Rawalpindi indicted the PML(N)'s Hanif Abbasi, and eight others in ephedrine case under section 9-C, 14 and 15 of the CNS Act. The said court also indicted Basit Abbasi, brother of Hanif Abbasi, distributor and employees of Grey Pharma. Challan also contained statement of Razia Bakhtawari, the owner of D-Watson Chemist - contradicting the initial claims made by Mr Abbasi of supplying the ephedrine contained medicine to her outlets.

CNS Judge M Akhtar Bahadur read out the charges against the accused. However, the accused pleaded not guilty. Subsequently, the judge directed the prosecution to produce evidence against the accused and adjourned the proceedings. On the next date the prosecution was asked to produce 10 witnesses out of total 40 witnesses.

After that nothing heard what happened to the case – but do not be panic; in Pakistan nothing happens to the kith & kins & cronies of big guns – courts and laws are always on their side.

JUDGES & JUDICIARY IN FOCUS:

During the 2nd week of April 2011, while hearing the 'missing persons' case, Justice Javed Iqbal and Justice Raja Fayyaz had reiterated

'The fact remained that the apex court went impotent on this issue but, just to satisfy its ego, it directed that home ministers of all the four provinces and federation to appear before the court on the next hearing.

What the home ministers [in-charge of respective poor local police] had to reply or explain before the apex court except for coming, going and sitting on benches outside the court room while adding millions of travelling expenses to the public expenditure'.

What else the apex court could do – by the way; it has been the routine practice of the '*independent judiciary*' of Pakistan since about a decade.

SC ON BUSINESS AFFAIRS:

Earlier, on 7th April 2009, the Supreme Court (SC) ordered for an independent commission headed by former SC judge Rana Bhagwandas for an inquiry into the *soaring prices of petroleum products* and profit earned by the oil companies. The identical constitutional petitions were moved by PPP Senator Rukhsana Zuberi, PML(N)'s Zafar Iqbal Jhagra in 2005 and others which was taken up by a 3-member bench of the apex court headed by CJP Iftikhar M Chaudhry on 30th March instant. The Court opined that ten (10) questions pertaining to the misuse of the authority and objectionable regulatory provisions should be answered by the Commission.

The National Accountability Bureau (NAB) submitted to Justice Bhagwandas Commission a report on the wrongdoings committed by the oil industry lords in the pricing of petroleum products causing a loss of Rs:83 billion to the nation over a period of five years. This huge loss was caused through the fixing of oil prices by OGRA in connivance with various oil companies.

The Living History of Pakistan Vol-I

The NAB told that the report on petroleum pricing mechanism between June 2001 and June 2006 was originally submitted to the then president Gen Musharraf and PM Shaukat Aziz on *13th June 2006* by the then NAB Chairman Lt Gen (rtd) Shahid Aziz. *The report was never made public but the NAB Chairman was removed unceremoniously shortly after the report was sent to the presidency.*

The NAB's same report was then provided to the Justice Bhagwandas Commission. As per finding of the then Deputy Chairman of NAB, Maj Gen Muhammad Siddique, the senior management of "Pakistan State Oil Company Limited (PSO), Ministry of Petroleum in collusion with the Oil Companies Advisory Committee (OCAC) were involved in massive misappropriation & misuse of authority and forgery in the import of HSD (high speed diesel) and its subsequent sale in the country.

The Federal Cabinet, in June 2001, had entrusted the role of oil price fixation to OCAC under monitoring by the DG but OCAC played Scot free. As a result of faulty policies, the profits of Shell Pakistan, Caltex and PSO increased by 232%, 281% and 252% respectively between 2001 and 2005. Likewise, the profits of Attock Refinery, National Refinery, Pak Refinery and Parco jumped by multiplication of hundreds in percentage between 2001-02 and 2004-05.

Contrarily, a loss of over Rs:11 billion was caused to the national exchequer because of a redundant oil pricing formula for petrol (motor spirit) while another Rs:34 billion loss was caused due to wrongful addition of premiums on the import parity prices of petrol and high speed diesel between July 2001 and April 2006. [Source: '*Dawn*' dated *25th June 2009*]

Likewise, the Petroleum Ministry failed to cap the distribution margins of the Oil Marketing Companies (OMCs) and dealers when the petroleum prices touched the sky and provided a benefit of Rs:9 billion to the OMCs and dealers between December 2004 and May 2006.

The Oil & Gas Ministry despite having assured the ECC in the summary of capping the margins, failed to cap OMCs' & dealers' margins resulting in their exorbitant profit margins. It calculated a financial impact of more than *Rs:18 billion that was `erroneously' earned by the OMCs and dealers* in five years because the OCAC charged commissions even on government taxes, particularly on 15% GST, that was clearly in violation of laws.

The report said that a loss of another Rs:6 billion was caused to the government by 'illegal removal of 40% upper cap of profits' to the refineries, making a total loss of Rs:82.90 billion.

The Living History of Pakistan Vol-I

But what happened in the last; nothing. In Pakistan reports are there but no action; the NAB, and J Bhagwandas Commission could not fix responsibility on any. The Supreme Court simply kept silent because '*son of no big gun or politician*' was nominated in the said case to highlight the case and apex court's activism in the media.

See another scenario:

Even in 2009-13 era of Former CJP Iftikhar M Chaudhry, the top judiciary failed to stand for the expectations of a sizable section of masses as 'independent' in real terms. In some cases the judges tried to settle their old scores by targeting PPP and their leader sitting as president of Pakistan. Some media reports also pointed out towards high judiciary's 'soft attitude' for PML(N), JUI and MQM governments.

Row over the issues of *Kh Sharif as the Chief Justice LHC*; strictures against the Governor Punjab Late Salman Taseer; eye-wash proceedings in 'big loan' cases and *allowing the Punjab government on 'stay order' for four years* could be quoted as examples. The people were expecting judge-like behaviours not the score settling games.

CJP Chaudhry had started investigations into cases of "*forced disappearances*" arising as part of the 'war on terror'; allegedly the Pakistan military and ISI were stated to have imprisoned tens of persons without due process. However, the same Supreme Court [SC] never chased the loan eaters – a more vital step to be taken.

After the general elections of February 2008, various populist rulings by the CJP Iftikhar Chaudhry against the government displayed a type of judicial activism considered to be unsettling for the [PPP's] government.

The Supreme Court's verdict of 16th December 2009 in NRO case followed by its pledge to come down on mega loan defaulters [referring to *SC's thunderous announcements dated 22nd December 2009*] had shaken some politicians but soon the people started divulging their resentment because not a single date was proposed for serious proceeding in that loan eater's case. While heading a Supreme Court bench on *suo motu* notice of last written off dubious loans worth Rs:54 billion sanctioned by the State Bank, the Chief Justice Iftikhar M Chaudhry had observed:

'For [the] nation's sake, we are ready to accept blame for our involvement in the loan write-off matter, but 'across the board action' will be taken after providing opportunity to the bankers and the defaulters to pay back the outstanding money. We are making it clear that the Supreme Court intends to pursue cases of corruption and graft vigorously and indiscriminately.'

The Living History of Pakistan Vol-I

A group of influential lawyers, who had allegedly joined hands with the loan eaters and had got their *shares in the name of 'fees & pleading charges'* conveyed threats to the bench that the proceedings in loan cases would not be so easy-going for the 'bench and bar' on collective basis.

Some circles did not even spare the higher judiciary labelling it as a stooge in the hands of one section of PML(N). It was apparent because some big politicians were shrewd enough to dictate NRO decision to some judges but opening up the 'Loan Cases' and such judicial activism was not acceptable to them so termed it as beyond the apex court's constitutional role.

The prominent lawyers had thus turned their back to a basic principle that the real, meaningful, fair and principled justice ought never to worry about 'being blamed'. Those who had done wrong in the eyes of law were meant to be punished by the judiciary that was after all one of the primary purposes of the institution.

Thus the rich class of lawyers wanted the judicial activism in the name of 'independent judiciary' but were simply dictating the benches for the fields of their peculiar choices. Whenever the judiciary went contrary to their wish and choices, they always raised flags against the whole process of judicial activism – or labelling 'threats to the democracy'.

SUO MOTO FOR MURDER IN SIALKOT:

On 12th July 2011; Chief Justice of Pakistan Iftikhar M Chaudhry took another *suo moto* notice [*another gimmick – as the media called it*] of a man's death by torture by some influential persons in Sialkot. Over a press clipping published in '*Daily Pakistan*' on that day carrying an appeal of one Said Bibi stating that her son Mubashir had been tortured to death by some influential people; she had got an FIR registered against them with police station Saddar Sialkot but no one had been arrested. Her son Mubashir and another person Rizwan were kidnapped by some people three days earlier; were severely tortured and left unconscious outside her home. Both the injured were shifted to hospital but her son succumbed to injuries while Rizwan was seriously hurt.

One of the common stories in Pakistan - the CJP felt moved and ordered for police report on the issue. The 'influential people' were having high political connections; they were threatening the old lady for dire consequences; they were pressurising the old lady to compromise the FIR for a bag of money; they were approaching the witnesses for favourable statements under another form of coercion and 'duress'; the police was definitely ig-

The Living History of Pakistan Vol-I

noring the old lady's requests for want of 'evidence' of involvement of those influential culprits and many other things.

Simultaneously another scenario; as per *CNN Report of 8th July 2011*, clashes in the Pakistani city of Karachi had killed seven more people on that day, raising the *death toll in the ongoing ethnic violence to 85 that week [the official figures told to media by the Federal Interior Minister Rehman Malik]*; actual figures not known. Waseem Akhtar of MQM said that 125 persons were killed in that strife not 85.

The front page of '*The Express Tribune*' dated 10th July 2011 mentioned that:

'..... he [the Interior Minister Mr Malik] tried to console the people of Karachi by saying that the police had arrested 133 people. Needless to say, Mr Malik's credibility is at its lowest ebb and his communication skills have wilted overtime through meaningless repetition of things that don't ever materialize in reality.'

On 13th July 2011 again, PPP politician Dr Zulfiqar Mirza made a sentimental statement at ANP's venue and accused MQM's Chairman Altaf Hussain. When his speech surfaced in media, the riots at once erupted in Karachi and *within three hours 15 persons were loathed in blood.*

Protests became the order of the day, businesses closed and shutters down. In the evening of 14th July MQM leader Altaf Bhai sent a message from London and the riots were immediately cooled down. Earlier, when there were 125 deaths reported in three days as said above, Rehman Malik appealed on 4th day to bring back Karachi in its normal colours.

An anchor Kashif Abbasi was footing his *live program at ARY TV* on the same evening of 13th July 2011 saying that 'who should be held responsible for 3000 deaths in Karachi during the last three years; 1200 men shot down during first six months of 2011 only' and the representatives of both MQM and PPP had no cogent answer to this tragedy.

Questions arose that why the two leaders Rehman Malik and Altaf Hussain, from the PPP and MQM respectively, had not launched their appeals earlier to avoid the huge death toll. No answer. No suo-moto or judicial inquiry was ordered earlier; Karachi kept on burning.

Going by government's documentation, it was no secret that the Pakistani Taliban [*or some other criminals in the garb of Taliban*] had joined the various political armies killing the innocent people at random. It was suspected that banned outfits as *Lashkar e Jhangvi and Sipah e Sahaba* were allegedly playing their games. The police in the past had, till then, arrested thousands of terrorists guilty of target killing but they were let off by the re-

The Living History of Pakistan Vol-I

spective courts on various counts. Some opined that ANP and the Taliban were hand in glove in Karachi, as some were suggesting that MQM and PPP, jointly and individually, were encouraging their own 'striking forces'; the police being silent spectators – sometimes being targeted itself.

So many deaths in Karachi on so diversified occasions that the SC had to take notice of the situation; giving priority at last as around forty deaths daily in Karachi were reported then, of course, no comparison with one man's death in a remote village of Sialkot as mentioned earlier.

PAKISTAN'S SC vs [MOSTLY] THE PMs:

When PPP took over the reigns of the government in 2008, its PM's first act was to release the top judges who were under house arrest on the orders of the then ruler Gen Musharraf. In February 2012, the very same judges indicted PM Gilani on charges of contempt of court for failing to pursue allegations of corruption against his boss, President Asif Ali Zardari. Earlier, the SC had denied his appeal against the contempt charges.

The Supreme Court had been angered by PM Gilani's stubborn refusals to comply with its demands — which consisted of writing a letter to Swiss authorities, urging them to reopen old corruption charges against Zardari. For the PPP government, the SC's actions amounted to a judicial coup in slow motion. The PPP also had a history of the hostility toward the judiciary and military, stretching back to Z A Bhutto's hanging in 1979 on a cooked-up murder charge.

President Zardari's corruption charges were given enhanced focus when the SC started investigating the treasonous memo case, calling on the US military to take over Pakistani military leadership. The said memo case was brought forward by the then opposition leader Nawaz Sharif.

The determined PPP government avoided implicating President Zardari by writing the letter to the Swiss authorities. In worst scenario, if Gilani was no longer able to remain prime minister, the PPP was discussing the possibility of appointing Makhdoom Shahabuddin; if Shahabuddin ended up being disqualified, too, the PPP had planned to use that "victimization" to enhance its standing in politically deprived southern Punjab.

Those were the days that once the prominent politician Mushahid Hussain was asked during a lecture in Karachi who was ruling the country, he said:

The Living History of Pakistan Vol-I

the Chief Justice. At the same time, many legal experts viewed the apex court as tilting the playing field.

In January 2012, when rumours filtered through Islamabad suggesting that the PPP government could sack the military & ISI chiefs, the court demanded confirmation that no move would be made against the army. In fact that move had thrown a challenge upon the government's prerogative of appointing military chiefs. Prof Vali Nasr of International Politics at Tufts University once opined that:

"The Supreme Court in Pakistan is a completely new axis that has [recently] emerged. However, despite its decisions that favoured the military establishment, the court isn't the best friend of the Generals at all.

In recent weeks, the court has decided to summon top intelligence officials and question them about the illegal detention of terrorism suspects — a move that lends some balances to its decisions..... The military has periodically been on a collision course with the Supreme Court."

[The 'Time' for week ending 13th February 2012 is referred]

The propagators of independent judiciary viewed SC's behaviour as that of a flourishing phenomenon. After being sacked twice by Gen Musharraf, CJP Chaudhry was reinstated after popular lawyers - led demonstrations forced President Zardari and PM Gilani's government to capitulate to the demands. The army chief, Gen Kayani, also made a discreet intervention in support of Justice Chaudhry.

Since his return to the bench in 2009, the CJP's interests ranged from a baffling decision to punish a famous actress, Attiqa Oddo, for allegedly carrying two bottles of wine, to challenging the hold that armed groups had been looting Karachi like cities. PM Gilani's return to prison for a few more months after he had spent five years in Adyala Jail during Gen Musharraf regime was the political price he was willing to pay.

The corruption cases against President Zardari were unlikely to be reopened even if the government had decided to write to the Swiss authorities – as he was enjoying presidential immunity and could not face charges at home or abroad. The most immediate victim was likely to be the PPP government's ability to function, beset by potential changes in leadership.

INDEPENDENCE UNDER CJP CHAUDHRY:

In response to a Presidential Reference filed in response to Judicial Commission [JC]'s meeting dated 27th September 2012, the Supreme Court, in its advisory jurisdiction, announced its opinion on issues concerning appointment of the next Chief Justice of the Islamabad High Court (IHC). The Reference had sought the Court's opinion on 13 questions, including the role of the President, the Prime Minister, and the Parliamentary Committee [PC] in judicial appointments, and the criteria or qualifications for nomination and seniority of the judges.

The Supreme Court in its verdict declared that *'the President and Prime Minister only have a ministerial role in the appointment of judges'*. However, debate triggered in the judicial circles on apex court's opinion that *'the Judicial Commission [JC] can recommend a junior judge to become Chief Justice of a provincial High Court'*. It was considered against the constitutional conventions and the principle of 'legitimate expectancy' amongst the aspirant judges.

The JC had voted to elevate Justice Iqbal Hameed-ur-Rehman to the Supreme Court. Subsequently, upon the recommendation of the Chief Justice, JC nominated (with a majority of 7 to 2) Justice Kasi to become the new Chief Justice of IHC. This decision was endorsed by the Parliamentary Committee [PC] and forwarded by the Prime Minister to the President for formal notification.

At that particular time, Justice Riaz (and not Justice Kasi) was the senior-most judge of the IHC. Since the JC, without providing any cause or reason, had superseded Justice Riaz, the Presidential Reference asked the court, *inter alia*, whether the JC could violate the convention and the precedent case law, to appoint a junior judge as the provincial Chief Justice? And if so, was the President bound to issue notification for Justice Kasi's appointment as Chief Justice of the IHC?

Article 175A (3) of Pakistan's Constitution mandates the senior-most judge of the Supreme Court "shall" be appointed as Chief Justice of Pakistan; however, there is no such provision requiring the senior-most Judge to be made Chief Justice of the High Courts. Instead, a 'constitutional convention' has developed over time to fill this void. As opined by eminent jurists:

'Specifically, per Al Jehad Trust case (PLD 1996 SC 324), the senior-most judge entertains "legitimate expectancy" to be made

The Living History of Pakistan Vol-I

Chief Justice of the High Court, unless 1) he "not be physically capable to take over the burden of the office" or 2) he "not be willing to take upon himself the above responsibility".

Barring these exceptions (neither of which apply in the case of Justice Riaz), such a judge cannot be superseded for "extraneous considerations". This convention was endorsed in Asad Ali's case (PLD 1998 SC 33) which states that "in the absence of any concrete and valid reason", the senior-most judge "has to be" appointed as the Chief Justice of the High Court.

The dictum was further strengthened recently in Munir Hussain Bhatti's case (PLD 2011 SC 407) which declared that the legitimate expectancy of the senior-most judge, and the convention of appointing him Chief Justice, are applicable even more strongly after introduction of the newly constituted bodies [Judicial Commission and the Parliamentary Committee] under Article 175-A.'

This should have been the true spirit of the 'independence of judiciary' by ensuring that a junior judge is not tempted to supersede his senior colleagues for Chief Justice's slot. The Constitution itself mandates [in Article 175A (5)(iv)] that:

'When the JC is deciding on who to nominate as the next provincial Chief Justice, the senior-most Judge of the concerned Court (having legitimate expectancy) should not participate in the said meeting (so as not to be a judge of his own cause).'

Contrary to these principles, the majority judgment, authored by Justice Khilji, declared that '*while breaching this convention is "not desirable", the same cannot be termed as violative of the Constitution'*.

In constructing this argument, Justice Khilji's opinion emphasized that '*the JC's recommendations are "not whimsical" and [thus] are not open to judicial review'*. However, it was felt that the CJP Iftikhar M Chaudhry and his team had themselves blown up the doctrine of transparency by depriving the senior most judge of his legitimate expectancy.

Further, Justice Khilji emphasized in his decision that the seniority of a judge cannot be determined by the court in its advisory jurisdiction. It was felt by the senior bar that it was wrongly interpreted as the issue of seniority between Justice Riaz and Justice Kasi was not the dispute. Justice Riaz

The Living History of Pakistan Vol-I

had already been notified as being senior, by the Chief Justice of the IHC and was confirmed by the President. The only question left to be answered was one of law: could the JC appoint a junior judge as Chief Justice of the High Court without giving any cogent reasons for ignoring the senior judge? Certainly it was violative of the constitutional convention and the mandate given to the JC.

Contrarily, Justice Afzal's [courageous] dissenting note carried weight that:

'Justice Riaz, in line with the convention and the principle of legitimate expectancy, is entitled to be appointed as the Chief Justice IHC. I, therefore, have no hesitation to hold that the premises recorded by the Commission for departing from the well established principle of determining seniority are not correct.'

The selection of judges should not be done behind closed doors and for silent reasons known only to a select few; CJP should have upheld the values sincerely to get real *'independence for judiciary'*.

During another such exercise, one additional judge of the IHC named Azim Afridi was sent home un-ceremonially. On his personal internet site, he wrote the following message for the general public:

'18th Amendment has deprived the Justices of higher judiciary from their right of being heard while deciding their affairs. Holding of proceedings in camera, which is not covered by law, provide an excuse to the person at the helm of affairs [the CJP] to exercise his choice to the disadvantage of those he dislike. There is none to ask; is it justice. The Constitution needs to be amended if fair play is intended in the case of the Honourable justices.'

The Hon'ble Justice has been deprived of the materials used against him. Where is the basic right of the Judges of the Superior Judiciary? Constitution 2 be amended.'

ISLAMABAD HC's ACTIVISM:

On 8th November 2012; 18 judges serving in District and Sessions court [DSC] were repatriated following Islamabad High Court's [IHC] orders as they did not meet set criteria for selection and allocation. Justice Shaukat

The Living History of Pakistan Vol-I

Aziz of the IHC said that 50% of appointments in DSC be from Islamabad, 48% from other provinces and 2% from the Federally Administered Tribal Areas, as dictated by the Judicial Services Rules (JSR) 2011.

The petition was filed by one Waqas Malik, a veteran lawyer of Islamabad.

The bench had reserved its judgment on 12th October 2012, after Malik concluded his arguments. Mr Malik argued that the judges' appointment was a violation of the IHC Judicial Services Rules, under which the IHC administration must ensure 50% of the judges appointed to the subordinate judiciary should belong to Islamabad Capital Territory.

On 13th November 2012, the Islamabad High Court (IHC) division bench, comprising of Justice M Anwar Kasi and Justice Shaukat Aziz Siddiqui, accepted an application, filed by a former Army officer Col (rtd) Inamur Rahim, calling for an early hearing about the extension given to the Army Chief Ashfaq Kayani in 2010.

Earlier *on 25th September 2012*, Chief Justice IHC Justice Iqbal Hameed ur Rehman had dismissed a related petition terming it "not maintainable". The petition was rejected under Article 199 (3) of the Constitution, which bars the high court from hearing military-related matters. Later, the petitioner filed an Intra Court Appeal (ICA) challenging the single bench order.

The petitioner, in its ICA, had maintained that there was no provision in the Pakistan Army Act of 1952 under which a complete tenure extension could be granted to any person subjected to the Army Act.

On 14th November 2012; the IHC *declared the promotion of over 100 bureaucrats illegal*. These bureaucrats had been promoted to Grade-21 during the previous couple of years. The order was passed by Justice Shaukat Aziz Siddiqui of the IHC in response to a petition filed by 50 civil servants belonging to different occupational groups in March 2012.

The petitioners, while challenging the Central Selection Board's decision, had maintained that their promotions had been overlooked and thus superseded by junior civil servants. They were ignored despite having a service career expanding over 33 years with no adverse remarks in their annual confidential reports. The board had given them less marks and illegally promoted other bureaucrats by giving them undue benefit. Some of the petitioners had even earned two highest performance evaluation reports for 2009 and 2010.

The Living History of Pakistan Vol-I

The court, in its judgment, observed that all the board meetings held in this regard were illegal, and hence of no consequence. It also observed that the civil servants who had earned their promotion without superseding others shall continue to hold their current positions.

On the same day of 14th November 2012, the IHC constituted a commission to prepare a report on the *encroachments removed by the CDA* - Capital Development Authority Islamabad - the report was to be submitted within a week.

The decision was taken by Justice Siddiqui while hearing a petition challenging the illegal structures in public places. During the hearing, Municipal Administration's Deputy Director submitted a report on the encroachments removed by the civic agency. However, the court was dissatisfied with the steps, observing that demolishing a few bricks would not be considered as removal of encroachments. The court then formed a one-member commission comprising IHC's Assistant Registrar Muhammad Shafiq and directed him to submit a report. It also said that the commission's expenses roughly amounting to Rs:100,000, would be borne by the CDA.

Earlier, the court had directed the CDA to remove all encroachments from parks and green-belts. Jawad Nazir, the civic agency's counsel, had told the court that the CDA had served notices to nearly 50 kiosks encroaching on green-belts.

On 9th April 2013; the IHC suspended the appointment of Federal Board of Revenue (FBR) Chairman, after it was challenged by a subordinate. Justice Shaukat Aziz Siddiqui restrained FBR Chairman Ali Arshad Hakeem from performing his duties. The court passed the order in response to a petition filed by one Ashfaq Ahmed, a member of the Inland Revenue Service, in late February 2013, stating that Hakeem was appointed illegally. The federal government had appointed Mr Hakeem as Chairman FBR in July 2012.

The fact remained that Mr Hakeem was not qualified for the post of FBR's Chairman and the Establishment Division had not followed the procedure for his appointment. According to the FBR Act 2007, the government was bound to appoint a most competent person with relevant experience through a transparent process. It was alleged that Mr Hakeem was a former civil servant, who had joined the Customs Group in 1987 but started his private business after leaving civil service, a few years later. The court declared his appointment illegal and directed the federal government to make a new appointment on merit.

The Living History of Pakistan Vol-I

On the same day, in a separate case, the head of state-owned Pakistan Television (PTV) was seen in boiling sentiments, after the IHC asked PTV to produce his appointment orders before the court on next day's hearing.

Justice Siddiqui issued the order in response to a petition filed by former PTV Managing Director (MD) Ashraf Azeem, who had challenged his termination in 2007. On next hearing, when Justice Siddiqui resumed hearing, the court was informed that Ashraf Azeem was appointed MD for three years on contract in May 2006, but was removed from service in March 2007 – since then, he had not been restored and his salary was withheld.

Opposing the argument on PTV's behalf, the court was told that after Mr Azeem's removal, the government had appointed him as president Institute of Regional Studies on contract where he remained employed for two years. The court asked PTV's counsel about the status of the incumbent PTV MD and specifically whether he was appointed on merit. Then Justice Siddiqui observed that:

"No blue-eyed boys will be allowed in state-run television. Today I have sent home the FBR Chairman; I won't spare those who violate rules."

AITZAZ EXPOSES CJP CHAUDHRY:

On 24th July 2013, the PPP boycotted Presidential Elections scheduled to be held on 30th July to find a replacement of President A A Zardari. Aitzaz Ahsan delivered a fiery speech cursing all including the Supreme Court of Pakistan for its one-sided decision to allow the government to hold presidential election earlier instead of 6th August.

Aitzaz Ahsan said the decision had been given without hearing the other candidates; even Mian Raza Rabbani, who was a presidential candidate, was not served any notice pertaining to hearing the plea seeking a change in the poll date. Aitzaz spoke loudly that:

'The Supreme Court, Election Commission of Pakistan and the PML-N had decided the matter without hearing the other parties. The Supreme Court has dictated the election schedule to the Election Commission. The decision of the Supreme Court, as per the desire of the PML-N, creates doubts, as on the

The Living History of Pakistan Vol-I

very first hearing the decision was announced. I have never seen such a decision in my 45 year long legal career.'

Raza Rabbani was not in a position to run his election campaign as he belonged to the middle class; virtually he was unable to go to Karachi, Quetta, Lahore and Peshawar in two days. He had no government machinery to benefit from and was also restricted to Islamabad as scrutiny of the nomination papers were to be held on 26th July. *'The Supreme Court, on the petition of the N-League, gave a one-sided decision without hearing the other parties; even gave the schedule of the presidential election',* Raza Rabbani had raised a valid point.

Two days later, on 26th July 2013, Senator Aitzaz said in a media conference that:

"Let the time come, I will unearth all the secrets of Supreme Court as he is a great secret holder of the judiciary. Let the time come, and then 'I will write and expose that why important cases are always referred to a few judges'".

PAKISTAN'S JUDICIAL PANDORA BOX:

On *GEO's* live TV program *'Aapas Ki Baat'* dated 13th December 2013, Najam Sethi, while commenting on the retirement of the CJP Iftikhar M Chaudhry, confirmed that:

'..... A judge has passed away and a politician has born.'

Mr Sethi further elaborated that during CJP Chaudhry's tenure, he had constantly been labelled as *'a politician in CJP's robes'*, but he never bothered and continued to display his character as such.

Let us travel into the recent past for a while.

On *GEO's* live TV program *'Aapas Ki Baat'*, of 11th, 12th & 13th June 2012, Najam Sethi had asserted that Dr Arsalan was not so innocent that he did not know why the son in law of Malik Riaz was trying to cultivate him and financing his tours abroad; it was intended to influence the CJP in turn. Since there was no evidence of the CJ having been influenced, there was clearly a more ominous and threatening purpose – not bribes but blackmail.

Through this timely move the entire leadership of the PPP was hoping onwards; think President Zardari's case in the backdrop of Swiss letter syn-

The Living History of Pakistan Vol-I

drome and PM Gilani's conviction for 'contempt of Court'. The said program concluded that:

'Who else had the required capability of chasing Dr Arsalan and collect documentary and video evidence of reckless [& wasteful] expenditure by him; the Intelligence Bureau [IB]'s team permanently located in Pakistan High Commission London AND Rehman Malik's company for private investigation named Shaffaf Ltd London.

Clearly, the 'sting operation' against Arsalan Iftikhar was the work of Rehman Malik as he had been disqualified to be a member of the Senate (and Interior Minister in consequence) because of his dual nationality, under apex court's decision.'

To keep his judicial house in order and to exhibit faithfulness to his pseudo - impartiality and fair-play, the CJP Iftikhar M Chaudhry called his son in the dock through *suo moto* case. Five years earlier there were cries that, upon securing an overall C grade in the intermediate examination (a fact), Arsalan Iftikhar was granted admission in Bolan Medical College upon the influence exerted by his Chief Justice father; years later, he was made Section Officer in the Health Department Quetta, only days after his initial appointment.

In August 2005, the then Federal Minister of Interior Aftab Sherpao, issued notification appointing Dr Arsalan as Assistant Director (later Deputy Director) in the FIA. In 2006 he was 'picked up by the high ups' for permanent induction as Superintendent of Police [SP] giving an unprecedented twist to the Police Service of Pakistan Rules in vogue.

Hue and cry surfaced from all corners especially from already deprived career police officers but the Chief Justice was found standing behind this unjust episode. In March 2007, it was Naeem Bokhari, a veteran advocate of the Supreme Court who tried to block that floodgate of nepotism in the higher judiciary; the case was referred to the Supreme Judicial Council but the civil society guided by the Lawyer's Movement rescued the CJP.

It was only natural that amidst so much controversy concerning Dr Arsalan, the Chief Justice Iftikhar M Chaudhry [after regaining his seat in March 2009], apparently dissociated himself from the professional and career growth of his son. Peeping into the vacuum prevailing in CJP's home affairs, Malik Riaz jumped in and allegedly spent millions on Dr Arsalan.

Dr Arsalan lived in CJ's official residence in Islamabad, at least until his marriage that year, so the CJP should have worried about the latest model BMW type cars driven in, the Gucci cufflinks or the Rolex watches or about

The Living History of Pakistan Vol-I

lavish trips abroad while staying in costly holiday flats of London and Monte Carlo – the French Riviera.

The general populace was not at all inclined to give CJP Chaudhry a relaxation for his dedicated cause of justice. The CJP was correctly blamed for not knowing where his family had been vacationing during the summer, or who was paying for it while he constantly chased the then PM's sons [*Qadir Gilani in Hajj Corruption Case & Musa Gilani in Ephedrine Case*], Pervaiz Elahi's son [*Moonis Elahi in NILC & Punjab Bank Case*], Asif Zardari in person and so many others.

As the people never allowed PM Gillani, Pervaiz Elahi, Nawaz Sharif or Asif Zardari to ever plead that they did not know what their sons were doing, so they allocated zero allowance to believe that the Honourable CJP, over the past three years, even had a slight hint of Dr Arsalan's (mis)deeds; totally a non-professional conduct.

The intelligentsia did not bother about the sentimental phrases from some media men and certain members of PML(N) or Imran Khan's PTI describing that '*ISI & Army or the PPP are hunting the CJP and the higher judiciary is being maligned purposefully*'. Not at all; they simply wanted an independent enquiry into the conducts of both Malik Riaz and Dr Arsalan Iftikhar in an un-biased way irrespective of the references pointed towards the CJP or the Army or the PPP.

The Registrar Office of the SC, in the meantime, rejected the application filed by Dr Arsalan Iftikhar to register an FIR against Malik Riaz as the case was in the apex court. Dr Arsalan had asked the court to direct police authorities to register an FIR against Malik Riaz for running a campaign against him in the media.

The people had been looking for some interesting results – but nothing appeared from that 'Judicial Pandora Box'

Scenario 105

PPP's DEMOCRACY HURRAY!

PPP's GIMMICKS ON BB's MURDER:

In ARY's TV program titled '*Idraak*' dated 3rd March 2012, a documentary on Benazir Bhutto's assassination [27th December 2007] was shown. It was basically a replica of Federal Interior Minister Rehman Malik's 'revelations' made in the Sindh Assembly on 21st February 2012 in which he had tried to wash a dirty linen of his announcements during the previous four years since the PPP came into power in 2008.

In tall media statements to befool the innocent members of the PPP and the strayed people of Pakistan at large, Rehman Malik had repeatedly trumpeted that:

'We know the people behind the BB's assassination; we have reached the criminals involved; we'll bring Musharraf back as he was involved in BB's murder and lastly that we have arrested four people and the interrogation is on.'

The same like shouts were given by the President Zardari himself and, more prominently during the 2011's anniversary of Benazir Bhutto at Garhi Khuda Bux giving an obnoxious call to the Chief Justice '*Chief Sahib! Where are BB's murderers?*' [By their own record they all knew that the four murderers were in jail since 2009 and five had been killed.]

The drop scene of the drama was presented in the Sindh Assembly on 21st February 2012 by reading a report through a police officer named Khalid Qureshi. As a matter of fact, the investigation into BB's murder on 27th December 2007 should have been started from a fatal episode of three months earlier which had occurred in Karachi. To refresh the memories, the event is briefly given here.

On 18th October 2007, Benazir Bhutto's cavalcade was creeping through towards the Jinnah's mausoleum over an especially fortified, bullet - proof truck, waving lustily at her followers and occasionally wiping her tearful eyes. At 11.50 PM, when the cavalcade reached the Karsaz Bridge, Benazir

The Living History of Pakistan Vol-I

stepped down to use the makeshift washroom built in the lower deck of the truck. Just 20 minutes later someone tossed a grenade on the right side of Benazir's truck to break the three rings of security cordon through explosion. In the ensuing confusion, a suicide bomber sneaked under Benazir's truck from the left and detonated himself.

Simultaneously, a sniper showered bullets on the truck's screen to ensure nobody could escape to safety. The cavalcade soon turned into a crying grave yard; human flesh and limbs flew around leaving 143 people dead at the spot. Later the toll went up to 154.

Benazir Bhutto was not atop the truck at that fatal moment; the explosion was powerful enough to rip off a door of her truck. The assassination plan later revealed the prior knowledge of Benazir's security arrangements in detail; the suicide bomber had successfully evaded the jamming devices fitted into two vehicles immediately in front and behind Benazir's truck. 21-year old suicide bomber had 15-20 kg of an explosive mix of C4 and TNT on his body; for Benazir Bhutto, two police jeeps accompanying her got the whole burden and torn into pieces.

Al Qaeda, along with local militant groups affiliated to it, was suspected but did these groups have assistance or tacit approval of *jehadi*-minded elements in the administration? Benazir herself told media next day that:

'... I had made it clear (to Gen Musharraf) that I won't blame Taliban or Al Qaeda if I am attacked, but I will name the three / four officials as I know quite well my enemies in the Pakistani military and intelligence establishment'.

The PPP insiders disclosed their identity to *Outlook* naming Brig (rtd) Ejaz Shah, DG IB; Ch Pervaiz Elahi, the CM Punjab; former DG ISI, Lt Gen Hameed Gul and Hassan Waseem Afzal, a former official of the NAB.

Categorically named in Benazir's letter, Hassan Waseem Afzal was then Secretary to the Governor of Punjab; appointed to this post after he was removed as NAB's Deputy Chairman on Benazir's insistence during her Abu Dhabi meeting with Gen Musharraf in July 2007.

Hassan W Afzal had incurred Benazir's wrath because he had made it his personal mission to pursue corruption cases against her in UK, Spain and Switzerland. On his instance and personal interest there were only two persons against whom the Interpol had issued 'Red Notices'; Benazir Bhutto & Inam R Sehri of FIA who had once arrested Hassan's real & only brother in law [named Javed Zia] in September 1995 in an embezzlement case.

The Living History of Pakistan Vol-I

The FIR filed by Benazir Bhutto in Karachi carried as suspects *'those four names which were given to Gen Musharraf'*, neither of Taliban nor of any other *Jehadi*-group.

Neither Mr Malik, being the Federal Interior Minister, nor Khalid Qureshi, the mighty senior police officer of the FIA ever bothered that from where the links of the investigation ought to be picked.

Coming back; the astonishing facts were that the said *'Final Investigation Report'* was actually finalised by the Punjab Police and one Additional IG Ch Abdul Majeed was the Team In-charge. Because it was not the JIT report and no officer of FIA or of Rehman Malik's recommended officer was included in that Punjab Police's team so that report was once declared as 'bull**** & useless' by the FIA and Rehman Malik both.

On 16th July 2009, UN Commission's three member team was there in Pakistan on PPP government's call. A copy of Punjab Police's aforementioned investigation report was also handed over to them secretly during interaction between the Commission and Rawalpindi Police. FIA and Rehman Malik only got clue of this fact in April 2010 or if known they did not bother for it. This report had already been discussed on DM Digital TV Manchester UK in four live programs held in April 2010.

The highlights of that investigation had already been mentioned in a book published in UK [*Judges & Generals in Pakistan Vol-II*] wherein it had been discussed that why the PPP's Rehman Malik and the FIA had shown total dissatisfaction over Punjab Police's Report.

However, in a 180 angle move Mr Malik presented the same Punjab Police's report in Sindh Assembly through Khalid Qureshi against all the ethics of professionalism omitting the name of Ch Abdul Majeed, Adl IG of Punjab Police altogether. One can see the details in that book.

Later, Rehman Malik had not only accepted that report but also owned it after it went published in above mentioned book though its *challan* was submitted in the court in April 2010.

[Published at www.pakspectator.com on 6th March 2012 as a lead story]

HIDDEN HISTORICAL FACTS:

Let us move further; referring to *pages 245-246 of Qayyum Nizami's book [Jo Dekha; Jo Suna]*: a veteran columnist, late Irshad Haqqani was once called by Malik Meraj Khalid, Prime Minister in the interim government

The Living History of Pakistan Vol-I

of 1996 and told [on the breakfast table] that the then CJP Sajjad Ali Shah had met him [the interim PM] and told:

'Most of the judges on the SC bench hearing Benazir Bhutto's petition were holding opinion of re-instating her government back in line with Justice Nasim Hassan Shah's judgment in Nawaz Sharif's case in 1993.'

President Farooq Leghari had got air of that development. Mr Leghari had also known about one Kh Tariq Rahim who had tried to convince the judges that the army wanted BB's re-instatement. Due to Leghari's timely handling, the 'agencies' had conveniently managed to convey to the judges of the bench that *'the army is not interested in the come back of Ms Bhutto.'* Democracy upheld again.

One can imagine the bravery of our superior judiciary that even in the 'top democratic era' of 1990s, the judges were always found ready to play at the tunes of their army counterparts and the intelligentsia should have raised the victory signs over our superior judiciary's bravery.

Sorry to interrupt in between. One can recall a beautiful sketch of army vs politicians' relationship in Pakistan just in few words; only *Ayaz Amir* keeps acumen to say so:

'The common factor between both parties [PML(N) & PPP] is gangsterism and corruption. Shahbaz Sharif resembled nothing so much as a Mafioso don. What does Asif Zardari look like? In any Godfather sequel he can easily get a part. As for moneymaking it is hard to figure out who beat whom: the PPP leadership or the Muslim Leagues?

My own guess is the Sharifs were professionals: subtle about their money. Zardari left a trail, which goes all the way to Rockwood, French submarines, Amer Lodhi, and my favourite grand admiral, Mansur-ul-Haq.

As for evidence, was their evidence against Al Capone? Is there evidence against a single patwari or thanedar across the country? Thieves do not leave receipts or footprints except when they get careless. Zardari was careless or he would not have been caught out over Rockwood.

But if in all other respects the two representatives of the people are equal, in one important characteristic they differ. The Sharifs became a threat to the army, attempting to play politics with it.

The Living History of Pakistan Vol-I

Except for the brief Sirohey episode during Benazir's first stint as prime minister, the PPP never tried to mess around with the army. In fact after each of her two dismissals Benazir took care to blame elements within the intelligence agencies and not the army as a whole for her troubles. Even now she is desperately waving an olive branch in General Musharraf's direction.

The army's political analysis therefore has all been wrong. Since Zia's time the prejudice which has never quite left the minds of senior Generals is that somehow the PPP is a security risk [forget Gen Hamid Gul's plans]. The facts speak otherwise.

Gen Beg and Ghulam Ishaq Khan, trying to scatter obstacles across the PPP's path in 1988 by building up Sharifs. Then one after the other receiving a kick from him. Leghari and Gen Karamat ousting Benazir in 1996 and thus ensuring the birth of the Heavy Mandate and the writing of their own obituaries.

Why is Pakistan's political landscape littered with such fools?'

In nut shell our Pakistan's civil dictators would continue to make mockery of the country 'to uphold democracy' but no army dictator; they are anti-democracy.

The fact remains that Gen Ziaul Haq and Gen Abdul Rehman's sons were also seen in the parliament and in cabinets successively but only after the death of both the Generals, not in their lives. Other Generals, Corps Commanders, or the ISI Chiefs seldom opted to strengthen the 'democracy in Pakistan' through this way. This prerogative always remained with the politicians whether belonged to the PPP, PML(N) or PML(Q) or similar heavy mandated parties.

{Part of this essay was published at www.pakspectator.com on 6th March 2012 as a lead story}

REHMAN MALIK'S DUAL NATIONALITY:

On 4th June 2012, a 3-member bench at the Supreme Court of Pakistan headed by Chief Justice Iftikhar M Chaudhry suspended Rehman Malik's membership of the Senate for holding the British citizenship which he had concealed while contesting the Senate election in 2008. Mr Malik was proceeded against on the basis of Article 63 (1c) of the Constitution. The interim order, however, did not state whether Malik could continue as the Inte-

The Living History of Pakistan Vol-I

rior Minister but he was unable to function as minister after the suspension of his membership of Parliament. In the past, he had been functioning as a Special Advisor on Interior to the Prime Minister before being elected to the Senate.

The Supreme Court had also issued notices to 14 other parliamentarians, including the then Finance Minister Abdul Hafeez Shaikh and an MNA of PML(N) Khwaja Asif. Earlier, the SC had suspended the membership of Parliamentarian Farahnaz Ispahani, the then media advisor to President Asif Ali Zardari, for holding US citizenship.

Rehman Malik was desperate to take with him to Pakistan the Renunciation of Nationality (RN) declaration certificate during his visit to the Home Office on 29th May 2012. The British government fast-tracked Mr Malik's application for renunciation; he spent three hours in a huddle with the Home Office bureaucrats to finalise the covert mission. Malik failed to achieve it as he had already been summoned by President Asif Ali Zardari to Pakistan the same evening though he had already held meetings with Home Secretary Theresa May and Immigration Minister Damian Green a day ago for his RN.

The declaration of renunciation bearing a stamp of registration was sent to Rehman Malik on 30th May, stating that his *".....status has been renounced with effect from 30-05-2012"*.

Why it took the Home Office four years to issue a declaration which normally takes under two weeks. The fee for registration of a declaration of renunciation in April 2008 was £385, according to the Immigration and Nationality Regulations 2007 which was £229 since 6th April 2012. The bank receipts had shown that Mr Malik had deposited £229 as *'application process'* fee and not £385 – meaning thereby that he might have been moved the Home Office in 2008 but his application was duly processed after deposit of the required fee.

Rehman Malik claimed that he filled the form RN on 25th of April 2008 to apply for the renunciation. But, as per comments of Sibghat Kadri, Britain's first Muslim Queen's Counsel who has practised law for over four decades:

"It is obvious from the letter of the British High Commission produced in the Supreme Court that Mr Malik remained a British citizen until 1st June 2012 when his declaration of renunciation became effective.

Mr Malik lied on oath to the Supreme Court in his affidavit in which he first stated that he had renounced his British citizenship in

The Living History of Pakistan Vol-I

March 2008, later amending it to 25th April 2008. In my opinion it is no longer a question as to when he renounced his British nationality but a serious matter of perjury."

However, the matter died down as per usual practices in Pakistan but, in my opinion, Mr Malik could be advised by his legal advisors in a better way. He should have stated the facts in the apex court that he had applied the British Home Office in March or April 2008, whatever be the case, but he had got it 'formally renounced' on 30th May 2012.

What was the option left with the SC bench; taking a drastic or the worst step the bench could have notified it that he was not the proper Senator since 2008. What consequences;

- *Repatriate back the Senator's pay & allowances since 2008 – Mr Malik was quite capable of returning that meagre amount; his business estate runs into millions of Sterling Pounds.*
- *The Senator's seat declared vacant – the Election Commission would have declared his vacancy and re-election. There were no worries for him. President Zardari was in his pocket; new nomination papers could have been filed; he would have been elected as new unopposed Senator from the Sindh Assembly again.*
- *He had to resign from the Interior Minister's slot; no worries were there – Zardari would have asked him to continue his assignment as an Advisor – he had already been do so earlier.*
- *What about decisions taken by him during his void period of 2008-12; not affected – practically not possible to be reverted. Otherwise, these was a strong precedent of the Supreme Court in case of CJP Dogar, when he was removed in March 2009, his judgments and decisions remained in tact as taken in routine.*

Now imagine; had Mr Malik gone through this exercise, which was not tough but only time consuming – he would been raised his height above mountains in Pakistan's political history; instead of being called liar & cheat in his political career and also in court documents.

He was a former bureaucrat; but wasted a golden chance of getting political legitimacy by going truthful.

STATE LEVEL CHEAT IN SWISS CASES:

The Living History of Pakistan Vol-I

A little background about of Corruption Cases against Zardari in the Swiss Courts:

On 22nd May 2008, the then Attorney General [AG] Qayyum Malik sent letter to the Swiss Authorities apprising them that Government of Pakistan had no intentions to pursue the said investigations and trial in \$60million money laundering cases connected with SGS and Cotecna involving Benazir Bhutto & Zardari AND that the cases may be treated as closed. AG Qayyum Malik was also sent to Switzerland to urge the concerned Swiss officials to make sure that the investigations had been expeditiously ended.

Thereafter, the Swiss authorities closed the cases on 25th August 2008. No further communication, in this regard, was made with the Swiss Authorities till after the 16th December 2009 judgment of the apex Court which, struck down the NRO, and ordered the government to reassert its status as a civil party in the case pending in Switzerland.

Earlier; in November 2009, when the PPP government had known that they had been betrayed and beaten in the National Assembly due to their internal intrigues and the NRO was not going to get accent by majority of the members on floor, they successfully managed to snatch and lift away the whole record of SGS and Cotecna cases from the Swiss offices through Wajid Shamsul Hassan and Rehman Malik; recall the GEO TV's footage of those days in which Mr Hassan was shown running away on a footpath of Geneva with hefty boxes of record.

Later; on 6th March 2010, Wajid Shamsul Hasan, the then Pakistan High Commissioner in London, rebutted the media report, called it baseless, malicious and unfounded. He said that *"...they [the 12 boxes] are kept in safe custody in the same condition as they were left by NAB Prosecutor General Dr Danishwar Malik."* The insiders believed there was no 'valuables' documents left in the boxes.

This clarification though did not state the location of the boxes, but Mr Hasan told that the shifting of the boxes from Geneva to London was not a clandestine affair but was transparent and done in broad daylight. A press release issued by the Pakistan High Commission in London contained that the NAB had been asked to send Dr Danishwar Malik to London to take the boxes to Pakistan after checking the seals put on them in his presence and there was no tampering.

'The Statesman' of 6th March 2010 had, *inter-alia*, remarked that it was still available on record that while convicting the late Pakistani premier Benazir Bhutto and her husband Asif Zardari in August 2003, consequent-

The Living History of Pakistan Vol-I

ly leading to the confiscation of the duo's assets, the Swiss Examining Magistrate David Devaud had studied his verdict with the guidelines provided by the UN Convention on Corruption then under discussion in the UN Chambers.

Under that UN convention, the Swiss judge had also ordered that the assets confiscated from Benazir Bhutto and Zardari be returned to Pakistan. The said UN Resolution was adopted by the General Assembly by its resolution on 31st October 2003; had finally come into force on 14th December 2005 after 30 ratifications.

[Switzerland's notoriety as a safe haven for illicit funds, leading to an estimated one-third of the world's illegal wealth being deposited in its 400 odd banks was first challenged in 1999-2000, after legal action was taken by the World Jewish Council on behalf of the Holocaust victims.

Judge Edward Korman of the United States District Court in New York had then approved a \$1.25 billion settlement between several Swiss banks and the plaintiffs. It was actually this particular development that had dented Switzerland's banking secrecy initially.

Armed with the legal powers to force disclosure and freeze assets, Switzerland quickly developed a legal climate, which in many ways now leads the global fight against corruption, but this transformation did not take place without complications or criticism.]

Coming back; PPP's gimmicks to write a letter to Swiss authorities for re-opening of the cases had violated the whole judgement of the Supreme Court passed on 16th December 2009 and a number of other subsequent judgements passed in the NRO implementation case, which had ordered the executive authorities to seek the revival of the Swiss cases.

The Supreme Court went upset. Meanwhile a 2-member enquiry team, comprising of Secretary Establishment and DG Intelligence Bureau constituted to look into this latest state sponsored forgery. The nation had to wait what was at the tip of that iceberg – nothing but disappointment.

Attorney General Munir Malik informed the SC that the government would appeal the Swiss government decision; the matter got adjourned. Whatever immunity President Zardari enjoyed by virtue of his position lapsed when he left the presidency in just over two months.

The Living History of Pakistan Vol-I

It may not be out of place to mention that when the PPP government had taken reigns of the government in 2008, Justice (rtd) Qayyum Malik, who was the Attorney General of Pakistan (AG) in Gen Musharraf's times, was kept in tact with the same posting though PPP high ups were die-hard enemy of his person.

[One can recall the judgments passed by J Qayyum Malik against Benazir Bhutto and Zardari in 1997 and the famous episode of J Qayyum's quit from judiciary in 2001 over Saifur Rehman's audio tapes row.]

A revelation that a letter was written on 22nd November 2012 to the Swiss authorities, through Dr Nicholas Jaanding, their lawyer in Geneva, in secret and running counter to an earlier letter to them at the behest of the Supreme Court, really jolted the whole nation. Three leading figures of the last PPP government – the Federal Law Minister Farooq Naek, PM Raja Perwaiz Ashraf and the Federal Law Secretary Yasmin Abbasey – conspired together to deceive the judiciary and by extension the whole nation.

[While bowing their heads at last before the Supreme Court Bench hearing 'implementation of NRO judgment' in early days of November 2012, Farooq Naek had secretly visited Switzerland to settle the whole game. After putting their cards in order there in Switzerland, the PPP's law minister and the Attorney General (AG) had submitted to the bench that the long awaited letter would be sent to the Swiss authorities for re-opening of Zardari's cases. The said letter, approved by the SC was then despatched on 5th November 2012.]

The three high heads urged the Swiss government to refrain from [possible] re-opening money-laundering cases against President Zardari, and wrote another letter after seventeen days asking that the effects of a previous letter be annulled. The second letter contained that the government of Pakistan had closed all such cases against the President, and that the cases would remain closed and never be re-opened.

The Swiss authorities acted on the contents of the secretly sent second letter [because it suited them and their economy] and withdrew all previous letters written by the government of Pakistan regarding the money-laundering cases.

On 26th June 2013, Attorney General [AG] Munir A Malik informed the Supreme Court during proceedings of the NRO implementation case that a second letter signed by the then Federal Law Secretary Yasmin Abbasey

The Living History of Pakistan Vol-I

was sent to Swiss authorities under explicit directions of the previous government without the apex court's knowledge. AG Mr Malik told the bench that:

"I received information about refusal of the Swiss authorities on the night of June 20, 2013, and was required to file an appeal by June 24. We have filed an appeal with the request to condone the few days' delay."

The 3-judge bench of the Supreme Court and many others in the courtroom were astonished when the AG Mr Malik placed a copy of that letter before the court. The letter written by the then Federal Law Secretary Justice (r) Yasmin Abbasey, contained that:

'The requests for mutual legal assistance made earlier in 1997 were illegal, having no legal effect, are hereby withdrawn by the government of Pakistan and may be treated as never written.

Further, that the orders regarding closure of the cases by former AG Abdul Qayyum on 25th May 2008, were final and could not be reopened under the Swiss laws.

AND that the steps taken on the orders of the SC were essentially political and in the eyes of the Republic of Pakistan, the criminal proceedings had been closed and could not be reopened.'

[Editorial page in 'the News' dated 28th June 2013 is referred]

Accordingly the Swiss lawyer conveyed the decision of Pakistani authorities to the Swiss government. *The Swiss authorities had conveyed their approval to the government of Pakistan on 4th February 2013, but it was brought on the record on 14th June 2013,* and that too after the incumbent government asked its ambassador in Geneva to start proceedings. The incumbent government could appeal against the decision of the Swiss authorities within 10 days.

The letter said that the government was not interested in reopening cases against President Asif Ali Zardari and sought a reply stating the closure of cases from Swiss authorities which were subsequently closed by Swiss authorities on 4th February. *The court was told that the ministry of law had also destroyed all the proof related to the second letter till the PML(N) government had to procure its copy through Pakistan's Ambassador at Geneva on 14th June 2013.*

The Living History of Pakistan Vol-I

The then Federal law Secretary, Yasmin Abbasey, didn't display the insight that, in the current age of open media and judicial oversight, a letter, officially written by one government to another, could be kept in the dark forever. No way – she had no acumen to defend her act displayed on eight live TV channels of Pakistan and more ridiculous when appeared in abroad. Referring to Sa'ad Rasool's essay appeared in '*Pakistan Today*' of 30th June 2013;

As a side-note, the defense of the Law Secretary (in this case) by the PPP stalwarts, is no different from the defense launched by the PML(N) supporters in the aftermath of the Mehran Bank scandal, or even the supporters of the Supreme Court in the aftermath of the Arsalan Iftikhar case.

When will our partisan loyalties be trumped by the voices of our conscience? When will truth, reason and law, be celebrated over the ideals of being more loyal than the king?

For thinking minds, this fraud by the PPP government is the reflection of a much larger malady of acute corruption in our politics.'

At that time, the Chief Justice Iftikhar M Chaudhry could only pass remarks that the then AG [Irfan Qadir] and Law Ministry kept the court in the dark.

Transparency, honesty and accountability do not matter in Pakistani politics – in fact it never have been since decades.

PPP's HIGH BLOWN DEMOCRACY:

For the first time in the history of Pakistan, a democratic Government completed its tenure so the rhetoric that no democratic Government was given a chance to die its own death. What excuse next Government would bring now? PPP left no room for true democrats to convince the people that democracy is the best system - unluckily they never witnessed a true democracy and for them PPP's oligarchic mindset was the democracy.

Referring to *Mughal Ejaz's* essay on media dated 22nd February 2013:

'When democratic governments fail to deliver; when they snatch even the basic right of 'Roti, Kapra aur Makan', it becomes hard to defend democracy for those who preach it a better system of

The Living History of Pakistan Vol-I

governance. Why the PPP was so sincere to defend democratic set up? For the betterment of country or its voters? Never... they defended democracy because they found it a very convenient system to loot, plunder and make merry with unlimited powers.'

Tauqir Sadiq, brother in law of PPP's General Secretary Jahangir Badr, was one example to embezzle Rs:83 billion [only]; there were other hundreds who minted money. They were the party beneficiaries who were chanting slogans in favour of President Zardari after Swiss courts refused to open cases against him. In short, the democracy under PPP government was identified for its unique features of corruption, unemployment, killings, murders, nepotism, poor growth rate, debts and inflation.

The announcement, in the last week of February 2013, of five new non-executive directors for the State Bank of Pakistan's Board of Governors raised eyebrows - out of seven vacant seats, five were filled. The nominees themselves – Mehmood Mandviwalla, Shahid Ahmed Khan, Nawaz Tiwana, Iskander Khan and Iqbal Hasan – were all known names, but for the wrong reasons and blurred past history.

Mehmood Mandviwalla was brother of the then Federal Finance Minister Saleem Mandviwalla; Shahid Ahmed Khan was an 'imported' technocrat; Iskander Khan was Pakistan Sugar Mills Association's Chairman when the Supreme Court had stopped sugar prices from skyrocketing; Tiwana, a former PIA office bearer and a jail-mate of President Zardari – who was being obliged then just one month ahead of general elections.

Running the financial coffers of the State, taking decisions on interest-rates and managing the structure that could sustain the economy of the country was a serious task – which had been undertaken without a full quorum in the SBP BoG for a number of years. There was a need to appoint individuals with the experience of having managed financial and business institutions – and having managed them well. It appeared the PPP government was refusing to learn from Tauqir Sadiq's unmerited appointment as Oil and Gas Regulatory Authority (OGRA)'s Chairman.

It was a moral and constitutional obligation of PPP's elected executive to make appointments on merit, as per their oath to uphold the constitution. All appointees of that government, selected to head PIA, PSO, OGDC, Hajj Directorate, Railways, CAA, Auditor General, PEPR, PEMRA, CDA, FBR, NHA, NAB etc had only accumulated losses to those organisations and brought nothing but misery for people and exchequer.

The Living History of Pakistan Vol-I

The PPP government selected a high school crony to head PIA, under whose tenure PIA routes were sold for a song. He was replaced by another crony who cancelled contracts with all manufacturers and instead awarded sole rights to an unknown firm located in Dubai, which resulted in grounding half the fleet. While PIA losses mounted and over three thousand more were added to the already overstaffed airline, a CFO related to co-chairperson was appointed in CAA, who embarked on loot sale of traffic rights to all airlines, in violation of all rules for such bilateral agreements.

What was the benefit to public of Rs:2.4 billion taken out of Benazir Income Support Program [BISP] and spending on media projection?

It was during the tenure of that PPP government that our state owned rail and air public transport system collapsed; our industry ground to a halt because of crippling electricity shortages; lawlessness breaking previous records under the garb of reconciliation; whereby target killings and extortion were endured.

The major issues remained as of poor governance; lack of transparency and corruption were pasted to PPP's government like glue to paper and yet they felt that all those abuses were the perks of power they earned through 2008 mandate – while holding of flags of democracy high.

PPP MINISTER'S WHITE LIE :

On 16th March 2013, Minister for Interior Rehman Malik said that Chief of Army Staff General Ashfaq Pervaiz Kayani should be awarded with the title of field marshal for *his services to democracy* in the country. Rehman Malik, while talking to media men at the Pakistan Sports Complex, said:

"If today the government is completing its tenure, the credit for that also goes to General Kayani as he always supported the democratically elected government.

The law and order situation have improved in the country as the security plan devised by him remained successful during the past five years in foiling the threats posed by terrorist elements.

When I became interior minister, the main challenge was that of terrorism. However, we have succeeded in breaking the backbone of terrorists.

The Living History of Pakistan Vol-I

In the war on terror, Pakistan not only lost over 40,000 precious human lives but also suffered economically."

One could compare the tall claims made by the then Federal Interior Minister with that of the actual figures available with media. The following is the chart of statistics taken from *www.SATO.org / Pakistan* for the whole decade. A little comparison would reflect that how much successful the PPP government had gone to tackle the terrorism menace and how much victorious Mr Malik's policies were:

Fatalities in Terrorist Violence in Pakistan 2003-2013

	Civilians	Security Force Personnel	Terrorists/ unidentified	Total
2003	140	24	25	189
2004	435	184	244	863
2005	430	81	137	648
2006	608	325	538	1471
2007	1522	597	1479	3598
2008	2155	654	3906	6715
2009	2324	991	8389	11704
2010	1796	469	5170	7435
2011	2738	765	2800	6303
2012	3007	732	2472	6211
2013	3001	676	1702	5379

The fact remained that the war on terror was not only Pakistan's war but the reality was that Pakistan was fighting this war for the entire world. Mr Malik, the PPP's Interior Minister, in response to the media questions, had categorically told that *'the recent incidents of bombing in Quetta and Karachi were a part of the conspiracy to destabilise Pakistan – Lashkar e Jhangvi was behind a series of terrorists activities like that'*.

Scenario 106

DIVIDING PUNJAB:

After independence of Bangladesh in 1971, in the remaining part of Pakistan, Punjab had four divisions - Lahore, Multan, Rawalpindi and Sargodha. The NWFP (now called Khyber PK) had two divisions - Dera Ismail Khan and Peshawar. Most of the divisions were named after the divisional capitals, with some exceptions.

From 1955 to 1970, the One Unit policy meant that there were only two provinces - East and West Pakistan. East Pakistan had the same divisions as East Bengal had previously got, but West Pakistan gradually gained seven new divisions to add to the original six.

The Balochistan States Union became Kalat Division, while the former Balochistan Chief Commissioner's Province became Quetta Division. Most of the former Sind province became Hyderabad Division, with some parts joining the princely state of Khairpur to form Khairpur Division. The former princely state of Bahawalpur became the Bahawalpur Division.

The Federal Capital Territory [then Karachi was the Capital] was absorbed into West Pakistan in 1961 and merged with the princely state of Las Bela to form the Karachi - Bela Division. In 1969, the princely states of Chitral, Dir and Swat were incorporated into West Pakistan as the division of Malakand with Saidu as the divisional HQ.

In 1969, West Pakistan was regrouped into four new provinces. Gradually over the late 1970s, new divisions were formed; Hazara and Kohat divisions were split from Peshawar Division; Gujranwala Division was formed from parts of Lahore and Rawalpindi divisions; Dera Ghazi Khan Division was split from Multan Division; Faisalabad Division was split from Sargodha Division; Sibi Division was formed from parts of Kalat and Quetta divisions; Lasbela District was transferred from Karachi Division to Kalat Division; Makran Division split from Kalat Division. The name of Khairpur Division was changed to Sukkur Division.

The Living History of Pakistan Vol-I

During the military rule of Gen Ziaul Haq, the Advisory Council of Islamic Ideology (headed by Justice Tanzilur Rahman) was tasked with finding ways to islamise the country. One of its recommendations was that the existing four provinces should be dissolved and the twenty administrative divisions should become new provinces in a federal structure with greater devolution of power, but this proposal was never implemented.

In early 1990s, Naseerabad division was split from Sibi Division; Zhob Division was split from Quetta Division; Bannu Division was split from Dera Ismail Khan Division; Mardan Division was split from Peshawar Division; Larkana Division was split from Sukkur Division; Mirpur Khas Division was split from Hyderabad Division. The capital of Kalat Division was moved from Kalat to Khuzdar

In August 2000, local government reforms abolished the "Division" as an administrative tier and introduced a system of local government councils, with the first elections held in 2001. Following that there was radical restructuring of the local government system to implement "the principle of subsidiarity, whereby all functions that can be effectively performed at the local level are transferred to that level."

This meant devolution of many functions to districts and *tehsils* (sub-divisions), which were handled at the provincial and divisional levels. At abolition, there were twenty-six divisions in Pakistan proper - five in Sindh, six in Balochistan, seven in Khyber PK and eight in Punjab. Abolition did not affect the two divisions of Azad Kashmir, which form the second tier of government.

In 2008, after the general elections, the new government decided to restore the divisions of all provinces. Punjab had nine divisions (with total of 36 districts) with Sahiwal Division being the newest. In Sindh after the lapse of the Local Governments Bodies term in 2010 the Divisional Commissioners system was restored.

In July 2011, following excessive violence in the city of Karachi and after the political split between the ruling coalition partners, the Government of Sindh decided to restore the Commissionerate System in the province. As a consequence, the five divisions of Sindh were restored namely, Karachi, Hyderabad, Sukkur, Mirpurkhas and Larkana with their respective districts.

Karachi district was de-merged into its 5 original constituent districts namely Karachi East, Karachi West, Karachi Central, Karachi South and Malir. These five districts form the Karachi Division since then.

VICIOUS DRAMA STARTS:

The Living History of Pakistan Vol-I

In mid 2011, during his press conference, taking Holy Quran on his head, whatever Dr Zulfiqar Mirza said and in what tone and tenor he said was too much severe; should have been investigated seriously and thoroughly.

Amongst many other deliberations, one thing disclosed in that press conference was of grave importance, i.e. the interest of America in disintegration of Pakistan and dissolving of ISI. This worried every Pakistani because aggression and enmity of US towards Pakistan, activities of CIA, MOSSAD and RAW within territorial limits of Pakistan were alarming.

In February 2007, for about two weeks CNN had been running an advertisement of a book about Pakistan; named as '*Divide Pakistan To Eliminate Terrorism*' penned down by an unknown author Syed Jamaluddin, an Indian by origin but living in France. Main theme being that '*the terrorism on international level is due to division of India in 1947*'.

Astonishing theory it was being propagated which had no reference document in any library the world over. The author opined that Pakistan emerged as a failed state for a one single reason; assembling almost eight different nations in the name of Islam. Further more Pakistan has been masterminding terrorism, providing all possible support to terrorism, nurturing terrorists and a threat to international peace!

Jamaluddin, in his book, came with a simple solution to the terror menace; division of Pakistan in several small states so that there should be no ISI. The map of Jinnah Pur was also included in that book.

An Indian scholar living in America named Guru Dev added fuel to fire by commenting that:

'The author says thanks to India, people of East Pakistan who were harassed and tortured by Pakistan became an independent state called Bangladesh, in 1971, but what about rest of its provinces who are craving for independence but are suppressed by ISI and Pakistan Army.'

During the same days, another such like book titled '*Descent into Chaos*' written by one *Ahmad Rasheed* was also sponsored by America & India. This book was perhaps published by eight publishers with different title designs because the author had blamed ISI for international terrorism and extremism. No substantive evidence was given by Ahmad Rasheed to justify his claims but because the two big nations were providing financial and media aids to the book, it went on.

The Living History of Pakistan Vol-I

Pakistan Army and ISI were criticized with blatant lies and termed as more dangerous than Hitler's Nazi army. In order to convert the whole world to peace, according to his biased and unfounded estimation, *'it is necessary to disintegrate Pakistan into several small states; initiated by 'Formation of Republic of Jinnahpur.'*

However, despite the sizable financial and diplomatic support of the enemy states, both the authors could not sell this idea of dividing Pakistan in 2007. Five years later, the world historians noted that the US & India had found more influential people within Pakistan [*pointing towards PM Gilani & President Zardari*] to accomplish their mission by announcing formation of Saraiki province and, of course, Hazara & Jinnahpur could not be pushed away from the scene.

SARAIKI SOOBA VOICE:

The province of Punjab is the hub of about 110 million people which is more than the composite population of any of the European country. Much difficult to control as a provincial unit composed of various ethnic, cultural and linguistic clans and tribes. There have been cogent voices to split it into more provinces since decades; Saraiki Suba was the most loud and viable demand but due to political intricacies, the rulers never opted to heed toward that popular demand of the inhabitants.

The Punjab Assembly once passed a resolution, a mandatory and procedural requirement under the Constitution of Pakistan, but did not agitate it in the Parliament because the rulers [Sharif Family] never wanted sincerely to dilute their administrative and financial power. Thus the resolution passed in Punjab could not travel up to Islamabad with ill intentions of both PPP & PML(N) [though on different grounds].

Promoters of Saraiki Province claimed to include about 23 districts, 62% of the total area of Punjab [1,49,419 km²]. Administrative Problems due to Long Distances within Punjab from Rahim Yar Khan [RYK] to Murree and Attock / Mianwali is over 1000km in length and capital being located at Lahore has multiple problems especially because of more poverty. Distance between RYK and Lahore is approximately 560 km.

Even in the present 21st century, in most of the Saraiki areas, human beings and animals drink water from same pond. People have lowest ratio in the Armed Forces and in public services. No Agriculture University - despite the fact that, it is mostly the agriculture based area which produces approximately 57% of the total agricultural produce of Punjab. No Medical University – only one Nishtar College caters for the teaching needs of the whole areas around.

The Living History of Pakistan Vol-I

No Engineering University - in the whole Saraiki belt; no IT or Science and Technology University; no Cadet College; no International Airport to cater for the people from 23 districts, one in Multan is only for the local flights. This has adverse effect on travelling abroad and export of fruits, vegetables and the other commodities abroad.

This is unfortunate and step brotherly treatment to the Saraiki belt, where the existing communication infrastructure is also in very bad condition. The Saraiki belt produces about 65% of the total cotton crop, but there is only one textile mills in Multan. Due to shortage of canals, 11 million acres land of Bahawalpur and Multan division has been rendered *banjar* [deserted] due to shortage of water.

Since there is no Urban / rural quota, for admission in medical and technical colleges; no special quota in armed forces and civil services; due to shortage of industries, most people are jobless; therefore, compelled to migrate to Karachi and abroad accepting least paid and low category jobs. Shortage of TV and radio stations, with no facilities of dry ports, industrial states, industries etc pose another set of problems for inhabitants. On top of it only 11 to 18 % of the total budget of Punjab is normally allocated for the development in this belt; the history proves it.

The problem remained that many politicians from South Punjab elected for the provincial and national assemblies were given the high ranks and portfolios in cabinets but when in power, they always went for their personal development – not for their voters.

Amongst them Yousaf Raza Gillani, Prime Minister of Pakistan from 2008-12; Latif Khosa, Governor Punjab; Zulfiqar Ali Khosa, Minister & then Governor Punjab for about a decade; Mustafa Khar, Chief Minister, Governor Punjab and Federal Minister for decades; Farooq Leghari, Federal Minister and then President of Pakistan; Dost Muhammad Khosa, Minister & Chief Minister Punjab); Shah Mehmood Qureshi, Federal Minister; Hina Rabbani Khar, Foreign Minister; Javed Hashmi, Federal Minister for two decades and many more figures from Bahawalpur, RYK and Bahawalnagar areas.

None of them ever spoke in favour of regional autonomy; AND never agitated strongly for the development budgets for their areas.

In the second week of August 2012, the Senate Secretariat nominated six senators to a Commission for the formation of South Punjab province and restoration of Bahawalpur province; Rafique Rajwana [later made Governor Punjab] was, however, there to represent PML(N) and none else from South Punjab.

The Living History of Pakistan Vol-I

PPP was at the forefront of support for a South Punjab province, but the PPP's majority on benches avoided to nominate a single senator from the region to the Commission on new provinces. The composition was PPP's Sughra Imam and Farhatullah Babar, ANP's Haji Adeel, PML(Q)'s Kamil Ali Agha, and JUI-F's Abdul Ghafoor Haidri besides PML-N's Rafiq Rajwana.

Each party had nominated their own senators to the Commission but MQM was ignored. An independent Senator Mohsin Leghari, who had won the Senate seat on a one-point agenda of raising his voice for the formation of a South Punjab province, was ignored in the Commission.

Mr Leghari had submitted around 100 resolutions in the assembly secretariat for the formation of South Punjab and raised his voice for allocation of funds to and for jobs in the Punjab Public Service Commission for South Punjab. He had the support of around 40 MPAs from South Punjab in the Senate elections. Mr Leghari termed the nomination for Commission as 'eyewash.'

In furtherance of the cause for new provinces in Punjab, the National Assembly Speaker Dr Fehmida Mirza nominated 12 [out of the 14] members for the Commission and were notified.

In addition to the above named Senators, PPP's MNAs Arif Aziz Sheikh, Jamshed Ahmed Dasti, Syed Ali Musa Gilani, PML(N)'s Tahmina Daultana and Ch Saud Majeed, as well as MQM's Dr Farooq Sattar were also nominated. Earlier, the Punjab Assembly on 9th May 2012 and the National Assembly on 21st May 2012 had approved the resolutions for the establishment of new provinces in Punjab with an overwhelming majority.

ANP's Haji Adeel also clarified that the Commission's workings would be confined to Punjab only and they would not consider for the creation of a Hazara or Muhajir province, as no other provincial assembly had passed any resolution in favour of new provinces.

Carving out more provinces in Pakistan was not a new demand. The PPP-led governments had been rallying since decades for the formation of a new province in southern Punjab for *Seraiki* representatives. President Zardari then directed for the Commission but later found bullying and bulldozing the issue, perhaps, with the next election in mind.

In Punjab, the PML[N] was not just bothering because it was running the province's government. The PML(N) did not initially approve two names from their Punjab Assembly to complete the Commission; contrarily putting the blame that *'the new provinces issue has been made controversial by forming the new provinces commission unilaterally.'*

The PPP was raising questions that why its leadership was refusing to nom-

The Living History of Pakistan Vol-I

inate its two members to the Parliamentary Commission and restraining others nominated by the Speaker NA from attending its meeting to be held on 28th August. The issue of Hazara and FATA could be addressed later as demanded by the PML(N); thus the PPP declared vacillating stance of the PML(N) as hypocritical.

The reality was that the PML(N) was not in favour of the division of Punjab province as it would erode its political clout and its main base of political support but it did not have the courage to admit it publicly. The demand for creation of four provinces first and the objections raised on the formation of the Commission were termed illogical and ill intentioned by many. Farhatullah Babar, the newly elected Chairman Parliamentary Commission on New Provinces (PCNP) in Punjab, said that:

'There have been no requests by other provinces. How can the commission go to other provinces and say it will form more provinces when they have not set forth any such proposals? This proposal has come from Punjab itself; therefore, the work of the commission is limited to the province alone.'

To a question why only representatives from Punjab could not form the commission alone, the Chairman said:

'When you talk about creating a new province, it requires amending the constitution and amendment of the constitution cannot be handed over to any one province or political party.'

The Commission was given one month time to complete its task. PML[N] was still missing; as their three members, nominated by the National Assembly Speaker, boycotted the meeting in protest. The PML[N] stayed away from the meetings of the Commission since its formation last year. The opposition kept serious reservations over the Commission, saying that it had no representation from Punjab – the province that was being divided. Secondly, the opposition argued that instead of the speaker choosing the members of the Commission, it was the respective party's right to choose the members as per authorisation given to the parties for sending their Senators.

The opposition leader Ch Nisar also rejected the term '*National Commission*' for the panel, and added that it has no right to call itself a '*National Commission*' because it had no representation from Punjab and the PML[N]. He opined that the Commission was not even formed by the federal government, but was established by Mr Zardari, through his speaker, which was wrong; having no provision in regulations.

SARAIKI PROVINCE OR BAHAWALPUR:

On 18th December 2012; former Federal Information Minister Muhammad Ali Durrani supported the demand for restoration of Bahawalpur province and creation of a Seraiki province comprising other areas of the region. Mr Durrani was among the five prominent figures from south Punjab who were called by the Parliamentary Commission [PNCP] to give their viewpoints on the issue of creation of one or more new provinces in Punjab. Others were Ghazanfar Mehdi, Masroor Baig, Iqbal Pitafi and Ashiq Khan Buzdar.

The PNCP continued with its regular in-camera meetings, ignoring a boycott by the opposition PML(N). Mr Durrani had stressed the need for restoration of Bahawalpur province whereas the others favoured the formation of one Seraiki province. In his presentation, Mr Durrani gave historic perspective of Bahawalpur State and said that it was the first state to sign the instrument of accession with Pakistan on 3rd October 1947, as a province of the newly - born country.

On 30th April 1951, a supplementary instrument of accession had been signed and Bahawalpur became the only state in Pakistan which was given the status of a province. The first elections in Bahawalpur were held in 1952 to elect 49 members of the provincial assembly, of which 80 per cent members belonged to the middle class. Bahawalpur had a provincial assembly, an election commission, a provincial secretariat, revenue board, an independent public service commission, a high court, and government's printing press with defined provincial boundaries and there were more than 40,000 state employees.

In the draft constitution of 1954, Mr Durrani said, Bahawalpur had been given the status of a province with four seats in the Senate of 50 members, seven seats in the National Assembly with a provincial assembly of 49 seats. Bahawalpur was merged with the West Pakistan one-unit, *and not in the Punjab province*, on 17th December 1954. However, when one unit was abolished, Bahawalpur was not restored as province and martial law administrator Gen Yahya Khan merged Bahawalpur with Punjab as a division of the province through the Province of West Pakistan Dissolution Order issued in March 1970.

Evidently; the promises made by the Quaid e Azam and the agreements signed between the State of Bahawalpur and the Pakistan government in 1947, 1951 and 1954 were disregarded and not given any importance. As a result of this injustice, a restoration movement under the banner of '*Bahawalpur Muttahida Mahaaz*' started in which two persons were killed and thousands imprisoned.

The Living History of Pakistan Vol-I

In the 1970 elections, 85 per cent people voted for the candidates fielded by the *Bahawalpur Muttahida Mahaz* and *MNAs Nizamuddin Haider and Makhdoom Noor Muhammad did not sign the 1973 Constitution in protest* against non-restoration of Bahawalpur as a province.

The movement for restoration of Bahawalpur province, initiated by former federal minister Mr Durrani, who was a PML[Q] leader but later he allied himself with the PML[N]. It was blamed that Mr Durrani, assisted by his sister, Abida Durrani, while residing in Dera Nawab Sahib, were running the affairs and had acquired Rs:800 million from a Norwegian NGO for the women development in the Seraiki belt – allegedly no development seen.

Another significant name of the Bahawalpur movement was Nawab Salahuddin Abbasi who might have been struggling for hereditary benefits and his title of "Nawab" from the Pakistani government due to which he never had a strong presence in this movement.

According to local political experts, Durrani had been trying to be a candidate from NA-183 Ahmedpur East - his birth place - but was stunned when Nawab Salahuddin Abbasi announced to contest election not only from NA-183 but also from NA-185; and had also launched his own political party "*Bahawalpur National Awami Party*". There were also rumours that Nawab Abbasi had reached a deal with the PPP for seat adjustment indicating that he would take a side role with regards to the Bahawalpur province movement.

The third main element of this movement was Usman Daud Abbasi, a relative of Nawab Salahuddin Abbasi and former deputy speaker of Punjab Assembly. Later Usman Abbasi joined Pakistan Tehreek e Insaf [PTI] and announced to contest election against his cousin Nawab Salahuddin Abbasi.

Another major player of the movement was Makhdoom Ahmed Mehmood, the then Governor of Punjab. His father Makhdoom Syed Hassan Mehmood was the Chief Minister of Bahawalpur State; therefore, his son was eager to occupy his father's chair which could only happen had the region gained the status of a province. But due to former premier Yousaf Raza Gilani's intervention, he had left the movement for the sake of governorship.

On the other hand, local communities of the three districts - Rahim Yar Khan, Bahawalpur and Bahawalnagar - had never supported this movement because the settlers, migrated from different areas of upper Punjab, had more bets at stake. Thus, there was no serious campaigning for the Bahawalpur province once Mr Durrani himself joined the PML[N] – he had to go with his party's wishes and whims.

The Living History of Pakistan Vol-I

Seth Ubaid-ur-Rehman, the main leader of Bahawalpur Restoration Movement during 1970's, once told the media that times had changed and there was no need to struggle for the provincial status. He claimed that the Nawabs of Bahawalpur were just fighting for their title.

Here one can differ with the above media noting because the Bahawalpur province was not needed for Mr Durrani's seat in the Parliament or Nawab's titles BUT the province was needed as a devolution of political powers – a fundamental requirement of the democracy. Bahawalpur or for that matter other provinces in making, were required so that people should not travel to Lahore for their routine visits in education, health, land records, judicial attendances, IG police's office and crime branch etc.

The most important that all the development funds would not be used by one Chief Minister sitting at Lahore – Bahawalpur province's funds would come straight from the Federal Finance and they would prioritize their development plans.

At the national level, it was a tussle between the PML[N] and the PPP. Nawaz Sharif did not want to sacrifice a major and important chunk of Punjab as *Saraiki* Province. According to experts of *Saraiki* belt, the PML[N] wanted to create a buffer zone between the *Saraiki* belt and Sindh, because *Sindhi* and *Saraikis* have same culture and norms, while both of them used to dislike "*Takht e Lahore*". As Lahore was not a keen supporter of the movement of *Saraiki* province, the Punjab Assembly passed a resolution for the Bahawalpur province.

The fact remained that the then Punjab Governor Makhdoom Ahmed Mehmood was also in the favour of a *Saraiki* province as the people of the *Saraiki* belt had decided to only support those candidates who were supporters of a new province – *Saraiki Suba* and not the Bahawalpur Province.

BAHAWALPUR SOUTH PUNJAB:

On 26th January 2013 at last, the Parliamentary Commission [PNCB] evolved consensus when it proposed '*Bahawalpur South Punjab*' as the name of the province to be carved out of Punjab and also approved its draft report to be presented in the National Assembly's next session. Three days later, the PNCB presented its report to the National Assembly recommending the creation of '*Bahawalpur Janoobi Punjab*' [BJP] province,

The Living History of Pakistan Vol-I

constituting the Multan, Bahawalpur and Dera Ghazi Khan divisions, along with the Districts of Mianwali and Bhakkar; with its capital at Bahawalpur.

The Commission, when constituted, was given the task to slice out two new provinces in Punjab as per resolution passed by the Punjab Assembly, which demanded the restoration of Bahawalpur's status as a province and the creation of a new unit in southern Punjab. However, the Commission had focused solely on one new unit.

According to the draft report of the Commission, four different models were proposed for the new province; issues such as the distribution of economic, financial and administrative resources, demarcation [of boundaries], seat allocation in assemblies, minority and constitutional amendments were discussed. The PC's report also included a draft of 24th Constitutional Amendment Bill 2013, which had already been sent directly to the Ministry of Law for onward completion of procedural formalities.

According to original draft report, the new province would have a share of 59 seats [47 general seats and 12 special seats for women and minorities] in the National Assembly while the provincial assembly would be composed of 124 members [101 seats allocated for general members and 23 special seats for women and minorities]; subject to the approval of the Election Commission. A consensus was also seen for Bahawalpur as the capital of the new province, whereas the provincial assembly would be situated in Multan – a perspective issue for the future.

The main issue remained that whether or not the PC had proceeded within its Terms of Reference (TORs) in recommending one province of Bahawalpur Janoobi Punjab, instead of two separate provinces as discussed earlier; especially that why Mianwali and Bhakkar were included in new BJP.

Referring to *the 'Pakistan Today' dated 3rd February 2013:*

'Pakistan is a constitutional republic. Andthe allocation of funds, resources, developmental work, representation in the legislature, and apportionment in the bureaucracy between provinces etc is done in light of roughly three factors: population in terms of representation; needs in terms of development work; and ownership in terms of natural resources.

As a result, the demand (by any region) for the status of a province is more than just a desire for the regional political forces to gain local administrative autonomy. The conferring of a provincial status

The Living History of Pakistan Vol-I

incorporates the promise of fundamentally improving the socio-political conditions of the region.'

The homework done on the basis of above given principles, the new BJP would require about 30% share in federal civil services [so called CSP, PSP & other 12 Services' Groups] and the same 30% share of National Finance Commission [NFC] award, commonly known as Development Funds.

At that particular time of ending 2012, the BJP's area and population was *getting only 12-15% from Punjab's allocations* in both sectors. The Commission report, however, pointed out that:

'This region [proposed Bahawalpur Province] accounts for 84% of Punjab's cotton, 41% of the province's wheat, 36% of its sugar. Similarly, 85% of Punjab's ginning cotton factories, 40% of flourmills, 30% of sugar mills, and 25% of the province's fertilizer manufacturing units are installed in this region'; whereas only one region named Lahore was getting more than 25% '.

Thus no threat was expected to its stability and economic wellbeing.

The PML(N) was not able to formulate a strategy on the proposed bill at that time but the Leader of Opposition in National Assembly Ch Nisar Ali Khan pointed out lacunas in the proposed bill; mainly urging the Commission to comply with the Punjab Assembly resolution of carving out two provinces instead of one province. PML[N]'s Khwaja Asif told the media next day that:

'Unless members of Punjab Assembly were involved in the decision or the matter is initiated from them, any action in this regard by the centre is contrary to the Constitution'.

PML[N]'s that tall leader was not ignorant that the Punjab Assembly had already passed a resolution on the Bahawalpur province. Kh Asif had in fact criticized the makeup of the Parliamentary Commission; arguing that the head of the Commission, Farhatullah Babar, was from Khyber-PK – he should have been from Punjab.

The Parliamentary Commission was headed by Farhat Ullah Baber from Khyber PK with members from all parties and provinces. The division of a province was a provincial matter to start with; it should have been divided on administrative and not on linguistic grounds. Khwaja Asif MNA told the media on 27th January 2013 that:

The Living History of Pakistan Vol-I

'We [PML-N] are in favour of creating new provinces along administrative lines. If they are created along ethnic lines, then this will harm the nation,'

In fact the new province was not created on linguistic or ethnic basics what the PML[N] had claimed – *Bhakkar, Bahawalnagar, Multan and Bahawalpur all had significant Punjabi population. Dera Ghazi Khan had Pashtuns and Balochs. Mianwali was the home of the Niazi Pashtuns and has a substantial Punjabi population.* And still the same situation prevails.

Additionally, *Saraiki* is just a dialect of Punjabi and people cannot be *Saraiki* as it is not a tribe or clan. Also, 17 million people speak *Saraiki* across KPK and South Punjab and their neighboring regions of Balochistan and Sindh so this language is not localized. So, the "*Saraiki*" province is just a naive, media term.

Now pondering into the Article 239(4) of the Constitution: *'that any Constitutional Amendment having the effect of altering the limits of a Province must necessarily be passed by the Provincial Assembly of that Province with a majority of two-thirds of its total membership'*, which already provided that there would be two provinces not one. The PPP government, while not having the required votes in the Parliament to pass the Constitutional Amendment Bill, was just kidding with the nation.

The nation was once more made fool by floating *a false hope of 'making out provinces'*. Mr Zardari and PML(N)'s Nawaz Sharif were playing with the nation after sorting out their *'Muk-Muka'* that the scheme of the new provinces would be chalked out in a manner that ultimately there would be nothing 'in shape' and Punjab would not be deprived off his development funds & area of control.

The PPP got announced the PC from the Speaker, without consultation of Opposition Leader, not including expected members of the concerned areas in the PC, making out PC's Chairman from a faraway territory, picking no Senator of that areas, including Mianwali & Bhakkar in it without taking will of that areas and so many other gimmicks.

Moral: *'na nou man tel ho ga, na radha nache gi'* [where there is NO will, there is no way]. All done deliberately; the PML[N] helped PPP to complete five years without hindrance, then PPP helped Nawaz Sharif to keep control [& funds] of the whole Punjab as before.

The Living History of Pakistan Vol-I

Nevertheless, more provinces are the way to go if Pakistanis want to squash out the fires set by deprivation and negligence. Pakistan covering an area of 796,095 km² has only 4 provinces (+4 administrative units). Countries close to Pakistan in terms of area have considerably large province counts and almost all of these countries are higher than Pakistan in Human Development Index (HDI) listings; Turkey (81 provinces), Chile (54 provinces) and Egypt (27 Governorates) being a few of these.

New provinces are not the only way to development; though it is one of the necessary steps. Smaller areas to administrate means more *hold* over the region and better allocation of resources and funds. The motives of the PPP government were shadowy but new provinces on administrative grounds were the need of the country.

A cogent question here: why were they in favour of new provinces only in Punjab when they opposed de-limitation in Karachi? Why breakup only Punjab? Why not other provinces too, on administrative lines? Why not have 30 to 40 provinces (the size of one or two districts)? This was nothing but an election gimmick by PPP, Q-League and MQM. While on the other hand control - freak and Laptop - Sharifs & N-League would never let breakup of Punjab (even on admin lines).

MUTINY GROWS IN PUNJAB?

by Anatol Lieven (author of Pakistan: A Hard Country)

The US strategy towards Pakistan remained focused to get Islamabad to help Washington's campaign against the Afghan Taliban. There were large problems with that approach - firstly that Pakistan's strategic calculations and the feelings of its population made it impossible because US was standing with India. Secondly; the war in Afghanistan had become a temporary US interest till then; *the chief concern was to avoid the damage to US military's prestige - an obvious failure.*

For America, the prospects for success in Afghanistan were depressing but they propagated as if they were saving Pakistan from terrorism. It was a desperate try because Washington knew that 86% Pakistanis did hate them. However, some positive loyalty could be expected from Pak-Army and one key province Punjab – but with the passage of time those feelings also vanished.

The above expectations could be true till April 2011; but after US attack of 2nd May 2011 at Abbotabad – every thing changed promptly [Anatol

The Living History of Pakistan Vol-I

Liever's article in '*National Interest*' of March - April 2011 is referred]. A lot changed since; and Britain had to assume a central role in resolving the Afghan imbroglio and it prevailed. See Liever's painful remarks in the said article:

'.....Disintegration of Pakistan is still on the [Indo-US Zionist] agenda but it is hoped it will follow rather than precede heightened Civil War in Afghanistan that is likely to result from NATO / US withdrawal'.

A clear warning for political and military elite of Pakistan in March - April 2011 – but Gen Kayani, Gen Pasha and President Zardari all kept sleeping.

Pakistan was then being ruled by a four party coalition for five years – Zardari League, MQM, ANP and JUI(F) – all of who had a history of opposition to Pakistan. Zardari's dad – Hakim Ali – was the President of ANP in Sindh after he was expelled from the PPP allegedly for trying to blackmail late Prime Minister Z A Bhutto. No details there but it was well known that ZAB was so angry with Hakim Ali that he sold all his assets and moved to the UK only to return after the execution of ZAB.

Now some paragraphs from Liever's above said article given verbatim:

'The relationship of Asif Zardari with his wife Benazir was characterized by the Hollywood film 'sleeping with the enemy'. Not referring to their marital relationship; but the point is that for securing US sponsorship of the NRO, every one wondered: "what is the quid pro quo that the USA wants from Asif Zardari?"

It appears that Asif Zardari signed up to disintegration of Pakistan. He has been tasked to destroy the two institutions that hold Pakistan together: 1) the armed forces and 2) the Punjab. The Memo written by Pakistan's Ambassador Hussain Haqqani at the behest of President Zardari to the US Government revealed how AZ intended to undermine the command structure of the armed forces on the pretext of 'civilian control.....

In not understanding the nature of enemy schemes and being so inadequate in articulating viable popular opposition the PML(N) and TIP share equal blame. India has for decades funded opposition to Kalabagh Dam and promoting Seraiki province. Disintegration of Pakistan has been at the top of Indian agenda since 1947. There should have been no doubt left after the invasion and separation of East Pakistan in 1971. But the very same political par-

The Living History of Pakistan Vol-I

ties that are in the ruling coalition today were at the helm in West Pakistan in 1971.

Their leaders readily embraced the Indian propaganda that East Pakistan separated because of 'maltreatment' by the Punjabis. Ever since, the Punjab has been the favourite whipping boy – blamed for every real or imagined grievance. But the Punjab sacrificed in any inter - provincial deal – [see] the recent finance award as well as the Water Accord of 1991. But the Indian propaganda continues to be mouthed by President Zardari and his coalition partners.

Not content with the Punjab giving in to every demand of cut in its legitimate share, the Zardari Administration is now embarked on the military and the Punjab province. The 2008 announcement of cancellation of the Kalabagh Dam, the 18th Amendment to the Constitution, and now the Freudian Slip..... the BJP (Bahawalpur Janubi Punjab) case..... PML(N) get no votes – just ridicule and disgust.

The people and politicians of Sindh have been wiser in understanding that the real reason for the new Local Bodies Ordinance is to give Indian protégés – the MQM – perpetual control over not just Karachi but all the urban centers of Sindh.....

In Pakistan, land has always belonged to the provinces but river water is owned by the federation. This is a sensible division that has stood the test of time. Large reservoirs of water in dams have been built and operated by the federal government but the barrages and the canals have been owned and operated by the provincial governments.

Kalabagh Dam is an exception because it is a dam as well as a barrage. Its right bank canal would irrigate DIK area of South KPK, and the left Bank canal would irrigate the area between Rivers Indus and Jhelum.

The reservoir would serve the interest of South Punjab and Sindh Province as Sindh gets 37% of the water of any reservoir built on River Indus. Tarbela Dam, built in the KPK has increased supply of irrigation water at Sukhar as well Kotri barrages.

Kalabagh Dam would be even more beneficial to Sindh because it would conserve huge amount of extra water from all the tributaries

The Living History of Pakistan Vol-I

of River Indus down stream of Tarbela and hill torrents that have caused death and destruction in South Punjab.

Kalabagh Dam is so detested by India because it would link all the provinces of Pakistan into a nationwide irrigation system. Farhatullah Babar included the Districts of Mianwali and Bhakkar in BJP in his proposal. The people of the two districts understood his intent and protested. They understood that it would imply that the only dam in the Punjab – the Kalabagh Dam – would be located outside the province.

Farhatullah Babar proposal undermines the link canals and the entire irrigation system of the Punjab..... However; India and its protégés in Pakistan have good reasons for hope.

The reason why the Indo-Zionist lobby wants the division of the Punjab: "If Pakistan is to be broken as a state, it will be on the streets of Lahore and other great Punjabi cities, not in the Pashtun mountains."

East Pakistan was the largest province of Pakistan until 1971 but its people were not able to see the benefits in the union. It split from Pakistan and is forever reduced to the status of a vassal state of India..... [but who cares for such facts].

The Punjabis are 60% of the Pakistani nation now. They see the vital need for maintaining the union and the Army is willing and able to defend every part of Pakistan. The only way Pakistan may not succeed in maintaining the integrity of the federation is that the political process brings a Boris Yeltsin to power and the armed forces are too discredited or demonised to resist threats to national integrity.

Pakistan has had a Boris Yeltsin in the shape of Asif Zardari in power for five years but the military has maintained national cohesion despite him. But that would not last forever. Pakistan's enemies hope that Mian Nawaz Sharif would play the role of blunderbuss Boris even better. Pakistan is not out of the woods yet. ++

[Author of the book does not want to offer any comments – Pak-Army and the Pakistan loving intelligentsia should be able to read in between the lines.]

Scenario 107

JUDICIAL AUTOCRACY IN PAKISTAN:

Referring to 'Harvard Law Review of April 2005' Richard Fallon Jr had once argued under 'Legitimacy and the Constitution' that the legitimacy of judicial review should be classified as:

- Moral Legitimacy: justifiability of its institutional existence and actions in moral terms.
- Sociological Legitimacy: public support for the institution and abidance by its rulings as a factual matter.
- Legal Legitimacy: the acceptance of formal legal reasons given for decisions reached at.

Talking of Pakistan's judiciary in perspective, barring a few instances, in most high-profile cases where the court has struck down executive actions for illegality or procedural impropriety, the legal reasoning advanced by it were not so weak & thin. Babar Sattar in '*the News*' dated 14th April 2012, pointed out that:

'Be it the NRO matter, the promotions of civil servants, the NICL scandal or the Rental Power shame, the PPP-led regime had elected to attack the moral and sociological legitimacy of the judiciary and not the legal reasoning of its orders.'

The PPP leadership including its 'then student Chairman' Bilawal Zardari passed sarcastic remarks on 5th April 2012 molesting the sitting judiciary dragging it in its pre 2007 chequered past.

The second prong of this attack on the judiciary's moral legitimacy was continuing emphasis on the Zulfikar Ali Bhutto murder case. There has been a general consensus in Pakistan that the outcome in the matter wasn't a product of legal considerations.

CHARACTER OF JUDGES:

The Living History of Pakistan Vol-I

Let us turn over another page of our judicial history. Lawyer's movement of 2007-08 was going on though its dimensions had apparently been shrugged. Though some lawyers had departed themselves from the movement but their hearts remained with Ch Iftikhar, the deposed judge. President Zardari had not reinstated justice Iftikhar because he had certain reservations for him.

On 9th March 2007, the Chief justice had retaliated because the fire was going to burn his own home when Gen Musharraf had asked him to resign. Before that day he was as much a part of Pakistan's routine judiciary as the others were, for example;

- Justice Iftikhar was also one of those judges who took oath on PCO in 2000 allegedly betraying his Chief Justice Saeed uz Zaman Siddiqui and others.
- He was also one of those who did not bother to consider Zardari's bail petitions for years because he was an 'upright' judge in Gen Musharraf's books.
- He was one of those who were a cogent party in getting five years jail for Prime Minister Gilani in just a flimsy case during Gen Musharraf's high days of rule.
- He was also responsible for getting five years imprisonment for Javaid Hashmi of PML(N) for actually no fault of him on account of '*Baghawat*'; during the same era of military rule.
- He was the judge who had thrown out petition from a citizen challenging the house arrest of Dr Qadeer Khan Scientist. He should have taken *suo-moto* action on this gross misconduct on the part of the Chief Executive or the government but ignored being in parcel with the PML[Q] plus military government.
- If he was really so upright then how come it happened that three of the politicians named Neelofar Bakhtiar, Aftab Sherpao and Faisal Saleh Hayat, being equal culprits like so many others in *Ehtesab* files, but were picked and raised to the level of federal ministers whereas others were made to lead miserable lives in jails.

However, luck favoured Justice Iftikhar Chaudhry because PPP's Aitzaz Ahsan and Nawaz Sharif suddenly jumped forward to raise him up and also got him en-cashed. Contrarily how Mr Sharif could forget that the same courts of Pakistan had announced for him fourteen years jail in false plane-hijacking case. How Mr Sharif could turn a blind eye to the fact that his party PML(N)'s former president Javaid Hashmi was sent to jail on false case by the same judiciary.

The Living History of Pakistan Vol-I

Leaving it aside, one should admire Nawaz Sharif's political wisdom that he picked a slogan of reinstating Justice Iftikhar Chaudhry and his team back to 3rd November 2007's position. The PPP also used this issue as catchphrase but either the PPP went a bit late or their voice remained at low pitch. Meetings of Zardari with Nawaz Sharif at Murree and elsewhere were OK but PML(N)'s explicit commitment to the people that the judges would be reinstated provided an edge to the PML(N) and PPP lost the chance and thus the whole game.

The reality is that all courts make mistakes; in Pakistan and elsewhere in the whole world. Abual Kalam Azad had once given a historical statement before a court in Calcutta [India] that:

"History stands witness that whenever the powerful rulers wanted to suppress the 'independent, self determining or truthful' public voices, they used their courts as 'the most effective' weapons."

Every court has powers and those can be used either way; for justice and gross injustice both. For rightful governments, the courts were the source of extending help to the deserved and oppressed ones; but the same courts had exerted to take revenge and score balancing jobs for military regimes and on bad ruler's behalf. *Most of the historical injustices have been done either in battle fields or in the courts.*

Since the early ages of Egyptian and Roman empires, the sentiments of judges have been the deciding factors; not the issues nor the facts of law. There is long list of persons which had been subjected to the injustices of the honourable courts of the past; history is still cursing those moments.

- *Prophet Jesus Christ was once made to stand with thieves before the stranger courts.*
- *Socrates was the most truthful man of his era but a court order made him to drink poison.*
- *Galileo of Florence had also gone through wrath of his time's court because he had denied shelving his knowledge and observations; then it was a crime to talk facts about nature in open.*
- *Premier Z A Bhutto was hanged on the orders of some rascal judges because a military General wanted to rule Pakistan for ever [historians blame Henry Kissinger on nuclear issue].*

In short, the dock in a court room is the most sacred place where the criminals, alleged culprits and the innocent angles stand alike and graded equal;

The Living History of Pakistan Vol-I

their fate always depended on application of law and mood of the judges both; analyse the history in perspective.

The PPP-led executive had cogently argued that the treatment meted out to the PML(N) leadership was preferential and that afforded to the PPP leadership was discriminatory. One could especially recall the SC's orders for throwing away the court sentences in 2007 which were passed against Nawaz Sharif in year 2000; under what powers it was done. Condoning court sentences after seven years was not provided in Pakistani laws.

Repatriating Nawaz Sharif's all assets in 2011 by the Chief Justice may also be analysed in this context [*details are available in Volume-II of this title at Scenario 48 pages 551-561*]. Keeping Kh Sharif as the CJ of the Lahore High Court was another case to be viewed.

The Prime Minister Gilani's contempt case is another example; he was sent home for non compliance of the NRO ruling as required by the Supreme Court, but what about getting the judgment implemented in the Asghar Khan Case. Why not even a single time the SC asked the government or the FIA about the progress of implementation – because some PML(N) politicians were to be questioned.

The fact remains that the Sharifs were smart business tycoons; think who had made enormous expenditure on 16th March 2009's Long March which ultimately brought the CJP Iftikhar Chaudhry and his team back in their seats and saddles. The lawyers had never contributed even a single rupee for this cause, no evidence that who spent millions on that show. Certainly they were Sharifs. Every investment brings profits sooner or later.

Pakistan's judicial history is full of such episodes of 'honourable buying / deals'. One Justice Zakiuddin Pal was made member of 5-judges bench of Lahore High Court in October 1977 which heard the famous Z A Bhutto's murder case because he was known for his anti-Bhutto views. The bench was headed by Molvi Mushtaq Hussain. All the five judges had unanimously agreed to sign the judgment against Mr Bhutto. As a reward perhaps, Justice Zakiuddin Pal was made Senator.

Judges Afzal Lone and Rafiq Tarar were given rewards by the PML(N) by taking them as Senators in March 1997 after their retirement. Rafiq Tarar was made president of Pakistan by the PML(N) being known as a rubber stamp. He remained in Presidency from Dec 1997 till June 2001 when he was kicked out by Gen Musharraf.

The Living History of Pakistan Vol-I

One Justice Ghos Ali Shah of Sindh High Court was made the Chief Minister of that province after asking him to join the PML(N) to which he gladly agreed. Till today Mr Shah is the President PML(N) of the Sindh and has earned a big name in politics [*though went angry later*].

Such rewards have tempted so many Judges in the history of Pakistan and all their oaths & pledges to uphold law went straight into the waste bins. In other countries, judges are routinely removed on complaints; in Pakistan there exists a Supreme Judicial Council but it has still to remove a single judge since it had been institutionalized through the Pakistan Constitution in 1973.

That is why we, as a nation, are at the lowest ebb in global hierarchy.

Notwithstanding the formal requirements of law that while deciding cases judges ought to be oblivious to extraneous considerations such as public opinion on a matter or the likely political consequences of a ruling, it is a fact that the effectiveness of the judiciary is intrinsically linked to the moral authority that emanates from non-partisanship of courts and their judges.

Judicial independence requires that the judiciary not be brought into dispute, but the judges are expected to remain more careful in keeping the balance amongst various stake holders of the state, especially in charged political atmosphere. See the NRO's issue, where one person was picked by the apex court and 8042 others were never bothered about.

No score balancing in justice; recall Hazrat Ali (RA) who had let off a *Kafir* just because he had spitted on the face of Hazrat when he was to put his sword on *Kafir's* neck. '*I do not want to mix my personal rage with Allah's Will*', Hazrat Ali(RA) had said.

PAKISTAN JUDICIARY IN 2012:

Pakistan's judicial system was increasingly receiving notorious flack for allegedly overstepping its powers during 2012 too.

In early that year, the International Commission of Jurists, a Geneva-based non governmental organization [NGO] of judges and lawyers, criticized the Supreme Court for launching too many of its own investigations rather than responding to plaintiffs' cases. The courts' activism

The Living History of Pakistan Vol-I

risked destabilizing the balance of power between the judiciary and government, the commission said in its report.

Human Rights Watch [HRW], the US-based rights advocacy, criticized Pakistan's superior courts for using their powers to hush up media reports that were negative about the judicial system. It cited a number of cases in which Pakistani judges had ordered Pakistan media regulators to stop private TV channels from airing criticism of the judiciary.

Once the Islamabad High Court [IHC] ordered the regulators not to air material aiming at defaming CJP Iftikhar M Chaudhry or other judges. At another occasion, the court issued a contempt of court notice to the Chief Executive of ARY, a private TV channel, for broadcasting a show that criticized CJP Chaudhry. HRW held that:

"No branch of government, including the courts, should be immune from public opinion in a democratic society. Pakistan's judges have demonstrated the independence to hold the government accountable. But their credibility will be lost so long as they fight against scrutiny and accountability of judiciary itself."

The Supreme Court earlier that year ordered the dismissal of PM Gilani over his refusal to reopen graft investigations into Mr Zardari. The new prime minister followed the court's order to restart the corruption probe but it was too late till then. Zardari denied wrongdoing and his supporters claimed the judiciary had gone politicized. The court and its bar fellows said they were only fighting against widespread corruption in the government in power.

Another report – by the World Justice Project [WJP], another US base NGO also painted a negative picture of the rule of law in Pakistan. *Its published report scored Pakistan among the lowest - ranked countries in the world* for eight areas of the rule of law. Pakistan was ranked 91 out of 97 countries for the quality of its civil justice system and placed 80 for its criminal justice system.

The country came 90th on corruption and was placed 97th [the last] globally for order and security, largely due to the then ongoing Taliban insurgency. It was researched that:

"Pakistan has shown weaknesses in most dimensions when compared to its regional and income group peers; low levels of

government accountability are compounded by the prevalence of corruption, a weak justice system, and a poor security situation, particularly related to terrorism and crime.”

BABAR AWAN'S LICENSE SUSPENDED:

Suddenly a tragedy occurred.

On 5th January 2012, the Supreme Court of Pakistan, while hearing Zulfikar Ali Bhutto reference case, issued notice to PPP leader Babar Awan, asking him as to why his licence should not be cancelled on his making a mockery of the contempt of court notice issued to him few days earlier. The court noticed that Babar Awan, talking to media a day before (on 4th January 2012), made jokes of contempt notice issued to him by a 2 member SC bench by uttering a verse in *Saraiki* language:

'Notice milya, kakh na hilleya, keun sohneyan da gila karan; main lakh wari, Bismillah karan' (The notice was issued but nothing happened, so why should I complain. I will always welcome such moves).

The bench noted that the content of the utterance, the gestures made and the body language were indicative of an attempt to ridicule the apex court. Mr Awan was enrolled as an advocate of Supreme Court on 29th May 2000.

Babar Awan's license to practice law was subsequently suspended on 17th January 2012 for an indefinite period. The video footage of Mr Awan was displayed in the courtroom which was seen by all including office bearers of the Pakistan Bar Council who had equally condemned his derogatory remarks against the judiciary. The 11-member bench resumed hearing of ZAB Reference case but had to ask the Federal Government to appoint someone else as their lawyer in the ZA Bhutto reference case.

Yaseen Azad and Latif Afridi of the SCBA along with Aitzaz Ahsan expressed their regrets and held that:

'A noose has finally been tightened around the neck of Babar Awan after he escaped the rage of the Supreme Court in the Bank of Punjab (BoP) bribe case; issued statements on NRO implementation case and sent an Attorney General home in April 2010.'

The Living History of Pakistan Vol-I

For Babar Awan it was a second contempt notice in one week by the Supreme Court when he was charged on similar counts and allegedly taking Rs:35 million from the owners of the Haris Steel Mills to bribe the judges of the Dogar court to get them cleared in Bank of Punjab [BoP] scandal. Referring to *'the News'* of 6th January 2012:

'It is worth mentioning here that Sheikh Afzal, owner of Haris Steel Mills and centre character of Rs:9 billion BoP scandal, had confessed before the Supreme Court to have paid Rs:35 million to Babar Awan to get favourable decision from Dogar judges. Sh Afzal was arrested in Malaysia by the Interpol.

The sensational disclosure by the owner of Haris Steel Mills about how money changed hands in the heyday of the CJP Abdul Hameed Dogar also solved the riddle of the arrest of two NAB officials, who had to face humiliation in Dogar's SC when the bar and the bench had joined hands to bail out the fat cats of the Haris Steel Mills.

Apart from Babar Awan, Sharifuddin Pirzada, Malik Qayyum, Ali Sajjad and Irfan Qadir were also named by Sheikh Afzal of robbing his company by charging millions as their own fee and for judges.'

Earlier, Babar Awan's name was highlighted in April 2010 after a United Nations investigation report into the murder of Benazir Bhutto appeared in media, but his name was dropped due to lack of evidence. This was surprising for Awan and other PPP members who had reportedly heard Benazir saying that Awan was her brother.

In another contempt case; on 8th March 2012, a 2-member bench of the Supreme Court indicted Babar Awan for addressing a press conference against the apex court injunction passed on 1st December 2011 over the formation of a judicial commission to probe the Memo-gate scandal. The bench, comprising Justice Ejaz Afzal Khan and Justice Athar Saeed, after going through facts and examining the video passed the order that:

'We believe the matter should be proceeded with and the case is adjourned for 20th March to frame charges against Babar Awan'.

Reacting to the verdict, the former law minister walked up to the rostrum and recited a Quranic verse, which translated as: *"You [Allah] alone we worship, and unto You alone we turn for help."*

The Living History of Pakistan Vol-I

As narrated earlier, on 17th January 2012, the court had already suspended Mr Awan's license declaring his behavior 'unbecoming'. The live TV channels had been replaying Awan's speech before the media for many days. President Zardari had to appoint some one else as his new counsel in the ZA Bhutto's Reference case.

The Supreme Court had already named 10 amicus curiae but, on 21st April 2012, re-affirmed them including SM Zafar and Aitzaz Ahsan, while some had disassociated themselves from the list.

The hearing on the presidential reference was adjourned on 29th June 2012. Attorney General Maulvi Anwarul Haq was presenting his point of view while the federation's counsel Babar Awan had already concluded his arguments. The Attorney General had sought time to prepare answers to the questions the president had referred to the court.

The apex court maintained that it received a letter from President Zardari to the effect of Aitzaz Ahsan being appointed a counsel in the ZAB reference [in place of Babar Awan].

On 10th November 2012; after a span of ten months, a 9-member bench of the apex court headed by the Chief Justice of Pakistan (CJP) resumed the hearing of Zulfikar Ali Bhutto presidential reference but *adjourned it indefinitely*. On that day, Aitzaz Ahsan was in Karachi to attend the funeral prayers of former federal law minister Iqbal Haider.

The hearing never resumed again because Aitzaz Ahsan, the counsel nominated by President Zardari, had not told the court about his availability for that reference.

BRIG ALI KHAN'S APPEAL REJECTED:

On 16th February 2012, Justice Rauf Ahmed Sheikh of the Lahore High Court [LHC], Rawalpindi bench had dismissed five petitions filed by convicts in October 2009 GHQ attack case, saying that the high court could not do anything after the army chief declined to provide certain documents.

In the 2nd week of March 2012, Advocate Col (ret'd) Inamur Raheem urged Justice Sheikh not to hear the petition of Brig Ali who had challenged court martial proceedings against him. Col Raheem had alleged that the judge had decided in favour of the army, saying the high court could not overturn the orders of the army chief. Justice Sheikh though referred the petition to his seniors but with the remarks that *'he had never made any observation about any decisions of military authorities'*.

The Living History of Pakistan Vol-I

Brig Ali was accused of having links with *Hizb-ut-Tahrir* (HuT) and was alleged of planning an attack on the GHQ with the help of some civilians and a PAF pilot. Brig Ali, in his petition, had said that he was being maligned because he had asked the military brass to fix responsibility for the 2nd May 2011's raid by US SEALs in Abbottabad that killed Osama bin Laden. Brig Ali's petition stated:

"It was on 5th May [2011] that I urged the military's highest hierarchy to fix responsibility for the US attack. I suggested the army leadership surrender their perks and privileges to get self-reliance. After the conference I was arrested and kept in solitary confinement.

The army investigators later charged him with planning to neutralize the top military and civil leadership to establish caliphate in the country and to carry out an air attack using F-16 fighter jets on the GHQ." [The prosecution had dropped the said charge later].

Brig Ali had, however, denied the charges.

Hizb ut Tehrir [HuT], known to be based in UK, was then accused of seeking to infiltrate Pakistan's army. In the wake of Bin Laden's death on 2nd May it allegedly distributed pamphlets near army bases calling on officers to remove some senior Pak-Army Generals and to overthrow the civilian PPP's government while forging a new Islamic caliphate.

HuT activists mostly used their base in Britain, where it was not banned, to tap into the large British - Pakistani population; mostly recruiting Pakistani officers who had been attending training courses in Sandhurst since 2000 and after. Some of them were discovered and jailed by the then president Gen Musharraf.

With the rise of anti-Americanism and conservatism, Pakistan's military has been increasingly concerned about Islamist infiltration in its ranks. The trends had gone intensified after PNS Mehran [naval base Karachi] attack on 22nd May 2011; about 12 officers, mostly from junior ranks, were arrested then. The detailed investigations had revealed that the arrested officers were being lead, equipped and guided by Al Qaeda Commanders – but the stooge rebels were portraying themselves as associates of HuT.

Pakistan's COAS Gen Ashfaq Kayani had to face angry questioning from across the ranks following the killing of Bin Laden; some officers considered him pro-American - the sentiments were known to the vibrant media too.

The Living History of Pakistan Vol-I

On 2nd April 2012, Brig Ali Khan boycotted the court – martial proceedings during hearing in protest against the refusal of military authorities to allow access to the *'counsel of his choice.'* The court martial panel consisted of five members and was being headed by an officer of Lt Gen rank.

A day earlier, Brig Ali asked Col Inamur Raheem to have a meeting with him which the authorities refused to accede that demand. He was later informed that Lt Col Khizar Hayat, hailing from GHQ's legal branch, had been appointed as the defending officer for him.

Under Pakistan's military laws an accused is provided a defending officer only if he cannot afford a lawyer or he assents to have a serving officer defend him in the court. Brig Ali's lawyer Col Raheem had earlier been allowed to see him only after the Lahore High Court [LHC]'s explicit directions. Later, he filed an application with LHC stating that the five member trial court had not been convened in accordance with the prevailing rules of Pakistan Army Act.

Col Raheem contended that the Field General Court Martial [FGCM] had been constituted in violation of the prescribed procedure as two of its members were immediate subordinates to the presiding officer of the court and they all belonged to one formation (8th Division) whereas the third member belonged to the unit of the accused which was also not permissible under the Army Act.

According to the Army Act, a charge sheet was to be prepared against the accused person and to be presented before the area corps commander. Brig Ali had also urged the court once to grant him permission to see the federal government's directives pertaining to his retirement. As per his contention *'he cannot be tried under military laws since he has already retired from the armed forces.'* Whereas the legal position was that even civilians associated with the accused military personnel could be tried in Court Martials under the Army Act.

Brig Ali Khan was scheduled to be retired on 9th July 2011; allegedly his retirement notification was issued next day in routine but was held in abeyance to try him under the Pakistan Army Act. When, during the hearing, the GHQ's rep Col Tahir placed the concerned notification before the LHC, the date mentioned therein was of 10th January 2012.

The prosecution held that Brig Ali was arrested in May 2011 and the Field General Court Marshal (FDCM) was informed verbally in July 2011 that the retirement of Brig Ali had been suspended temporarily. Brig Ali, considered himself retired on 10th July 2011 after completing his service [*the GHQ's*

The Living History of Pakistan Vol-I

Military Secretary (MS) branch had approved his retirement on file on 11th April 2011] but was not put on the list of reserved army officers owing to a heart illness. Justice Sagheer Ahmed Qadri of LHC's Rawalpindi bench had observed that Brig Ali's petition would be heard after his formal retirement.

Brig Ali was picked up on 5th May 2011 from his home; he was serving as Director of Rules and Regulations at the GHQ – it was correct. A day later, four army majors were also arrested for their alleged links with HuT. He was taken through court martial proceedings after an inquiry board informed him that the allegations levelled against him were substantiated.

After the military trial which had taken start in December 2011, the FGCM on 3rd August 2012, convicted Brig Ali; *three other military officers were found guilty and all were given sentences for imprisonments* - Brig Ali was to be imprisoned for five years, Maj Sohail Akbar for three years, Maj Jawwad Bashir for two years and Major Inayat Aziz for 18 months. The accused were given the right to appeal against the decision.

Ironically, all they were held in class C barracks of Adiala Jail Rawalpindi, and their appeals and petitions continued to remain on the cause lists of the High Court.

In a later development, the wife of Brig Ali Khan appealed to the CJP Iftikhar M Chaudhry to intervene over what she termed injustice meted out to her husband. In a letter written to the CJP in March 2013, Mrs Anjum Ali alleged that her husband had been facing the ordeal of trial and conviction by a military tribunal having no jurisdiction, simply because he had questioned during a conference held at the GHQ on 4th May 2011, the justification of the 2nd May's raid by American forces in Abbotabad and the failure of the Pakistan Army to deal with it. SC's record went silent on it.

SC ON WAHEEDA SHAH:

On 29th February 2012, the Supreme Court took *suo moto* notice of an incident wherein Waheeda Shah, the Pakistan People's Party's (PPP) candidate, slapped an assistant presiding officer at a polling station during the by-polls held in Tando Mohammad Khan, Sindh. The CJP Iftikhar M Chaudhry, while taking notice of the incident, summoned Inspector General of Police (IGP), Sindh, Secretary Election Commission of Pakistan (ECP) and Waheeda Shah, the PPP candidate, on 2nd March instant.

The Living History of Pakistan Vol-I

[Such like were the fields where CJP Chaudhry was objected and even cursed. That kind of un-necessary judicial activism was neither required nor liked even by his colleague judges – especially when there were tens of cases lying in the back-log which needed immediate attention of the apex court for disposal.

Tens of the fake degree holders were sitting in the Parliament on stay order; CM Punjab was on stay order since 2009; many appeals were pending against MNAs and MPAs – the CJP had no time.

Another aspect: PPP's candidate did wrong thing; no doubt - but what was the fun in calling the IGP Sindh all the way from Karachi to Islamabad, or Secretary ECP – just to keep them standing at the doors of Court no: 1 waiting to have bullshit remarks from a CJP.

Instead, the CJP could have formulated a summary procedure code which could pass orders or dispose off that case or punish Waheeda Shah like arrogants within a day's summary trial.]

On 2nd March 2012, the CJP Justice Chaudhry, while addressing the IGP Sindh, said that such like incident may occur to anyone including you and me *'if this is allowed to go unnoticed. This is grimmer than the Kifayat Shah incident.'* Meantime, PPP's Waheeda Shah tendered her apology to the Chief Justice Chaudhry, saying: *'You are both my counsel as well as judge.'* The CJP said that *'Allow us being judge.'* Later on, the apex court adjourned the hearing till 12th March.

The ECP had withheld the result of by-election for PS-53, the constituency where the incident took place. On the face of it, it was quite likely, the result would be declared null and void by the ECP and polling would be held again minus Waheeda Shah. The decision to withhold the election result was made by EC's three members from Punjab, Balochistan and Khyber PK.

The Chief Election Commissioner (CEC) Justice (R) Hamid Ali Mirza was completing his four-year term on 16th March 2012 and the fourth member of the EC from Sindh Roshan Ali Essani, continued to stay back in Sindh to avoid taking blame of the action against Waheeda Shah. Such were instances where the institutions are spoiled. Like rogues; Roshan Ali Essani preferred to avoid because he was PPP's nominee member in the ECP – he did not opt to stand by justice.

This was not the first time that the three members were on one side while the CEC and ECM from Sindh on the other, as then, one Mohsin Khan

The Living History of Pakistan Vol-I

Leghari was permitted by the same three members to contest the Senate election while Hamid Mirza and Roshan Essani had opposed it. [*Mohsin Leghari won his Senate seat in elections of 2nd March 2012 and was the only independent candidate amongst the winning new 54 senators.*]

Coming back; a criminal case was registered against Waheeda Shah on the directives of the ECP. The ECP held its independent hearing too, which was likely to [at least] disqualify the PPP candidate, as enough evidence was available in the shape of a video clip and the fact Waheeda Shah herself conceded before media that she had reacted in fury. The ECP had also vowed to recommend disciplinary action against the police officer on duty named DSP Irfan Shah and his contingent who remained inactive during the incident thus failed to perform their duty.

The ECP had taken the slapping of its presiding officer Habiba Memon and her assistant as a slap on its own face and had asked its returning officer to proceed against Waheeda Shah and he had already done so under Section 86-A of the Representation of the People Act, 1976. The Returning Officer was empowered to award 3-months jail to the accused and fine or both.

On 6th March 2012, Waheeda Shah was disqualified by the ECP for slapping polling officials during last month's by-polls; an apology and 25,000 thumb impressions could not save PPP's candidate. *PPP, however, appeared un-convinced and expressed concern over the decision.* The ECP also imposed a two-year ban on Shah from taking part in elections and nullified the result of that by-poll for a Sindh provincial assembly seat PS-53. The ECP also asked the IGP Sindh to take action against DSP Irfan Shah who was present with the candidate when the incident took place.

How justice is valued in the Pakistani society; three jury members voted in favour of the verdict, while two [CEC and one ECM from Sindh] opposed it – because it was a case against PPP's nominate from Sindh.

On appeal, the Sindh High Court had maintained her conviction but quashed her disqualification on the ground that the power to disqualify under Section 100 of the Act rested exclusively with the CEC and not with the Commission members of ECP. On 4th November 2012, the CEC Fakhrudin G. Ebrahim had upheld the disqualification of Shah; her disqualification had barred her from being elected as an MPA or MNA for two years.

On 29th November 2012, however, the Supreme Court admitted Waheeda Shah's appeal for hearing and directed the authorities to stop the by-election in PS-53 Tando Mohammad Khan. A 3-judges bench of the apex

The Living History of Pakistan Vol-I

court, headed by Justice Nasirul Mulk, admitted Shah's appeal for hearing. Shah had filed the appeal against the rulings of the Sindh High Court and the Election Commission of Pakistan.

On 29th March 2013; while hearing case regarding Waheeda Shah's disqualification to contest for two years, the SC terminated her disqualification and allowed her to take part in the coming up polls of 11th May 2013.

Zaid Hamid approaches the SC:

On 2nd April 2012, Zaid Hamid, a veteran reformer, filed a petition in the Supreme Court for trial of certain media warlords like Imtiaz Alam, Executive Director SAFMA, Sirmed Manzoor, Najam Sethi, Beena Sarwar, Nusrat Javeed, Khaled Ahmed, Marvi Sirmed, Ali Chishti, Hamid Mir, Hassan Nisar, and some others under 'high treason' causes of the Pakistan Constitution but no cogent response till today at least. The said petition was drafted by Ahmed Raza Khan Qasuri on behalf of Zaid Hamid.

Reason: the media, Pakistani and Western, paper as well electronic, often orchestrated negatively since at least 2007 over the alleged role of ISI in politics. Z A Bhutto was said to have assigned some political work [*then mostly related to Balochistan affairs, it is believed*] to ISI but it might not be a policy decision.

However, what a Prime Minister did, any of his successors could undo it if it was considered wrong but it never happened. The fact remained that every ruler found it convenient to use ISI in political manipulations. So, the practice continued, despite a lot of noise over the years.

Who were the people in the media and politics who wanted ISI under political control, or even its abolishment; mainly India and US, the petition openly said - because ISI kept a watch on them and neutralized their covert activities. Why did the US want ISI to go? Simply because the ISI might be knowing more about the South Asia affairs than the CIA. Also for that the ISI had played a major role in the defeat of Soviet Union in Afghanistan and later allegedly kept the US away from victory over the same region.

On 12th July 2012, President Zardari signed a new bill, Contempt of Court Bill 2012, promulgated under Clause 3 of Article 204 of the Constitution of Pakistan which was thrown out by the SC's 5-member bench on 3rd August 2012.

The Living History of Pakistan Vol-I

Its brief details are available in the chapter 'PM Gilani sent home' of this volume; a full chapter is there.

On 16th August 2012, a Meeting of Pakistan's Federal Cabinet decided that army Generals and judges of the superior courts should also declare their assets annually at par with other government functionaries and political representatives. The Establishment Division was asked to prepare a report in this regard because of the culture of corruption prevailing in all walks of civic life.

The fact remained that the annual declarations of politicians, submitted to the Election Commission of Pakistan [ECP], could not be taken as fruitful, as they never declared their foreign holdings - the favoured means of storing the proceeds of corruption.

The intelligentsia felt that the Generals uniformly spend their working lives in government service, having joined it after their basic college education; so theirs and the Judge's assets accumulated during service must be scrutinised. There was seen a tint of revenge or competition in these declarations of assets but the Establishment Division never put up their report before the treasury benches; or if done, it never came to the light at least.

On 7th September 2012, the Supreme Court trashed the federal government's appeal against a high court verdict that overruled the parliamentary committee's decision not to recommend two judges in the Sindh High Court. Justices Anwar Zaheer Jamali, Sarmad Jalal Osmany, Amir Hani Muslim and Muhammad Athar Saeed heard Deputy Attorney General Ashikue Raza on the main reasons given by the parliamentary committee for not confirming the two judges.

The parliamentary committee on appointment of judges had accused Justice Ghulam Sarwar Korai of tax evasion while the name of Justice Irfan Saadat Khan was dropped on his "compromising attitude" while deciding cases.

The apex court bench asked whether any tax default notice was sent to Korai. If not, how the committee reached that conclusion; *'this should not be made a reason for removing a judge unless he is proven guilty of tax evasion'*, the bench held. Moreover, why these eight [intelligence] agencies were not consulted at the time of appointment, the bench resorted when the DAG attempted to hammer the importance of the reports on the judges' antecedents.

The Living History of Pakistan Vol-I

For one judge, Justice Khan, the Parliamentary Committee's report said that *'he may indulge in corruption later'*. The SC bench declared that reason 'untenable' also as *'there lies Article 209 in the Constitution if any judge violates the code of ethics after confirmation'*.

After hearing the arguments, the bench in its short order dismissed the appeal and gave the federal government a week to confirm the two judges from 17th September 2011, and to maintain their seniority. *'If the government fails to do so, the Sindh High Court's chief justice would still administer the oath to the two judges after seven days,'* the SC bench directed.

On 12th November 2012; *the Army Act 1952* came under scrutiny during a Supreme Court hearing of a petition filed against the law for its provision that no reason needs to be provided for a court martial once it has been issued. The apex court observed that this provision, known as a non-speaking order, conflicts with Article 10-A of the Constitution and can be cancelled on the basis of Article 25.

Petitioner Col (rtd) Akram had told the court that *'anyone convicted under a court martial is neither provided a copy of the decision, nor the reasons for the decision – and that this system creates hurdles in filing an appeal'*. He appealed to the apex court to direct the army to amend the relevant law under basic constitutional rights.

Such amendments were already available in the Navy and Air Force Acts and, therefore, there was no justification for not making such an amendment in the Army Act. The army's lawyer had pleaded that if the request of the petitioner was granted, as much as half of the Army Act would have to be revised.

Scenario 108

JUDICIARY vs PAK-ARMY [2012]

In Pakistan, the controversy between the judiciary and the executive over the appointment of superior court judges is not a new development. The rift between the judiciary and the executive on the appointment of superior court judges is available on record since decades.

One can recall the history that when Benazir government was dismissed second time on 5th November 1996, governors of Punjab and NWFP [now Khyber PK] provinces considered Benazir loyalists were removed and chief justices of high courts were sworn in as acting governors. President Farooq Leghari had pressurized the two justices turned acting governors to dissolve provincial assemblies and assured them that if they resigned from judiciary they would be retained as permanent governors.

President M Rafiq Tarar once met the Chief Justice Ajmal Mian in his chamber at Supreme Court [in 1999] and asked him not to appoint Justice Falak Sher as Acting Chief Justice [ACJ] of Lahore High Court *as he did not suit the Sharif Brothers*. Chief Justice declined but government went ahead and nominated a junior Justice Allah Nawaz as ACJ.

During her second term, PM Benazir Bhutto had appointed Sajjad Ali Shah as Chief Justice by-passing three senior justices. She thought that Shah would return the favour. When tensions rose between CJP Shah and Benazir about the issue of appointment of some judges in 1995, the government decided to strike back. First, former Sindh Chief Minister Qaim Ali Shah spilled the beans in media claiming that he had persuaded Benazir during her first term to elevate Sajjad to the post of Chief Justice of Sindh High Court. In the second term, Benazir didn't want to elevate Sajjad to the post of CJP but he along with CM Sindh Abdullah Shah and Federal Defense Minister Aftab Shaban Mirani (all Sindhis) persuaded Benzair to appoint him [J Sajjad A. Shah] as CJP.

In the Judges' Case of March 1996, the Supreme Court had ruled that senior most judge should be considered for appointment if there is no valid negative element against him. Benazir's government decided to beat the CJP with his own stick and filed a review petition asking the court whether

The Living History of Pakistan Vol-I

the rule of seniority applied to the Chief Justice of the Supreme Court (referring to Justice Shah's own elevation against the rule of seniority). Counsel for federation raised objection to Justice Shah heading the bench to decide about his own appointment.

The same issue was later taken up by the next PM Nawaz Sharif which ended in a 'sober attack on the SC' in ending 1997 and CJP Sajjad A Shah sending home. Afterwards, several incidents such as snatching of car of that CJ at gun point and arrest of an armed intruder from his residence had raised suspicion about harassment. His son-in-law and other relatives were sacked from their jobs and police harassed them, too.

On 17th February 2011; the Supreme Court overruled the Parliamentary Committee [PC]'s decision that denied extension to four additional judges of the Lahore High Court. A two-member SC bench noted that the PC had not complied with clause 12 of Article 175A of the Constitution, therefore the recommendations of the PC in respect of the four judges mentioned in the petition were suspended and the respondents were restrained from issuing any notification in pursuance of the recommendations made by the Parliamentary Committee.

The bench comprising Justice Mahmood Akhtar Shahid Siddiqui and Justice Jawwad S Khawja issued the direction on a constitution petition filed on behalf of the petitioners. Makhdoom Ali Khan, counsel for the petitioners, contended that the Justice Muhammad Yawar Ali, Justice Syed Mazahir Ali Akbar Naqvi, Justice Mamoon Rashid Sheikh and Justice Muhammad Farukh Irfan Khan - were entitled to be appointed as judges on the basis of the recommendations made by the Judicial Commission [JC] headed by Chief Justice of Pakistan. The PC had not given its reasons for not confirming the nomination of the four judges.

The JC, on 22nd January, had recommended the PC to give one-year extension to 24 additional judges of the Lahore High Court [LHC] while the Commission itself dropped the names of ten judges. The PC, however, accepted the proposal of the Commission to award one-year extension to 20 additional judges whereas it rejected extension to four.

On the same day of 17th February 2011, the JC considered the appointment of two ad hoc judges in the Supreme Court and confirmation of nine additional judges of High Court of Sindh. Earlier, on 14th February, the JC headed by CJP Chaudhry had proposed that Justice Khalilur Rehman Ramday and Justice Rahmat Hussain Jaffery, who retired on 21st November 2010, would be requested to rejoin the court as ad hoc judges under Article 182 of the Constitution to work for a period of one and two years respectively.

FAIRY TALE OF IHC JUDGES:

On 22nd October 2012; another judicial crisis started cropping up when the JC on Appointment of Judges had recommended IHC's additional judge Shaukat Aziz Siddiqui to be made permanent and also vowed for a six-month extension in the tenure of IHC's additional judge Noorul Haq N Qureshi. Presided over by the CJP Iftikhar M Chaudhry, the JC, however, rejected Justice Azeem Afridi, whose name was also on the list for confirmation, nor his tenure as the additional judge was extended. All the three judges were appointed as additional judges on 20th November 2011.

Conspicuously Law Minister Farooq H. Naek was absent from the meeting; the Attorney General Irfan Qadir and Pakistan Bar Council representative Dr Khalid Ranjha had raised objections over the consideration of the three judges for confirmation but of no avail.

On 6th November 2012; the PC for Appointment of Judges had also endorsed the recommendations of the JC but the Law Ministry did not issue a notification for extension in the tenure of these two judges as President Zardari had not given approval to the nominations, questioning the composition of the JC that it was not valid because the 'most senior' judge of the IHC Justice Riaz Ahmad was not invited to attend the commission's meeting on 22nd October. The fact remains that Justice Riaz Ahmed Khan was in Saudi Arabia for Haj when the J Commission had met.

On 22nd November 2012, the Attorney General of Pakistan Irfan Qadir informed the apex court that the government wanted to file a presidential reference over the issue. The SC gave two weeks to the government to file the reference. The lawyer community termed the presidential reference as '*challenging the entire process of appointment of superior court judges*' including judges' seniority, powers of the Judicial Commission *vis-à-vis* the parliamentary committee, and the role of the president.

On 7th December 2012; the law ministry moved the Supreme Court with a presidential reference, under Article 186 of the Constitution, to resolve the following key questions:

- *Whether the 11-members Judicial Commission acted on 5th November 2012 in accordance with the Constitution and conventions thereof in recommending a junior judge as chief justice of the IHC? [the JC had appointed Justice M Anwar Kasi as the*

The Living History of Pakistan Vol-I

Chief Justice of the Islamabad High Court in place of senior judge Justice Riaz Ahmed Khan]

-
- *Whether the commission was properly constituted as per provision of Article 175-A of the Constitution as Justice Kasi who participated in the meeting was not a member thereof and was a stranger to the proceedings?*
-
- *Whether the president who is bound by oath of office to preserve, protect and defend the Constitution is obliged to make the appointments which are not in accordance with the provisions of the Constitution and what should be the manner, mode and criteria before the Judicial Commission with respect to the nomination of a person as a judge of high court, Supreme Court and Federal Shariat Court in terms of Clause (8) of Article 175-A of the Constitution of Islamic Republic of Pakistan. 1973?*
-
- *While seeking the opinion of the apex court, what is the proper role of the Judicial Commission [JC] and Parliamentary Committee [PC] under the Constitution of Pakistan with respect to appointment of judges of Supreme Court, high courts and Federal Shariat Court?*
-
- *Whether in view of the decision by the chief justice of the IHC that Justice Riaz Ahmed was the senior most judge of the IHC [which decision of the chief justice was also confirmed by the President of Pakistan] Justice Kasi could be treated as most senior Judge of the IHC.*
-
- *Whether Mr Justice Riaz had a legitimate expectancy to be appointed as chief justice of the IHC on the ground that he was the most senior judge of that court in the light of the judgment of the Supreme Court in the Al-Jehad case?*
-
- *What should be the criteria for elevating a judge / chief justice of the high court to the Supreme Court? Is it their seniority inter-se as judge of the high court or their seniority inter-se as chief justice of the respective high court be the consideration for elevation to the Supreme Court?*
-
- *Whether the government views that the constitution authorizes the president to have a role in appointments of judges, as the link between the JC and the PC as clarified by the 18th Amendment, was based on correct perceptions?.*

The Living History of Pakistan Vol-I

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- *What is the true import and meaning of the word "confirm" and what is the effect of the proviso to Clause 12 of Article 175-A which reads as: "...Provided further that if nomination is not confirmed, the Commission shall send another nomination."*
-
- *Whether by not providing in camera proceeding for the Judicial Commission in Article 175-A of Constitution of Pakistan, the intention of the legislature is to ensure complete transparency and open scrutiny?*

Including above, the Presidential reference posed 13 questions but seeking the judiciary's guidance mainly on who is constitutionally empowered to appoint judges in superior courts, the reference has also sought clarification on the role of JC and the PC in such appointments. In fact, *the reference questioned the acts and constitution of the JC regarding the appointments of judges in the Islamabad High Court (IHC) after the changes made in the Constitution through the 18th and 19th constitutional amendments.* The said presidential reference was signed by President Asif Ali Zardari, seeking advice of the apex court.

The reference brought controversy that arose when the JC decided to elevate the chief justice of the IHC, Justice Iqbal Hameed ur Rahman, to the Supreme Court and both the JC and the PC decided to elevate Justice M Anwar Kasi as the IHC chief justice. But when the summary appeared before President Zardari for routine signing, it was found that Justice Riaz Ahmed Khan was senior to Justice Kasi and, therefore, qualified to be the new CJ of IHC. The new situation brewed the debate in the context as to whether the president should apply his mind on such appointments or sign on the dotted lines.

The Supreme Court constituted a 5-member Bench, headed by Justice Khilji Arif Hussain, and comprising Justice Tariq Parvez, Justice Ejaz Afzal Khan, Justice Gulzar Ahmed and Justice Sh Azmat Saeed, to hear the constitution petition [*filed by Nadeem Ahmed through his counsel M Akram Sheikh, senior advocate*] challenging the delay of appointment of judges in the IHC and presidential reference.

[Advocate Akram Sheikh had asked the apex court to direct the president to issue notifications of the judges and told the court that the president had no authority to hold the issuance of these notifications for more than six weeks.

The Living History of Pakistan Vol-I

The president's role is just clerical and there is no constitutional dispensation involved in the process,' he contended. Justice Ejaz Afzal Khan said that 'the premier has no reason to not forward the approved names to the president and the president has no reason to stop the issuance of these notifications'.

Subsequently, AG Irfan Qadir told the bench that '..... the high functionaries of the government – of which the president was also a part – could disregard any unconstitutional and unlawful order of the Supreme Court.' On this Justice Asif Khosa had observed that '*Mr Attorney General, you are advancing to a very dangerous argument.*']

The reference stated that the 18th and 19th amendments of the Constitution made significant and important changes in the manner regarding appointment of the judges of the Supreme Court, high courts and Federal Shariat Court. This was done by introducing a new Article 175-A in the Constitution and the new procedure envisages a three-stage process for the appointment of judges, including nomination of Judicial Commission, confirmation by a Parliamentary Committee, and appointment by the President of Pakistan.

The most uncharacteristic in the whole episode was the acquiescing role of the PC which was required to scrutinize the JC's recommendations. This eventually gave birth to a dilemma for the Presidency within the meaning of the 18th and 19th Amendments. The 19th Amendment to the Constitution was an attempt to remove some deficiencies in the new mode for appointments in the superior judiciary [*some argued that it was CJP Chaudhry's personal whim*], as they appeared in the Eighteenth Amendment, in the light of the Supreme Court order of 21st October 2010.

[It was in the Al Jihad Trust case of 1996 that the Supreme Court elaborated the meaning of the word "consultation" as contained in Article 177 and 193 dealing with appointment of high court judges. The court held that ".....the consultation should be effective, meaningful, purposive, consensus oriented and leaving no room for complaint of arbitrariness or unfair play. The opinion of the Chief Justice of Pakistan and the chief justice of a high court on to the suitability of a candidate for judgeship may, thus, be accepted only in the absence of sound reasons to be recorded by the president or the executive."]

The players at the heart of that wholesome game were all the three big fish: The judiciary, whose recommendations stood ignored, the Presidency,

The Living History of Pakistan Vol-I

which was not implementing the recommendations, and the army, which, though not directly involved, was certainly a stakeholder in this latest situation. Both Justice Siddiqui and Justice Qureshi had taken oath on 21st November 2011, as additional judges for one year.

[The two judges whose reappointment expired due to the delay in Presidency were, on 22nd November 2012, on the bench of a potentially explosive case – a petition against the government's decision to give a three-year extension to incumbent Chief of Army Staff Gen Ashfaq Parvez Kayani.]

Legal experts believed that the situation was heading towards another judicial crisis. As per summary of the Law Ministry, sent to the President, Justice Riaz and Justice Kasi though took oath the same day but Justice Riaz was senior by age. There prevails a normal practice that if a judge is not confirmed, he cannot continue services after the expiry of his tenure.

Thus as the president had not signed the summary of Justice Siddiqui, he was no longer a judge after 20th November and Justice Anwar Kasi was not able to assume charge as the chief justice of the IHC. Both the judges had relinquished their charge on that day as there was no notification available to give effect to their continuation.

The political elite were of the view that the role of the Judicial Commission [JC] was to make a nomination for the appointment of a judge, passing on to the Parliamentary Committee [PC] for confirmation and in the end the president to make the appointment. But actually it was the JC headed by the Chief Justice which prevailed in the end because neither the PC nor the president could reject its nomination. The PC at best could refuse confirmation of a judge with a three-fourths majority vote, but for that it was supposed to record reasons which again was up to the JC to accept or reject them.

Above all, it was felt that there was no definite role in the appointment of a judge for the president who was the eventual appointing authority but constrained to make a formal announcement. The SC was asked to explain in definite terms what role the president should play in this regard. The said reference was being filed in response to a petition which had challenged President Zardari's refusal to sign notifications for the appointment of two judges of the IHC.

The bench comprising Justice Khilji Arif Hussain, Justice Asif Saeed Khan Khosa, Justice Ijaz Ahmed Chaudhry and Justice Ejaz Afzal Khan heard the petition filed by Advocate Nadeem Ahmed seeking issuance of a notification

The Living History of Pakistan Vol-I

for six months' extension of Justice Noorul Haq N. Qureshi and permanent appointment of Justice Shaukat Aziz Siddiqui in the IHC. The two judges were nominated by the JC and approved by the PC.

The presidency returned the recommendations back to the JC with observations to reconsider the nominations since the Commission was not constituted properly. Consequently, the judicial term of the two judges had expired when they completed their tenure on 20th November 2012. However, Justice Ejaz Afzal objected the appointment of Justice Anwar Kasi and suggested the name of Justice Riaz as CJ IHC on the basis of his seniority in a separate note.

It was also mentioned in the verdict that except the Chief Justice of Pakistan and Chief Justice of High Court, no one else has the authority to nominate judges in high court. The controversy was about the composition of the 11-member JC on which Justice M Anwar Khan Kasi sat in the absence of Justice Riaz Ahmed Khan who had gone to Saudi Arabia to perform Hajj. Being a senior judge of the high court, Justice Riaz Ahmed Khan was supposed to attend the meeting.

On 31st January 2013, in a response to the presidential reference on the issue of judges' appointment, the Supreme Court declared valid the appointment of Justice Anwar Khan Kasi as Chief Justice of the Islamabad High Court (IHC), adding that the president was bound to approve the recommendations put forward by the JC. The court's answer constituting 102 pages had responded to all the 13 questions raised in the reference sent by President Zardari. The court's reply said:

'.....that the president and the prime minister have no role with respect to the appointment of judges.'

Perhaps that was the most surprising and perturbing part of the judgment because near most jurists, the apex court's opinion that the JC, in violation of constitutional convention and the principle of *'legitimate expectancy'*, could appoint a junior judge to become Chief Justice of a High Court. SC's order / advice also added that:

- *'After the passage of the 18th and 19th amendments, the president only enjoyed nominal authority on the matter;*
- *that the president was bound to accept and approve the Judicial Commission's recommendations;*
- *that a decision on the seniority of judges could not be made through a presidential reference.*

The Living History of Pakistan Vol-I

- *that in the cases of Justice Riaz Ahmed Khan and Justice Kasi seniority was not relevant, adding that the JC could make any judge the chief justice of a high court.*
- that the JC could also state its reasons for not making a senior judge a high court chief justice.

Interestingly; the reference had, on record, a conclusion of Justice Rehman who had held Justice Riaz as the senior judge, instead of Justice Kasi, and asked - could Justice Kasi be treated as most senior judge of the IHC. It asked whether Justice Riaz had a legitimate expectancy to be appointed as the IHC chief justice in the light of the judgment in the 1996 *Al-Jihad Trust* case and whether the JC acted in accordance with the Constitution and conventions while recommending a junior judge as the chief justice.

Justice Kasi and not Justice Riaz sat in the meetings of the JC which had recommended elevation of IHC Chief Justice Iqbal Hameedur Rehman as a judge of the Supreme Court and Justice Kasi to fill his position ignoring Justice Riaz.

Firstly; the governing law: Article 175A of the Constitution sets out the procedure for appointment of judges to the superior judiciary. Article 175A (3) mandates the senior-most judge of the Supreme Court "shall" (must) be appointed as Chief Justice of Pakistan. However, the Constitution has no *para materia* provision requiring the senior-most Judge to be made Chief Justice of the High Courts.

Instead, a 'constitutional convention' has developed over the time to fill this void. Specifically, per *Al Jihad Trust* case (PLD 1996 SC 324), the senior-most judge entertains "legitimate expectancy" to be made Chief Justice of the High Court, unless:

- *He "not be physically capable to take over the burden of the office"*
or
- *He "not be willing to take upon himself the above responsibility".*

Barring these exceptions (neither of which apply in the case of Justice Riaz), such a judge could not be superseded for "extraneous considerations". This convention was endorsed in *Asad Ali's* case (PLD 1998 SC 33) which states that "in the absence of any concrete and valid reason", the senior-most judge "has to be" appointed as the Chief Justice of the High Court. And the dicta was further strengthened later in *Munir Hussain Bhatt's* case (PLD 2011 SC 407) which declared that the legitimate expectancy of the senior-most judge, and the convention of appointing him Chief Justice, are "applicable even more strongly after the introduction of the

The Living History of Pakistan Vol-I

newly constituted bodies [the Judicial Commission and the Parliamentary Committee] under Article 175-A.

In fact, the seeds of this constitutional convention can be found in the very text of the Constitution itself – which mandates (in Article 175A (5)(iv)) that when the JC is deciding on who to nominate as the next provincial Chief Justice, the senior-most Judge of the concerned Court (having legitimate expectancy) should not participate in the said meeting (so as not to be a judge of his own cause).

Contrary to these principles, the majority judgment, authored by Justice Khilji, declared that *while breaching this convention is “not desirable”, the same “cannot be termed as violative of the Constitution”*. In constructing this argument, Justice Khilji clearly indicated that these recommendations were being made for the satisfaction of the Chief Justice and that the JC’s verdict was not open to judicial review. Justice Khilji’s opinion, however, failed to point out how departure from precedent and convention by the JC, without stating any reason or cause, did not amount to whim or caprice?

Furthermore, Justice Khilji emphasized that *‘the seniority of a judge cannot be determined by the court in its advisory jurisdiction’*. Consequently, anyone aggrieved by the JC’s recommendation should be able to seek remedy from some ‘adjudicatory forum’ but in so deciding, the judgment missed the vital point. The issue of seniority between Justice Riaz and Justice Kasi was not the dispute. Justice Riaz had already been notified as being senior, by the Chief Justice of the IHC (and confirmed by the President).

The only question left to be answered was one of the law: could the JC appoint a junior judge as Chief Justice of the High Court, without giving any cogent reasons for ignoring the senior judge? And this question could certainly be answered declaratively in advisory jurisdiction. And as such, after laying down the convention, endorsing its merits, and recommending its application, why Justice Khilji’s opinion stopped short of declaring that the JC’s verdicts were violative of the constitutional convention and mandate, was certainly a black dot on CJP Chaudhry’s ‘independent’ judiciary.

On the contrary, Justice Afzal’s additional note, in essence a courageous dissent, declared that Justice Riaz, in line with the convention and the principle of legitimate expectancy was *entitled to be appointed* as the Chief Justice. Breaking ranks with the majority opinion and not bowing in reverence to the non-speaking decision of the JC [a Herculean act in CJP Chaudhry’s Court], Justice Afzal concluded that:

The Living History of Pakistan Vol-I

"I, therefore, have no hesitation to hold that the premises recorded by the Commission for departing from the well established principle of determining seniority are not correct."

It remains a fact that CJP Chaudhry had manoeuvred JC's those two main decisions i.e. getting justice Iqbal Hameed ur Rehman elevated to the Supreme Court and getting Justice Anwar Kasi to be recommended as CJ of the IHC instead of his senior Justice Riaz through noticeable gimmicks.

- Firstly, CJP Chaudhry, in a private sitting, directed Dr Faqir Hussain, Registrar Supreme Court to watch the demeanour of the Court during hearing of Judges Case.
- Secondly, he purposely included Justice Ijaz Afzal Khan in the Bench in spite of Justice Riaz's reservations, valid alarms & apprehensions as Judge IHC.

Thus allegedly, CJP Chaudhry hatched a conspiracy & influenced others to disbelieve official reports & accept as true 'off the record' material to ouster Justice Riaz from the list. *He probably settled the encounter with Malik Riaz of Bahria Town, after punishing the authors of the judgment in WPs No. 2009 / 2012 & 2076 / 2012.*

CJP Chaudhry played another trick not desirable for CJ's stature. The decision of the Judges Case through a short order and the JC's summary by the Supreme Court without furnishing the needed advice sought by President Zardari, was sent to the PM Raja Ashraf [for onward passing to the Presidency] but accompanied by a notice from the apex court in the name of PM for his Son-in-law's appointment case.

Refusal of the President of Pakistan to assent to the summary, in spite of the said notice to the PM & then filing of Review against the said Judgment was encountered with the *issuance of warrant of arrest against the Prime Minister* of Pakistan, trumpeted by media, with extras & orchestras, for his arrest in 24 hours was a reality; recall Maulana Tahirul Qadri's *dharna* in Islamabad and his jubilations during his address to the audience in the evening hours.

The whole show was followed by the issuance of abrupt, hasty & rushed notification of appointment of Judges by the law & Justice Division, before the dawn of the deadline day and the resolve of the Supreme Court to hear the case of Prime Minister till 10 PM, as trumpeted by the media, was a reality. The adjournment of the same after oath by the

The Living History of Pakistan Vol-I

aforesaid elevated Judges of Islamabad High Court would remain on the pages of judicial history for all ages.

Consequential suicidal death of one Kamran Faisal, [an officer of the NAB] due to the above performances of stress & strains might be haunting CJP Chaudhry even today and for all times to come.

The selection of judges should no longer be done behind closed doors and for silent reasons known only to a select few or just at the sweet wish of the presiding Chief Justice of Pakistan.

'Dramas staged; performers knowingly or unknowingly, innocently or maliciously appreciated, lauded & applauded in the constitutional chain of commands & in the Territory of Capital of Islamabad, at the risk & cost of the national interest, would never see or perceive success', were the ending lines of an Islamabad daily.

CONTEMPT NOTICE TO ALTAF HUSSAIN:

On 16th December 2012 [Sunday], the Supreme Court of Pakistan issued written orders on the contempt notice to Muttahida Qaumi Movement (MQM) Chief Altaf Hussain on account of using improper language against the judges. The order was issued by a 3 members bench headed by the CJP Iftikhar M Chaudhry, the other members being Justice Jawwad S. Khwaja and Justice Anwar Zaheer Jamali.

According to the court order, issued under Article 204 of the Constitution and Section 3 of the Contempt of Court law, the words used by Altaf Hussain in his speech were equivalent to interference in court matters and intimidation of the judges. No appeal was filed against the SC decision regarding the delimitation of constituencies in Karachi but the court said:

'Altaf Hussain used threatening and humiliating language against the judges of the Supreme Court during his address at a public gathering and this act comes under the contempt of court category'.

The contempt notice against Mr Hussain came on an office note put up by Supreme Court Registrar Dr Faqir Hussain who had invited the court's attention towards Mr Hussain's "uncalled-for aspersions on the judges".

The Living History of Pakistan Vol-I

The Supreme Court ordered Altaf Hussain to personally appear before the apex court on 7th January 2013. One court 'notice' was sent on the London address of the MQM Chief through the Foreign Secretary and the other through Deputy Convener of the MQM, Dr Farooq Sattar, on the address 494/8, Azizabad Karachi.

[The MQM Chief had said in his telephonic address of 2nd December 2012 from London that 'certain judges of the Supreme Court are part of the process of eliminating the MQM'. He had also demanded an apology for using the word 'monopoly' in the order given by the Supreme Court over electoral constituencies in Karachi.]

Altaf Hussain, in his speech, had also termed the judges "unconstitutional" and "undemocratic"; calling the Chief Justice, President Zardari and the federal government to take notice of the remarks, adding that constitutional action should be taken against the judges.]

Mr Hussain was not the first politician to face the contempt notice. Former Prime Minister Yousuf Raza Gilani had lost his coveted office after he was sentenced by the apex court on 26th April 2012 for not writing a letter to the Swiss authorities and was eventually disqualified on 19th June.

Mr Gilani's successor PM Raja Pervez Ashraf narrowly escaped the same charges when his administration agreed to write the letter. Interior Minister Rehman Malik, former law minister Babar Awan, PPP Senator Taj Haider and Sindh Information Minister Sharjeel Memon were already in row to face contempt charges on various counts.

On 7th January 2013, MQM's Senator Frogh Naseem appeared in the Supreme Court as Altaf Hussain's Counsel and submitted unconditional apology on behalf of his chairman. The apology was accepted and the contempt notice was filed.

ARMY ACT 1952 PREVAILED:

On 18th July 2011, a joint constitutional petition was filed in the Supreme Court, seeking that certain provisions of military laws be fixed down because they deny fundamental rights of fair trial and due process of law through independent and impartial tribunals. The petition was filed through

The Living History of Pakistan Vol-I

advocate Ch M Akram by five persons detained in Faisalabad and Rawalpindi Jails.

The petitioners were civilians convicted for suicidal attacks attempted on the life of Gen Musharraf on 14th & 25th December 2003, at *Jhanda Chichi Bridge* and at nearby petrol pump in Rawalpindi respectively. The petitioners, along with some military personnel, were tried by the Field Court Marshal General [FCMG] under military laws; both military men and civilians were awarded death sentences in July 2005 to all under the Army Act 1952, which were later confirmed by the Vice Chief of the Army Staff.

The petitioners challenged the *vires* of certain provisions of the law embodied in the Pakistan Army Act 1952, Pakistan Air Force Act 1953 and Pakistan Navy Ordinance 1961 and prayed that:

- *That amendments be made in military laws and at least one opportunity of appeal be provided against the decision of army tribunals before the apex court.*
-
- *That the Federal Government be asked to legislate for independent military tribunals and re-examine all pending cases by a larger bench.*
-
- *That the Armed Forces tribunals had exercised the jurisdiction of other courts of law erroneously by trying the civilians accused.*
-
- *That the cases of civilians be re-examined on the basis of constitutional rights available to the public at large in Pakistan.*
-
- *That Section 133 of the Army Act 1952, along with some other provisions, be declared ultra vires and in negation of Article 2A, 4, 5, 9, 10, 10A and 25 of the Constitution and in denial of rights under Article 175 and 203 of the Constitution.*
-
- *That the Section 2(1)(d) of Defence Services Law Amendment Ordinance 1967 incorporated in the Pakistan Army Act, Air Force Act 2(1)(dd) and Naval Ordinance 2(3), which brought civilians within the jurisdiction of Military tribunals, was ultra-vires and liable to be struck down under Article 8 of the Constitution.*
-
- *That the Pakistan Army Act 1952, Pakistan Air Force Act 1953 and Pakistan Naval Ordinance 1961 were in conflict among themselves on sections 31(d), 37(c), and 36(3) respectively; the same are discriminatory in character.*

The Living History of Pakistan Vol-I

It was not the case that the higher courts were approached first time to take notice of alleged 'injustice' incorporated in the Army Act or so. Earlier on 2nd May 2007 two Army commandos of Zarrar Company, namely Lance Havaldar Ghulam Ahmad and Sepoy Shahid Shehzad, who had opposed the *Lal Masjid Operation of 2nd July 2007* and were subsequently court-martialled, were denied the right of appeal in superior courts. Both above named soldiers were kept in confinement for 15 months; then were court-martialled in August 2008; sentenced 14-years and 7-years respectively.

During trial, it was proved that *both of them were in contact with the Lal Masjid administration and kept on updating them about the military operational details.*

It was an act of 'cheat & Gaddari [betrayal]' of your own force – not tolerated in any army of any country. *That was the reason the Army court of appeal upheld the verdict.* Lanc Hav Ghulam Ahmed had approached the Supreme Court for relief but even refused from there.

Even earlier than that one Abdul Islam Siddiqui, a soldier of the Pakistan Army was hanged in 2005 after military trial for his alleged involvement in the December 2003 attack on former president Gen Musharraf's convoy.

The Army Act 1952 keeps a provision since decades to hold court martial of civilians - but only when at least one of the accused belonged to the armed forces. On 10th November 2007, Gen Musharraf had promulgated an ordinance making amendments to the Army Act giving more powers to military courts as per requirements of the changing times. In fact, the said amendment was required for the military courts to try civilians on charges of terrorism, anti-national activities, sedition, attacks on Army personnel and officers.

That was what required for the civil courts too. During the last decade Pakistan lost about 47,000 lives, including about 5000 army officers and men, in the terrorism related crimes, blasts, suicidal attacks, bombings etc – hundreds were arrested, investigated and jailed but all the civilian courts including the subordinate or superior judiciary could not punish even a single accused – even the red handed one. Why so – because the Parliament or the superior courts could not amend their 170 years old CrPC, Evidence Act, procedures etc.

[Full details of this lethargic tragedy can be seen in the initial pages of this volume under title: AN URGE – AN APPEAL]

The Living History of Pakistan Vol-I

Previously, offences under the Prevention of Anti-National Activities Act were tried by a specially constituted tribunal headed by a judge of the high court, appointed with the consultation of the concerned chief justice. Later, through an ordinance the heinous offences were made try-able by military courts. Lawyers, intelligentsia and civil society activists got it denounced, declaring them oppressive – in the name of human rights and the Constitutional provisions etc.

Thus the lawyer community preferred to stand by the killers [*and not by the families who lost their lives*] because it is easy to get the killers freed on the basis of 170 years old legal and procedural provisions.

Military trials are normally not open to public hearings; civilian lawyers are only allowed to be there in military court if the permission is granted to them to represent the accused. Mostly investigations are carried out by military officers themselves and normal rules of evidence are not applied – and that is only good thing to maintain discipline in ranks – contrary to the civil courts of Pakistan where a judge CANNOT accept video, audio, photographs, CCTV, admission before police, confessional statement before the magistrates etc.

In which fool society the Pakistanis are living – that is why Pakistan is ranked at 192th out of 197 countries when speedy justice or conviction rates are considered and compared. The judiciary, bar associations and legal fraternity always remained silent on that side of the story.

According to Pakistan Army Act's section 133-A and 133-B, the decision of the Army's appellate court '*shall be final and shall not be called into question before any court of authority*' - the Army's appellate courts can enhance sentences as well. For instance, an accused in Gen Musharraf's attack case, Rana Naveed, was granted life sentence by the court martial but the Army's appellate court converted it into death sentence.

Is there any provision or example in the civil justice system?

Long ago in 1993, Col (rtd) Akram, a lawyer had agitated this issue in the superior courts through his two petitions. The issue was brought up before the Federal Shariat Court in *Col (Rtd) M Akram vs State* (FSC 44 / 1 / 1993). The Court had *directed the Federal Government to amend Rules of the Pakistan Army Act 1952.* The petitioner sought review from the court again in 2008. The FSC upheld its earlier decision giving six months to the government to bring amendments through the Parliamentary process – but no one bothered.

The Living History of Pakistan Vol-I

[The Federal Shariat Court [FSC], meant to mainly deal with cases under Hadood Laws, could not get even a single MALE convicted in Zina or allied cases since its inception in 1980 – fourteen poor ladies involved have been 'sangsarred'.

See the media statistics that how many events of Zina occurred since the last 35 years – disgusting for the whole nation. The FSC could not get its own Hadood Laws refined or developed or transformed to get conviction for the wrong-doers; and shamefully recommending amendments in Army Act – what a mockery.]

But in Pakistan, who cares for the poor victims, whether they are in Zina cases or families of Peshawar Army School. In 1993, the decisions were not implemented though it was an era of uprising political governance; the same trend travelled through 2008 and still in vogue today.

Since the promulgation of Hadood Ordinance on 20th April 1979, not a single male culprit could be punished or flogged for rape, deflowering of girls, adultery, criminal maltreatment with women, and acid throwing incidents etc. Since 35 years in perspective, some lower courts do exhibited courage to announce punishments but the convictions were invariably set-aside by the appellant courts for 'lack of evidence'. What does it speak on the part of courts and legislators? They could not identify the blank spots where the fault lies.

However, 14 women were stoned to death in rape / adultery cases while men were freed for want of admissible evidence.

Nothing was on the government agenda seriously – as the Parliament and the superior courts [*the Federal Shariat Court was never considered as the superior court even*] are both impotent regarding legal formulation matters.

[In Pakistan, the Laws of Evidence are 170 years old, testimony of police officer is not admissible; Parliamentarians have no courage and acumen to frame new laws; existing laws suit the Lawyers because it is easy for them to get relief for their 'becharey' killers; higher courts judges do not want to set appropriate rulings to make available evidence admissible – so the bonanza is going on.

That's why the people have always shown faith in the military courts because there the defence lawyers cannot play gimmicks on the basis of poor laws and faulty investigation files.]

The Living History of Pakistan Vol-I

One thing became more evident that granting military courts jurisdiction to try offences like multiple murders, rapes, arsons, terrorist attacks etc the general public were successfully given a message that the representatives they had sent to the assemblies were not capable enough to provide them justice and peace; nor were they competent to frame new laws required as per changing circumstances.

Coming back; on 12th November 2012, the Pak-Army authorities, however, formally opposed that dormant petition of Col (rtd) M Akram originally prayed in 1993, seeking amendments in the Pakistan Army Act 1952.

The GHQ, in its written reply submitted before a 3-judges bench of the Supreme Court, stated that the Army Act was a special act and that any attempt to bring it in line with the general law was to defeat the very purpose of that law. Military authorities argued that the petition was not maintainable as it did not raise a question of 'general public importance' to invoke the jurisdiction of the Supreme Court with regard to Article 184 (3) of the Constitution, nor did it seek to enforce any fundamental rights conferred by the Constitution. The GHQ further held that:

'Any law relating to the armed forces is outside the operation of the normal scheme of the Constitution. The petition is a virtual plea to bring a special law at par with the general law. The Pakistan Army Act is a special law applicable to a specific class and is a complete code by itself which, inter alia, provides for appointment, enrollment, service discipline, inquiries and investigation, summary punishments and trial by courts martial.'

The GHQ told the apex court that *'Section 31 of the Army Act allows an accused to submit a petition against the findings or decision of a military court.'*

During that hearing, the Supreme Court asked the federal government to consider amending the Pakistan Army Act 1952 to remove an inconsistency because of which important documents of the Field General Court Martial [FGCM] were not provided to an accused. However, the wording of the SC's order was of 'advisory' nature; saying that: *'the Ministry of Defence may consider amendment to the Pakistan Army Act*

The 3-judge bench comprising CJP Iftikhar M Chaudhry, Justice Gulzar Ahmed and Justice Sh Azmat Saeed, while dealing with those two petitions of Col (rtd) M Akram, remained in a fix that from where the court could derive jurisdiction to direct the government to amend the said law because the powers of the judiciary and that of the executive were different. One could

The Living History of Pakistan Vol-I

recall that how the apex court dealt with the Contempt of Court Act 2012 which was challenged before it. The Supreme Court had simply struck down the law, but never asked the government to resurrect it or bring a new law in place.

The SC bench, however, granted three weeks to the army authorities to amend the law. Later the bench was told that the counsel had suggested relevant authorities to make the Army Act compatible with Pakistan Navy and Air Force Act AND that the army authorities had agreed to amend certain [discriminatory] clauses of the act.

When the SC bench resumed again in January 2013, the petitioner Col (rtd) M Akram did not pursue the case; *the petitions were verbally dismissed [being not contested] but the files were sent to the cold room, perhaps without written final verdict.* The petitions were filed in 1993, then again in 2008, then in 2013 – then should have been fixed again after a decade; but it surfaced up sooner.

On 26th January 2015, after two years long pace, the Supreme Court restored the petitions of Col (rtd) M Akram again for hearing, which were once rejected by the apex court in January 2013. The court ordered that the petitions for hearings be fixed within two weeks despite government's opposition. A 2-member bench of the SC, presided over by Justice Jawwad S Khawaja, took up the said dismissed petitions again and restored the same for hearing.

This time Col (rtd) Akram argued that the charge-sheet carrying the allegations was not served to the accused during a court martial and he even did not know for what he was being convicted and what he was being punished for. The accused was not even provided access to the record, while the facility provided to the accused for filing an appeal against the conviction was equal to nil. Apparently, it seemed that lies were told to Col Akram by the family members of the convict.

The Deputy Attorney General [DAG] opposed the petitions saying that: *'the court has already rejected these applications because it had not been persuaded by them earlier. The law does not allow for restoration of these petitions after one year.'*

The court remarked that the matter was crucial, therefore it would hear it.

Though the above words were placed on record, but then realizing that the petitions already stand closed by a 3-member bench headed by the CJP,

The Living History of Pakistan Vol-I

Justice Khawaja never called those files again till at least his retirement in September 2015.

GEN KAYANI SPEAKS OUT:

On 5th November 2012, while speaking to his officers at GHQ, Pakistan's Army Chief Gen Ashfaq Kayani said:

'As a nation we are passing through a defining phase...Weakening of the institutions and trying to assume more than one's role will set us back...Any effort, which wittingly or unwittingly draws a wedge between the people and Armed Forces of Pakistan, undermines the larger national interest.

.....that no individual or institution can decide what is right or wrong in defining the ultimate national interest.

..... that entire institutions shouldn't be blamed for an individual's mistakes.'

After the ISPR's press release, some anchorpersons, analysts and commentators started tossing around the question whether it was a warning shot to the judiciary or media or both. The fact remained that there was a lot of military - bashing in the media for the aberrations of some retired Generals since the announcement of SC's judgment in Asghar Khan Case.

Since early 2008, there had been growing confrontation between the Parliament and the Judiciary and now it appeared that judiciary and military were at loggerheads.

On the same day, the office of CJP Iftikhar M Chaudhry released a nine-page speech that he had made to a group of visiting bureaucrats but that seemed timed to counter the criticism made by Gen Kayani. In it, Justice Chaudhry noted that his court's paramount authority was enshrined in the Constitution. For the first time in Pakistan's history, the two giants' hard-hitting comments displayed that they were in complete disagreement with each other over the role and the status of the institutions they supervised - and revealed the issues they had with each other's individual performances. CJP Chaudhry got the ball rolling when he asserted his institution's supremacy; while saying that:

The Living History of Pakistan Vol-I

"A heavy responsibility lies upon the judges of the Supreme Court to uphold the canons of constitutional predominance and its supremacy over all other institutions and authorities.

Gone are the days when stability and security of the country were defined in terms of the number of missiles and tanks as a manifestation of hard power available at the disposal of the state."

CJP Chaudhry had manifested — a pointed reference to the GHQ straightaway but forgetting that *Pakistan's judiciary was being ranked at no:192 out of 197 countries whereas Pakistan's Army was rated as the sixth largest and most professional.*

The CJP Iftikhar A Chaudhry might have said it in some different context, but the timing created misperceptions. There were certain earlier observations which added up the spice. For instance, in missing persons' case, an esteemed judge on the bench had remarked that: *'for every third missing person the fingers are raised towards the Frontier Constabulary'* which was not a fact at all – no statistics were available to say that.

In October 2012, CJP Chaudhry had resumed the hearing on a petition filed on the law and order situation in Balochistan, in which Baloch nationalist leader Sardar Akhtar Mengal made varied submissions including his six points. The CJP said in his concluding remarks that:

'The missing persons would be recovered and that the court would go to any extent, if needed, to achieve the purpose. The death squads of ISI and MI agencies should be abolished.'

That was what Sardar Akhtar Mengal wanted to hear. The military circles had felt the pinch of judiciary's remarks because, in their opinion, the dissident Baloch Sardars had their own agenda and never wanted to hold negotiations with the government or the military considering them responsible for all the woes and problems they were facing. Insinuation against the military and negative sentiments against intelligence agencies were already grown up. Gen Kayani was even criticized when [before flying to Moscow] he had said *'the army would support any solution to the Balochistan crisis provided it was within the constitution'*.

The fact remains that there was no conflict between the army and the judiciary but the routine utterances of their chiefs were blown out of proportion in the media just because the ruling political party, PPP, wanted to brew benefits out of the situation. Even the statements of the two chiefs were not in conflict with the Constitution. When the dust, blown up by the PPP

The Living History of Pakistan Vol-I

sponsored media, settled down, the intelligentsia felt that army chief's speech in the GHQ was reflective of the opinion of his fellow generals and the Pakistan army. Similarly, nothing unusual in the statement of the CJP could be seen as *'he keeps on saying such things quite often'*.

It was a mere coincidence that the two statements appeared on the same day in the media; but they were not issued in reaction to each other. The army chief's speech, in fact, reflected the views of his companions and the army as an institution. Likewise, the chief justice also expressed his views while delivering a speech at a function; though an ambiguity prevailed about the background in which the speeches were made. Though some media persons behaved *'improperly'* but the retired Generals should not have given them a shut up call; this hasty act had tarnished their own image before the public.

The tension appeared to stem from the Supreme Court's judgment in Asghar Khan Case in which criminal proceedings against two former army and spy chiefs were ordered for their part to election rigging in 1990. Parallel to this, about nine retired Generals were facing judicial scrutiny for alleged financial irregularities in different cases. The court had also exerted full pressure on military intelligence agencies in the cases of *'enforced disappearances'* — the illegal abduction, torture and sometimes extrajudicial execution of suspected militants and rebels, especially in Balochistan.

The October court ruling had come in connection with the famous case dating back to 1996 in which (rtd) AM Asghar Khan had filed a petition against the then COAS for sponsoring a political alliance. The Supreme Court had asked the federal government to take necessary steps under the constitution against two retired Generals named in the case. However, Pakistan's government had little sway over the military Generals who normally enjoy a high esteem amongst the general populace in Pakistan. Gen Kayani had gracefully said:

"While individual mistakes might have been made by all of us in the country, these should be left to the due process of law. Let us not pre-judge anyone, be it civilian or a military person, and extend it, unnecessarily, to undermine respective institutions. Any effort which wittingly or unwittingly draws a wedge between the people and Armed Forces of Pakistan undermines the larger national interest."

The intelligentsia had felt that through his speech, Gen Kayani was successful in repeating Pak-Army's resolve of keeping Pakistan's security first with

The Living History of Pakistan Vol-I

backing of the general populace; ignoring nexus of few corrupt politicians and allegedly compromising judiciary.

In those days, there had been much hot debates on all the TV channels and in print media concerning role of Pakistan Army & ISI in politics sparked after SC's judgment in AM (Rtd) Asghar Khan Case. Gen Aslam Beg and Gen Asad Durrani were focussed in person and they appeared in live TV talks; and when the statements from the two Chiefs appeared in Pakistani press almost simultaneously, Gen Aslam Beg tried to twist the public opinion through his warnings that *'the statements of the Army Chief and the Chief Justice harbinger a grave danger for the country'*.

Gen Beg held that Gen Kayani's statement *'clearly warns the Parliament to perform its immediate role to avoid a roll-back of the political setting'*. [Gen Beg's exclusive interview to GEO TV channel on 7th November 2012 is referred] The General also said that:

'The misunderstanding between Pakistan Army and Supreme Court is indicative of a dangerous situation. Whatever we did in the past five years, will turn to dust.'

'Gen Tikka Khan did not execute a coup nor will General Kayani take such a step. Someone else will indulge in this action. Go through General Kayani's statement closely which conveys this message.'

However, the media remained busy that whole week deciphering the statements issued by the COAS & CJP. The pessimists [mostly the PPP] viewed the statements as a direct confrontation between the army and the judiciary, while optimists believed that since both upheld the supremacy of the Constitution, thus good omen for the country. Fact remained that since his election as president in September 2008, Mr Zardari was perceived as the joint target of both the military leadership and superior judiciary at one point or the other. This time too, at the end, distrust between the PPP, military and judiciary went wider.

One could recall the most recent events firstly of October 2012 when Mr Zardari's closest friend Hussain Haqqani was declared guilty of forwarding the controversial memo to the US military. Gen Kayani and former DG ISI Gen Shuja Pasha, had submitted their witnesses in the probe. Secondly; of November 2012, when the long standing letter was ultimately sent to Swiss authorities against Mr Zardari for reopening the graft cases. Earlier in 2011, the PPP had lost army's favours after 2nd May raid at Osama's hide-out in Abbottabad. Though Mr Zardari hailed the American attack in his essay that

The Living History of Pakistan Vol-I

he wrote for the Washington Post, the GHQ criticised the government for media handling in derogatory manners.

The PPP, however, had refused to pick sides between the COAS and the CJ but [referring to 'Dawn' dated 9th November 2012] the PPP held that:

'We don't know if there is a real or perceived conflict between the judiciary and military, the ensuing discussion in the media is going our way.'

Throughout our tenure in the government since 2008 general elections, the PPP had been painted as the villain party that had refused to accept court orders, and put the national interest at stake by pitting itself against the military establishment. It's a blessing in disguise that with general elections around the corner, such events are shaking off these ignominious tags from the party.'

The PPP went jubilous saying that with the elections around the corner, the right way of playing the game would be by sitting on the fence.

When army Generals cross their constitutional limits and step into domains outside their jurisdiction, they do so in their professional capacity and hence could be taken with positive considerations if sitting together on table to share wider national interest.

CJP CHAUDHRY'S JUDICIARY:

The judgment of the famous '*Judges Case*' was to be announced on 20th March 1996 by the then Chief Justice Sajjad A Shah.

A day earlier, on 19th March, Benazir Bhutto's government announced the appointment of twenty judges to Lahore High Court and seven to Sindh High Court. Acting Chief Justices of both courts; Justice Irshad Hasan Khan of LHC and Justice Abdul Hafeez Memon of Sindh Court were the Supreme Court judges who were on deputation with the two High Courts, administered oaths to new judges without even informing their CJP. Both ACJs were appointees of Benazir Bhutto and they returned the favour by doing so while in the Supreme Court the draft of judgment in '*Judges Case*' was being finalized.

In Pakistan, indoor intrigues prevailed [even more] in higher judiciary in all times.

A SALUTE TO CJP CHAUDHRY:

See another page of Pakistan's cruel history and in between the lines one can smell the superior judiciary's behaviour for their own courts; an *attack on SC in 1997* is painfully referred:

Former President Farooq Leghari told later how on the night of 28th November 1997, Prime Minister Nawaz Sharif accompanied by COAS Jehangir Karamat, National Assembly Speaker Ilahi Bakhsh Soomro, Senate Chairman Wasim Sajjad, and Law Minister Khalid Anwer came to see him and advised him to de-notify Chief Justice Sajjad Ali Shah and appoint Justice Ajmal Mian in his place.

The cassette recording was forwarded to the Chief Justice of Pakistan while the case was still open. The reaction was evident.

At 0700 on the morning of 28th November 1997, Lt Gen Naseem Rana, the then ISI Chief, informed his COAS Gen Jehangir Karamat that a mob had been organized to raid the SC whilst the contempt case against Prime Minister Nawaz Sharif, was being heard.

The Living History of Pakistan Vol-I

[Rest is a painful history – no use of repeating it here; *Judges & Generals in Pakistan VOL-I (Scenario 21)* is referred for details]

On 14th May 1999, over 500 days later, SC bench headed by Justice Nasir Aslam Zahid [Justice Munawar Mirza and Justice Abdur Rehman Khan were the other two] let the seven legislators off with observation below:

'Though flagrant contempt of court was committed but the accused cannot be convicted as the people had not given specific evidence against them.'

Even Senator Saifur Rehman, the mastermind of that attack was acquitted against whom oral as well as documentary evidence was in abundance. Even live videos of the event, three from BBC & CNN each, were discarded along with 53 eye-witnesses from media who had got recorded their statements. Hundreds of photographs plastered over main pages of the whole press, and the apex court's own CCTV camera footings were not able to convince the bench.

[In March 2013, Justice ® Nasir Aslam Zahid was named as PML(N)'s prime candidate for interim premiership because he had been the *'outstanding' pet judge of PML(N)* since at least ending 1997.]

On 28th October 1999, Shahid Orakzai filed an application "for immediate hearing of Cr Appeal No.162 of 1999" which was given weight only because the PML(N)'s government was no more there. On 18th November 1999, the hearing started and the then Attorney General Aziz Munshi was asked to plead that case to be heard de novo and the AG Mr Munshi delivered.

Ironically the CJP Saiduzzaman Siddiqui, more loyal to politicians than to the SC or its judges, tried to play saying that the said appeal was time barred as it could be filed within 60 days only. Justice Irshad Hasan Khan had to snub the former CJP reminding him that the apex court had the powers to enhance the period for filing of the appeal.

At last on 29th September 2000, 5-members bench of the Supreme Court, headed by Chief Justice Irshad Hasan Khan, issued execution warrants for seven Muslim Leaguers who were sentenced to undergo one-month imprisonment and Rs: 5,000 fine each on the charges of contempt of court.

The Living History of Pakistan Vol-I

In December 2004 the appellants appealed the apex court to release them of all charges [they had undergone the given imprisonment and had paid the fine] entitling them to hold public offices. A larger bench consisting of Justice Sardar Muhammad Raza Khan was nominated to resume the said case but remained in cold room till March 2010, when the apex court dismissed it observing that "if such things were allowed, no one would respect this institution."

The CJP Iftikhar M Chaudhry underlined the need to discourage such an attitude and observed that *"an MNA attacked the Supreme Court and after six years he came for pardon. We have to respect the institutions as they cannot survive like this."*

Justice Tariq Parvez had remarked that:

"If we pardon four people now, four hundred would come tomorrow for relief on the basis of this verdict."

Insults are to be treated with disdain -...In the case of the Welsh students, the Court was invaded on February 4, they were sentenced on February 4, the appeal was heard on February 9 and decided on February 11; all within the space of one week."

When our present judiciary would feel courage to behave as that foreign Court had done on 4th February – make laws like that. The event of 4th February, as mentioned by Justice Tariq Parvez above, was never repeated again in that country till today at least.

An echo of the said episode was heard again after two years when On 6th June 2012; Interior Minister Rehman Malik was appreciated for reopening a much-awaited case of storming of Supreme Court by Sharif Brothers [1997] case. This time some one moved to hang culprit MNAs etc till death who had violated Article 6, of the Constitution of Pakistan.

This was a good development as the evidences including the CCTV footages, FIR registered with the Secretariat police and investigation reports prepared by then SSP HQ Taimour Ali Khan had been collected. SSP Khan's incomplete inquiry was called so because the statements of main culprits – PML(N) leaders – could not be recorded as they were in detention and later they made a secret deal with Gen Musharraf and fled for Jeddah.

The Living History of Pakistan Vol-I

The Capital Police had issued notices to 59 people including PML(N)'s Nawaz Sharif and Shahbaz Sharif, asking them to appear before the SSP within 10 days for interrogation in connection with the 1997 attack on the SC. Nawaz Sharif did all this out of ego, abused his powers and stormed the apex Court. SC had appointed five new judges; Nawaz Sharif harshly criticized the then CJP Sajjad Ali Shah. A contempt of court notice was issued; the court was about to hear the contempt case when Nawaz Sharif got attacked the court.

Most of the analysts believed that Mr Sharif's conflict with the CJP had reached the point of no return. The dispute between Mr Sharif and the Chief Justice had become personal, and that it was then impossible for them to reconcile their differences. *Just to refresh the memories of that drastic tussle – see the following paragraphs.*

During his second stint in power as PM Nawaz Sharif wished to rid himself of an awkward Chief Justice, Syed Sajjad Ali Shah who was not ready to toe his line. Sharif started consulting his confidantes as to how to get divested of the defiant CJP. In his book '*Glimpses into the Corridors of Power*' (OUP 2007), a former foreign minister of Sharif cabinet, Gohar Ayub Khan, writes:

"Nawaz Sharif wanted to summon the CJP (Sajjad Shah) before the privilege committee of National Assembly for having committed contempt of the parliament..... that he was first asked to provide guidance as to how Sajjad Ali Shah could be summoned before the privilege committee and later for sending him to jail. The tussle between the premier and chief justice was reaching its peak.

I got a call from the prime minister on November 5, 1997 asking me to come and see him in his chamber in the National Assembly. When I arrived, I found members of the privilege committee (Nawabzada Iqbal Mehdi and several others) present in the cabinet room. The PM asked the Chairman of the privilege committee to explain the situation to me. The chairman said that they wanted to summon the CJ before the privilege committee and all those present (including the PM) concurred.

I told them that the rules did not provide for such a drastic step.... if you make the mistake of doing so, he will disregard your summons. The privilege committee and the PM will be insulted. With that, the discussion came to an end.

The Living History of Pakistan Vol-I

The PM asked me to accompany him to the PM House. In the car, the PM put his hands on my knee, and said: 'Gohar Sahib, show me the way to arrest the chief justice and keep him in jail for a night'. I was shocked and advised Sharif against even thinking about it."

Rest is the history you've already gone through in Volume-I of this title.

To recall, Chief Justice Sajjad Ali Shah was the lone dissenter in the 11-member bench of the apex court, whose decision had restored Nawaz Sharif to power in May 1993 as prime minister after he had been booted out by President Ghulam Ishaq Khan. Justice Shah had also ordered the release of some civil servants who had been arrested on the orders of Nawaz Sharif; Faisalabad's WASA Case is referred. These events became the starting point of a long tussle between the two.

The first confrontation by Nawaz Sharif was the establishment of special trial courts which were established in contravention of the advice of the chief justice. However, Sharif finally succeeded in dividing the superior court judges into two camps. The infamous Article 58(2)-b, Eighth Amendment to the Constitution of Pakistan (which empowered the President of Pakistan to dismiss the National Assembly) was restored and suspended within minutes by two separate benches of the apex court assembled against each other.

A 3-member bench headed by CJP Shah suspended the operation of the 13th Amendment to restore the powers of the president to dissolve the National Assembly; a verdict that was set aside within minutes by another 10-member bench of the apex court. The 10-member bench led by Justice Saeeduzzaman Siddiqui granted stay against the CJ Sajjad Shah's order minutes after it was passed, without receiving any formal petition, and the decision of the chief justice was set aside. All efforts to resolve the judicial crisis failed as both the groups of the superior court judges stuck to their stance and issued separate cause lists.

Thus; the critics held that how was it possible that MNAs of a ruling party and political Secretary of the sitting PM organize such unruly mob attack on SC without an approval of their boss? At least in Pakistan it was not possible because in fragile democratic setup personalities always shine and workers and legislators of political parties act according to the wishes of their leaders, especially when it is a ruling party.

SC ATTACKED AGAIN [this time] BY LAWYERS:

The Living History of Pakistan Vol-I

On 26th November 2013; exactly after 16 years, violence revisited the Supreme Court when a group of disgruntled lawyers attacked the hallowed building, smashing doors and windows in afternoon hours. About 200 young lawyers, who had come from the Sahiwal, Gujranwala, Sargodha, Faisalabad and D G Khan Divisions of Punjab, to vent their anger at non-establishment of the benches of the Lahore High Court at their Divisional Headquarters, created the ugly scenes and clashed with the police who pushed them out.

They then started a sit-in outside the Supreme Court building. Most of them quit the protest by nightfall but about 60 were staying till late night, unmoved by the local administration's pleas to go home. It was embarrassing for the ruling PML(N) because it was also in power when the apex court was attacked last time on 28th November 1997. Then the raiders were the supporters of PML(N) while this time they were the supporters of the judiciary in black coats. The protesters held that:

"We were promised and the provincial government even notified that high court benches would be established in these divisions sometimes in April or March [2013] to facilitate the poor litigants. But the matter is stuck up at the level of the top judiciary.

The decision to protest in front of the Supreme Court was reached during inter-division meetings held in different cities on rotation."

When they continued to be rowdy, pelting stones at the building, smashing windows, the police baton charged and fired tear gas shells. A number of lawyers and 25 policemen were injured in the scuffle, including DSP Zubair Shaikh, SHO Secretariat, Assistant Commissioner City Mohammad Ali. In reaction to the incident, Vice Chairman Pakistan Bar Council Qalbe Hassan announced a countrywide strike and boycott of the courts by the lawyers next day. There were meetings in the bar rooms all over the country to condemn *"inhuman and brutal police action"* against the lawyers.

"Not only the police beat up the lawyers severely and aggressively but also used tear gas tear, with the result that many of them were seriously injured, and the SC administration was not moved at all," PBC held.

It is always a tragedy in Pakistan – police was blamed for 'the inhuman behaviour' as if 'smashing of windows and pelting stones on SC building' was quite a humanly behaviour displayed by the lawyer fraternity. The media had taken the photographs and videos of those 'some irresponsible lawyers' showing smashing windows and pelting over police contin-

The Living History of Pakistan Vol-I

gent and the building – the same were displayed on the TV channels whole night and next day but no license was cancelled, no lawyer was called in the dock for reprimand. What else is the statelessness?

The lawyers had gathered at the entrance reserved for judges and delivered fiery speeches against the judiciary as well as the chief justice, and abusing the judiciary. Before being formally invited in, the protesting lawyers had been going inside to use the court's toilets.

The court officials asked the capital administration and police to intercept them. This provoked the lawyers who entered the court building in force. Police tried but failed to stop them. The lawyers broke the barrier at parking lot and the gate at judge's entrance and started smashing things up. That brought the anti-riot unit of the police inside, which pushed the rioting lawyers out when they were about to enter the courtroom.

However, the lawyers again assembled at the parking lot and started pelting stones at the officials and the court building with stones available there. The police first fired a couple of tear gas shells and rubber bullets in the air to disperse them. Later the anti-riot police used batons which injured some of the lawyer.

Police had to do it because the judiciary and the judges sitting inside were coward and impotent. They didn't have the laws nor the courage to follow the CCTV footage, or media videos or print media photographs to take any of the lawyers to task. *The event was more serious than of 28th November 1997.* Thank God, this time no IGP Tariq Saleem Lone or SSP Altaf were made escape goats. It was CJP Chaudhry's Supreme Court.

INDEPENDENT JUDICIARY – CONFLICTS:

After the CJP Iftikhar Chaudhry was restored in July 2007, for the first time in the country's judicial history it had been able to exercise judicial power independent from the military and the civilian government. However, as the judiciary exercised its power as an independent institution, it started showing favouritism towards a particular political party [PML-N] and soon lost its effectiveness. Criticism in the live TV shows on the judiciary's behaviour left a bad taste in public's mouth for not coming upto the required mark.

During 2012 too, from February to June, the judiciary was in a direct confrontation with the Executive and the Legislative on the pretext of eradicat-

The Living History of Pakistan Vol-I

ing corruption when the judiciary ordered the reopening of the corruption cases against President Zardari whereas Sharif Brothers' cases were not called up. And when the former Prime Minister, Yousuf Raza Gilani, refused to implement the court's order citing presidential immunity under the Constitution, he was indicted for contempt, convicted and disqualified to sit as the Parliamentarian even.

Aitzaz Ahsan, one of the leaders of the 2007 lawyer's movement, questioned the constitutionality of the judiciary's action to prosecute President Zardari; the judiciary has already acted beyond the ambit of its judicial power in the Constitution. When asked in an interview by the BBC's Hard Talk in August 2012, Aitzaz said:

'No criminal proceedings whatsoever can be instituted or continued against the President in any court during his tenure of office. As long as Zardari is the incumbent head of State, and constitutionally elected President of Pakistan - you may like him, dislike him, you may charge him with corruption or any other offence (but he) cannot be sent for trial...'

After Mr Gilani's ouster from office, his replacement Prime Minister Raja Pervaiz Ashraf had to appear in person in court proceedings in June 2012 to explain what actions were on cards regarding the court's order. Leaders of the lawyer's movement that helped restore the judiciary were concerned that, not only CJP Chaudhry was overstepping Legislature & Executive; he was acting 'too independently.'

The 'Ittefaq' brothers were being given all relaxations instead. Asma Jahangir, former President of the Supreme Court Bar Association, expressed concern that if the judiciary continued to nourish political thinking it would lead to unrecoverable loss. Ms Jahangir argued that when the courts show political bias, the common man loses confidence in the courts.

The court's failure to deal with the corruption charges against Arsalan Iftikhar, the son of CJP Chaudhry, had alarmingly demonstrated the court's bias and double standard in prosecution of corruption cases.

When it was revealed that Arsalan Iftikhar had been involved in corruption, the zealotry of the judiciary, and particularly of the Chief Justice, against the Executive and Legislative branches by issuing orders to investigate, prosecute and arrest on the pretext of eradicating corruption did not happen to his son's case. CJP Chaudhry had availed clear advantage of his position in the judiciary; he had known full well of the corrupt practices of his son and how he had made fortunes in CJP's name.

The Living History of Pakistan Vol-I

To suppress the attack on CJP Chaudhry's son, the SC's Divisional Bench stopped the investigation by giving a stay order for the proceedings. Also, to indirectly remind the media - who were exposing those allegations at the time in public, the judiciary imposed de facto censorship. In a petition concerning obscenity, the judiciary entrusted the Pakistan Electronic Media Regulatory Authority (PEMRA) with the role to compel the media to abide by the strict rules on *'guided freedom' in keeping the Islamic identity of the country* [as Arsalan Iftikhar had accomplished a sacred Islamic act by doing open corruption].

The clash between the Judiciary and PPP did not end with the ouster of PM Gilani from office for contempt of court, seven months after the new incumbent PM Ashraf took and the 27 top officials of the government became the object of judiciary's attack.

On 15th January 2013, the judiciary gave orders to the National Accountability Bureau [NAB] to arrest PM Ashraf in the Rental Power Projects [RPPs]; case HRC No: 7734G of 2009 is referred. That was another explanation that the court neither had the power to give orders to the NAB nor to monitor the progress of their investigations.

The court's justification of its authority to supervise investigations raised serious questions. The court, in the case of *Jogindar Kumar v the State of UP* (1994 (4) SCC 260), also established a judicial precedent in this principle. The judiciary's order for arrest not only usurped Executive power, it was also abrogating its earlier precedents on protection of fundamental rights to fair trial and liberty:

At another stage; the CJP Chaudhry maintained that it can stop the Parliament from making amendments to the Constitution and that legitimizing Emergency Regulations in Balochistan by the military raised concerns for many. On the first concern, if the judiciary claimed its upper hand on the Legislative power, it did reflect that judiciary was superior to the Constitution but the CJP Chaudhry did it despite all reservations.

The position taken by CJP Chaudhry in his son's case had contradicted the court's own decision. The former President SC Bar Association Mr Ahsan held that 'the court can only review amendments of the Constitution made through simple majority for any discrepancy, but amendments passed with a two-third majority cannot be challenged in court.'

Mr Ahsan once again drew attention as to how the judiciary failed to uphold judicial fairness in the corruption case against CJP Chaudhry's son, Arsalan Iftikhar. The court proceedings on the allegations of corruption against Mr

The Living History of Pakistan Vol-I

Arsalan and the CJP's alleged complicity to it demonstrated that the judiciary was not impartial and was "*diverting from the prevailing principles of investigation.*"

In nut-shell, the political frictions generated by the over-reach of the judiciary during CJP Chaudhry's era, brought more damages for the people of Pakistan. The ultimate goal of the judiciary was known to all but it preferred to be an isolated institution in quest for popular opinion – but till how long.

MIXED FEELINGS WENT ON:

On 13th January 2013, the CJP Iftikhar M Chaudhry, speaking at the annual dinner of the Lahore Bar Association, urged the people not to vote for the parties who were misguiding the people and promoting anarchy.

Clearly, it was unbecoming of a top judge to make statements of the political nature. This was not the first time he had done so. During the hearing of the cases and speaking on similar forums with unprecedented frequency, he had been hitting the headlines on political matters and making no bones about judiciary assuming the role of a saviour. The lawyers' movement that promised the emergence of a new dawn heralding independence of judiciary had only proved to be a transition from one disaster to another.

The dream for an independent judiciary had vanished. The testimony to this fact came from a former and the most respected judge of the Supreme Court, Justice (rtd) Sardar Muhammad Raza, who in an article then published in the national dailies frankly admitted that:

'The present judiciary is not independent and the conduct of the judges giving disparaging remarks during the hearing of the cases are also contrary to their code of conduct.'

He impliedly expressed concerns about corrupt judges, talking judges, judges with bias, their bad temper, their prejudices and judges indulging in naked usurpation of the legislative function under the disguise of interpretation of Constitutional Amendments.

An independent judiciary functioning within the constitutional parameters, defined under the principle of tri-chotomy of powers, is universally accepted as a custodian of the constitution, a bulwark against the indiscretions

The Living History of Pakistan Vol-I

and unconstitutional acts of other institutions of the state and the protector of the fundamental rights of the citizens.

Pakistan's judiciary during CJP Chaudhry's times was supposed to dispense justice according to the constitution and law ensuring that '*it does not transgress into the domain of other state institutions*'. The courts are not supposed to make laws or interpret them in breach of the recognised norms of interpretation or give them meaning to assuage the popular sentiments.

CJP Chaudhry's some judgments, unfortunately; were like the slaps on the face of judicial history. His bench had cast itself in the role of legislators, encroached upon the powers of the parliament in certain cases and shown an irresistible propensity to meddle into the affairs falling within the constitutional jurisdiction of the executive. Fixing the prices of commodities like sugar and petrol; interfering in the postings and transfers of the bureaucracy [*referring to the cases of Hussain Asghar and Sohail Ahmed in FIA and Establishment Division respectively*], restricting development expenditures and other budgetary allocations approved by the parliament and taking *suo motu* notice of everything under the sky had in fact paralysed the functioning of the executive and thus of the political government.

Justifying the intervention of judiciary on the ground that the executive had failed to solve the problems of the people and they look up to the court to redress their grievances, was leading to reincarnation of the doctrine of necessity which the CJP Chaudhry claimed to have buried forever. A celebrity lawyer, Babar Sattar, once said:

"There can be a legitimate debate on the need or scope of a 'political question doctrine' as part of our constitutional law that strikes the right balance between judicial activism and restraint. But to argue that the judiciary intrudes into the province of the executive out of necessity when people look up to the peoples' court in utter helplessness, is just that another doctrine of necessity".

Leaders of the bar associations, Human Rights Commission of Pakistan, eminent constitutional experts, international commission of jurists and some respectable justices from other countries had openly expressed their concern over the phenomenon of judicial activism in Pakistan and its aptitude for an over-reach. A former Judge of the Indian Supreme Court, Justice Karmandey Katju, in the wake of dismissal of PM Gilani, said:

"How can a court remove a prime minister? This is unheard of in a democracy. The prime minister holds the office as long as he

The Living History of Pakistan Vol-I

has the confidence of the parliament and not the confidence of the Supreme Court.

I regret to say that the Pakistani Supreme Court, particularly its CJ has been showing utter lack of restraint. This is not expected of superior courts. In fact, the court and its CJ have been playing to the galleries for long. It has clearly gone overboard and flouted canons of constitutional jurisprudence."

The constitutional lawyers in Pakistan had been highlighting the indiscretions of the SC conceding that *'the judiciary has indeed been trespassing into the area of responsibility of the other organs and it has also violated internationally recognised principles of jurisprudence and the limits set by the constitution'*.

Even the lawyers who were in the forefront of the lawyers' movement, like Ali Ahmed Kurd, Aitzaz Ahsan and Hamid Khan, had expressed their disappointment over the way the SC was conducting itself in breach of the constitutional provisions.

Not only the CJP Chaudhry, but also some members of his bench, had been enjoying the manifestation of hitting the headlines through their remarks during hearing of the cases having political connotations. The extraordinary interest shown by the media in the proceedings of the SC and expression of unqualified support to its decisions and the conduct of judges was also responsible for the escalating judicial activism. Similarly, the support to the controversial decisions of the SC by the opponents of the government without really bothering to judge the decisions at the touchstone of constitutional norms and principles of jurisprudence had also contributed to this phenomenon and scuttled the chances of seeing a really independent judiciary in Pakistan.

Pakistan's politicians, due to their sheer incompetence, greed, lack of scruples and hereditary succession have never been able to deliver. The vacuum of leadership has to be naturally filled by other institutions; mostly the military and judiciary with the help of media and the legal fraternity. Unfortunately, with the passage of time, the roles of the three institutions have been so corrupted that the concept of separation of powers given in the Constitution has become irrelevant and the lines drawn between the roles and functions of institutions have gone blurred.

The members of legislature are no more enthusiastic about making laws to improve the lot of common man. They are more interested in their share of development funds in hundreds of millions. Pakistan is probably the only

The Living History of Pakistan Vol-I

country where the entire outlay on development is distributed amongst the legislators. Another role they perform is sitting on the standing committees, technically for legislative oversight of government departments. The only oversight they pursue vigorously, of course through blackmailing the senior bureaucracy, is recruitment of their kins by the ministries under their oversight in violation of all rules of merit. *The first source of corrupt practices, thus, is the legislative bodies.*

The Executive branch is no better than the Legislature. It is the placement bureau for providing cushy jobs to cronies in government corporations and deciding on major contracts. This branch is headed by the prime minister and an army of cabinet ministers, and a bunch of parliamentary secretaries. Under the political dispensation, it has always failed in management of economy. The burden of debt that each successive government leaves behind is phenomenal. It utterly fails in delivering services, providing security and managing the foreign relations. Major reason behind the failure of political government is that there is no criterion for selecting the ministers. No minister has adequate knowledge of the affairs of a ministry he is supposed to guide and lead.

Historically, the corrective action was always taken by the establishment comprising armed forces, intelligence agencies, bureaucracy and the judiciary. With the advent of the era of terrorism, the armed forces went busy fighting the terrorists and fighting for their own image. The terrorists had somehow successfully divided the nation into pro and anti-terrorism factions depriving the country of any opportunity to form a consensus to fight the menace of terrorism.

The situation left the field open to some other institution to fill in the leadership vacuum. Pakistan's apex judiciary assumed the role of saviour of the last resort in 2009 but soon decided to take over the reign of civilian power themselves. The judiciary, particularly the subordinate judiciary in Pakistan is known for massive corruption. To correct the image, the apex judiciary picked up high-profile cases and ruled the roost with the help of the media.

A new phenomenon during recent years; the lawyers ganged up on almost everything and turned into gangsters every time their interests, genuine or otherwise came under threat. An eye-opening report of the *'Washington Post'* of 11th November 2012, told the world that how those self-proclaimed custodians of rule of law took law into their own hands. Their hooliganism conveniently escaped the 'judicial activism syndrome' of the then CJP Chaudhry who was known to take notice of almost everything happening under the sky.

The Living History of Pakistan Vol-I

Hard luck prevailed over Pakistan when the courts and a large section of legal fraternity, persistently pronounced sympathies for the insurgents and terrorists. That was where the differences between the CJP Chaudhry's judiciary and Gen Musharraf started to grow. Every terrorist invariably got released by the courts, *even those in the custody of intelligence agencies for interrogation.*

The higher court's insistence to follow the due process of law for separatists and terrorists had given it a commanding position over the establishment – by sheer accident. The assassin who killed Punjab's Governor Salman Taseer, *Mumtaz Qadri, was garlanded by the legal fraternity including some of the senior pro-Taliban lawyers who were subsequently elevated to honourable judges.*

Misfortune over-whelmed; that while every institution of the State should be subjected to some sort of accountability, *the apex courts had no effective mechanism in place to keep an eye on the judges.* The accountability institution of superior judiciary – 'the Supreme Judicial Council', as given in the Constitution, was made irrelevant or redundant by the apex court itself when its Chief Judge himself appeared before it in 2007. It was then made as a power tussle between the Executive and the Judiciary and the top judges ruled the Council to stop its proceedings. *Since then it is lying as a dead horse in the book of Pakistani Constitution – with no case or proceeding whatsoever.*

In Pakistan, the power tussle amongst its organs started when the apex court tried to establish its supremacy through judicial activism [media called it 'gimmicks'] in cases like missing persons and privatization of Steel Mills in 2006-07. This was something which the governments were not used to. In order to assert its authority, the court started taking *suo moto* notices and in some cases gave land mark decisions which strengthened the confidence of citizens in the court.

The Supreme Court virtually took over the business of governance itself due to incompetent and greedy public representatives. It undoubtedly provided relief to countless but at the same time had challenged the hegemony of power centres - thus becoming a power centre itself. But without a defined scope of activism and a proper mechanism of accountability in the given situation, the CJP Chaudhry's apex court headed on a dangerous trajectory.

The lack of notice of lawyers' hooliganism and amusing conclusion of the case of Arsalan Iftikhar in a non-transparent manner suggested that Pakistan's highest court needed to step very carefully.

The Living History of Pakistan Vol-I

Simultaneously; the role of Pakistan's Supreme Court *under CJP Chaudhry need to be appreciated in keeping a check on rampant corruption [minus his own son Arsalan Iftikhar's case file]*, abuses of power, target killings of citizens, appointment of cronies, role of land or drug mafia, failure to prosecute extortion collectors and other excesses by elected political executive and civil bureaucracy, that ravaged this country and destroyed its economy. Most politicians who played the role of vultures, indulging in massive unchecked loot and plunder, fearing accountability, had embarked upon scandalizing their judiciary when felt needed.

The fact remains that there were no angels sitting on benches of Pakistan's superior judiciary, men with human weaknesses, but compared to other public officeholders, they were much better than others and enjoyed more credibility than any other organ of state. *When FBR failed* in performing its sole primary objective to collect taxes from all those who earned above a certain level, it was the Supreme Court which intervened to reprimand them, not the executive, or NAB.

When hundreds of containers, loaded with contraband smuggled goods and weapons, were off-loaded at KPT and *went missing*; it was not Customs, Coast Guard or KPT Security, but SC of Pakistan which took *suo motu* notice of that criminal act.

The superior judiciary had taken note of *fleeing of Hajj & Umra* passengers; the institutionalised vandalising of state corporations like OGDC, OEBI, PIA, PSO, NICL, CAA, PEPCO etc, it was none other but SC, which intervened in the national interest. The critics of judicial activism could first take note of plunder by those who were supposed to act as guardians of state assets, not to assume role of robbers. Had the executive and public servants performed their constitutional roles, there would have been no need for SC to intervene.

As per statistics appeared in *'The Express Tribune'* dated *16th October 2013*; there were over 20,000 cases awaiting adjudication in the Supreme Court of Pakistan since September 2012. As many as 45,040 complaints were filed with the Human Rights Cell of the SC between September 2012 and September 2013; around 17,577 were yet to be disposed of. Legal experts cited *suo motu* activity as the main reason for the huge backlog.

Justice (rtd) Tariq Mahmood suggested the cases be equally distributed among different benches of the top court to clear the backlog. Vice President of Pakistan Bar Council [PBC], Qalb e Hassan, insisted that the judiciary could have followed an equilibrium for *suo motu* to bring a balance in day to day routine working of the apex court.

The Living History of Pakistan Vol-I

The Supreme Court disposed of 18,927 cases pending since September 2012 shrinking the backlog to 20,911. Some 8,282 cases brought up before the bench in Islamabad; 7,823 cases were decided. *The Lahore registry* received 6,964 new cases, but 8,348 were adjudicated in total – indicating a little clearance of back log too. Around 1,132 cases were filed in *the Karachi registry* of which 972 were decided. *The Peshawar registry* received 1,299 new cases and 1,314 cases were decided including some old ones. Similarly, *the Balochistan registry* took up 438 new cases and decisions were handed down in 470 cases including some old ones. Some 11.75 million cases have been decided by different courts in Pakistan since June 2009. Of these, 11.56 million were taken up by the courts post-2009, resulting in the backlog reduction of 184,142 cases.

The National Judicial (Policy Making) Committee sent formal requests to the government to increase the number of judicial officers and strengthening the court infrastructure. However, only the demand of Lahore High for 317 posts of ADJs and 696 posts of Civil Judge - Judicial Magistrates were adhered to by the government of Punjab and initially an amount of Rs: 1 billion was sanctioned for that purpose with future commitments. The other provinces went blank under this head.

J KHOSA's DARING PRECEDENT:

There have been several attempts to infuse a sense of accountability into the functioning of Pakistan's judicial system. The most aggressive of such attempts was made during enactment of the 18th Constitutional Amendment, which proposed a change in the judicial appointment process. Through the said Amendment (insertion of Article 175A of the Constitution), all political parties agreed that the appointment of a judge to the superior Courts must go through a rigorous process of being approved by a Judicial Commission [JC] and a Parliamentary Committee [PC].

The expressed intention of the legislature was that through this procedure, a certain degree of transparency could be instilled in the judicial appointment process, and that review by the PC would allow the 'people' to have a say in choosing their superlative arbitrators.

The Amendment was challenged before the apex court [*or it was managed by the CJP & Registrar SC to be challenged*], on the ground that the insertion of this new method of judicial appointment could violate the sacred principle of 'independence of judiciary'. It was finally resolved that judicial accountability could only be entrusted to members of the judiciary itself.

The Living History of Pakistan Vol-I

Thus, any move of 'outside' accountability of judicial conduct was curbed through issuance of contempt notices to those 'rude' persons who dared to question the Court's conduct. Even the Parliamentary Accounts Committees [PACs] were barred to look into matters of Court expenditures and material assets of the honourable Judges.

It was CJP Chaudhry's assertive interpretation that 'all judicial accountability must rest with the judges alone', and any attempt of outside interference in this regard would undermine the *independence of judiciary*. Since then, no one dared to point out any corrupt judge – so much that Dr Arsalan's case has not been re-investigated after CJP Chaudhry's departure.

The CJP Chaudhry's person left legacy of unchecked judicial superiority, even beyond the boundaries of law and the Constitution. Later, it was courageous Justice Asif Saeed Khosa of the same Supreme Court, who authored in early days of 2014, a passionate and scholarly judgment that, inter alia, discussed and held a Judge of the Lahore High Court [LHC] accountable for the exercise of his judicial discretion - the misapplication of law concerning bail matters.

[The bail application of a person convicted for murder (pending appeal), was filed before the LHC and dismissed for non-availability of the Petitioner, or his counsel. Subsequently, another application was filed by the same convict, and was withdrawn prior to decision "after arguing the case at some length", apparently for the reason that the honourable Judge was not inclined to grant bail.

Thereafter, within a few weeks, another bail application was moved before the same Judge, on exactly the same grounds as before, and bail was granted. In this last application "the only difference... was a different learned counsel...". In appeal, Justice Khosa found this granting of bail to be "somewhat colourable"; because once a bail has been rejected on merits, a new bail could only be moved on "fresh grounds".]

Against this observation [*colourful exercise*] of Justice Khosa, a review was filed by that Judge of the LHC, praying for expunction of the said remarks which was dismissed by another bench of the SC. He was the same Justice Khosa who was seen with a voice of reason in the 18th Amendment case.

During the CJP Chaudhry's days, there was not even a remote possibility for intelligentsia to speak on the conduct of judges; later the SC was able

The Living History of Pakistan Vol-I

to bring back its house in order. Without a tinge of accountability of judicial conduct, the affluence of a just social order goes bleak.

Scenario 110

POLITICAL ATTACKS ON PAK-ARMY

ATTACKS FROM A A ZARDARI:

During mid-2011, President Asif Ali Zardari escalated his battle with the army and judiciary that was aimed to test the limits of the country's burdened experiment with democracy. Intensifying pressure by judges had plunged his administration into a new drama and eclipsed Pakistan's most serious problems: economic decline, chronic energy shortages and militancy. Rasul Bakhsh Rais, professor of political science at LUMS opined:

"People feel cheated by the political forces that they voted into power - they are anxious and pessimistic."

The uncertainty was more felt by Pakistan's foreign allies, notably the US, who was desperate to repair the diplomatic damage done over the '*Salala event of 26th November 2011*' - an air strike that killed 24 Pakistani troops on the Afghan borders. Mr Zardari's conflicts with judges and the Pak-Army were directed on both fronts – triggering speculation by Pakistani TV media channels that his government was on the verge of collapse.

Then the PPP's conflict with the military centred on allegations that Mr Zardari had authorised sending of a secret memo seeking US help to curb the influence of the army after Osama bin Laden's killing in Abbotabad. Then the PM Yusuf Raza Gilani defied his Generals by sacking Gen Naem Khalid Lodhi, the Defence Secretary, *on 11th January 2012* over the charges of "gross misconduct and of creating misunderstanding between the state institutions"; he was effectively the top army representative in the civilian bureaucracy.

PM Gilani had announced his decision shortly after the army warned that his remarks criticising senior Generals over the memo affair could have "grievous consequences"; PM Gilani's thundering speech on the parliamentary floor dated 22nd December 2011, known as '*state within state*' is referred; already cited in aforesaid scenarios.

Some media channels instigated the Pak-Army to stage a repeat of its last coup of October 1999 because they were already controlling important aspects of foreign policy and security. Corps Commanders Conference in

The Living History of Pakistan Vol-I

GHQ just after the said developments was another indicator in that direction – something was melting in the pot.

[Gen Lodhi, who retired from the Pak-Army in March 2011 and appointed Defence Secretary in November, became embroiled in a controversy during December 2011 after he submitted a statement in the Supreme Court on behalf of the Defence Ministry, saying that the civilian government had no operational control over the ISI, Pakistan's powerful spy agency.

Considering that Gen Lodhi had overstepped his authority, PM Gilani objected to the blunt statement; a public acknowledgment that while the intelligence services are technically answerable to the PM, they are widely perceived to act independently of civilian control.

Considering that Gen Lodhi was not authorized to speak such things publicly. The relationship between Gen Lodhi and PM Gilani broke down after the PM's staff pressed Gen Lodhi to issue contradiction about the controversial memo.

The army and intelligence chiefs, Gen Kayani and Gen Pasha had told the Supreme Court a month earlier that the memo — said to have been orchestrated by ambassador Hussain haqqani — was authentic, and pointed to a conspiracy against the military. The government and Mr Haqqani had held that they had nothing to do with the memo.]

President Zardari, on the other hand, was under greater threat from assertive judiciary, particularly if the SC would be backed by the military after the outcome of Supreme Court's investigation in the memo episode.

In separate proceedings, judges had warned that they could disqualify PM Gilani for not obeying its orders to reopen the investigations against Mr Zardari. The case had been deferred for further consideration, raising the prospect of yet another internal strife. The ruling PPP was being pushed into the corner so they decided:

'So be it, if we're going down, we're not going down without a fight.'

The PPP government, in any case, wanted to stay and stagger on until Senate polls in March 2012.

GEN PASHA OF ISI RETIRES:

Lt Gen Ahmed Shuja Pasha, the ISI Chief, went on retirement on 18th March 2012 and Lt Gen Zaheerul Islam, the Corps Commander of Karachi, replaced him. The new incumbent was no stranger to the ISI, having served as its Deputy Director General in the past. The so called controversies surrounding the premier spy agency of Pakistan during the recent years were to be discouraged and the ISI was put back to its real professional duties.

ISI's involvement in the politics of the country from behind the scenes was curtailed. The outgoing commander, Gen Pasha, during his extended tenure had brought certain controversies in play, some of which even continued till the last days of the PPP government in March 2013.

The biggest and most controversial event of Gen Pasha's tenure was the discovery and elimination of Osama bin Laden in Abbottabad, within a stone's throw from the Pakistan Military Academy. The ISI was accused of incompetence or collusion for not exposing the al Qaeda leader's whereabouts in the garrison city for over five years and its failure to detect the unilateral US raid. After the American SEALs raid had killed Osama bin Laden, an unprecedented session of parliament had seen Pasha offering to step down – but no heads rolled after the Abbottabad debacle.

The second controversial episode of Gen Pasha's tenure was the famous memo-gate affair, in which Mansoor Ijaz was privileged by Gen Pasha's sneaky visit to him in London, following which the ISI and military chief, Gen Kayani, deposed before the Supreme Court that Ijaz's allegations had substance. Subsequent developments in the memo-gate case, particularly the proceedings of the Memo-Gate Commission, which allowed Ijaz to depose by video link, however, the issue could not be materialized.

At the peculiar moments of extensions to Gen Pasha and Gen Kayani, the media had taken position that changing horses in midstream when the war against terrorism was at its peak was not a good idea. However, the two top commanders who received extensions became controversial after the two events outlined above.

Military command extensions have a chequered history in Pakistan – the same caused heartburn within the ranks of those with a legitimate expectancy to succeed the incumbents and a breakdown of institutional continuity. Thus for another extension for Gen Pasha the then opposition PML(N)'s strong rejection of any such notion, explicitly expressed by Ch Nisar in the press and on the Parliament's floor, tilted the scales against the General.

The Living History of Pakistan Vol-I

The ISI's change in command, however, did not alter the policy framed by GHQ to continue with the 'strategic depth' policy for Afghanistan – which was augmented by introducing a new green doctrine in ending 2012.

Operation Zarb e Azb, started by Gen Raheel Sharif in early 2014, however gained more attention then.

SIACHEN TRAGEDY:

On 7th April 2012; with the tragic news of 129 Pakistani soldiers buried alive in an avalanche near the Pakistan Army's base camp at Siachen pushed the whole nation in agony and sorrow. One km wide and 25 metre high wall of snow and mud simply moved downwards. It was in Gari Sector, near the Siachen Glacier region, trapping 129 soldiers and about a dozen civilian contractors under deep snow. The incident occurred at an altitude of about 13,000 feet and 180 miles northeast of Skardu (Capital of Baltistan). It was the worst avalanche that the Pakistani military had ever experienced in the area.

Some basic facts: Siachen means 'the place of wild roses'. Siachen glacier is the great Himalayan watershed that demarcates central Asia from the Indian sub-continent, and that separates Pakistan from China in this region. It is the world's second longest non-polar glacier, and thus is sometimes referred to as the third pole. It is 70 km long and flows from an altitude of 3600 meters to 5750 meters above sea level.

The conflict:

- *Siachen is known as the world's highest battlefield between India & Pakistan. Troops are deployed at elevations of up to 6,700 metres (22,000 feet) at minus 60 degrees Celsius.*
- Siachen conflict began in 1984 when both India and Pakistan, started sending mountaineers, in an attempt to lay their claims over the area.
- Subsequently, though, the situation resulted in almost an undeclared ceasefire, with the major challenge being the survival of the men of both countries in such a harsh terrain.
- Several skirmishes took place till 2003 when a formal ceasefire was declared.
- The roots of the conflict over Siachen lie in the non-demarcations on the map northward to the China boundary

The Living History of Pakistan Vol-I

beyond NJ9842, which is the line's "dead end" in the India-Pakistan line of control agreement.

- The 1949 Karachi agreement and the 1972 Simla agreement presumed that it was not feasible for human habitation to survive north of NJ9842.
- *UN officials presumed there would be no dispute between India and Pakistan over such a cold and barren icy wasteland.*
- The contentious area is only 900 square miles (2,300 km²)
- Indians control the heights while the Pakistanis control the glacial valley. As a result, Pakistanis cannot climb up, and Indians cannot come down.
- *Together, the two nations have about 150 manned outposts along the glacier, with some 3,000 troops each.*
- Over 2,000 soldiers [reportedly] have died at Siachen. More soldiers have died from frost bites, cold and avalanche i.e. harsh weather rather than combat.

The strategic importance:

Dr Stephen Cohen, a well-known and respected Washington-based South Asia analyst, considers, "Siachen conflict is a fight between two bald men over a comb."

In his view, "Siachen... is not militarily important... They (Indian and Pakistani armies) are there for purely psychological reasons, testing each other's 'will'."

Question arises then: why India Occupied Siachen?

There were two benefits. One was stopping Pakistan from sending tourists to Siachen (which Pakistan never stopped with its control over K2) and then to try and infiltrate to a point where they can monitor the KKH. [By the way the KKH is otherwise being monitored from satellites mechanism]. What would India get or discover from seeing trucks pass by on the highway.

As a matter of fact, it offers no importance to India. India and Pakistan could have put a joint team, a much smaller force for observation sakes, perhaps geologists or any other branch of science suited and carry out a joint scientific operation. This would mean a lot less casualties and no fear of a fight breaking out and since it's a joint observatory place, a safer place can be chosen for the base. This would bring costs down as well as save lives. India sometimes goes skeptical about the

The Living History of Pakistan Vol-I

tourist expeditions which are often not programmed by the Pakistan government or Army – thus the trouble shoots up.

Coming back; only 129 bodies could be recovered despite the hectic efforts of 180 military and civilian rescuers. The victims belonged to the 6th Northern Light Infantry battalion of the Pak-Army. The tragedy triggered a heated debate in political and security circles as to whether it was worthwhile for both India and Pakistan to maintain a military presence in the sub-zero 'hell'. The affirmative answer also appeals sometimes because the glacier puts the KKH [*Karakoram Highway*] — a critical link between China and Pakistan — within range of Indian artillery.

One Col Ali told about that sad event:

'...suddenly, with no warning, huge rocks and tons of snow and ice swept down from the mountain at a distance of 4.2 kilometres and covered the base with 40 million cubic meters of glacial mass in an instant. The average depth of the debris which buried the camp was between 40-60 meters.

All men, 124 of them soldiers, three officers, and six civilians, embraced martyrdom within moments; no one had a chance in the face of nature's colossal power.'

The Pakistan Army was assisted by German, Swiss, Norwegian, American and British teams of experts. Earth-moving and other heavy equipment was quickly moved up to the site of the avalanche and rescue efforts were immediately put into effect.

The two regional rivals have been locked in a protracted battle over the glacier since 1984 when India had sneaked a march on the 78 kilometre piece of wilderness, fearing that Pakistan wanted to lay claim to it because of the glacier's strategic location. Thousands of troops stationed on both sides have had to brave extremely cold weather, leading at times to amputations because of frostbite, aside from altitude sickness and psychological trauma caused by long periods of isolation. It is true that more fatalities had been caused by extreme weather conditions than actual combat.

The area is normally quiet since the signing of the 2003 ceasefire accord between India and Pakistan. Proposals were mooted lately to declare the area a 'peace park', a proposal no sane person would dispute, though the abiding mistrust generated by the confrontation between India and Pakistan have made this a difficult proposition, unless there are cogent guarantees backed by world powers through the UN.

The Living History of Pakistan Vol-I

If at all such an initiative is mounted, it will have to be on a reciprocal basis to ensure the wholehearted participation of the two regional rivals.

Viewed in the wider perspective, the loss of 124 Pakistani soldiers and 11 civilians because of the Siachen glacier avalanche underscores the need for both India and Pakistan to address all bilateral issues peacefully. This human tragedy could instil some sense into the hawks on either side of the border, leading to a cut in military spending by both the countries and diversion of scarce resources to the development of infrastructure and human capital – but went waste.

The talks for demilitarization of Siachen did take place between India and Pakistan in May 2011, but failed to reach any agreement. The truth remains that this stretch of icy wasteland holds no political or economic importance to the inhabitants residing on both sides of the border.

On 8th April 2012; President Asif Zardari and Indian PM Manmohan Sindh held meeting in New Delhi, and the two leaders had underlined importance of the issue – but simply assurances were exchanged; nothing practical.

In the 3rd week of April 2012, Pakistan held again that Siachen glacier was part of dialogue process; India and Pakistan brought several proposals including mutual deployment of troops for resolving this issue. Pakistan made no change in its stance on Siachen glacier (*where troops of both countries stand deployed there since 1984 when India sent its Army*).

On 22nd April: PM Syed Yusuf Raza Gilani, while speaking on Siachen and the Kashmir dispute both, said that: "*I strongly believe that better sense will prevail on two sides and we will resolve these issues through dialogue.*" All exercise went fruitless.

Till October 2013 at least, Pakistan Army was still working to recover the remaining seven bodies buried in Siachen's Gayari sector. Two more dead bodies were recovered in June. Gen Kayani was addressing a memorial service held in the honour of 140 people of the northern light infantry battalion, who were buried under ice in April last year. The disaster could have served as a wake-up call for Pakistan and India to revisit the Siachen issue, and probe into the logic of why troops were there at all.

The difficulties associated with the area are immense. Temperatures go down as low as -50 degrees Celsius, and the rarity of air and associated lack of oxygen pose significant challenges. This means, for instance, that the lift capacity of the special helicopters operating in the area is reduced when they go up to high-altitude posts. Troops need special apparel and

The Living History of Pakistan Vol-I

gear for survival. Many are incapacitated due to frostbite and other weather - related conditions. There is not enough oxygen to light fires for even cooking purposes.

All this hardship becomes senseless given the fact that the area cannot be used for large troop movements that either country could use to outflank or out - manoeuvre the other. The occupation of Siachen makes no military sense at all.

Under the 1972 Simla Agreement, the line of control between Pakistan and India was delineated up to a point known as NJ9842. The dotted line then proceeds northeast so that Siachen clearly appears on the Pakistan side. The agreement's script states that from this point onwards, the line will proceed northwards as shown by the dotted line.

In the early 1980s, reports surfaced that some Indian reconnaissance parties had been visiting the area occasionally. Some cigarette packets and food packages found on the main Siachen glacier confirmed these activities. The matter was still under active consideration at Pakistan's GHQ when news came that the glacier had been occupied by India with an approximately brigade - strength deployment.

A brigade of the Pakistan Army was immediately sent up then. This brigade occupied all the passes giving access to the Siachen glacier, which prevented India from gaining access to areas administered by the government of Pakistan. This position, known as the *Conway Saddle*, continued to be firmly held by the Pakistan Army (*the Indian post in the area is Indra Kol*).

There have been a number of rounds of negotiations between the two sides to resolve this issue. The Pakistan point of view had been that we need to revert to the pre-1984 positions while India insisted that we first authenticate these positions and then withdraw. This means that Pakistan would cede this area to India.

This, however, was against international law, from the Westphalia agreement of 1648 to UN resolutions in more recent years. When, in any conflict, a country occupies the territory of its enemy, it must vacate it after an agreement is reached. This was the case after the 1965 and 1971 wars between India and Pakistan, and internationally such as the Israeli occupation of Sinai and other areas. But India stated that in the script of the Simla Agreement, "northwards" means 90 degrees north and ignores the dotted line drawn on the map.

The Living History of Pakistan Vol-I

Brig Mehmood Shah has been part of those negotiations. Pakistan's foreign and defence secretaries were proceeding for talks with their Indian counterparts and they asked whether Pakistan could provide any concessions that could provide India with a face-saving exit. Referring to the 'Express Tribune' dated 13th April 2012, Brig Shah said that:

'I suggested that certain small glaciers in the vicinity of the Nubra River, which issues out of the Siachen glacier, could be granted to them. Both the sides had come close to an agreement on a number of occasions. Consistently, though, agreement had been prevented by some last minute hitches on the Indian side.'

Since the inception of the Siachen Conflict in 1984, the Pakistan Army has lost 3000 men, while the Indian military has suffered 5000 casualties, not in battle, but due to the severe winter. Of late, and particularly after the Kargil debacle, India accused Pakistan of being untrustworthy. In terms of Siachen, though, this was a lame excuse.

This high-altitude glacial area cannot be used for large-scale manoeuvres or large troop deployment. The status quo is detrimental for both sides. Perhaps it is time for international guarantors to step in to convince both the countries to call off this madness.

ROYAL PALM CLUB CASE:

Background: Once, a nine year old Rs:25 billion scam of Gen Musharraf regime took U-turn to haunt his three favourite ex-Army Generals, who administered the Pakistan Railways in 2001.

On 22nd April 2008, a 20-member special Parliamentary Committee [PC] of the National Assembly was formed to investigate the lease of Pakistan Railways' land of Royal Palm Golf and Country Club Lahore, to a private party. After about 30 months deliberations, the Committee recommended to the government to register criminal cases against those ex-Generals named former ISI Chief Javed Ashraf Qazi, Saeeduz Zafar and Hamid Hassan Butt and to investigate further.

The three Generals had appeared before the PC to explain the real facts but failed to convince the members of their innocence. The PC also recommended immediate termination of the contract signed in 2001 and for fresh leasing of the Royal Palm Golf Course in an open auction.

The Living History of Pakistan Vol-I

The said scam had surfaced in 2001 when it landed in the Public Accounts Committee but they were unable to access the complete file of the deal because, allegedly, the father in law of Gen Musharraf's son used to work with that 'party' as consultant. The parliamentary inquiry team headed by MNA Nadeem Afzal Chann had revealed in their 25 page inquiry report that the contract was achieved through misrepresentation.

The PC members had held that the said contract was faulty; allegedly caused Rs:40 billion loss to the national exchequer. The inquiry report said that the inclusion of Phase-II in the deal was also illegal, not based on any expression of interest and was not mentioned in the advertisement published for the said lease. The lessee had been occupying the land meant for Phase-II and III without paying any rent.

The PC was referring to an additional facility - that within three months of inking the deal, the same executive committee had enhanced the total area of land from 103 acres to 141 acres, brought down annual land usage charges to Rs:4 per square yard, and had also enhanced the lease period from 33 to 49 years.

The two Generals Saeeduz Zafar and Hamid Hassan Butt, however, told the media that:

'The said contract was awarded after doing proper homework and following the laws of the land. The deal was also put before the Public Accounts Committee in 2006 and its members did not find anything wrong in it. Later a Senate body too had probed the deal and it too failed to find any flaws in it.'

The Railways land was given on lease to a Malaysian firm titled Royal Palm & Golf Club.

On 23rd May 2012, the Supreme Court took a *suo motu* notice of the deal and completed its hearing on the case in March 2013 but had not released the judgment.

The Public Accounts Committee (PAC) of the National Assembly once decided to get the names of Supreme Court judges who were having membership of Lahore's that controversial Royal Palm Club. The committee suspected that judges might have withheld a judgment for over a year on a case relating to illegal lease of land and construction of the club because

The Living History of Pakistan Vol-I

they were given the club membership for a token fee. Allegedly, the nation was deprived of billions of rupees whereas PML(N) had to move the court for early announcement of the judgment.

[Near the Mayo Road (now called Shahrah e Allama Iqbal) Level Crossing Lahore, Mr S N Nulty, Permanent Way Inspector of the then North Western Railway had conceived and then made into reality 'Railway Golf Club' in 1912 (4 holes only) on a piece of land owned by Railways.

By 1914, the golf course had been further cleared of jungle and the track was extended to nine holes; in 1928 it further expanded to a standard full length 18 holes course.

After 1947, the course was redesigned and its sand 'browns' were converted into 'greens' for which a pipe-line was laid all over the course. In addition, a large number of saplings were planted on both sides of the fairways and at strategic points; its length too was also increased.

In 1955 a new club-house was constructed at a new site in the centre of the course. A number of additions and alterations were carried out to the Clubhouse in order to provide requisite facilities to the golfers. The Club also boasted of a swimming pool for its members and their families.

In 1987, major reconstruction of the club house and the course was undertaken by the Railways department and hosted some of the major tournaments in the country until 2000 when Lt Gen Ashraf Qazi, the then Railways Minister decided in 2001 to hand it over to a consortium called Mainland Husnain Pakistan Ltd. (MHPL) and the club was renamed as the Royal Palm Golf & Country Club.

With those changes, the Railways land measuring 141 acres was given to a private party on a 49-year lease for specific use at a price. The initial understanding was for 103 acres, for 33 years and then lease of additional land was also awarded in addition, according to the audit report; subsequent enquiries held that huge financial losses had been caused to the Railways department.

On that Audit Report, the Speaker National Assembly had formed a 22-member parliamentary special committee to probe this case.]

The Living History of Pakistan Vol-I

A federal audit carried out in 2007 found that the government had lost Rs:10 billion by leasing out 103 acres of land to the club refurbished during 1999-2000 on Pakistan Railways' land in Lahore. A special National Assembly committee headed by Mr Gondal was set up in 2008 to investigate the matter. In a report submitted to the house in October 2010, the committee said the government had lost Rs:40 billion not Rs:10b. [*How those figures were arrived at – the report was silent*]

The Parliamentary Committee [PC] recommended that the contract be cancelled and disciplinary action taken against the then federal minister for railways Lt Gen (retd) Javed Ashraf Qazi, Secretary Lt Gen (retd) Saeeduz Zafar and GM Railways Major Gen (retd) Hamid Hassan Butt.

The National Assembly had unanimously approved the recommendations but *the fact remained that the land has been lying there since decades, how much revenue the Railways Department had been generating from it – not even in thousands*. The irony of fate that Pakistan's legislators were equally impotent on such counts. They were seen proactive and often roaring on the parliamentary floor calling shots for opposite party's corruption but never opted to formulate needed legislation to use such precious lands in better way in the national interest.

The parliamentarians used to call for action against some corrupt hands in that Golf Club but *never bothered to call for the accounts of that club from 1947 till 2001; virtually negligible; could not provide the maintenance expenditure even*. Ironically *Pakistan Railways was spending about half a million annually from its revenue to run and manage its affairs*. It was only to provide recreation to some elite secretary level families for their club dinners nothing else. Here in the said case; Gen Qazi had given the land on lease for 49 years – had not sold it as has been the practice in Sindh during PPP regimes; *commonly known as China Cutting*.

The matter was also registered with the National Accountability Bureau [NAB] and an enquiry was also held into the scam but the report never came to lime light. NAB had reportedly recovered Rs:6 billion from the club owners; enough as compared to other corruption cases with NAB offices. In normal course of investigations the 'recovery by NAB' from the politicians remains around zero. However, just for change of taste, see few lines from an article published in '*the New York Times*' of 18th May 2013:

'The Royal Palm Golf and Country Club, a lavish facility with an 18-hole golf course, gyms, 3-D cinemas and cigar rooms, opened in 2002 at the height of the military rule of Gen Pervez Musharraf. The club, which costs \$8,000 to join, has become a showcase for

The Living History of Pakistan Vol-I

new money; families that made their fortunes from property and industry, contacts and corruption.

The Royal Palm's glittering social functions, attended by men in expensive suits and women in ornate gowns, are a staple of local society magazines. The opening of a local Porsche dealership was celebrated here in 2005 with a gala dinner featuring exotic dancers flown in from Europe. Some events even offer alcohol, although guests are encouraged to drop their wine glasses when the cameras show up.

The rail minister at the time was Lt Gen Javed Ashraf Qazi, an ally of Gen Musharraf's and a former spy chief who leased the railway's land to a consortium of businessmen. Critics accused him of giving the land away at a sweetheart rate. The National Accountability Bureau, which investigates official corruption, concluded last year that the Royal Palm deal had cost the government millions of dollars in lost revenue.'

But what the politicians have been doing with the country – comparison is needed. Referring to 'the News' dated 3rd November 2012:

'Pakistan Railways was wasting big amount of money annually in running and managing the Golf Course Lahore, which was in use of some elite class members who would pay Rs:12 per annum for 103 acres of land while after the new deal this course was earning Rs:40 million annually while the land and newly constructed building were the ownership of the department - documents submitted in the Supreme Court explained.'

A perception was purposefully propagated at the whims of the mighty elite who had been using this club for decades that "Lahore's prime land was converted into a gold club", whereas the fact remained that the same land was used by a select few. After the 2000 deal through Gen Qazi it was privatised and now being used by hundreds of members, bringing millions for the money-less railway. *A careful analysis of the record would reveal that this was a normal business deal at least much better than Privatization Commission deals done by politicians during their respective regimes.*

According to the documents submitted in the SC, in year 2000 the Railways was on the verge of collapse with Rs:20 billion debt of the State Bank and was facing an annual loss of Rs:2.5 billion. The lease of this Railway land started generating revenue of more than Rs:40 million per annum, the only

The Living History of Pakistan Vol-I

profit generating unit of Pakistan Railways so far, with construction of mega buildings and a golf course of international standard with everything owned by none else but the Pakistan Railways itself.

However, after this lease was signed the members of the old golf club, headed by former Railway Minister Ishaq Khakwani, who played golf at the expense of poor railway passengers, started maligning the railways authorities. Print media record shows that only one sided viewpoint has been appearing without the versions of other side.

Those old members had challenged the deal in Lahore High Court [LHC] where Justice Khalilur Rehman Ramday was the judge, who after hearing the initial arguments, addressed the petitioners with following observation;

"You should be ashamed before invoking the jurisdiction of this court. You were paying Rs:12 per annum and now Pakistan Railways will earn Rs:40 million per annum after this lease agreement."

The result was evident; the petitions were thrown out. Those members of the old club never turned up at the LHC again and Justice Ramday dismissed the petition on 4th May 2001.

The only major point used to mislead the public was that the total per annum income was much lower whereas the land was very precious and its market value was four to five times the amount agreed upon. This could be correct as if the land was allowed to be leased on commercial basis for best possible commercial purposes the income would have been in billions *but this land was marked and categorised as 'golf course land'* and it was supposed to be used as a golf course in any case and was not to be 'sold'; it was 'leased' so the ownership could remain with Pakistan Railways for ever. However, this very point was never explained in the media in detail and people were misled.

Gen Qazi's Railways management hired marketing professionals who got published an advertisement, requiring documents with previous experience. Following which four big companies had submitted their expression of interest *but only one Malaysian firm, Maxcorp, qualified* as it had relevant work experience and had offered the highest bid.

The firm had demanded at least 66 years instead of the announced 33 years and at least 140 acres of land instead of 103 acres be given to them so as to enable the firm to construct an international standard course. Thus with mutual agreement it was decided that Maxcorp would pay 10 percent

The Living History of Pakistan Vol-I

of gross annual revenue (10% of gross revenue and not merely of profit) and total time period was agreed on 49 years.

The firm made huge investments and erected international standard buildings along with a golf course comparable to any golf course of the world and which is owned by Pakistan Railways. There was also a second phase of this, which was agreed upon in the same agreement. The company was to construct a five-star hotel and was to pay 500,000 US dollars as commitment fee, Rs:40 million per year minimum guarantee with an escalation of 15 percent every three years.

A Senate standing committee however did visit the site and declared it a good deal. Public Accounts Committee also took up the matter in 2005 and all issues were settled after detailed briefing by the then Secretary Railways. However, vested interests continued to raise baseless objections, which halted the initiation of second phase of the project and thus deprived the railways of big revenues.

The foreign company after successful completion of this mega project completed golf course of DHA Karachi, Mangla Cantonment, Jacaranda Club Islamabad and also landed many big projects of international standard in Pakistan.

FRESH EFFORTS TO TAME ISI:

On 16th July 2012, to bring an end to the interference of the intelligence agencies in national politics, the Supreme Court of Pakistan declared illegal and 'void *ab initio*' the political cell of the ISI which had been frequently accused of 'engineering' the successive general elections in Pakistan – a symbolic decision it was. The Attorney General could not produce the notification under which the political wing of the ISI was established in May 1975 by the then PM Z A Bhutto; in fact there was nothing on file.

The decision was taken by a 3-judges bench headed by CJP Iftikhar M Chaudhry in an off - shoot petition launched in the back drop of AM Asghar Khan Case which had been with the SC since 1996. The details of Asghar Khan Case is available in Vol-I of this book and SC's judgment on that petition have been given in the previous pages of this volume.

The court order mentioned the disqualification of former PM Gilani, the apex court's judgment of 31st July 2009, followed by subsequent judg-

The Living History of Pakistan Vol-I

ments, making it abundantly clear that the affairs of the country would only be governed strictly under the constitution, with no interference from institutions other than those given powers under the constitution. Interestingly, a week earlier the President Zardari had urged his government to clip the wings of the ISI through parliamentary legislation.

A 19-page draft bill prepared by Senator Farhatullah Babar, the official spokesman of President Zardari, titled as Inter Services Intelligence Agency (Functions, Powers and Regulation) Act 2012, was not only aimed at disbanding the political wing of the ISI but also to make it fully accountable to the elected parliament and the prime minister. The bill was placed before the Senate on 9th July 2012 and was withdrawn on 12th July 2012 without any discussion or progress on it – reasons unknown.

Senator Babar had not obtained approval of the Special Committee of the PPP headed by Federal Minister for Law and Justice Farook H Naek. The four member committee also included Leader of the House Jehangir Badar and chief whip Senator Islamuddin Shaikh – Committee was there to wet and approve submission of the private drafts of the party members.

However, the proposed bill had evoked a fair amount of interest in the diplomatic community of western countries especially some important capitals across the Atlantic. Giving background of the proposed legislation, the bill stated:

“The absence of appropriate legislation regulating functioning, duties, powers and responsibilities of the agency is not consistent with the principles of the natural justice and accountability of authority and power, and has given rise to resentment against the premier national agency.”

It stated the ISI's DG should be a serving or retired civil servant or an armed forces official who would be appointed by the President on the recommendation of the Prime Minister. The ISI chief would hold office for four years. *“The agency shall be directly under the Prime Minister and not under any ministry,”* it stated.

The bill envisaged an Intelligence and Security Committee comprising nine members drawn from both Houses of the Parliament, none of whom shall be a minister or minister of state, to examine matters related to the expenditure, administration and policy of the ISI. The committee would not be allowed to go into the intelligence sources of the ISI.

The Living History of Pakistan Vol-I

The Prime Minister shall lay before the Parliament a copy of the annual report of the committee together with a statement on whether any matter has been excluded from it and why.

In the case of missing persons, the draft bill stated - the government had informed the Supreme Court that operations of intelligence agencies were beyond the control of the federal administration. It suggested that:

'The DG ISI may issue written orders for taking into preventive custody any person who is acting or has acted in furtherance of a terrorist act or in a manner prejudicial to the security of Pakistan.

The ISI chief should fix the period of custody, not exceeding [] days, in the order of preventive detention and this can be extended up to ninety days on special grounds. If a person is required for over ninety days, the ISI chief shall place the matter before a review board.

Under the proposed act, any employee of the ISI found in any way working for the enemy, any terrorist or terrorist organisation, or for any criminal or organised criminal group, shall, on conviction, be punished with imprisonment for a term that may extend to twenty five (25) years.

The employees of the ISI shall not be regarded as civil servants and a separate mode of taking disciplinary action against them for misconduct has been prescribed in the draft.

The bill recommends the appointment of an ombudsman by the President to independently and impartially address service complaints of employees of the ISI and any complaints of misuse of authority.'

The bill recommended internal accountability and a better discipline system within the ISI to put an end to enforced disappearances of civilians and victimisation of the political parties and their workers and leaders. It was a replica of '*State within State*' speech of 22nd December 2011 delivered by PM Gilani in the Parliament.

The opening speech held that the ISI became a powerful arm of the military regime under Gen Ziaul Haq during the Afghan *jehad* against the Soviet forces in Afghanistan during 1980s. After the death of Gen Zia, the then

The Living History of Pakistan Vol-I

DG ISI Lt Gen Hameed Gul had tried to stop Benazir Bhutto's PPP from sweeping into power through making of the IJI – it is on record.

In the past, the ISI used to act independently with its untied decisions but with the elevation Gen Kayani to the coveted slot of DG ISI and then to the army chief in 2008, opened the route for a complete merger of the ISI with GHQ of the Pak-Army. All the prime ministers in row had been aspiring to nominate the chief of the ISI but it remained a fruitless exercise.

Once Benazir Bhutto in her second stint during 1994-97 put her own choice, Gen (rtd) Shamas Kallu as ISI chief but was disappointed when the GHQ had withdrawn and shifted all operational files from the ISI to the MI, an intelligence body directly under GHQ. Since then no such exercise was put to practice.

DG ISI Gen Shuja Pasha [2009-2012], nominated by Gen Kayani, was given extensions in his tenure, allegedly making him to implicate the incumbent President Zardari in the infamous Memo-gate scam in 2011. In March 2012, Gen Pasha was not given extension because:

'.....[allegedly] he signed a secret contract with Gen Patreaus, the CIA Chief then, in Qatar in January 2012, giving green signal for the unchecked US drone attacks, allegedly keeping Gen Kayani, the Army Chief, in dark; whereas, after November 2011's Salala event, Gen Kayani was coming harsh on Americans in all fields including drone attack strategies.'

The PPP government once more tried to seize control of the ISI in their 3rd stint in 2008 by proposing its command and control in the interior ministry; notification was issued to that effect in ending July 2008, but the Interior Minister Rehman Malik had to withdraw that notification within three hours. However, the internal political wing of the ISI was 'officially' made non-effective and it is coming so on papers since then BUT practically it never ceased functioning.

Thus, despite being declared illegal by the Supreme Court, it is still there, doing its job as before – but just to keep record of persons and events.

Scenario 111

BREAKING PAKISTAN PLAN

Why the Chief of the Pak-Army Gen Raheel Sharif took the bold decision [in 2013 when he took his assignment] to face the menace of terrorism in Pakistan. Successive terrorist activities since a decade at least, in which his two forerunners [Gen Pervez Musharraf & Gen Kayani AND not the army as a whole] were named as innocent partners, had not only devastated Pakistan economically but was *nearly declared a 'failed state'* by the world's defence - media commentators.

To understand the phenomenon in true spirits, one may like to peep into the vicious plans designed by our 'friends' in recent past.

'US's BREAKING PAKISTAN' PLAN:

Dissident voices went on rising in Balochistan since about a decade. Tribal belt stayed disturbed as such since 2001 due to drone attacks from the US and power play by Pakistani and Afghan Taliban factions. Gilgit valley kept on bleeding in lawlessness triggered by sectarian game players. Karachi has been burning since 1990s and still the killing sprees were on, till the recent past at least, amidst a controlled atmosphere of '*bhatta*' [forceful extortion], '*bori-band*' bodies' culture, '*Qabza*' mafias and acute administrative lethargy on the part of state.

Pakistan was being pushed towards a dead end due to short sightedness of their political leaderships in succession. Did the country deserve so; read the following paragraphs based on open American Announcement of December 2009 [Published at *pakspectators.com* on 10th March 2012].

Quoting a few lines from an article titled 'Obama Declares War on Pakistan' written by *Webster G. Tarpley* on 11th December 2009 available on internet media:

The Living History of Pakistan Vol-I

'Obama's West Point speech of December 1 (2009) represents far more than the obvious brutal escalation in Afghanistan - it is nothing less than a declaration of all-out war by the United States against Pakistan. This is a brand-new war, a much wider war now targeting Pakistan, a country of 160 million people armed with nuclear weapons. In the process, Afghanistan is [also] scheduled to be broken up.

This is no longer the Bush - Cheney Afghan war we have known in the past. This is something immensely bigger: the attempt to destroy the Pakistani central government in Islamabad and to sink that country into a chaos of civil war, Balkanization, subdivision and general mayhem.

The chosen strategy is to massively export the Afghan civil war into Pakistan and beyond, fracturing Pakistan along ethnic lines. It is an oblique war and the United States and its associates in aggression are far too weak to attack directly. In this war, the Taliban are employed as US proxies. This aggression against Pakistan is Obama's attempt to wage the Great Game against the hub of Central Asia and Eurasia.'

[Referring to Obama's speech at West Point Academy New York on 1st December 2009 at the Cadet's passing out occasion of US army]

For a moment; leaving the mockery of 9/11 and Osama's killing in Abbottabad aside, let us contemplate that what were the real aims of dominating Pakistan from all the four corners. The war actually started long before when the Americans had planned to take over Iraq for oil and Pakistan because of having nuclear technology. On Iraq the US forces attacked in the garb of 'Mass Weapons' but for Pakistan they developed an idea of splitting the country through civil war.

The architect of this Pakistani civil war was Gen Stanley McChrystal of US Special Forces , who had organized the infamous network of US torture chambers in Iraq by successfully patronizing the Iraqi civil war of Sunnis versus Shiites, by creating 'al Qaeda in Iraq' under the pseudo command of a double agent Zarkawi.

Tarpley had rightly pointed out then that 'McChrystal's senior, Gen Petraeus, wants to be the new US Field Marshal' through CIA or otherwise and possibly the next US president. Both had gone home but left the bleak fu-

The Living History of Pakistan Vol-I

ture for the south western Asia as 2012-13 were the election years in Afghanistan and Pakistan both.

If the US scenario through 2010-11 is analysed, the things had started taking shape. See the map of the prevalent ethnic groups of Afghanistan, Pakistan, Iran, and India; these maps show only political borders which date back to the time of British imperialism. The main sects like Pashtun, Balochi, Kashmiri, Punjabi and Sindhi were purposefully divided in the above countries and then a new phenomenon on religious sectarian basis like *Sunnis, Shias, Deobandis, Ahl e hadiths* and many more was infused in them while settled in all areas.

From where the said groups get finances to live up lavishly and generously, the American government and especially the Jewish lobby injected huge funds to feed the imams of all sects equally and leaders through different ways but keeping themselves behind the curtain.

In the same essay, Webster Tarpley mentioned: Chris Matthews of MSNBC, a devoted associate of Obama, had pointed out that the US strategy as announced at West Point on 1st December 2009, 'very much resembles a Rube Goldberg mechanism. [He had described "al Qaeda" as the CIA's own terrorist squad.]' Even then, knowingly false and fabricated, it was then planned that:

'There are only few Al Qaeda fighters left in Afghanistan then why to concentrate US forces there rather than in Pakistan where Al Qaeda are present now, so our next target should be Pakistan and not Afghanistan.'

The innocent Pakistani people should have been able to grasp from the above that to conquer their country the US had first developed Al Qaeda ideology, trained certain people as their own brigades, equipped them with Indian / American arsenal, planted them in Afghanistan, then ordered to move into Pakistan to make out a case for the world that Pakistan harboured Al Qaeda so was being attacked. Pakistani leadership could not understand it hoping to brew more billions of dollars on one pretext or the other. Their ultimate fate was visibly bannered on the wall.

A Democratic Senator Russ Feingold of Wisconsin once asked (Ref: ABC TV) the then Chairman of the Joint Chiefs of Staff, Admiral Mullen, and (late) Mr Holbrooke that: *'if there is a risk that we build up troops in Afghanistan, that will push more extremists into Pakistan?' They couldn't deny it and next week the then PM Gilani had to reflect their concerns over the same. The Senator said in the television interview that:*

The Living History of Pakistan Vol-I

'Pakistan, in the border region near Afghanistan, is perhaps the epicentre [of global terrorism] although al Qaeda is operating all over the world, in Yemen, in Somalia, in northern Africa, affiliates in Southeast Asia. Why would we build up 100,000 or more troops in parts of Afghanistan, (pointing out towards) in Helmand Province? – [of course, to teach a lesson to Pakistan].'

There was no answer; obviously to control and try occupying Pakistan which had started happening then bit by bit; by and by.

In the above scenario, Pakistan should have pondered to formulate a national policy on the related issues. *After the event of Osama's killing there were three more drone attacks in the FATA area within the same week.* Even then Pakistanis were not in a mood to demonstrate a consensus as a nation.

Most of the population considered Osama as a foreign national, an illegal immigrant, as Pakistan's equal enemy due to whom 42000 civilians and 5000 army troops were sacrificed besides thousands of homes devastated but still there were some who had shown street power for him [Osama BL], taken out processions, offered *Namaz e Janaza* in absentia and enchanted slogans. Moreover, they felt pride in doing so. By what standards Osama was Pakistan's national hero leaving aside the Gen Hamid Gul's innocent wishes of *Islamization* of Afghanistan at the cost of Pakistani nationalism.

{What good Osama had done for Pakistan except giving a gift of £50million to Nawaz Sharif in 1986 to establish Mujahideen Training Camps in Punjab but, instead, were allegedly invested by him in buying properties in London on which multi-billion estate business of Hasan Nawaz was later established.}

What contribution Osama made for betterment of Pakistan beyond leaving behind two mixed generations of Uzbeks, Chechans and Afghani *Jehadis* in its tribal areas.

The real issue was of solidarity of Pakistan. No body thought for it as a nationalist. Pakistan should have confined to think that America had attacked it and was also looking for more such chances to ruin it. Pakistani leaders continued sleeping or unable to see across the wall though were overtly warned by President Obama on 1st December 2009 as cited in the first paragraph. Pakistan was gradually trapped and dragged into war unconsciously; later pushed towards the end scenes.

The Living History of Pakistan Vol-I

The US plans were not secret; they were banging South West Asian doors since long. Pakistan's brief - case political rulers should have kept their eyes open to read the banners on their walls around.

WHY US WANTED PAKISTAN'S BREAK:

Why was the United States so obsessed with the break-up of Pakistan?

First and the foremost reason; that Pakistan has been traditionally a strategic ally and economic partner of China. With the development of Gwadar port in Balochistan, Pakistan opted to function as an energy corridor linking the oil fields of Iran with the Chinese market. This provided China a guaranteed land - based oil supply not subject to Anglo - American naval superiority, while also cutting out the 12,000 mile tanker route around India and adjacent countries of Asia. Beijing had already done a deal with Tehran for China's pipeline project through Pakistan and Islamabad always welcomed China's participation.

The proposed pipeline from Gwadar to Chinese border in Pakistan's north was expected to bring \$200 million to \$500 million annually for Islamabad in transit fees alone. Blue print of the project was successfully worked out. Pakistan offered to China the shortest possible route to import oil from the Gulf countries, too; so China had agreed to finance the said pipeline project. Referring to the *ASIA TIMES* dated 27th May 2009:

'The Chinese have also proposed a refinery at Gwadar. Imports using the pipeline would allow Beijing to reduce the portion of its 80% oil shipped through the narrow Strait of Malacca. Islamabad had once announced the plans to extend its railway track from Gwadar to China.

Gwadar port had already been declared feasible as likely terminus of proposed multibillion - dollar gas pipelines reaching from the South Pars fields in Iran or from Qatar, and from the Daulatabad fields in Turkmenistan for export to world markets.'

The Anglo - American forces were hell-bent on stopping this normal and peaceful economic progress amongst the neighbouring states. They were successful in at least stopping the whole process during PPP's regime of Mr Zardari but one must hail the strategy of PML[N] government installed in

The Living History of Pakistan Vol-I

2013 which not only revived the previous plans but also took one step forward to launch adequate road links from Gwadar to Chinese borders.

Gen Raheel Shrif swiftly took the road project in hand and deployed 3200 Pak-Army personnel to start the project in hilly terrains of Northern Areas through Army's Engineering Corp and Frontier Works Org [FWO] on immediate basis.

Oil and natural gas pipelines from Iran across Pakistan and into China could carry energy resources into the Middle - Eastern Kingdoms and also to serve as conveyor belts for Chinese economic influence around. The said planning made Anglo - American dominion increasingly fragile in a part of the world which London and Washington had traditionally sought to control as their colonies. That was why since early 2009, US domestic propaganda started *portraying Pakistan as the home base of terrorism; sometimes as nearly 'failing state'.*

Another analysis of *30th December 2009* [available on media pages] had confirmed President Obama's vicious plans in the garb of new world order which he continued to preach amongst his associates.

A former NATO officer claimed that US Special Forces conducted secret raids inside Pakistan's border regions between 2003 and 2008, but only one was ever made public; that was of September 2008 which was condemned as a provocation by the Pak-Army. Most of those raids were done in Balochistan province, AND Baloch dissidents were told to blame the government in Islamabad for allowing these things to happen; thus US used to kill two birds with one stone. The NATO officer pointed out that:

"President Obama's West point speech of December One is a thinly veiled declaration of war against Pakistan in the sense that it announces the intent of the US to promote the dismemberment, the partition of Pakistan along ethnic lines and in order to do that you have to create trouble on the ground.

Ambassador Richard Holbrook, who is the US tsar for the region, was asked 'Do you have troops in Pakistan?' and he said 'The US has intelligence personnel in Pakistan but not troops'. And I would ask – What about the contractors, Mr Ambassador?"

Webster Tarpley's disclosed information published in '*The Nation*' and '*Vanity Fair*' magazines about Blackwater Select and Total Intelligence

The Living History of Pakistan Vol-I

Solutions having massive snatch and grab and even assassination operations carried out in Karachi, Pakistan's largest city, under the command of the US Joint Special Operations Command and CIA.

The Taliban refused to take responsibility for some explosions in public places in Pakistan and blamed the CIA for destabilizing the situation in the country through terror. It was held that:

"I guess from some points of view the golden age of Blackwater was perhaps not under Bush / Cheney but it is now under Obama; and they are running wild in ways they trample the sovereignty of Pakistan as a country."

The Pakistani people remember that these Blackwater mercenaries were issued Pakistani visas by the then Interior Minister Rehman Malik and Hussain Haqqani, Pakistan's envoy in Washington, without any security clearance. Some visa applications contained written 'President House Islamabad' as their place of stay in Pakistan. For details see *Judges & Generals in Pakistan Vol-IV*; Scenario 84 on Raymond Davis.

[Published at pakspectators.com on 10th March 2012]

PAK - ARMY DELEGATION HUMILIATED:

The journey of tense Pak-US relations had taken start soon after Obama's above referred speech of December 2009 but then

On 31st August 2010, Pakistan's military delegation was humiliated at Dulles International Airport of the United States, off loaded from plane, checked and rechecked before being cleared to proceed. The delegation had been invited by US military to visit CentCom (US Central Command). The visit was cancelled midway to protest against the alleged misbehaviour and the delegation was called back due to the harsh and humiliating treatment meted out to the Pakistani officers. The army delegation was boarding a flight from the Dulles Airport to attend a US Defence Department meeting at CentCom.

The said checking or search was not in routine nor was it required at all. The delegation maintained that they were interrogated and rudely treated by security officials at Airport. However, the cat came out of the bag [later] that:

The Living History of Pakistan Vol-I

'Once inside the United Airlines plane, one of the delegation members remarked that he hoped the flight might be his last flight.....their destiny. However, an attendant who overheard them mistook the officials for terrorists. The airport security staff was alerted, who off-loaded and questioned the Pakistani delegation and misbehaved with them.

The US Defence Department had apologised for the incident, but till then the delegation had decided to return home.'

The nine-member group of high-ranking Pakistani officers boarded United Airlines Flight 727 from Washington to Tampa late night but were pulled off the plane after one of them made above comments to a flight attendant; Mike Trevino, a United Airliner spokesman told. However, the Pakistani officials said the remark came from a General in the delegation who - weary of a long day of travel that began in Islamabad - said, *'I hope this is my last flight'*. That was just the routine conversation but the Airline staff took it other way round.

That sparked a call to Dulles law enforcement officials, who detained the delegation for about three hours and refused to allow the officials to contact their embassy or the US military officials who had invited them to visit.

The delegation members were finally released after police at Dulles determined they did not pose a threat. But instead of proceeding to Tampa, the delegation was ordered to return to Pakistan by their military command in Islamabad, in protest of their treatment. [*The US media sources later divulged that the Pakistani officials were 'verbally abused'*.] The group of officers spent the next 48 hours in Washington while waiting for the next available flight home.

The Pakistani officers were originally en route to US Central Command headquarters in Tampa to attend the annual conference of the US - Pakistan Military Consultative Committee, said Maj David Nevers of the US Central Command. Pakistani officials were later offered apologies from Pentagon and CentCom officials both.

One odd comment from the American media:

'Pakistani Military brass were in a civilized country US where every one is equal. Late Ted Kennedy, a well known US senator, was stopped several times at US airports for security checks; he simply followed the process and never complained. Army Generals, Minis-

The Living History of Pakistan Vol-I

ters and the politicians never go through security checks in Pakistan but they have a rude awakening when they are abroad where they have to abide by the rules of that country.'

The same media link also wrote: 'perhaps the officials [might be] humiliated because they were Muslims and especially from a rigid Islamic state like Pakistan'. Then the following event was quoted:

'In an Israeli cabinet meeting shortly after the 9/11 (False flag) "Terror" attacks, which benefited the State of Israel, Larry Silverstein's bank account and the Globalist agenda of stripping away our Constitutional rights with the absurdly - named 'Patriot' Act; Hebrew radio Kol Yisrael on Oct. 2, 2001, reported Shimon Perez cautioned Ariel Sharon not to upset Americans.

Reportedly, Sharon angrily boasted back to Perez: DON'T WORRY ABOUT AMERICAN PRESSURE ON ISRAEL. WE, THE JEWISH PEOPLE, CONTROL AMERICA, AND THE AMERICANS KNOW IT.'

Ruptured Pak-US relationship goes more tense

Washington and Islamabad had barely been on speaking terms since US forces killed Osama bin Laden on 2nd May 2011. But with American and NATO troops set to leave neighbouring Afghanistan soon after, nuclear-armed Pakistan had shown little motivation to improve relations; hatred of the US was growing in Pakistan.

Sheikh Rashid, 61, a veteran of Pakistani politics, six times MNA, served in several cabinet posts under PML(N) and Gen Musharraf from 2001 to 2008; lately founded his own party, the "Awami Muslim League Pakistan," had once formally declared *jihad* on America. For weeks, Sh Rashid had been going around the country with a travelling cavalcade of religious leadership, whipping up the masses into anger against United States.

The cavalcade consisted of the leaders of 44 religious groups who joined forces some years earlier to form the '*Pakistan Defence Council*'; Sh Rashid was amongst the moderate forces; unlike Hafiz Saeed, the old timer *aalim* [religious scholar]. The US government, for obvious reasons, had then announced a bounty of \$10 million for Hafiz Saeed's capture but he was just leading a normal life in Pakistan with no danger of arrest or capture from any side, neither from the public nor the state machinery. That bounty announcement appeared so amused for Saeed, who had promptly

The Living History of Pakistan Vol-I

called a press conference in Rawalpindi, where he openly joked about the bounty and said:

"I am here, and I am visible. America should give that reward money to me. I will be in Lahore tomorrow. America can contact me whenever it wants to. In my homeland I'm a hero, not a villain."

Pakistan was thrown into turmoil by the war in Afghanistan. Militant religious leaders had assumed cultural hegemony and went frenzied over the arrogance of the US superpower, its drone attacks in the border regions and the killing of Osama bin Laden in May 2011 – the general populace could not forget American's intrusion. Washington had not given the Pakistani government or military any advance notice, so as not to jeopardize the mission. The US humiliated its ally by showing its deep mistrust of Pakistan. The operations, known as '*Neptune's Spear*' & '*Geranimo*' created a rupture in relations between the US and Pakistan – still one can feel the cold wave.

The US armed forces and the Pak-Army always pretended to be working together, with diplomats and senior military officials of both countries travelling up and back; but for months, there had been a lack of communication between Gen James Mattis, Head of the US Central Command and in charge of the war in Afghanistan, and Gen Ashfaq Kayani, the Chief of the Pakistan Army. The Pakistani parliament, under President Zardari's instructions, once had named a committee to discuss new parameters for its new relationship with US but the matter could not gain importance.

The relationship went more sour when Pakistan refused to allow its territory to be used to transit NATO troops and ammunition in Afghanistan after November 2011's 'Salala Event', when NATO helicopters had [surely not] accidentally fired on two Pakistani border posts, killing 24 soldiers. Immediately after, NATO was forced to use a route through Central Asia, an extremely costly detour.

Later, when agreed to re-open the routes, Pakistan demanded a fee of \$1,500 for each container of food, fuel or military equipment that arrived at Karachi for onward transportation by truck to Kabul or Kandahar. NATO's only choice was to either accept the new price until its 2014 withdrawal or continue to use the Central Asian supply routes. The US had to accept the new price but got an exemption on tolls. *The US had not suffered much loss because nearly the same amount used to go in the pockets of corrupt Pakistani customs and police officials on duty en-route.*

The Living History of Pakistan Vol-I

In December 2011, an article in the well respected US magazine *The Atlantic* created a furore in both the countries. An essay titled "The Ally from Hell" started as:

'Pakistan lies. It is home to both radical jihadists and a large and growing nuclear arsenal. With a friend like this, who needs enemies?'

The twin authors described in detail how great the military's fear was that it could be deprived of its nuclear weapons and noted: *'the Pakistani generals' fears are not directed at al-Qaida, as one might assume, but the United States'*. According to *The Atlantic*, Pakistan's security apparatus saw the attack on Bin Laden as an indication *'that the US has developed the technical means to stage simultaneous raids on Pakistan's nuclear facilities.'*

The security measures Pakistan used to adopt to protect its arsenal were also noted. Most of the information given in the article was based on secret discussions between top brass of the two countries. Pakistan felt that the US Generals had deliberately leaked that classified information to some rogue US media-men.

The US machinery started pinching more; saying that:

'Pakistan is a nuclear power, but it's also a poor country that does little to alleviate poverty and illiteracy. About half of its 190 million people cannot read or write. Pakistan; if is a democracy, at least according to its constitution, it is terribly meaningful.'

In reality, feudalism forms the basis of society, and old families like the Bhutto clan still control the country, as they always have. President Asif Ali Zardari has been given a reprieve.'

He [Mr Zardari] is an accidental president, the widower of Benazir Bhutto, one of the most hated politicians in the country. His nickname from earlier days is "Mr. Ten Percent," because he was an investment minister in his wife's cabinet. He was convicted of corruption in 1999 and spent five years in prison.'

Pakistan was also cursed for its *Absurd Justice*; for decades, the justices were nothing more than the vicarious agents of the military, giving every coup a constitutional blessing - but they never got investigated President Zardari, and his old companions. Sometimes they tried to review the cases

The Living History of Pakistan Vol-I

that had come under the amnesty, involving millions of dollars that Zardari had allegedly laundered and deposited into Swiss bank accounts.

The judges could not harm Mr Zardari but turned to Prime Minister Yousuf Raza Gilani instead, ultimately sentenced the defendant Gilani to a prison term lasting only some minutes, because it was [symbolically] deemed served [*what inheritance the judiciary wanted to leave behind*].

In fact the relationship between Pakistan and US suffered from mutual suspicion from the start, as far back as 2003, which had only increased over the years. US Secretary of State Hillary Clinton had repeated her reprimand of the Pak-Army to go after the *Haqqani* network because, in NATO's assessment, that *Pashtun* clan of the Haqqanis, based in North Waziristan, was posing a serious threat to the US troops in Afghanistan.

The NATO held that seven simultaneous attacks in Kabul [killing 40 people] in mid-April 2012; suicide bombing killing 11 people shortly after Obama's unannounced visit to Afghanistan, 3 bombings in Pakistan's FATA killing 25 tribal elders, were all done allegedly by *Haqqani* Group.

From the perspective of the Pakistani Army, the US had planned to withdraw from Afghanistan by the end of 2014, thus Pakistan needed to keep all Afghan groups at all levels as 'equally important', including the Haqqani clan. Contrarily, the US, for its part, also wanted to retain its influence in the region after 2014 - but Pakistan was not affirming to become base for its operations any more; *hats off to Gen Raheel Sharif's stand*.

This was the upshot of a symbolic democratic conflict because in Pakistan, the civilian governments are either swept away in coups or forced to resign because of corruption.

GEN MUSHARRAF WAS LOUD ENOUGH:

Let us travel into the near past of US-Pak relations.

It was on official record and on media as well that the US government had given 10.65 billion dollars to Pakistan in the name of 'war on terror' [WOT] after 9/11 attacks on Trade Towers in 2001. (*Gen Musharraf had, however, admitted nine billion dollar's aid during this period: referring to his interview to French daily 'Le Figaro' on 12th January 2008*) Most of that aid was spent on agencies and their covert operations against

The Living History of Pakistan Vol-I

Taliban or Al-Qaeda. No audit or expenditure statement had been placed before the concerned '*audit party*' (not talking of media or general public) of the Pakistan's Parliament; thus presumed by the people that Pakistan's 'agencies' were run by the Americans while seeking priorities from US control rooms and serving the US chains of command.

Till about a decade earlier, India had been claiming that the intelligence agencies of Pakistan remained associated with the CIA and Pentagon and worked as their B teams to fulfil the operational requirements of United States in the Asian region. [*That is another fact that since the last decade that role has successfully been taken over by the Indian RAW and perhaps more vigorously.*]

See a 'tiny' news clip from Pakistan's press; the leaders of FATA Grand Alliance (*jirga*), in a press conference held at Peshawar Press Club *on 12th January 2008*, had directly warned the US government that they should refrain from interference in the border belt adjoining tribal areas of Pakistan. In open words the *jirga* had retaliated and vowed that:

'If the US forces are seen at our tribal borders, they would be taught such lesson that they will forget their defeat in Vietnam. They should remember that Pakistan's safety and solidarity is our priority'.

The above news item was viewed with much concern in an arena of some statements then floated by the US. The picture became more blurred when the American's unrest was excavated amidst their sayings that '*we are unable to get any reasonable accountability on this front (sending aid to Gen Musharraf on account of 'War on Terror') thus they are not satisfied*'. There was much hue and cry in US Senate and Congress and the then President Bush was asked to call the expenditure statement from Pakistan and the next instalment would only be issued after analysis and scrutiny of the aid previously supplied.

Before general elections of 2008 in America, most of the presidential candidates, particularly Obama and Hilary Clinton, had been launching their election campaigns on the basis of slogans carrying derogatory remarks against Pakistan. All Pakistanis were feeling embarrassed and depressed. The American candidates were openly saying that they would be sending US forces directly in the tribal areas of Pakistan to locate Osama and crush Taliban without permission of Pakistani government. Our Foreign Office seldom bothered to retaliate on the issue.

The Living History of Pakistan Vol-I

During January 2008, Gen Musharraf while releasing an interview to Daily 'Streets Times' of Singapore, first time opened his mind and mouth with sufficiently loud message that:

'If the NATO forces or the American troops entered Pakistani territory from Afghanistan, it will be treated an aggression by all means. If the American troops entered our tribal area on the pretext of searching Osama, it will be considered an open invasion. If the American forces did so without our permission, it will be taken as an act against our sovereignty.'

'If America understands that our forces or our intelligence are inactive there and the American troops would do a better job, it is false impression. I challenge them to come to our tribal mountains and they will definitely repent on their move.'

Gen Musharraf once more retaliated and tried to pay in the same coin while giving an interview to 'Le Figaro' of France and saying that:

'Do you think Pakistan would die if it didn't receive this money (US aid)? Our economy is doing well. Over the last 6 years, we have received a total of around 9 billion dollars. More than half for fighting terrorism ... If the Americans do not want to pay any more, they should ask other people to help them. But the fight against terrorism would suffer.'

On the allegations of 'not doing more', Gen Musharraf had said:

'How can one say that we are not doing enough? We are the only country to have arrested or eliminated from 600 to 700 members of Al-Qaida.' (Referring to an interview to Le-Figaro dated 12th January 08)

Would the US try to find out some other ally to cope with this situation, a question aroused amidst the above scenario of statements? Iran was already at their enemy list [then] and Mr Karzai in Afghanistan was not in a better position to help Americans at the borders where Karzai's forces themselves had no hold.

US never opted to launch a search for another ally; instead, they planned to pick it from our existing files and ranks. This time it was from within and was not a shrewd politician like Ms Benazir Bhutto to further the American cause, who would like to stand by them. No senior General had the capabil-

The Living History of Pakistan Vol-I

ity, sharpness and shrewdness to avail this chance, so they chose Mr Zardari to accomplish their theme.

In February 2008, the regime changed; history also changed its horses on the chess thus their tones also changed altogether - see what happened during those five years since then.