

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.

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. Interalia, 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 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.

*[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 discarded. 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 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 kickbacks 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 (retd) 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 Mirza. 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.

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.]
May 2010}

{Ref: the daily 'Dawn' of 8th

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.'

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.

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 immediately 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.