

Scenario 57

ON JUDGES & JUDICIARY IN PAKISTAN:

Munir A Malik, former President SC Bar Association was once asked [*when he had taken stand against Gen Musharraf on Justice Chaudhry's dismissal in March 2007*] that Benazir Bhutto and Nawaz Sharif both humiliated and attacked the judiciary in their second terms of power, but there was no massive movement then. What was different this time?

Munir Malik had replied that:

*'Historically, the judiciary [in Pakistan] has always been a collaborator with the ruling elite. **It has been the 'B' team of the army.** It retains the old, imperial mindset that it is there to serve the government. If a high court judge was called by the president, he would probably put on his best suit and take a camera with him; it would be an event for him to remember, that he has been summoned by the president or prime minister.*

*In a white paper published after 1977, Zulfikar Ali Bhutto in one of his side notes remarked, **'they [judges] will come to you for petty favours'; for a diplomatic passport, an admission for a child, a posting for a relative.....'***

Basically, the judges were part of the establishment, they had no moral credibility. You could sense that if there was a case involving the corp commanders or cantonment land, the judge would think that before the commander says something to me, I should oblige him. Such judges did not inspire public support.

*This time however, the media brought to our drawing rooms a man saying 'no' to the establishment, a man standing up to the military, saying **'I will not resign, I am innocent'**. So I think both the legal community and civil society felt they had to support him.'*

Judiciary in Pakistan remained mostly dormant. The higher judiciary seldom felt courage in initiating *suo moto* action against any influential functionary, private or government sponsored. In past it mostly remained subservient to the executive controls, whether there has been a political party in power or army dictator. History of Pakistan is replete with certain glaring examples.

Until it was suspended on 12th October 1999, the 1973 Constitution provided for an independent and impartial judiciary but this guarantee was immediately curtailed following the coup. On 14th October 1999 the military government issued a Provisional Constitution Order [PCO] which mandated that the judiciary would not issue "**any order against the Chief Executive or any person exercising powers or jurisdiction under his authority**".

The people of Pakistan were expecting that the apex judiciary would itself call a bench of available judges, might be in late hours of night, and would declare the said phrase 'unconstitutional' [*as they have been doing during CJP Sajjad Ali Shah's last days in November 1997 and also did later in the evening of 3rd November 2007*]. The Supreme Court was the custodian of the Constitution.

This order effectively insulated the military Government's actions from judicial scrutiny. The judiciary had to remain silent. But, on 26th January 2000, when the military rulers further in-

creased executive control over the judiciary through the promulgation of the '**Oath of Judges' Order 2000** (which required judges of all Superior Courts to take a new oath to Gen Musharraf's regime) the whole judiciary could have refused to take such derogatory oath but the game continued.

The American media termed it as infamous '*General Pervez Musharraf's Oath*'; 13 out of 17 judges, who were not invited to take this oath, were thrown out of the Supreme Court of Pakistan. The reports of the '**Information Times' dated 28th January 2000** had used highly objectionable language for this event by saying that:

'Pakistan Supreme Court judges took the GPMO on Wednesday January 26, 2000 in accordance with orders issued by Pakistan's Chief Executive and Army Chief Gen Pervez Musharraf and swore to work like judicial clerks under the ruling Military Regime'.

Moral and financial dishonesty are bad but the intellectual dishonesty is intolerable. It is recorded in Pakistan's history as to if the Judges tried to restore the lost honour of Judiciary by declaring Martial Law illegal and Law of Necessity as immoral but *That had usually happened after the departure of every Military Regime and Military Dictator.*

Since 1988 till 1999, certain people like Habib Wahabul Khairi, M D Tahir and Al-Jihad Trust had allegedly blackmailed every civilian government in the name of 'Judicial Activism'. Whether it was true or not, the critics held that they had been doing so at the behest of their paymasters in the Pakistan Army. Facts and verifications are needed.

Another disappointment; that the first petition challenging illegality of the military coup of 12th October 1999 was filed in November 1999. On 12th May 2000 the Supreme Court, reconstituted by the military executive, unanimously rejected the petition, and endorsed the coup's legitimacy under the doctrine of State necessity, thus losing their own integrity in the eyes of general populace of Pakistan. Similarly:

'On 13th April 2005 the judiciary was blamed and more severely cursed by the people of Pakistan because on that day the Supreme Court had dismissed all petitions challenging the 17th constitutional amendment and the dual office of Gen Musharraf; the present incumbent Chief Justice Iftikhar M Chaudhry was the part of that bench.'

MAKING ANTI-TERRORIST COURTS:

Going a little earlier; the general public once hailed the decisions taken on merits only, irrespective of the fact that the ruling executive authority was on the loosing end. For example; PM Nawaz Sharif enacted the Anti-Terrorist Act (ATA) in August 1997 to "*provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto*".

Eleven courts were then set up under the ATA in Punjab and presiding judges for these were appointed after consultation with the Chief Justice of the Lahore High Court. In May 1999 several courts were set up in Karachi. Irony of fate was that many of such courts were presided by serving military officers as judges.

[A life time tragedy was that Nawaz Sharif himself was tried by one of the same ATA courts constituted in Karachi.]

In May 1998, the Supreme Court ruled that a number of provisions of the ATA were unconstitutional. These provisions were concerning the lack of appeal in Anti-Terrorist Courts, the far reaching powers of police, and right of the police to shoot & kill. On a similar occasion the public unanimously hailed the Supreme Court of Pakistan and its realistic decision when two people were sentenced to death by a Military Court in Karachi in November 1998. The

Supreme Court had decided in January 1999 to halt their executions pending the review of legality of the establishment of these Military Courts.

In February 1999, the Supreme Court gave a ruling unanimously that the establishment of the Military Courts in Karachi were "*unconstitutional, without lawful authority and of no legal effect*" and that the pending cases should be transferred to regular courts. The Anti-Terrorism Act was also amended accordingly.

The idea of curbing the terrorist trends based on sectarian affiliations was appreciable in fact; the intelligentsia had also hailed the step of Nawaz Sharif but the related law was not perfect. The law should have given the 'powers of summary trials' to specified Session Judges of regular cadre to meet that program. The Supreme Court had finished those courts but could not give alternative remedy to end centuries old slow trials by normal courts.

However, this decision changed the path of history in Pakistan. In the past, whenever there has been a military government, whether they came up through coup or malicious transfer of power, the first step adopted by the ruler used to be the establishment of military courts and tribunals generally without cogent provisions of appeals before the higher courts. In 1997 the situation was different and disgusting.

This time there was no military ruler to constitute the military courts. It was the PML(N), which had assumed power after having two third majority public vote in general elections of 1997. *A hard luck for Pakistani people that a democratic Prime Minister had ordered for establishment of Military Courts to rule them.*

This decision from the Supreme Court of Pakistan blocked the way of Gen Musharraf to make an announcement of military courts when he took reigns of the country in hands on 12th October 1999. Nevertheless the General made his way through by assigning extra powers to the then existing *Ehtesab Bureau* through amendments in law and changing the name of that establishment to '*National Accountability Bureau*' (NAB).

The NAB did more than the (would be) military courts for the dictator and brought most of the political heads to his knees through coercion, threats of arrest, harassments, illegal custodies without any charges and baseless references (the practice continued till March 2009 at least). Joint teams of ISI and NAB then negotiated with characterless and allegedly corrupt politicians to help the military ruler announcing so called political approvals and consents but the judiciary remained silent over the whole process of this '*militarized trading*'.

In October 2000, a report detailing hundreds of *killings in "police encounters"* since 1990 was presented to the then Punjab provincial government for further investigation. Some 967 criminal suspects were reportedly killed in various police encounters between February 1997 and October 1999 in Punjab. The people generally praised the step which was an indirect slap on the judiciary's face; showing mistrust in the judicial proceedings and ultimately letting off the hardened criminals because of 'lack of evidence' defined under colonial rule of 19th century but still prevailing in Pakistan.

During this period Shahbaz Sharif was the Chief Minister of Punjab and the head of provincial government. All the extra-judicial killings were carried out apparently with his prior approval. It was an explicit demonstration of miss-trust over the judiciary and open defiance of judicial institutions. As per Police Rules, in Pakistan's administrative set up there are provisions that each death in police custody and each death in police encounter would be independently enquired into through a 'judicial enquiry' conducted under the supervision of District Magistrate. Though some judicial enquiries were also held but there was no significant complaint whatsoever.

Because those killings were ordered or closely supervised by the Chief Executive of the province, Shahbaz Sharif, a political uproar was seen but due to ineptness of judiciary, it was all tolerated. Every killing was reported in media and the political stalwarts from the respective districts had also raised their cries in this respect. The federal government did not respond

because firstly, the then Prime Minister Nawaz Sharif was the real elder brother of the then CM. Secondly, the laws and judiciary both were weak [and still going so].

Judiciary never came up with suggestions to make out or amend the 150 years old laws through calling a body of retired judges or jurists or bars or through their Judicial Academy, or through guiding the Law Ministry or suggesting governments to make commissions or parliamentary boards during the last 63 years; so the people were denied speedy justice.

'Honour killings' (the tradition of punishing women who allegedly bring dishonour to their families) is another area where the educated populace of Pakistan has been expecting vocal stand by the state and the higher judiciary both. This black act is prohibited under Pakistani law; however, the practice has ever been *de facto* tolerated by successive governments and even today, we read and listen news of honour killing in media almost daily. Southern Punjab, Balochistan and Rural Sindh are known for these extra-judicial killings.

In April 2001, Pakistan's upper house, the Senate, had rejected a bill condemning the growing incidence of honour killings. The Senate had not even considered discussing the issue of honour killings by blocking a draft resolution condemning violence against women. It is on record of the house that two tribal Chiefs, who were representing Baluchistan in the Senate, had expressed their views in a sentimental way urging that 'this act of **Honour killing is their tradition and it cannot be abandoned**'. Even higher courts could not take any notice of this tradition effectively since 63 years.

Gen Musharraf's Government had also made various declarations of intent against honour killings but to the extent of slogans only. The political will to combat this practice had always been lacking but the judiciary have never taken a serious notice of any such news published in the newspapers except *suo moto* notices in one or two events but that too, without any cogent result to make mention of it.

BENAZIR BHUTTO'S VISION OF JUSTICE:

After landing in Pakistan on 18th October 2007, Benazir Bhutto was much concerned about judiciary, judicial crisis, Lawyer's agitations and boycotts of the courts etc then going on in Pakistan since about a year. This had paralyzed day to day life of her country. Pakistan was notoriously known in the world for its in-effective judicial procedures, lengthy hearings, corrupt and ineligible judges and their remarkable judgments always suitable to the sitting governments or military dictators.

Even then Ms Bhutto, endured it wishing for better tomorrow; she herself had been victim of that inept judicial system which had pushed them into exile for about a decade.

In a meeting with Nawaz Sharif, which was convened in London in May 2006 and '*Meesaq e Jamhooriyat*' was signed, Benazir Bhutto had discussed judicial atrocities with him at length and they promised with the nation that they would leave no stone unturned to make institutions free of political pressures especially the judiciary. Ms Bhutto personally was not happy with judiciary on various counts like:

- In 1979, Z A Bhutto was judicially murdered by Maulvi Mushtaq, the then Chief of Lahore High Court (he does not deserve to be called as Mr Justice; a stigma on judiciary) subsequently endorsed by the then CJP Anwar ul Haq, another stooge in military hands.
- In 1985, Benazir's brother Shahnawaz Bhutto was murdered in Cannes city of France through his Afghani wife named Rehana as a result of conspiracy hatched by Gen Ziaul Haq. Bhutto family could do nothing being not in power.
- In September 1996, Benazir's brother Murtaza Bhutto was allegedly targeted by 'agencies' in association with or more precisely on the instructions the then President Farooq Leghari, the trial court later closed the case declaring 'not proved'.

- During Nawaz Sharif's regime, Chief Justice Lahore High Court (namely Rashid Aziz) and judge Qayyum Malik used to take directions from Saif ur Rehman, the then chief of *Ehtesab* Bureau. The said judge had announced decision against both, Benazir Bhutto and Zardari, which was dictated to them on phone.

Their conversations were tape-recorded and ultimately they both had to resign from their seats in 2001 because those tapes were procured and got their scripts published in '*The Sunday Times*' of London.

- These courts and judges kept Zardari in jails for eight years. They could not dare to announce even a single judgment against him on the charges of corruption [*though the corruption details were available with media*]. They were not courageous enough to even decide matters of bail on merit.

Those were the judges who used to ask the Deputy Commissioners for latest instructions from 'high ups'. They did not grant him bail in two cases unless they were not sure that the police was waiting outside the court with a fresh case registered against him.

- The judiciary of Pakistan had also given decision against Bhuttos in '*Nusrat Bhutto vs Pakistan case*' endorsing Martial Law of 1977.

There were many more examples. In Pakistan, the laws have been applied in a different way for higher status people and the under privileged; still the same system prevails. Rich, influential, or politically connected people are never sent to jails and only poor populace are awarded punishments by Pakistani mighty courts. This practice is going on since half a century; one can dig out that:

- How many big politicians, industrialists and feudal lords have been taking loans from banks especially from Agricultural Development Bank of Pakistan, Industrial Development Bank of Pakistan, National bank of Pakistan and others and how many have paid them back.

How much bank loans were condoned by Gen Ziaul Haq in 1980s, Nawaz Sharif in 1997, Gen Musharraf in 1999 and then PM Shaukat Aziz during his tenure? The condoners and beneficiaries were culprits in the eyes of law but did the judiciary have ever taken the cases seriously.

[The Supreme Court had initiated a suo moto action in 2009 against the loan defaulters since 1971, with high trumpeting strictures but proved to be an 'eye wash'; hats off to the 'independent judiciary'.]

- How many women have been killed or buried alive in events of *KaroKari* and honour killings in Sindh, Baluchistan, and southern Punjab. The judiciary has seldom taken notice of any event (though most of them are published) because they are unable to punish the feudal lords and tribal chiefs behind the curtain.
- How many cases of narcotics trafficking have been caught in the last 60 years? Has any drug lord been punished; is any one in jail now or has been.
- How many *Qabza* cases have been reported during the last 60 years? How many *Qabza* group leaders have been punished so far? Is there any one behind bars?
- How many industrialists or business tycoons have been punished by the courts that have been found guilty of taking false claims of customs rebate, excise duty, or income tax during the last 60 years?

One would find that all cases reported under the above heads had been heard by our courts and might be punished at times but the jails are filled by those poor people who had been associated with these tycoons as their drivers, carriers, clerks, supervisory managers, *patwaris* and security guards. Is it justice which our judiciary delivers daily?

Benazir Bhutto, when came in power in ending 1988, did not initiate criminal proceedings against those who had conspired for hanging of his father, Mr Bhutto. When Gen Ziaul Haq snatched PPP's government in July 1977 and developed a conspiracy to kill Mr Bhutto, it was the judiciary who came forward to accomplish his plans.

Anwarul Haq, the then CJP and A K Brohi advocate used to visit Gen Ziaul Haq daily to talk about day to day proceedings in the Court and in chatting moods. The decision of hanging Z A Bhutto was also taken in those informal meetings.

Later, Gen Ziaul Haq himself once told Gen Zamin Naqvi and Dr Qadeer Khan (of Kahoota Nuclear Plant) that Anwarul Haq and Brohi used to visit him daily to assure that:

'The job (of hanging Bhutto) would be done according to your wishes and the courts would not give decisions against your will'.

Justice Naseem Hasan Shah, former Chief Justice of the Supreme Court, himself had admitted on Pakistan TV in 1996 that there was a tremendous pressure on the judges to sign death penalty for Z A Bhutto though he was not guilty of such major punishment.

The same inept and hopeless attitude was shown by our judiciary when they approved the PCO of Gen Musharraf in 2000 and confirmed that the military dictator had done the right. Some of the judges of that bench were the same as sitting in the Supreme Court today with the change that then its Chief was Irshad Hasan Khan.

It was a planned and negotiated deal; Justice Irshad Hasan Khan had announced that decision only to get a slot as Chief Election Commissioner of Pakistan which he got immediately after his retirement. ***In Pakistan, the superior judiciary has been believing in bargains and negotiations; keep it noted, though never for financial gains.***

CIVIL SOCIETY FOR IND JUDICIARY:

Often questions are asked about the 'emergence of **'Civil Society'**'; how **'Lawyers Movement'** started in 2007; how scheme of **'Independent judiciary'** was developed in contemporary history of Pakistan.

Taking light from ***Harvard Law Review [2010] Vol 123, Page 1712-18***; one can recall that as defunct CJ Iftikhar Chaudhry's case continued [in 2007] before the Supreme Judicial Council [SJC], J Chaudhry developed an idea of giving a call for judicial independence to the Pakistani people. He assembled a defence team of Pakistan's well-regarded attorneys, and embarked on a country tour speaking before local bar associations. In his speeches, J Chaudhry mostly discussed the reimbursement and benefits of judicial independence.

J Chaudhry's motorcade soon attracted large crowds, and inspired them often to the level of revolt. The lawyers eventually began accepting the support of other civil society groups. For example, lawyers in Lahore started meeting every week at the Lahore High Court with representatives from professional trade bodies and political parties and labour unions to plan protest activities. One could recall the eagerness of such groups to participate saying: *'Why didn't you call us sooner?'*

Thus the groups of doctors, engineers, professors, religious scholars, traders, and political party workers were showing up in force to support the lawyers at their weekly rallies. In addition, urban professional and student groups formed their own factions but towards a common goal.

One Ghazala Minallah explained how a protest group known simply as **"Civil Society"** grew out of a letter to a newspaper editor she sent shortly after the sacking of the Chief Justice:

'In response to that letter I got quite a few emails. . . . my dentist in Islamabad . . . gave me a phone call, "Okay great that you wrote this letter. . . . Are we just going to sit at home and watch what happens next on the news?" . . . We mutually agreed that we'd send out SMS messages to all our contacts, and tell them to forward it to everyone else, saying, "Let's meet in front of the Supreme Court at a fixed time."

That was the beginning. It was amazing turnout on that first day.'

During those early months of the lawyers' movement, J Chaudhry convinced many Pakistanis that at least one prominent jurist was willing, if not yet able, to serve as a watchdog against governmental abuses. When Justice Ramday's SC bench quashed the reference against J Chaudhry and reinstated him as Chief Justice **on 20th July 2007**, the legal community, and much of the public, rejoiced.

On 3rd November 2007, the SC was on the verge of ruling [*it was a general perception then; based on media discussions*] on the validity of Gen Musharraf's re-election as President when he suspended the constitution and declared emergency. 63 out of 95 judges of higher judiciary were sent home; many of them had refused to take new oath themselves.

After the imposition of emergency rule, the lawyers began to cooperate more directly with opposition parties. Protests became much larger and more diverse as a result. In addition, new protest groups emerged and came to include not only secular urban elites, but also some poorer and more religious Pakistanis. According to Minallah, *"It was a very interesting mixture. It was from every class. . . . Even people from the religious political parties . . . would be [protesting] with us outside the Supreme Court."* Gen Musharraf had to end emergency rule in December 2007 under intense international pressure and continued protests.

Jumping to the days after general elections of 2008, taking over of PPP, Gen Musharraf's exit and taking over of President Zardari; J Chaudhry's team was not yet reinstated despite numerous promises and back-outs. Lawyers protests moved by and by on slow pace though continued through the fall and winter of 2008; the movement appeared to lose its momentum or it was being reported so.

Protests began to swell once again in early 2009, only after Zardari attempted to sideline Nawaz Sharif of PML(N) by declaring Governor Rule in Punjab. Shortly thereafter, the (CJ Dogar's) Supreme Court issued a ruling declaring Sharifs ineligible to run for office. In response, the lawyers planned a massive protest in cooperation with PML(N) and a number of opposition parties, promising to stage a sit-in in the capital Islamabad, until J Chaudhry and his team was restored.

With the Pakistani government seemingly on the verge of collapse, a last-minute flurry of negotiations led Zardari, to reinstate the deposed judges, including J Chaudhry, on 16th March 2009.

[Complete details are given elsewhere in this Volume-III]

So, in Pakistan it is there, the concept of **CIVIL SOCIETY & INDEPENDENT** Judiciary originated from.

JUSTICE CHAUDHRY IN SADDLES AGAIN:

It was, no doubt, 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 J Chaudhry, the deposed judge. President Zardari was not inclined to reinstate Justice Chaudhry because he had certain reservations.

On 9th March 2007, the Chief justice Chaudhry 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 sub-servient judiciary as the others were, for example;

- Justice Iftikhar M Chaudhry was one of those judges who took oath on PCO in January 2000 allegedly betraying his Chief Justice Saeeduz Zaman Siddiqui and others.
- J Chaudhry was also one of those who did not consider Mr Zardari's bail petitions for years because he was an 'upright' judge in Gen Musharraf's books.
- On 11th February 2001, former Prime Minister Gillani was imprisoned in Adiala Jail by a military court instituted under Gen Musharraf on charges of corruption; released on 7th October 2006. The SC could have either declared the case false or had barred Mr Gilani to contest next elections of 2008. The CJP of the SC kept silent.

[*However, on 3rd August 2007, a three-member bench of the Supreme Court under CJ Iftikhar Chaudhry granted bail to Javed Hashmi after serving approximately three and a half years in prison. Javed Hashmi was given 23 years imprisonment in a trial held in Adiala Jail Rawalpindi on charges of 'mutiny'*]

- J Chaudhry was the judge who had thrown out petition from a citizen challenging the house arrest of Dr Abdul 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 military government.
- J Chaudhry was on the apex court strength when three of the politicians named Neelofar Bakhtiar, Aftab Sherpao and Faisal Saleh Hayat, being equal culprits like so many others in *Ehtesab* files, were picked and raised to the level of federal ministers whereas others were made to lead miserable lives in jails.

Under the LFO Gen Musharraf announced amendments to the constitution which restored executive powers to the President, including Art 58(2)(b), the right to dismiss the National Assembly, appoint Governors and Service Chiefs and created a National Security Council (NSC).

After the **general elections of 10th October 2002**, PML(Q) and the MMA, an alliance of religious parties, emerged as the prime benefactors. In December 2003, the two parties in the Parliament, in association with certain independent members, gathered the two-third majority required to pass the 17th Constitutional Amendment which had validated almost all the previous unconstitutional military actions including the revival of Art 58(2)(b), the presidential power to dismiss the parliament.

Gen Musharraf later garnered a simple majority to pass the 'President to Hold Another Office Act 2004' (PHAA), vehemently denying the constitutional provisions in allowing him to retain the portfolio of the Army Chief in addition to the office of the President.

- **On 13th April 2005** [as has been mentioned earlier], in the *Pakistan Lawyers Forum* case, again a five member bench of the Supreme Court of which *Justice Iftikhar M Chaudhry was a member*, had validated both the 17th Amendment and the PHAA, based on an extension of the doctrine of state necessity.

In legitimizing the powers of the military and executive over the Parliament, this case further strengthened the popular perception of the subservience of the Supreme Court to the military regime.

However, luck favoured Justice Iftikhar Chaudhry because PPP's Aitzaz Hassan and Nawaz Sharif suddenly jumped forward to raise him up [*and later Sharifs got him en-cashed, too*]. Contrarily how Nawaz Sharif could forget that the same courts of Pakistan had announced for him fourteen years jail twice in plane-hijacking case. How Nawaz Sharif could turn a blind eye to the fact that his PML(N)'s Acting President, Javid Hashmi was sent to jail for 23 years on a false case by the same judicial system.

Leaving it aside, one should admire Nawaz Sharif's political wisdom that he picked a slogan of reinstating Justice Chaudhry and his team back to 3rd November 2007's position. The PPP also used this issue as catch-phrase but either the PPP went a bit late or their voice remained at low pitch. Meetings of Zardari with Nawaz Sharif at Murree and Dubai 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.

PPP's advisors [*allegedly Farooq Naek and Rehman Malik, as per media claims*] betrayed the PPP and the strategy coined by them in this issue had not succeeded to get desired results. Mr Naek had approached and negotiated with certain judges of Justice Chaudhry's team, made them to join again as fresh entrants in judiciary but this technique had not demonstrated positive achievements because:

- Firstly Farooq Naek's invitation and some judge's acceptance would have proved that those judges were totally characterless, bland, and insipid. They were not having any commitment for the cause of justice and any ruler could dictate them any decision; their conscious was rotten, dead, or nearly dead.
- Secondly they would have been known as 'ready to work as judges but as an uninspiring lot and without courage'. They would not be loyal even to Mr Zardari or PM Gilani's government rather they would be at a look out to harm PPP and Mr Zardari's colleagues whenever a chance cropped up.
- Thirdly, how could they agree to Naek's proposal because they were like snakes whose tails were crushed by PPP's promises during the last nine months [till then]. They were, in fact, ready to attack and bite PPP as they were themselves hurt.
- Fourthly PML(N) had withdrawn their ministers from the cabinet in mid 2008. They were looking for a chance to attack politically on Mr Zardari and the PPP. Much weak that judiciary was, so there were all possibilities that those newly re-recruited judges would be exploited by the PML(N).

In fact, the PPP were going to create a circle of enemies in the judiciary in the form of those 'already disturbed' judges.

Pakistani people keep a short memory. They forget that once; in November 1997, the Supreme Court was raided and ransacked by a crowd loaded on thirty buses, sent from Lahore, carrying explicit instructions from the PML(N) leaders.

What the apex court did then. Case was heard; MsNA were identified; videos were displayed as evidence; news reporters were extensively examined in the court; lengthy hearings held and then the case was suddenly closed by Justice Nasir Aslam Zahid's bench on some pretext because the sitting MsNA were on the front. However, police officers like IGP, SSP and DSP were bullied enough and punished instead; ***Pak-Judiciary Zindabad.***

Moreover, in the same apex court, in October 2007, serving police officers, mostly in uniform, were called and confronted with contempt of court charges, and were subsequently punished up to one month's jail though they all had tendered unconditional apology before the court.

Why so because the Chief Justice Iftikhar Chaudhry himself was allegedly manhandled on 9th March 2007; *bechari* police. The court had no waters to call the persons of authority who had ordered the police to manhandle, because they were khakis, so the Supreme Court won the award of bravery by punishing IGP, SSP and DSP of Islamabad Police. This was the way our judiciary used to settle their ego scores.

The same attitude was shown by the Supreme Court in Mehran Bank case where a retired Army Chief Mirza Aslam Beg had appeared in the said Court, openly got recorded his statement that he had ordered to snatch 140 million rupees from Mr Younus Habib, President of Mehran Bank, to be used by ISI as a secret fund in 1990. Gen Beg had also confessed that the money was used in elections to obstruct the possible win of PPP.

Gen Beg had given statement that their strategy was successful and consequently PML(N) had manoeuvred to win because it was then a pro-establishment political party.

Did Mr Beg or anyone else got punishment then. No; because Waseem Sajjad was immediately sent to the Supreme Court to dictate decision. The then sitting bench did sign it only.

In 2012, the SC had [*in Asghar Khan Case*] given judgment against Gen Beg on the same pretext; then was the Executive's turn to show their muscles, but nothing happened as usual.

This is Pakistani justice and these are our courts but it has a long history too, to recall:

- **On 21st March 1955**, Chief Justice Muhammad Munir of the Federal Court (the present Supreme Court of Pakistan) legalized the dissolution of the 1st Constituent Assembly. Only Justice A R Cornelius (a non-Muslim) of the Federal Court dissented.
- Once again, **on 6-7th October 1958**, the same Chief Justice called Iskander Mirza's dissolution of the 2nd Constituent Assembly & abrogation of 1956's Constitution, a 'legalized illegality'.
- **On 7th & 20th April 1972**, The Supreme Court of Pakistan declared Yahya Khan's martial law to be illegal but the bench was so 'courageous' that the decision was announced four months after the departure of that army ruler.
- **On 22nd September 1977**, Yaqub Ali Khan, the then Chief Justice of Pakistan, was forced to retire because he had dared to accept Begum Nusrat Bhutto's petition (against Gen Zia's illegal take over and arrest of Z A Bhutto) for hearing just three days earlier i.e on 19th September 1977.

Next day Anwar-ul-Haq, an officer of Administrative Cadre, a person who also lacked adequate judicial training, was appointed as the Chief Justice of Pakistan. So on 10th November 1977, the Supreme Court unanimously validated imposition of martial law over the country relying upon the 'doctrine of necessity' under that able Chief justice.

- **On 5th November 1996**, President Farooq Leghari dissolved National Assembly and dismissed PPP's government. When challenged this dissolution order, the Supreme Court initially returned Benazir Bhutto's petition with flimsy and insubstantial objections but finally admitted.

[See details of Mr Leghari's orders at the end of this chapter]

On 29th January 1997, the Supreme Court upheld Farooq Leghari's order dissolving the National Assembly and dismissing PPP's claims. These were the same judges who used to lick Mr Zardari's feet just three months earlier.

- **On 3rd November 2007**, Gen Musharraf announced 'emergency' and played the same old trick of PCO oaths for High Court and Supreme Court judges. The judges were not able to unite themselves to say NO to an unconstitutional order. Out of 94 judges, 60 judges declined to take oath under that PCO, rest of the 34 survived and continued as such.
- **On 21st November 2007**, Gen Musharraf did numerous changes in the constitution issuing an executive order only. On the very next day (22nd November 2007), the new Supreme Court rejected a petition in which Gen Musharraf's competency to contest president's election was challenged. Next day again (23rd November 2007), that puppet SC validated all the orders issued under the hand of Gen Musharraf including *Emergency*.
- **On 14th December 2007**, Gen Musharraf issued another executive order by virtue of which six more amendments in the constitution were done; the Supreme Court remained mum and silent.

- **On 14th February 2008**, the Supreme Court issued about 100 pages detailed decision of November's various announced short judgments.

One Tikka M Iqbal deposited a review petition on the same day. In a swift reaction, it was accepted and on the same day a 13 member's bench was constituted to deal with this review petition. Same day notices to the parties were issued to appear next day. It was purposefully done to strengthen the earlier decision taken in that context.

- **On 15th November 2008**, the 13 member bench of the Supreme Court announced to reject the review petition and upheld the validation of Gen Musharraf's executive orders for amendments in the constitution.

Never mind; the same judiciary ultimately held the flags of honesty and consciousness; slaughtered the 'wrong doer' and PCOed judges forgetting that once they were also amongst the same team, rather gone through alike privileged moments twice.

In the last week of July 2009, one Pakistani TV anchorperson Ms Aysha Tammy Haq was accusing Gen Musharraf in her program and then she suddenly asked that: **'Is there any country in the world where 60 judges are dismissed overnight** [referring to 3rd November 2007's Emergency probably]?' Next day one Shams Z Abbas sent an interesting questionnaire for her through a Dubai based internet media. Let us share some of the questions.

- "Is there any other country in the world where you don't need to pay lawyers when the Judges are available to the highest bidder?"
- Is there any other country in the world where a reference is filed against a Chief Justice [*CJP Iftikhar Chaudhry's turmoil of 2007 referred*] accusing him of serious allegations, of getting undue personal favours for his son, but his fellow judges decide not to hear the reference to protect him?
- Is there any country in the world where a "Saeeduzzaman Siddiqi bench" is constituted to dismiss a sitting honorable Chief Justice namely Sajjad Ali Shah against whom there was no reference, simply because the prime minister [*Nawaz Sharif*] of the day wanted the judges to wage a 'Judges vs. Judges' battle?
- Is there any country in the world where a Supreme Court is physically attacked [*episode of 28th November 1997 is referred*] and the judges seek help from the Army which is denied [*Gen Jehangir Karamat's reply is referred*]?
- Is there any country in the world where the same leader becomes the torch bearer of a movement to restore a Chief Justice against whom office he had earlier ordered to attack the Supreme Court [*16th March 2009's Long March is referred*].
- Is there any country in the World where Maulana Aziz and Sufi Mohammad arrested by the law enforcing agencies are released by the judiciary to avoid attacks on its judges?
- Is there any country in the world where actions of Red Mosque operatives challenging the writ of the State are condoned without any answers to law & justice; where were the courts?
- Is there any country in the world where the people are so disgusted with their Judiciary that they want Islamic Sharia, as in Swat, which was then approved overnight by the Parliament?
- Is there any country in the world where the judiciary passes judgment for a serving army General to contest elections for presidency [*SC's shameful judgment of 28th September 2007 is referred*]?
- Is there any country in the world where a National Reconciliation Ordinance (NRO) is performed issued because the NAB & judiciary could not decide the cases even in ten years?

I dedicate this article to the Pakistani middle and lower classes, the prisoners and litigants whose cases would never be decided in their lifetime; thanks to these judges and lawyers. (Shams Z. Abbass through www.Ahmedqureshi.com)"

May God The Almighty, give our judiciary enough strength to avoid such pinching [but factual] questions from ordinary citizens.

PRESIDENT LEGHARI'S ORDER [1996]:

Referring to a thought provoking column of [late] Ardeshir Cowasjee appeared in **Dawn of 8th June 2001** and a subsequent discussion in the same columns **dated 14th June 2001**, it was suggested that:

"The Supreme Court to examine former President Farooq Leghari [now he is also 'late'] under oath and finally come to conclusion as to the part played in the whole sordid episode [of killing of Mir Murtaza Bhutto] by various functionaries of the government including the Judges of the Supreme Court and President Rafiq Tarar..... the above mentioned were responsible for masterminding, engineering and storming the Supreme Court."

In addition to that the intelligentsia also wanted Mr Farooq Leghari to be examined under section 540 of CrPC, by the trial court dealing with Murtaza Bhutto's murder case. In a seminar of Helpline dated 19th March instant, Mr Leghari had divulged the following details:

- a) That Asif Ali Zardari told Farooq Leghari in the presence of Benazir Bhutto that the conflict between MMB and AAZ had reached such heights that only one of them would survive.
- b) That Mr Leghari later advised Benazir Bhutto to resolve this conflict in her family, as she could not afford any further divide.
- c) That the people who fired at MMB had been chosen by AAZ. Every child in Sindh knows who killed Murtaza Bhutto.

Here is the charge sheet issued (and read over to the nation) by the President Leghari against the then Prime Minister Benazir Bhutto **on 5th November 1996**, while dismissing her elected government. Amongst the other charges, the President also mentioned about killing of Murtaza Bhutto and the government's alleged lethargic attitude towards judiciary related matters. He said;

".....during the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution.

..... On 20th September 1996, Mir Murtaza Bhutto, PM's brother, was killed at Karachi along with seven of his companions including the brother in law of a former Prime Minister, ostensibly in an encounter with the Karachi Police. The Prime Minister and her Government claimed that Mir Murtaza Bhutto has been murdered as a part of a conspiracy.

Within days of Mir Murtaza Bhutto's death the Prime Minister appeared on television insinuating that the Presidency and other agencies of State were involved in this conspiracy. These malicious insinuations, which were repeated on different occasions, were made without any factual basis whatsoever.

A situation has thus arisen in which justice, which is a fundamental requirement of our Islamic Society, cannot be ensured because

On 20th March 1996 the Supreme Court of Pakistan delivered its judgment [in the Judges Case]; the Prime Minister ridiculed this judgment in a speech before the National Assembly which was shown more than once on nation-wide television.

The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional mandate

The directions of the Supreme Court with regard to regularization and removal of judges of the High Courts were finally implemented on 30th September 1996, with a deliberate delay of six months and ten days and only after the President informed the PM that if advice was not submitted in accordance with the Judgment by end September 1996 then the President would himself proceed further in this matter to fulfill the constitutional requirement.

The Government has, in this manner, not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed by Article 2A of the Constitution read with the Objectives Resolution.

The sustained assault on the judicial organ of State has continued under the garb of a Bill moved in Parliament for prevention of corrupt practices without informing the President as required under Article 46(C) of the Constitution.

The Bill proposes, inter alia that on a motion moved by 15 percent of the total membership of the National Assembly, that is any 32 members, a judge of the Supreme Court or High Court can be sent on forced leave. Thereafter, if on reference made by the proposed special committee, the Special Prosecutor appointed by such Committee, forms the opinion that the judge is prima facie guilty of criminal misconduct, the special committee is to refer this opinion to the National Assembly which can, by passing a vote of no confidence, remove the judge from office.

The decision of the Cabinet is evidently an attempt to destroy the independence of the judiciary guaranteed by Article 2A of the Constitution and the Objectives Resolution.

Further, as the Government does not have a two-thirds majority in Parliament and as the opposition parties have openly and vehemently opposed the Bill approved by the Cabinet, the Government's persistence with the Bill is designed not only to embarrass and humiliate the superior judiciary but also to frustrate and set at naught all efforts made to combat corruption.

And; whereas the judiciary has still not been fully separated from the executive in violation of the provisions of Article 175(C) of the Constitution of Pakistan.

And, whereas the PM and her Government have deliberately violated, on a massive scale the fundamental right of privacy guaranteed by Article 14 of the Constitution through illegal phone-tapping and eaves-dropping techniques. The phones tapped and the conversations monitored in this unconstitutional manner include the phones and conversations of judges of the superior courts, leaders of political parties and high-ranking military and civil officers."

Then, in exercise of my powers under Article 58(2)(b) of the Constitution, Farooq Ahmad Khan Leghari, President of the Islamic Republic of Pakistan, dissolved the National Assembly. The Prime Minister Benazir Bhutto and her Cabinet were debarred to hold their offices.

Under the provisions of Article 48(5) of the Constitution he announced 3rd February 1997 as the date for next general elections.