

Scenario 77

NAB & ACCOUNTABILITY – HIGH DRAMA:

PPP's [Drama] ACCOUNTABILITY COMMISSION:

On 15th April 2009, Parliamentary Affairs Minister Babar Awan tabled '*the Holder of Public Office (Accountability) Act, 2009*' in the National Assembly. Among the major proposals was the removal of the immunity enjoyed by members of the armed forces, the judiciary and parliamentarians by re-defining public office given in Article 260 of the Constitution of Pakistan; it was generally termed as draft of the National Accountability Commission [NAC] Act.

Perhaps first time, all the political parties had reached a consensus that besides politicians and civil bureaucrats, members of the armed forces and judiciary should also be made accountable.

The PML(N) had forwarded about five dozen proposals which were not accepted by the working committee. The body had been operational on the bill since April 2009. PML(N)'s one major proposal, which was not accepted was that the NAC should be headed by a sitting judge of the Supreme Court. The committee, however, decided that the post should be held either by a sitting or retired judge or any person qualified to be a judge of the Supreme Court.

The Committee's head, Mr Fatiana told the media that NAB would be dissolved after the new law comes into effect and its assets and employees would be transferred to the NAC. All cases being pursued by NAB would also be transferred to the NAC. However, the NAC would not carry out investigations against any accused who might had been named having committed fraud before 1985.

As per NAC's draft the prime minister would not have discretionary powers to appoint the head of the NAC, to be appointed for three years, and his nominee would require the approval of an eight-member parliamentary committee having equal representation of the treasury and opposition benches.

The draft suggested that an official found guilty of corruption by a court after hearing a reference moved by the NAC would stand dismissed. Any elected representative or other public office-holder would be disqualified for contesting elections after conviction till five years after completion of his sentence.

The speaker and deputy speaker of the National Assembly and the chairman and deputy chairman of the Senate were also made accountable through another clause of the proposed law. PML(N) alleged that the PPP government had in the past changed some approved drafts at the last moment.

Later Prime Minister Yousuf Raza Gilani announced that the government would bring the accountability bill before the parliament after consulting all political parties. A copy of the draft bill was sent to the PML(N), which suggested more than 50 amendments. PM Gilani had consulted Nawaz Sharif on the draft law in January 2010 and asked the committee to expedite the process of reviewing it.

The PML(N), however, raised objections on the language and provisions in the draft and refused to accept it; ***till the end of their governments, of the PPP & the PML(N) on 16th March 2013, that NAC Bill could not be passed.***

Coming back; the said proposed ACT of 2009 of Babar Awan could not go through because the opposition parties raised many objections on it and demanded amendments in it. Then an exercise of recasting the said bill, in its generic name of ***National Accountability Commission*** [NAC] started; dozens of meetings of the Parliamentary Committee held, tens of mutual discussions amongst the PPP & PML(N) members took place during the four years but of no avail.

Till the end of their governments on 16th March 2013, the proposed improvements in NAB or its controlling NAO / NAC changed many shapes and faces. In November 2012 at last, the PPP government made a serious try to bring forward the National Accountability Commission Bill (NACB) of 2012 but timely shouts of one Anusha Rehman saved the nation from a '***calculated legal disaster***' in the history of Pakistan.

To transform NAB into the National Accountability Commission [NAC], the proposed Bill was [mildly; may be off the record now] tabled in the National Assembly to seek a simple majority vote to make it an Act. The salient features, as noted by a freelance columnist [Referring to qaisarrashid@yahoo.com], were:

- It laid down a broad consultation mechanism to seek the consent of the leader of the opposition to nominate the Chairman of the NAC.
- Consultation with the Chief Justice of High Court concerned was made mandatory to nominate a judge for the accountability court.
- It made a mandatory provision that the chairman NAC should be a retired judge of the Supreme Court (SC) or a retired grade-22 federal government officer.
- Provisions were included that both judges and army Generals would also be held accountable for their misdeeds.
- A National Accountability Investigation Agency (NAIA) would be formed to investigate any alleged affair.
- Once appointed, the chairman of the NAC would stay in the office till completion of his four-year tenure.
- The powers of the chairman to seek mutual legal assistance, where the jurisdiction would be foreign, was reduced. **The question:** *Why did the PPP government wanted the scope of mutual legal assistance reduced unilaterally? Why should those Pakistanis who siphoned off the wealth of this country and escaped abroad not be apprehended and the booty recovered?*
- The powers of the chairman to procure banking information about an alleged person was made subject to prior permission granted by a court. **The question:** *Why should the chairman not be independent to procure any banking information without letting the accused know that an investigation was being carried out against him? Why was it important to put in place a mechanism to alert an accused person so that he could shift his money through telephone or internet banking?*
- The scope of the NAC would be limited only to public office holders (politicians or government servants) while the people falling under the definition of '**other persons**' would be spared. **The question:** *how many front men used by the corrupt public office holders would also be termed public office holders? What would be the*

mechanism for apprehending the front men to unearth the trail leading to the actual face indulging in corruption?

- The powers of the investigation agency (NAIA) would be short of arresting a public office holder if he cooperated with the NAIA even if there was available solid evidence of corruption against him. **The question:** *Good messages - indulge in corruption but cooperate with the NAIA to avoid arrest if the scam was exposed; in the meantime, flee from the country, save your skin and enjoy the fruits of the booty. Do corruption but be careful to give any clue; you are free to plunder and if caught un-luckily then cooperate.*
- The accountability courts of the NAC would not punish a culprit for more than seven years imprisonment (instead of 14 years) in case corruption was proved against him but the looted money not recovered. **The question:** *In such a scenario, should the duration of punishment be decreased or increased? For such a hardened criminal, why not the limit be extended to 20 years?*
- The accountability courts of the NAC would not punish a culprit at all in case corruption was proved against him but he returned the looted money before the judgement of the court or his plea bargain was accepted by the NAC. **The question:** *Why should there be a soft corner for a proven corrupt public office holder; this clause was an encouragement for plundering process in fact – loot the country but go careful to be caught – if caught, return the money immediately and try the next move.*
- Any act of corruption would be condoned if done 'in good faith'. **The question:** *who will define the clause and at which stage that faith would be disclosed.*
- The '**benami**' accounts and property of a culprit would not fall in the ambit of the NAC. **Very cogent message:** *you will be a fool of the first order if you would keep the looted money or property in your own name.*

The above said points especially in an arena of reduction in powers of the chairman to seek mutual foreign legal assistance and reduction in the scope of the NAC only to bureaucrats and politicians would hardly help Pakistanis in reducing corruption. Unless the corrupt people's bank accounts would be checked without alerting him; including all members of the society like parliamentarians, ministers, judges and army officers from Major ranks and above in the net; why should any wrongdoer chiselling out money from the poorest or governments on one pretext or another get off scot-free?

The questions; *why should the cooperation of a corrupt public office holder be a guarantee against his arrest? Why should not he fall from grace if he was corrupt? Why should the arrest not act as a deterrent against corruption? Had such immunities offered to a corrupt public office holder, then no need of having any anti-corruption body?*

In nut shell, the PPP government wanted to encourage and institutionalize corruption at all levels of the government under the protection of the said National Accountability Commission. The high class elite were being given an LCP [**License to Corrupt Practices**].

Even then if a bureaucrat or politician would not do corruption [*in the light of above provisions of law*] he should straightaway be disqualified to hold an office or be sent to a mental hospital.

Were the courts ready to take cognizance of such loot & plunder?

APG BASEER QURESHI's PLEA:

On 1st February 2010, Additional Prosecutor General [APG] of the NAB Abdul Baseer Qureshi moved an application in the Supreme Court requesting to expunge adverse observations made against him in its verdict on the NRO.

[A 17-judge bench of the court in a short order, issued on 16th December 2009, had expressed displeasure over the conduct and lack of proper and honest assistance and cooperation to the court by NAB's Chairman, Prosecutor General and Additional Prosecutor General.

The apex court had suggested the government to replace them with persons possessing high degree of competence and impeccable integrity in terms of Section 6 of the NAB Ordinance as also in terms of the observations made by the apex court in the Asfandyar Wali Khan case.

The SC full bench had regretted that the conduct of the top NAB executives made it impossible for the court to trust them with proper and diligent pursuit of cases falling within their spheres of operation.]

The Chairman, the Additional Prosecutor General of NAB, former Attorney General Justice (Rtd) Malik Qayyum and the federal government had filed review petitions against the apex court's order.

After the release of the detailed judgment, Baseer Qureshi filed additional grounds requesting the court to remove the adverse remarks passed against him in the judgment so that he could concentrate on his work which he said was his only source of income. Mr Qureshi told the court that *'he was nearing 70 years of age and is not interested to continue working in the NAB.'* It was contended that he was once granted a special certificate of appreciation and a cash reward of Rs:100,000 for his extra-ordinary dedication and devotion to duty while appearing against Mr Zardari in Steel Mills and BMW References.

The apex court, however, was not inclined to give any relief to Qureshi.

JUSTICE DEEDAR H SHAH AS NAB's CHIEF:

In the **first week of October 2010**, the federal government appointed Justice (Rtd) Deedar Hussain Shah as Chairman NAB while PML(N) had rejected the move mainly because he had been an MPA from Ratodero (Larkana) twice in 1990s on the PPP ticket when he was picked up as judge of the Sindh High Court in 1994 and then later elevated to the Supreme Court.

Justice (Rtd) Deedar Shah was appointed NAB's Chief after his predecessor Nawid Ahsan was removed under a 16th December 2009's ruling of the Supreme Court that held the controversial National Reconciliation Ordinance (NRO) as unconstitutional.

Then it was ordered that the government should revive all cases withdrawn under the ordinance and expressed displeasure over the perceived lack of proper and honest assistance and had also suggested the appointment of a new chairman.

Justice (Rtd) Syed Deedar Hussain Shah was appointed as Chairman National Accountability Bureau [NAB] by President Zardari vide Notification no: F.8.(17)/2010-A.I dated 8th October 2010 with the wording:

'The President of Islamic Republic of Pakistan has been pleased to appoint Mr Justice (Retd) Syed Deedar Hussain Shah as Chairman, National Accountability Bureau in

terms of Section 6(b)(i) of the National Accountability Ordinance 1999, with immediate effect.'

Justice Shah took over the charge immediately and started the routine functions. Within one week of that Notification the said appointment was challenged in the Supreme Court of Pakistan. While the proceedings were going on in the apex court, the original notification was taken back or withdrawn and on **9th February 2011** another notification was issued with details below:

'No.F.8.(17) / 2010-A.I The President of Islamic Republic of Pakistan has been pleased to withdraw/recall his order dated 07.10.2010, appointing Mr Justice (R) Syed Deedar Hussain Shah as Chairman, National Accountability Bureau (NAB). Consequently, notification No.F.8(17)/2010-A.I dated 08.10.2010 is hereby rescinded / cancelled.

2. Further, the President of Islamic Republic of Pakistan has also been pleased to appoint Mr. Justice (R) Syed Deedar Hussain Shah as Chairman, National Accountability Bureau (NAB), in terms of Section 6(b)(i) of the National Accountability Ordinance, 1999 with immediate effect.'

Abdul Hafeez Pirzada, the counsel for the federal government, was asked to explain 7th October's presidential summary before the court especially in the context that PM Gilani had, on 10th October 2010, disowned the whole issue declaring it as President's exclusive domain.

Mr Pirzada submitted the 10-page summary to establish that it was prepared by the law ministry and sent to the PM Secretariat for onward approval. The summary suggested that PM Gilani had talked to Ch Nisar Ali Khan [*the then Leader of the Opposition in the National Assembly*] on the matter and even discussed objections raised by the latter. Under Section 6 of the National Accountability Ordinance (NAO) such appointments, though finally approved by the President, but were to be made on the advice of the prime minister.

However, it was found on record that few days before appointment of Justice Shah, probably on 22nd September 2010, PM Gilani had informed the Opposition Leader Ch Nisar Ali Khan on telephone that Justice (Rtd) Mukhtar Junejo was being considered for the post of NAB's chairman but in October a different summary was sent and got approved. Ch Nisar had serious reservations over the proposal and he had communicated them to the prime minister in writing, but the very next day the name of Justice Deedar Shah was communicated to him by PM Gilani without any reference to his earlier letter.

On 10th March 2011, the Supreme Court of Pakistan, on two petitions filed by one Shahid Orakzai and Ch Nisar Ali Khan MNA [No: 60 & 61 of 2010], challenging the appointment of Justice (Rtd) S Deedar Hussain Shah as Chairman NAB, declared that the appointment was illegal. The 33-page ruling was authored by Supreme Court's Justice Asif Saeed Khosa in which it was ordered that Justice (Rtd) Shah should immediately relinquish the office.

The verdict by a three-judge bench headed by Justice Javed Iqbal [Justice Raja Fayyaz Ahmed & Justice Asif Saeed Khan Khosa were others two judges] required Justice Shah, a former judge of the Supreme Court, to immediately leave the office he assumed five months ago after a legal row in which the apex court had ordered the removal of his predecessor.

Justice Shah left the office immediately; however, the PPP government filed review petition against the decision on 9th April 2011, but of no avail.

On 11th March 2011 during mid-night, the President Zardari again proposed the re-appointment of Justice (Rtd) Deedar H Shah as Chairman of the NAB while he had been removed from the office by the Supreme Court only a day earlier. The president proposed Jus-

tice Shah in two separate letters addressed to PM Mr Gilani and Leader of the Opposition Ch Nisar Ali Khan to meet the mandatory consultative process.

Both letters were sent to Mr Gilani who was asked to forward one to Ch Nisar. The president's letter had described Justice (Rtd) Shah as a 'man of integrity' recalling his services in superior judiciary. The president had taken note of the earlier objections on Justice Shah's name, including the criticism that he had '*political affiliation with the ruling political party*'.

The President's letter had also quoted the 1996's Supreme Court judgment in Al-Jehad Trust case that had settled the issue of political affiliation of a candidate for a judicial post by concluding that political affiliation alone might not disqualify a candidate. The PML(N) was not convinced and rejected this proposal by saying that '*we believe that the transparent process of accountability cannot take place if a controversial man is appointed as the NAB's Chairman.*'

The position of NAB's chairman always remained controversial during Nawaz Sharif's rule and more in Gen Musharraf's regimes since he could 'selectively' pursue accountability cases against the opposition. Partly to address this controversy, the 18th Constitutional Amendment required the prime minister to consult the opposition before making the appointment.

However, PML(N)'s stance on Deedar Shah was unchanged. The PPP held that Nawaz Sharif had in 2000 expressed full confidence in Justice (rtd) Shah. Rauf Klasra had [referring to '***the News of 9th October 2010***'] described the facts as:

- The 10 years official record of the Sindh High Court (SHC) revealed that PML(N)'s Nawaz Sharif, when he was a high profile detainee of Gen Musharraf, during his trial on the hijacking charges punishable with death penalty, had not only shown confidence but also praised professionalism of the then CJ of the Sindh High Court J Deedar H Shah.
- With the elevation of the then CJ SHC J Shah to the Supreme Court on 28th April 2000, detainee Nawaz Sharif had suddenly found himself in big trouble at the hands of the new CJ of the SHC, who had constituted a full bench to hear the hijacking case on daily basis. It created panic in the ranks of Nawaz Sharif's legal team.
- Contrarily, CJ SHC Deedar Hussain Shah had actually appointed a 3-member bench comprising Justice A Hameed Dogar, Justice Rabbani and another judge, to hear Nawaz Sharif's case and the later was quite satisfied with this bench and its proceedings. It was quite obvious that CJ Deedar Shah was sent to the Supreme Court because Gen Musharraf was unhappy with him during the trial of Nawaz Sharif.
- Nawaz's legal team had praised CJ Shah in their petition no. 43(172) / 2000 dated 27th June 2000 which was filed to challenge the speedy trial and formation of a full bench by the new CJ SHC. Nawaz Sharif's lawyer had also complained in writing then to the SHC that the role of secret agencies had suddenly become important in proceedings that had greatly disturbed Nawaz Sharif and brought inconveniences for him.
- However, 10 years later, the PML(N) leaders came out to attack the same judge and challenged his appointment as the NAB Chairman on grounds that once he was a PPP worker and had contested elections on its tickets. Nawaz Sharif's companions did not question him or his past political affiliation when they had found him a professional judge who did not allow secret agencies to disturb his Court's decorum. J Deedar Shah had also worked with the CJP Iftikhar M Chaudhary and had retired without any complaint against him.

SC's judgment against Justice Shah was based on facts because his appointment was not made by taking due precautions; the given procedure [of consultation] was not followed.

It is on record that the whole Sindh protested the SC's judgment against Justice Shah; the PPP passed a resolution condemning the decision and later its MPAs marched towards the Sindh High Court to register their protest. At the same time, the PPP in Islamabad loudly hinted about the reappointment of Deedar Shah as the NAB Chairman again.

The fingers were pointed out on why he should be re-appointed. Justice (Rtd) Tariq Mehmood, a legal expert, had cogently raised the question as to whether or not an individual could be made NAB Chairman for the second term because the second appointment of former Prosecutor General Irfan Qadir was challenged in the apex court on the same grounds. Mr Qadir was sent home under the court orders.

[That is another story that how the PPP retaliated Irfan Qadir's quit; he was brought back in the same SC at Attorney General's slot.]

Gen Musharraf had made the NAB controversial because he had brought five army Generals, serving & retired, to 'selectively' pursue accountability cases against the opposition. Partly to address this controversy, the 18th Constitutional Amendment required the prime minister to consult the Opposition Leader before making the appointment, but the rifts have always been there.

Indeed, it was the government's failure to consult Ch Nisar Ali that led to the removal of the NAB Chairman Justice (Rtd) Deedar Hussain Shah. ***J Deedar Shah was widely regarded as a PPP loyalist and not a 'person of impartial character'*** for the said post, the PML(N) had contested.

On 22nd March 2011, the SC issued detailed judgment over the appointment issue of NAB's Chairman and held that ***'Justice (r) Deedar Hussain Shah stands disqualified to be appointed to that office again on account of the Section 6(b)(i) of the National Accountability Ordinance (NAO) 1999'***; and the matter of appointing Mr Shah as NAB's Chairman had been handled by the Law Ministry in a manner depicting shallow and perfunctory understanding of the constitution and the relevant law.

The apex court in its 33-page detailed judgement written by Justice Asif Saeed Khosa pointed out that because of his two appointments to that office, both botched and messed up by the Law Ministry's wrong legal advice to the relevant quarters and that he stood disqualified to be appointed to that office again on account of the provision regarding "non-extendable period" contained in section 6(b)(i) of the NAO, 1999.

Justice Khosa had also observed that:

'..... Anybody interested in making an honest appointment of NAB's chairman would not feel shy of consulting the Chief Justice of Pakistan.'

It concluded that the appointment of Justice Shah as NAB's Chairman by President Asif Ali Zardari on 9th February 2011 was *ultra vires* and against the spirit of section 6(b)(i) of the NAO, 1999 and through such illegal appointment, the fundamental rights of the people of the country, including their right to life, right to liberty, due process of law, fair trial and access to justice, were adversely affected.

Senior ASC Akram Sheikh argued that appointing NAB's Chairman was not a discretionary power of the president [Mr Zardari] and in making such an appointment, the president was, in terms of Article 48(1) of the constitution, bound to act on the advice of Prime Minister [Yousaf Raza Gilani]; but for Justice Shah's first appointment dated 7th October 2010 the prime minister had not tendered such advice to the president.

Justice Khosa after discussing at length the importance of office of NAB Chairman and its functions said that it was perceived as an institution which was possibly being misused for covering up corruption at high places through appointment of its hand-picked chairman, therefore, consultation with the chief justice of Pakistan and the leader of opposition was necessary.

It was in that backdrop that in the case of '**Dr Mobashir Hassan and others vs Federation of Pakistan and others**', the SC had suggested consultation with the chief justice of Pakistan in the matter of appointment of NAB chairman. That suggestion was once again repeated by the apex court in the case of '**The Bank of Punjab vs Haris Steel Industries (Pvt) Ltd.**' saying that consultations with the leader of opposition in the NA and with the CJP were essentially meant for noble and laudable purposes to achieve the very objects for which NAB was established.

2 NEW CONTEMPT NOTICES AGAIN:

The general populace of Sindh protested against the SC's judgment; the PPP in the provincial assembly passed a resolution condemning the SC's decision and later its members marched towards the Sindh High Court to register their protest. The Federal Law Minister Babar Awan had told the media outside SC building just after the short order announced by the apex court [on 11th March 2011] that '*we are thinking about the reappointment of J Deedar Shah as the NAB Chairman; the office of NAB should not be left vacant even for a day.*'

Babar Awan had known the law better but was compelled by his party policy thus an ambiguity prevailed because an individual could not be appointed as NAB's Chairman for the second term; rejection of second appointment of former Prosecutor General Irfan Qadir was in sight. It was on record that Mr Qadir was sent home under the similar court orders.

On 11th March 2011, all over the Sindh province, the PPP workers held strikes, seized processions and raised slogans against the apex Court's verdict. The Supreme Court had taken a serious view of this violence-ridden strike, issued contempt of court notices to the two organizers and asked them to submit their replies.

On 26th March 2011, the Supreme Court of Pakistan issued contempt notices to PPP leaders Taj Haider and Sharjeel Memon for criticising, ridiculing and instigating the people against the apex court's verdict of disqualifying the Chairman NAB Justice (Rtd) Deedar Hussain Shah. The two leaders had shown their utmost resentment and made an open public call to their party workers to come out on roads in protest.

Both of them appeared in the Supreme Court accompanied by hundreds of PPP office bearers and politicians from Sindh who had flown to Islamabad on poor people's expenses just to make out a show, to demonstrate their strength and to pressurize the judiciary. Amidst all this show of political force, it was claimed by the PPP that the proceedings against Justice Shah were held in the open court, in presence of media persons – thus the people already knew it and there was not an air of confrontation.

On 25th April 2011, a 3-member bench of the Supreme Court headed by Chief Justice Iftikhar M Chaudhry adjourned the hearing of contempt of court case against the two PPP leaders till the 27th May. During the hearing, Taj Haider submitted his reply whereas Sharjeel Memon sought time on the plea that his counsel Abdul Hafeez Pirzada was not available in country and secondly that they were busy in making the new budget.

The apex court knew that Mr Sharjeel was not the finance minister of Sindh and also that ***he was actually made the Information Minister only when the SC had issued him con-***

tempt of court notice. Admittedly the said gesture was posed on the orders of the Presidency just to place another note of confrontation on record muffled with utter humiliation. The chief justice had remarked that ***'after fighting with the judiciary you have become minister in the Sindh.'***

During the first week of July 2011, Information Minister of Sindh Sharjeel Memon, while submitting his reply urged that a wrong and negative perception was taken by the people of Sindh about the disqualification of Justice Deedar H Shah and a timely call for strike was given to avoid any potential uncontrollable situation.

In his reply, Memon submitted that while making the statement, he had no intention to ridicule the court and it was a *'fair and healthy comment on the decision'* of the apex court. He urged that his statement, unfortunately, had been misconstrued as no judge was ridiculed nor scandalized.

As the matter was dragged into controversy, the apex court was likely to face another humiliation at the hands of the ruling PPP. To a question about unconditional apology, Sharjeel Memon said:

'I did not commit any contempt of court and there is no question of apology. It was a call for peaceful strike and that was our right. (About killing of citizens during the strike, he added) that target killing of six or seven persons has become a routine in Karachi which must be stopped and same happened during the strike call. It is my request that do not attribute it with the strike call. PPP has sacrificed its precious lives for the restoration of the judiciary and we are committed for its independence.'

While serving the contempt notices to Haider and Memon, the SC had quoted a statement by Haider that legislators would take out a rally from the Sindh Assembly building to the Sindh High Court to lodge a protest against what he called a ***'politically-motivated decision of the superior judiciary'*** and that there would be a general strike across Sindh against the ***'interference of the judiciary in administrative affairs'***.

It remained a point to ponder that NAB was a federal organization, based in Islamabad, working previously under the direct control of Gen Musharraf and then under PM Gilani, both times in the capacity of 'Chief Executive'. Even in the previous regime it remained under Nawaz Sharif as the PM. As such reaction to the SC's verdict, if at all it was necessary, should have come at central command level of the PPP. The move was given a start from Sindh and the strikes remained confined within Sindh because the defunct chairman Justice Shah belonged to Sindh.

AND nothing happened to Sharjeel Memon & Taj Haider in subsequent proceedings for not admitting their guilt and for not tendering un-conditional apologies. See another page of our history.

CONTEMPT LAW IN PERSPECTIVE:

Considering the history of contempt of court cases in Pakistan in those days, the said law was running out of control. It was Sajjad Ali Shah's decision to charge-sheet Nawaz Sharif for contempt of court after the later made a remark criticising him that led directly to storming of the Supreme Court by a mob in November 1997, dismissal of three heads of the premier institutions – CJ Sajjad Ali Shah, COAS Jehangir Karamat and President Farooq Leghari which in turn contributed to the over-concentration of powers in PM Nawaz Sharif's hands and eventually his own dismissal.

In developed countries like United States, to charge someone with contempt of court for criticising a judge or a court is totally unheard of, largely because of their longstanding commit-

ment to freedom of speech. ***A US Supreme Court's decision in 1941 dismissively mentioned the concept of "scandalising the court" and pointed out that "Such foolishness has long since been disavowed in England and has never found lodgement here".***

The other inheritors of English common law; Canada, Australia and New Zealand have generally refrained from using this charge, though it remains on the books there. An Australian trade unionist was convicted under contempt in 1982. However, his conviction caused a huge outcry and spurred calls for the reform of the relevant laws.

Thus, while ***"contempt of court"*** remains a valid and widely used principle in Anglo-American law, used to prevent interference with or obstruction of the administration of justice, such as by ignoring court orders, disrupting court proceedings, or interfering with witnesses, the specific variety that has run out of control in Pakistan and nobody takes notice of them.

The issuance of charge-sheet against [late] Mr Cowasjee, a veteran columnist, was condemned all over for his quite reasonable remarks about the Pakistani judges and courts. Reference can be made towards judges like Molvi Mushtaq Hussain and CJP Anwar ul Haq in Z A Bhutto's hanging case; J Malik Qayyum and CJ Rashid Aziz in Benazir Bhutto and Zardari's conviction cases and CJP Hameed Dogar's team upholding the 3rd November 2007's Emergency and more.

Once, ***on 26th October 1999***, Ardsheer Cowasjee, Pakistan's popular columnist attached with Dawn of Karachi, while standing before the Supreme Court of Pakistan, pleaded not guilty to charges of contempt of court arising from critical remarks he made about the Pakistan's judiciary on a TV program. He was charged with 'scandalising the court'. Mr Ardsheer Cowasjee had said:

"Today Judiciary has no respect. The judiciary has killed itself. The Judiciary is corrupt. The Government made it corrupt. The Government has got a book on all the Judges. The people looked down on the Judges. The higher the Judge, the lower he is looked down upon....."

"Judiciary can never demand respect. I mean these guys can threaten us that we will take you to court and charge you with contempt case. But it's all nonsense. They should command respect [through their judgments] and that will take a long time to come, every thing is corrupt."

The Court had observed that these remarks ***"scandalized the Superior Courts of this country and the Judges comprising such courts and tended to bring them into hatred, ridicule and contempt"***.

Mr Cowasjee was also charged earlier, four years ago in 1995, for essentially the same offence of "scandalising the court" for writing a column in 1994 questioning certain appointments in the Supreme Court.

Subsequently, Chief Justice Sajjad Ali Shah was made to quit his office in 1997 to prevent Nawaz Sharif from being tried for contempt of court and subsequent storming event.

[The fact remained that the legal landscape surrounding the doctrine of "contempt of court" had changed significantly in Pakistan since the Nawaz Sharif government repealed the Contempt of Court Act 1976, and replaced it with the Contempt of Court Ordinance 1998.]

After all, Mr Cowasjee was among the bitterest critics of Sharifs unabashedly changing this law solely to protect himself from prosecution; and then Mr Cowasjee could also benefit from the same Ordinance which was meant for those charged with such contempt. Some people had opined that Mr Cowasjee and Nawaz Sharif were both fellow "scandalizers" of the judiciary of those times.

JUSTICE SHAH'S HONESTY IN QUESTION?

It may not be out of place to mention that Justice (Rtd) Deedar Shah was known as an upright and honest judge throughout his previous career and Nawaz Sharif of PML(N) had himself admired him, at least once on record, when he was given relief by a full bench of the Sindh HC in Cr Appeal no: 43 / 2000 dated 27th June 2000. Then Nawaz Sharif had reposed full confidence in Justice (Rtd) Shah who was the Chief Justice of Sindh HC then.

At the same time it was also very strange to be noted that so honest justice (Rtd) Deedar Shah had been enjoying official perks and privileges till late being NAB's former chairman despite his removal from the office. (**Ref: Daily 'Dawn' of 25th June 2011**) Despite receiving several letters from NAB HQ, Justice Shah had not returned his two official vehicles and kept on occupying official residence.

- *During his posting as the Chairman, Justice Shah was not able to control his DG for Rawalpindi and Lahore, Zahid Mehmood, who was using six official vehicles even though he was entitled to only one 1300CC car. Mr Mehmood had also taken away Rs:500,000 special funds from NAB's pooled money; Rs:300,000 from Rawalpindi region and Rs:200,000 from Lahore region. The NAB HQ was also charged a bill of Rs:55,000 as accommodation rent in federal lodge Islamabad because Mr Mehmood kept on living in a suit in the lodges.*
- *Mr Mehmood was appointed as Director General NAB Rawalpindi for one year on 21st April 2010 and later he was also given the additional charge of NAB Lahore DG. He retired from NAB on 21st April 2011, but continued to hold the two offices. Finally, he was removed from the bureau on the Supreme Court's orders.*

Similarly, NAB's former Prosecutor General Irfan Qadir continued using an official car and his official residence in Islamabad. Justice Shah failed to boast power over him even. Mr Qadir, whose appointment as the PG, was declared illegal by the Supreme Court on 1st September 2010, continued occupying his official residence near Kohsar Market in F - 6 / 3 area Islamabad along with chauffeur-driven car and official security guards.

(Part of this essay was published at www.Pakspectator.com on 11th July 2011)

[The above referred essay of 11th July 2011 contained a mention of respectable Ardsher Cowasjee. When it reached him he was kind enough to send his comments to the author - reproduced below:

***"Thank you for a good essay.
You have covered everything.
My case is still alive and has been called on 3 occasions.
But due to ill health I have not been able to go to the Court.
Like all else in this country, the judiciary remains a mess and is largely helpless.
Best
AC"***

{But alas! We lost Honourable Cowasjee last year; he is no more with us}

In March 2011, when NAB's Chairman Justice Deedar H Shah was sent home under the Supreme Court's orders, the National Accountability Bureau [NAB] was pushed into the process of a painful slow death when its key investigators, who were handling high profile corruption cases including NRO, were made to leave the organization.

More importantly, the official record and critical evidence of corruption, including the Swiss-cartons brought back from Geneva in 2010, were passing into 'nominated political' hands. The old guys were to leave NAB because of the non-renewal of their contracts, which under

the NAB law was the authority of NAB's Chairman only and Justice (R) Deedar Shah had left NAB.

In the 2nd week of October 2011, the federal government pleaded before the Supreme Court that it wanted an early hearing of its pending review petition challenging the 10th March verdict (judgment was released on 22nd March) which had declared the appointment of Justice (Rtd) Deedar Hussain Shah illegal and unconstitutional as NAB Chairman.

Additional Attorney General K.K. Agha had urged before a four-judge special bench [*comprising Justice Tassaduq Hussain Jilani, Justice Nasirul Mulk, Justice Asif Saeed Khan Khosa and Justice Amir Hani Muslim*] to constitute a larger bench to hear the matter.

The matter earned significance since the apex court itself had been continuously asking the government to immediately appoint the new NAB Chairman and had even dismissed a different review petition of the government seeking time for the appointment, but had lost sight that the review petition of 9th April 2011 was lying pending with them for the last seven months.

[On 14th October 2011; the 4-judge bench of the SC referred the matter to the CJP back to form an appropriate bench to hear the government's two applications seeking a stay on the verdict and a larger bench to hear the review plea. A 5-judges bench was formed to deal with that review petition which ultimately disposed it off on 28th May 2013 keeping the old judgment intact.

The obvious reason for so much delay might be that the said review petition had lost its utility as President Leghari had notified another person, Adml Bokhari, as the new Chairman of NAB.]

ADML BOKHARI AS NEW CHAIRMAN NAB:

On 16th October 2011, President Zardari appointed Admiral (Rtd) Fasih Bokhari as new Chairman of the NAB and a notification to that effect was issued by the Federal Ministry of Law, Justice and Parliamentary Affairs. The appointment was made under Section 6(b) of the National Accountability Ordinance 1999 on the advice of the prime minister and after consultation with leaders of the House and the Opposition in the National Assembly.

The Section 6(b) of the NAO 1999 reads:

'A person shall not be appointed as chairman NAB unless he (i) is a retired chief justice or judge of the Supreme Court, or a chief justice of a high court; or (ii) is a retired officer of the armed forces of Pakistan equivalent to the rank of a lieutenant general; or (iii) is a retired federal government officer in BPS-22 or equivalent.'

Admiral Fasih Bokhari, had served as the 14th Chief of Naval Staff (CNS) of Pakistan Navy from 1997 to 1999. He had resigned, in protest, from his post on 6th October 1999 after being superseded by much junior and newly promoted Gen Musharraf, when he was appointed as Chairman of the Joint Chiefs of Staff Committee in addition to his being Chief of Army Staff of the Pakistan Army.

This historical mistake was done by the Prime Minister Nawaz Sharif and he had immediately paid for it because just after six days the PM was sent home by the same Army Chief.

Pakistan Navy [and for that matter the PAF also] was not taken into confidence when Gen Musharraf, had launched the Kargil Operation. After retirement, Fasih Bokhari along with former Air Chief Marshal Parvaiz Mehdi Qureshi, who were leading their respective forces during Kargil War, had demanded a commission of inquiry to probe the Kargil operation and had agreed to appear before it to give their version of the events surrounding the Kargil episode.

The PML(N) initially rejected Adml Fasih Bokhari's name, too [*but mildly*] as the Chairman NAB though he was the person who had repeatedly called for court-martial of Gen Musharraf urging that the later had violated the Constitution, and had illegally overthrown the democratically elected government of Nawaz Sharif in 1999. According to him, he was fully aware of Gen Musharraf's intentions when he became the Chairman of the Joint Chiefs of Staff Committee.

Why the nomination of Admiral Fasih Bokhari was opposed then? As per PML(N)'s version, he was allegedly involved in different questionable deals, was accused of not proceeding against those submariners who had received kickbacks from Agosta Submarine scandal when he assumed the charge as Naval Chief despite knowing all the facts. Additionally a case [**'Brooks and Garcia Spares Case'**], allegedly involving Adml Bokhari, was also being heard by Ch Nisar Ali Khan's Public Accounts Committee in earlier months of 2011.

[Details of 'Augusta Sub-marines Kickbacks' have already been discussed in Vol-II of this book]

In 'Brooks and Garcia Spares Case' Admiral Bokhari was alleged to have favoured one of his close friend Commander (R) Naeem Sarfraz. He was also accused of taking a luxurious plot which in fact existed in the category reserved for 'widows of martyrs' by changing the category of plot in his capacity as Naval Chief.

Former senior Navy officer Rear Admiral (R) Tanveer Ahmad once told the media that even if Fasih Bokhari was not directly involved in Agosta Submarine scandal, he as a submariner let all those submariners who were involved, off the hook, and instead gave them promotions after becoming Naval Chief.

Shireen Mazari's column '**Reciprocity: A costly omission**' appeared in '**the News' of 6th February 2008** reads:

"What's with the admirals of the Pakistan Navy? When Admiral Fasih Bokhari was Chief of the Naval Staff (CNS), soon after Pakistan's nuclear tests in May 1998, I was surprised to be asked for a meeting with him but was then horrified to find him questioning why I had supported Pakistan's nuclear testing. He declared that Pakistan had made a big mistake at which point I asked him why as naval chief he had not given his view officially.

Anyway, it was not at all astonishing to find Admiral Bokhari, after retirement, declaring at an IISS meeting in the Gulf, that Quaid-i-Azam had made a mistake in seeking the creation of Pakistan. It appears Admiral Bokhari got away with a mild rebuke when his peculiar view became known to the military leadership."

Justice (Rtd) Wajihuddin Ahmad commented on Adml Fasih Bokhari's nomination that:

'It is in fact a mindset to make controversial decisions to which one's own interest is attached; to keep on creating controversies in high-profile corruption cases..... when your objective is to create controversies and confusion, you always appoint your close aides or friends on such positions which otherwise needs people with completely spotless career and impeccable integrity.'

However, some media people kept the opinion that '**Bokhari is an honest and respectable person**'. Adml Bokhari had been a known supporter of peace with India and even adversaries had recognized it. Indian Navy Admiral (rtd) JG Nadkarni recently wrote that:

'Pakistan had sensible mariners in decision-making positions who were keen to have agreements with the Indian Navy. Admiral Fasih Bokhari, Pakistan's Naval Chief from

1997 to 1999, was a great supporter of maritime co-operation with India, and believed that it would benefit both countries’.

Coming back to Admiral Fasih Bokhari’s appointment, the PML(N) indicated that it might challenge the appointment in the Supreme Court on the basis that **‘thorough consultations with opposition’** had not been done. The PML(N) was hoping to get success again in the back drop of general public perception that the superior judiciary, especially the CJP Iftikhar M Chaudhry, always had soft corners for the Sharif family and the PML(N).

Mr Bokhari was the fifth NAB Chairman belonging to the armed forces. Earlier, NAB Chiefs from the military were Lt Gen Amjad Hussain, Lt Gen Khalid Maqbool, Lt Gen Munir Hafiez and Lt Gen Shahid Aziz. The two civilian heads of the bureau were Nawid Ahsan and Justice (Rtd) Deedar Hussain Shah.

President Zardari had sent a letter to Ch Nisar Ali on 9th October 2011 seeking his consent for the said appointment as he was required to do so under the 18th Amendment to the constitution [the fate of Justice Deedar Shah is also referred]. Ch Nisar Ali replied after a week raising objections to the appointment on technical grounds. He asked the government to prepare a list of possible candidates for the office of NAB’s Chairman saying that:

‘Mr President, if the objective of the entire exercise is to select a nominee with impeccable reputation, integrity and credibility and unquestionable impartiality, there is no reason whatsoever for hesitation on the part of the government to engage with the opposition in a thorough, concrete and meaningful consultation.’

The President thanked Ch Nisar Ali of PML(N) ‘for taking part in the consultative process as mandated by the law’ in the nomination of Adml Bokhari as NAB Chairman but at the same time held that:

‘The sense of various judgments of superior courts is that the consultation shall be meaningful and for this purpose there is no necessity of sending a panel of nominees. Therefore, meaningful consultation can be done even on a single person and for that purpose you are taken on board quite candidly.’

‘Sending of a panel for consultation does not have any legal cover as well, there being no legal requirement as such. I have consulted the Leader of the House in the National Assembly on the subject who has concurred to the proposal.’

Mr Zardari also made clear to Ch Nisar Ali that:

‘The name of Fasih Bokhari had been proposed in accordance with the provisions of the National Accountability Ordinance 1999, which was the ‘existing law at the point of time’. Also that the opposition leader had offered no comments on the profile and integrity of the nominee, which in fact is the material aspect of the consultation.’

Referring to the implementation of superior court’s verdicts mentioned in the letter of the opposition leader, the president said a bill was already pending in the parliament since nearly [then] thirty months; also related to the qualification of appointment of a chairman of the proposed National Accountability Commission. PML(N)’s view was that the chairman should be a serving judge of the Supreme Court. However, it remained a fact that the PPP government had proposed the appointment of a person who was not a judge nor qualified to be a judge.

The office of the Chairman NAB was lying vacant since the removal of Justice (Rtd) Deedar Hussain Shah in March that year [2011]. The top accountability institution in the country had

been ineffective and without a Chief for seven months. It was also evident that the PPP government had no intention to pass the new accountability law.

PML(N)'s Secretary Information Senator Mushahidullah Khan told at a live program of ARY NEWS during the 2nd week of October 2011:

'I wonder why President Zardari cannot find someone with undisputed character. If Bokhari is not directly involved, he is linked in some way to the Agosta submarines corruption of a \$520 million deal for French submarines. The government intended to appoint Bokhari in order to receive clearance from the NAB in cases against them. It reflects nothing but cronyism.

The government should consider the PML(N)'s request that a former judge of the Supreme Court be appointed, rather than someone who would face resistance from the entire opposition'.

But Mushahidullah Khan's voice was considered hollow as he could not bring forward any reference proving Adml Bokhari's weakness in Agosta Submarine Deal. However, despite such unproved allegations, the employees of the NAB and Accountability Courts had welcomed the appointment of Admiral (r) Fasih Bokhari as their Chairman calling him the "right man for the right job" because several NAB prosecutors whose contracts were expiring during the next two months and a chairman was required to extend their contracts.

The NAB employees considered the new nominee fair enough who could act impartially without absorbing political pressure; new references were in the queue to be filed with NAB. In 2010, NAB-Punjab had filed 44 new references whereas in 2011, the bureau could entertain only 13 references till then.

Now the tail piece:

On 19th September 2011: [BERN] Director Swiss Bank said:

'Pakistanis are poor but Pakistan isn't a poor country; that 97 billion dollars of Pakistan is deposited in respective bank and if this money would be utilized for the welfare of Pakistan and its people then Pakistan can make tax-less budget for 30 years, can create 60 million jobs, can carpet four lanes road from any village to Islamabad, endless power supply to five hundred social projects, every citizen can get 20000 rupees salary for the next 60 years and there is no need to see IMF and any World Bank for loans.'

Referring to the **daily 'Nation' dated 11th July 2013**, yet another **survey by Transparency International** bemoaned the unpalatable reality about corruption in Pakistan. In the report, facts only corroborate what everybody already knew; that the land revenue department was top of the list followed by police. The holy judiciary was at number six since its underbelly, the lower courts, remained place ordinary citizens avoided like the plague. Unscrupulous lawyers and their court clerks were generally seen boasting **'they have judges and judicial officers in their pockets'**.

In Pakistan, there was no body to bother that how the average cases were dragged for years, even decades despite with all the autonomy and freedom the NAB used to enjoy. It was not even planned to be so because the will of the people and their representatives in the assemblies had seemingly run dry.

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