

## Scenario 39

### **LEGAL FRAMEWORK ORDER (2002)-II:**

It has been stated in detail on the preceding pages that Gen Musharraf himself changed his own assignment from Chief Executive to the President of Pakistan on 20<sup>th</sup> June 2001, under the Provisional Constitutional Order (PCO) by sending Rafiq Tarar home not allowing him to complete his five-year tenure. With immediate effect he dissolved the suspended Senate, National and Provincial Assemblies and dismissed the Chairman of the Senate and the Speaker of the National Assembly. After assuming the new office as President, Gen Musharraf had announced that:

*'The change will augur well for the future of Pakistan and I think I have a role to play; I have a job to do here; I cannot and will not let this nation down.'*

In the meantime 9/11 tragedy occurred. Washington suddenly and direly needed Gen Musharraf's support to combat with alleged and concocted '*anti-terrorism campaign*' and to crush the Taliban in Afghanistan. He could not stand the American pressure and just on a phone call from Washington he promised to extend all cooperation and offered for which the '*Americans had not even demanded*'. As a result the Taliban were ousted from Afghan capital and the Americans succeeded to establish a pro-US government, under the control of one Hamid Karzai, in Kabul and Gen Musharraf offered all possible help to the new government.

Gen Musharraf ordered for general elections in October 2002 after getting mandate from the Supreme Court. After general elections, Pakistan's National Assembly and Senate met in November 2002 for the first time since 1999's coup. Then he also relinquished the post of Chief Executive when Zafarullah Khan Jamali was made Prime Minister of Pakistan the same month but Gen Musharraf continued to hold the offices of Chief of Army Staff and Chief of the Staff Committee.

The then opposition parties had refused to accept Legal Framework Order (LFO) 2002 as it empowered the President to sack the prime minister; dissolve the parliament and also recognize him [Gen Musharraf] as both head of the army and head of the state. Some of the provisions of the LFO were unconstitutional and illegal [*though some were very good, purely democratic*], and against the sovereignty of the Parliament. As a result, the business of the parliament went in deadlock and remained so for a year.

In December 2003 the ice melted and this deadlock ended after negotiating a deal with MMA (*Muttahida Majlis e Amaal*) to end the stand-off, Gen Musharraf agreed that he would step down as military head of the country on 31<sup>st</sup> December 2004. After getting vote of confidence from parliament and the four provincial assemblies, Gen Musharraf was entitled to serve full five-year term as President till 2007 after the 17<sup>th</sup> Constitutional Amendment was passed by a two-third majority of the Parliament. He secured 658 votes out of 1,170 members of parliament and the four assemblies amid MMA's abstention and opposition's boycott.

The major constitutional amendments which Gen Musharraf got approved from the puppet National Assembly of 2002 were the focus of his stay ensured through 17th Amendment in the Constitution of Pakistan which largely included reframing of the articles 43(1), 63(1)(d) and (k). Article 63(1)(d & k) were related to the office of the President when read with Article 41(2) with or without the uniform. The said Articles were suspended for different periods under Article 41(7)(a & b) through the same Amendment. Of all the suspended articles, Article 63 (1)(d) was to come into force on 31st December 2004, while Article 43(1) and

63(1)(k) would stand restored in mid-November 2007 when the President's tenure would expire.

*[The original Article 43(1) of the Constitution says, "Conditions of president's office: The president shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services."*

*Similarly, the original Article 63(1)(k) says, "A person shall be disqualified from being elected or chosen as, and from being, a member of parliament, if he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the government or in which the government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service."*

Since the Article 43(1) had to come into force in November 2007 and the president would have no immunity from other related articles as provided through Article 41(7)(a & b) after the completion of his tenure, he was not able to get himself elected in any circumstances unless he managed these constitutional amendments.

The fact remains that Gen Musharraf had sailed smoothly after Article 63(1)(d) was restored on 31st December 2004, which warranted the president to quit one office immediately under the constitutional proviso of the Article 41(7)(b). This spin was given to the law under the trick of 'Validation of Presidential Act'. He had gone too far to please the American President, then Mr Bush, and his team in that arena of 'War on Terror' philosophy; so much that later the magazine **'TIME' of 29th April 2006** included his name in 'top 100 personalities' of the world who had influenced the world opinion most.

One can recall the history when Gen Ziaul Haq had managed to hang Z A Bhutto through judicial gimmicks, the Americans were quite happy over that episode. The Americans had declared Gen Ziaul Haq as their right hand statesman because the Russian threats to Afghanistan were not 'fully cleared' then. But what were their inner feelings about the General, certain paragraphs from a CIA report of 1982 (since declassified) have been given in the last chapter of Volume I in detail. Just for a moment, if one inserts the name of Gen Musharraf where Gen Zia's name was placed, the said statement of 1982 was holding well during 2003-2007.

Military, during Gen Musharraf's era, which was holding both power and guns, was not able to play a key role in shaping the future course of events. It should have proactively understood that its continued interference in politics and economy had weakened the Federation and institutions as World Economic Forum's Global Competitiveness Report, 2005 had (once more) indicated by rating quality of Pakistan's public institutions at 102 out of 104 countries.

Coming back to our original topic, in Pakistan, Lt Generals retire at the age of 57 or on completion of four years as Lt Gen, whichever is earlier. Gen Musharraf granted himself an extension on 6<sup>th</sup> October 2001 when he was due for retirement as the COAS and was supposed to hand over power to an elected political leadership before 12th October 2002, in accordance with the judgment of the Supreme Court. That day has never seen dawn, Gen Musharraf was there as COAS (& President) whereas all threatening Lt Generals were sent home.

One shouldn't be surprised, if concerned over this prospect, the US had planned so. It made no difference to the US if Gen Musharraf was continuing in power as the President in uniform or a non-political civilian elected in a sham election, functioning as the Prime Minister so long as the things were continuously delivered in the upkeep of US interests. That was exactly the same what Gen Ziaul Haq did during his rule.

For thirty six out of sixty years of existence Pakistan has been under military rule. The military has been responsible to a great extent for Pakistan's continuing deadlock. If there is any hope, it lies in the fact that despite its domination the military has somehow been restrained from turning security into a means of terrorizing its own citizens. Throughout his

rule of eight years, Gen Musharraf has been stressing his commitment to human rights, religious tolerance and a free press. But the time proved that all his steps moved to concentrate power in his own hands, and while he talked largely of accountability he has allowed no space for holding the army or any of his corrupt army officers accountable and all the superior judiciary remained silent indirectly providing strength to the illegal and illogical military rule.

### **GENERAL ELECTIONS OF 2002:**

Gen Musharraf announced for general elections in Pakistan scheduled to be held on 10<sup>th</sup> October 2002. More than 70 parties vowed to take part in those parliamentary elections but the mentionable were PPP (Parliamentarian Group), PML(N), PML(Q) better known as pro-Musharraf or King's Party, *Muttahida Majlis e Amal* (MMA): an alliance of six religious political parties, Imran Khan's Pakistan *Tehrik e Insaaf* and Tahir ul Qadri's Pakistan *Awami Tehrik*. Several regional parties with strongholds in their own provinces included the Sindh based Muttahida Qaumi Movement (MQM), Awami National Party (ANP) in Khyber PK (then NWFP), Jamhuri Watan Party, factions of Baluchistan National Movement and Pashtunkhwa Milli Awami Party.

The National and Provincial elections were held on the same day. More than 72 million registered voters aged 18 and above from a population of 140 million, had elected 272 members for the National Assembly seats and 728 members for the four Provincial Assemblies. A total of 2,098 candidates contested for the said seats of the National Assembly. The remaining 60 seats were reserved for women and 10 for non-Muslim minorities. These seats were to be allocated on the basis of proportional representation to parties bagging at least five per cent of the total general seats.

In the Provincial Assemblies: out of 371 seats of the Punjab Assembly, 66 were reserved for women and eight for minorities, in 168 seats of the Sindh Assembly 29 for women and nine for minorities, in 124 seats of the NWFP Assembly 22 for women and three for minorities and in 65 seats of the Baluchistan Assembly 11 for women and three for minorities.

The elections were observed by hundreds of local and 300 international observers, including observers from European Union and the Commonwealth. These elections were different from the previous ones on many counts. Only educated candidates having at least a Bachelor's degree could submit the nomination papers. Pakistan's leading political personalities Benazir Bhutto and Nawaz Sharif were barred from the contest under the new electoral laws. The age limit of voting in these elections was also lowered from 21 to 18 years. For the first time since 1977, the minority communities that included Christians, Hindus and Parsees had voted for all general seats in the National and Provincial Assemblies.

The election results were declared with mysterious delay which invited un-necessary criticism. Unexpectedly, large number of seats were won by the Islamic parties; MMA secured 51 seats in the National Assembly after PML(Q) with 76 seats, PPPP with 62 seats and the PML(N) won only 14 seats. The MMA got a clear-cut majority in NWFP [now Khyber PK] and Baluchistan provinces where it easily formed government on their own. In the other two Provinces, coalition governments were formed as no party could surface with enough majorities to form sovereign governments.

Despite government assurances that the elections would be fair, free and transparent, different political parties alleged that the elections were engineered by the ISI and the military government was involved in massive rigging. The elections had a low turnout of less than 25 percent as compared to 35.42 percent in 1997 general elections. Allegations of rigging were mainly raised by the PML(N) because they got much less seats than expectations in a way sanctifying 1999's military take over.

With no party emerging with a simple majority, Pakistan faced menace of a hung parliament. A coalition government was, however, set up with Mir Zafarullah Khan Jamali of PML(Q) as

the Prime Minister of Pakistan with the help of MQM, a number of independent candidates and 10 members of the PPP who defected from the main PPP to form 'Forward Bloc'.

### **ZAFARULLAH JAMALI MADE PM:**

The PM Jamali was elected as the 21st Prime Minister of Pakistan on 21<sup>st</sup> November 2002; Gen Musharraf administered the oath at the Presidency. A political deadlock had prevailed as no party had won with an overall majority. The President did not call the National Assembly session until the creation of PPP's forward bloc and the floor-crossing law was held in abeyance. Maulana Fazlur Rehman of the MMA, Shah Mahmud Qureshi of the PPPP and Mir Zafarullah Khan Jamali of PML(Q) were the main contenders for the Prime Minister's slot.

Mir Zafarullah Khan Jamali went successful by securing 172 votes out of 329 votes, against 87 bagged by Maulana Fazlur Rahman and 70 by Shah Mahmud Qureshi. Mir Z K Jamali was however, able to get the desired number of votes only after 10 members of the PPPP had defected from their original party PPP to form their own forward bloc in order to support Mir Jamali.

PM Jamali continued with Gen Musharraf's economic and foreign policies, particularly in supporting the ongoing international war against terrorism. He reiterated Pakistan's support for the US and said that '*Pakistan has become a frontline state, and will remain one*'. PM Jamali then announced a 25-member Cabinet which included four unelected advisers and several legislators who had defected from the PPP. The PPPP's group of dissidents got the best ministries in the PML(Q)'s Government. Rao Sikandar and Faisal Saleh Hayat were given the Ministries of Defence and Interior. Out of the ten PPPP dissidents, six had been accommodated either as full Federal Ministers or Ministers for state.

PM Jamali's Government faced tough challenges; not only from a strong opposition on the Assembly's floor but also in keeping his fragile coalition together while sharing power with Gen Musharraf. The President had the ultimate power, with the authority to dissolve Parliament and sack the PM and his government any time. **On 29<sup>th</sup> December 2002**, the PM Jamali won the vote of confidence of 188 members in the Assembly of 342 seats. It is a tribute to PM Jamali's pleasing personality that even the main Opposition like MMA, while sticking to its own political agenda, had pledged publicly not to destabilize his Government so that the democratic dispensation takes firm roots. PM Jamali, despite enormous pressures, remained firm in sticking to two principles:

Firstly: not to take any major step in policy formulation without consulting the opposition parties on the floor.

Secondly: making sure that his political opponents would not be dragged in false criminal cases as per previous practices in Pakistan.

These two simple principles at length led to the strengthening and functioning of a sustainable democracy. Though the PM Mir Jamali who did bear confidence of the majority in the Parliament and tried to maintain amicable terms with the most powerful President as well as the Opposition with his traits of humility and decency, could not complete his five-year term and was forced to resign on 26<sup>th</sup> June 2004 and dissolved his cabinet, too. He was replaced by Ch Shujaat Hussain of PML(Q), a major ally of Gen Musharraf. Mr Hussain continued for an interim period of about three months and then vacated the slot for Shaukat Aziz, the then Finance Minister in the dissolved cabinet. Mr Aziz was set to win a seat in the National Assembly as he was a senator then. Mr Aziz had returned from living abroad as a senior Citibank executive in 1999 at Gen Musharraf's request.

During Shaukat Aziz's tenure as the Finance Minister, Pakistan's economy had one of its best performances, the public was told; the gross domestic product grew at 6.4% in 2003-4, well above the target of 5.3%. [However, poverty remained high for about one-third of the population] For advocates of democracy in Pakistan, Gen Musharraf's refusal to let Mr Jamali

finish his term was a blow, emphasizing again that Parliament had less power than the president.

Referring to the **'NY Times' of 27<sup>th</sup> June 2004**: *'you cannot in a parliamentary democracy have a head of state running the show. Parliament must be sovereign.'* The problem was not between the two men, but in the system Gen Musharraf had created. He was facing a rising law & order problem in Karachi, a nationalist movement and a pro-Taliban government in Baluchistan, and an ongoing conflict with Al Qaeda militants and their supporters in the NWFP. Gen Musharraf had been eager to avoid having to remove Mr Jamali through a parliamentary vote of no confidence, because there was no guarantee of the outcome. The opposition had indicated it would support Mr Jamali.

Mr Jamali was Pakistan's first prime minister from Baluchistan, a province that had a tense relationship with the governments since long. His departure had further aggravated anti-government sentiments among Baluchi nationalists.

Gen Musharraf had held general polls in Pakistan to fulfil his promise to return the country to the democratic path but it was a brand of democracy that suited the General better than anyone else. He reframed the election rules to disqualify the two former Prime Ministers Nawaz Sharif and Benazir Bhutto, and threatened them to go in jail if they returned from abroad. After the polls were over, the PM Jamali's government worked under an amended constitution, which had given ultimate powers both to him [Gen Musharraf] and a new militarized National Security Council.

Gen Musharraf reiterated that he was merely trying to prevent corruption and bad governance; critics said he had no intention of letting elected civilians run Pakistan. Thus PM Jamali acted as a show face. Amidst such criticism, Gen Musharraf had successfully diverted public attention away from the elections by involving army and media in dreadful news of their nuclear missile race with neighbouring India those days.

In Pakistan, the Muslim Leagues and the PPP combined normally get more than 50% of the popular vote, but during 2002 elections their camps were apathetic, producing one of the dullest campaigns in Pakistan's parliamentary history. Gen Musharraf did not expect that but the vacuum was filled by an alliance of six hard-line religious parties called MMA; the wholesome anti American in the back drop of their crackdown on *jihadis* in Kashmir.

As per analysis of the western media, Pakistani religious parties seldom grabbed more than five percent of votes in the past elections because most Pakistanis were moderate and of secular folk. The fact also remains that most Pakistanis are poor and uneducated who traditionally vote as per their feudal lord's command. With the absence of two big parties, the hard-line religious coalition got a chance to lead the whole lot of voters to the booths; thus the MMA could win 51 National Assembly seats. They were not in majority but in a splintered Parliament, it was enough to give the clerics a few berths in a coalition government.

The **Time Magazine of 7<sup>th</sup> October 2002** had written that:

*'The six hard-line party leaders of the MMA were rivals. They stormed each other's mosques over ideological disputes dating back to Islam's early days. Their differences were stark: some worship at the tombs of local Sufi saints; the personalities of the party leaders have also clashed. Qazi Hussain Ahmed from the Jamaat e Islami is a cultured, well-travelled cleric who speaks with the measured finality of a judge passing a grim sentence.*

*Several of his new brethren, in contrast, are unquestionably flamboyant. Maulana Fazlur Rehman wears robes of golden thread and was dubbed 'Maulana Diesel' after allegations were made though never proven that he was involved in a fuel scam. They have differences, some are centuries-old but they have enough in common.*

*Under their guidance the people of Pakistan had started crying that Americans are killing our Muslim brothers and sisters in Afghanistan; soon, they will come here!'*

The MMA's stronghold was based in the tribal band at Pak-Afghan border. Its Baluch and Pashtun supporters were ethnically and ideologically tied to the former Taliban rulers in Afghanistan, thus their anti-Americanism. Guns were in plentiful supply there as ever. An enlightened educated tribal youngster had once told the Time's reporter that:

*'Of course I carry an automatic pistol. That doesn't mean I'm a terrorist; but I refuse to bow to the Americans. This is our land'.*

Even though, the MMA clerics and their followers had termed Gen Musharraf as *'an American agent and a puppet'*. They resented the General for allowing the US to use Pakistani military bases in Baluchistan and NWFP as staging posts in its Afghan campaign. It angered them that the agents of FBI wiretap Pakistani telephones and organize raids on suspected al-Qaeda hideouts. They knew that cameras at the Karachi airport were feeding images into CIA computers. What irritated them most was that Gen Musharraf had buckled to US pressure and this was against Pakistan's sovereignty.

In and around 2002 elections, Gen Musharraf had plainly given the religious groups more free rein in the campaign than the PML and the PPP had provided during their respective regimes and the same relaxations tightened the noose around his neck five years later.

There are numerous articles available in media suggesting that the America has ultimately lost the so called War on Terror in Afghanistan and has planned to quit much before 2014 as is being suggested by his cronies and concocted think tanks in America. After sustaining hundreds of deaths of the American and NATO soldiers, loosing \$113 trillion in the un-winning war and killing more than 35,000 civilian lives of falsely occupied territories, what they got; humiliations and another black dot of defeat. The above lines appearing in the Time, the most read & circulated magazine in the West, had clearly indicated as early as in 2002 that sons of the soil were not favouring foreign boots on their land.

Americans should have heard those innocent voices and should have read in between the lines being a 'wise & superior' nation, which they have proved otherwise.