

## Scenario 22

### Judiciary in 1997-III:

#### ***Shameful Judgments & Judiciary:***

This hard fact of Pakistan's history made the people believe that some judges of superior courts could be puppets in the hands of wealthy politicians. On the other hand, for some judges of the superior courts, their personal differences are dearer to them in comparison to judicial values. Some judges had practically demonstrated that they had no courage to announce decisions contrary to the wish of sitting rulers. It was pity. It is Pakistan's painful judicial history.

It is a common saying that one who digs a pit for others will fall into it himself. The same thing happened here. Nawaz Sharif had promulgated the 'Contempt of Court Ordinance 1998' to find a way of appeal for himself if he would have declared guilty. The side benefit of this ordinance was to tackle his political opponents too but himself fell prey to it along with his companions during his own regime.

The political scenario changed suddenly in October 1999 and hence the mood of the courts.

In the first week of December 1999 the ousted Prime Minister Nawaz Sharif had appeared before the Supreme Court, in a hearing of re-opening of a contempt of court case against his political party. A petition was moved before the Supreme Court by a 'private person' to re-open this case. Nawaz Sharif was then also waiting for a special anti-terrorism Court to frame formal criminal charges against him for actions leading to the military takeover in October.

The former prime minister was brought before the Supreme Court amid tight security. Nawaz Sharif had also been named in this lawsuit. Although he was not charged in the case, the Supreme Court ordered Nawaz Sharif to testify. The Court then adjourned the case until 12th January 2000 to allow the parties to prepare responses.

*[The fact may be kept in mind that during Gen Musharraf's regime, the judges of superior courts became particular targets of a lethal criticism from the opposition parties as well as the Supreme Court and High Court bar associations for accepting three-year extension in service through the controversial Legal Framework Order (LFO).*

*Gen Musharraf's military government opted to counter these voices by promulgating another ordinance on contempt of court though the Parliament sessions were running there during 2003. The apparent ruling party, Muslim League (Q), had not moved the bill on the floor but instead got the army wishes implemented through the military commander and the President in one chair.]*

Mohammad Shehzad of '**One World**' had rightly pointed out in his essay titled 'Pakistan Law Muffles Opposition to Army-Judiciary Nexus' **dated 27<sup>th</sup> July 2003** that:

*'..... while widening the scope of law on the subject (of Contempt of Court), the military regime had in fact issued the draconian Contempt of Court Ordinance 2003, that made even mere criticism of a judge a punishable offence, sparking off widespread protests from the intelligentsia. The ordinance, issued in July 2003, was facing huge criticism. According to the Lawyers Action Committee, it only furthered the impression that army judiciary nexus was going full tilt to gag all opposition.'*

Qazi Hussain Ahmed, a key leader of the alliance of six religious parties, the *Muttahida Majlis-e-Amal* (MMA), condemned the manner in which the ordinance was issued as shameful, unlawful, and unconstitutional. Mr Qazi had pointed to the ordinance as 'law's back door entry', when there was perfectly legitimate route through Parliament, and said that:

*'It is another wicked attempt to suppress criticism of the crooked judiciary by politicians & lawyers and its reporting by the media.'*

Khawaja Sa'ad Rafiq of the PML(N), the party of ousted Prime Minister Nawaz Sharif, said that:

*'Gen Musharraf has shown his contempt for the country's Parliament by issuing the said ordinance.'*

This statement reflected another replica of Pakistani politician's character; a tragedy..... that Nawaz Sharif and his party had already accomplished the same illogical act in 1998 when he had promulgated an ordinance on the same subject, Contempt of Court Ordinance 1998, with the signatures of the then President Rafiq Tarar though the parliament sessions were also in the row.

On **7<sup>th</sup> February 2008**, another petition against former Prime Minister Nawaz Sharif was filed in Lahore High Court (LHC) seeking action under contempt of court act.

S Naeemul Hassan Sherazi, advocate, on behalf of Ch Siddiq Sarwar, Safia Naureen and Farzana Kausar in the petition had challenged an advertisement message which was published in daily newspapers on 8<sup>th</sup> January 2008 on behalf of or instigated by Nawaz Sharif. The petitioners said in their application:

*'The respondent has committed contempt of court wilfully and intentionally in order to scandalise the honourable court which is grievous contempt of court. He had criticised various policies of the previous military government, particularly saying "Agar Tum Mann pasand judges Sey Mann-pasand Faisalay Laina Chahtay ho to Tumhara Yaum-e-Hisab Qareeb Hay" (if you desire to get decisions of your own choice by your beloved judges then the day of your accountability has come true or nearby at least).'*

Nawaz Sharif is known for creating such occasions for committing contempt of court. History is the witness to it.

Let us move a step further. A script from column of **Ardisher Cowasjee dated 15<sup>th</sup> February 2009** appearing in daily the '**Dawn**' of Karachi reads as under:

*'Come Nawaz Sharif as prime minister in 1997, with Sajjad Ali Shah as chief justice of Pakistan. A prickly person, not open to wheeling and dealing, he did not suit Nawaz Sharif or his designs to assume full and complete power, transforming himself into an amir-ul-momineen and the country into his vision of a citadel of Islam. The tussle reached its peak in November 1997.*

*Later, on Nov 28, Sharif did the unthinkable. He arranged for a mob of his party storm troopers to physically invade the Supreme Court building at a time when its chief justice was sitting hearing a contempt of court case that had been brought against the prime minister and various others. Pakistan was disgraced in front of the world. Many of the attackers were identified, but, the judiciary being the judiciary, they got off lightly'. The PML was 'however' feeling proud.*

### ***Pseudo Trial in SC Attack Case:***

During the first week of March 1999, a full bench of the Supreme Court indicted six legislators of the then ruling PML (N) by framing contempt of Court charges against two Members of Parliament and four Members of Provincial Assembly Punjab, besides head of the 'Nawaz Sharif Force' in the case of ransacks, bullying and attack on the apex Court building on 28<sup>th</sup> November 1997.

Those, who were charged with offence of the contempt of Court under the Contempt of Court laws read with Articles 3 and 4 of the Constitution, included PML (N) MNAs Tariq Aziz and Mian Muhammad Munir; PML (N) MPAs Ch. Tanvir Ahmed Khan, Akhtar Rasool, Sardar Naseem, Mehmood Akhtar and a leader of the PML (N) Youth Wing, Shebaz Goshi.

The show-cause notice served earlier on the political secretary to the then prime minister Col (Retd) Mushtaq Tahirkheli was withdrawn. Islamabad Secretariat police had registered an FIR against these leaders soon after the incident took place. No investigation into the matter could be started as Pakistan's political culture never allowed any agency to enquire into or investigate any issue if it would be related to the sitting government's favourite persons.

The bench, designated to hear this contempt case, was headed by Justice Nasir Aslam Zahid and comprising Justice Munawar Ahmed Mirza and Justice Abdul Rehman Khan. The charge-sheet, which after a prolonged hearing was served on the seven PML leaders, stated:

*"You were the part of the crowd gathered in and around the building of the Supreme Court in the morning of 28.11.97 and were involved in acts of rowdyism including raising of slogans and display of banners against the judiciary with the intention of bringing the authority of this Court into disrespect or disrepute and lower its authority and to disturb the decorum of the Court and rendered yourself liable to punishment under Article 204 of the Constitution read with Articles 3 and 4 of the **Contempt of Court Act, 1976.**"*

The alleged contemnors were served with the show-cause notices on 3<sup>rd</sup> July 1998 as per procedural demands.

Leading columnist of daily The Dawn, Aredsher Cowsjee had assisted the Court in identifying the contemnors and provided the Court with two video films of the incident; one recorded by the close circuit video camera of the Supreme Court and the other shown by the BBC and CNN. Some 13 press reporters had appeared before the Court as witnesses while on the orders of the Court newsmen and newspapers provided the photos of the incident appeared in the daily newspapers. The SC bench headed by Justice Nasir Aslam Zahid did not allow any counsel of the alleged contemnors to argue and directed them to speak on the matter themselves.

It was May 1999. Those were the days of Nawaz Sharif's rule being the prime minister so how the court, how high level it was, could dare to hear the contempt case against Prime Minister's colleagues and party leaders. The available evidence was 'declared' insufficient to prove the allegations. The critics though remembered that **video tapes of BBC, CNN and of Supreme Court's own security cameras were there on the Courts record** along with bundles of national and international newspapers having details of events and photographs of the political stalwarts involved.

Just for academic discussion, one should not forget the other scripts on the court's file. For example Justice Nasir Aslam Zahid, heading the three-member bench, during regular hearing of this contempt case, had reacted and asked the then Inspector General of Police (IGP) Islamabad, Salim Tariq Lone, whether or not they lathi-charged people gathering outside the Parliament, Presidency, Prime Minister's house or for that matter the Supreme Court?

Though the IGP Mr Lone had tendered his apology at the very outset of the proceedings on that day but the judge further said:

*'When the police knew that a thousand or two three thousand people had gathered in front of the Court, why the entire Constitution Avenue was not blocked for traffic?'*

The Politicians & political workers; the planners, muggers and assailants were not asked even a single question.

The Court, including Justice Munawar Ahmed Mirza and Justice Abdur Rehman Khan as its other members, had expressed dissatisfaction over the police performance that after the lapse of seven months police could not identify the miscreants whose TV footage had been run by the Court's close circuit cameras and international media. Even after viewing the footage of CCTV, press videos and press photos, the politicians and political attackers were not found guilty of any charge, police was there to be bullied. What an independent judiciary the Pakistan had.

Responding to the Court, the then IGP Salim Tariq Lone said that about 30 people were identified, 15 of whom arrested till then. The officer offered regrets, when the Supreme Court had expressed its dismay that no further action taken and the issue was still pending, as it was.

The IGP had also placed it on record that an inquiry was conducted by the Chief Commissioner of Islamabad but its report was not officially given to them yet.

He said two police officials were suspended following the incident. Why it was delayed, the Supreme Court asked. IGP Lone told the Court of his satisfaction with the security arrangements on 28<sup>th</sup> November and said some of his colleagues had advised not to use force, as they feared, the situation might get out of control. The IGP was reprimanded that as head of the department he should have immediately started investigations of the incident. The politicians and attackers were declared angels, not found guilty of any charge as if police had instigated them. What a justice it was.

Javed Akram, the Chief Commissioner, in his statement before the bench said, it was not unusual for the crowd to gather in front of the Supreme Court as it would come whenever the Prime Minister appeared before the Court. He said he did not get any intelligence report that the crowd would gatecrash into the Supreme Court building. Security arrangements in and around the SC building were adequate and satisfactory, he submitted to the Court.

It was further pointed out again to the Islamabad Police Chief, Salim Tariq Lone, that an administration official Assistant Commissioner Mr Shallwani in his statement before the Court had identified a group of people among the trespassers as members of the ruling PML Youth Wing.

The judge observed that no one from police had bothered to further probe into his statement despite the fact that the statements made in the Court room were communicated to the police chief by his subordinates who attended the proceedings. The slackness was continuing as it existed on that day (when the Supreme Court was stormed); candidly observed by Justice Mirza sitting in the bench.

***'I apologise. I think it was not intentional'***, IGP Mr Lone replied but only to be interrupted again by Justice Zahid who had observed that the crowd had threatened the dignity of the Court. The politicians and political workers were not touched, being sacred.

The senior police official, SSP Altaf Hussain, who was in charge of police deputed for security at the apex Court on the day of incident was bullied by the court. The bench had also asked for statements of many journalists who were there on that day for reporting. BUT even then, there was no decision from the court because of pressure of the PM Nawaz Sharif who had patronized his party members involved in the said case of historical misery. How independent the judiciary was. Politicians and attackers were innocent, police guilty. ***Pakistani justice Zindabad.***

The evidence comprising of press videos, BBC & CNN videos and reports, CCTV footings, bundles of newspapers and press photos, statements of media-men, was shelved declaring it 'insufficient' by the apex court and the case was filed because the members of ruling party were involved in the case and they were subordinates and company men of the same Prime Minister Nawaz Sharif, who had sent their Chief Justice home about 20 months back. Justice—Hurray.

Referring to this 'judicious trial', former CJP Sajjad Ali Shah held a candid opinion that 'some of our judges and the attacking politicians' were a joint party against the supreme Court. The attack on the SC was launched by politicians but those 'party judges' were consulted prior to actual attack. PM Nawaz Sharif was openly saying at all forums, including media that 'we are working on [brother] judges and soon the Chief Justice of Pakistan would be isolated'.

CJP Mr Shah had once addressed PM Nawaz Sharif in presence of the President and the Army Chief that:

***'I can tell you Mr Prime Minister that your son in law Captain Safdar visits which judges with brief cases and who accompanies him to the judge's residences.'*** Both the addressees were staring at the wall.

The PM had no answer. All those judges were residing in official accommodations in front of the Punjab House Islamabad and most of them used to assemble in the Punjab House invariably every evening. Senator Saifur Rehman used to be there also to use his dictatorial influence about NAB appeals. Their meals used to come from nearby five star Marriot Hotel of Islamabad.

Shahbaz Sharif remained busy on another front while sitting in Lahore. During those days of turmoil, once he asked Justice Fazal Elahi from Peshawar Bench to stand by Nawaz Sharif, he would be made Chief Election Commissioner of Pakistan.

In nut shell, most of the 'brother judges' were paid their price by the PM Nawaz Sharf. They themselves had assured the PM that the CJP would be out soon and that too through the court orders. CJP Mr Shah tried his level best to obstruct that exit order against him through both judicial and administrative means but could not succeed because the executive was with them all. For all this exercise, the fact prevails that; judges could not stand before 'chamak'. The PM Nawaz Sharif once himself told in a private meeting that:

***'Justice Sajjad Ali Shah's exit has cost us too much, too high.'***

It was fact also because a special plane was used to fly between and buy the 'brother judges' in all the four provincial capitals through Justice (Rtd) Rafiq Tarar, Dr Shahryar - a cardiologist of Lahore & family friend of Sharifs and Sharifuddin Pirzada.

That was the only way out for Nawaz Sharif to finish all the corruption cases against him and his family. After exit of the CJP Mr Shah, all cases were transferred to a bench of 'brother judges'; what happened to them then, history is silent on those facts.

**Akram Sheikh**, Pakistan's top law specialist, in an interview published in media on **29<sup>th</sup> August 1999**, had opined:

*'It was categorically mentioned in the said judgment that the planning for that attack on the Supreme Court was done at some other place and at very high level. The motive behind that planning was to keep the CJP Sajjad Ali Shah away from hearing cases [of contempt and regarding corruption both] against the PM Nawaz Sharif. It was done to teach a lesson to the CJP.'*

*'The transport was provided from the same PM House. Some PML's elected members were made incharge of the people sent in those transport buses. Under a similar planning then, that PML's local leadership was got acquitted from some judges on the pretext that there was no evidence available against the 'high level planners'.'*

*'The process got immediate approval by the followers. An Additional Session Judge was hearing a case of an 'influential person'. His colleague openly conveyed the message to 'set free his man' otherwise he would be coming with 4000 people in buses. The Judge brought that threat in the notice of his seniors. Advised; that better to proceed on leave to avoid a new trouble.'*

Threats, misappropriation and corruption by influential have developed as acceptable culture in Pakistan now.

Nothing new in Pakistan; no surprise! In most of the third world countries it is just a routine matter. Quoting Tanzania as an example where the judiciary also finds itself chastened by government efforts to persuade and sometimes forcefully push it to go in line with state *dictation*. According to M.K.B. Wambali and C.M. Peter, as narrated in '**The Judiciary in Context: The case of Tanzania**' (Frances: London).

*"...the government and the Party play a vital, if not a decisive role in determining who will man various positions in judiciary. This in a way has a bearing on the work of this important institution. Although the constitution also provides safeguards to the judges to maintain their independence ..... experience has shown that these safe guards are formal enactments and are not all that water-tight. Judges have been transferred from the judiciary and given other responsibilities in government service.*

*The very fact that the executive makes appointments [in the superior judiciary] has at times tended to make members of the judiciary subservient to the executive and the Party"*

When our judges are so 'courageous and God-fearing' then how a nation can prosper. These judges had sworn in with the Holy Qoran in hand considering themselves as the true followers of Islam; taking oath under the constitution of Islamic Republic of Pakistan, of an Islamic state.

Contrarily they behave like a coward clerk of a municipal office who is simply afraid of any rogue BD member. They are the Respectable judges who do not remember that an ordinary *Qazi of Muhammeden* Era used to call the *Khalifa* before him to answer the allegations levelled by ordinary persons. But who could speak against them. Contempt of court for them was enough.

Here, instead of making bold decision on the basis of evidence placed before them, the judges preferred to shout at IGP and Chief Commissioner - the harmless creatures, sidelining the main culprits and finally letting them off. What kind of judgments they have drafted and what they are leaving behind as legacy. What the future law students would take out from their judgments and what would they quote. ----- Nothing but shame, filth, burnt flesh and sarcastic smiles.

One can see if the same is true for Pakistan throughout its history.