

Scenario 170

JUDGES & POLITICS IN 2012-13 [III]:

OGRA CASE FIASCO:

On 19th December 2012, the Supreme Court of Pakistan [SC] ordered arrest of the former ***OGRA Chairman Tauqir Sadiq. He was brother in law of the PPP's Secretary General [Late] Jehangir Badar;*** was wanted for the last few months but had successfully escaped to Dubai [by a sea launch] in early October that year.

The apex court was told by the NAB that Prime Minister Raja Pervez Ashraf had, as minister of water and power and chairman of the interview board, had forwarded documents about Sadiq's appointment to the then PM Yousuf Raza Gilani.

Tauqir Sadiq was appointed Chairman OGRA in a clear case of favouritism and despite criticism by the media over the suitability of the PPP's favourite as head of this important regulatory authority. ***His appointment was declared illegal by the Supreme Court on 25th November 2012.***

As per rules, for appointment as Chairman OGRA, the qualifications required for the post were ignored; the slot required 20 years of specialised experience as an impeccable professional in the field of law, business, engineering, finance or accounting. But being brother in law of Jehangir Badar of PPP, Tauqir Sadiq secured a relaxation in the rules and managed to get hold of the chairman's seat. The former PM Mr Gilani was facing charges of appointment of Tauqir Sadiq as Chairman ORGA and protecting him during the subsequent stints.

Background of OGRA Case: The National Accountability Bureau [NAB] submitted to Justice Bhagwandas Commission a report on the wrongdoings committed by the oil industry people in the pricing of petroleum products causing a loss of Rs:83 billion to the nation over a period of five years. This huge loss was caused through the fixing of oil prices by OGRA in connivance with various oil companies.

The NAB told that the report on petroleum pricing mechanism between June 2001 and June 2006 was originally submitted to the then president Gen Musharraf and PM Shaukat Aziz on 13th June 2006 by the then NAB chairman Lt Gen (rtd) Shahid Aziz. The report was never made public but the NAB chairman was removed unceremoniously shortly after the report was submitted to the presidency. The same report was then provided to the Justice Bhagwandas Commission.

As per finding of the then Deputy Chairman of NAB, Maj Gen Muhammad Siddique; the former Chairman OGRA and three other officials of OGRA – Mansoor Ali Muzaffar, Mir Kamal Farid Bijarani and Jawad Jamil – the senior management of “Pakistan State Oil Company Limited [PSO], in collusion with the Oil Companies Advisory Committee [OCAC] were involved in massive misappropriation & misuse of authority and forgery in the import of HSD [high speed diesel] and its subsequent sale in the country.

The above officers were accused of misusing authority, embezzling funds and causing the afore-mentioned losses to the national exchequer. Converting regular income of two public utilities — the Sui Northern Gas Pipelines and Sui Southern Gas Company - into virtually non-operating ones, relocating several CNG stations for financial and political considerations, making illegal appointments, etc were the additional charges on them.

In short, the NAB report told that Tauqir Sadiq in collaboration with above mentioned members of OGRA [Member Gas and Member Finance] had caused a loss of billions to the national exchequer in the form of gas development surcharge. Furthermore, under his stewardship:

- OGRA issued licenses for opening 306 new CNG stations in 2009-10 and 170 in 2010-11 in violation of a ban imposed by the government in 2008 because of severe gas shortages.
-
- OGRA increased the benchmark of un-accounted for gas [UFG] from 4.5% to 7% against the global practices without explaining the basis and rationale for it which resulted in irrational and unjustified benefits to gas companies.
-
- The NAB held that during that upward revision, the government suffered a loss of around Rs:44 billion. Moreover, the information was leaked to a select few people in the stock market, before making the decision public which led to increase in the share value of SNGPL in the market from Rs:15 to Rs:36, providing an opportunity to the dearest ones to obtain massive benefits.

The Living History of Pakistan Vol-V

- OGRA suffered a loss of Rs:87.28 million caused by illegal stay orders in gas theft cases by Mansoor Ali, of which Rs:56.46 million was still recoverable.
-
- OGRA suffered an estimated loss of Rs:22 billion because it increased well-head gas price from \$2.80 per mmbtu to \$3.9. In the said Sabsabil Gas Field, owned by Dewan Petroleum Limited, the price was increased in negation to the government policy and that too with retrospective effect from 2007; however the timely intervention by NAB authorities had saved a further loss of around Rs:36 billion to national exchequer.
-
- OGRA paid Rs:13.27 million to lawyers and attorneys who were neither on the approved panel of lawyers for the authority, nor were they acting for the authority. Instead, these lawyers were given cases involving personal benefit or loss to Mr Sadiq, including one challenging his fake degrees.

[Interestingly, Tauqir Sadiq had no lawyer to defend the charges framed against OGDC in the multi-billion rupees scam though as the OGRA Chairman he had appointed seven lawyers for his personal cases after 22nd July 2009.]

- OGRA relocated 47 CNG stations illegally under the orders of Tauqir Sadiq and Kamal Marri.
-
- Evidence regarding 'kickbacks / commissions' also surfaced for 'collections made by agents and front-men' working for Tauqir Sadiq, Kamal Marri and Mansoor Ali.
-
- Mansoor Ali had misused his authority and illegally obtained vehicles from SSGCL and SNGPL for almost two years, causing a loss of Rs:3 million to the national exchequer in the form of fuel, driver and depreciation costs.
-
- Illegal appointments were made in OGRA and according to records available, some 50 officers were appointed in sheer violation of the rules and criteria for such appointments.
-
- A loss of another Rs:6 billion was caused to the government by 'illegal removal of 40% upper cap of profits' to the refineries.

The Federal Cabinet, in June 2001, had entrusted the role of oil price fixation to OCAC under monitoring by the DG but OCAC played Scot free. As a

result of faulty policies, the profits of Shell Pakistan, Caltex and PSO increased by 232%, 281% and 252% respectively between 2001 and 2004-05. Likewise, the profits of Attock Refinery, National Refinery, Pak Refinery and Parco jumped by multiplication of hundreds in percentage between 2001-02 and 2004-05.

Contrarily, a loss of over Rs:11 billion was caused to the exchequer because of a redundant oil pricing formula for petrol [motor spirit] while another Rs:34 billion loss was caused due to wrongful addition of premiums on the import parity prices of petrol and high speed diesel between July 2001 and April 2006. [Source: '**Dawn' dated 25th June 2009**]

Likewise, the Petroleum Ministry failed to cap the distribution margins of the Oil Marketing Companies [OMCs] and dealers when the petroleum prices touched the sky and provided a benefit of Rs:9 billion to the OMCs and dealers between December 2004 and May 2006.

The Petroleum ministry, despite having assured the ECC in the summary of capping the margins, failed to cap OMCs' & dealers' margins resulting in their exorbitant profit margins. It calculated a financial impact of more than Rs:18 billion that was '*erroneously*' earned by the OMCs and dealers in five years because the OMCs charged commissions even on government taxes, particularly on 15% GST that was clearly in violation of laws.

But what happened in the last; nothing. In Pakistan reports are there but no action; smile please and see that the NAB, and J Bhagwandas Commission could not fix responsibility on any. The Supreme Court simply kept silent because '*son of no big gun or politician*' was nominated in the said case to bring the SC and judges in highlight media.

OGRA Case Investigations: During investigation, Tauqir Sadiq insisted that he had completed his LLM degree from Quaid-e-Azam Law College, Lahore, and also got a degree from American University London [***by the way there is no American University at London***].

Once, the FIA had informed the apex court that wife and daughter of Tauqir Sadiq had also left for Kathmandu in a PIA flight PK-268 on 10th December. Sadiq's name was put on the ECL **on 25th January 2012**. He had returned to the country **on 27th March 2012** but as per FIA record he had not left the country after that BUT he had slipped abroad in fact.

On 3rd January 2013, the court was told that Tauqir Sadiq's passports had been cancelled but on 9th January 2013, after a long chase and overcoming massive 'hurdles' the NAB finally managed to bring OGRA's Tauqir

Sadiq back home from the UAE and probe into Rs:82 billion corruption scandal entered the final phase in full swing.

NAB had spent about Rs:5 million, mainly on travelling and lodging of the officers quite a few times, to make Tauqir Sadiq's come back effective. The UAE government had immediately agreed to send him back on the first request from NAB but **Pakistan's ambassador in UAE named Jamil Ahmed** did his best efforts to keep Sadiq there due to his close associations with PPP; Jehangir Badar was obliged though he had never stood by Tauqir Sadiq in open.

Tauqeer Sadiq was arrested by Abu Dhabi police on the intervention of Interpol in January 2013 but he could not be brought back to Pakistan earlier than 9th July due to gimmicks by Pakistan's embassy in UAE. The embassy only helped NAB in this case because the new regime [of PML(N)] had taken over in Islamabad.

[Interestingly, while the NAB team was authorised to bring back the fugitive to Pakistan, some FIA officers [Adl Director Shuja Naveed and Usman Ahmed AD to be named exactly] also reached UAE on 2nd February 2013 to make parallel efforts against NAB's team on the directive of the then Interior Minister Rehman Malik to disrupt Tauqeer Sadiq's deportation process.]

It is still available on SC's record that Pakistan ambassador in Dubai did not cooperate with the NAB team and used delaying tactics for completing formalities necessary for extradition of the accused to Pakistan.

Suddenly on 28th February 2013 it was revealed to the NAB team that Tauqir Sadiq had been taken to **Nayabbah** [Prosecution Department of the UAE] by the FIA & Embassy officials and his detention period had been extended for 10 more days. Thereafter, a meeting in Pakistan's Embassy had to be arranged between the visiting Interpol [FIA] team and NAB's officers to sort out the matter but with no progress.

The then NAB Chairman Adml (Rtd) Fasih Bokhari was apprised of the situation; he directed his I O Waqas Ahmed Khan to convey to the ambassador that he should make all-out efforts to help deport the accused otherwise the ambassador would be proceeded against under NAB laws.

Though Tauqir Sadiq's family members termed all allegations to be false and fabricated and the majority of assets linked to his 'supposedly' corrupt practices were explained away as either having belonged to his family members, or as joint property of the family falling to him as inheritance.

Professor Tanvir Sadiq, the elder brother of the accused Chairman urged that ***out of the 40 bank accounts some 23 were either operated by him*** or his close relatives and had nothing to do with Tauqir Sadiq.

NAB concentrated more on circumstances which led Tauqir Sadiq to be the Chairman OGRA, his handling of the affairs as authority, his escape to the UAE and finally his arrest and landing back in Pakistan.

[Very few people know that following international practice and under pressure from donors, an independent regulator for oil and gas pricing and management was established in Pakistan through an ordinance of 2002 and named it OGRA. The decision was widely appreciated by the Asian Development Bank, the World Bank and others but OGRA could not function as per the spirit behind its creation.]

The founding Chairman of OGRA, Munir Ahmad, had to face tough opposition in initial years from the bureaucracy of its parent Ministry of Petroleum and Natural Resources, which was not mentally prepared to give away their control over the matters especially concerning financial interests.

That tug of war between OGRA and the ministry was in full swing, when in the fall of 2008 Tauqir Sadiq stepped into the shoes of Munir Ahmad, using his political clout in the PPP.]

It is on record that Raja Pervaiz Ashraf, who was then the Chairman of the interview board being the Federal Minister for Water and Power, had forwarded the appointment documents of Tauqir Sadiq to the then PM Mr Gilani, who gave the final approval to Tauqir's appointment.

With strong political support, it was considered that Tauqir Sadiq would provide a steady base to this newly established authority, but contrarily he made the authority even more vulnerable. Unable to overcome bureaucratic hurdles, OGRA's new chief allowed more political interference and thus scores of irregularities to be recorded.

Tauqir Sadiq had managed to get the OGRA Ordinance 2002 amended in 2009, and secured control over CNG as well as petroleum products pricing, yet the M/O Petroleum refused to give up its bureaucratic control.

The Living History of Pakistan Vol-V

The oil lobby in the country was so strong that through Prime Minister's Advisor on M/O Petroleum Dr Asim Hussain, a close confidant of President Asif Ali Zardari, it made a strong move to get OGRA disbanded completely.

The attempt was quelled, as both PM Gilani and his deputy Ch Pervaiz Elahi opposed the move quoting the possible reaction from the ADB and World Bank supporting independent handling of various sectors. In fact Dr Asim had failed to follow the foot-prints of Federal Information Minister Qamar Zaman Kaira, who had managed to bring PEMRA under the direct control of M/O Information through a cabinet decision, otherwise an independent body to regulate electronic media channels.

Tauqir Sadiq could not engage a lawyer to defend him despite paying Rs:13.274 million to them during 2009-10. According to details, Akram Khawaja advocate received Rs:2.014 million, Tariq Aziz Rs:5.505 million and Khurram Saeed advocate received an amount of Rs:915,000, Advocate Shehzad Saleem Bhatti was paid Rs:640,000, M Saleem Lashari advocate got Rs:100,000, Naveed Rasool Mirza got Rs:1.1 million and Akram Sheikh advocate was paid Rs:3 million [*Mr Sheikh was a counsel for Tauqir Sadiq in the Supreme Court just to contest his appointment case*].

In July 2013, during his physical remand with NAB, Tauqir Sadiq started spilling the beans while disclosing a secret account in the UAE managed by a close relative and Benami (nameless) transactions in Pakistan.

A prominent businessman agreed to become an approver in the mega case and return an amount of Rs:162.5 million allegedly invested by Sadiq in his company. That secret account was kept in Mashreq Bank Dubai which was managed by his relative named Sajjad. It is estimated that Sadiq had deposited about AED 3.7 million [Rs:101.3 million], of course made through corruption, in that account alone.

NAB sent a formal request to the UAE government for the freezing of Tauqir Sadiq's account and recovery of the money looted through the illegal issuance of licences for CNG stations, stock market manipulations and other alike means. The cheques in the said A/C used to be received through his relative and associate Sajjad and one uncle named Abdul Ghafoor, a resident of Canada. Sajjad told the NAB in writing that Tauqir Sadiq had invested Rs:162.5 million with his company but he was unaware that the money was made through corruption adding that:

"An amount of Rs:25 million has already been paid back to the accused Tauqir Sadiq and the remaining amount is still with him; he is willing to return the amount to NAB in instalments."

A bank pay order worth Rs:12 million was given to NAB by Sajjad as a token of his sincerity. Sajjad used to pay the profits of Tauqir Sadiq's investment money to Abdul Ghafoor in Canada. Tauqir Sadiq used to look after Ghafoor's property in Pakistan and Dubai in return but the NAB held that Sadiq had been doing Benami transactions using the name of Ghafoor. Nab confiscated all the properties in Pakistan in the name of Ghafoor worth Rs:15 million.

On 10th June 2013, the former PM Raja Pervez Ashraf told NAB investigators that he was falsely accused of issuing 200 licenses to CNG stations as alleged in media reports - he had only approved 69 CNG stations' licenses which were already approved in 2010 by his predecessor. Raja Pervaiz Ashraf satisfied the NAB that he had not advised to open 69 CNG stations on 16th March 2013, the last day of his premiership, just only the policy guidelines were made by him.

It has become a normal practice in bureaucracy that in 99% cases, the officers in various lucrative positions do corruption by taking decisions at their own then put it on the shoulders of out going ministers urging that **'.....he had given the verbal orders.'** There is no relaxation in law or the regulations unless supported by other evidence in that regard.

According to the resources, the CNG stations were opened due to the verbal orders made by the ex Prime Minister Raja Pervaiz Ashraf.

Raja Ashraf admitted that he was Chairman of the interview board that approved the appointment of former OGRA Chairman Tauqir Sadiq, Jehangir Badar's brother-in-law. Yousuf Raza Gilani was prime minister at the time.

On 24th January 2014, NAB filed a reference, over the appointment of Tauqir Sadiq as OGRA Chief, against the two former prime ministers in an accountability court. A supplementary reference in the main case pertaining to Rs:82 billion corruption committed in OGRA was also placed before the court. Names of 9 known persons, booked in OGRA corruption scandal, were also included in the Exit Control List [ECL] rendering them unable to flee the country. The list included two former Managing Directors [MDs] of Sui Northern Gas Pipelines Limited [SNGPL] and Sui Southern Gas Pipelines Limited [SSGPL] too.

Aqeel Karim Dheedi, Deewan Zia-ur-Rehman, OGRA officer Jawad Jamil, Former President SNGPL MD Rashid Loan, MD SSGPL Zaheer Siddiqui, former MD Azeem Iqbal Siddiqui, GM [Finance] of SSGPL Syed Arsalan, Director SNGPL and SSGPL Mirza Mehmood, Deputy MD of SSGPL Yousaf

Ansari included who were put on in ECL. Both the prime ministers were summoned to attend the court on 18th February 2014. On the said day, both were there in the court and were given the copies of the references filed against them.

On 21st August 2015, the Supreme Court ordered the formation of a commission on the matter of escape of OGRA scandal's main suspect Tauqeer Sadiq. A 3-member bench headed by Chief Justice Jawwad S Khawaja was hearing the said case.

Astonishingly, after three years investigations, NAB's Prosecutor Waqas Qadeer Dar was telling the court that ***'no one has been proven guilty in the matter'***. It was on record that the scam was touching Rs:82 billion loss whereas millions were spent to bring Tauqir Sadiq back to the country – the CJP directed to form a commission regarding the matter. Tauqir Sadiq was the principal accused in the said case, and had fled to Abu Dhabi after the SC on 25th November 2012, declared his appointment as Chairman OGRA illegal and ordered his arrest for corruption.

Tauqeer Sadiq, according to an interim reference provided by NAB, had provided undue financial relief to firms and individuals and issued licenses for CNG stations on bogus documents.

Allegedly, the General Secretary of the PPP, Jehangir Badar, had played a major role in his escape from Pakistan despite cancellation of his passport and inclusion of his name in the Exit Control List [ECL]. Once he was brought back from Dubai to appear in the case but again fled the country.

ZIARAT RESIDENCY RANSACKED:

On 15th June 2013; the historic Quaid e Azam Residency building in Ziarat [Balochistan] was burnt to ashes after hand grenade and rocket attacks by unidentified armed men were launched. Soon after the attack, the wooden building caught fire and burnt to ashes in hours. A policeman on guard duty on the premises was also killed by the culprits.

It took five hours to bring the blaze under control as Ziarat had no fire brigade. Local Police seized six unexploded explosive devices hours later after fire-fighters extinguished the fire.

The Living History of Pakistan Vol-V

Most of the old furniture and other objects inside the monument were destroyed in the fire, including historic photographs of the Quaid. The furniture, used by the Quaid and being kept at its original place as national heritage since his death in September 1948, was all burnt.

The banned organisation, the Baloch Liberation Army [BLA], claimed responsibility for the attack through a phone call from one Merak Baloch, a spokesman for the BLA. Meanwhile, hundreds of people belonging to different shades of life, including political activists and students, staged a protest in Ziarat city.

This attack on the Quaid's Residency was a symbolic message at a time when a new beginning of reconciliation was being witnessed in Balochistan. The decades old structure was something meant to survive in history. The attack was a practical statement against Pakistan openly displaying that *'some elements within Pakistan are at war with it, with the very idea of what Pakistan is and why it is.'*

Daily **'the News'** dated **16th June 2013** noted with concern that:

'Balochistan has long been an arena of conflict. It serves as an example of how rulers of a country can alienate an entire region and its people and fail to address their immortal longings for freedom and development.'

'The human rights situation in the vast province, so thinly populated, has been unbearable for years.'

Just a week earlier, PM Nawaz Sharif had taken an appreciable decision to select *'a commoner'*, Dr Abdul Malik Baloch, as the Chief Minister of Balochistan. He knew that the challenges he was confronted with were monumental but Balochistan has been essentially a challenge for the rulers in Islamabad and the GHQ both. The former coalitions had totally betrayed their followers on this count and also indulged in disgracefully poor governance – whether army sponsored or of PPP or the JUI.

However, the intelligentsia divulged their doubts over PML[N]'s right-wing inclinations pointing towards their previous attitude towards religious militants, raising some questions about social justice in Pakistan's general populace and in particular for Balochis, rural Sindhis, Saraikis and deprived Pakhtuns whether belonging to Balochistan or otherwise.

The Living History of Pakistan Vol-V

On the other end, the Taliban and other non state actors operating in the tribal belt, have been pointing that the '*religious militancy has disfigured the face of the Pakistani society.*' Confronted with strategic implications of a complicated regional situation, many of Pakistani leaders in succession were unable to define the nature of the two decades old war that Pakistan has been fighting for its survival.

Pakistani rulers, hailing from military and democratic backgrounds both, in fact failed to prove that the [remaining] Pakistan, after the creation of Bangladesh, was viable and could survive as a progressive nation in which all its citizens from all its regions keep equal rights & privileges. Most of the population persistently suffered injustices and deprivations.

In his essay appeared in '***the News***' referred above, Ghazi Salahuddin had rightly pointed out that:

'We have almost been hiding from history. We do not teach history in our institutes of higher education. A large number of our universities do not even have a department of history. We lack an intellectual environment in which we can rationally explore our recent or distant past and learn lessons.'

Pakistan can only survive as a liberal and progressive polity; see the Article 3 of Pakistan's Constitution which states that:

'...the state shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle: from each according to his ability, to each according to his work'.

The Balochistan Liberation Army [BLA], knowingly supported by the CIA & MI5, had not only claimed the attack on Quaid's Residency in Ziarat but replaced Pakistan flag with that of BLA there. The people of Pakistan were more hurt when BLA's leader, Herbyar Murree, said in Jasmin Manzoor's **live TV talk show on 17th June 2013** that:

'... then what if sixty years old residence of someone is burnt. Daily tens of houses of Balochi people are hit by your forces [pointing towards Pak-Army] but no one bothers.'

Next days **attack on Bolan Medical Complex** by RAW supported *Lashkar e Jhangvi* [LeJ] killing 29 including 14 young girls, four soldiers of FC, one Captain, Deputy Commissioner of Quetta, one Lady Doctor,

four nurses, two policemen and six pedestrians was another tragedy to be worried about. It was propagated that as some top PML[N] leaders were humiliated by Gen Musharraf [*albeit the PML[N] was created and patronised by the military under Gen Ziaul Haq and the party had always been labelled to be pro-establishment*] so they tried to snub the Pakistan Army on the pretext of these events.

The attack on Quaid's Residency came within a week of the election of a Baloch nationalist – Dr Abdul Malik - as the Chief Minister of Balochistan. His Party, the National Party, had the smallest number of seats in the 3-party coalition in which Pashtun Nationalists [PKAMP] were given the Provincial Governor's slot but the largest partner in the coalition – PML[N] – preferred to be in the back set.

This 'generosity' was widely celebrated as auguring well for peace in Balochistan but the attacks in Quetta and Ziarat put a challenge for the trio set up in much disturbing way.

That media anchors like Hamid Mir, Kashif Abbasi, Javed Chaudhry and Jasmin Manzoor held live TV-talk shows where the majority of the analysts, including Gen Hamid Gul, raised fingers over the insensitivity and callousness of the security agencies, the ISI in particular, for the attacks.

An interview of Afghan President Hamid Karzai by Salim Safi broadcasted on GEO TV **on 16th June 2013** had clarified the things more. Mr Karzai repeatedly blamed the Pak-Army and ISI for all the trouble in Afghanistan. He openly accused the Pakistani 'establishment' to be interfering on the internal affairs of Afghanistan. He said that:

'The Pakistan Army is supporting the Taliban insurgents who control large areas of Afghanistan and is giving refuge to them on Pakistani territory.

If they [Taliban] will continue interference in Afghan affairs, Pakistan will also continue to suffer with losses of human lives & economy; will see the persistent bloodshed also – you have chosen the way.'

The message was baseless but very clear.

On 17th June 2013, the leader of PKAMP Mahmud Achakzai repeated the same charges in the National Assembly's session. He confirmed that Pakistan was interfering in the internal affairs of Afghanistan and asked

The Living History of Pakistan Vol-V

the Government to withdraw troops from FATA and negotiate with all representative factions of the Taliban.

The bottom line of the stand was that Pakistan had nothing to do with alleged Indian plans in Afghanistan or to support or criticize any government in Afghanistan. Afghanistan's political scenario should be handled through normal diplomatic activity and NOT through ISI's guidance or taking side of Haqqanis or similar Afghan groups.

The defence of Pakistan is the 'statutory' role of the armed forces but Pak-Army had nothing to play role in government formation in neighbouring countries; as has been doing since two decades.

When Ch Nisar Ali, the Federal Interior Minister and Mahmood Achakzai roared on Parliament's floor questioning the role of Pak-Army in Afghanistan, a very special lobby of TV anchors, columnists of the print media and social net work specialists immediately jumped to defend two decades old but miserably failed policies of status quo. For instance an article on internet circulated **on 17th June 2013** said:

- *'As things stand today, if Pakistan compromised on its policy to have a friendly administration in Afghanistan after NATO troops leave, there would be civil war much more bloody and destructive than the one that followed the withdrawal of Soviet troops.*
-
- *Pakistan would face another flood of refugees and the war would be fought primarily on the soil of Pakistan.*
-
- *The Pakistan Army understands that the initiative is in the hands of the enemies of Pakistan - RAW and the CIA.*
-
- *Afghanistan is the base of both for clandestine operations against Pakistan.'*

What could Pakistan do & what should have done?

The above premises were considered by veteran nationalists, no doubt, but the intelligentsia tended to disagree with the above presumptions on which Pakistan had continuously been suffering since two decades.

The new brigade of torch bearers on this path had very simple solutions for the above apprehensions that:

The Living History of Pakistan Vol-V

- Pakistan should immediately stop worrying about 'friendly administration' in Kabul. That should be their prerogative, their people's sweet will; so no further guidance – no interference please. If there will be civil war then what to Pakistan; let the big powers handle it.
-
- Pakistan should otherwise keep vigilant to check the influx of the expected refugees from Afghanistan – as the other countries of the world do; as the European countries behave with Pakistani asylum seekers. Don't be sentimental, international law is very clear.
-
- The hidden attacks and intrigues of CIA & RAW should be dealt with by the Pak-Army and ISI for which they exist. They should work out adequate measures while remaining in Pakistan's limits. To counter their initiatives, it is not valid that Pak-Army should try to establish its bases in a neighbouring country.
-
- Lastly, that '*Afghanistan is the base of CIA & RAW for clandestine activities in Pakistan*' would not qualify for Pak-Army's armed interference in another sovereign country.

Elaborating the last point, one thing went clear that it was a direct admission of failure of successive Pakistani governments to think and saying so; their foreign policy and the capability of security forces. Foreign office should have taken the matter with India and America with evidences if Pakistan was right.

Secondly, Pakistan's security forces should have taken steps to formulate a cogent strategy to counter those clandestine activities; for which they are being heavily paid and funded from national exchequer.

The fact remained that Pakistani governments had always kept the best friendly relations with the two countries; India & America as sovereign countries – then why not with Afghanistan on the same pitch.

SUPREME COURT BETRAYED BY PPP:

On 26th June 2013, Attorney General [AG] Munir A Malik informed the Supreme Court during proceedings of the NRO implementation case that a second letter signed by the then Federal Law Secretary Yasmin Ab-

basesy was sent to Swiss authorities under explicit directions of the previous government without the apex court's knowledge. AG Malik told the bench that:

"I received information about refusal of the Swiss authorities on the night of June 20, 2013, and was required to file an appeal by June 24. We have filed an appeal with the request to condone the few days' delay."

The 3-judge bench of the Supreme Court and many others in the courtroom were astonished when the AG Mr Malik placed a copy of that letter before the court. The letter written by the then Federal Law Secretary Yasmin Abbasesy, contained that:

'The requests for mutual legal assistance made earlier in 1997 were illegal, having no legal effect, are hereby withdrawn by the government of Pakistan and may be treated as never written.

Further, that the orders regarding closure of the cases by former AG Abdul Qayyum on 25th May 2008, were final and could not be reopened under the Swiss laws.

AND that the steps taken on the orders of the SC were essentially political and in the eyes of the Republic of Pakistan, the criminal proceedings had been closed and could not be reopened.'

Accordingly the Swiss lawyer conveyed the decision of Pakistani authorities to the Swiss government. The Swiss authorities had conveyed their approval to the government of Pakistan on 4th February 2013, but it was brought on the record on 14th June 2013, and that too after the incumbent government asked its ambassador in Geneva to start proceedings. The incumbent government could appeal against the decision of the Swiss authorities within 10 days.

The letter said that the government was not interested in reopening cases against President Asif Ali Zardari and sought a reply stating the closure of cases from Swiss authorities which were subsequently closed by Swiss authorities on 4th February. **The court was told that the ministry of law had also destroyed all the proof related to the second letter** till the PML[N] government had to procure its copy through Pakistan's Ambassador at Geneva on 14th June 2013.

Chief Justice Iftikhar M Chaudhry remarked that the then AG and Law Ministry kept the court in the dark.

Transparency, honesty and accountability do not matter in Pakistani politics – in fact it have never been there since decades.

A revelation that a letter was written **on 22nd November 2012** to the Swiss authorities, through Dr Nicholas Jaanding, their lawyer in Geneva, in secret and running counter to an earlier letter to them at the behest of the Supreme Court of Pakistan, really jolted the whole nation. Three leading figures of the last PPP government – the **Federal Law Minister Farooq Naek, PM Raja Pervaiz Ashraf and the Federal Law Secretary Yasmin Abbasey – had allegedly conspired together to deceive the judiciary** and by extension the whole nation.

[While bowing their heads at last before the Supreme Court Bench hearing 'implementation of NRO judgment' in early days of November 2012, Farooq Naek had secretly visited Switzerland to settle the whole game.

*After putting their cards in order there in Switzerland, the PPP's law minister, and the Attorney General had submitted to the bench that the long awaited letter would be sent to the Swiss authorities for re-opening of Zardari's cases. The said letter, approved by the SC, was then despatched **on 5th November 2012.***

The three legal godfathers urged the Swiss government to refrain from [possible] re-opening money-laundering cases against President Zardari, and had written that letter after seventeen days asking that the effects of a previous letter be annulled. The second letter contained that the government of Pakistan had closed all such cases against the President, and that the cases would remain closed and would never be re-opened.

The Swiss authorities acted on the contents of the secretly sent second letter [because it suited them and their economy] and withdrew all previous letters written by the government of Pakistan regarding the money-laundering cases weather moved by any government or the apex court.

It may not be out of place to mention that when the PPP government had taken reigns of the government in 2008, Justice (rtd) Qayyum Malik, who was the Attorney General of Pakistan [AG] in Gen Musharraf's times,

was kept in tact with the same posting though PPP high ups were die-hard enemy of his person.

[One can recall the judgments passed by J Qayyum Malik against Benazir Bhutto and Zardari in 1997 and the famous episode of J Qayyum's quit from judiciary in 2001 over Saifur Rehman's audio tapes row.]

AG Qayyum Malik, **on 22nd May 2008**, had sent letter to the Swiss Authorities apprising them that Government of Pakistan had no intentions to pursue the said investigations and trial in \$60million money laundering cases connected with SGS and Cotecna involving Benazir Bhutto & Zardari AND that the cases could be treated as closed. AG Qayyum Malik was also sent to Switzerland to see the concerned Swiss officials to make sure that the investigations had been expeditiously ended.

In November 2009, when the PPP government had known that they had been betrayed and beaten in the National Assembly due to their internal intrigues and the NRO was not going to get accent by majority of the members on floor, they successfully managed to snatch and lift away the whole record of SGS and Cotecna cases from the Swiss Lawyer's offices through Wajid Shamsul Hassan and Rehman Malik.

[One can recall the GEO TV's footage of those days in which Mr Hassan was found running away on a footpath of Geneva following with twelve hefty boxes of record; still that record is reported 'missing' from the courts, Law Ministry Islamabad and Pakistan's High Commission in London.]

This stance violated the whole judgement of the Supreme Court passed on 16th December 2009 and a number of other subsequent judgements passed in the NRO implementation case, which were ordered for the executive authorities to seek the revival of the Swiss cases; the Court went upset. Meanwhile a 2-member enquiry team, comprising of Secretary Establishment and DG Intelligence Bureau was constituted to look into that latest state sponsored forgery. The nation was waiting what was at the tip of that iceberg – but again ***tain.....tain....phish*** as usual.

Attorney General Munir Malik informed the SC that the government would appeal the Swiss government decision; the matter was, however, adjourned. Whatever immunity President Zardari held and enjoyed by virtue of his position lapsed when he left the presidency on 8th Septem-

ber 2013 – and the justice was buried with surprises and smiles once more.

Promotions Reversed by SC: PPP didn't behave well with the apex court because of certain reservations but the CJP Iftikhar M Chaudhry himself never left any chance to humiliate the PPP's leadership; see one more instance in that context.

On 3^d October 2013; the Supreme Court [SC] ***declared the promotions of 80 grade 21 and 22 bureaucrats, made during former Prime Minister Pervez Ashraf's tenure, as void.*** The SC also ordered that a fresh board meeting be held to decide promotions on merit.

A 3-member bench of the SC presided over by the CJP Iftikhar M Chaudhry [the other members were Justice Sh Azmat Saeed and Justice Ejaz Chaudhry] had reserved the verdict on 12th July 2013 on the petition filed by Oria Maqbool Jan. It was held that the previous government had promoted these bureaucrats on political considerations while encroaching upon the rights of deserving officers.

Interestingly, the previous government had already admitted that the promotions of 23 officers were illegal and the decisions taken by the Central Selection Board [CSB] in connection with the promotion of these 80 bureaucrats were not transparent as then supervised by Secretary Establishment Azmat Usman.

[That whole drama of fake promotions was played to bring up Dr Fazlullah Pechuho, husband of Asif Ali Zardari's sister, as Chief Secretary Sindh and was given priority for the promotion despite being on 132nd position in the seniority list then held.]

J MAQBOOL BAQIR ATTACKED:

On 26th June 2013; some miscreants targeted a senior judge of Sindh High Court in Karachi killing at least nine people on a busy street during morning rush hour.

The attack happened as Justice Maqbool Baqar Rizvi drove past with his security detail on Burns Road on his way to the high court. The driver and one officer from the Rangers paramilitary force were among the dead, the

later along with police were on security duty with Justice Baqar. Nine more were injured while the bomb was planted on a motorbike and was detonated by remote control.

Justice Baqar kept a reputation for honesty and had also served as a judge in Special Anti-Terrorism Courts [ATC] and was known to hand down quick judgments in terror cases. The *Tehreek e Taliban* Pakistan [TTP] claimed responsibility for the attack, urging that Justice Baqar was acting in 'un-Islamic' manner. **"The Sindh High Court judge was our target. His decisions were anti-shariah and he was ruling against the mujahideen,"** TTP spokesman Ihsanullah Ihsan told the *Newsweek*.

[Karachi, a city of 22 million people, contributes 42 percent of Pakistan's GDP but had been rife with murder and kidnappings since years; plagued by ethnic, sectarian and political violence. In year 2012, around 2,000 people were killed in violence linked to ethnic and political tensions, its deadliest toll in two decades.]

On 18th July 2013; the suspect who had planned and attacked Justice Baqar was arrested along with his two companions after the Karachi Police raided their hideout in Surjani Town. The alleged mastermind frequently changed his identity and was known by names, such as Bashir Chandio and Masoom Leghari, however, he was associated with the **Asif Chotu group** of the outlawed LeJ allegedly operating from Waziristan. During initial interrogation, the suspect did reveal that the group spent Rs:2.2 million on monitoring the judge before they carried out the attack.

Next day, the suspect, then clearly known as Hafiz Baseer Leghari, died in the hospital due to his gun shot injuries during raid.

On 20th September 2013; Justice Baqar took oath as the SHC's Chief Justice after surviving the above mentioned terrorist attack. The 56 year old judge became the 22nd chief justice of the SHC; he was elevated as an additional judge to the high court on 26th August 2002, and was confirmed on 26th August 2003.

Justice Baqar, along with outgoing Chief Justice Mushir Alam, were considered heroes of the lawyers movement as they had refused to take oath under the 3rd November 2007's Provisional Constitutional Order [PCO], imposed by the then military ruler Gen Musharraf. Justice Baqar had again assumed the office in March 2009 after the restoration of the higher judiciary after Black Coat Revolution.

PRESIDENTIAL ELECTION [2013]:

That the term of the then incumbent president, Asif Ali Zardari, was ending on 8th September 2013. **Article 41 (4) of the Constitution** says:

"Election to the office of President shall be held not earlier than sixty days and not later than thirty days before the expiration of the term of President in office. . . ."

As the two months of July and August had 31 days each so presidential election had to be held between 10th July and 8th August. Between these two dates the election process beginning with the submission of the nomination papers by candidates and ending with polling, counting of votes and announcement of result was to be completed.

In the first place, the Election Commission of Pakistan [ECP] did not announce the schedule of presidential election till 17th July apparently without any valid reason; that job could have been accomplished in the last week of June or first week of July.

Secondly, no political party, including the Pakistan Muslim League [Nawaz], requested the ECP to complete the election process at the earliest, if it apprehended that delay on the part of the ECP would lead to the holding of presidential election in the last 10 days of Ramazan.

On 17th July 2013; the ECP announced the schedule of presidential election under which the nominations had to be submitted by 24th July and the president was to be elected by secret ballots on 6th August. Probably at that stage the PML[N] realized that since *Eidul Fitr* was almost certain to fall on 9th August, a number of MNAs and MPAs who were expected to vote for the presidential candidate might not turn up, and the party would fail to get its nominee elected with its full strength. The PML[N] then decided to do something about it.

Since constitutionally it was not possible to delay the presidential election until after Eid, the PML[N] first tried to persuade the ECP to advance the date to 30th July. The ECP was not convinced that there existed any genuine reason to change the schedule of presidential election which had already been announced and declined to shift the date. Upon this the PML[N] decided to bring the matter before the Supreme Court.

Referring to ***Amicus' analysis of 4th August 2013 at pkhope.com:***

*"Under the Constitution, the only way available to the PML[N] to approach the Supreme Court was through the invoking of **Article 184 (3) - Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have power to make an order of the nature mentioned in the said Article.***

The language in which this article has been framed shows that it was intended to have a well-defined and limited scope. Normally, Article 199 was about the jurisdiction of the High Courts."

The contents of the petition submitted to the Supreme Court by the leader of the house in Senate, PML[N]'s Senator Raja Zafarul Haq , **on July 24, 2013** made an interesting reading. Senator Haq contended that the polling for presidential election was to be held in the last 10 days of Ramazan during which a number of lawmakers planned to observe *aitkaf* or go for *umra* to Saudi Arabia.that 6th August would be close to *Eidul Fitr* and many lawmakers would like to proceed to their hometowns to celebrate Eid.

The holding of presidential poll on 6th August would infringe the fundamental rights of lawmakers because they would not be able to participate in the election due to their spiritual and religious engagements during the last 10 days of *Ramazan*. Senator Haq asserted that the election schedule violated the fundamental rights of lawmakers because if he and other parliamentarians opted to exercise their voting right they would have to give up their **"spiritual and religious plans."**

In response to an application by Senator Haq, which called for early hearing of the petition, the Supreme Court took up the matter on the same day i.e. 24th July. Without going into the merit of the case as to why the ECP had rejected the pleadings of the PML[N] for changing the date of polling or hearing the viewpoints of other political parties and candidates, the Supreme Court only listened to the arguments of the petitioner.

The SC just enquired from the representative of the ECP if it was possible to advance the polling date to 30th July and, on receiving answer in "yes", issued its Order to shift the date of polling to 30th July.

The Supreme Court Order said that the holding of presidential election was one of the most important constitutional activities to be undertaken by the ECP. The Court observed:

"....therefore, it is the duty of the ECP to facilitate all the voters and electors and enable them to exercise their right of franchise."

Obviously the Supreme Court completed its proceedings in a hurry, and issued the Order the same day without fully taking into consideration its likely consequences and repercussions. The SC was facing criticism from different quarters on at least three grounds:

- It heard the submissions of only the PML[N].
- It encroached upon the domain of the ECP.
- Its Order was flawed and untenable in many respects.

The ECP was a constitutional entity and, as the SC had itself observed, it was the duty of the ECP to hold presidential election. The announcement of the election schedule was a procedural matter and not a substantial one. It was not appropriate for the SC to interfere with the working of the ECP even in a procedural matter. The ECP was an independent and reformed body after the Eighteenth Amendment to the Constitution with a well-defined domain of activities. The SC should have realized that every institution needed to respect the domain of others for the sake of harmony and to avoid unnecessary clash.

Due to the SC's Order of 24th July, the country lost Fakhruddin G Ibrahim, a man of principles and integrity, as Chief Election Commissioner. Reportedly Mr Fakhruddin G Ibrahim wanted to challenge or ignore the SC's said order but other members of the ECP were not of the same viewpoint. Had Mr Ibrahim decided to resign before the polling date, technical hurdles could have delayed the presidential election.

However, he could not endure the slur and aspersion cast against his person as a result of abdication of its authority by the ECP and when some of the political parties demanded resignation of the members of ECP, he was the first to oblige them forthwith.

The jurists held that as the SC Order had flaws thus was legally untenable. First the Article 184 (3) had a well-defined and limited scope. By including observance of *aitkaf*, *performance of umra* and leaving for hometown three days before *Eidul Fitr* in fundamental rights, the SC had imparted a new meaning and unlimited scope to this article.

Were these things mentioned as fundamental rights in the Constitution? In what respect they were ***matters of "public importance"***? From the general election of 1988 to general election of 2013, several hundred thousand people of different constituencies in Karachi had been deprived of their fundamental right to vote by a political party known to all. Had the SC taken cognizance of that disenfranchisement?

Aitkaf and umra are optional; they are not included in fundamental obligations of Islam. The federal and provincial secretariats, courts, corporations, business houses, educational institutions, in fact, except for a very small number of people, all individuals and institutions perform their duties as usual during the last 10 days of Ramadan.

To cast vote in presidential election was a constitutional and moral obligation of the lawmakers even if the polling date falls on 27th day of Ramazan, all the more so owing to the magnificence day following the Holiest Night *Shab e Qadr*. The SC Order had opened up a Pandora's Box and anyone can now claim leave from his or her duty on religious ground as a fundamental right because otherwise he or she would have to give up his or her "spiritual and religious plans".

Pakistani society was already suffering from hypocrisy of highest order. Honourable judges were requested to have a look at Quaid e Azam's address to the first Constituent Assembly of Pakistan in August 1947.

Surprisingly that in support of his contention that a number of lawmakers would not be available on 6th August to cast vote, Senator Haq did not produce any facts and figures or statistics from the past. He just presumed that others too wanted the change of polling date. He did not have any right to represent other lawmakers, in particular those belonging to parties other than the PML[N], in the matter. Despite this non-representative character of the petition, the SC accepted Senator Haq's submissions and passed the Order.

By advancing the date of polling, the SC deprived other candidates and opponents of PML[N] of their right to have sufficient time for canvassing. Agreed that the position of the PML[N]'s candidate was not so strong, but the very fact that the Constitution provides for secret ballot implies that the MsNA and MsPAs have the right to vote independent of party instructions and there always remains a possibility of upset in the result.

The PPP boycotted the presidential election in protest against the Supreme Court Order. Had MQM also boycotted the polls, Sindh would have been conspicuous by absence from the election process, as a dis-

enfranchised federating Unit. Although the PPP claimed that its stand was based on principles, one could not forget that it had given legitimacy to the sham presidential election of September 2007 as *quid pro quo* for National Reconciliation Ordinance [NRO].

The PPP should have given precedence to interests of the federation and participated in the presidential election under protest. The credit was due to *Tehreek e Insaf* [PTI] which despite reservations, fielded its candidate.

The boycott of presidential election by the PPP, the *Awami* National Party [ANP] and the Balochistan National Party [BNP] as a protest against the Supreme Court Order to advance polling date from 6th August to 30th July 2013 followed by the resignation of the Chief Election Commissioner, Fakharuddin G Ibrahim had led to a controversy over the presidential election. Only with due care and alertness on the part of state institutions and political parties, the unpleasant situation could have avoided.

The acceptance of the PML[N]'s position in the matter had strengthened the impression that the SC under CJP Iftikhar Chaudhry had a tilt towards that party. One might refer to the matter in which ***Shahbaz Sharif's constitutional right to serve as the Chief Minister of Punjab was challenged but he completed his term after securing stay order.***

Since the SC had failed to give a constitutionally or legally sound reasoning, its Order in the matter under discussion was also being considered a political ruling by many jurists.

Also consider the SC's summary dismissal of Dr Tahirul Qadri's petition for reconstitution of the ECP. By all estimates, the public meeting organized by Dr Qadri at ***Minar e Pakistan Lahore*** had an attendance of between half and one million people and *dharna* in Islamabad had between fifty thousand to one hundred thousand participants, including women and children, who endured an extremely rough weather.

Dr Qadri represented those multitudes who were hopeful of a new dawn. What about their fundamental rights to have the ECP reconstituted if due mechanism was not followed in its constitution? These people thought that another ECP would strictly implement Articles 62 and 63 of the Constitution. How the SC insulted Dr Qadri, the representative of teeming millions? The SC had lost all sense of propriety, decorum and politeness while in blind love with the PML[N].

In any case the election of president is a closed transaction. Article 41 (6) of the Constitution says: "***The validity of the election of the President shall not be called in question by or before any court or other authority.***" Nevertheless, it is important that somehow a larger bench of the SC could revisit the Order to have a proper interpretation of Article 184 (3) of the Constitution for future.

The detractors of CJP Iftikhar Chaudhry consistently complained that since his reinstatement in March 2009, the Chief Justice had often interfered in the domains of other state institutions, in particular the executive. He kept penchant to remain in limelight and engineered the occasions to do so.

[A visible tendency was seen to acquire cheap publicity through: (a) issuing prompt suo motto notices of matters falling within the domains of other institutions and (b) passing populist remarks during judicial proceedings for the consumption of media.]

The SC knew that as the interpreter and arbiter of the Constitution, no one is above the Constitution – the SC itself was required to function within the given parameters of the Constitution. The over-all scheme of the Constitution must not be violated, including Article 204, in letter and spirit it has to protect the Supreme Judiciary and other State Institution, from ridicule or disrepute, this was needed to be revisited.

The PML[N]'s jurists held that though the verdict was delivered after listening to just one party, and it encroached on ECP domain, but how come the decision was untenable and flawed?

DHA vs ETPB [EVACUE LANDS SCAM]:

On 2nd October 2013; a 3-member bench of the Supreme Court headed by CJP Iftikhar M Chaudhry while deciding a *suo moto* case pertaining to the **Evacuee Trust Property Board [ETPB]** land worth billions of rupees selling for peanuts to the Defence Housing Authority [DHA], declared the agreement void and ordered criminal proceedings by the FIA against ETPB Chairman Asif Hashmi and others.

The *suo moto* action was taken on a letter sent by members of Sikh community stating therein that Asif Hashmi, Chairman ETPB, had been

selling the evacuee property attached to their worship places. ETPB had planned for making investment of Rs:986 million contrary to the provisions of Section 4(2) of the ETPB Act 1975.

The court noticed that in the transactions entered into by ETPB with DHA Lahore and Islamabad, numerous illegalities and violations of financial instructions had been committed along with violation of the relevant laws. The bench directed Secretary Ministry of Minorities Affairs to arrange forensic audit of the ETPB for the last five years.

The Chairman ETPB and its members in pursuance of the decision taken in 272nd meeting held on 16th April 2009 made investment of Rs:986 million but without settling the terms and conditions in that respect. The recovery of principal amount had already been made under an earlier order of the apex court but the parties were made bound to pay mark up on Rs:986 million from the date of its payment.

The court ruled that matter relating to acquisition of ETPB land situated in Mauza Lidhar, Mauza Mota Singh Wala and Mauza Dera Chahal Tehsil Cantt Lahore by the DHA Lahore, vide its above referred decision dated 16th April 2009 approving DHA's offer for exemption of 25% residential plots was unlawful; as the earlier decision dated 20th July 2007 by ETP Board in its 263rd meeting had given 33% exemption of residential plots [measuring 1-Kanal each] as a result whereof DHA had to provide 642 residential plots on acquiring 1946-Kanals of ETPB land, in addition to DHA's offer of 100 x commercial plots on payment.

The court, however, gave option to the DHA to accept within 30 days the ETP Board's decision taken in 263rd meeting dated 23rd July 2007 and handover the developed residential and commercial plots to the ETPB; failing which DHA would be bound to return the land owned by ETPB situated in above mentioned three villages.

The apex court also noted that DHA had acquired more land than agreed upon, therefore, Board of Revenue was directed to make arrangement for the demarcation of the properties owned by ETPB and ensure the restoration of the excess land.

The apex court ruled that DHA would not be entitled to recover any compensation, if it had paid to obtain the possession from the lessee or on the development of land. However, DHA could resort to the court of law to prove its claim by adducing evidence as per lines given in Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society **[PLD 2011 SC 619]**.

The Living History of Pakistan Vol-V

The court further held that the inquiry already initiated by FIA would be concluded at the earliest and compliance report be sent to the SC registrar for appropriate orders if needed.