

## **Scenario 8**

### **Army & Judiciary in 1981-83:**

#### ***PCO of 1981:***

**Provisional Constitutional Order (PCO) of 1981** was the first extra- constitutional order promulgated on **24<sup>th</sup> March 1981**, by the military dictator Gen Ziaul Haq, which suspended the Constitution of Pakistan. It was the earliest Provisional Constitutional Order in the history of Pakistan. Judges of the Superior Courts were asked to take oath of the office under the PCO.

Referring to an essay by **Justice (rtd) Sajjad Ali Shah** appeared in daily the '**Dawn**' of **7th January 2008**.

*'Judges of the superior courts are required to take oath as prescribed in the third schedule to the Constitution, and calls on them to preserve, defend, uphold and act according to the law and constitution itself. If the Constitution stands suspended, the oath of a judge remains intact because he acts according to law which includes a suspended Constitution. Pakistan's constitutions were abrogated in 1958 & 1969 and martial laws imposed, but the judiciary continued as it was, without any removal of judges.'*

After 1969's martial law, many government officers were dismissed or retired on grounds of misconduct, without a mandatory inquiry but some were retired in consultation with the Chief Justices of the respective high courts of Pakistan.

During Gen Ziaul Haq martial law of 1977 the Supreme Judicial Council was approached to investigate whether any judges in the high courts were selected for political reasons. After inquiry and the right of personal hearing, several were retired as political appointees. As if this was not enough, the 1981 PCO was promulgated. PCOs are normally promulgated to get rid of certain upright or unwanted judges to whom the military governments declare 'non-cooperative'.

Gen Ziaul Haq's martial law was validated on 10<sup>th</sup> November 1977 by a unanimous decision of the Supreme Court bench comprising of 9-member court headed by Chief Justice Anwarul Haq, under the doctrine of necessity, while dismissing Nusrat Bhutto's petition challenging detention of former Prime Minister Z A Bhutto and 10 others. Strange enough that the PCO of 1981 was announced after four years delay and as a result, many judges were retired from the Supreme Court and the high courts without having their say.

Question arises that why after four years then. Answer lies that in those days whatever petition was filed in Balochistan High Court (BHC), the CJ BHC Justice Murri used to announce judgment against the military government invariably in all petitions. Gen Ziaul Haq was continuously feeling disturbed for that. A chance happened that on similar petitions the Sindh High Court (SHC) gave different verdicts, nearly favouring the military government and much different than those of BHC. It was much confusing for the legal community as well as for the government.

The then Federal Secretary Law, Justice S A Nusrat, approached the then CJP Anwarul Haq and requested him on behalf of the military government to consider the issue of two judgments on the similar petitions from two different subordinate high courts and bring

forward one verdict. For unknown reasons the CJP declined to consider government's request saying that *'the Supreme Court has other more important cases to deal with'*.

That was the beginning of thinking about PCOship in military minds of Pakistan. Had CJP Anwarul Haq taken those opposing verdicts from two high courts seriously to reach a just conclusion or judgment, there was no possibility of PCO in 1981. It remains a fact that the said PCO was neither coined in the Federal Ministry of Law nor any of its officers including Justice Nusrat were asked to join them. It was all a military exercise with the aid of private legal experts.

That is why that when PCO was promulgated, CJP Anwarul Haq and the former CJ LHC Molvi Mushtaq Hussain (then a judge of the Supreme Court) were not called to take oath. The CJP contended that he was called for oath but he had himself refused to take it. Both the CJs were very close to each other and were no more in good books of Gen Ziaul Haq after Bhutto's judicial murder in April 1979.

In 1981, the Chief Justice Sindh High Court, like other high courts, was instructed by the Federal Law Secretary from Islamabad to ask all the judges of the court to reach Governor House for fresh oath except the two judges named Abdul Hafeez Memon and G M Shah. Some judges had argued that if all judges boycotted the oath-taking, other 'pliant ones' would replace them and therefore it was far wiser to fight from within. Later it transpired that many judges were not called and some judges who had declined to take the oath became heroes and were appreciated by members of the bar and the general populace.

Chief Justice Maulvi Mushtaq Hussain of the Lahore High Court, who headed the bench of five judges and sentenced PM Z A Bhutto to death was though elevated to the Supreme Court but was not invited to take oath by Gen Ziaul Haq. Chief Justice of Pakistan Anwar ul Haq, when told about the PCO, called an urgent meeting and asked his fellow judges for their opinion in that regard.

Justice Fakhruddin G. Ebrahim said that although he was not party to the judgment in Nusrat Bhutto's case but he would not take oath. Justice Dorab Patel also refrained but all other judges agreed and lastly the CJP declared that since he was the author of the judgments, both Nusrat Bhutto's case and Z A Bhutto's appeal, he too would not take oath. On Federal Law Ministry's record, a letter no: 786-81/CJP dated 25<sup>th</sup> March 1981 addressed to the President Gen Ziaul Haq is available showing that Justice Anwarul Haq himself had declined to take oath at PCO declaring the act as 'against his conscience'.

Justice Dorab Patel was the honourable judge of the Supreme Court who had refused to take oath on PCO of 1981 knowingly that he was going to be the Chief Justice after refusal of Justice Anwarul Haq and was going to stay in the post for another seven years at least.

It is worth a mention here that Justices Dorab Patel, Mohammad Haleem and G. Safdar Shah had acquitted Mr Bhutto. Even then if judges like Dorab Patel were being invited for oath it meant that Gen Ziaul Haq wanted to avail the right of pick and choose judges favoured by the government under that PCO. For Justice Dorab Patel the PCO had not only negated the spirit of independence of the judiciary but also prolonged martial law by nullifying the effect of a judgement giving military regime limited recognition. As a signatory to the judgement, Patel could not have taken the new oath, given his strict conscience.

It is also said that during that PCO of 1981, Justice Samdani of LHC, a known upright judge, was also not called to take oath. The facts were otherwise in this case. Justice Samdani was called to take oath but when he reached at Governor House Lahore to take oath, the then Chief Justice Lahore High Court Shamim Hussain Qadri met him at gate and told lie to him that his name was not included in the list of would be judges. He went back from there and then.

Prior to his posting as the judge of LHC, Justice Samdani was the Federal Secretary Law. During a high level meeting once Gen Ziaul Haq had said that **'some judges should be hanged'**. Mr Samdani was also there in the meeting who loudly said that **'some Generals**

***should also be hanged'***. Gen Ziaul Haq got angry with Mr Samdani. There prevailed an impression that due to above given remarks Gen Ziaul Haq had not asked him to take oath, whereas it was not true. Gen Ziaul Haq did call him for oath because Samdani was widely respected for his uprightness and the General had liked that quality in Justice Samdani. J Samdani was sincere in taking oath but his CJ S H Qadri did not want him in his team.

The then Federal Law Secretary Justice S A Nusrat came to know at 10 AM that day that Justice Samdani was not asked to take oath. He rang up Governor Jilani immediately who told that *'we had called him but not turned up'*. The subsequent enquiry made clear that he had come but sent back from gate of the Governor House. Sharifuddin Pirzada was upset on the issue; he immediately told the whole story to Gen Ziaul Haq. Gen Zia promptly asked Gen Jilani to call Justice Samdani and take oath from him. Justice Samdani was called again, asked to take oath but he refused then saying that *'I've been disgraced too much'*.

At the same time, the intelligentsia and old democratic figures had felt that, motivated by self-preservation and self-interest, Pakistan's superior judiciary had failed to uphold the basic spirit of the constitution. While superior courts have been validating military coups, military regimes have manipulated judicial appointments, promotions and removals, steadily purging higher court benches of independent-minded judges. This has pushed the judiciary further towards incredibility. Judicial independence used to be hampered not only by the state but also by religious groups patronized by some military Generals.

### ***Balochistan in Gen Ziaul Haq's Era:***

After the debacle of fall of Dacca in 1971, the National Awami Party (NAP) led by Baluch nationalists Ghaus Bux Bizenjo, Sardar Ataullah Mengal, Gul Khan Nasir, Khair Bux Marri and Nawab Akbar Khan Bugti dominated Balochistan. At that time, even the Jamiat Ulema e Islam (JUI) of Maulana Mufti Mahmood (father of Maulana Fazlur Rehman) thought it fit to join hands with the ethnic nationalists to become big leaders.

Emboldened by the stand taken by Sh Mujib ur Rehman of Bangladesh, these ethnic nationalists started demanding their 'provincial rights' from Zulfikar Ali Bhutto in exchange for a consensual approval of the 1973 constitution. But while Mr Bhutto admitted the NAP-JUI coalition, he refused to negotiate with the provincial government of Balochistan led by Chief Minister Ataullah Mengal in Quetta; thus tensions erupted. Within six months, PM Bhutto dissolved the Balochistan government, arrested the CM and the Governor along with many Baluch MNAs and MPAs, obtained an order from the Supreme Court banning the NAP and charged everyone with high treason to be tried by a specially constituted Hyderabad Tribunal of handpicked judges. In time, an ethnic nationalist insurgency erupted and Army had to launch an action.

The 1970s conflict with the separatists had manifested itself in the form of an armed struggle against the Pakistani army in Balochistan. Mir Hazar Khan Marri headed the separatist movement under the Baluch People's Liberation Front (BPLF). Marri and the BPLF fled to Afghanistan, along with thousands of his supporters. [Baluch separatists often fight today under related nicknames such as BLA, BLM, BLO etc.] The irony was that Nawab Akbar Khan Bugti served the federal government as Governor of Balochistan throughout the time of the insurgency; during this time, Bugti spoke not a word in favour of provincial autonomy.

The greater irony was that the insurgency came to an end following the army coup of Gen Ziaul Haq against Mr Bhutto's civilian government. Soon thereafter, Gen Ziaul Haq called the Baluch leadership into mainstream while providing jobs and funds from the federal government to the alienated, insecure tribal middle classes. More significantly, Gen Zia created maximum political space for the religious parties so that they could be galvanized in the jihad against the USSR in neighbouring Afghanistan. Soon the ideological jetty for the Greater Balochistan movement melted into memory over the next two decades.

The uprising itself had suffered from a lack of direction. Some Baluch wanted independence, most only greater autonomy within Pakistan. Among their grievances against Islamabad were: neglect of the economic development of the area; discrimination against the Baluchis in

respect of recruitment to the civilian government services and the armed forces; the policy of resettlement of large numbers of Punjabi and Pashtun ex-servicemen in Balochistan, which was viewed by them as an attempt to reduce the Baluchis to a minority in their homeland; and non-payment of royalties to the Baluchi tribal for the utilization of their natural resources for the benefit of the rest of Pakistan.

In that backdrop the attacks were organised by individual Baluch separatist chiefs, rather than an organised type of attack. During the NAP days, the Baluch separatists hoped to get the support of the Soviets, which never happened. Also, the large Pashto and Brahvi minorities in Balochistan did not take part and were hostile to the idea of a separate Balochistan. In the meantime, Gen Zia sent Lt Gen Rahimuddin as Governor there who, being a Pashtun himself, was against the idea of greater Balochistan.

Gen Rahimuddin's unprecedented long rule (1978–84) crushed almost all armed uprisings within the province with an iron fist. His policy of isolating Baluch Sardars from provincial affairs earned increasing controversy. Previous rulers had tried to appease the feudal lords; Rahimuddin went out of his way to isolate them from any position of provincial power and addressed the common masses of the province by promoting economic growth. This policy, in retrospect, led to the most stable period Balochistan has ever witnessed after the British left. Economic expansion was also impressive during Gen Rahimuddin's reign.

In Gen Ziaul Haq's times in 1980s, when the American CIA, through Pakistan's ISI, trained and armed the Afghan mujahideen and other Islamic fundamentalist elements and used them to bleed the Soviet troops in Afghanistan, the Marris and the Mengals kept away from the anti-Soviet jihad and helped the KGB, the Soviet intelligence agency; and the Khad, the Afghan intelligence agency, in the collection of intelligence regarding the activities of the CIA and the ISI on the Pakistani side of the border.

The Jamalis collaborated with the CIA and the ISI in countering the activities of the Marris and the Mengals and their influence in Balochistan. [*During the course of this collaboration, Mir Zafarullah Khan Jamali came in touch with Nancy Powell, the US ambassador in Pakistan those days. Jamali and Nancy Powell developed a close personal friendship, which was carefully nurtured by Washington. According to some sections of the Pakistani media, it was she who suggested to Gen Musharraf later, Jamali's name for appointment as the prime minister after the elections of October 2002.*]

Dr Allah Nizar Baluch ([www.sachaan.webs.com](http://www.sachaan.webs.com)) gives a recent conversation (2011: for Daily Ibart of Sindh) with Khair Bux Marri, 82 year old, known as rebel but had been a member of Pakistan parliament, then self-exiled to Afghanistan, who believes that solution of Balochistan lies in 'resist movement'. Now establishment should realize that bitter experience was not only felt by Baluch Sardars but now it also comes in common Baluch. Matter is that: would establishment and power makers ever see this bitterness? *'I can't sit to say that Baluchs are brave nation, who never surrender in front of injustice.'*

On a question that 'how do you see nature of politics in Subcontinent;' (slightly smiling) *'this question is long; I restrict myself to Pakistan; mostly slaves like Punjabis, always do fraudulent tact (while sharing one incident), there are some proverbs for them like Punjabis & Pashtuns; give them money, Sindhis; keep them under pressure, and Baluchis; make them foolish through respectable talks (while smiling), really it happens.'*

If you give respect to Baluch, he can do any sort of work for you. Punjabis just want a box of money and Pakhtoons never be able to accept challenge, for time being they fight, suddenly they would surrender. On question that Do you see any difference between Mr Jinnah and Gandhi jee? (Loudly laughed) answer is simple that Gandhi was a man of human and Jinnah was a man of British. [It was a long interview but more reservations there]

The Soviet invasion of Afghanistan in 1979 came as a blessing in disguise for Gen Ziaul Haq. The General exploited the opportunity to bankroll numerous religious schools in Balochistan and finance its religious parties in order to save the Islamic Republic of Pakistan from the Soviets influence. According to one Ahmed Rashid, the author of *Taliban: The Story of*

*Afghan Warlords*, there were only 900 *madrassas* in Pakistan in 1971, but by the end of Gen Zia's era in 1988 there were 8000 *madrassas* and 25,000 unregistered religious schools, with half a million students. It was alleged that these schools were kept closed for months to allow students to participate in '*jihad*'.

During the general elections of 2002, the Pakistani politico-religious alliance, the Muthida Majlis e Amal (MMA) emerged victorious with 16 seats in the Balochistan Assembly, enabling it to form a coalition government along with the PML(Q). The MMA went on to support the PML(Q)'s recommendations to the federal government to launch a military operation against the Baluch people who were demanding provincial autonomy but the allegation was not proved by figures or through independent sources.

Pashtun vs Baluch gulf among populations continued widening with the time. In the midst of this tug-of-war between the Baluch nationalists and Pashtuns [called radical Islamists also] always posed the question whether the Baluch democratic movement could prevail. Relentless efforts by the state machinery for the past 30 years have not succeeded in radicalizing Baluch society. Gen Zia however went successful.

For example, when US forces invaded Afghanistan in 2001, the Baluch populated areas hardly witnessed any protest rally in support of the Taliban regime. On the other hand, massive demonstrations took place in the Pashtun-dominated districts of Balochistan.

### ***Office of Ombudsman (1983):***

The institution of the Ombudsman in Pakistan was established in August 1983 under the Establishment of the Office of Wafaqi Mohtasib Order 1983. The Office was equipped with the power to redress certain public complaints against administrative excesses. It was an Article 276 of the Interim Constitution of 1972 that provided for the appointment of the Federal Ombudsman as well as Provincial Ombudsmen for the first time. Subsequently, the subject was included in 1973 constitution.

The main functions entrusted to the Wafaqi Mohtasib were to diagnose, investigate, redress and to rectify any injustice done to public through mal-administration of an agency of the Federal Government. This Order provided a speedy and inexpensive mode of addressing public grievances against the state. The Mohtasib was vested with wide jurisdiction to inquire into the affairs of all the offices of the Federal Government, except the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court and the High Courts. WM office could investigate any complaint, except in respect of matters which are subjudice or which relate to the Armed Forces and military personnel.

Soon after, provincial Mohtasibs were appointed in Azad Jammu & Kashmir (AJK), Sindh, Punjab and Balochistan, while a separate Federal Tax Ombudsman was appointed in 2000 to address citizen's complaints against tax functionaries. A Banking Ombudsman was also appointed on 29<sup>th</sup> April 2005, based in Karachi and with regional offices in the provincial capitals of Lahore, Peshawar and Quetta to handle complaints in the banking sector, a task earlier dealt by the State Bank of Pakistan or the Banking Circle of the Federal Investigation Agency.

By analysis, 66% applications moved before WM related to the federal agencies, while the remaining 34 % go to respective provinces. Of the complaints against federal agencies, about half are normally admitted for thorough investigation, while the remaining are rejected for reasons being subjudice, service matters or premature. An average of roughly 40,000 complaints has been received annually by the WM over past two decades.

The general populace still have no faith in this institution because their findings or recommendations are not binding on any department. It is merely considered wastage of funds and resources in practical terms. On the other hand the orders and determinations of WM are appealable before the President of Pakistan where these appeals gather dust and are subsequently disposed of without any judicial appreciation.

### ***Flogging in Public:***

During Gen Ziaul Haq's regime, year 1983 would also be remembered for giving punishments to the criminals by **flogging & hanging in Public**. During this period several high-profile public canings and floggings were carried out, often in stadiums with **thousands of spectators**. The offenders dealt with in this way, all were men under 50, were often serious criminals such as rapists.

The punishment was administered with a very long and thick but whippy cane across the prisoner's buttocks. Often his pants were pulled down, but the target area was then covered with one layer of thin cloth, perhaps out of Islamic modesty. The prisoner was usually tied, upright and with feet apart, to a colonial-era A-frame but in some cases was held bending over a chair schoolboy-style. Microphones were often placed close to the prisoner's head so that his moans and screams could be broadcast to the crowd. Apart from the public exhibitions, many other offenders were caned and flogged privately inside prison. Media reports told that a mass flogging of 84 people in Karachi prison only was done during 1983.

*[In the same year 1983, Barrister Akram Sheikh, a veteran lawyer, won international acclaim when he contested a human right case of Safia Bibi; still alive in history as 'blind girl' case.]*

### **Save Pakistan Movement (1983):**

On 14<sup>th</sup> August 1983, a historical movement for restoration of Democracy was launched in Sindh against the cruel regime of Military dictator Gen Ziaul Haq. The movement was named as '**Save Pakistan Movement**' in which city areas of Khairpur Nathan Shah, Dadu, Moro, Halla, Sakrand, and Liyari of Karachi were the flag bearers.

On 29<sup>th</sup> September 1983, about 500 villagers from around gathered and blocked the National Highway near Sakrand town. Some of them started reciting the Holy Qura'an whereas the rest of the mob hurled slogans against the army and Gen Ziaul Haq's rule in general. Some army trucks appeared suddenly from a side track and opened machine gun fire on the demonstrators. The firing continued for about three hours leaving 16 dead and 54 injured on the highway.

**Ishaque Soomro** in his essay dated 12<sup>th</sup> April 2011; titled as '**Martyrs of MRD 1983**' available at LUBP gives an elaboration saying:

*'When I reached the spot with my colleagues for reporting there was death like silence all around and red blood was still fresh and could be seen oozing out of the dead as well as injured human bodies. The bodies were also blackened because heavy trucks were made to run over these bodies presumably to demonstrate the callousness and barbarism against protesting common people of Sindh at the hands of those who were responsible for that uncalled for operation. The belongings of the demonstrators like shoes, towels, caps, empty bullets were scattered and even leafs of Holy Quran pierced with bullets were also found scattered.'*

Fifty-four injured persons were arrested and dead bodies were taken to the army camp Nawabshah. They had paid enough prices for democracy and more than enough for Pakistan. The press termed it as the biggest incident of whole MRD movement of 1983. People were looking angry but no mourning. Ghulam Qadir Chandio, a sitting MPA & ex-senator, told the press that his old father Punhal Khan Chandio and elder brother Ghulam Abbas were also arrested along with 54 others.

**Ishaque Soomro** seemed to be more concerned murmuring that '*now quarter of a century has passed; but people of this country are still fighting for real democracy and for the bright future of this country. People of Indus valley have sacrificed a lot; but they still believe in democracy and prosperous Pakistan.*'