

## Scenario 104

### **JUDGES & JUDICIARY IN FOCUS:**

During the **2<sup>nd</sup> week of April 2011**, while hearing the '**missing persons**' case, Justice Javed Iqbal and Justice Raja Fayyaz had reiterated .....

*'The fact remained that the **apex court went impotent on this issue** but, just to satisfy its ego, it directed that home ministers of all the four provinces and federation to appear before the court on the next hearing.*

*What the home ministers [in-charge of respective poor local police] had to reply or explain before the apex court except for coming, going and sitting on benches outside the court room while adding millions of travelling expenses to the public expenditure'.*

What else the apex court could do – by the way; it has been the routine practice of the '**independent judiciary**' of Pakistan since about a decade.

### **SC ON BUSINESS AFFAIRS:**

Earlier, **on 7<sup>th</sup> April 2009**, the Supreme Court (SC) ordered for an independent commission headed by former SC judge Rana Bhagwandas for an inquiry into the **soaring prices of petroleum products** and profit earned by the oil companies. The identical constitutional petitions were moved by PPP Senator Rukhsana Zuberi, PML(N)'s Zafar Iqbal Jhagra in 2005 and others which was taken up by a 3-member bench of the apex court headed by CJP Iftikhar M Chaudhry on 30th March instant. The Court opined that ten (10) questions pertaining to the misuse of the authority and objectionable regulatory provisions should be answered by the Commission.

The National Accountability Bureau (NAB) submitted to Justice Bhagwandas Commission a report on the wrongdoings committed by the oil industry lords 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 13<sup>th</sup> 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 sent to the presidency.**

The NAB's 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 senior management of "Pakistan State Oil Company Limited (PSO), Ministry of Petroleum 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 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 2005. 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 national 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 25<sup>th</sup> 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 Oil & Gas 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 OCAC charged commissions even on government taxes, particularly on 15% GST, that was clearly in violation of laws.

The report said that a loss of another Rs:6 billion was caused to the government by 'illegal removal of 40% upper cap of profits' to the refineries, making a total loss of Rs:82.90 billion.

But what happened in the last; nothing. In Pakistan reports are there but no action; 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 highlight the case and apex court's activism in the media.

***See another scenario:***

Even in 2009-13 era of Former CJP Iftikhar M Chaudhry, the top judiciary failed to stand for the expectations of a sizable section of masses as 'independent' in real terms. In some cases the judges tried to settle their old scores by targeting PPP and their leader sitting as president of Pakistan. Some media reports also pointed out towards high judiciary's 'soft attitude' for PML(N), JUI and MQM governments.

Row over the issues of ***Kh Sharif as the Chief Justice LHC***; strictures against the Governor Punjab Late Salman Taseer; eye-wash proceedings in 'big loan' cases and ***allowing the Punjab government on 'stay order' for four years*** could be quoted as examples. The people were expecting judge-like behaviours not the score settling games.

CJP Chaudhry had started investigations into cases of ***"forced disappearances"*** arising as part of the 'war on terror'; allegedly the Pakistan military and ISI were stated to have imprisoned tens of persons without due process. However, the same Supreme Court [SC] never chased the loan eaters – a more vital step to be taken.

After the general elections of February 2008, various populist rulings by the CJP Iftikhar Chaudhry against the government displayed a type of judicial activism considered to be unsettling for the [PPP's] government.

The Supreme Court's verdict of **16<sup>th</sup> December 2009** in NRO case followed by its pledge to come down on mega loan defaulters [referring to ***SC's thunderous announcements dated 22<sup>nd</sup> December 2009***] had shaken some politicians but soon the people started divulging their resentment because not a single date was proposed for serious proceeding in that loan eater's case. While heading a Supreme Court bench on ***suo motu*** notice of last written off dubious loans worth Rs:54 billion sanctioned by the State Bank, the Chief Justice Iftikhar M Chaudhry had observed:

*'For [the] nation's sake, we are ready to accept blame for our involvement in the loan write-off matter, but 'across the board action' will be taken after providing opportunity to the bankers and the defaulters to pay back the outstanding money. We are making it clear that the Supreme Court intends to pursue cases of corruption and graft vigorously and indiscriminately.'*

A group of influential lawyers, who had allegedly joined hands with the loan eaters and had got their **shares in the name of 'fees & pleading charges'** conveyed threats to the bench that the proceedings in loan cases would not be so easy-going for the 'bench and bar' on collective basis.

Some circles did not even spare the higher judiciary labelling it as a stooge in the hands of one section of PML(N). It was apparent because some big politicians were shrewd enough to dictate NRO decision to some judges but opening up the 'Loan Cases' and such judicial activism was not acceptable to them so termed it as beyond the apex court's constitutional role.

The prominent lawyers had thus turned their back to a basic principle that the real, meaningful, fair and principled justice ought never to worry about 'being blamed'. Those who had done wrong in the eyes of law were meant to be punished by the judiciary that was after all one of the primary purposes of the institution.

Thus the **rich class of lawyers wanted the judicial activism in the name of 'independent judiciary'** but were simply dictating the benches for the fields of their peculiar choices. Whenever the judiciary went contrary to their wish and choices, they always raised flags against the whole process of judicial activism – or labelling *'threats to the democracy'*.

### **SUO MOTO FOR MURDER IN SIALKOT:**

**On 12<sup>th</sup> July 2011;** Chief Justice of Pakistan Iftikhar M Chaudhry took another *suo moto* notice [*another gimmick – as the media called it*] of a man's death by torture by some influential persons in Sialkot. Over a press clipping published in '**Daily Pakistan**' on that day carrying an appeal of one Said Bibi stating that her son Mubashir had been tortured to death by some influential people; she had got an FIR registered against them with police station Saddar Sialkot but no one had been arrested. Her son Mubashir and another person Rizwan were kidnapped by some people three days earlier; were severely tortured and left unconscious outside her home. Both the injured were shifted to hospital but her son succumbed to injuries while Rizwan was seriously hurt.

One of the common stories in Pakistan - the CJP felt moved and ordered for police report on the issue. The 'influential people' were having high political connections; they were threatening the old lady for dire consequences; they were pressurising the old lady to compromise the FIR for a bag of money; they were approaching the witnesses for favourable statements under another form of coercion and 'duress'; the police was definitely ignoring the old lady's requests for want of 'evidence' of involvement of those influential culprits and many other things.

Simultaneously another scenario; as per **CNN Report of 8<sup>th</sup> July 2011**, clashes in the Pakistani city of Karachi had killed seven more people on that day, raising the **death toll in the ongoing ethnic violence to 85 that week** [*the official figures told to media by the Federal Interior Minister Rehman Malik*]; actual figures not known. Waseem Akhtar of MQM said that 125 persons were killed in that strife not 85.

The front page of '**The Express Tribune**' dated **10<sup>th</sup> July 2011** mentioned that:

*'..... he [the Interior Minister Mr Malik] tried to console the people of Karachi by saying that the police had arrested 133 people. Needless to say, Mr Malik's credibility is at its lowest ebb and his communication skills have wilted overtime through meaningless repetition of things that don't ever materialize in reality.'*

**On 13<sup>th</sup> July 2011** again, PPP politician Dr Zulfiqar Mirza made a sentimental statement at ANP's venue and accused MQM's Chairman Altaf Hussain. When his speech surfaced in media, the riots at once erupted in Karachi and **within three hours 15 persons were loathed in blood.**

Protests became the order of the day, businesses closed and shutters down. In the evening of 14<sup>th</sup> July MQM leader Altaf Bhai sent a message from London and the riots were immediately cooled down. Earlier, when there were 125 deaths reported in three days as said above, Rehman Malik appealed on 4<sup>th</sup> day to bring back Karachi in its normal colours.

An anchor Kashif Abbasi was footing his **live program at ARY TV** on the same evening of **13th July 2011** saying that 'who should be held responsible for 3000 deaths in Karachi during the last three years; 1200 men shot down during first six months of 2011 only' and the representatives of both MQM and PPP had no cogent answer to this tragedy.

Questions arose that why the two leaders Rehman Malik and Altaf Hussain, from the PPP and MQM respectively, had not launched their appeals earlier to avoid the huge death toll. No answer. **No suo-moto or judicial inquiry** was ordered earlier; Karachi kept on burning.

Going by government's documentation, it was no secret that the Pakistani Taliban [*or some other criminals in the garb of Taliban*] had joined the various political armies killing the innocent people at random. It was suspected that banned outfits as *Lashkar e Jhangvi and Sipah e Sahaba* were allegedly playing their games. The police in the past had, till then, arrested thousands of terrorists guilty of target killing but they were let off by the respective courts on various counts. Some opined that ANP and the Taliban were hand in glove in Karachi, as some were suggesting that MQM and PPP, jointly and individually, were encouraging their own 'striking forces'; the police being silent spectators – sometimes being targeted itself.

So many deaths in Karachi on so diversified occasions that the SC had to take notice of the situation; giving priority at last as around forty deaths daily in Karachi were reported then, of course, no comparison with one man's death in a remote village of Sialkot as mentioned earlier.

### **PAKISTAN'S SC vs [MOSTLY] THE PMs:**

When PPP took over the reigns of the government in 2008, its PM's first act was to release the top judges who were under house arrest on the orders of the then ruler Gen Musharraf. In February 2012, the very same judges indicted PM Gilani on charges of contempt of court for failing to pursue allegations of corruption against his boss, President Asif Ali Zardari. Earlier, the SC had denied his appeal against the contempt charges.

The Supreme Court had been angered by PM Gilani's stubborn refusals to comply with its demands — which consisted of writing a letter to Swiss authorities, urging them to reopen old corruption charges against Zardari. For the PPP government, the SC's actions amounted to a judicial coup in slow motion. The PPP also had a history of the hostility toward the judiciary and military, stretching back to Z A Bhutto's hanging in 1979 on a cooked-up murder charge.

President Zardari's corruption charges were given enhanced focus when the SC started investigating the treasonous memo case, calling on the US military to take over Pakistani military leadership. The said memo case was brought forward by the then opposition leader Nawaz Sharif.

The determined PPP government avoided implicating President Zardari by writing the letter to the Swiss authorities. In worst scenario, if Gilani was no longer able to remain prime minister, the PPP was discussing the possibility of appointing Makhdoom Shahabuddin; if Shahabuddin ended up being disqualified, too, the PPP had planned to use that "victimization" to enhance its standing in politically deprived southern Punjab.

Those were the days that once the prominent politician Mushahid Hussain was asked during a lecture in Karachi who was ruling the country, he said: the Chief Justice. At the same time, many legal experts viewed the apex court as tilting the playing field.

In January 2012, when rumours filtered through Islamabad suggesting that the PPP government could sack the military & ISI chiefs, the court demanded confirmation that no move would be made against the army. In fact that move had thrown a challenge upon the government's prerogative of appointing military chiefs. Prof Vali Nasr of International Politics at Tufts University once opined that:

*"The Supreme Court in Pakistan is a completely new axis that has [recently] emerged. However, despite its decisions that favoured the military establishment, the court isn't the best friend of the Generals at all.*

*In recent weeks, the court has decided to summon top intelligence officials and question them about the illegal detention of terrorism suspects — a move that lends some balances to its decisions..... The military has periodically been on a collision course with the Supreme Court."*

[The '**Time**' for week ending **13<sup>th</sup> February 2012** is referred]

The propagators of independent judiciary viewed SC's behaviour as that of a flourishing phenomenon. After being sacked twice by Gen Musharraf, CJP Chaudhry was reinstated after popular lawyers - led demonstrations forced President Zardari and PM Gilani's government to capitulate to the demands. The army chief, Gen Kayani, also made a discreet intervention in support of Justice Chaudhry.

Since his return to the bench in 2009, the CJP's interests ranged from a baffling decision to punish a famous actress, Attiqa Oddo, for allegedly carrying two bottles of wine, to challenging the hold that armed groups had been looting Karachi like cities. PM Gilani's return to prison for a few more months after he had spent five years in Adyala Jail during Gen Musharraf regime was the political price he was willing to pay.

The corruption cases against President Zardari were unlikely to be reopened even if the government had decided to write to the Swiss authorities – as he was enjoying presidential immunity and could not face charges at home or abroad. The most immediate victim was likely to be the PPP government's ability to function, beset by potential changes in leadership.

### **INDEPENDENCE UNDER CJP CHAUDHRY:**

In response to a Presidential Reference filed in response to Judicial Commission [JC]'s meeting dated **27<sup>th</sup> September 2012**, the Supreme Court, in its advisory jurisdiction, announced its opinion on issues concerning appointment of the next Chief Justice of the Islamabad High Court (IHC). The Reference had sought the Court's opinion on 13 questions, including the role of the President, the Prime Minister, and the Parliamentary Committee [PC] in judicial appointments, and the criteria or qualifications for nomination and seniority of the judges.

The Supreme Court in its verdict declared that '*the President and Prime Minister only have a ministerial role in the appointment of judges*'. However, debate triggered in the judicial circles on apex court's opinion that '*the Judicial Commission [JC] can recommend a junior judge to become Chief Justice of a provincial High Court*'. It was considered against the constitutional conventions and the principle of 'legitimate expectancy' amongst the aspirant judges.

The JC had voted to elevate Justice Iqbal Hameed-ur-Rehman to the Supreme Court. Subsequently, upon the recommendation of the Chief Justice, JC nominated (with a majority of 7 to 2) Justice Kasi to become the new Chief Justice of IHC. This decision was endorsed by the Parliamentary Committee [PC] and forwarded by the Prime Minister to the President for formal notification.

At that particular time, Justice Riaz (and not Justice Kasi) was the senior-most judge of the IHC. Since the JC, without providing any cause or reason, had superseded Justice Riaz, the Presidential Reference asked the court, *inter alia*, whether the JC could violate the convention and the precedent case law, to appoint a junior judge as the provincial Chief Justice? And if so, was the President bound to issue notification for Justice Kasi's appointment as Chief Justice of the IHC?

Article 175A (3) of Pakistan's Constitution mandates the senior-most judge of the Supreme Court "shall" be appointed as Chief Justice of Pakistan; however, there is no such provision requiring the senior-most Judge to be made Chief Justice of the High Courts. Instead, a 'constitutional convention' has developed over time to fill this void. As opined by eminent jurists:

*'Specifically, per **Al Jihad Trust case (PLD 1996 SC 324)**, the senior-most judge entertains "legitimate expectancy" to be made Chief Justice of the High Court, unless 1) he "not be physically capable to take over the burden of the office" or 2) he "not be willing to take upon himself the above responsibility".*

*Barring these exceptions (neither of which apply in the case of Justice Riaz), such a judge cannot be superseded for "extraneous considerations". This convention was endorsed in **Asad Ali's case (PLD 1998 SC 33)** which states that "in the absence of any concrete and valid reason", the senior-most judge "has to be" appointed as the Chief Justice of the High Court.*

*The dictum was further strengthened recently in **Munir Hussain Bhatti's case (PLD 2011 SC 407)** which declared that the legitimate expectancy of the senior-most judge, and the convention of appointing him Chief Justice, are applicable even more strongly after introduction of the newly constituted bodies [Judicial Commission and the Parliamentary Committee] under Article 175-A.'*

This should have been the true spirit of the **'independence of judiciary'** by ensuring that a junior judge is not tempted to supersede his senior colleagues for Chief Justice's slot. The Constitution itself mandates [in Article 175A (5)(iv)] that:

*'When the JC is deciding on who to nominate as the next provincial Chief Justice, the senior-most Judge of the concerned Court (having legitimate expectancy) should not participate in the said meeting (so as not to be a judge of his own cause).'*

Contrary to these principles, the majority judgment, authored by Justice Khilji, declared that **'while breaching this convention is "not desirable", the same cannot be termed as violative of the Constitution'**.

In constructing this argument, Justice Khilji's opinion emphasized that **'the JC's recommendations are "not whimsical" and [thus] are not open to judicial review'**. However, it was felt that the CJP Iftikhar M Chaudhry and his team had themselves blown up the doctrine of transparency by depriving the senior most judge of his legitimate expectancy.

Further, Justice Khilji emphasized in his decision that the seniority of a judge cannot be determined by the court in its advisory jurisdiction. It was felt by the senior bar that it was wrongly interpreted as the issue of seniority between Justice Riaz and Justice Kasi was not the dispute. Justice Riaz had already been notified as being senior, by the Chief Justice of the IHC and was confirmed by the President. The only question left to be answered was one of law: could the JC appoint a junior judge as Chief Justice of the High Court without giving any cogent reasons for ignoring the senior judge? Certainly it was violative of the constitutional convention and the mandate given to the JC.

Contrarily, Justice Afzal's [courageous] dissenting note carried weight that:

*'Justice Riaz, in line with the convention and the principle of legitimate expectancy, is entitled to be appointed as the Chief Justice IHC. I, therefore, have no hesitation to hold that the premises recorded by the Commission for departing from the well established principle of determining seniority are not correct.'*

The selection of judges should not be done behind closed doors and for silent reasons known only to a select few; CJP should have upheld the values sincerely to get real **'independence for judiciary'**.

During another such exercise, one additional judge of the IHC named Azim Afridi was sent home unceremoniously. On his personal internet site, he wrote the following message for the general public:

*'18th Amendment has deprived the Justices of higher judiciary from their right of being heard while deciding their affairs. Holding of proceedings in camera, which is not covered by law, provide an excuse to the person at the helm of affairs [the CJP] to exercise his choice to the disadvantage of those he dislike. There is none to ask; is it justice. The Constitution needs to be amended if fair play is intended in the case of the Honourable justices.*

*The Hon'ble Justice has been deprived of the materials used against him. Where is the basic right of the Judges of the Superior Judiciary? Constitution 2 be amended.'*

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### **ISLAMABAD HC's ACTIVISM:**

**On 8<sup>th</sup> November 2012;** 18 judges serving in District and Sessions court [DSC] were repatriated following Islamabad High Court's [IHC] orders as they did not meet set criteria for selection and allocation. Justice Shaukat Aziz of the IHC said that 50% of appointments in DSC be from Islamabad, 48% from other provinces and 2% from the Federally Administered Tribal Areas, as dictated by the Judicial Services Rules (JSR) 2011.

The petition was filed by one Waqas Malik, a veteran lawyer of Islamabad.

The bench had reserved its judgment **on 12<sup>th</sup> October 2012**, after Malik concluded his arguments. Mr Malik argued that the judges' appointment was a violation of the IHC Judicial Services Rules, under which the IHC administration must ensure 50% of the judges appointed to the subordinate judiciary should belong to Islamabad Capital Territory.

**On 13<sup>th</sup> November 2012**, the Islamabad High Court (IHC) division bench, comprising of Justice M Anwar Kasi and Justice Shaukat Aziz Siddiqui, **accepted an application**, filed by a former Army officer Col (rtd) Inamur Rahim, calling for an early hearing about the extension given to the Army Chief Ashfaq Kayani in 2010.

Earlier *on 25<sup>th</sup> September 2012*, Chief Justice IHC Justice Iqbal Hameed ur Rehman had dismissed a related petition terming it "not maintainable". The petition was rejected under Article 199 (3) of the Constitution, which bars the high court from hearing military-related matters. Later, the petitioner filed an Intra Court Appeal (ICA) challenging the single bench order.

The petitioner, in its ICA, had maintained that there was no provision in the Pakistan Army Act of 1952 under which a complete tenure extension could be granted to any person subjected to the Army Act.

**On 14<sup>th</sup> November 2012;** the IHC **declared the promotion of over 100 bureaucrats illegal**. These bureaucrats had been promoted to Grade-21 during the previous couple of years. The order was passed by Justice Shaukat Aziz Siddiqui of the IHC in response to a petition filed by 50 civil servants belonging to different occupational groups in March 2012.

The petitioners, while challenging the Central Selection Board's decision, had maintained that their promotions had been overlooked and thus superseded by junior civil servants. They were ignored despite having a service career expanding over 33 years with no adverse remarks in their annual confidential reports. The board had given them less marks and illegally promoted other bureaucrats by giving them undue benefit. Some of the petitioners had even earned two highest performance evaluation reports for 2009 and 2010.

The court, in its judgment, observed that all the board meetings held in this regard were illegal, and hence of no consequence. It also observed that the civil servants who had earned their promotion without superseding others shall continue to hold their current positions.

On the same day of **14<sup>th</sup> November 2012**, the IHC constituted a commission to prepare a report on the **encroachments removed by the CDA**- Capital Development Authority Islamabad - the report was to be submitted within a week.

The decision was taken by Justice Siddiqui while hearing a petition challenging the illegal structures in public places. During the hearing, Municipal Administration's Deputy Director submitted a report on the encroachments removed by the civic agency. However, the court was dissatisfied with the steps, observing that demolishing a few bricks would not be considered as removal of encroachments. The court then formed a one-member commission comprising IHC's Assistant Registrar Muhammad Shafiq and directed him to submit a report. It also said that the commission's expenses roughly amounting to Rs:100,000, would be borne by the CDA.

Earlier, the court had directed the CDA to remove all encroachments from parks and green-belts. Jawad Nazir, the civic agency's counsel, had told the court that the CDA had served notices to nearly 50 kiosks encroaching on green-belts.

**On 9<sup>th</sup> April 2013**; the IHC suspended the **appointment of Federal Board of Revenue (FBR) Chairman**, after it was challenged by a subordinate. Justice Shaukat Aziz Siddiqui restrained FBR Chairman Ali Arshad Hakeem from performing his duties. The court passed the order in response to a petition filed by one Ashfaq Ahmed, a member of the Inland Revenue Service, in late February 2013, stating that Hakeem was appointed illegally. The federal government had appointed Mr Hakeem as Chairman FBR in July 2012.

The fact remained that Mr Hakeem was not qualified for the post of FBR's Chairman and the Establishment Division had not followed the procedure for his appointment. According to the FBR Act 2007, the government was bound to appoint a most competent person with relevant experience through a transparent process. It was alleged that Mr Hakeem was a former civil servant, who had joined the Customs Group in 1987 but started his private business after leaving civil service, a few years later. The court declared his appointment illegal and directed the federal government to make a new appointment on merit.

On the same day, in a separate case, the head of state-owned **Pakistan Television (PTV)** was seen in boiling sentiments, after the IHC asked PTV to produce his appointment orders before the court on next day's hearing.

Justice Siddiqui issued the order in response to a petition filed by former PTV Managing Director (MD) Ashraf Azeem, who had challenged his termination in 2007. On next hearing, when Justice Siddiqui resumed hearing, the court was informed that Ashraf Azeem was appointed MD for three years on contract in May 2006, but was removed from service in March 2007 – since then, he had not been restored and his salary was withheld.

Opposing the argument on PTV's behalf, the court was told that after Mr Azeem's removal, the government had appointed him as president Institute of Regional Studies on contract where he remained employed for two years. The court asked PTV's counsel about the status of the incumbent PTV MD and specifically whether he was appointed on merit. Then Justice Siddiqui observed that:

*"No blue-eyed boys will be allowed in state-run television. Today I have sent home the FBR Chairman; I won't spare those who violate rules."*

### **AITZAZ EXPOSES CJP CHAUDHRY:**

**On 24<sup>th</sup> July 2013**, the PPP boycotted **Presidential Elections** scheduled to be held on 30<sup>th</sup> July to find a replacement of President A A Zardari. Aitzaz Ahsan delivered a fiery speech cursing all including the Supreme Court of Pakistan for its one-sided decision to allow the government to hold presidential election earlier instead of 6<sup>th</sup> August.



Aitzaz Ahsan said the decision had been given without hearing the other candidates; even Mian Raza Rabbani, who was a presidential candidate, was not served any notice pertaining to hearing the plea seeking a change in the poll date. Aitzaz spoke loudly that:

***'The Supreme Court, Election Commission of Pakistan and the PML-N had decided the matter without hearing the other parties. The Supreme Court has dictated the election schedule to the Election Commission. The decision of the Supreme Court, as per the desire of the PML-N, creates doubts, as on the very first hearing the decision was announced. I have never seen such a decision in my 45 year long legal career.'***

Raza Rabbani was not in a position to run his election campaign as he belonged to the middle class; virtually he was unable to go to Karachi, Quetta, Lahore and Peshawar in two days. He had no government machinery to benefit from and was also restricted to Islamabad as scrutiny of the nomination papers were to be held on 26<sup>th</sup> July. ***'The Supreme Court, on the petition of the N-League, gave a one-sided decision without hearing the other parties; even gave the schedule of the presidential election'***, Raza Rabbani had raised a valid point.

Two days later, on 26<sup>th</sup> July 2013, Senator Aitzaz said in a media conference that:

***"Let the time come, I will unearth all the secrets of Supreme Court as he is a great secret holder of the judiciary. Let the time come, and then I will write and expose that why important cases are always referred to a few judges".***

#### **PAKISTAN'S JUDICIAL PANDORA BOX:**

On ***GEO's*** live TV program ***'Aapas Ki Baat'*** dated **13<sup>th</sup> December 2013**, Najam Sethi, while commenting on the retirement of the CJP Iftikhar M Chaudhry, confirmed that:  
***'..... A judge has passed away and a politician has born.'***

Mr Sethi further elaborated that during CJP Chaudhry's tenure, he had constantly been labelled as ***'a politician in CJP's robes'***, but he never bothered and continued to display his character as such.

Let us travel into the recent past for a while.

On ***GEO's*** live TV program ***'Aapas Ki Baat'***, of **11<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> June 2012**, Najam Sethi had asserted that Dr Arsalan was not so innocent that he did not know why the son in law of Malik Riaz was trying to cultivate him and financing his tours abroad; it was intended to influence the CJP in turn. Since there was no evidence of the CJ having been influenced, there was clearly a more ominous and threatening purpose – not bribes but blackmail.

Through this timely move the entire leadership of the PPP was hoping rewards; think President Zardari's case in the backdrop of Swiss letter syndrome and PM Gilani's conviction for 'contempt of Court'. The said program concluded that:

***'Who else had the required capability of chasing Dr Arsalan and collect documentary and video evidence of reckless [& wasteful] expenditure by him; the Intelligence Bureau [IB]'s team permanently located in Pakistan High Commission London AND Rehman Malik's company for private investigation named Shaffaf Ltd London.***

***Clearly, the 'sting operation' against Arsalan Iftikhar was the work of Rehman Malik as he had been disqualified to be a member of the Senate (and Interior Minister in consequence) because of his dual nationality, under apex court's decision.'***

To keep his judicial house in order and to exhibit faithfulness to his pseudo - impartiality and fair-play, the CJP Iftikhar M Chaudhry called his son in the dock through *suo moto* case. Five years earlier there were cries that, upon securing an overall C grade in the intermediate examination (a fact), Arsalan Iftikhar was granted admission in Bolan Medical College upon the influence exerted by his Chief Jus-

tice father; years later, he was made Section Officer in the Health Department Quetta, only days after his initial appointment.

In August 2005, the then Federal Minister of Interior Aftab Sherpao, issued notification appointing Dr Arsalan as Assistant Director (later Deputy Director) in the FIA. In 2006 he was 'picked up by the high ups' for permanent induction as Superintendent of Police [SP] giving an unprecedented twist to the Police Service of Pakistan Rules in vogue.

Hue and cry surfaced from all corners especially from already deprived career police officers but the Chief Justice was found standing behind this unjust episode. In March 2007, it was Naeem Bokhari, a veteran advocate of the Supreme Court who tried to block that floodgate of nepotism in the higher judiciary; the case was referred to the Supreme Judicial Council but the civil society guided by the Lawyer's Movement rescued the CJP.

It was only natural that amidst so much controversy concerning Dr Arsalan, the Chief Justice Iftikhar M Chaudhry [after regaining his seat in March 2009], apparently dissociated himself from the professional and career growth of his son. Peeping into the vacuum prevailing in CJP's home affairs, Malik Riaz jumped in and allegedly spent millions on Dr Arsalan.

Dr Arsalan lived in CJ's official residence in Islamabad, at least until his marriage that year, so the CJP should have worried about the latest model BMW type cars driven in, the Gucci cufflinks or the Rolex watches or about lavish trips abroad while staying in costly holiday flats of London and Monte Carlo – the French Riviera.

The general populace was not at all inclined to give CJP Chaudhry a relaxation for his dedicated cause of justice. The CJP was correctly blamed for not knowing where his family had been vacationing during the summer, or who was paying for it while he constantly chased the then PM's sons [*Qadir Gilani in Hajj Corruption Case & Musa Gilani in Ephedrine Case*], Pervaiz Elahi's son [*Moonis Elahi in NILC & Punjab Bank Case*], Asif Zardari in person and so many others.

As the people never allowed PM Gillani, Pervaiz Elahi, Nawaz Sharif or Asif Zardari to ever plead that they did not know what their sons were doing, so they allocated zero allowance to believe that the Honourable CJP, over the past three years, even had a slight hint of Dr Arsalan's (mis)deeds; totally a non-professional conduct.

The intelligentsia did not bother about the sentimental phrases from some media men and certain members of PML(N) or Imran Khan's PTI describing that '**ISI & Army or the PPP are hunting the CJP and the higher judiciary is being maligned purposefully**'. Not at all; they simply wanted an independent enquiry into the conducts of both Malik Riaz and Dr Arsalan Iftikhar in an un-biased way irrespective of the references pointed towards the CJP or the Army or the PPP.

The Registrar Office of the SC, in the meantime, rejected the application filed by Dr Arsalan Iftikhar to register an FIR against Malik Riaz as the case was in the apex court. Dr Arsalan had asked the court to direct police authorities to register an FIR against Malik Riaz for running a campaign against him in the media.

The people had been looking for some interesting results – but nothing appeared from that '**Judicial Pandora Box**'