

Scenario 107

JUDICIAL DICTATORSHIP IN PAKISTAN:

Referring to '*Harvard Law Review of April 2005*' Richard Fallon Jr had once argued under 'Legitimacy and the Constitution' that the legitimacy of judicial review should be classified as:

- **Moral Legitimacy:** justifiability of its institutional existence and actions in moral terms.
- **Sociological Legitimacy:** public support for the institution and abidance by its rulings as a factual matter.
- **Legal Legitimacy:** the acceptance of formal legal reasons given for decisions reached at.

Talking of Pakistan's judiciary in perspective, barring a few instances, in most high-profile cases where the court has struck down executive actions for illegality or procedural impropriety, the legal reasoning advanced by it were not so weak & thin. Babar Sattar in '*the News dated 14th April 2012*, pointed out that:

'Be it the NRO matter, the promotions of civil servants, the NICL scandal or the Rental Power shame, the PPP-led regime had elected to attack the moral and sociological legitimacy of the judiciary and not the legal reasoning of its orders.'

The PPP leadership including its 'then student Chairman' Bilawal Zardari passed sarcastic remarks *on 5th April 2012* molesting the sitting judiciary dragging it in its pre 2007 chequered past.

The second prong of this attack on the judiciary's moral legitimacy was continuing emphasis on the Zulfikar Ali Bhutto murder case. There has been a general consensus in Pakistan that the outcome in the matter wasn't a product of legal considerations.

CHARACTER OF JUDGES:

Let us turn over another page of our judicial history. Lawyer's movement of 2007-08 was going on though its dimensions had apparently been shrugged. Though some lawyers had departed themselves from the movement but their hearts remained with Ch Iftikhar, the deposed judge. President Zardari had not reinstated justice Iftikhar because he had certain reservations for him.

On 9th March 2007, the Chief justice had retaliated because the fire was going to burn his own home when Gen Musharraf had asked him to resign. Before that day he was as much a part of Pakistan's routine judiciary as the others were, for example;

- Justice Iftikhar was also one of those judges who took oath on PCO in 2000 allegedly betraying his Chief Justice Saeed uz Zaman Siddiqui and others.
- He was also one of those who did not bother to consider Zardari's bail petitions for years because he was an 'upright' judge in Gen Musharraf's books.
- He was one of those who were a cogent party in getting five years jail for Prime Minister Gilani in just a flimsy case during Gen Musharraf's high days of rule.
- He was also responsible for getting five years imprisonment for Javaid Hashmi of PML(N) for actually no fault of him on account of '*Baghawat*'; during the same era of military rule.
- He was the judge who had thrown out petition from a citizen challenging the house arrest of Dr Qadeer Khan Scientist. He should have taken *suo-moto* action on this gross misconduct on the part of the Chief Executive or the government but ignored being in parcel with the PML[Q] plus military government.
- If he was really so upright then how come it happened that three of the politicians named Neelofar Bakhtiar, Aftab Sherpao and Faisal Saleh Hayat, being equal culprits like so many others in *Ehtesab* files, but were picked and raised to the level of federal ministers whereas others were made to lead miserable lives in jails.

However, luck favoured Justice Iftikhar Chaudhry because PPP's Aitzaz Ahsan and Nawaz Sharif suddenly jumped forward to raise him up and also got him en-cashed. Contrarily how Mr Sharif could forget that the same courts of Pakistan had announced for him fourteen years jail in false plane-hijacking case. How Mr Sharif could turn a blind eye to the fact that his party PML(N)'s former president Javaid Hashmi was sent to jail on false case by the same judiciary.

Leaving it aside, one should admire Nawaz Sharif's political wisdom that he picked a slogan of reinstating Justice Iftikhar Chaudhry and his team back to 3rd November 2007's position. The PPP also used this issue as catchphrase but either the PPP went a bit late or their voice remained at low pitch. Meetings of Zardari with Nawaz Sharif at Murree and elsewhere were OK but PML(N)'s explicit commitment to the people that the judges would be reinstated provided an edge to the PML(N) and PPP lost the chance and thus the whole game.

The reality is that all courts make mistakes; in Pakistan and elsewhere in the whole world. Abul Kalam Azad had once given a historical statement before a court in Calcutta [India] that:

"History stands witness that whenever the powerful rulers wanted to suppress the 'independent, self determining or truthful' public voices, they used their courts as 'the most effective' weapons."

Every court has powers and those can be used either way; for justice and gross injustice both. For rightful governments, the courts were the source of extending help to the deserved and oppressed ones; but the same courts had exerted to take revenge and score balancing jobs for military regimes and on bad ruler's behalf. ***Most of the historical injustices have been done either in battle fields or in the courts.***

Since the early ages of Egyptian and Roman empires, the sentiments of judges have been the deciding factors; not the issues nor the facts of law. There is long list of persons which had been subjected to the injustices of the honourable courts of the past; history is still cursing those moments.

- ***Prophet Jesus Christ*** was once made to stand with thieves before the stranger courts.
- ***Socrates*** was the most truthful man of his era but a court order made him to drink poison.
- ***Galileo of Florence*** had also gone through wrath of his time's court because he had denied shelving his knowledge and observations; then it was a crime to talk facts about nature in open.
- ***Premier Z A Bhutto*** was hanged on the orders of some rascal judges because a military General wanted to rule Pakistan for ever [historians blame Henry Kissinger on nuclear issue].

In short, the dock in a court room is the most sacred place where the criminals, alleged culprits and the innocent angles stand alike and graded

equal; their fate always depended on application of law and mood of the judges both; analyse the history in perspective.

The PPP-led executive had cogently argued that the treatment meted out to the PML(N) leadership was preferential and that afforded to the PPP leadership was discriminatory. One could especially recall the SC's orders for throwing away the court sentences in 2007 which were passed against Nawaz Sharif in year 2000; under what powers it was done. Condoning court sentences after seven years was not provided in Pakistani laws.

Repatriating Nawaz Sharif's all assets in 2011 by the Chief Justice may also be analysed in this context [***details are available in Volume-II of this title at Scenario 48 pages 551-561***]. Keeping Kh Sharif as the CJ of the Lahore High Court was another case to be viewed.

The Prime Minister Gilani's contempt case is another example; he was sent home for non compliance of the NRO ruling as required by the Supreme Court, but what about getting the judgment implemented in the Asghar Khan Case. Why not even a single time the SC asked the government or the FIA about the progress of implementation – because some PML(N) politicians were to be questioned.

The fact remains that the Sharifs were smart business tycoons; think who had made enormous expenditure on ***16th March 2009's Long March*** which ultimately brought the CJP Iftikhar Chaudhry and his team back in their seats and saddles. The lawyers had never contributed even a single rupee for this cause, no evidence that who spent millions on that show. Certainly they were Sharifs. Every investment brings profits sooner or later.

Pakistan's judicial history is full of such episodes of 'honourable buying / deals'. One Justice Zakiuddin Pal was made member of 5-judges bench of Lahore High Court in October 1977 which heard the famous Z A Bhutto's murder case because he was known for his anti-Bhutto views. The bench was headed by Molvi Mushtaq Hussain. All the five judges had unanimously agreed to sign the judgment against Mr Bhutto. As a reward perhaps, Justice Zakiuddin Pal was made Senator.

Judges Afzal Lone and Rafiq Tarar were given rewards by the PML(N) by taking them as Senators in March 1997 after their retirement. Rafiq Tarar was made president of Pakistan by the PML(N) being known as a rubber stamp. He remained in Presidency from Dec 1997 till June 2001 when he was kicked out by Gen Musharraf.

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One Justice Ghos Ali Shah of Sindh High Court was made the Chief Minister of that province after asking him to join the PML(N) to which he gladly agreed. Till today Mr Shah is the President PML(N) of the Sindh and has earned a big name in politics [*though went angry later*].

Such rewards have tempted so many Judges in the history of Pakistan and all their oaths & pledges to uphold law went straight into the waste bins. In other countries, judges are routinely removed on complaints; in Pakistan there exists a Supreme Judicial Council but it has still to remove a single judge since it had been institutionalized through the Pakistan Constitution in 1973.

That is why we, as a nation, are at the lowest ebb in global hierarchy.

Notwithstanding the formal requirements of law that while deciding cases judges ought to be oblivious to extraneous considerations such as public opinion on a matter or the likely political consequences of a ruling, it is a fact that the effectiveness of the judiciary is intrinsically linked to the moral authority that emanates from non-partisanship of courts and their judges.

Judicial independence requires that the judiciary not be brought into disrepute, but the judges are expected to remain more careful in keeping the balance amongst various stake holders of the state, especially in charged political atmosphere. See the NRO's issue, where one person was picked by the apex court and 8042 others were never bothered about.

No score balancing in justice; recall Hazrat Ali (RA) who had let off a *Kafir* just because he had spitted on the face of Hazrat when he was to put his sword on *Kafir's* neck. ***'I do not want to mix my personal rage with Allah's Will'***, Hazrat Ali(RA) had said.

PAKISTAN JUDICIARY IN 2012:

Pakistan's judicial system was increasingly receiving notorious flack for allegedly overstepping its powers during 2012 too.

In early that year, the International Commission of Jurists, a Geneva-based non governmental organization [NGO] of judges and lawyers, criticized the Supreme Court for launching too many of its own investigations rather than responding to plaintiffs' cases. The courts'

activism risked destabilizing the balance of power between the judiciary and government, the commission said in its report.

Human Rights Watch [HRW], the US-based rights advocacy, criticized Pakistan's superior courts for using their powers to hush up media reports that were negative about the judicial system. It cited a number of cases in which Pakistani judges had ordered Pakistan media regulators to stop private TV channels from airing criticism of the judiciary.

Once the Islamabad High Court [IHC] ordered the regulators not to air material aiming at defaming CJP Iftikhar M Chaudhry or other judges. At another occasion, the court issued a contempt of court notice to the Chief Executive of ARY, a private TV channel, for broadcasting a show that criticized CJP Chaudhry. HRW held that:

"No branch of government, including the courts, should be immune from public opinion in a democratic society. Pakistan's judges have demonstrated the independence to hold the government accountable. But their credibility will be lost so long as they fight against scrutiny and accountability of judiciary itself."

The Supreme Court earlier that year ordered the dismissal of PM Gilani over his refusal to reopen graft investigations into Mr Zardari. The new prime minister followed the court's order to restart the corruption probe but it was too late till then. Zardari denied wrongdoing and his supporters claimed the judiciary had gone politicized. The court and its bar fellows said they were only fighting against widespread corruption in the government in power.

Another report – by the World Justice Project [WJP], another US base NGO also painted a negative picture of the rule of law in Pakistan. ***Its published report scored Pakistan among the lowest - ranked countries in the world*** for eight areas of the rule of law. Pakistan was ranked 91 out of 97 countries for the quality of its civil justice system and placed 80 for its criminal justice system.

The country came 90th on corruption and was placed 97th [the last] globally for order and security, largely due to the then ongoing Taliban insurgency. It was researched that:

"Pakistan has shown weaknesses in most dimensions when compared to its regional and income group peers; low levels of government accountability are compounded by the prevalence of corruption, a weak justice system, and a poor security situation, particularly related to terrorism and crime."

BABAR AWAN'S LICENSE SUSPENDED:

Suddenly a tragedy occurred.

On 5th January 2012, the Supreme Court of Pakistan, while hearing Zulfikar Ali Bhutto reference case, issued notice to PPP leader Babar Awan, asking him as to why his licence should not be cancelled on his making a mockery of the contempt of court notice issued to him few days earlier. The court noticed that Babar Awan, talking to media a day before (on 4th January 2012), made jokes of contempt notice issued to him by a 2 member SC bench by uttering a verse in *Saraiki* language:

'Notice milya, kakh na hilleya, keun sohneyan da gila karan; main lakh wari, Bismillah karan' (The notice was issued but nothing happened, so why should I complain. I will always welcome such moves).

The bench noted that the content of the utterance, the gestures made and the body language were indicative of an attempt to ridicule the apex court. Mr Awan was enrolled as an advocate of Supreme Court on 29th May 2000.

Babar Awan's license to practice law was subsequently suspended **on 17th January 2012** for an indefinite period. The video footage of Mr Awan was displayed in the courtroom which was seen by all including office bearers of the Pakistan Bar Council who had equally condemned his derogatory remarks against the judiciary. The 11-member bench resumed hearing of ZAB Reference case but had to ask the Federal Government to appoint someone else as their lawyer in the ZA Bhutto reference case.

Yaseen Azad and Latif Afridi of the SCBA along with Aitzaz Ahsan expressed their regrets and held that:

'A noose has finally been tightened around the neck of Babar Awan after he escaped the rage of the Supreme Court in the Bank of Punjab (BoP) bribe case; issued statements on NRO

implementation case and sent an Attorney General home in April 2010.'

For Babar Awan it was a second contempt notice in one week by the Supreme Court when he was charged on similar counts and allegedly taking Rs:35 million from the owners of the Haris Steel Mills to bribe the judges of the Dogar court to get them cleared in Bank of Punjab [BoP] scandal. Referring to **'the News' of 6th January 2012:**

'It is worth mentioning here that Sheikh Afzal, owner of Haris Steel Mills and centre character of Rs:9 billion BoP scandal, had confessed before the Supreme Court to have paid Rs:35 million to Babar Awan to get favourable decision from Dogar judges. Sh Afzal was arrested in Malaysia by the Interpol.

The sensational disclosure by the owner of Haris Steel Mills about how money changed hands in the heyday of the CJP Abdul Hameed Dogar also solved the riddle of the arrest of two NAB officials, who had to face humiliation in Dogar's SC when the bar and the bench had joined hands to bail out the fat cats of the Haris Steel Mills.

Apart from Babar Awan, Sharifuddin Pirzada, Malik Qayyum, Ali Sajjad and Irfan Qadir were also named by Sheikh Afzal of robbing his company by charging millions as their own fee and for judges.'

Earlier, Babar Awan's name was highlighted in April 2010 after a United Nations investigation report into the murder of Benazir Bhutto appeared in media, but his name was dropped due to lack of evidence. This was surprising for Awan and other PPP members who had reportedly heard Benazir saying that Awan was her brother.

In another contempt case; **on 8th March 2012**, a 2-member bench of the Supreme Court indicted Babar Awan for addressing a press conference against the apex court injunction passed on 1st December 2011 over the formation of a judicial commission to probe the Memo-gate scandal. The bench, comprising Justice Ejaz Afzal Khan and Justice Athar Saeed, after going through facts and examining the video passed the order that:

'We believe the matter should be proceeded with and the case is adjourned for 20th March to frame charges against Babar Awan'.

Reacting to the verdict, the former law minister walked up to the rostrum and recited a Quranic verse, which translated as: **"You [Allah] alone we worship, and unto You alone we turn for help."**

As narrated earlier, **on 17th January 2012**, the court had already suspended Mr Awan's license declaring his behavior 'unbecoming'. The live TV channels had been replaying Awan's speech before the media for many days. President Zardari had to appoint some one else as his new counsel in the ZA Bhutto's Reference case.

The Supreme Court had already named 10 amicus curiae but, on 21st April 2012, re-affirmed them including SM Zafar and Aitzaz Ahsan, while some had disassociated themselves from the list.

The hearing on the presidential reference was adjourned **on 29th June 2012**. Attorney General Maulvi Anwarul Haq was presenting his point of view while the federation's counsel Babar Awan had already concluded his arguments. The Attorney General had sought time to prepare answers to the questions the president had referred to the court.

The apex court maintained that it received a letter from President Zardari to the effect of Aitzaz Ahsan being appointed a counsel in the ZAB reference [in place of Babar Awan].

On 10th November 2012; after a span of ten months, a 9-member bench of the apex court headed by the Chief Justice of Pakistan (CJP) resumed the hearing of Zulfikar Ali Bhutto presidential reference but **adjourned it indefinitely**. On that day, Aitzaz Ahsan was in Karachi to attend the funeral prayers of former federal law minister Iqbal Haider.

The hearing never resumed again because Aitzaz Ahsan, the counsel nominated by President Zardari, had not told the court about his availability for that reference.

BRIG ALI KHAN'S APPEAL REJECTED:

On 16th February 2012, Justice Rauf Ahmed Sheikh of the Lahore High Court [LHC], Rawalpindi bench had dismissed five petitions filed by convicts in October 2009 GHQ attack case, saying that the high court could not do anything after the army chief declined to provide certain documents.

In the 2nd week of March 2012, Advocate Col (retd) Inamur Raheem urged Justice Sheikh not to hear the petition of Brig Ali who had challenged court martial proceedings against him. Col Raheem had alleged that the judge

had decided in favour of the army, saying the high court could not overturn the orders of the army chief. Justice Sheikh though referred the petition to his seniors but with the remarks that *'he had never made any observation about any decisions of military authorities'*.

Brig Ali was accused of having links with *Hizb-ut-Tahrir* (HuT) and was alleged of planning an attack on the GHQ with the help of some civilians and a PAF pilot. Brig Ali, in his petition, had said that he was being maligned because he had asked the military brass to fix responsibility for the 2nd May 2011's raid by US SEALs in Abbottabad that killed Osama bin Laden. Brig Ali's petition stated:

"It was on 5th May [2011] that I urged the military's highest hierarchy to fix responsibility for the US attack. I suggested the army leadership surrender their perks and privileges to get self-reliance. After the conference I was arrested and kept in solitary confinement.

The army investigators later charged him with planning to neutralize the top military and civil leadership to establish caliphate in the country and to carry out an air attack using F-16 fighter jets on the GHQ." [The prosecution had dropped the said charge later].

Brig Ali had, however, denied the charges.

Hizb ut Tehrir [HuT], known to be based in UK, was then accused of seeking to infiltrate Pakistan's army. In the wake of Bin Laden's death on 2nd May it allegedly distributed pamphlets near army bases calling on officers to remove some senior Pak-Army Generals and to overthrow the civilian PPP's government while forging a new Islamic caliphate.

HuT activists mostly used their base in Britain, where it was not banned, to tap into the large British - Pakistani population; mostly recruiting Pakistani officers who had been attending training courses in Sandhurst since 2000 and after. Some of them were discovered and jailed by the then president Gen Musharraf.

With the rise of anti-Americanism and conservatism, Pakistan's military has been increasingly concerned about Islamist infiltration in its ranks. The trends had gone intensified after PNS Mehran [naval base Karachi] attack on 22nd May 2011; about 12 officers, mostly from junior ranks, were arrested then. The detailed investigations had revealed that the arrested officers were being lead, equipped and guided by Al Qaeda Commanders – but the stooge rebels were portraying themselves as associates of HuT.

Pakistan's COAS Gen Ashfaq Kayani had to face angry questioning from across the ranks following the killing of Bin Laden; some officers considered him pro-American - the sentiments were known to the vibrant media too.

On 2nd April 2012, Brig Ali Khan boycotted the court – martial proceedings during hearing in protest against the refusal of military authorities to allow access to the '*counsel of his choice*.' The court martial panel consisted of five members and was being headed by an officer of Lt Gen rank.

A day earlier, Brig Ali asked Col Inamur Raheem to have a meeting with him which the authorities refused to accede that demand. He was later informed that Lt Col Khizar Hayat, hailing from GHQ's legal branch, had been appointed as the defending officer for him.

Under Pakistan's military laws an accused is provided a defending officer only if he cannot afford a lawyer or he assents to have a serving officer defend him in the court. Brig Ali's lawyer Col Raheem had earlier been allowed to see him only after the Lahore High Court [LHC]'s explicit directions. Later, he filed an application with LHC stating that the five member trial court had not been convened in accordance with the prevailing rules of Pakistan Army Act.

Col Raheem contended that the Field General Court Martial [FGCM] had been constituted in violation of the prescribed procedure as two of its members were immediate subordinates to the presiding officer of the court and they all belonged to one formation (8th Division) whereas the third member belonged to the unit of the accused which was also not permissible under the Army Act.

According to the Army Act, a charge sheet was to be prepared against the accused person and to be presented before the area corps commander. Brig Ali had also urged the court once to grant him permission to see the federal government's directives pertaining to his retirement. As per his contention '*he cannot be tried under military laws since he has already retired from the armed forces*.' Whereas the legal position was that even civilians associated with the accused military personnel could be tried in Court Martials under the Army Act.

Brig Ali Khan was scheduled to be retired **on 9th July 2011**; allegedly his retirement notification was issued next day in routine but was held in abeyance to try him under the Pakistan Army Act. When, during the hearing, the GHQ's rep Col Tahir placed the concerned notification before the LHC, the date mentioned therein was of **10th January 2012**.

The prosecution held that Brig Ali was arrested in May 2011 and the Field General Court Marshal (FDCM) was informed verbally in July 2011 that the retirement of Brig Ali had been suspended temporarily. Brig Ali, considered himself retired on 10th July 2011 after completing his service [*the GHQ's Military Secretary (MS) branch had approved his retirement on file on 11th April 2011*] but was not put on the list of reserved army officers owing to a heart illness. Justice Sagheer Ahmed Qadri of LHC's Rawalpindi bench had observed that Brig Ali's petition would be heard after his formal retirement.

Brig Ali was picked up on 5th May 2011 from his home; he was serving as Director of Rules and Regulations at the GHQ – it was correct. A day later, four army majors were also arrested for their alleged links with HuT. He was taken through court martial proceedings after an inquiry board informed him that the allegations levelled against him were substantiated.

After the military trial which had taken start in December 2011, the FGCM **on 3rd August 2012**, convicted Brig Ali; ***three other military officers were found guilty and all were given sentences for imprisonments*** - Brig Ali was to be imprisoned for five years, Maj Sohail Akbar for three years, Maj Jawwad Bashir for two years and Major Inayat Aziz for 18 months. The accused were given the right to appeal against the decision.

Ironically, all they were held in class C barracks of Adiala Jail Rawalpindi, and their appeals and petitions continued to remain on the cause lists of the High Court.

In a later development, the wife of Brig Ali Khan appealed to the CJP Iftikhar M Chaudhry to intervene over what she termed injustice meted out to her husband. In a letter written to the CJP in March 2013, Mrs Anjum Ali alleged that her husband had been facing the ordeal of trial and conviction by a military tribunal having no jurisdiction, simply because he had questioned during a conference held at the GHQ on 4th May 2011, the justification of the 2nd May's raid by American forces in Abbotabad and the failure of the Pakistan Army to deal with it. SC's record went silent on it.

SC ON WAHEEDA SHAH:

On 29th February 2012, the Supreme Court took *suo moto* notice of an incident wherein Waheeda Shah, the Pakistan People's Party's (PPP) candidate, slapped an assistant presiding officer at a polling station during the by-polls held in Tando Mohammad Khan, Sindh. The CJP Iftikhar M Chaudhry, while taking notice of the incident, summoned Inspector General

of Police (IGP), Sindh, Secretary Election Commission of Pakistan (ECP) and Waheeda Shah, the PPP candidate, on 2nd March instant.

[Such like were the fields where CJP Chaudhry was objected and even cursed. That kind of un-necessary judicial activism was neither required nor liked even by his colleague judges – especially when there were tens of cases lying in the back-log which needed immediate attention of the apex court for disposal.

Tens of the fake degree holders were sitting in the Parliament on stay order; CM Punjab was on stay order since 2009; many appeals were pending against MNAs and MPAs – the CJP had no time.

Another aspect: PPP's candidate did wrong thing; no doubt - but what was the fun in calling the IGP Sindh all the way from Karachi to Islamabad, or Secretary ECP – just to keep them standing at the doors of Court no: 1 waiting to have bullshit remarks from a CJP.

Instead, the CJP could have formulated a summary procedure code which could pass orders or dispose off that case or punish Waheeda Shah like arrogants within a day's summary trial.]

On 2nd March 2012, the CJP Justice Chaudhry, while addressing the IGP Sindh, said that such like incident may occur to anyone including you and me *'if this is allowed to go unnoticed. This is grimmer than the Kifayat Shah incident.'* Meantime, PPP's Waheeda Shah tendered her apology to the Chief Justice Chaudhry, saying: *'You are both my counsel as well as judge.'* The CJP said that *'Allow us being judge.'* Later on, the apex court adjourned the hearing till 12th March.

The ECP had withheld the result of by-election for PS-53, the constituency where the incident took place. On the face of it, it was quite likely, the result would be declared null and void by the ECP and polling would be held again minus Waheeda Shah. The decision to withhold the election result was made by EC's three members from Punjab, Balochistan and Khyber PK.

The Chief Election Commissioner (CEC) Justice (R) Hamid Ali Mirza was completing his four-year term on 16th March 2012 and the fourth member of the EC from Sindh Roshan Ali Essani, continued to stay back in Sindh to avoid taking blame of the action against Waheeda Shah. Such were instances where the institutions are spoiled. Like rogues; Roshan Ali Essani

preferred to avoid because he was PPP's nominee member in the ECP – he did not opt to stand by justice.

This was not the first time that the three members were on one side while the CEC and ECM from Sindh on the other, as then, one Mohsin Khan Leghari was permitted by the same three members to contest the Senate election while Hamid Mirza and Roshan Essani had opposed it. [*Mohsin Leghari won his Senate seat in elections of 2nd March 2012 and was the only independent candidate amongst the winning new 54 senators.*]

Coming back; a criminal case was registered against Waheeda Shah on the directives of the ECP. The ECP held its independent hearing too, which was likely to [at least] disqualify the PPP candidate, as enough evidence was available in the shape of a video clip and the fact Waheeda Shah herself conceded before media that she had reacted in fury. The ECP had also vowed to recommend disciplinary action against the police officer on duty named DSP Irfan Shah and his contingent who remained inactive during the incident thus failed to perform their duty.

The ECP had taken the slapping of its presiding officer Habiba Memon and her assistant as a slap on its own face and had asked its returning officer to proceed against Waheeda Shah and he had already done so under Section 86-A of the Representation of the People Act, 1976. The Returning Officer was empowered to award 3-months jail to the accused and fine or both.

On 6th March 2012, Waheeda Shah was disqualified by the ECP for slapping polling officials during last month's by-polls; an apology and 25,000 thumb impressions could not save PPP's candidate. ***PPP, however, appeared un-convinced and expressed concern over the decision.*** The ECP also imposed a two-year ban on Shah from taking part in elections and nullified the result of that by-poll for a Sindh provincial assembly seat PS-53. The ECP also asked the IGP Sindh to take action against DSP Irfan Shah who was present with the candidate when the incident took place.

How justice is valued in the Pakistani society; three jury members voted in favour of the verdict, while two [CEC and one ECM from Sindh] opposed it – because it was a case against PPP's nominate from Sindh.

On appeal, the Sindh High Court had maintained her conviction but quashed her disqualification on the ground that the power to disqualify under Section 100 of the Act rested exclusively with the CEC and not with the Commission members of ECP. **On 4th November 2012**, the CEC Fakhrudin G. Ebrahim had upheld the disqualification of Shah; her

disqualification had barred her from being elected as an MPA or MNA for two years.

On 29th November 2012, however, the Supreme Court admitted Waheeda Shah's appeal for hearing and directed the authorities to stop the by-election in PS-53 Tando Mohammad Khan. A 3-judges bench of the apex court, headed by Justice Nasirul Mulk, admitted Shah's appeal for hearing. Shah had filed the appeal against the rulings of the Sindh High Court and the Election Commission of Pakistan.

On 29th March 2013; while hearing case regarding Waheeda Shah's disqualification to contest for two years, the SC terminated her disqualification and allowed her to take part in the coming up polls of 11th May 2013.

Zaid Hamid approaches the SC:

On 2nd April 2012, Zaid Hamid, a veteran reformer, filed a petition in the Supreme Court for trial of certain media warlords like Imtiaz Alam, Executive Director SAFMA, Sirmed Manzoor, Najam Sethi, Beena Sarwar, Nusrat Javeed, Khaled Ahmed, Marvi Sirmed, Ali Chishti, Hamid Mir, Hassan Nisar, and some others under 'high treason' causes of the Pakistan Constitution but no cogent response till today at least. The said petition was drafted by Ahmed Raza Khan Qasuri on behalf of Zaid Hamid.

Reason: the media, Pakistani and Western, paper as well electronic, often orchestrated negatively since at least 2007 over the alleged role of ISI in politics. Z A Bhutto was said to have assigned some political work [*then mostly related to Balochistan affairs, it is believed*] to ISI but it might not be a policy decision.

However, what a Prime Minister did, any of his successors could undo it if it was considered wrong but it never happened. The fact remained that every ruler found it convenient to use ISI in political manipulations. So, the practice continued, despite a lot of noise over the years.

Who were the people in the media and politics who wanted ISI under political control, or even its abolishment; mainly India and US, the petition openly said - because ISI kept a watch on them and neutralized their covert activities. Why did the US want ISI to go? Simply because the ISI might be knowing more about the South Asia affairs than the CIA. Also for that the ISI had played a major role in the defeat of Soviet Union in Afghanistan and later allegedly kept the US away from victory over the same region.

On 12th July 2012, President Zardari signed a new bill, Contempt of Court Bill 2012, promulgated under Clause 3 of Article 204 of the Constitution of Pakistan which was thrown out by the SC's 5-member bench on 3rd August 2012.

Its brief details are available in the chapter '**PM Gilani sent home**' of this volume; a full chapter is there.

On 16th August 2012, a Meeting of Pakistan's Federal Cabinet decided that army Generals and judges of the superior courts should also declare their assets annually at par with other government functionaries and political representatives. The Establishment Division was asked to prepare a report in this regard because of the culture of corruption prevailing in all walks of civic life.

The fact remained that the annual declarations of politicians, submitted to the Election Commission of Pakistan [ECP], could not be taken as fruitful, as they never declared their foreign holdings - the favoured means of storing the proceeds of corruption.

The intelligentsia felt that the Generals uniformly spend their working lives in government service, having joined it after their basic college education; so theirs and the Judge's assets accumulated during service must be scrutinised. There was seen a tint of revenge or competition in these declarations of assets but the Establishment Division never put up their report before the treasury benches; or if done, it never came to the light at least.

On 7th September 2012, the Supreme Court trashed the federal government's appeal against a high court verdict that overruled the parliamentary committee's decision not to recommend two judges in the Sindh High Court. Justices Anwar Zaheer Jamali, Sarmad Jalal Osmany, Amir Hani Muslim and Muhammad Athar Saeed heard Deputy Attorney General Ashikue Raza on the main reasons given by the parliamentary committee for not confirming the two judges.

The parliamentary committee on appointment of judges had accused Justice Ghulam Sarwar Korai of tax evasion while the name of Justice Irfan Saadat Khan was dropped on his "compromising attitude" while deciding cases.

The apex court bench asked whether any tax default notice was sent to Korai. If not, how the committee reached that conclusion; *'this should not be made a reason for removing a judge unless he is proven guilty of tax evasion'*, the bench held. Moreover, why these eight [intelligence] agencies were not consulted at the time of appointment, the bench resorted when the DAG attempted to hammer the importance of the reports on the judges' antecedents.

For one judge, Justice Khan, the Parliamentary Committee's report said that ***'he may indulge in corruption later'***. The SC bench declared that reason 'untenable' also as ***'there lies Article 209 in the Constitution if any judge violates the code of ethics after confirmation'***.

After hearing the arguments, the bench in its short order dismissed the appeal and gave the federal government a week to confirm the two judges from 17th September 2011, and to maintain their seniority. ***'If the government fails to do so, the Sindh High Court's chief justice would still administer the oath to the two judges after seven days,'*** the SC bench directed.

On 12th November 2012; the Army Act 1952 came under scrutiny during a Supreme Court hearing of a petition filed against the law for its provision that no reason needs to be provided for a court martial once it has been issued. The apex court observed that this provision, known as a non-speaking order, conflicts with Article 10-A of the Constitution and can be cancelled on the basis of Article 25.

Petitioner Col (rtd) Akram had told the court that *'anyone convicted under a court martial is neither provided a copy of the decision, nor the reasons for the decision – and that this system creates hurdles in filing an appeal'*. He appealed to the apex court to direct the army to amend the relevant law under basic constitutional rights.

Such amendments were already available in the Navy and Air Force Acts and, therefore, there was no justification for not making such an amendment in the Army Act. The army's lawyer had pleaded that if the request of the petitioner was granted, as much as half of the Army Act would have to be revised.