

SCENARIO 246

FAIZABAD 'DHARNA' CASE VERDICT (2019)

Historically **Dharna** is a Hindi word for a non-violent sit-in protest to receive fast justice, state response or payment of a debt. The word originates from the Sanskrit word Dharna. In the time of all India, when there was the colonial system, Dharna was used as a popular form of public protest to express strong disagreement, disapproval and opposition to some action or something. It was also used as part of Mahatma Gandhi's *Satyagraha* form of civil disobedience and protest during Indian Independence Movement.

BACKGROUND OF 2017's DHARNA CASE:

On 8th November 2017: Thousands of green-turbaned religious foot soldiers of the *Tehreek-e-Labaik Pakistan* [TLP] managed to paralyse Islamabad and Rawalpindi by blocking the main link between the twin cities inter-provincial traffic. They were led by one Khadim Hussain Rizvi, a religious leader whose entry in the federal capital was banned by the government then.

The Faizabad sit-in was a worrying example of the state and government being held hostage by a religious group largely ambiguous. Hundreds of thousands of commuters use the Expressway to enter the federal capital from areas on its periphery every day. Even on the best of days, a minor accident or blockade can result in miles-long traffic jams. Sit-in of religious zealots over a change in law that had already been reversed was made an issue.

The government and city administration started out by deploying huge containers on main roads to block the influx of protesters. This threw traffic into a tailspin. By the morning of 9th November, patients were unable to get medical attention, students could not attend classes and people could not make it to their workplaces and offices. The city governments of the two districts were totally incapacitated. The point to mention is that demand to reverse a change in the law pertaining to the finality of prophet-hood had already been accepted and the PMLN government had made it the respective law.

However, the TLP group was vying to raise its public profile. TLP had joined electoral politics and bagged over 7,000 votes in the by-polls for NA-120 following Nawaz Sharif's disqualification. Since the PMLN was concerned about religious parties like TLP causing a dent in its vote bank, it refused to acknowledge the group's legitimacy by either negotiating with them or confronting them directly - but its policy of waiting for the protest to fizzle out did not work either. The PMLN government then invited representatives of the TLP for talks after a violent clash between protesters and the police which had left several people injured.

The PMLN government's inaction was seen as a sign of weakness by its opponents. In the opinion of many politicians, the crisis could have been easily averted with strict administrative measures. There was a clear distinction between a legitimate political cause for which the Constitution grants you the right to protest AND illegitimate political causes which cause chaos in society. PTI's '**dharna**' in 2014 had paved the way for religious groups to march to the capital to protest and press for their demands in a peaceful way. The violent protest over the hanging of Mumtaz Qadri, who had assassinated Punjab governor Salman Taseer in the near past, had also paralysed the capital and caused massive inconvenience for the public.

Those were the days when the clergy was disconnected from society and the real community problems. In its fight to preserve orthodoxy, it openly went against the interests of ordinary people. The protesters, in such situations, do not even see themselves causing any trouble to commuters. In this particular event, TLP leader Khadim Hussain Rizvi also urged while addressing protesters at Faizabad:

"Our sit-in and protest should not be blamed for the trouble of the city's people ... it's the government which is responsible for blocking roads and creating problems.

We have only one demand: remove (PMLN's) Law Minister Zahid Hamid from office as he is the one responsible for amending the affidavit that contained the clause about the finality of Muhammad (PBUH)'s prophet-hood. If you don't remove Zahid Hamid, we don't care if the whole assembly dies."

On 16th November 2017; the National Assembly gave nod to 'The Elections (Amendment) Bill 2017', seeking restoration of the *Khatm-e-Nabuwwat* [finality of Muhammad (PBUH)'s Prophet-hood] clause to its original form. On the same day, The Islamabad High Court [IHC] ordered the said religious group (TLP) to end its sit-in on the Faizabad Intersection — the main link between the twin cities – but the high court orders couldn't be implemented by the police and city administration – the sit-in stayed as such.

On 19th November 2017: Government's second deadline to call off Faizabad sit-in ended, protest continued and the PMLN govt had to approach scholars to conciliate Faizabad protesters. The government convened a grand meeting of leading clerics in an effort to find a peaceful solution to the protracted sit-in that had paralysed the twin cities of Rawalpindi and Islamabad for the two weeks. Next day, Islamabad police arrested a suspect allegedly carrying 2kg of explosive material near Faizabad Interchange which caused considerable unrest among the state institutions. On the other hand, the IHC issued show-cause notices to the district administration Islamabad and interior ministry officials over their failure to implement the court orders (of 16th November) to disperse the sit-in.

On 21st November 2017: The Supreme Court of Pakistan [SCP] took *suo motu* notice (No.7/2017) regarding the *Tehreek-e-Labaik Pakistan's* [TLP]'s Faizabad *Dharna* (sit-in) when the Islamabad High Court [IHC] had seized the matter in Syed Pervaiz Zahoor case (WP No. 3914/2017).

On 24th November 2017; the Islamabad administration issued a final warning to the protesters, occupying the Faizabad Interchange to clear the roads or face 'strict action'. Next day, the Police and Frontier Corps personnel launched crackdown but got retreated within hours. Perhaps the Army Chief Gen Bajwa had telephoned the then Prime Minister Shahid Khaqan Abbasi and advised him ***'to handle the Faizabad sit-in peacefully as violence is against national interest and cohesion'***. The PMLN Government called out Pak-Army to break up Faizabad sit-in, but military said: ***'it can't use force against our own people'***.

Next day, the law enforcement personnel used tear gas and water cannons to disperse the protestors, but ***failed and gave up after 173 of them suffered serious injuries*** – the law enforcement personnel were not allowed to use firearms and were provided only with anti-riot equipment. Two days later, Law Minister Zahid Hamid resigned following an agreement between TLP and the PMLN govt; Khadim Hussain Rizvi called off the sit-in.

The PMLN government had invoked Article 245 of the constitution and sought the assistance of Pak-Army but before the army could be deployed, the matter was resolved between the govt and the protestors on the night of 26th November 2017. The TLP leadership there, received payment from men in uniform AND dispersed. The moments were captured on videos and remained available on social media for weeks. The footage went viral. It was indeed ***'rare evidence'***, as a BBC report suggested, of what seemed to be a

'soft spot of the military' for religious groups whose support had been often mobilized against mainstream political parties. See below:

@omar_quraishi at Twitter on the same evening of 27th November 2017 at 7:39pm with 35 sec video and text: *Turns out the full context of this clip is as follows: The DG Rangers was visiting the protest site & was told that these are v poor activists who couldn't afford to return to their homes outside ISB - that's why at the start a man also says "Let us help them" - money is for that...*

Referring to the **BBC** dated 29th November 2017; the demonstrators blocked a main road in Islamabad for three weeks until the military brokered an end to the protest after a botched police operation. The law minister then resigned meeting a key demand of the protesters who had accused him of blasphemy. The deal was seen as surrender by the civilian authorities under pressure from the military.

[In the captured video of 27th November 2017, Director General of the Punjab Rangers Maj-Gen Azhar Navid Hayat was seen giving envelopes containing 1,000-rupee (£7) notes to participants in the protests, who were described as having no money to pay their bus fare home. **'This is a gift from us to you,'** the General was heard telling one bearded man. **'Aren't we with you too?'** He then went on to pat another protester on the cheek and offered a reassurance that, **'God willing, we'll get all of them released'** - presumably making a reference to some arrested protesters.

'This is all we had in one bag. There's some more [money] in the other,' Gen Hayat said, before the footage ends.]

The above video was shot by **Dawn News TV's** reporter Shakil Qarar on his mobile phone. He said it was run on the Dawn News website but no idea how footage without the Dawn News logo ended up on social media. There was no immediate reaction from the military, which knew more about each politician's role and lust in Pakistan.

No politician from the governing party (PMLN) or the opposition (PPP, PTI & JUIF) commented and **TV channels refrained from running the footage**, perhaps reluctant to annoy the Pak-Army. The **Nation** and **Dawn** daily newspapers did cover the story but did not headline it, and it got a back-page mention in the Urdu-newspaper **daily Jang**. However, there was fierce reaction from some Pakistanis on social media.

Omar R Quraishi, a Samaa TV journalist, asked **'whether it was a good use of taxpayers' money'**. The said sit-in came to an end after 21-days; the PMLN government was forced to accept TLP's demands after a futile operation to break up the sit-in went skewed and sparked violent protests across the country. This *Dharna* could have been avoided had the government kept the political environment cordial and amiable instead of following the politics of abusive syndrome for political opponents and nabbing them through NAB; PMLN's weakness had played more vital role.

In this charged atmosphere, religious extremists affiliated with the TLP roamed the streets, inciting and committing acts of violence. Under those circumstances, taking a stance against the establishment, questioning the executive, critiquing mainstream political parties including the PTI, and even scrutinizing the judiciary was an extraordinary act in politics, given the formidable forces aligned against such dissent.

That *Dharna* Case engulfed a prolonged and quarrelsome sit-in staged at Islamabad's Faizabad interchange. The protest itself started out as a political stand-off, but soon evolved into a litmus test for the resilience of democratic institutions, the sanctity of the Constitution, and the boundaries of freedom of expression.

At that time, Nawaz Sharif, a three-time elected prime minister, had been disqualified, and preparations were underway for his imprisonment. Political parties were undergoing significant changes, with one being dismantled and another; the PTI however, was enjoying robust public support. ***Much of the superior judiciary and media had largely aligned with the establishment's narrative.*** Even the elected PMLN, led by Shahid Khaqan Abbasi at the Centre and Shahbaz Sharif in Punjab, refrained from challenging the establishment's dominance; said to be extended to religious extremists, too – but remained a matter of open media discussions for long.

In November 2017, the situation in Islamabad had been simmering for three weeks before it erupted into violence and ultimate defiance of the Islamabad High Court [IHC] orders. Many blame the government for allowing the protesters to grow in number and build a countrywide momentum for their movement. When the ICT authorities moved, they did not appear to have a good plan. The police failed to arrest leaders of the protest, and when trouble started to spill into other cities, they resorted to a controversial policy of blocking all live news channels and social media websites.

{...but the situation was not unprecedented in this country; it's a routine matter here. This is Pakistan where corruption scandals had been invariably used to topple governments through courts, and there were instances when religious hordes had stormed urban centers to undermine the legitimacy of the respective governments. Many suspected that those moves came with the tacit support of the military; but the military always denied.}

25th November (2017)'s police action against the protesters was launched under cool but worried circumstances. Since the PMLN was known for having considerable standing with right-wing religious voters in Punjab province, many believed the protest by the ultra-right-wing TLY and TLP was aimed at attracting some of that support towards then freshly ousted PM Nawaz Sharif. The military stepped in later when its chief spokesman tweeted to say the army chief had told the new Prime Minister, Shahid Khaqan Abbasi, that ***'...the issue of protesters should be resolved by avoiding violence from both sides ...'***

The said directions raised many eyebrows. Dawn newspaper in an editorial comment said it had ***'oddly equated the (PMLN) government with the protesters'***. Others raised concerns over the timing of this tweet, saying: ***'...it would embolden the protesters'***. Hours after the tweet, the government enlisted the army's support in aid of civil administration but security experts were of the view that the military could only secure state buildings and installations against possible attacks, and that regular army troops were unlikely to physically confront the protesters.

Much later, on 25th instant, police fired tear gas and rubber bullets to disperse protesters, hence its initial reluctance to move against the protesters came up understandable. Nearly the same timing - top judiciary jumped in. Islamabad High Court declared the highway sit-in illegal earlier and during the last week it issued contempt notices to top administration officials for failing to clear the protesters. Later the Supreme Court also initiated hearings in the case, asking the government to restore the people's right to freedom of movement in occupied areas. It was just unexpected and unprecedented.

Initially, the media coverage of the protest was minimal due to small number of the protesters and also because road blocks by obscure religious groups trying to register their presence had become a routine affair in Pakistani politics. However, six people were believed to have died in the protests and hundreds were injured, including of police. Last day's escalating events changed the whole scenario; pressure was felt by the both - the government and the military. Aside from the blocking of Twitter, Facebook, Instagram, YouTube and other social media websites, television channels were made off-air and their live streaming pages were suspended.

Schools were also ordered closed for two days – 27-28th Nov 2017 - in the province of Punjab, which was home to more than 50% of the country's population; also, the ruling party [PMLN]'s home base.

TOTAL ADMINISTRATIVE FAILURE:

In Faizabad *Dharna* Case, the government, Islamabad administration, police and other law-enforcing agencies totally failed in removing the protesters from Faizabad, and despite using thousands of officials from multiple agencies, the protest site was kept occupied by more protesters than before; all operations went in vain. For many, the *halwa-eating maulvis* proved better at planning a protest and putting up resistance than the law enforcement agencies and administration had estimated.

Experts blamed the PMLN govt's delayed reaction for the chaos and instability; one mentionable crack-down was ultimately done on 26th November 2017. However, others felt the problem was more complicated. One Brig (R) Asad Munir, attributed the govt's failure to ill-planning; see below:

"They should have blocked all the routes to the sit-in to avoid chances of more protesters reaching the site at the time of the operation. In the morning, there were just a few hundreds of them – as most people tend to go away at night and return in the morning. Had the supporters been arrested as they tried to reach the sit-in a day before (it was Friday) morning, the situation would have been completely different. More important, Khadim Hussain Rizvi, the leader of the protesters, should have been arrested as early as possible by using teargas - the most effective weapon in protests.

For such operations, law enforcement personnel in reserve should be three times as many as the men deployed; but here there was no such arrangement. Hence, once the force was exhausted, it became impossible to control the situation."

A veteran media-cum-political analyst Imtiaz Gul said:

"... the state's delay allowed the protesters to make plans for a counter-protest across the country. This is why country-wide protests were witnessed after the operation began. Due to such strong and widespread demonstrations, it has become very difficult to address the situation without involving the armed forces.

The most serious mistake was not arresting Rizvi in the morning, when there were just a few hundred participants at the sit-in. It is strange that the law enforcement agencies focused on the workers rather than arresting the leadership.

The electronic media should have been approached earlier and explained why it should not cover the operation (where was PEMRA by the way). The live coverage simply helped fuel the anger across the country and more people headed for the protest site. The military should have been called in earlier."

A former IGP, Tahir Alam Khan, who had served in Islamabad earlier, felt that the operation revealed the lack of coordination between police officers and personnel. High-ranking officers should have led the operation, but they didn't bother. The govt should have focused first on controlling the protests across the country before launching another operation to clear Faizabad. Referring to Zahid Hussain's analysis Published in **daily DAWN** dated 22nd November 2017:

*"What more troubling is that the flames of bigotry are sweeping across other parts of the country creating a dangerous confluence of religion and politics. The controversy over the missing oath that has apparently been exploited by the newly formed **Tehreek Labbaik Ya Rasool Allah***

[TLY], (surely an off-shoot of TLP) to whip up religious sentiments has turned into more of a political issue bringing the beleaguered government under severe pressure."

Cleric Rizvi's show started with just few hundred zealots blocking Islamabad's main highway; then turned into its 3-week demonstration and with thousands more crusaders in, the blockade virtually brought the administration to its knees. Pampering and pleading failed to move the defiant clerics; even the court order to end the siege fell on deaf ears. The paralysis of the state bestowed the fanatics with a lot greater consent they didn't deserve.

The repeated extension of deadlines and seeking the help of religious leaders to end the stand-off demonstrated the helplessness of the administration amidst of political crisis. It was the fear of a blowback that limited the option of using force. The political fallout of the 2007's Lal Masjid military operation and the 2014's Model Town police action kept haunting the embattled PMLN govt and their buddy Islamabad administration. On the other side, giving in to the irrational demands of a politico-religious group weakened the state authority further. The authorities had not learnt from the consequences of the policy of conciliation and pacification in such situations.

There was certainly no outpouring support for that unruly sectarian mob; ***in fact, there was huge public outrage over the blockade.*** But initial indecisive and hesitant planning on the part of the administration encouraged some other groups to join the siege, making the situation much more volatile. Certainly, it was much easier for law-enforcement agencies to remove a few hundred protesters when they started to block the road. Nor it could be taken as a spontaneous move when the protesters led by Mr Rizvi marched into Islamabad travelling all the way from Lahore. There was a clear plan behind the siege. It was quite intriguing why the Punjab government did not stop the TLY supporters despite the fact that the issue of the missing clause about the finality of Prophet Muhammad (PBUH) had already been resolved.

Evidently, some senior members of the ruling PMLN also played a role by stoking the controversy because of political expediency. Some opposition leaders, from PPP, PTI and JUIF, could have jumped into the fray for their own vested political interests; reportedly the newly formed TLY enjoyed tacit support of some intelligence agencies to undercut the PMLN vote bank. All these factors created a monster and stoked the flames of bigotry that burnt down their own homes. The filthy language used by these clerics and the open incitement to violence made the lives of minority religious communities and of moderate Muslims more vulnerable to mob violence. The slightest perceived allegation of blasphemy could cost anyone his / her life.

The speeches of Rizvi and his fellow clerics were being live-streamed on social media; one could see and understand the kind of venom being spewed in the name of religion - they were merchants of hate - holding the nation captive. It was pathetic that the law minister had to prove his allegiance to faith and beg forgiveness for an oversight for which he was not directly responsible. The demand for his resignation was not just about his person but the sanctity of parliament. Conceding to that demand to end the sit-in further strengthened the extremist forces who were manifestly above the law.

One couldn't understand the administration's irresolute response despite the order of the Islamabad High Court to clear the siege. The order declared that no group could be allowed to infringe upon the rights of the people or disrupt the administration. Indeed, it was primarily the responsibility of the government to protect the rights of the people and uphold the rule of law. But the issue of extremism was also the concern of the state and other stakeholders. The use of religion as a policy tool by the state and its confluence with politics divided the nation along sectarian lines and fueled bigotry; it was a serious challenge to the ruling regime of the PMLN.

{SUMMARY: The agitators claimed that during the passage of the Elections Act 2017, the Khatm-i-Nabuwwat oath was deliberately modified as part of a larger conspiracy. The amendment to the

oath was deemed a clerical error by the government and was subsequently rectified through an act of Parliament.

The government had attempted to negotiate in vain with the protesters to end the sit-in several times. Finally, it launched an operation to disperse the protesters, in which at least six people were killed and scores others injured. After the botched operation, the government decided to call in the army for help. Negotiations were undertaken with protesters once again, and the government accepted a number of their demands in return for ending the protest. The agreement document bears the signatures of then interior minister Ahsan Iqbal, TLP chief Khadim Hussain Rizvi, and Gen Faiz Hameed among others.}

SC JUDGMENT ON SIT-IN CASE [5th FEB 2019]

On 5th February 2019: The Supreme Court of Pakistan issued a bold and strongly-worded 43-pages judgement in 2017's Faizabad sit-in case, in which it observed lapses on the part of the govt, media, the Pakistan Electronic Media Regulatory Authority [PEMRA], intelligence agencies, the armed forces, and the Election Commission of Pakistan [ECP]. Below are excerpts from the judgement given by Justice Qazi Faez Isa in the said *suo motu* case:

- ***The leaders of the dharna intimidated, hurled threats, abused, provoked and promoted hatred. The media provided unabated coverage to the TLP.*** Anyone having a grouse against the government joined in. The report submitted by Inter-Services Intelligence [ISI] under the title 'Public Support' and subtitle 'Political Parties / Personalities' listed the following: 1) Sheikh Rasheed Ahmed (Chairman AML), 2) Ejaz-ul-Haq (PML-Z), 3) PTI Ulema Wing Islamabad released audio message & 4) Sheikh Hameed (PPP).
- Inflammatory speeches were delivered by irresponsible politicians. Some unscrupulous talk-show hosts incited and provoked citizens.
- ***The free publicity made TLP, a little-known political party, into a phenomenon.*** Basking in the limelight, TLP's leadership became ever more intransigent, abusive and aggressive.
- With each passing day, as they grew in strength and number, they became delusional and alleged that people would be rendered objects of Divine displeasure (which is a criminal offence) unless they followed the chosen path of the TLP. Protests turned violent and spread to other cities.
- As per the unanimous view of all the intelligence agencies, ***TLP wanted to maximize political mileage*** for itself.
- The ambitious leadership of a fledgling political party projected itself as the defender of the Muslim faith.
- ***They provoked religious sentiment, stoked the flames of hatred, abused, resorted to violence and destroyed property worth Rs:163.95 million.***
- The report submitted by the Ministry of Interior [...] also disclosed that ***the requisite permission to take out a rally or to stage a sit-in (dharna) was not obtained by the TLP*** and that TLP's leadership repeatedly broke their promise to relocate to the designated protest areas, namely, Democracy Park & Speech Corner.
- The report of the Inspector General of Police Islamabad (IGP Islamabad) corresponds with the reports of the Intelligence Bureau (IB) and the Ministry of Interior, and highlighted the illegal actions of the protesters, including causing the death of a seriously ill eight-year-old child.
- The ISI report did not negate the reports submitted by IB, Ministry of interior and IGP Islamabad.
- ***Abusing, threatening and attacking people undermine their right to live a life of 'dignity'*** (guaranteed under Article 14 (1) of the Constitution) which requires enforcement.

- When shops and businesses are forced to shut, when people cannot pursue their vocation, when poor daily workers are denied the possibility of earning a livelihood their right to work (guaranteed by Article 18 of the Constitution) requires enforcement.
- When property is damaged or destroyed, the right to hold and enjoy property (guaranteed under Article 23 of the Constitution) requires enforcement.
- ***The right of assembly, the freedom of association and the freedom of speech cannot be exercised by infringing the fundamental rights of others.***
- ***Without obtaining permission public meetings cannot be held on roads. Nor can a road be used as a camping ground or to assemble on it indefinitely.***
- Roads are for vehicular use and pavements are for the use of pedestrians to enable the travelling public to move freely, which is their fundamental right.
- ***TLP's leadership created hatred amongst the people, they abused, threatened and advocated violence; and this was broadcast by some private television channels.***
- ***ISI's report identified Channel 92 as a television channel supporting TLP*** and stated that its owners had supplied food to the protesters occupying the Faizabad Interchange.
- PEMRA, however, did not take action under the Pemra Ordinance against any of its licensees for violating the terms of their licenses.
- ***PEMRA abdicated its statutory duty, a duty which it was legally obliged to fulfil.***
- ***PEMRA also failed to protect the legitimate rights of its licensed broadcasters.***
- ***Broadcasts by Dawn and Geo television channels were stopped / interrupted; complaints stating this were acknowledged by Pemra.***
- ***Dawn and Geo were particularly targeted in the Cantonment and Defence Housing Authority areas of the country,*** which too was confirmed by Pemra.
- It did nothing to protect the interests of its licensees nor took action against those cable operators who were responsible.
- On 19th March 2018 and on 24th April 2018, information was sought from Pemra as to who was responsible, but ***Pemra professed ignorance (on the subject questions).***
- The Council of Pakistan Newspaper Editors [CPNE] has ***alleged "media repression", "that editors and journalists are forced to self-censor their work amid pressure from certain quarters" and it "appealed to all state and non-state actors to refrain from such unconstitutional practices".***
- It seems that *Dawn*, the oldest English language newspaper of the country, which was founded by Quaid-i-Azam Muhammad Ali Jinnah, was targeted the most.
- ***Overt and covert censorship is unconstitutional and illegal.*** Nebulous tactics, such as issuing advice to self-censor, to suppress independent viewpoints, to project prescribed ones, to direct who should be hired or fired by media organizations is also illegal.
- No one, including any government, department or intelligence agency can curtail the fundamental right of freedom of speech, expression and press beyond the parameters mentioned in Article 19 of the Constitution.
- Those who resort to such tactics under the mistaken belief that they serve some higher goal delude themselves.
- Pursuant to the judgement in Air Marshal Asghar Khan's case, ***the involvement of ISI and of the members of the armed forces in politics, media and other 'unlawful activities' should have stopped.***
- Instead, when ***TLP's dharna participants received cash handouts*** from men in uniform, the perception of their involvement gained traction.
- The Director General of the Inter-Services Public Relations (ISPR) has also taken to commenting on political matters: "History will prove the 2018 general elections were transparent."
- The armed forces, and all agencies manned by the personnel of the armed forces, including ISI, Military Intelligence (MI) and ISPR serve Pakistan, and thus all its citizens. They must never be perceived to support a particular political party, faction or politician.

- ***If any personnel of the armed forces indulge in any form of politicking or tries to manipulate the media, he undermines the integrity and professionalism of the armed forces.***
- The report submitted by ***ISI did not disclose the "source of livelihood, place of work, address, funding of their organizations, etc" of the TLP leadership.***
- Subsequently, we had inquired whether they paid income tax or had bank accounts. ISI responded by stating that it did not have the mandate to gather such information and therefore was unable to provide answers to our queries.
- The learned AGP was thus asked to inform us about the law / rules / regulations governing ISI and its mandate. The learned AGP tendered a document (in a sealed envelope) which spelled out ISI's mandate, but requested that the mandate of ISI should not be disclosed.
- He did not give any reason for such secrecy except that this was also the practice in other countries but did not cite the example of a single one (country).
- We, therefore, ascertained whether other countries maintained secrecy about the mandate of their intelligence agencies. The United Kingdom, the United States of America, New Zealand, Australia, Canada and Norway have laws governing their intelligence agencies, and all these laws also disclose their respective mandates.
- ***We are disappointed in the manner in which the government handled this aspect of the case; by ignoring an issue it does not go away.***
- The perception that ISI may be involved in or interferes with matters with which an intelligence agency should not be concerned with, including politics, therefore was not put to rest.
- Article 17(3) of the Constitution requires political parties to account for the source of their funds and Section 211 of the Elections Act, 2017 demands that details of election expenses be provided.
- ***The Election Commission of Pakistan [ECP] confirmed that TLP did not account for its funds and election expenses, but, surprisingly, professes its helplessness because the law according to it is cosmetic in nature.***
- The ECP should disabuse itself that constitutional and legal provisions are cosmetic. The responsibilities placed on the ECP by the Constitution and the law must be fulfilled, they are not optional. The Constitution also empowers the Election Commission to get requisite information from any executive authority.

J Qazi Isa's verdict came at the peak of a peculiar hybrid experiment, with a new prime minister cementing the 'same page' between the executive and the establishment. Apparently, the judiciary itself had become an active participant in this collaboration barring very few judges. Notably, Justice Shaukat Aziz Siddiqui of the IHC, had previously been removed from office by the SJC when he exposed pressure from the establishment and the ISI. The intelligentsia held it as a bold judgement but no one was sure if the directions of the apex Court would be implemented any time sooner or ever.

{The Supreme Court of Pakistan [SCP] had taken *suo motu* notice (No.7/2017) regarding the *Tehreek-e-Labbaik Pakistan* [TLP]'s Faizabad *Dharna* (sit-in) when the Islamabad High Court [IHC] had seized the matter in Syed Pervaiz Zahoor case (WP No. 3914/2017).}

Referring to ***Saad Rasool***'s analysis in **daily 'Nation'** dated 10th Feb 2019:

"Justice Isa, in his prolific writing style, starts the judgment with a brief background of the events that transpired in the wake of 'change in the wording of the declaration' related to finality of the Prophet (SAWW), enacted through the Elections Act, 2017. He notes how the resulting dharna effectively paralyzed the cities of Islamabad and Rawalpindi as a result of which public's movement was restricted or altogether stopped and commuters could not get to courts, schools, colleges, universities, their place of work, et cetera. Simultaneously, the judgment observes that leaders of the dharna intimidated, hurled threats, abused, provoked and promoted hatred, while anyone having a grouse against the government supported them and the media provided unabated coverage to the TLP. In the circumstances, the Court took cognizance of the issue under Article 184(3) of

the Constitution, declaring that the matter undisputedly was one of public importance and required the enforcement of the fundamental rights of nearly every citizen."

[The underlined words are verbatim from J Qazi Isa's said judgment]

The judgement of the IHC had concluded that a right to protest was a qualified right that needed to be balanced with other citizens' fundamental rights, adding that there were designated places for protests in Islamabad - **Democracy Park and Speech Corner [Parade ground]**.

The opinion of the Supreme Court in this *suo moto* case was authored by J Qazi Isa with his own pen. In addition to answering a question concerning enforcement of entrenched fundamental rights, the verdict adequately attended the question of public importance to assume SCP's jurisdiction under Article 184 (3). Right to protest is not an entrenched fundamental right in Pakistan's Constitution, thus the Court observed:

"The Constitution does not specifically stipulate a right to protest. The right of assembly, the freedom of association and the freedom of speech cannot be exercised by infringing the fundamental rights of others. Without obtaining permission, public meetings cannot be held on roads. Nor can a road be used as a camping ground or to assemble on it indefinitely. Roads are for vehicular use and pavements are for the use of pedestrians to enable the travelling public to move freely, which is their fundamental right."

By framing the issue of TLP's protest as one due to which the **'country effectively came under lock-down'**, the apex Court, justified assumption of jurisdiction under Article 184(3) of the Constitution as the protest that infringed rights of other citizens. A similar conclusion was made by the IHC in its orders which were not implemented by the Islamabad Admin and Police due to unknown reasons.

MOVE TO REMOVE J FAEZ ISA:

On 20th April 2019; the Executive Committee of the Punjab Bar Council (PbBC) at Lahore passed a resolution against Supreme Court's J Qazi Faez Isa, terming the remarks given against Pak-Army in the Feb 2019's judgment as **'uncalled for'** and **'against the independence of judiciary'**.

On 24th April 2019, an emergency meeting of the Executive Committee of the Pakistan Bar Council (PBC) disapproved the Punjab Bar Council's (PbBC) Executive Committee resolution passed four days earlier (dated 20th April 2019). The Executive Committee of PBC met under the chairmanship of Hafiz M Idris Sheikh; and the meeting was attended by its members including M Ahsan Bhoon and Azam Nazeer Tarar. PBC's vice chairman Syed Amjad and a member Syed Qalb-i-Hassan also attended. The PBC held:

"Senior lawyers believe that the PbBC's executive committee move was made in a haste and most members were not taken into confidence over it. It might have been an attempt to satisfy 'certain quarters (related with Pak-Army desks). PbBC's Executive Committee resolution is a deliberate move to divide the judiciary and create an environment against a judge before fixture of review petitions on Faizabad sit-in judgement, authored by Justice Isa wherein certain observations were passed regarding intelligence agencies."

It was noted with concern that Ministry of Defence in its review petition had contended that the said judgment would adversely affect the morale of the armed forces and the directions to the Chiefs of Armed Forces of Pakistan (to take action against personnel who violated their oath) were ambiguous. The ruling PTI govt in its review petition had also contended that the judgment on Faizabad Sit-in case was sufficient to invite the **'verdict of professional misconduct'** against Justice Isa in terms of Article 209 of the

Constitution. [However, Imran Khan later withdrew its petition and refilled another one with the request to expunge the disturbing remarks].

The resolution to remove Justice Qazi Faez Isa for '**criticizing the army and the ISI**' in Faizabad Sit-in case verdict indicated that there were clamps on freedom of speech within the superior judiciary in Pakistan. The 'Faizabad sit-in (Nov 2017)' was one of the major events in the political landscape of the country which highlighted several boiling issues within the country's society, Parliament, Bars and the Establishment.

Peeping into the backdrop history, the sit-in was a reaction to a trivial issue raised by a religious party, which blocked a major junction of the twin-city for days, resulting in rioting and terror spreading on the streets throughout the country. The Supreme Court had taken up a *suo motu* case, and the verdict was delivered on 5th February 2019. However, in April 2019, a six-member executive committee of the Punjab Bar Council came up with a resolution to remove Justice Qazi Faez Isa – who had authored this verdict. The committee said Justice Isa '*criticized the army and the ISI*'. For many, this was a unfair claim, and they believed that the true loyalties of the then Punjab Bar Council committee rested elsewhere.

The verdict was issued by a 2-member bench of the Supreme Court of Pakistan [SCP] comprising Justice Isa and Justice Mushir Alam, and it gave facts and details of the sit-in staged by the *Tehreek e Labbaik Ya Rasoolallah* [TLY], an off-shoot of the *Tehreek-e-LabbaiK Pakistan* [TLP] at the Faizabad Interchange in the federal capital, Islamabad. In its verdict, the court had directed the federal and provincial governments to monitor all elements '**advocating hate, extremism and terrorism and prosecute the perpetrators in accordance with the law**'. More courageously, it gave a bold statement telling all institutions of the state, including its agencies and media guru PEMRA, to stay within their mandate as required by their oaths.

Further background; the TLP had objected to the language of one of the election laws then placed on media pages after revision. The parliament resolved the misgivings and mis-understandings but the TLP continued its protest, and in the first week of November 2017, they occupied the interchange – one of the main points connecting Islamabad and Rawalpindi. They also demanded the removal of the then law minister and called for the resignation of the govt itself. The verdict, authored by Justice Isa read that:

"...the leaders of the dharna intimidated, hurled threats, abused, provoked and promoted hatred; the media (also) provided unabated coverage to the TLP. Instead of ideally giving lukewarm coverage to the group of hooligans, most of the media – especially broadcast media – chose to play a sensationalist role.

Some unscrupulous talk-show hosts incited and provoked citizens," further read the detailed verdict. "The free publicity made TLP, a little-known political party, into a phenomenon. TLP's leadership became ever more intransigent, abusive and aggressive. With each passing day, as they grew in strength and number, they became delusional and alleged that people would be rendered objects of Divine displeasure (which is a criminal offence) unless they followed the chosen path of the TLP."

The SCP had invoked jurisdiction under Article 184 (3) of the constitution with regard to protecting the fundamental human rights of citizens, because by then the protests had turned violent and spread to other cities; further details are given below under separate sub-headings.

Additionally, the worst hit was those who were in dire need of medical treatment. Ambulances, doctors, paramedical staff and others providing emergency services, including firefighters, bomb disposal squads and rescue services, were prevented from rendering emergency assistance. The impact reached its height

with an eight-year-old boy dying when he failed to reach the hospital in time – as the sit-in prevented the ambulance from moving.

Meanwhile, the media continued its sensationalist fury. The ISI's own report identified **Channel 92** as a channel supporting the TLP and stated that its owners had supplied food to the protestors occupying the Faizabad Interchange; the PEMRA remained inactive. At one point, the verdict said:

"The perception that ISI may be involved in or interferes with matters with which an intelligence agency should not be concerned with, including politics, therefore was not put to rest."

The verdict also referred to the **Asghar Khan Case**. The late Air Marshal Asghar Khan was concerned that the ISI and some armed forces personnel were pursuing a political agenda. He expressed these concerns to the Supreme Court, which took cognizance of the matter under Article 184 (3), as it was a matter of public importance regarding the enforcement of fundamental rights. The decision in Air Marshal Asghar Khan Case declared that:

"Involvement of the officers/members of secret agencies i.e. ISI, MI, IB, etc. in unlawful activities, individually or collectively calls for strict action being, violative of oath of their offices, and if involved, they are liable to be dealt with under the Constitution and the Law."

Again, these thoughts surfaced at the time the *dharna* participants received cash from a military officer. With regard to the ISI and other agencies, the decision concluded that:

"All intelligence agencies (including ISI, IB and MI) and the ISPR must not exceed their respective mandates. They cannot curtail the freedom of speech and expression and do not have the authority to interfere with broadcasts and publications, in the management of broadcasters / publishers and in the distribution of newspapers. The Constitution emphatically prohibits members of the Armed Forces from engaging in any kind of political activity, which includes supporting a political party, faction or individual. The Government of Pakistan through the Ministry of Defence and the respective Chiefs of the Army, the Navy and the Air Force are directed to initiate action against the personnel under their command who are found to have violated their oath."

It was this kind of tough cross-questioning and speaking of mandates that the Punjab Bar Council (PbBC) took offence to. They claimed that Justice Isa had violated laws by targeting intelligence agencies in the Faizabad sit-in case. PbBC's resolution had said: **"He (J Qazi Faez Isa) should not have 'mocked' the state institutions ... the Pakistan army."**

The sentiments were, however, not greeted warmly across the board. In fact, it seemed as if those behind the resolution were in a minority, not even fully supported by some members of their own council. One Punjab Bar Council member held that the executive committee did not represent the whole house of the council, neither did it have the mandate to pass such resolutions or interpretations of judgments. Meanwhile, the Sindh Bar Council [SBC], including the Karachi and Hyderabad Bar Associations, instantly condemned the resolution.

"We must express our severe disappointment with the six members of the PbBC who were elected to be the voice of the legal fraternity but have chosen, instead, to become puppets of the puppet master; adding that such a resolution was only trying to sabotage the unity of the legal fraternity."

Within a day, the Pakistan Bar Council [PBC] – the body that regulates the affairs of the legal fraternity – rejected the resolution and described it as uncalled for, and an unnecessary one that transgresses the independence of the judiciary. Senior members of the *late Asma Jahangir Group* stepped forward to publicly

disown the PbBC's resolution against Justice Qazi Faez Isa. The Human Rights Committee of the PBC also stood by the latter group to reject the said resolution; its chairman held:

"It's just something foolish, as there are no justifiable grounds to think of removing him. Definitely, there are factions within the judiciary but there is a tangible presence of those who are standing with Qazi Isa. Different institutions of the country are given their limits by the constitution of Pakistan. But unfortunately, many of us do not bother to even give the constitution that kind of respect."

Meanwhile, review petitions were moved by the PTI, the Ministry of Defence, Intelligence Bureau [IB], Election Commission of Pakistan [ECP], Sheikh Rashid Ahmed, the Pakistan Electronic Media Regulatory Authority [Pemra], Ijaz-ul-Haq and the Muttahida Qaumi Movement [MQM]. One of the review petitions by the Defence Ministry pleaded to set aside explicit or implicit adverse observations implicating the armed forces and or the ISI, in particular the declaration to the armed forces (*details are sited elsewhere in this essay*).

In fact this was not the first time that J Qazi Faez Isa had been targeted including challenging his appointment, move after a carnage in Quetta in which 70 lawyers were killed in a blast in the court there AND try to entangle him for strengthening the narrative of RAW and India etc – but, his truthfulness and integrity prevailed. Such incidents indicated there were hidden forces seeking to influence him and pressurize the judiciary.

DHARNA POLITICS IN PAKISTAN:

Truthfully, in Pakistan along with use of other forms of protests and strikes, sit-in got more popularity. The *Dharna* tactic in this country was first used in 1958 by the first Chief Minister of the NWFP Late Abdul Qayyum Khan against Prime Minister Feroze Khan's administration to remove his President Iskander Mirza. It is part of the history that Pakistan National Alliance [PNA]'s *Dharna* helped Gen Ziaul Haq to oust PM Zulfikar Ali Bhutto [ZAB] and PNA used mosques to stimulate the masses. Unfortunately, *Dharnas* always served as latent aid to over-throw the democratic governments. Qazi Hussain Ahmed, the then JJ Amir, had also organised *Dharna* against PPP government in 1993; murder cases were registered against the then Interior Minister late Gen Naseerullah Babar and the Commissioner Rawalpindi.

On 9th March 2007; Gen Musharaf deposed the then Chief Justice Iftikhar M Chaudhary along with sixty other judges and dissolved the judiciary which led to a nationwide lawyers' long march. For more details see:

JUDGES & GENERALS IN PAKISTAN VOL-II,
(2012) Scenarios 44-47, Pp496-550; GHP Surrey UK
- Available at AMAZON in paperback and as eBooks;
also at <https://www.inamsehri.com/>

Later in 2009, during PPP government, Nawaz Sharif of PMLN along with Imran Khan of PTI and Qazi Hussain Ahmed of JJ planned a sit-in protest in the name of '**Restoration of Judiciary**'. It was handled effectively before it could enter Islamabad; timely political wisdom and dialogue worked out and successfully averted the situation. Iftikhar M Chaudhry was reinstated as the Chief Justice of Pakistan.

There was another *Dharna* in 2013 when Pakistan *Awami* Tehreek [PAT] under Dr Tahirul Qadri marched from Lahore and staged a sit-in against PPP's government in front of the Parliament Islamabad which was

also successfully averted; PAT was brought to the table through dialogue resultantly the said sit-in ended amicably. On the other hand, during PMLN Government, the PAT Lahore's *Dharna* was not dealt with political negotiations, resultantly turned into a war Zone **on 17th June 2014** taking the lives of dozens of PAT workers. The lesson was that aggressive political moves might lose chances of a peaceful settlement and can take many innocent lives when mobs go unruly, disobedient and disorderly.

Thus, the history of *Dharnas* and lockdowns in Pakistan have mostly resulted into victory of politicians but failure of democracy and the state institutions. Such tactics mostly bring political instability and discourage economic growth. Consequently, the political instability further reduces economic growth and escalates inflation and mis-trust for the ruling party.

Then comes up the sit-in of November 2017 held by one Khadim Hussain Rizvi owning a sister organization of the *Tehreek e Labbaik Pakistan* [TLP]. It's details are available on these pages along with a little details of a landmark judgment dated 5th February 2019, penned down by Justice Qazi Faez Isa. The honourable Court noted therein that despite all efforts by the government (*including use of tear gas and water cannons on 25th November 2017*) the protestors could not be disseminated that day. However, next day, after negotiating an accord with the PMLN government AND after receiving '**payment from men in uniform**' they dispersed.

J Qazi Faez Isa's judgment deliberated upon a wide spectrum of issues:

1. History of past dharnas / protests, and how the concerned parties had never been proceeded against;
2. The overall ambit and scope of '**Right to Protest**', under our constitutional dispensation;
3. Failure of the Election Commission of Pakistan [ECP] to proceed against matter relating to funding of TLP;
4. Impotence of PEMRA in cracking down against hate speeches;
5. Prohibition of hate-mongering within the ambit of the Islamic tenor of our Constitution;
6. Need for a defined legal / statutory '**mandate**' of the intelligence agencies.

Justice Isa was absolutely correct in pointing out that due (stern) action could be taken against those responsible for causing public inconvenience, and also that those in control of the cold-blooded Karachi massacre of 12th May 2007 must be prosecuted. For details of Karachi carnage, see:

JUDGES & GENERALS IN PAKISTAN VOL-II, (2012)

Scenario 45, Pp513-524; GHP Surrey UK

- Available at AMAZON in paperback and as eBooks;

also at <https://www.inamsehri.com/>

It is equally imperative to say that the TLP *dharna* of Nov 2017 was entirely unjustified after the govt had already enacted the requisite statutory amendment to redress their grievance. However, what required deeper and serious attention was the manner in which the apex Court defined the ambit of one's constitutional right to protest, and the consequences of 'abusing' such right. Specifically, its direction that '**protestors who obstruct people's right to use road and damage or destroy property must be proceeded against in accordance with the law and held accountable.**'

The judgment of the SCP, in its section titled **Previous Protests and TLP Dharna**, recounted two previous incidents of public protest:

- 1) "12th May, 2007 Karachi Massacre" during the Lawyer's Movement, and
- 2) "2014 dharna by PTI-PAT" at Islamabad.

Justice Isa in his judgment noted that:

"...perpetrators of the May 2007 event were not punished and even after a judicial Inquiry Commission had rebutted PTI's allegations, no adverse consequences followed". Consequently, emboldened by this lack of consequences, participants of the TLP dharna ignored the law (e.g. DC's imposition of section 144 Cr.PC.), destroyed property worth 163,952,000 rupees and caused nearly all economic activity in the country to come to a virtual standstill, which per day, caused a GDP loss of 88,786,180,821 rupees, and should be compensated by someone (the perpetrators)."

However, the serious minds pondered that who would start calculating the total damage done to the economic activity in Pakistan, as a result of the Lawyer's Movement? What about the blocking of Mall Road on every Thursday, for almost two years? And, of course, the consequent hindrance in getting to the Courts, or hospitals or schools? What about the constitutional right to **move freely** on GT Road, during the 2009 lawyer's Long March? The Bar Councils could have been charged this bill?

Taking words from Saad Rasool, referred *elsewhere above*, while on the point of past protests, what about the one Nawaz Sharif did, in his 'GT-Road Rally'? Should that bill, including loss of GDP, be charged to the former Prime Minister? Perhaps through some apex judgment in the future, the honourable Court could clarify whether there was a constitutional distinction between protests / dharnas / rallies that were short-lived, and those that lasted for longer? If so, how long a period of disruption could be taken as '*tolerated*'. BUT then what about the time when a group of blind government employees had blocked the Mall Road in Lahore? Should their protesting be measured in terms of their ability to pay?

At another point, referring to J Qazi Isa's judgment again, that the '*...right to assembly cannot be used to bring about a revolution or insurrection*'. Very respectfully, it required further clarification from the apex Court that '**why can a protest not aspire to become a revolution?**' World history is depleted with many such examples of successful revolutions.

On 6th April 2019; PPP co-Chairperson Asif Ali Zardari urged his party's supporters to '**march towards Islamabad**' and oust the government. According to the PPP leader, the accountability cases against him were part of an agenda to revoke the 18th amendment to the Constitution, which was passed by the PPP government in 2010. Otherwise, PPP has traditionally championed democracy and adherence to law & order but such a statement was disappointing. Mr Zardari didn't clarify what the purpose of such a long march was; the demand of '*ousting the government*' was outrageous, and against all legal realms.

If the march was meant to register a protest against a possible pushback of 18th Amendment, that could be done through political dialogue avoiding disruption of normal state business. Besides, there was no move or announcement by the sitting govt indicating challenge to the 18th amendment.

Later it transpired that Zardari's battle cry during his rally was just a bluff made in a wave of enthusiasm, - not a move for an actual long-march. Indeed, the economic inactivity that the PPP used to complain then got more terrible. Also, it appeared that PPP were (still) haunted by the politics of sit-ins. PTI's dharna of 2014, which was harshly criticised for civil disruption and law & order violation, in fact, paved the way for a political culture of waging protests to fulfil demands which could have been better fulfilled in via political discussions on the table and negotiations. The PPP could have acted gracefully; raising such divisive rhetoric always bring negative results.

AZADI MARCH OF JUI(F): Coming back to the *Dharna* science in Pakistan. In 2019, it became (serious) joke like a *lunger-gup* amongst seasoned politicians even. The date of Maulana Fazalur Rehman's *Dharna* titled '**Azadi March**' was near around and every coming day was making the PTI government nervous. PM Imran Khan was advised by intelligentsia that he should keep his ego aside and personally talk to the opposition leaders of various parties AND invite them to a talk & dine evening. It was a nice suggestion to

defuse the political uncertainty in the country; but the PM was un-necessarily proud. The political scenario could have been different and the upcoming political move of Maulana Fazalur Rehman could have gone frustrated had the PM Khan understood the political intrigues in power-corridors.

The news of JUIF's sit-in had created uncertainty and chaos in the minds of the general populace of Pakistan; particularly it was scarier for the citizen of Islamabad based on their past bad memories of sit-ins when businesses were halted, roads blocked, markets deserted and the schools closed. The previous *Dharna* of 2017 was still alive in the minds because an eye-opener judgment of J Qazi Isa was in place since February that year.

RE-SURGENCE OF FAIZABAD CASE:

On 21st September 2023: Just a week after taking oath of his new office, Chief Justice of Pakistan [CJP] Qazi Faez Isa fixed review petitions against the Faizabad Dharna Case judgment, wherein the Inter-Services Intelligence [ISI], Intelligence Bureau [IB] and Military Intelligence [MI] -- and Pak-Army's media wing, the Inter-Services Public Relations [ISPR], were directed not to exceed their constitutional mandates. A 3-judge bench of the apex court -- led by the chief justice himself and comprising Justice Aminuddin Khan as well as Justice Athar Minallah -- took up the petitions on 28th September 2023 against the 6th February 2019's verdict.

The pleas were not taken up during the tenures of the last three chief justices, namely Asif Saeed Khosa, Gulzar Ahmed and Umar Ata Bandial. During the hearing of Justice Isa's case related to an inquiry into three UK properties in the name of his wife and children, his counsel Muneer A Malik had told the apex court that the judge's observations in the Faizabad sit-in judgment -- **'an inconvenient truth'** -- prompted the PTI-led federal government to file a presidential reference against him.

Eight review petitions were filed against the Faizabad sit-in case verdict by various political parties and organizations including the PTI, MQM-P, Election Commission of Pakistan [ECP], Pakistan Electronic Media Regulatory Authority [Pemra], IB and the ISI. The review petitions were part of a coordinated exercise as all were saying that [the] observations in [the] SC judgment demoralized the armed forces. Surprisingly, the content of the review petitions filed by the PTI and MQM was the same. Both the parties had accused Justice Isa of **'misconduct'** for giving his observations against the establishment.

The ISI challenged the SC verdict through the then Attorney General for Pakistan Anwar Mansoor Khan saying that:

*"It (the verdict) would adversely affect the morale of the armed forces. It contended that the court's observations would gather the impression that the armed forces and the premier intelligence agency were responsible for **'unconstitutional acts like sit-ins / dharnas'**. It added that the verdict displaced the image of the armed forces defending the country against the menace of terrorism with that of those **'mired in politics, manipulating elections, subverting free speech, muzzling the press and funding extremists'**. The ISI also contended that the observation about the involvement of the armed forces in politics was vague as there was no evidence to back it up.*

Likewise, there was no evidence to suggest that the ISI was involved with either the Faizabad sit-in, outcome of the 2018 general elections, abridgment of free speech, or intimidation of or censorship of the press. Also, that observations and findings created the impression that the armed forces, in violation of their oath of office, have been found by the court to be involved in politics and other

unlawful activities. Further, the apex court's observations created the perception that the armed forces were busy pampering rather than checking those who resorted to abuse, hate and violence.

These are disturbing allegations unsupported by any credible and admissible evidence without identifying any person. Yet, the chiefs of armed forces of Pakistan have been directed to take disciplinary action against unnamed individuals who the court suspects of being so involved."

In their review plea / petition, it was also contended that such remarks (given in the judgment against the military agencies) would be exploited by external foes in their propaganda war against Pakistan's armed forces. Their [external foes'] politicians and media had in the past exploited such allegations to their advantage and would use the said SCP verdict to allege that *'the highest court of Pakistan is of the view that the armed forces are harbouring extremists'*. It continued that the armed forces could counter propaganda but their task would become unenviable when the judgment of the highest court of Pakistan supplied ammunition to the enemies of the country.

The intelligence agency also submitted that to promote their own interests and further their designs, several hostile foreign intelligence agencies had created a 'false perception' against Pakistan and its armed forces of aiding and supporting extremist organizations in the region.

The ISI also objected to the court's observations of halting TV transmission in the cantonments and defence areas; adding that:

"[The] armed forces have zero tolerance policy when it comes to violation of oath by their officers. An allegation that an officer of the armed forces has violated his oath of office is always inquired into. If the allegation is not devoid of basis, disciplinary proceedings are initiated. However, no action is possible in the absence of any credible evidence and that too against unnamed officers for their alleged involvement in un-particularized incidents on unspecified date[s]."

The full court formed a committee comprising Justice Minallah and Justice Muhammad Ali Mazhar to take up the task of chalking out standard operating procedures (SOPs) for the live telecast of court proceedings.

Justice Isa, in his 2019 Faizabad Dharna judgment, had written that the Constitution emphatically prohibited members of the armed forces from engaging in any kind of political activity, which included supporting a political party, faction or individual. 'The government of Pakistan through the ministry of defence and the respective chiefs of the army, the navy and the air force are directed to initiate action against the personnel under their command who are found to have violated their oath,' read the 43-page verdict authored by incumbent CJP Isa.

CJ Isa, in his Faizabad Dharna judgment, had also held that:

"Pakistan is governed by the Constitution ... obedience to the Constitution and the law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being in Pakistan."

On 26th September 2023: The Intelligence Bureau [IB] and PEMRA moved the SCP for the withdrawal of its review petition against the judgment delivered in the said sit-in case over four years ago, stating that it did not want to pursue the case anymore. The withdrawal application came just two days before the hearing of the review petitions by a 3-member bench led by Chief Justice Qazi Faez Isa and comprising J Aminuddin Khan and J Athar Minallah.

COURT COMMISSION'S REPORT:

On 6th May 2024; CJP Qazi Faez Isa expressed his dissatisfaction with the report submitted by an inquiry commission formed to investigate the *Tehreek-i-Labbaik Pakistan's* (TLP) 2017 Faizabad sit-in, remarking that the probe body was not even aware of its responsibility. The bench — headed by Justice Isa, and also including Justice Irfan Saadat Khan and Justice Naeem Akhtar Afghan — presided over the hearing today, which was broadcast live on the Supreme Court website and YouTube.

In that February 2019's judgment, adverse observations were made against several government departments, including ISI & MI of the Pak-Army for causing inconvenience to the public as the 20-day sit-in had paralysed life in both Islamabad and Rawalpindi. Pleas were subsequently moved against the verdict by the Ministry of Defence, the Intelligence Bureau (IB), the PTI, Pakistan Electronic Media Regulatory Authority (Pemra), the Election Commission of Pakistan (ECP), the Muttahida Qaumi Movement (MQM), AML chief Sheikh Rashid and Ijazul Haq. However, most of the petitioners withdrew their pleas, prompting the CJP to ask ***'why is everyone so afraid to speak the truth'***.

During a previous hearing, former Pemra chief Absar Alam had made revelations on the interference of intelligence agencies and *'media coercion'* during the Faizabad sit-in. Although the primary objective of setting up the Faizabad Commission was to fix responsibility for the failures that led to the TLP sit-in spiralling out of control, the Commission's report had stopped short of placing the blame directly on any individual's shoulders. During the hearing that day (6th May 2024), CJP Isa had to express his dismay at the report compiled and submitted by the Commission, noting that it was not according to the Terms of Reference (TORs).

CJP Isa inquired whether the Attorney General of Pakistan (AGP) had seen the report submitted by the Election Commission of Pakistan (ECP), to which the latter replied in the negative. Inter-alia, he told the apex court that Gen (rtd) Faiz Hameed had told the Commission that it was not the ISI's responsibility to look into the financial support of terrorists.

While scrutinising the report, CJP Isa pointed out that while one paragraph said it was not the ISI's responsibility, another said no evidence was found of TLP being financially assisted. Justice Isa asked the AGP to reflect on how much loss the country had suffered because of the Faizabad sit-in. ***'Kill, vandalise and leave; what is this? I cannot comprehend what level of mind prepared this report. The commission does not even know what its responsibility was.'***

The Commission, led by retired IG Syed Akhtar Ali Shah and also comprising former Islamabad police chief Tahir Alam Khan and additional interior secretary Khushal Khan, was constituted to ensure compliance with the 2019 SC judgment. The TORs were to investigate the causes and subsequent events leading to the omission and commission of acts not in accordance with the law. It included proposed drafting rules and SOPs to regulate the working of intelligence agencies since the involvement of the army or its affiliated agency in civilian matters adversely affected the fair image of the institution.

The CJP asked about the whereabouts of other Commission members. The chief justice asserted further:

"The right to protest is a part of democracy but the right to kill is not. Those who do so must be taken to task. What sort of report is this? There is no mention of TLP workers in the report. Were the TLP workers called? They weren't; truth might have come forward if TLP workers had been summoned by the Commission. The statements of those who sent breakfast and food are on the record."

"This is a grade-five [student's] statement that is being filed in the SC," CJP Isa quipped while referring to the report. However, the Commission's report said that since no one from the then-premier, former law

and interior ministers, and the former Punjab chief minister had accused intelligence agencies of facilitating the protesters, nor was any evidence furnished to this effect, the commission could not connect any organisation or state official with the TLP sit-in – and that was the end of the court business that day.

The IB's review petition had urged the court to set aside the adverse observations made against the department, adding that it was the premier civilian intelligence agency responsible for state security. It had contended that the impugned order created a "bad impression" on the public that the IB was involved in unlawful activities and politics, after transgressing constitutional boundaries. It had said the observations made in the verdict were based on "vague facts" and that during the sit-in, the department was in close contact with the federal and Punjab governments and forewarned them about the plans and intentions of the TLP, with a view to foiling their attempt to storm/lockdown Islamabad.

Meanwhile, in response, the defence ministry had requested the court to set aside the explicit or implicit observations about the armed forces and/or the Inter-Services Intelligence (ISI). The ministry's petition had said that a host of factors could affect morale. However, it said, what was fatal was the belief amongst the rank and file that their officers while acting like "self-proclaimed saviours" were violating the fundamental rights of citizens and instead of serving "Pakistan and thus all its citizens", supporting a "particular political party, faction or politician".

"...When the source of such remarks is the highest court in the land, it can promote fissiparous tendencies and has the capacity to destroy the ability of the armed forces to act as a cohesive fighting force," the review petition had argued. It had further said there was no evidence before the court to suggest that the armed forces or ISI were, in any manner, involved with either the sit-in or a particular outcome of the general elections of 2018 or the abridgement of free speech or intimidation or censorship of the press.

In its petition, the ECP contended that it had comprehensively applied and enforced the Constitution, law and code of conduct by issuing a letter to the TLP on Aug 16, 2017, asking the party to provide details of its bank account and even had issued notices to it with a warning to cancel its registration.

Daily life in Islamabad was disrupted for about 20 days when protesters belonging to religio-political parties occupied the Faizabad Interchange which connects Rawalpindi and Islamabad through the Islamabad Expressway and Murree Road, both of which are the busiest roads in the twin cities.