

Scenario 168

JUDGES & POLITICS IN 2012-13 [I]

PAK- JUDICIARY:

AT NO: 91 IN 97 COUNTRIES:

Pakistan's judicial system was increasingly receiving notorious flack for [allegedly] overstepping its powers during the year 2012, too.

In early that year, the **International Commission of Jurists** [ICJ], a Geneva-based non governmental organization of judges and lawyers, criticized the Supreme Court of Pakistan [SC] for launching too many of its own investigations rather than responding to plaintiffs' cases. The apex court's 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 Pakistani 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 the 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 the judiciary itself."

The Supreme Court earlier that year [2012] ordered the dismissal of PM Gillani over his refusal to re-open 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 wrong-doing and his supporters claimed the judiciary had gone politicized. The court and its bar fellows said they were only fighting against widespread corruption in PPP command and its regime.

Another report – by the **World Justice Project** [WJP], another US based 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 at no: 80 for its criminal justice system.***
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- ***The country came 90th on corruption and placed at 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."

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' clauses of the Pakistan's Constitution but with no cogent response from the SC. 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 was not a policy decision. Anyway, what one Prime Minister did, any of his successors could undo it if it was considered wrong but no one dared to do so.

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The fact remained that every ruler found it convenient to use ISI in political manipulations for its own peculiar interests. 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 the political control, or even its abolishment - mainly India and US; the petition openly said. Because the ISI stands mandated to keep a watch on them and neutralize their covert activities.

Why the US wanted 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 that region mostly comprising of tribal groups spread in that whole country - Afghanistan.

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

[Its brief details are available in **Scenario 98-99 'PM Gillani Sent Home I & II'** of book '**The Living History of Pakistan**' Vol-I [2015] pps 1588-1618, GHP Surrey UK.]

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 was prevailing and propagating 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 and Judges both uniformly spend their working lives in state service, having joined it after their basic college education; so their 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 its

report before the treasury benches; or if done, it never came to light at least in Pakistan – in fact how the corrupt or feudal politicians could dare to think so loud.

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 [PC] 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 of various nature.

The apex court bench asked whether any tax default notice was sent to Justice 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 the 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 Justice Irfan Saadat Khan, the Parliamentary Committee's report said that ***'....he may indulge in corruption later.'***

The SC bench declared the said reason 'untenable' saying that ***'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. The SC bench directed:

'....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.'

JUDICIAL DICTATORSHIP IN PERSPECTIVE:

In Pakistan, the controversy between the Judiciary and Executive over the appointment of superior court judges was not a sudden development.

Earlier a disagreement had emerged when the Parliamentary Committee [PC] in the first week of February 2011 had declined to accept a recommendation of the Judicial Commission [JC] to extend the service tenures of four senior additional judges of the Lahore High Court and two of the Sindh High Court. Consequently, two petitions were filed in the Supreme Court — one by Advocate Munir Hussain Bhatti and the other by the Sindh High Court Bar Association.

On 21st March 2011; the apex court rejected the objections raised by the PC and ruled that the committee had overstepped the rightful jurisdiction of the JC while ignoring its constitutional boundaries. It ordered that the notification be issued immediately.

On 7th December 2012; the law ministry of Pakistan moved the Supreme Court with a presidential reference to resolve as to who among the Judicial Commission [JC], the Parliamentary Committee [PC] and Presidency was authorized to appoint judges at the Supreme Court and high courts on the basis of their seniority that was being determined by the judiciary itself.

[The reference questioned the acts and constitution of the JC regarding the appointments of judges in the Islamabad High Court (IHC) after the changes made in the Constitution through 18th and 19th constitutional amendments.]

The said presidential reference was signed by President Asif Ali Zardari, seeking advice of the apex court under Article 186 of the Constitution.

The issue started cropping up when **on 22nd October 2012;** the JC on Appointment of Judges had recommended IHC's additional judge Shaukat Aziz Siddiqui to be made permanent and also vowed for a six-month extension in the tenure of IHC's additional judge Noorul Haq N Qureshi.

Presided over by the CJP Iftikhar M Chaudhry, the JC rejected Justice Azeem Afridi whose name was also on the list for confirmation; his tenure as the additional judge was NOT extended as done for the earlier

two judges. No cogent reason was cited to drop Mr Afridi – definitely, the bias, the whims of '**personal liking and disliking**', were seen at the highest level of CJP's Judicial forum – as all the three judges were appointed as additional judges on the same one date of **20th November 2011**.

Conspicuously Law Minister Farooq H Naek was absent from the meeting; the Attorney General Irfan Qadir and Pakistan Bar Council representative Dr Khalid Ranjha had raised objections and urged over the opposing considerations for the three judges - but of no avail.

On 6th November 2012; the PC for Appointment of Judges had to endorse the recommendations of the Judicial Commission but the Law Ministry did not issue a notification for extension in the tenure of these two judges as President Zardari had not given approval to the nominations, questioning the composition of the Judicial Commission that it was not valid because the 'most senior' judge of the IHC Justice Riaz Ahmad was not invited to attend the Commission's meeting of 22nd October. The fact remains that Justice Riaz Ahmed Khan was in Saudi Arabia for Haj when the J Commission had met.

On 22nd November 2012; the Attorney General of Pakistan Irfan Qadir informed the apex court that the government wanted to file a presidential reference over the issue which was filed **on 7th December 2012** then.

The presidential reference contained the following key questions:

- Whether the 11-members Judicial Commission acted on 5th November 2012 in accordance with the Constitution and conventions thereof in recommending a junior judge as chief justice of the IHC?

[The JC had appointed Justice M Anwar Kasi as the Chief Justice of the Islamabad High Court in place of senior judge Justice Riaz Ahmed Khan]

- Whether the commission was properly constituted as per provision of Article 175-A of the Constitution of Pakistan as Justice Kasi who participated in the meeting was not a member thereof and was a stranger to the proceedings?
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- Whether the president who is bound by oath of office to preserve, protect and defend the Constitution is obliged to make

the appointments which are not in accordance with the provisions of the Constitution and what should be the manner, mode and criteria before the Judicial Commission with respect to the nomination of a person as a judge of high court, Supreme Court and Federal Shariat Court in terms of Clause (8) of Article 175-A of the Constitution of Islamic Republic of Pakistan. 1973?

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- While seeking the opinion of the apex court, what is the proper role of the Judicial Commission and Parliamentary Committee under the Constitution of Pakistan with respect to appointment of judges of Supreme Court, high courts and Federal Shariat Court?
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- Whether in view of the decision by the chief justice of the IHC that Justice Riaz Ahmed was the senior most judge of the IHC [*which decision of the chief justice was also confirmed by the President of Pakistan*] Justice Kasi could be treated as most senior Judge of the IHC.
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- Whether Mr Justice Riaz had a legitimate expectancy to be appointed as chief justice of the IHC on the ground that he was the most senior judge of that court in the light of the judgment of the Supreme Court in the **Al-Jehad Case**?
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- What should be the criteria for elevating a judge/ chief justice of the high court to the Supreme Court? Is it their seniority inter-se as judge of the high court or their seniority inter-se as chief justice of the respective high court be the consideration for elevation to the Supreme Court?
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- Whether the government views that the constitution authorizes the president to have a role in appointments of judges, as the link between the JC and the PC as clarified by the 18th Amendment, was based on correct perceptions?
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- What is the true import and meaning of the word "confirm" and what is the effect of the proviso to Clause 12 of Article 175-A which reads as follows:

"...Provided further that if nomination is not confirmed, the Commission shall send another nomination."

- Whether by not providing in camera proceeding for the Judicial Commission in Article 175-A of Constitution of Pakistan, the

intention of the legislature is to ensure complete transparency and open scrutiny?

Including above, the Presidential reference posed 13 questions but seeking the judiciary's guidance mainly on who was constitutionally empowered to appoint judges in superior courts; the reference had also sought clarification on the role of JC and the PC in such appointments.

The reference brought controversy that arose when the JC decided to elevate the chief justice of the IHC, Justice Iqbal Hameed ur Rahman, to the Supreme Court and both the JC and the PC decided to elevate Justice M Anwar Kasi as the IHC's Chief Justice.

When the summary appeared before President Zardari for routine signing, it was found that Justice Riaz Ahmed Khan was senior to Justice Kasi and, therefore, qualified to be the new CJ of IHC. The new situation brewed the debate in the context as to whether the president should apply his mind on such appointments or sign on the dotted lines.

The Supreme Court constituted a 5-member Bench, headed by Justice Khilji Arif Hussain, and comprising Justice Tariq Parvez, Justice Ejaz Afzal Khan, Justice Gulzar Ahmed and Justice Sh Azmat Saeed, to hear the constitution petition [*filed by Nadeem Ahmed through his counsel M Akram Sheikh, senior advocate*] challenging the delay of appointment of judges in the IHC and presidential reference.

Meanwhile, Advocate Akram Sheikh had asked the **apex court to direct the president** to issue notifications of the judges and told the court that the president had no authority to hold the issuance of these notifications for more than six weeks. Mr Sheikh contended that:

'The president's role is just clerical and there is no constitutional dispensation involved in the process.'

Justice Ejaz Afzal Khan said that:

'.....the premier has no reason to hold the approved names and not sending the same to the president and the president has no reason to stop the issuance of these notifications.'

Subsequently, AG Irfan Qadir told the bench that:

'..... the high functionaries of the government – of which the president was also a part – could disregard any unconstitutional and unlawful order of the Supreme Court.'

On this Justice Asif Khosa had observed that:

'Mr Attorney General, you are advancing to a very dangerous argument.'

The reference stated that the 18th and 19th amendments of the Constitution made significant and important changes in the manner regarding appointment of the judges of the Supreme Court, High Courts and Federal Shariat Court. This was done by introducing a new Article 175-A in the Constitution and the new procedure envisages a three-stage process for the appointment of judges, including nomination of Judicial Commission [JC], confirmation by a Parliamentary Committee [PC] and appointment by the President of Pakistan.

The most uncharacteristic in the whole episode was the acquiescing role of the PC which was required to scrutinize the JC's recommendations. This eventually gave birth to dilemma for the Presidency within the meaning of the 18th and 19th Amendments.

The 19th Amendment to the Constitution was an apparent attempt to remove some deficiencies in the new mode for appointments in the superior judiciary, as they appeared in the Eighteenth Amendment, in the light of the Supreme Court order of 21st October 2010 – but in fact it was a conspiracy envisaged by the CJP Chaudhry to hold a monopoly position in the process of judges' selection through the JC.

*[It was in the **Al Jihad Trust case of 1996** that the Supreme Court elaborated the meaning of the word "consultation" as contained in Article 177 and 193 dealing with appointment of high court judges. The apex court had held that:*

"....the consultation should be effective, meaningful, purposive, consensus oriented and leaving no room for complaint of arbitrariness or unfair play.

The opinion of the Chief Justice of Pakistan and the Chief Justice of a high court on to the suitability of a candidate for judgeship may, thus, be accepted only in the absence

of sound reasons to be recorded by the president or the executive”.]

However, it was widely held by senior lawyers that the CJP Chaudhry had got passed the 19th Constitutional Amendment by threatening the PPP government – to gain total control in the JC while making the PC impotent. That was why in the later months the PC had declined to consider any recommendation of the PC declaring the whole exercise fruitless and wastage of time.

The players at the heart of that wholesome game were the three big heads: The judiciary, whose recommendations stood ignored, the Presidency, which was not keen to implement the recommendations, and the army, which, though not directly involved, was certainly a stakeholder in this latest situation. The later institution had actually no stake in the judges’ selection game but the media had blown it

[The two judges whose reappointment expired due to the delay in Presidency were, on 22nd November 2012, on the bench of a potentially explosive case – a petition against the government’s decision to give a three-year extension to incumbent Chief of Army Staff Gen Ashfaq Parvez Kayani.]

Both Justice Siddiqui and Justice Qureshi had taken oath on 21st November 2011, as additional judges for one year.

Legal experts believed that the situation was heading towards another judicial crisis. As per summary of the Law Ministry sent to the President, Justice Riaz and Justice Kasi though took oath the same day but Justice Riaz was senior by age.

There prevails a normal practice that if a judge is not confirmed, he cannot continue services after the expiry of his tenure. Thus as the president had not signed the summary of Justice Siddiqui, he was no longer a judge after 20th November 2012 and Justice Anwar Kasi was not able to assume charge as the Chief Justice of the IHC. Both the judges had relinquished their charge on that day as there was no effective notification in vogue to give effect to their continuation.

SC’s ORDERS – THUSS.....:

On 16th December 2012 [Sunday], the Supreme Court of Pakistan issued written orders on the contempt notice to *Muttahida Qaumi Movement* [MQM] Chief Altaf Hussain on account of using improper language against the judges. The order was issued by a 3 members' bench headed by the CJP Iftikhar M Chaudhry, the other members being Justice Jawwad S Khwaja and Justice Anwar Zaheer Jamali.

According to the court order, issued under Article 204 of the Constitution and Section 3 of the Contempt of Court law, the words used by Altaf Hussain in his speech were equivalent to interference in court matters and intimidation of the judges. No appeal was filed against the SC decision regarding the delimitation of constituencies' case of Karachi but the Supreme Court held that:

'Altaf Hussain used threatening and humiliating language against the judges of the Supreme Court during his address at a public gathering and this act comes under the contempt of court category.'

The contempt notice against Mr Hussain came on an office note put up by Supreme Court Registrar Dr Faqir Hussain who had invited the court's attention towards Mr Hussain's "uncalled-for aspersions on the judges".

The Supreme Court ordered Altaf Hussain to personally appear before the apex court on 7th January 2013. One court 'notice' was sent on the London address of the MQM Chief through the Foreign Secretary and the other through Deputy Convener of the MQM, Dr Farooq Sattar, on the address 494/8, Azizabad Karachi.

[The MQM Chief had said in his telephonic address of 2nd December 2012 from London that 'certain judges of the Supreme Court are part of the process of eliminating the MQM'.

MQM Chief had also demanded an apology for using the word 'monopoly' in the order given by the Supreme Court over electoral constituencies in Karachi.

Altaf Hussain, in his speech, had also termed the judges "un-constitutional" and "un-democratic"; calling the Chief Justice, President Zardari and the federal government to take notice of the remarks, adding that constitutional action should be taken against those judges.]

Mr Hussain was not the first politician to face the contempt notice. Former Prime Minister Yousuf Raza Gillani had lost his coveted office after he was sentenced by the apex court on 26th April 2012 for not writing a letter to the Swiss authorities and was eventually disqualified on 19th June.

PM Gillani's successor PM Raja Pervez Ashraf narrowly escaped the same charges when his administration agreed to write the letter. Interior Minister Rehman Malik, former law minister Babar Awan, PPP Senator Taj Haider and Sindh Information Minister Sharjeel Memon were already in row to face contempt charges on various counts.

On 7th January 2013; MQM's Senator Frogh Naseem appeared in the Supreme Court as Altaf Hussain's Counsel and submitted unconditional apology on behalf of his chairman. The apology was accepted and the contempt notice was filed.

A Positive Note: 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.
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- **Sociological Legitimacy:** public support for the institution and abidance by its rulings as a factual matter.
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- **Legal Legitimacy:** the acceptance of formal legal reasons given for decisions reached.

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**, rightly 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.'

Earlier, the PPP leadership including its 'student Chairman' Bilawal Zardari had 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.

The reality is that all courts make mistakes; in Pakistan and elsewhere in the whole world. Abual 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' weapon."

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 dictators and on bad ruler's behalf. The truth remains that:

"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. For instance:

- Prophet Jesus Christ was once made to stand with thieves before the stranger courts.
- Socrates was the most truthful man of his times but a court order made him to drink poison.
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- 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.
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- 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, too].

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In 1997-99, Justice Qayyum Malik's openly biased behaviour as judge of the Lahore High Court in the Benazir Bhutto & Zardari cases, sponsored and backed by Nawaz Sharif's government, will remain there as the black page of Pakistan's judicial history – and Justice Malik had to leave his seat and go home in 2001 in the most humiliating way.

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 apex court's treatment meted out to the PML[N] leadership was preferential and that afforded to the PPP leadership was discriminatory. One can 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 at least; the CJP Chaudhry did it 'gracefully enough'.

Repatriating Nawaz Sharif's all assets in ending 2011 by the then Chief Justice Chaudhry could also be analysed in this context; details are available in **Scenario 48** of the book '**Judges & Generals in Pakistan**' Vol-II [2012] pps 555-566, GHP Surrey UK.

Keeping Kh Sharif as the Chief Justice of the Lahore High Court was another case to be viewed – he was known pet-judge of the Sharifs.

The Prime Minister Gilani's contempt case is an opposing 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 its implementation?

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 Chief Justice 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 and their shrewd planning.

Pakistan's judicial history is full of such episodes of '**honourable Buys & Sales**'. One **Justice Zakiuddin Pal** was made member of 5-judges bench of Lahore High Court in October 1977 which had heard the famous Z A Bhutto's murder case because he was known for his anti-Bhutto views. The bench was headed by rogue justice **Molvi Mushtaq Hussain** who was not once approved for elevation by Mr Bhutto. 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.

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.

Such rewards tempted so many Judges in the history of Pakistan and all their oaths & pledges to uphold law went straight into the waste baskets. 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 requirement of law that while deciding cases judges ought to be oblivious to extraneous considerations such as public opinion on 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 the 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, Asif Ali Zardari, was picked by the apex court to proceed against and **8042 others were never bothered about** – especially in Sindh province where about 8000

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NROed persons, mostly belonging to the MQM, were given green chit in one local meeting and they were brought back on their original postings, too.

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.

Lamar S. Smith once said:

"Judicial abuse occurs when judges substitute their own political views for the law."