

Scenario 32

HISTORY OF JUDICIAL PAKISTAN:

Draconian 'Doctrine of Necessity'

Earlier history of Pakistan's Judiciary, as owned by the Supreme Court of Pakistan itself through one of its judgments made in 2002, gives an interesting account of intrigues amongst the then state institutions.

From 1947 till 1954 the Constituent Assembly, which was also the legislature of the country, failed to give a Constitution to the nation. Nothing was done beyond the passing of the Objectives Resolution by it. Failure to give a Constitution to the nation coupled with in-palace intrigues and the musical chair game for power and with a view to having absolute powers Governor General Ghulam Muhammad dissolved the Constituent Assembly. This act of the Governor General was challenged by Moulvi Tamizuddin Khan, President of the Assembly, in the Chief Court of Sindh.

The Sindh Chief Court allowed the petition and declared the dissolution of the Assembly as illegal. The judgment of the Sindh Chief Court was challenged in the Federal Court and by virtue of the judgment reported as *Federation of Pakistan v. Moulvi Tamizudding Khan (PLD 1955 FC 240)*, the Federal Court reversed the judgment of the Sindh Chief Court and held that assent of the Governor General was necessary to all the laws and the amendments made in the Government of India Act 1935, which was the interim Constitution. According to the Court, section 223-A conferring power on the High Courts to issue writs had not received assent of the Governor General and the Chief Court could not have issued writ holding the act of the Governor General as invalid.

Therefore, by means of the Emergency Powers Ordinance 1955 (Ordinance No: IX of 1955) issued under section 42 of the Government of India Act 1935 the Governor General sought to validate such Acts by indicating his assent with retrospective operation. The Federal Court in *Usif Patel's case (PLD 1955 FC 387)*, however, declared that the Acts mentioned in the Schedule to the aforesaid Ordinance could not be validated under Section 42 of the Government of India Act 1935, nor could retrospective effect be given to them.

A noteworthy fact was that the Constituent Assembly had ceased to function, having been already dissolved by the Governor General by a Proclamation on 24th October 1954 and no Legislature competent to validate these Acts was in existence.

The Governor General made a Reference to the Federal Court under section 213 of the Government of India Act 1935 asking for the Court's opinion on the question whether there was any provision in the Constitution or any rule of law applicable to the situation by which the Governor General could, by order or otherwise, declare that all orders made, decisions taken, and other acts done under those laws, should be valid and enforceable and those laws, which could not without danger to the State be removed from the existing legal system, should be treated as part of the law of the land until the question of their validation was determined by the new Constituent Convention.

The answer returned by majority judges of the Federal Court to the *Reference by The Governor General (PLD 1955 FC 435)* was that '*in the situation presented by the Reference, the Governor General has, during the interim period, the power under the common law of civil or state necessity of retrospectively validating the laws listed in the Schedule to the Emergency Powers Ordinance 1955*'. The Constituent Assembly, reconstituted

as per the guidelines given by the Federal Court, with great efforts and pains, framed the 1956 Constitution wherein Pakistan was declared an Islamic Republic.

Unfortunately, the political stability could not be achieved and frequent changes of the government, apathy on the part of the legislators to the problems of the country, killing of the Deputy Speaker of the East Pakistan Assembly, beating up of the Speaker and desecration of national flag in Dacca led to the abrogation of the 1956 Constitution and imposition of first Martial Law in the country in October 1958.

The central and provincial governments were dismissed, the national and provincial assemblies were dissolved, the political parties were abolished and Gen Muhammad Ayub Khan, the Commander-in-Chief of the Army, took reigns of the country as the Chief Martial Law Administrator, who later became the Field Marshal. It was declared that a Constitution more suitable to the genius of the Muslim people would be devised.

On 10th October 1958, President Iskandar Mirza promulgated the Laws (Continuance in Force) Order 1958 wherein it was, inter alia, provided that notwithstanding the abrogation of the Constitution, Pakistan shall be governed, as nearly as may be, in accordance with the 1956 Constitution, all Courts in existence immediately before the Proclamation shall continue in being, the law declared by the Supreme Court shall be binding on all Courts in Pakistan, the Supreme Court and the High Courts shall have power to issue the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, etc.

Under Clause (7) of Article 2 of the Laws (Continuance in Force) Order 1958, all writ petitions pending in the High Courts seeking enforcement of Fundamental Rights stood abated. Interpretation of the said clause [no: (7) of Article 2] was debated in the Supreme Court and in the famous case reported as *State v. Dosso (PLD 1958 SC 533)* the Supreme Court held that if the Constitution was destroyed by a successful revolution, the validity of the prevalent laws depended upon the will of the new law-creating organ. Therefore, if the new legal order preserved any one or more laws of the old legal order, then a writ would lie for violation.

As regards pending applications for writs or writs already issued but which were either *subjudice* before the Supreme Court or required enforcement, the Court in the light of the Laws (Continuance in Force) Order 1958 held that no writ or order for a writ issued or made after the Proclamation shall have any legal effect unless the writ was issued on the ground that any one or more of the laws mentioned in Article 4 or any other right kept alive by the new order had been contravened.

To sum up, the Supreme Court, on the basis of the theory propounded by Hans Kelsen, accorded legitimacy to the assumption of power by Gen Muhammad Ayub Khan holding that *coup d'etat* was a legitimate means to bring about change in the government and particularly so when the new order brought about by the change was accepted by the people.

In 1959 the Basic Democracies Order was promulgated and 40,000 basic democrats from each province, i.e. the West Pakistan and the East Pakistan were elected, who formed the Electoral College for election to the office of the President. Gen M Ayub Khan sought referendum and more than 94-95 percent of the basic democrats voted in his favour and thus he assumed the office of the President of Pakistan. The basic democrats were then entrusted with the task of electing national and provincial assemblies ultimately leading to the framing and promulgation of the 1962 Constitution.

War between India and Pakistan in 1965, the Tashkent Declaration of 1966, dissatisfaction over the tremendous Presidential powers as against the helplessness of the National Assembly and screams and shouts for restoration of the Parliamentary system in which the Government was controlled by the Legislature and answerable to it, gave rise to agitations by the political leaders in both wings of the country. As a result, Field Marshal Ayub Khan had to descend from power. However, instead of transferring power to the Speaker of the National Assembly in accordance with the 1962 Constitution, he called upon Gen Agha Yahya Khan to take control of the affairs of the country that abrogated the said constitution and another phase of military rule commenced in Pakistan.

Gen Yahya Khan dissolved the National and the Provincial Assemblies, imposed Martial law and promulgated Legal Framework Order 1970. In addition thereto one unit in the West Pakistan was dissolved, the old four provinces were restored and general election to the Constituent Assembly / National Assembly under the Legal Framework Order was announced and held in 1970.

Unfortunately, the members returned to the Assemblies could not see eye to eye with each other and no compromise formula could be arrived at. The Awami League led by Sh Mujeebur Rehman was the majority party in the East Pakistan while the Pakistan Peoples Party (PPP), led by Mr Zulfiqar Ali Bhutto, was the majority party in two provinces namely Punjab and Sindh. The session of the Assembly, which had to take place immediately after elections, was postponed, dragged up to March 1971 to be held at Dacca which never assumed.

The Awami League of the East Pakistan led by Sh Mujeebur Rehman had returned with a thumping majority on the basis of 6-point political programme announced by it. The postponement of the Assembly session infuriated the Awami League and the public in East Pakistan and thus a revolt took place there. To cut the long story short, ultimately the separation movement in the East Pakistan succeeded and that province became Bangladesh; a separate independent country. In the remaining Pakistan, Zulfiqar Ali Bhutto of PPP, the leader of the majority party in two provinces, became the President of Pakistan and the CMLA on the eve of transfer of power to him by Gen Yahya Khan.

1973's CONSTITUTION HELD IN ABEYANCE:

The Interim constitution of 1972 was promulgated and then by consensus of all, the 1973 Constitution was framed which came into force on 14th August 1973. Zulfiqar Ali Bhutto became the Prime Minister under the said Constitution. However, the country could not be brought on path of development and in 1977 elections were announced which was allegedly rigged leading to countrywide agitation against the PPP; the Pakistan Army intervened and Martial law was imposed by Gen Ziaul Haq on 5th July 1977.

The Constitution was not abrogated but was put in abeyance and the National as well as the Provincial Assemblies were dissolved. After the general elections of 1985, which was held on non-party basis, Gen Ziaul Haq nominated Muhammad Khan Junejo as the Prime Minister of Pakistan. A row between the two erupted and continued to prosper. However, ultimately the National and Provincial Assemblies were dissolved on 29th May 1988 by Gen Ziaul Haq.

Gen Ziaul Haq had publicly announced that the next elections would also be held on non-party basis. Before Gen Ziaul Haq could do so, he died in an air crash on 17th August 1988 at Bahawalpur and Ghulam Ishaq Khan, Chairman of the Senate became the President of Pakistan who announced that elections would be held in November 1988.

In the meantime, Benazir Bhutto filed a petition in the Supreme Court praying that the soul of parliamentary democracy, which was the hallmark of the 1973 Constitution, required that the election be held on party basis. The apex Court allowed the said petition through the judgment reported as *Benazir Bhutto's case (PLD 1988 SC 416)* and it was directed that the elections would be held on party basis.

The elections were held on party basis and Benazir Bhutto formed the government at the centre and two Provinces [Sindh and NWFP] while Pakistan Muslim League (PML) which was the rival political party, formed government in the Punjab with Nawaz Sharif as the Chief Minister. Simultaneously, an unfortunate period of confrontation between the two rival parties and their leaders started. The two leaders were at daggers drawn with each other, the history witnessed.

Hardly any tolerance was shown and instead of solving the problems of the country and the people they were trying to malign and humiliate each other. Attempts for vote of no confidence in the centre against Benazir Bhutto were made in ending 1989. The members of the National Assembly of both the factions were taken to different places by the leaders, kept them hidden under duress and a new era of '*lotocracy*' started in the history of Pakistan. The

stories of corruption, mal-administration, nepotism, favouritism, etc were rampant both in the Punjab and at Federation level.

PARLIAMENT DISSOLVED IN 1990:

In this background, on 6th August 1990 Ghulam Ishaq Khan under Article 58(2)(b) of the Constitution dissolved the National and the Provincial Assemblies on the following grounds:

'The President having considered the situation in the country, the events that have taken place and the circumstances, and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary:-

(a) The utility and efficacy of the National Assembly as a representative institution elected by the people under the Constitution, and its mandate, is defeated by internal dissensions and frictions persistent and scandalous 'horse-trading' for political gain and furtherance of personal interests, corrupt practices and inducement, in contravention of the Constitution and the law, and by failure to discharge substantive legislative functions other than the adoption of the Finance Bill, and further the National Assembly have lost the confidence of the people.

(b) The Constitution envisages the Federation and the Provinces working within the spheres respectively assigned to them with clearly delineated executive and legislative authority, and with a view to safeguarding the structure of the Federation also contains special provisions of mandatory nature to ensure and protect the authority granted to provinces, by creating the specific constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has wilfully undermined and impaired the working of the constitutional arrangements and usurped the authority of the Provinces and of such institutions, resulting in discord, confrontation and deadlock, adversely affecting the integrity, solidarity and well-being of Pakistan, in that, *interalia*:

(i) The Council of Common Interests under Article 153, which is responsible only to Parliament, has not been allowed to discharge its Constitutional functions and exercise its powers despite persistent demands of the Provinces, and Parliament has also not been allowed to function in this regard as required by Articles 153 and 154, and in relation to Articles 155 and 161.

(ii) The National Finance Commission under Article 160 has never been called to meet and allowed to function, thus blocking mandatory constitutional process in the matter of allocation of shares of revenues to the Provinces despite their persistent demands.

(iii) Constitutional powers and functions of the Provinces have been deliberately frustrated and extension of executive authority of the Federation to the Provinces in violation of Art 97 and by manner of implementation of the Peoples' Program.

(iv) The Senate, which is representative of the Federating Units under Article 59 and is an integral part of Parliament, has been ridiculed and its Constitutional role eroded.'

Next general elections were held in November 1990 and at that point of time, an alliance of certain political parties known as *Islami Jamhuri Ittehad (IJI)* was formed which won the majority seats and Pakistan Muslim League (PML) formed the government headed by Nawaz Sharif and the PPP went in opposition. Personal hostility between the leaders of the two factions continued as before.

PARLIAMENT DISSOLVED AGAIN IN 1993:

On account of this acute confrontation, absence of attempt on the part of the leaders to arrive at a consensus and to solve the problems of the country, failure to improve the quality of human life and the deteriorating economy of the country again led President GIK to dissolve the National Assembly in April 1993. In the dissolution order, the President gave the following grounds:

'The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minister's speech on 17th April 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the constitution and an appeal to the electorate is necessary: -

(a) The mass resignation of the members of the Opposition and of considerable number from the Treasury Benches, including several Ministers, *interalia*, showing their desire to seek fresh mandate from the people have resulted in the Government of the Federation and the National Assembly losing confidence of the people; that the dissent therein, has nullified its mandate.

(b) The Prime Minister held meetings with the President in March and April and the last on 14th April 1993 when the President urged him to take positive steps to resolve the grave internal and international problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation.

Instead, the Prime Minister in his speech on 17th April 1993 chose to divert the people's attention by making false and malicious allegations against the President of Pakistan who is Head of State and represents the unity of the Republic.

The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The Prime Minister tried to cover up the failures and defaults of the Government although he was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent basis.

Further, the Prime Minister's speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversions of the Constitution.

(c) Under the Constitution the Federation and the Provinces are required to exercise their executive and legislative authority as demarcated and defined and there are specific provisions and institutions to ensure its working in the interests of the integrity, sovereignty, solidarity and well-being of the Federation and to protect the autonomy granted to the Provinces by creating specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has failed to uphold and protect these, as required, *interalia*:

(i) The Council of Common Interests under Articles 153 which is responsible only to Parliament has not discharged its Constitutional functions to exercise its powers as required by Articles 153 and 154, and in relation to Articles 161, and particularly in the context of privatization of industries in relation to item 3 of Part II of the Federal Legislative List and item 34 of the Concurrent Legislative List.

(ii) The National Economic Council under Article 156, and its Executive Committee, has been largely bypassed in the formulation of plans in respect of financial, commercial, social and economic policies.

(iii) Constitutional powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation of Article 97.

(d) Mal-administration, corruption and nepotism have reached such proportions in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government, the lack of transparency in the process of privatization and in the disposal of public properties, that they violate the requirements of the Oath(s) of the Public representative together with the Prime Minister, the Federal Ministers and Ministers of State prescribed in the Constitution and prevent the Government from functioning in accordance with the provisions of the Constitution.

(e) The functionaries, authorities and agencies of the Government under the direction, control, collaboration and patronage of the Prime Minister and Ministers have unleashed a reign of terror against the opponents of the Government including political and personal rivals & relatives, and media-men, thus creating a situation wherein the Government cannot be carried on in accordance with the provisions of the Constitution and the law.

(f) In violation of the provisions of the Constitution:

(i) The Cabinet has not been taken into confidence or decided upon numerous Ordinances and matters of policy.

(ii) Federal Ministers have, for a period, been called upon not to see the President.

(iii) Resources and agencies of the Government of the Federation, including statutory corporations, authorities and banks, have been misused for political ends and purposes and for personal gain.

(iv) There has been massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid justification resulting in increased deficit financing and indebtedness, both domestic and international, and adversely affecting the national interest including defence.

(v) Articles 240 and 242 have been disregarded in respect of the Civil Services of Pakistan.

(g) The serious allegations made by Begum Nuzhat Asif Nawaz as to the high-handed treatment meted out to her husband, the late Army Chief of Staff, and the further allegations as to the circumstances culminating in his death indicate that the highest functionaries of the Federal Government have been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself.

(h) The Government of the Federation for the above reasons, *inter alia*, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan.'

Although the Supreme Court in the judgment reported as *Mian Nawaz Sharif's case (PLD 1993 SC 473)* restored the Assembly but the system did not work and the Prime Minister had to advise dissolution of the Assemblies.

BENAZIR BHUTTO SENT HOME AGAIN 1996:

Thereafter the government of Benazir Bhutto formed as a result of the 1993 election; but was dismissed by the then President Farooq Ahmed Leghari in November 1996 on the following grounds: -

- "And whereas on 20th September 1996 Mir Murtaza Bhutto, the brother of the Prime Minister, was killed at Karachi along with seven of his companions including the brother-in-law of a former Prime Minister, ostensibly in an encounter with the Karachi Police.

The Prime Minister and her Government claim that Mir Mutaza Bhutto has been murdered as a part of conspiracy. Within days of Mir Murtaza Bhutto's death the Prime Minister appeared on television insinuating that the Presidency and other agencies of State were involved in this conspiracy.

These malicious insinuations, which were repeated on different occasions, were made without any factual basis whatsoever. Although the Prime Minister subsequently denied that the Presidency or the Armed Forces were involved, the institution of the Presidency, which represents the unity of the republic, was undermined and damage caused to the reputation of the agencies entrusted with the sacred duty of defending Pakistan.

In the events that have followed, the widow of Mir Murtaza Bhutto and the friends and supporters of the deceased have accused Ministers of the Government, including the spouse of the Prime Minister [Mr Asif Ali Zardari], the Chief Minister of Sindh, the Director of the Intelligence Bureau and other high officials of involvement in the conspiracy which, the Prime Minister herself alleged led to Murtaza Bhutto's murder.

A situation has thus arisen in which justice, which is a fundamental requirement of our Islamic Society, cannot be ensured because powerful members of the Federal and Provincial Government who are themselves accused of the crime, influence and control the law-enforcing agencies entrusted with the duty of investigating the offences and bringing to book the conspirators.

- And whereas, on 20th March 1996, the Supreme Court of Pakistan delivered its judgment in popularly known as the '*Appointment of Judges Case*'; the Prime Minister ridiculed this judgment in a speech before the National Assembly, which was shown more than once on nationwide television. The implementation of the judgment was resisted and deliberately delayed in violation of the Constitutional mandate that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court.

The directions of the Supreme Court with regard to regularization and removal of Judges of the High Courts were finally implemented on 30th September 1996 with a deliberate delay of six months and ten days and only after the President informed the Prime Minister that if advice was not submitted in accordance with the judgment by end (of) September 1996 then the President would himself proceed further in this matter to fulfil the Constitutional requirements.

The Government has, in this manner, not only violated Article 190 of the Constitution but also sought to undermine the independence of the judiciary guaranteed by Article 2A of the Constitution read with the Objectives Resolution. And whereas the sustained assault on the judicial organ of State has continued under the garb of a Bill moved in Parliament for prevention of corrupt practices. This Bill was approved by the Cabinet and introduced in the National Assembly without informing the President as required under Article 46(c) of the Constitution.

The said Bill proposes that on a motion moved by fifteen per cent of the total membership of the National Assembly, that is any thirty two members, a Judge of the Supreme Court or High Court can be sent on forced leave. Thereafter, if on reference made by the proposed special committee, the Special Prosecutor appointed by such Committee, forms the opinion that the Judge is *prima facie* guilty of criminal misconduct, the special committee is to refer this opinion to the National Assembly which can, by passing a vote of no confidence, remove the Judge from office.

The decision of the Cabinet is evidently an attempt to destroy the independence of the judiciary guaranteed by Article 2A of the Constitution and the Objectives Resolution.

Further, as the Government does not have a two-third majority in Parliament and as the Opposition Parties have openly and vehemently opposed the Bill approved by the Cabinet, the Government's persistence with the Bill is designed not only to embarrass and humiliate the superior judiciary but also to frustrate and set a naught all efforts made,

including the initiative taken by the President, to combat corruption and to commence the accountability process.

- And whereas the judiciary has till not been fully separated from the executive in violation of the provisions of Article 175(3) of the Constitution and the dead-line for such separation fixed by the Supreme Court of Pakistan.
- And whereas the Prime Minister and her Government have deliberately violated, on a massive scale, the fundamental right of privacy guaranteed by Article 14 of the Constitution. This has been done through illegal phone-tapping and eaves-dropping techniques. The phones which have been tapped and the conversations that have been monitored in this unconstitutional manner include the phones and conversations of Judges of the Superior Courts, leaders of political parties and high-ranking military and civil officers.
- And whereas corruption, nepotism and violation of rules in the administration of the affairs of the Government and its various bodies, authorities and corporations has become so extensive and widespread that the orderly functioning of Government in accordance of the provisions of the Constitution and the law has become impossible and in some cases, national security has been endangered. Public faith in the integrity and honesty of the Government has disappeared.

Members of the Government and the ruling parties are either directly or indirectly involved in such corruption, nepotism and rule violations.

Innumerable appointments have been made at the instance of members of the National Assembly in violation of the law declared by the Supreme Court that allocation of quotas to MsNA and MsPA for recruitment to various posts was offensive to the Constitution and the law and that all appointments were to be made on merit, honestly and objectively and in the public interest.

The transfers and postings of Government servants have similarly been made, in equally large numbers, at the behest of members of National Assembly and other members of the ruling parties.

The members have violated their oaths of office and the Government has not for three years taken any effective steps to ensure that the legislators do not interfere in the orderly executive functioning of the Government.

- And whereas the Constitutional requirement that the Cabinet together with the Ministers of State shall be collectively responsible to the National Assembly has been violated by the induction of a Minister against whom criminal cases are pending which the Interior Minister has refused to withdraw.

In fact, at an earlier stage, the Interior Minister had announced his intention to resign if the former was inducted into the Cabinet. A Cabinet in which one Minister is responsible for the prosecution of a cabinet colleague cannot be collectively responsible in any matter whatsoever.

- And whereas in the matter of the sale of Burmah Castrol Shares in PPL and BONE / PPL shares in Qadirpur Gas Field involving national asset valued in several billions of rupees, the President required the Prime Minister to place the matter before the Cabinet for consideration & re-consideration of the decisions taken in this matter by the ECC. This has still not been done, despite lapse of over four months, in violation of the provisions of Article 46 and 48 of the Constitution.
- And whereas for the foregoing reasons, taken individually and collectively, I am satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary."

It may be stated here that on both occasions when the governments of Ms Benazir Bhutto were dismissed, the dissolutions were challenged and the Supreme Court in the judgments reported as **PLD 1992 SC 646** and **PLD 1998 SC 388** upheld the dissolution orders and the grounds on which the Assemblies were dissolved.

In the 1997 general elections, PML again returned to power with a thumping majority in the Assemblies and by means of the 13th Amendment, Article 58(2)(b) of the Constitution was omitted and the President Leghari's power to dissolve the National Assembly was taken away. In the meanwhile, a tug of war started between PM Nawaz Sharif and the CJP Sajjad Ali Shah. The Prime Minister introduced the 14th Amendment to the Constitution as a result of which the persons elected on the ticket of a particular party were debarred from speaking against the policies of the party concerned at the floor of the house or outside.

A petition was moved challenging the 14th Amendment on the ground that it infringed the fundamental right of freedom of speech and the then Chief Justice of Pakistan suspended the operation of the 14th Amendment which was resented by the party in power. The justification advanced by the party in power [PML] to introduce 14th Amendment was that they were trying to bring an end to the floor crossing.

The suspension of the operation of the 14th Amendment made the Prime Minister and others to ridicule the Chief Justice and certain derogatory remarks were made against the Supreme Court, which led to initiation of Contempt of Court proceedings against the Prime Minister and others.

Although the Prime Minister appeared in Court but as expected the apex Court desired to proceed further in the matter which again infuriated the PML and thus through a concerted effort the Supreme Court was attacked by an unruly mob to deter the Court from hearing the contempt case as a result of which the Chief Justice of Pakistan and other Judges had to leave the Courtroom. Crocodile tears were shed by the party in power over the incident. The mob which attacked this Court included one MNA and two MsPA with other PML formation commanders.

[It was another tragic part of Pakistan's history that the said MNA & the 2 MsPA and leading political figures all were made free despite verbal, written and electronic media-evidence on record by the Supreme Court but numerous police officers were punished taking them as escape goats.]

Later, the Chief of Army Staff Gen Jehangir Karamat delivered a speech in the Pakistan Naval War College and while commenting upon the prevalent circumstances in the country he suggested that a National Security Council should be formed to advise the Prime Minister so that appropriate measures be taken to reform the administration in running the affairs of the country. This speech was disapproved by the Prime Minister and consequently Gen Jehangir Karamat was sent home.

NAWAZ SHARIF SENT HOME AGAIN 1999:

Such like circumstances ultimately precipitated the military coup by Gen Musharraf and his colleague Generals on 12th October 1999, reinforced by Proclamation of Emergency of 14th October 1999, which was validated by the Supreme Court in *Syed Zafar Ali Shah's case* on the basis of doctrine of state necessity in year 2000.

It is pertinent to mention that the personal hostility between the two leaders [Benazir Bhutto & Nawaz Sharif] and the confrontation between them never ceased. Both of them on coming to power tried to involve each other in criminal cases. The government of Nawaz Sharif filed references against Benazir Bhutto, her husband and others and similar course of action was followed by Benazir Bhutto when she was in power. On a reference about the receipt of kickbacks in SGS case Benazir Bhutto was convicted in 1998 but on appeal the conviction was set aside and the case was remanded for fresh trial in 2001.

When Gen Musharraf took over the reins of power, there was a sigh of relief because the people were fed up with the confrontation and lack of understanding between the two

leaders and their followers. The apex Court's decision in the above referred *Syed Zafar Ali Shah's case*, three years' period was also given to the Gen Musharraf to achieve his declared objectives; reproduced hereunder: -

- Rebuild national confidence and morale;
- Strengthen federation, remove inter-provincial disharmony and restore national cohesion;
- Revive the economy and restore investor confidence;
- Ensure law and order and dispense speedy justice;
- Depoliticize state institutions;
- Devolution of power to the grass roots level; and
- Ensure swift and across the board accountability.

The Supreme Court had held that:

*'Changes in the social, political and economic fields are not brought about at once with a magic wand but involve a journey of thousands miles, which requires a start with the first step. In our view, the Election Order deserves approval being the first step aimed at bringing about a change in the political culture, which has been described in the **International Encyclopedia of the Social Sciences** by David L. Sills, **Volume 12, page 218** as under:*

- [*Political culture is the set of attitudes, beliefs, and sentiments which give order and meaning to a political process and which provide the underlying assumptions and rules that govern behaviour in the political system. It encompasses both the political ideals and the operating norms of a polity. Political culture is thus the manifestation in aggregate form of the psychological and subjective dimensions of politics. A political culture is the product of both the collective history of a political system and the life histories of the members of that system, and thus it is rooted equally in public events and private experiences.*]

Once it was argued before the Supreme Court that *'the imposition of educational qualification would not bring about any change because the kith and kin of the old politicians would reach the Assemblies.'* But the Court held that for the making of new laws in the light of the changing circumstances and social and political values the public representatives should be well versed with the modern trends, changing social order and the events on the international scene.

No doubt wisdom is not related with degrees but this is an exception to the rule. Education certainly broadens the vision, adds to knowledge, brings about maturity and enlightenment, promotes tolerance and peaceful coexistence and eliminates parochialism. The apex court was convinced that the educational qualification prescribed for membership of Assemblies would raise their level of competence; bring change in the political culture and would also be an incentive to education.

Hence petitions praying for relief against education qualifications were dismissed but subsequently, the political nexus amongst various clans got this barrier removed through the parliamentary benches.