

## **Scenario 50**

### **JUDICIARY vs ARMY (2007)-III**

#### **LAWYERS' PROTESTS AGAINST ELECTIONS:**

After **28<sup>th</sup> September 2007**, when the Supreme Court of Pakistan gave verdict of legitimacy for Gen Musharraf to contest the presidential election in uniform, there was a big chaos in Islamabad. In the office of the Chief Election Commissioner, the nomination papers of Gen Musharraf as a presidential candidate were admitted amidst a big roar of objections filed by the other two main candidates. All the objections were straightaway rejected.

The Constitution Avenue Islamabad on that day presented the scene of a virtual battlefield. The blood of journalists and lawyers soaked the ground who fell victim to the worst-ever brutality of police in the capital's history. All this happened because large contingents of the police, both in uniform and plain clothes, were deployed at the main route of the Constitution Avenue and all the main routs around that day. The lawyers had gathered in front of the Election Commission building where they wanted to protest against the nomination papers of Gen Musharraf for another term in office. Many media persons were there to cover the event.

Marvat Ali Shah, the Police Incharge Islamabad, was himself heading his force at that moment. It was alleged that he had issued orders to target Aitzaz Ahsan, Ali Ahmad Kurd, and others by name but no evidence was there beyond media reports. However the situation worsened when the Police teams manhandled Ali Ahmad Kurd while he was trying to enter the Election Commission building. Aitzaz Ahsan was also there. One stone hit his belly. This infuriated the lawyers who went to argue with the police. Odd situation was there. A group of lawyers, including Zamurrad Khan MNA, managed to drag away Aitzaz Ahsan from the scene.

On that day, the police stopped journalists and media persons to enter the premises of the Election Commission. Some of them were allegedly beaten. As many as 34 media persons and 80 lawyers, including common citizens sustained serious injuries. Earlier, Ali Ahmed Kurd, before moving to the premises of the Election Commission, had burnt the said order (dated 28<sup>th</sup> September 2007) of the Supreme Court allowing Gen Musharraf to contest the presidential election. He had bitterly criticized the decision of the six judges who had declared the petitions as not maintainable.

**29<sup>th</sup> September 2007:** Chief Justice of Pakistan had taken *suo moto* notice of police violence against lawyers, newsmen and representatives of the civil society at Constitution Avenue of Islamabad on a drafted report of his Registrar. The Police and civil administration of Islamabad then held that the Supreme Court had taken notice of the police action just to cover its own misgiving for that black decision, to take away their shame and sorrow and to continue playing with the tunes of army's orchestra; the Supreme Court of Pakistan did another odd.

The lawyers who had raised their voices and hurled shouts at the judges by name; the media members who had torn out the Supreme Court's humiliating orders; the political activists who had burnt the copies of SC's judgment and so many others – all were found noble, innocent, guiltless and blameless but only police was found offender because they were the symbol of authority; because they were easy to be shouted at in the court; because they all religiously attend the court to tender their unconditional apologies; because they help the sheepish courts to 'be known as strong and powerful' and because they are poor and are not able to

bring costly pleaders to save their skins. Weigh the strength of the judges calling only the police to answer; hurray Pakistan's judiciary!

Most people understand that why the superior courts behave so; to hide their own embarrassment and regret without realising that history is cruel; keeps track of the events and paints a very ugly picture of some jackals sitting on certain honourable echelons. It was enough to confirm that the higher courts could do anything to please the khaki uniformed people, as ever before, but would shout, scream and screech at poor police just to pretend that they are powerful and arrogant. What a show of power and what degree of cowardice at the same moment --- what kind of history they wanted to make. Whom should one blame?

The Court had summoned Secretary Interior, Advocate General Punjab, Chief Commissioner Islamabad, IG Police, DC and SSP Islamabad to appear before the court. They were directed to submit their security plans and FIRs to the court. The Chief Justice had also issued directives to doctors of PIMS and Polyclinic Hospital to submit their reports to the court about patients admitted in their hospitals and nature of their injuries registered during the days of turmoil.

Many people believe that the SC was blackmailed by the 'mighty intelligence agencies' of Pakistan to get the 28<sup>th</sup> September's judgment in favour of Gen Musharraf. News appeared in '**The Australian**' of 12<sup>th</sup> November 2007 under the caption: **Pakistan: judges 'filmed having sex'** is reproduced below verbatim:

*"ISLAMABAD: Some of Pakistan's Supreme Court judges and their children were secretly filmed in compromising positions with lovers and prostitutes as part of a dirty tricks campaign by the country's feared military intelligence, it was reported yesterday.*

*Videos were sent to at least three of the 11 judges in September as they were deciding whether Pervez Musharraf was eligible to run for president while still army chief. One showed a judge with his mistress while another was of a judge's daughter with a boyfriend, **London's Sunday Times reported.***

*"The message was clear," a British barrister who learned about the tapes from a Pakistani counterpart told the paper. "If you rule the wrong way, these will become public and your family destroyed."*

*The judges gave an ambiguous ruling, allowing General Musharraf to be elected but declaring that they would decide on his eligibility later.*

*It was fear that this ruling, due last week, would go against him that led General Musharraf to declare the state of emergency.*

*Although he claimed he acted to prevent extremists taking over the country, the judiciary appeared to have been his principal target, the paper said.*

*No jihadi leaders have been arrested, but General Musharraf sacked chief justice Iftikhar Chaudhry and eight of the 11 Supreme Court judges, and scrapped the constitution.*

*Since declaring the state of emergency, General Musharraf has placed most of the top judges and human rights activists under house arrest. The sacked judges have been replaced by others who swore an oath of allegiance.*

*According to Western diplomats, it was General Musharraf's intelligence chiefs who talked him into imposing emergency rule by convincing him the Supreme Court was about to overturn his re-election as president."*

[No rebuttal or denial was ever seen from the apex court or the 'agencies', thus no comments from the author.]

**5<sup>th</sup> October 2007:** The Supreme Court of Pakistan unanimously decided holding of Presidential elections on 6<sup>th</sup> October as per schedule. In a short order, the larger bench of the apex court disallowed staying the presidential poll. However, it added that results of the election would not be notified by the election commission till decision of all related petitions.

The text of the order said:

*'Having heard the learned counsels for the parties at length, it is unanimously resolved and directed that the election process already commenced shall continue as per schedule notified by the Chief Election Commission of Pakistan but the final decision of the election of the returned candidate shall not be issued till the final decision of these petitions.'*

The main petitions were set down for hearing on 17<sup>th</sup> October 2007. This short order was passed by a ten member larger bench of the Supreme Court headed by Justice Javed Iqbal and comprising of Justice Abdul Hameed Dogar, Justice Khalil-ur-Rehman Ramday, Justice Muhammad Nawaz Abbasi, Justice Faqir Muhammad Khokhar, Justice Tassaddaque Hussain Jillani, Justice Nasirul Mulk, Justice Raja Fayyaz Ahmed, Justice Syed Jamshed Ali Shah and Justice Ghulam Rabbani.

**6<sup>th</sup> October 2007:** When on 28<sup>th</sup> September 2007, the Supreme Court of Pakistan had given clearance to Gen Musharraf for presidential election; the Election Commission of Pakistan started accepting applications from Presidential candidates next day. 43 candidates in all applied for the slot.

Justice (R) Wajeehuddin Ahmed was from Lawyer's group whereas the PPP fielded its vice president Ameen Faheem as a candidate stating that he would withdraw his candidacy if Gen Musharraf were approved as a candidate. On 29<sup>th</sup> September 2007, the Election Commission scrutinised the nomination papers of all 43 candidates. Gen Musharraf and both of his major opponents (Justice W Ahmed and Ameen Fahim) were approved along with three others; the official list of candidates was publicised on 1st October 2007. The final list of five candidates was:

- Gen Pervez Musharraf, the incumbent in uniform, for the Pakistan Muslim League (Q);
- Justice ® Wajihuddin Ahmed, for an association of lawyers opposed to Gen Musharraf;
- Ameen Faheem for the [Parliamentarian] Pakistan Peoples Party;
- Muhammad Mian Soomro, Chairman Senate, as Musharraf's backup candidate;
- Faryal Talpur, Deputy Mayor of Nawabshah, as Amin Fahim's backup candidate.

On Election Day, 80 opposition party members had resigned from the Parliament, protesting that Gen Musharraf was running for re-election while being head of the army. Complete results were announced only 80 minutes after the five-hours-long voting process had been finished, with 685 of the 1,170 eligible lawmakers participating. The results were Pervez Musharraf: 671 votes, Wajihuddin Ahmed: 8 votes, Invalid: 6 votes. The Supreme Court had rejected all challenges to the legality of the election, with the last ruling made on 22<sup>nd</sup> November 2007.

Gen Musharraf easily won a vote to be re-elected Pakistan's President, even though it was unclear if his candidature was legal. He had won all but five of the votes cast in parliament's two houses and swept the ballots in the four provincial assemblies whereas opposition MPs abstained or boycotted the vote, calling it unconstitutional.

Chief Election Commissioner Qazi M Farooq told the National Assembly that Gen Musharraf had won 252 of 257 votes cast in the upper and lower houses. His nearest rival, Wajihuddin Ahmed, had won just two votes in the National Assembly and the Senate. Three votes had been rejected. A similar picture prevailed in the provincial assemblies of Punjab, Sindh, North West Frontier and Balochistan.

A deal had been announced earlier that, as a result of July 2007's meeting between Gen Musharraf and Benazir Bhutto in Dubai, members of Pakistan People's Party (PPP) would not join opposition boycott but abstain from voting while remained seated in the Parliament. The PPP did exactly as settled. Under the deal, Gen Musharraf had to drop corruption charges against Ms Bhutto, a stride towards power-sharing arrangement which had surfaced as NRO a day earlier.

PML(N) had boycotted that presidential election. Nawaz Sharif had attempted to return to Pakistan before the election [10<sup>th</sup> September 2007] but was deported back into exile by the ruling government because of a gross violation of the agreement he had signed with Gen Musharraf in December 2000 to stay out of Pakistan and its politics for a period of ten years.

After the Election Commission's announcement, Gen Musharraf lodged an appeal to the people to end protests against his rule and once more revived his offer of reconciliation to all political parties. The opposition parties rejected Gen Musharraf saying '*We will not accept him as president... He is a person who has hardly any respect for the rule of law*'. Opposition parties and lawyers called for protests. In Peshawar city, the police had to fire tear gas at lawyers protesting near the provincial assembly building. However, Political observers believed that Gen Musharraf got himself re-elected as the president on 6<sup>th</sup> October only because of the MMA leaders who had decided to vote in favour of 17<sup>th</sup> Amendment after striking a deal with a uniformed General and distorted the Constitution of 1973.

Gen Musharraf once again was grateful to the MMA leaders, particularly Qazi Hussain Ahmed and Maulana Fazlur Rehman, whose single act not only gave him the crucial support when he needed it most, but it continued to yield results when he once again needed it.

The Supreme Court had said that no winner could be declared until the decision whether Gen Musharraf could stand while being the army chief. This ruling had dragged the presidential election into confusion for a while but subsequently, on 17<sup>th</sup> October's hearing, nothing happened.

*[It may be remembered that since early 2007 Gen Musharraf had started exploring different options to retain both offices for another term, but none of them were likely to stand up in a court of law. It should be available on PPP minutes of Dubai mutual meeting of July 2007 that another parliamentary exemption was worked out and it was offered to him by the Pakistan Peoples Party (PPP), the largest political party in the country but it asked him to give up his army post and settle for reduced presidential powers.*

*Gen Musharraf, instead, preferred to order his intelligence agencies to try to ensure a similar parliamentary victory for him through PML(Q) party loyalists by rigging the elections and this option cum strategy went successful.]*

**14<sup>th</sup> October 2007:** Pakistan's Supreme Court ruled that legal challenges to Gen Musharraf's re-election in uniform should be heard by a larger bench headed by the Chief Justice, adding to the uncertainty over a new five-year term. An 11-member bench of the apex court headed by Justice Javed Iqbal, which took up five petitions challenging Gen Musharraf in the 6<sup>th</sup> October presidential poll, decided to ask Chief Justice Iftikhar M Chaudhry to constitute a full court to hear the matter.

Among those who filed the petitions taken up were PPP leader Makhdoom Amin Fahim and retired judge Wajihuddin Ahmed, who had unsuccessfully contested the presidential poll. Justice Ahmed's counsel told the court that the petitions were of the highest national importance as they involved the role of the army in Pakistan's politics and constitutional affairs and deserved to be heard by a full court. Attorney General Malik Qayyum, however, opposed this contention and said the government would object to the inclusion of four judges if a full court was constituted.

### **EMERGENCY OF 3<sup>rd</sup> NOV 2007:**

On **3<sup>rd</sup> November 2007**, Gen Musharraf declared a state of emergency in Pakistan, suspending the constitution, replaced the Chief Justice before an expected crucial Supreme Court ruling on his future as president, and cutting various private Tele-Channels all over Pakistan other than state-controlled PTV. Telephone service in the capital, Islamabad, was also cut. Gen Musharraf's leadership was threatened by an increasingly defiant apex court and his 'Emergency Order' had accused some judges of '*working at cross purposes with the executive and weakening the government's resolve*' to fight terrorism.

Going into details; during the hearing of Gen Musharraf's eligibility case, the Supreme Court had once announced that it might postpone the hearing until 12<sup>th</sup> November due to a personal engagement of one of the judges on bench. However on 2<sup>nd</sup> November, the court reversed its decision to break and called the bench on 5<sup>th</sup> November to resolve the political situation quickly. On the same day [of 2<sup>nd</sup> November 2007], Barrister Aitzaz Ahsan placed an application before the Supreme Court separately asking that the army be restrained from imposing martial law in Pakistan. On this petition a seven member's bench was formed headed by CJP Iftikhar Chaudhry himself which issued a stay order next day against the imposition of an emergency or martial law. The other members of the bench were Justice Rana Bhagwandas, Justice Javed Iqbal, Justice Mian Shakirullah Jan, Justice Nasirul Mulk, Justice Raja Fayyaz, and Justice Ghulam Rabbani. Attorney General Malik Qayyum while representing Gen Musharraf had assured the court that there was no planned move by the government to indulge in any such extra constitutional activity.

This stay order was ignored; before the court's next proceeding on 5<sup>th</sup> November, Gen Musharraf, acting as Chief of the Army Staff, declared a state of emergency as per Article 232 of the constitution on the evening of 3<sup>rd</sup> November 2007, and issued a Provisional Constitutional Order (PCO) which replaced the constitution. Under the order, the Constitution was suspended, the federal cabinet ceased to exist, and the justices were ordered to take an oath to abide by it. Those who failed to do so would be dismissed.

*[The Constitution's Article 232 allows only the President of Pakistan (**and not the Army Chief**) to declare a State of Emergency when he is satisfied a situation exists that warrants its imposition. In the case that a President of Pakistan declares a State of Emergency, the National Assembly has to approve it within 30 days.]*

Following was the text of the Proclamation of Emergency declared by Chief of the Army Staff Gen Pervez Musharraf:

- WHEREAS there is visible ascendancy in the activities of extremists and incidents of terrorist attacks, including suicide bombings, IED explosions, rocket firing and bomb explosions and the banding together of some militant groups have taken such activities to an unprecedented level of violent intensity posing a grave threat to the life and property of the citizens of Pakistan;
- WHEREAS there has also been a spate of attacks on state infrastructure and on law-enforcement agencies;
- WHEREAS some members of the judiciary are working at cross purposes with the executive and legislature in the fight against terrorism and extremism, thereby weakening the government and the nation's resolve and diluting the efficacy of its actions to control this menace;
- WHEREAS there has been increasing interference by some members of the judiciary in government policy, adversely affecting economic growth, in particular;
- WHEREAS constant interference in executive functions, including but not limited to the control of terrorist activity, economic policy, price controls, downsizing of corporations and urban planning, has weakened the writ of the government; the police force has been completely demoralized and is fast losing its efficacy to fight terrorism

and intelligence agencies have been thwarted in their activities and prevented from pursuing terrorists;

- WHEREAS some hard-core militants, extremists, terrorists and suicide bombers, who were arrested and being investigated, were ordered to be released. The persons so released have subsequently been involved in heinous terrorist activities, resulting in loss of human life and property. Militants across the country have, thus, been encouraged while law-enforcement agencies subdued;
- WHEREAS some judges by overstepping the limits of judicial authority have taken over the executive and legislative functions;
- WHEREAS the government is committed to the independence of the judiciary and the rule of law and holds the superior judiciary in high esteem, it is nonetheless of paramount importance that the honourable judges confine the scope of their activity to the judicial function and not assume charge of administration;
- WHEREAS an important constitutional institution, the Supreme Judicial Council, has been made entirely irrelevant and non est by a recent order and judges have, thus, made themselves immune from inquiry into their conduct and put themselves beyond accountability;
- WHEREAS the humiliating treatment meted to government officials by some members of the judiciary on a routine basis during court proceedings has demoralized the civil bureaucracy and senior government functionaries, to avoid being harassed, prefer inaction;
- WHEREAS the law and order situation in the country as well as the economy have been adversely affected and tri-chotomy of powers eroded;
- WHEREAS a situation has thus arisen where the government of the country cannot be carried on in accordance with the Constitution and as the Constitution provides no solution for this situation, there is no way out except through emergent and extraordinary measures;

AND WHEREAS the situation has been reviewed in meetings with the prime minister, governors of all four provinces, and with Chairman of Joint Chiefs of Staff Committee, Chiefs of the Armed Forces, Vice-Chief of Army Staff and Corps Commanders of the Pakistan Army; NOW, THEREFORE, in pursuance of the deliberations and decisions of the said meetings, I, General Pervez Musharraf, Chief of the Army Staff, proclaim Emergency throughout Pakistan.

2. I, hereby, order and proclaim that the Constitution of the Islamic Republic of Pakistan shall remain in abeyance.

This Proclamation shall come into force at once.

**Text of PCO 2007:**

Following is the text of the Provisional Constitutional Order (PCO) promulgated by Chief of the Army Staff Gen Pervez Musharraf:

1. In pursuance of the Proclamation of the 3rd day of November, 2007, and in exercise of all powers enabling him in that behalf, the Chief of Army Staff, under the Proclamation of Emergency of the 3rd day of November, 2007, is pleased to make and promulgate the following Order:
  - This Order may be called the Provisional Constitution Order No 1 of 2007.
  - It extends to the whole of Pakistan.
  - It shall come into force at once.

- 2. (1) Notwithstanding the abeyance of the provisions of the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, Pakistan shall, subject to this Order and any other Order made by the President, be governed, as nearly as may be, in accordance with the Constitution.
- Provided that the President may, from time to time, by Order amend the Constitution, as is deemed expedient:
- Provided further that the Fundamental Rights, under Articles 9, 10, 15,16,17,19 and 25, shall remain suspended.
- (2) Notwithstanding anything contained in the Proclamation of the 3rd day of November, 2007, or this Order or any other law for the time being in force, all provisions of the Constitution of the Islamic Republic of Pakistan embodying Islamic injunctions including Articles 2, 2A, 31, 203A, 227 to 231 and 260 (3) (a) and (b) shall continue to be in force.
- Subject to clause (1) above and the Oath of Office (Judges) Order, 2007, all courts in existence immediately before the commencement of this Order shall continue to function and to exercise their respective powers and jurisdiction:
- Provided that the Supreme Court or a High Court and any other court shall not have the power to make any order against the President or the Prime Minister or any person exercising powers or jurisdiction under their authority.
- All persons who immediately before the commencement of this Order were in office as judges of the Supreme Court, the Federal Shariat Court or a High Court, shall be governed by and be subject to the Oath of Office (Judges) Order, 2007, and such further Orders as the President may pass.
- Subject to clause (1) above, the *Majlis e Shoora* (Parliament) and the Provincial Assemblies shall continue to function.
- All persons who, immediately before the commencement of this Order, were holding any service, post or office in connection with the affairs of the federation or of a province, including an All Pakistan Service, service in the armed forces and any other service declared to be a service of Pakistan by or under Act of *Majlis e Shoora* (Parliament) or of a Provincial Assembly, or Chief Election Commissioner or Auditor General, shall continue in the said service on the same terms and conditions and shall enjoy the same privileges, if any, unless these are changed under Orders of the President.
- 3. (1) No court, including the Supreme Court, the Federal Shariat Court, and the High Courts, and any tribunal or other authority, shall call or permit to be called in question this Order, the Proclamation of Emergency of the 3rd day of November, 2007, the Oath of Office (Judges) Order, 2007, or any Order made in pursuance thereof.
- (2) No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the President or the Prime Minister or any authority designated by the President.
- 4. (1) Notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the President, all laws other than the Constitution, all ordinances, orders, rules, bye-laws, regulations, notifications and other legal instruments in force in any part of Pakistan, whether made by the President or the governor of a province, shall continue in force until altered, or repealed by the President or any authority designated by him.
- 5. (1) Any ordinance promulgated by the President or by the governor of a province shall not be subject to any limitations as to duration prescribed in the Constitution.

- (2) The provisions of clause (1) shall also apply to an ordinance issued by the President or by a governor which was in force immediately before the commencement of the Proclamation of Emergency of the 3rd day of November.

After the proclamation of Emergency & the PCO; out of 18 Supreme Court justices, only five judges took oath on the PCO. Initially in Islamabad, Abdul Hameed Dogar who was inducted as the new Chief Justice, J Nawaz Abbasi, J Faqir M Khokhar and J Javed Buttar took the oath under the PCO. Later in the evening, in Karachi J Syed Saeed Ashhad also took the oath on the PCO on the same day. From the remaining judges, Justice Javed Iqbal, Justice Falak Sher, Justice Sardar Muhammad Raza Khan, Justice Mian Shakirullah Jan, Justice Tassaduq Hussain Jilani, Justice Nasirul Mulk, Justice Chaudhry Ejaz Ahmed, Justice Raja Fayyaz, Justice Syed Jamshed Ali and Justice Ghulam Rabbani declined invitation to take oath on the PCO. All judges of the High Court of Balochistan had taken oath on the PCO.

The Chief Justice Iftikhar Chaudhry, Justice Rana Bhagwandas and Justice Khalil ur Rehman Ramday were not offered to take oath. On 3<sup>rd</sup> December 2007, a notification of removal of the said three judges was issued without any retirement privileges. On the same day, the federal government issued another notification that in pursuance to Article 3 of the Oath of Office (Judges) Order No. 1 of 2007, 24 judges of the High Courts of Sindh, Punjab and NWFP had ceased to hold office, with effect from 3<sup>rd</sup> November 2007.

Strong public opposition was seen to imposition of the state of emergency. 67% demanded Gen Musharraf's resignation where as 71% said they opposed suspension of the Constitution. More than 70% people surveyed said that they were opposed to closure of private television channels and arrest of judges. International broadcasts and local phones were blocked in main cities like Islamabad where barriers & barbed wires were erected at important points. PPP's Aitzaz Ahsan was detained at home and key opposition figures & senior lawyers were also placed under house arrest but were released after a day or two.

Similar actions were taken all around in Pakistan after proclamation of the emergency; prominent lawyers, human rights activists and politicians including Asma Jahangir at Lahore and Kh Asif at Sialkot were house arrested. Reports from inside Karachi stated that the situation remained peaceful showing entirely different picture than rest of the Pakistan due to MQM's standing along with Gen Musharraf. On 21st November 2007, two thousand detainees under the Emergency were released, but 3,000 remained in detention, according to the media reports.

Police blocked entry to the Supreme Court building and later took the deposed Chief Justice and other judges away in a convoy and placed them in house arrest at their official residences cordoned by Police and Rangers while cutting off their tele-connections and jamming their mobiles. Gen Musharraf also said that Pakistan was at a 'dangerous' juncture as its government was being threatened by Islamic extremists.

The Supreme Court was immediately placed under occupation and control of military personnel and the Chief Justice J Iftikhar Chaudhry, who was re-instated half heartedly by Gen Musharraf on 20<sup>th</sup> July 2007, was told that '*your services are no longer required.*'

Secondly, the military had also suffered devastating defeats against Islamic militants in Waziristan and Swat, the northern areas of Pakistan. They reportedly had thousands of troops in fierce fighting over the last two or three months, and just one day before proclamation of this emergency, had forced into signing a ceasefire. Why so; because the militants had captured two police stations in Matta Sub Division of Swat from the military forces and had paraded 48 captured paramilitary personnel in streets – bringing the total military personnel captured to more than 300. This development had brought the writ of the military government to zero level in fact.

The critics declared that the judiciary herself had called the cause of that Emergency giving their decision of 28<sup>th</sup> September 2007. Riots had immediately started from the court room when the decision was announced and then continued for days. Next day, on 29<sup>th</sup> September,

the apex court at its own had taken *suo moto* notice terming those riots as 'contempt of court' and all the high ups were called in.

The Contempt of the Court case was kept going on its pace. One fine morning of last week of October 2007 Justice Rana BhagwanDas announced punishments for all the police and administrative officers who were involved in that day's exercise of allegedly beating the shouting lawyers. Commissioner and the Deputy Commissioner Islamabad got punishment till the rising of the Court whereas the IGP Iftikhar Ahmed, the SSP, DSP and inspector etc got fifteen days imprisonment.

That was the day when the police force got demoralized as an institution because many higher courts had heard tens cases of contempt of court on one pretext or the other but the matter always ended with submission of unconditional apology. First time in the history of Pakistan police officers of such high stature were punished for such issue.

The police force was justified to recall the judicial murder of Z A Bhutto's case where Nawab Ahmed Khan was not killed by Mr Bhutto in person but even then he was hanged by the judiciary. Similarly here the IGP had not touched the Chief Justice on the alleged day of contempt but he was simply punished because he was over-all in charge of the police contingent deployed on duty.

This decision of the Supreme Court was also one of the factors which provided stimulation to Gen Musharraf to call for 'Emergency of 3<sup>rd</sup> November 2007' just four days after announcement of the decision.

The '**TIME**' magazine of **3<sup>rd</sup> November 2007** had opined that:

*'Pakistani President Pervez Musharraf declared a state of emergency Saturday, citing growing militant attacks and **interference in government policy by members of the judiciary**. But far from a solution to Pakistan's problems, Musharraf's move to consolidate power has plunged the country into a deeper constitutional crisis.*

*The declaration of a state of emergency by Musharraf, who remains head of the army eight years after seizing power in a bloodless coup, suspended the constitution, blacked out independent television news stations and cut some phone lines.*

*The emergency declaration came as Pakistan's Supreme Court was expected to rule in the next two weeks on the legality of Musharraf's candidacy for another term as President. Chief Justice Iftikhar Chaudhry, a thorn in Musharraf's side since the President suspended the judge earlier this year only to see him reinstated after massive public protests, was removed from his job and placed under house arrest.*

*Members of the Supreme Court were required to sign a new provisional constitutional order that would mandate the state of emergency. But most of the justices instead signed a declaration calling the state of emergency illegal.'*

*"The Supreme Court was going to rule against him," president of the Supreme Court Bar Association Aitzaz Ahsan told TIME by cell phone from jail, where he was taken after being served a month-long detention order. "Constitutionally he had no right to run as President while staying a General. This is the end of the road for him."*

The state of emergency announced by Gen Musharraf brought America in an increasingly uncomfortable position. The Bush Administration had long backed Gen Musharraf as a key ally in the war on terror, while regularly calling for a return to democracy. Gen Musharraf's move made that balancing act harder to keep up. Secretary of State Condoleezza Rice told the media soon after that emergency news:

*'The US has made clear it does not support extra-constitutional measures because those measures take Pakistan away from the path of democracy and civilian rule. Whatever happens we will be urging a quick return to civilian rule and a return to constitutional order and the commitment to free and fair elections.'*

Just a day before declaration of emergency; as Gen Musharraf and his regime was rigorously following the "war on terror" dictates of Washington, the Engineering & Technical Branch officers & workers of Pakistan International Airlines (PIA) suddenly went on strike and in one day 92 scheduled flights including 21 for foreign destinations were cancelled demonstrating a total chaos on all the airports of Pakistan. On the same day in Karachi, 200 doctors at one hospital started an indefinite strike and elsewhere about 300 workers and activists went on protests against killing of some textile worker's leader reportedly on the behest of government sponsored agencies.

In the country, there was a very strange scenario because, while releasing the emergency pack, it was declared that the 1973's Constitution of Pakistan had been suspended; but at the same time it was announced that the Parliament and the Provincial Assemblies would continue working, the Prime Minister and the Provincial Chief Ministers would remain in place, the Governors would continue to occupy their seats, the Federal and Provincial Cabinets would continue to carry on their assignments but the Judges of the Supreme Court and respective High Courts would be required to take a fresh oath under the provisions of new PCO.

The Speaker of the National Assembly issued call notice for meeting of the Assembly to be convened on 6<sup>th</sup> November 2007. The world intelligentsia was reluctant to understand the developments because all the above mentioned institutions and the portfolios work under the provisions of the Constitution; and once the Constitution was held the institutions automatically could stand abolished. But in Pakistan every thing is possible and plausible ***'in the greater interest of the country.'***

Another situation was widely criticized that despite presence of a platoon of legal advisors present and posted in the President Secretariat; despite availability of a former corrupt judge turned into Attorney General and despite back & call of the Federal Ministry of Law, Gen Musharraf had proclaimed this emergency as the Chief of the Army Staff (COAS) and not as the President of Pakistan. Under the provisions of Sec 243 of the Constitution of Pakistan the COAS was merely a government servant whereas only the President of Pakistan had the prerogative of declaring emergency in the country and that too, mainly on the following two grounds only:

- If there are disturbances in some province beyond control of the provincial government. If it is so then the Federal Government performs administrative functions of that province through the Governor.
- If there is any foreign attack on any part of the country.

On 3<sup>rd</sup> November 2007, emergency in Pakistan was not declared in any of the contexts narrated above. It was only declared to get rid of certain 'nasty' judges who were going to decide the fate of candidature of a sitting General cum President and Gen Musharraf did not want to take any risk.

Gen Musharraf, giving justification for his illegal step, told the nation that:

*'The constitution provides no solution for this situation, there is no way out except through emergent and extraordinary measures.'*

But the Pakistanis had increasingly turned against his government, who failed earlier that year [March 2007] to oust the Chief Justice Iftikhar Chaudhry. This time [November 2007], Justice Chaudhry was dethroned along with next senior most judges including Rana BhagwanDas. Next senior judge Javed Iqbal was conveyed an offer to come up and take the oath of Chief Justice under the PCO but he flatly refused to do so. The same offer was floated to the next senior judge named Abdul Hameed Dogar who then sworn in as the new Chief Justice the same evening. He had already promised to be a pliant servant of the military dictatorship when on 9<sup>th</sup> March 2007 he was called to the Supreme Judicial Council for Chief Justice Iftikhar Chaudhry's trial.

Most of the Supreme Court judges, including the Chief Justice of Pakistan, who was not called to take oath under the new Provisional Constitutional Order (PCO) of November 2007, were

held incommunicado. No one, including newsmen and even the judge's own relatives or acquaintances, was allowed to enter the Judges Colony and meet any of those judges. *"Have we committed a robbery? We cannot get out of our residence and find heavy security conducting our surveillance and blocking our way out,"* one (detainee) judge was quoted as saying, adding that they had been isolated from the outside world.

The security persons who had met the (detained) judges found them in high morale but themselves at a complete loss to understand why they had been detained and treated like criminals. Justice Javed Iqbal, who was offered to take oath as the Chief Justice of Pakistan under the PCO but refused to do so, and being a heart patient, remained all alone in his official residence. *"We were neither allowed to go out nor was anyone permitted to visit us,"* Justice Javed Iqbal told afterwards. These judges did not get the newspapers while they also didn't have any access to the private television channels; thanks to PEMRA (Pakistan Electronic Media Regulatory Authority). The internet connections (DSL) were also removed from the residences of these 'defiant', judges.

New parliamentary elections were due to restore civilian rule by January 2008. Gen Musharraf himself was overwhelmingly re-elected in October 2007 by the then expiring parliament, dominated by his ruling party, but the vote was challenged. The Supreme Court had then emerged as the main check on Gen Musharraf's dominance and was (as it was told by Aitzaz Ahsan earlier and widely imagined by the people) expected to issue a verdict before Gen Musharraf's term expiring on 15<sup>th</sup> November.

The fact remains that Gen Musharraf was on shaky legal grounds in his re-election by the lawmakers; a vote that was boycotted by most of the opposition; but they still aspired the court to rule in his favour to prevent further destabilizing Pakistan. Some judges, however, had made comments that they would not be swayed by threats from senior officials, repeatedly by the Attorney General Qayyum Malik, that an emergency might be declared if the court ruled against the General.

On the evening of 3<sup>rd</sup> November 2007, the seven Supreme Court judges, the original ones, rejected the declaration of emergency and ordered top officials, including the prime minister, and military officers not to comply with the 'Emergency Order'. The two-page ruling said that:

*'There were no grounds for an emergency, particularly for the reasons being published in the newspapers that a high profile case is pending and is not likely to be decided in favour of the military government or Gen Musharraf.'*

On 6<sup>th</sup> November 2007, an 8 member's bench of the newly framed Supreme Court, headed by the new Chief Justice Abdul Hameed Dogar, reversed the decision given by the 7 members bench headed by former CJ Iftikhar Chaudhry on 3<sup>rd</sup> November and gave the verdict that the 7 member's bench was not entitled to give any halt to the PCO. Gen Musharraf's PCO allowed courts to function but suspended most of the fundamental rights guaranteed by the constitution, including freedom of speech as has been described in earlier paragraphs. It also allowed authorities to detain people without informing them of the charges.

As stated earlier, the 'Emergency' announcement was followed by arrests of lawyers and other perceived opponents of the government, including all the presidents of bar associations of all High Courts and many more. In the 7 PM news of Channel Four (UK) on 5<sup>th</sup> November 2007, the newsreader got Mr Muneer Akram, an Ambassador of Pakistan in the UN on line and asked him about the reasons behind this proclamation of emergency. He replied that it had been done because of the growing terrorism activities in Pakistan.

When the newsreader asked him to explain that:

*'During 4<sup>th</sup> and 5<sup>th</sup> Nov the Pakistani authorities had picked up, jailed or house-arrested the human rights activists, lawyers, certain political leaders and seven respectable judges of the Supreme Court only, why even a single terrorist, miscreant or religious activist has not been arrested or picked up.'*

The Ambassador felt embarrassed having no answer to forward.

One of the reasons forwarded for proclamation of emergency by Gen Musharraf was that the judges of the Supreme Court had allegedly released certain miscreants and *Jihadists* involved in the Red Mosque event of July 2007. The facts would live as an interesting episode of the history that the names of two judges of the Supreme Court who had heard the Red Mosque case were **Justice Nawaz Abbasi and Justice Faqir M Khokhar** and, astonishingly, these two judges were among those five only judges who took oath under the new PCO on 3<sup>rd</sup> November 2007.

After proclamation of emergency, the main building of the Supreme Court Islamabad was surrounded by the army, Police and Rangers. No body was allowed to go in nor were the judges present inside allowed to come out. In the late night all the seven judges and the Chief Justice were taken out to their official residences and were held in reserve there under house arrest. They were not allowed to come out. During the morning hours of 4th November their houses were locked from outside which was a sheer humiliation because the inmates were not allowed to come out for other human needs.

Justice Javed Iqbal was a heart patient. His doctor tried to approach him in the hour of pain but was allowed to visit him after a delay of four hours.

In the backdrop of hundreds of persons which were arrested all over the country on the second day of emergency, the lawyers boycotted the courts all over the country and held demonstrations while police were asked to beat them as if they were criminals. Various lawyers were wounded in the police shelling and baton-charge after the lawyers in the Lahore High Court attempted to come at Mall Road. The lawyers of the Karachi Bar Association held demonstrations against the judges taking oath under PCO. The Police arrested 25 lawyers including president Karachi Bar Association Iftikhar Javed Qazi. **Dr Shahid of GEO TV** had forwarded interesting comments on the events then prevailing in Pakistan. According to him:

*'As if the first u-turn that Pakistani President Pervez Musharraf did on 12th of October 1999 by staging a coup was not bad enough, he has done it again, eight years later, leaving the nation back at square one. Strangely enough this time around it is not a coup against a 'corrupt' civilian government but one against his own army-led regime of which he has been the supreme commander and leader all these years. .... that is, at its best, an admission of the failure of his own style of governance, the breaking down of the system that he himself created and the collapse of the empire that he built with his own hands.'*

(Referring to **'the News' dated 6<sup>th</sup> November 2007**)

Gen Musharraf had once vowed in October 1999 to crack down on corruption allegedly done by the former Prime Minister Nawaz Sharif, improve law and order situation and bring real democracy to Pakistan. But not much later, the promises were forgotten and politicians who were booked under the National Accountability Bureau (NAB) were seen enjoying fruits of power. Aftab Sherpao, Faisal Saleh Hayat and Neelofar Bakhtiar were examples.

Fight against extremism and rogue elements were declared as reasons behind the announcement of 'Emergency Order', but he was not willing to concede that there were both fundamental and logistical flaws in the way he handled the issues. Being an army General, continuously supported by a disparaging but willing bunch of politicians, he could not improve the law and order situation. If the writ of the government was not working in the tribal areas, then why was the interior ministry or interior secretary not held accountable? Why didn't Gen Musharraf reshuffle the cabinet and bring a more capable hand to bring things in tribal areas under control? That attitude gave way to critics that the challenges to the writ of his government in Waziristan and Swat probably went un-manageable.

Along with lawyers, it was the media which were singled out for 'special treatment' under emergency proclamation, *'lying bares the paranoia'* that surrounded Gen Musharraf's governance. All the private TV channels were blanked out in Pakistan on the 3<sup>rd</sup> November 2007 but he should have recalled that the media was not a powerful tool in 1958 when the first martial law was imposed in 1969 when the movement against Gen Ayub Khan took shape and in July

1977 against Bhutto. On all those occasions, media just danced to the tunes of the government machinery. The media was grown up in 2007 and the international tele-lobbies were there to watch and comment upon the true situations taking shapes in Pakistan.

Once again, like many other institutions in Pakistan, the judiciary also went decimated. Honest and credible judges were obliterated from the institution and those who were loyal to the President were seen taking oaths. The press, particularly electronic media, which had been struggling for total freedom for years, was facing yet another crackdown. Mass arrests of lawyers, human rights activists and politicians were carried out across the country. Pakistan was again at a crossroads from where there was little hope in sight.

**19<sup>th</sup> November 2007:** In a dramatic development, Pakistan's Supreme Court dismissed all but one of the six petitions challenging Gen Musharraf's re-election in uniform as president and said it would decide the matter later. Gen Musharraf's second term as president hinged on the outcome of the case, which was originally being heard by an 11-members bench of the apex court before the military ruler imposed emergency on 3<sup>rd</sup> November 2007 and sacked most judges of the superior judiciary.

A 10-judge full court headed by Supreme Court's new Chief Justice Abdul Hameed Dogar, all of whom were sworn in under the Provisional Constitutional Order of 2007 issued by Gen Musharraf, were made members of the new bench to hear this matter. Among the five petitions dismissed that day were those filed by retired judge Wajihuddin Ahmed and Pakistan People's Party leader Makhdoom Amin Fahim, who had unsuccessfully contested the 6<sup>th</sup> October presidential poll against Gen Musharraf.

### **SC Validates Presidential Elections, PCO and Emergency:**

**On 24<sup>th</sup> November 2007**, a seven member's bench of the Supreme Court headed by the then CJ Abdul Hameed Dogar, validated the imposition of emergency and the promulgation of the PCO issued by the Army Chief (COAS) and directed the Chief Election Commissioner of Pakistan to declare Gen Musharraf President for a second term of five years from 1<sup>st</sup> December 2007, while the later should relinquish the office of the COAS before taking oath as civilian president. The other members were Justice Ejazul Hassan, Justice Muhammad Qaim Jan Khan, Justice Muhammad Moosa K Laghari, Justice Chaudhry Ejaz Yousaf, Justice Muhammad Akhtar Shabbir, and Justice Zia Pervez.

The Supreme Court, while vacating the interim stay of 6<sup>th</sup> October on the presidential election results, held that Gen Musharraf was qualified to contest the presidential election and did not suffer any disqualification under the constitution and the law.

**On 15<sup>th</sup> February 2008**, the Supreme Court issued the full judgement for validation of the Proclamation of Emergency of 3<sup>rd</sup> November 2007, the PCO No 1 of 2007 and the Oath of Office (Judges) Order 2007, written by the CJP Dogar himself. The Court said that:

*'In the recent past the whole of Pakistan was afflicted with extremism, terrorism and suicide attacks using bombs, hand grenades, missiles, mines, including similar attacks on the armed forces and law enforcing agencies, which reached climax on 18th of October 2007 when in a similar attack on a public rally, at least 150 people were killed and more than 500 seriously injured.*

*The situation which led to the issuance of Proclamation of Emergency of the 3rd day of November 2007 as well as the other two Orders, referred to above, was similar to the situation which prevailed in the country on the 5th of July 1977 and the 12th of October 1999 warranting the extra-constitutional steps, which had been validated by the Supreme Court of Pakistan in Begum Nusrat Bhutto V. Chief of the Army Staff (PLD 1977 SC 657) and Syed Zafar Ali Shah V. Pervez Musharraf, Chief Executive of Pakistan (PLD 2000 SC 869) in the interest of the State and for the welfare of the people, as also the fact that the Constitution was not abrogated, but merely held in abeyance.*

*The learned Chief Justices and Judges of the superior courts, who have not been given, and who have not made, oath under the Oath of Office (Judges) Order, 2007 have ceased to hold their respective offices on the 3rd of November 2007. Their cases cannot be re-opened being hit by the doctrine of past and closed transaction.'*

Pakistan went through another transformation those days but the dawn was not very far off.