

Scenario 12

Junejo Gone & Gen Zia Crashed (1988):

In the history of Pakistan, 1988 can be seen as one of the most volatile and proactive years. During the last week of May 1988, Gen Ziaul Haq had used the sword of Art 58(2)(b) first time to cut the throat of his PM M K Junejo and with the orders of dissolution of the then National Assembly. In the third week of August 1988, Gen Ziaul Haq was sent upstairs in the sky through a sabotage activity while his C-130 met an air crash at Bahawalpur. 19 other senior military brass of Pakistan, one from US army and a serving US Ambassador were also accompanying him to meet their fate. During November 1988, general elections were held and Benazir Bhutto started her first innings of the PPP government.

The above three main events of 1988 are remembered by all books and columns. The fourth equally most important development was a tint of 'judicial activism' which actually took start in 1988, if the writers of judicial history peep into the related events and their repercussions. Let us travel a few years back.

When in 2005, Chief Justice Iftikhar M Chaudhry held reins of the Supreme Court of Pakistan; he immediately started exercising the court's *suo moto* judicial review powers. *Suo moto*, meaning 'on its own motion,' apparently beginning with the case of ***Darshan Masih v The State (1990)***, where the Supreme Court had converted a telegram sent by bonded labourers into a writ petition, the apex Court rapidly fashioned for itself the power to take up cases of its own accord, based on letters or media reports. The court also relaxed other procedural requirements and public interest cases had increasingly come to acquire an inquisitorial or administrative inquiry mode rather than the strict adversarial model of adjudication that a common law system used to imagine.

Better to refer to Articles 184(3) & 199 of the Constitution of Pakistan, which place judicial review powers in the Supreme Court and the High Courts respectively. The majority of these powers are based upon the prerogative writs of *certiorari*, *mandamus*, prohibition and habeas corpus. Under Article 199 of the Constitution of Pakistan, the High Court's powers include issuing orders:

- (i) directing any person performing "functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do;
- (ii) declaring that any act or proceeding ... has been done or taken without lawful authority and is of no legal effect;
- (iii) directing that a person in custody be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; and
- (iv) Requiring a person ... holding or purporting to hold a public office to show under what authority of law he claims to hold that office."

In addition, Pakistani courts may, subject to certain restrictions, make an order giving "such directions to any person or authority ... as may be appropriate for the enforcement of any of the Fundamental Rights" conferred by the Constitution.

Referring to '*Pakistan: US AID Report on Rule of Law published in November 2008*', although the above quoted powers were conferred on the courts in 1973, it was only in 1988 when the

Supreme Court decided ***Benazir Bhutto v Federation of Pakistan (PLD 1988 SC 416)***, that these broad constitutional powers were 'discovered' and the seeds of public interest or social action litigation were sown. A subsequent judgement of 2002 of the apex court said:

'It is true that as held in Benazir Bhutto's case (PLD 1988 SC 416) and Asad Ali's case (PLD 1998 SC 161) the person desiring to invoke the jurisdiction of this Court under Article 184(3) of the Constitution need not necessarily be an aggrieved person, nevertheless the person approaching this Court under the aforesaid provision has to demonstrate that the question raised concerns the public at large.'

PM M K Junejo Sent Home (1988):

In 1988, there prevailed a tension between Gen Ziaul Haq and the then Prime Minister M K Junejo who was chosen three years back for his weak political personality. The major bone of contention was the civil interference in top military appointments and the Afghan situation. Gen Ziaul Haq was angry with PM Junejo for holding Geneva talks against his wishes thus he had refused to sign the Geneva Accord. Junejo got organized a round table conference of opposition leaders to get his way. Secondly, Junejo challenged the appointment of two Generals amidst the main demand that Gen Ziaul Haq should also announce retirement from the post of the Army Chief, long overdue then.

On Afghan issue: the Russians were going back from Afghanistan. For America their purpose was over as that had taken revenge of US defeat in Vietnam but for Gen Ziaul Haq it was the start of a new era in the region. In Gen Ziaul Haq's view America and PM M K Junejo both should have wait till the new but some stable government in Afghanistan was made. With Geneva Accord a new phase of uneasiness started in Afghanistan in the form of a civil war amongst various factions. Thus for Pakistan the tension prevailed as such.

The Mujahideen had assembled again and toppled Najeebullah's government in Afghanistan which the Soviets had left while leaving the region after defeat. These Mujahideen were being controlled by all the three Gulbadin Hikmetyar, Ahmed Shah Masood and Burhanuddin Rabbani and all the three reached Kabul simultaneously to make an interim set up.

It was pretended in a calculated move that Junejo's government was not providing funds to relocate Ojhri ammunition depot away from Rawalpindi. It was a lame excuse because army otherwise keep major part of the budget cake and such operations were neither told to the civil government nor funds were ever provided by the civil authorities. Gen Akhtar played this tune on behalf of the president Gen Ziaul Haq. To subvert the blame, the PM Junejo demanded punishment for the army Generals who were held responsible for the catastrophe according to an inquiry report prepared by the Cabinet Committee.

The Prime Minister M Khan Junejo also blamed Gen Akhtar Abdur Rahman, and rumours were spread that the depot had been blown up knowingly and deliberately just before the arrival of a six-members US defence audit team, to find facts about reports that some Stinger missiles had been sold off to private parties.

On 29th May 1988: In the backdrop of above mentioned circumstances, Gen Ziaul Haq used powers of his world famous 8th Amendment [Sec: 58(2)(b)] of the Constitution of Pakistan and dismissed Prime Minister Junejo's government. Assemblies, both National & provincial, were also suspended with immediate effect.

The dissolution of the National Assembly was challenged in the Lahore High Court under its constitutional jurisdiction and through the judgment reported as *Kh Muhammad Sharif vs Federation of Pakistan (PLD 1988 Lahore 725)*, the dissolution of the Assembly was declared illegal and the matter then came to the Supreme Court in appeal.

On 17th August 1988, Gen Ziaul Haq died in an air crash and Ghulam Ishaq Khan, the then Chairman of the Senate assumed the office of the President of Pakistan. In an appeal to that effect, the Supreme Court vide judgment reported as *Federation of Pakistan vs Haji Saifullah Khan (PLD 1989 SC 166)*, which was delivered on 5th October 1988 had upheld the judgment of the Lahore High Court but declined to grant relief of restoration of the Assembly

on the ground that the whole nation had been geared up for election scheduled for 16-19th November 1988.

In reply to a question regarding Haji Saifullah's case, Gen Aslam Beg, the former COAS, had told the journalists in Lahore on 4th February 1993:

"I did try to convey to the Honourable Supreme Court that, we had given a solemn undertaking to the nation that elections to the National Assembly would be held according to the schedule already announced and that, therefore, it would be in the best interest of the nation that we stick to our promise and the said elections were allowed to be held accordingly." (Ref: The Dawn daily of 5th April 1993)

Coming back, when the President dissolved the National Assembly in June 1988 in the exercise of his discretionary power both the Lahore High Court and the Supreme Court in '**Haji Saifullah Khan vs Federation of Pakistan**' did not shy away by observing that the questions involved were political and held the dissolution to be invalid on the ground that it was not premised upon objective considerations.

At the same time, however, considering that the assembly was elected on a non-party basis and as the fundamental right to form a political party stood suspended by the Martial Law regime and the whole nation was geared up for a proper party based elections to be held in November 1988, the Court declined to restore the dissolved assembly by refusing to exercise discretionary jurisdiction.

Eventually, an amendment was brought about in the constitution requiring that whenever such order was passed the matter would be instantly referred to the Supreme Court for a final verdict.

Gen Ziaul Haq's Crash (1988):

On **17th August 1988**, Gen Ziaul Haq, along with his nineteen (19) top brass military Generals, was blown in the air just after seven minutes of their flight from Bahawalpur airbase. They all had gone to Hasilpur, a town at the brink of deserts, about 55 km away from Bahawalpur to see inaugural functioning of a new American Tank. The then US Ambassador in Pakistan was also one of the dead, considered to be on 'marketing tour' to convince and persuade the high command of Pakistan Army for a green signal to buy those tanks against a hefty budget. Gen Zia's 2nd in command Gen Mirza Aslam Beg had seen them off in an army aircraft C-130, considered one of the most securely built military air carrier. Gen Beg, being the only left over and the senior most had succeeded Gen Zia as a new army chief.

Theories started coming up immediately that it was a sabotage activity or a technical fault with the plane's engine or allied security systems. The record available with FIA carries a detailed probe (probably in association with the IB team) that if the Al Zulfiqar, the underground terrorist organization set up by Z A Bhutto's son, Mir Murtaza Bhutto, had played a role to avenge his father's hanging.

One theory referred towards elements within the Pakistan Army, mostly advocated by Gen Ziaul Haq's son, Ijazul Haq, who alleged that Gen Aslam Beg was behind the crash because he had abstained to accompany the others. The fact remains that Gen Aslam Beg had travelled out from Bahawalpur alone in another similar army plane that day. Moreover, the army was not allowed to cooperate with Justice Shafi ur Rehman Commission which was set up to look into the issue.

Another theory was also given attention during probe if the Iranian or Shia factor could be held responsible for that tragedy because of Gen Ziaul Haq's '*Hanfl*' way of Islamization or his close relationship with Saudi rulers. Yet another theory saw the American hand in the incident on the grounds that Gen Ziaul Haq had successfully crossed over the Americans by putting Pakistan's nuclear program on fast track with the help of US aid manoeuvred to manage under disguised military arsenal. No document is available on record to show if the inquiry people had succeeded in getting any positive clue in that direction.

Apparently convincing and in those days widely believed reason behind the clash was linked with Ojhri Camp of Rawalpindi episode of 10th April 1988. On that day the military ammunition depot, blew up and unleashed an inferno that sent all sorts of rockets all over Rawalpindi and into neighbouring Islamabad. Tens of citizens were killed and injured. An inquiry committee was formed consisting of the then cabinet members which was ordered by the then Prime Minister Muhammad Khan Junejo without the formal consent of Gen Ziaul Haq which was considered an alarming step to degrade the army establishment. The committee had finalised its recommendations but the report never surfaced in public.

On 29th May 1988, when PM Junejo was returning from Seoul & Manila tour after a state visit, the PM's staff officer had placed that inquiry report for final approval and signature. The ADC, an army officer accompanying the PM, succeeded in conveying the event direct to the Army House Rawalpindi from the cockpit of the plane. Result was the immediate response. When the plane landed at Islamabad airport, there was no media person to question about the official tour; no protocol of cabinet ministers and the PM's car was there without flag. PM Junejo was fired, while his plane was still in air, by Gen Ziaul Haq using his powers under Article 58(2)(b) of the 8th Constitutional Amendment. The conspiracy experts believed that military dictator's that action had led to his death in crash.

It remained a mystery even till today, mostly for the American themselves because they had lost their top diplomat, Arnold Raphael and an American General, too. In Pakistan there was no such expertise available then either with army or the civilians to conduct a serious inquiry into an air crash incident except that an FIR was initiated in the local police station and the enquiry was subsequently handled by an FIA team in routine.

The things go more blurred when one considers that after Geneva Accord, the American authorities believed that they had taken revenge of their humiliation of Viet Nam War from the Russians by forcing them out of Afghanistan. Taking this philosophy on, it could be believed that America wanted to take away all the 'war players' away from the battlefields especially the two top heads; Gen Ziaul Haq and Gen Akhtar Abdul Rehman. The US was not at all interested that in Kabul, the Najibullah's government be overturned to bring the Taliban in. The US did not want Islamic government in Kabul because then all the Islamic countries in a row could form a block and could create problems for America & Europe in future.

That may be one reason that the American themselves had never bothered to launch a solemn, conclusive, or even comprehensive inquiry into the crash. After the crash the FBI was told to 'keep out of Pakistan' by Secretary of State George Schultz, though the US had the authority to investigate suspicious plane crashes involving US citizens.

The special team to look for forensic evidence was not deployed. The US experts assigned to the official board of inquiry appointed by Pakistan included six air force accident investigators but no criminal, counter-terrorist, or sabotage experts. The US team was expected to reach at the spot immediately to examine the scene of occurrence and to collect, or help the Pakistani teams to collect, the first hand information, pieces of forensic evidence and other related material.

In an interview published in '**Jang**' dated **19th November 2001**, Lt Gen Hamid Gul, the most concerned person being Chief of the ISI then, had categorically stated that:

'The Americans were responsible for Gen Ziaul Haq's air crash. The American team told us that the plane crashed due to a technical fault because one of its (air) pumps was blocked. Later the team found that pump from the residue and sent it to the manufacturer company named 'Lockheads'. They reported back that the pump was working right – no fault seen in it; perfectly working it was.

Robert B Oakley, the then American Ambassador in Islamabad came to me and urged to give back the earlier inquiry report. I asked PAF Chief Mr Hakimullah of the Inquiry Commission NOT to return the report in any case.'

Media record tells us that '**New York Times**' had tried to unearth certain facts in independent capacity but could not claim a break through because of certain barriers concerning national security affecting both the US and Pakistan. Its bureau chief in South Asia, Barbara, had sent a report suggesting that '*the infamous Israeli secret agency 'Mossad' (whose motto is 'with clandestine terrorism we will conduct war') most probably killed Gen Ziaul Haq.*' The Israelis wanted to stop Pakistan from developing nuclear technology. They had attacked Iraq's nuclear facilities at Osirak in 1981 and believed that Gen Ziaul Haq was very near to then commonly known as 'the Islamic Bomb' and feared that formal atom-bomb testing could take place any time then.

The suspicion was also endorsed by **John Gunther Dean**, who was the American ambassador to India in 1988 and had named his written article & opinion as '**Smoking Guns**' but his reasons were shelved even by the US declaring Mr Dean a 'psychiatric case.' However, the record was available to prove that:

'During Mr Dean's stay in India as an ambassador, various pro-Israel Congressmen and other US policymakers constantly asked him why he wasn't cooperating with the Israelis to thwart Pakistan's nuclear program and demonize Pakistan.'

Mr Dean was forcibly sent on retirement in 1988, as was noted down by Irshad Saleem at www.DesPardes.com

World Policy Journal had claimed that '*still another theory accused the Ahmadiya community of masterminding General Ziaul Haq's end. At the time, and until now, there was no mention of the Israelis.*' The available documentation did not support any of the versions relating with Israel's Mossad or Ahmadiya group because no piece of evidence was available showing their presence or leading to their connection up to that airbase or into the plane.

The **Press Trust of India**, through a write up of **7th September 2009**, assured that US and 'internal powers' were behind the 1988 plane crash that killed Gen Ziaul Haq, while referring to Brig (r) Imtiaz Ahmed, former chief of Pakistan's Intelligence Bureau. IB Ex-Chief had then told a news channel that '*former army chief Gen Mirza Aslam Beg also said that Zia's plane crash was not an accident, but sabotage, as Gen Ziaul Haq had come to power after overthrowing the PPP's Prime Minister Zulfikar Ali Bhutto in July 1977.*'

But the fact remains that Edward Jay Epstein's report published by Vanity Fair had ruled out Bhutto family and their Al-Zulfikar from the crash scene altogether. It is on record that Gen Ziaul Haq and Gen Akhtar Abdul Rehman were '*immensely persuaded from within army*' to go to Bahawalpur suggesting that a '*faction in the Pakistan army was bent on an invisible coup d'état.*'

Referring to an interview of Lt Gen Asad Durrani, published in the daily '**Jang**' dated **7th March 1999**:

'Many people be astonished to know that Gen Ziaul Haq's coup of July 1977 was not at all approved by the army at large. His orders were obeyed because he was the army chief but his decision was not hailed. Many army officers were especially upset when PM Bhutto was arrested. When Gen Zia's rule entered 9th or 10th year, the army people had built up their opinion to get rid of him.

Gen Ziaul Haq's Afghan policy was right rather appreciable but we army people did not approve his policy of Islamization of Pakistan because we all knew that the name of Islam was being misused to prolong the military rule. Further, Mr Bhutto was wrongly hanged that was why the people compensated the PPP by calling Benazir Bhutto in power after nine years.'

Justice Dr Javed Iqbal, in an interview published in **February 1993 in the Daily 'Jang'** held that:

'Since the day Gen Ziaul Haq had given us the "gift" of Islamic Hudood Ordinance, the crime rate soared up. In the history of Pakistan the crimes against women were

never as high as now after that Ordinance. The reported rape cases had never been as high as now after that Ordinance. In my opinion Gen Ziaul Haq had met with a severe kind of humiliating death due to cries and sighs of those women who had been victims of sexual maltreatment due to his Ordinance in which he had ridiculed Islam to get his own peculiar motives.'

Referring to **Khalid Hasan's** essay published on **18th June 2004** in media: In Epstein's opinion Soviet Union might have hand in the said crash because immediately before they had accused Gen Ziaul Haq for violating Geneva Accord. Earlier, in August 1988, the Soviet Union had temporarily suspended troop withdrawals from Afghanistan in protest. Gen Ziaul Haq had also counter attacked Soviets with same like allegations. The Soviets had summoned the US ambassador Jack Matlock and told him about Soviet Union's intentions to teach Gen Ziaul Haq a lesson. Epstein shunned the possibility of Soviet's involvement due to American envoy's presence on plane in the back drop of possible strained relations with Washington.

May be noted, however, that neither the American envoy Raphael nor Gen Wassom, head of the US military mission, was supposed to fly back with Gen Ziaul Haq, so Soviet involvement could not be ruled out.

On the other hand, Rajiv Gandhi had also warned Pakistan two days earlier that it should regret its behaviour on arming Sikh separatists. The United States too was unhappy with Gen Ziaul Haq for diverting a good deal of aid and weapons to Gulbuddin Hekmatyar whom it considered an anti-American extremist. They were also worried much about Gen Ziaul Haq's nuclear programme being continued even after knowing about Mr Bhutto's tragedy at its back-drop.

The details of the enquiry were told by the head of the US team, Col DE Sowada, later that no evidence of a mechanical failure had been found. The official Pakistani report had said the same thing. The US findings, contained in a 365 page report, established that the plane had not exploded in midair but hit the ground intact. It had not been hit by a missile either, nor had there been an on-board fire. No autopsies were done, except one on the US General who was sitting with Gen Ziaul Haq in plane.

The Pakistani report categorically said that **'no engine failure; fuel not contaminated; electric power found working normal and no pilot's error'**. The report did mention of traces of explosive particles and related chemicals, or it could be poison gas in cockpit. Thus the findings pointed towards sabotage. The report recommended a criminal investigation in detail. Gen Hamid Gul, then head of ISI, had told Epstein that *'at the request of the government, the agency had called off its inquiry and transferred it to a "broader-based" authority headed by F K Bandial, a senior civil servant.'* The report was never made public.

At the time of crash, three other planes were flying in the area. Their crew members were interviewed. The last words heard by the control tower were "Stand by" and then a faint voice saying "Mash'hood, Mash'hood", the name of the captain. The voice was that of Gen Zia's MS, Brig Najib; a long silence between "Stand by" said by Mash'hood and Mr Najib calling the pilot's name. Eyewitnesses saw the plane pitching up and down; Lockheed told that this pattern was characteristic of a pilot-less plane, which meant that the pilots were either dead or unconscious.

Possibility was that a gas bomb placed in the air vent of the plane which went off when pressurised air was fed into the cockpit. Epstein's inquiry concluded that any military or civilian mechanic could install such gas bomb in vent within two hours.

Such a gas was widely used in Afghanistan by the Soviets. VX, a US-made gas, could cause paralysis and loss of speech within 30 seconds. If used, it left behind phosphorus and traces of phosphorus were found in the remains of crashed plane. Autopsies could have determined the cause but not done, though the bodies were not returned to the families until two days later. A PAF doctor told that autopsies were routinely performed on pilots after crashes. The remains of human bodies were brought to CMH Bahawalpur but before US or Pakistani pathologists could arrive on next day, they were laid in coffins, sealed and despatched.

One last theory had surfaced, too that the crash was revenge against the then killing of a Shi'a cleric in Peshawar and the pilots of both Gen Ziaul Haq's crashed plane and the standby C-130 were Shi'a. One Mash'ood died in crash, the standby plane's Flt-Lt Sajid was interrogated and even tortured; the PAF had to launch a strong protest for that. It was held by Epstein that:

'The Shiite red herring theory was only one of several efforts to limit the investigation into the air crash of Gen Ziaul Haq and divert attention from the issue of sabotage.'

Another theory published in the **'International Herald Tribune' of 16th June 1999**, coined much later by Selig Harrison, a well-known American analyst, divulged that:

'Gen Ziaul Haq picked up Gen Musharraf (then a Brigadier) in 1987 to command a newly-raised Special Services Group (SSG) base at Khapalu in the Siachen area. Gen Musharraf had earlier spent seven years in two tenures with the SSG and remained proud of an SSG commando till his last moment in power.'

'In May 1988, the majority of Shias in Gilgit revolted against the Sunni administration. An SSG group commanded by Gen Musharraf was sent there to suppress that uprising. Gen Musharraf transported a large number of Wahabi Pakhtoon tribesmen from the NWFP to Gilgit to teach the Shias a lesson.'

In concluding paragraphs Mr Harrison opined that Gen Ziaul Haq was said to become the first victim of the crusade of Gen Musharraf on the Shias of Gilgit. Though there is no definite report on record from any committee, which enquired into the crash of Gen Zia's plane on 17th August 1988, it was widely believed in Pakistan that a Shia airman from Gilgit named Mash'ood, opted to take revenge for the May 1988's massacre, was responsible for the crash.

In support of his theory Selig Harrison also referred to Monthly **'Herald' Karachi of May 1990** saying that:

'In May 1988, low-intensity political rivalry and sectarian tension ignited into full-scale carnage as thousands of armed tribesmen from outside Gilgit district invaded Gilgit along the Karakoram Highway. Nobody stopped them. They destroyed crops and houses, lynched and burnt people to death in the villages around Gilgit town. The number of dead and injured was in hundreds.'

More so, Gen Musharraf had started a policy of bringing in Punjabis and Pakhtoons from outside and settling them down in Gilgit and Baltistan in order to reduce the Kashmiri Shias to a minority in their traditional land and this is continuing till today.

The **'Friday Times' of October 15-21, 1992**, quoted one Muhammad Yahya Shah, a local Shia leader, as saying:

'We were ruled by the Whites during the British days. We are now being ruled by the Browns from the plains. The rapid settling-in of Punjabis and Pakhtoons from outside, particularly the trading class has created a sense of acute insecurity among the local Shias in and all around Gilgit.'

But still there is no concrete evidence surfaced to put this theory in belief.

The records of calls made to Gen Ziaul Haq and Gen Akhtar A Rehman prior to the crash were destroyed. Military personnel posted in Bahawalpur at the time of the crash were soon transferred. All leads pointed towards 'insider's job' proposition with a well-organised cover-up.

Ijazul-Haq, being a federal minister twice, could gain access to classified information, could do a lot being a son, a citizen of Pakistan and as an elected parliamentarian, to determine facts, but he preferred not to dig the files so deep.

One uncounted casualty in 17th August 1988's crash was the truth; let us agree with Epstein.

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