

Scenario 44

JUDICIARY vs ARMY 2007-I:

CHIEF JUSTICE SENT HOME:

On **9th March 2007**, the history of Pakistan took another turn, unprecedented and unimaginable. Gen Musharraf, who has been ruling the country for the last eight years in army uniform but using the shield of office of the President of Pakistan to paint a picture of democracy for the outside world, held a meeting with the Chief Justice of Pakistan (CJP), J Iftikhar Muhammad Chaudhry at Army House Rawalpindi. He was asked to resign from his office.

When the CJP refused to oblige Gen Musharraf, he was pressurized by the heads of the army and civil intelligence agencies to bow his head. The CJP was detained at the Army House for five hours. During this time a reference was prepared against him and the same was filed with the Supreme Judicial Council of Pakistan (SJC) in haste on the same evening. The CJP afterwards contended that he had been "illegally detained" and that the Chiefs of Pakistan's intelligence services spent five hours urging him to resign after he told Gen Musharraf he would not do so; the media reported the event on the same day telling truth to the whole world.

The sequence of events was later narrated by the CJP himself in an affidavit which moved away curtain from the facts while covering four day's hell that he faced from 9th to 13th March 2007 when he was rendered non-functional. This affidavit, filed in support of a constitutional petition filed by the CJP under Article 184(3) of the Constitution, told that on 9th March 2007, he headed bench No 1 of the apex Court as chief justice and heard several cases till about 10.30 AM. The bench rose briefly and had to reassemble for the day except the CJP who left for the Army House Rawalpindi to meet the president.

The CJP arrived at the Army House at about 11:30 AM along with his protocol staff and was shown to a waiting room. After five minutes of his arrival, Gen Musharraf, wearing his military uniform, came into the room along with his military secretary and ADC. As soon as the General took his seat, a number of TV cameramen and photographers entered into the room. They took several pictures and made movie footage of meeting between the two giants as it was the routine activity of the Army House.

In the meeting, while discussing the SAARC Law Conference and the concluding session of the golden jubilee ceremony of the Supreme Court, the General said that a complaint against him had been received from a judge of the Peshawar High Court. The CJ replied that it was not based on facts as his case had been decided by a two-member bench and that attempts were being made to maliciously involve other members of the bench as well. On this, the president said there are a few more complaints against him and after saying so; he directed his staff to call the other persons.

The other persons, who entered the room on Gen Musharraf's direction, included the Prime Minister Shaukat Aziz, Director General Military Intelligence (DG MI), Director General Inter Services Intelligence (DG ISI), Director General Intelligence Bureau (DG IB), COS and another official. All officials (except DG IB & the COS) were in uniform. At this moment, the president started reading from a small piece of paper. The allegations, which were being put to the CJP, had been taken from the contents of a letter written by an advocate Supreme Court Mr Naeem Bukhari. The CJP strongly refuted the allegations as being baseless and engineered to defame him personally and the judiciary as a whole.

Gen Musharraf said that the CJP had obtained cars from the Supreme Court for his family, however, the CJP vehemently denied the allegation, too. Gen Musharraf went on to say that the CJP was being driven in a Mercedes, to which the CJP promptly replied; *"here is the Prime Minister. Ask him, he has sent me the car himself."* (The CJP stated in his affidavit that the PM did not reply even by a gesture) The President then forwarded the last allegation that the CJP had interfered in the affairs of the Lahore High Court and had not accepted and taken notice of most of the recommendations made by the Chief Justice of the LHC.

Gen Musharraf then asked the CJP to resign and in case of his resignation, the former would accommodate the later. He was told that in case of refusal to resign, the CJP would have to face a reference, which could be a bigger embarrassment for him. The CJP resolutely said that he wouldn't resign and would face any reference since he had not violated any code of conduct or any law, rule or regulation. *"I believe that I am myself the guardian of law. I strongly believe in God who will help me"*. This ignited the fury of Gen Musharraf who stood up angrily and left the room along with his MS, COS and the PM, saying that others would show evidence to the CJP.

The meeting of Gen Musharraf and the CJP continued for not more than 30 minutes. The DG MI, DG ISI and DG IB remained behind and continued to sit with the CJP but did not show him a single piece of evidence. The DG MI and the DG ISI insisted that the CJP should resign while the CJP continued to assert strongly that the allegations were baseless. The CJP was forced to stay in the same room during the subsequent hours till 5 pm and despite requests, he was not allowed to see his protocol officer.

Sometimes, all the persons would leave the CJP alone in that room but would not allow him to leave. Despite several attempts to leave the room at the Army House, the CJ was made to stay there on one pretext or the other and was kept there 'absolutely against his will'. Thereafter, DG MI came in again and told the CJ that his car was outside to drive him 'home'. DG MI came out of the room and once outside, told the CJ that:

'This is a bad day, now you are taking a separate way and you are informed that you have been restrained to work as a judge of the Supreme Court or Chief Justice of Pakistan'.

The CJ's car was stripped of both the flags of Pakistan and the emblem. His staff officer informed him that Justice Javed Iqbal had taken oath as the Acting Chief Justice and it had been shown on TV.

[The driver also informed the CJ that he had been instructed not to take him to the Supreme Court while on the way to his residence.]

The CJ directed the driver to go to the Supreme Court but an Army official prevented his car from proceeding further near the Sports Complex. Meanwhile, Tariq Masood Yasin, Senior Superintendent of Police Islamabad appeared and ordered the driver to come out of the car so that he could drive the CJ and also asked the CJ's gunman to come out of the car. The CJ said:

'Okay, I will not go to the Supreme Court but my driver will drive my car and my gunman will escort me home'.

SSP Islamabad Mr Tariq agreed to let the car be driven by the CJ's driver. SSP himself was being instructed and controlled by the Military Protocol Officer on duty following that cavalcade.

The CJ reached home at 5:45 pm and was shocked to see police officials and agencies personnel in plain clothes all around his residence. Landline phones had already been disconnected; cell phones, TV, cables and DSL had been jammed or disconnected. The CJ and his family were completely cut off for several days from the outside world.

It might be a mind blowing fact for some that Gen Musharraf had not performed that act of detention of judges first time. In 2000, after his take over as military dictator in October

1999, he had issued the same like PCO and the judges of the higher courts were asked to take fresh oath if they wanted to stay on roll.

The then Chief Justice of Pakistan Saeeuzzaman Siddiqui told Gen Musharraf that they had already taken oath as per constitutional provisions so they would not go for the fresh oath on PCO. He was subjected to immense pressure through various means but he did not agree. Some of the judges from each high court had also declined to take the PCO oath. At that moment, too, the army troops were sent to besiege the residence of the CJP and he was only allowed to come out of his residence after the oath ceremony of the new Chief Justice was over.

BRIEF CAUSES OF CJP'S REMOVAL:

In short, under the Chief Justice Chaudhry's smudge, the Supreme Court took action on its own initiative to question the military government on the role of the ISI and apparent instances of injustices. He launched investigations into cases of 'forced disappearances' arising as part of the 'WOT' in which the Pakistan military and its ISI had allegedly imprisoned hundreds of persons without due process; most of them were from Balochistan Province where an insurgency was underway. The apex court's efforts had resulted in the return of some missing persons.

In another major ruling against the government, in August 2006, the Supreme Court under the CJP Iftikhar Chaudhry also prevented the sale of a state monopoly, Pakistan Steel, to private investors, based on allegations of kickbacks. Chief Justice Chaudhry ruled interalia that:

'While exercising the power of judicial review, it is not the function of this Court, ordinarily, to interfere in the policy making domain of the Executive ... relatable to the privatization of State owned projects... However, the process of privatization of Pakistan Steel Mills Corporation stands vitiated by acts of omission and commission on the part of certain State functionaries reflecting violation of mandatory provisions of law and the rules framed hereunder which adversely affected the decisions qua prequalification of a member of the successful consortium ..., valuation of the project and the final terms offered to the consortium which were not in accord with the initial public offering given through advertisement.'

Going far back in 2005, the NWFP provincial Assembly had passed a controversial bill, known as the '**Hasba Bill**', which had raised concern in other parts of the country. The Bill established a sort of ombudsman not only to inquire into corruption and maladministration by provincial government departments, but also to carry out moral and religious policing to ensure the protection of Islamic values. A number of the moral policing provisions were declared unconstitutional by the Supreme Court and it asked the Governor of the province not to sign the bill and thus avoided making it into law.

As stated elsewhere, the most significant issue providing the real reason behind the attempted removal of CJP Chaudhry, was the fear that the Supreme Court would prevent Gen Musharraf from retaining his position as the Army Chief and running for President for another term. This fear was based on an address of Chief Justice Chaudhry in February 2007 when he told the trainee military officers: '*he was of the opinion that Gen Musharraf should not continue as army chief if he runs again for the [President's] office*'.

The media had blown this address [& opinion of the CJ] with high trumpeted analysis thus Gen Musharraf had to move for 9th March 2007's action just within one month of CJ's speech.

PROCEEDINGS AGAINST A CJP:

10th March 2007, Justice Iftikhar M Chaudhry received a 'Notice' from the Supreme Judicial Council (SJC) whereby he came to know that a reference had been filed by Gen Musharraf (in

the capacity of President of Pakistan) before the Council. There was also a copy of the order passed by the SJC whereby Justice Chaudhry had been restrained to function as a judge and as the Chief Justice of Pakistan. This order was passed in a meeting of the SJC convened on 9th March 2007 after 6 PM in an indecent haste.

"In fact, no meeting had been called by the secretary of the Council namely Dr Faqir Hussain. No one had issued either agenda for the meeting or notice thereof."

Justice Chaudhry was kept detained along with his family members including his young child of seven years from the evening of 9th March till 13th March 2007. He could not use any vehicle since there was none and he had to walk till the other end of the road where a police officer confronted him and manhandled him as was established later by a judicial enquiry on the subject issue. An attempt was being made to fabricate evidence against Justice Chaudhry through the Supreme Court staff attached to him by coercive means and even employees working at his residence were taken away and made to appear before the 'agency' officials.

The CJ's chamber was sealed and certain files lying therein were removed and some of them handed over to the ISI under the supervision of the newly appointed registrar. No one was authorized to meet Justice Chaudhry, even his colleagues were not allowed access to him. His children were not allowed going to school, college and university. He and his family members were deprived of basic amenities of life, i.e. medicines and doctors, etc. They were made to go through a lot of mental, physical and emotional agony, torture and embarrassment.

All these tactics were used to put pressure on him to tender his resignation 'but after **13th March 2007**, when Justice Chaudhry succeeded in establishing some contact with his lawyers team during a brief appearance before the Council, the ongoing pressure to resign from the office was released to some extent. One of his daughters failed to appear in her 1st year exams while the other was not being allowed to take her examination (1st semester) at Bahria University.

Analysts held that Gen Musharraf wanted to suppress an independent judiciary in view of the coming elections that year. Justice Chaudhry's sacking was done in the backdrop of a concerted whispering that he was going to 'adversely consider' some cases like Gen Musharraf's re-election in uniform from the sitting assemblies.

Most of the charges listed against Justice Chaudhry were contained in a letter written by the lawyer Mr Naeem Bokhari to the CJ. The later developments proved that it was part of a vilification campaign against the CJ and was believably written on government's instance. The said letter was purposefully but 'secretly' leaked to the press. Moreover, some of Justice Iftikhar Chaudhry's rulings did comprehensively embarrass the government. However, his intervention in cases of public importance and human rights violations (especially *suo moto* proceedings on about 250 missing persons which were allegedly picked up by secret agencies without keeping them on official record) was taken as the basic cause of this episode.

Justice Chaudhry, sworn-in as the Chief Justice in June 2005, was sent home just after 21 months. He was to hold the office for another six years till 2013 and to become the longest serving chief justice.

[Until 9th March 2007, the media liked Justice Chaudhry's fondness for judicial activism on public interest and human rights issues. Journalists were hugely entertained by his habit of passing harsh comments on senior government functionaries and frequently embarrassing them publicly in his court room. But he was no public hero. Not at all, that is, until the government took action against him. In the past he was seen very much as a supporter of Gen Musharraf.]

J Chaudhry was among the half of the Supreme Court judges who validated Gen Musharraf's 1999 military coup against an elected government. The other judges [had] resigned in protest.

Later, when Gen Musharraf held a referendum to install himself as the President; the act was challenged in the SC. J Chaudhry was on the bench that decided in favour of

the General. These actions brought J Chaudhry closer to the military rulers. He was never seen as a threat to the legitimacy of Gen Musharraf's rule until 9th March 2007 at least.]

Coming back, Justice Abdul Hamid Dogar and Sardar M Raza Khan, Judges of the Supreme Court, Chief Justice Lahore High Court Chaudhry Iftikhar Hussain and Chief Justice of Sindh High Court Justice Sabihuddin Ahmed attended the meeting as members of the SJC. Acting Chief Justice Javed Iqbal presided over the meeting as available next senior most judge of the Supreme Court.

Some of the alleged charges against the CJ Iftikhar Chaudhry were related with his son's police career while he was a doctor on the pay roll of Baluchistan government (*taken up from Mr Naeem Bokhari's letter mentioned above*). When the reference against CJ was brought to the SJC then those in the government who had been facilitating the son of the deposed CJ in his pursuit of a police career were ready to speak against him. They were tight-lipped in the past, defending Dr Arsalan's police training despite his not being a police officer. Seeing the man falling, those officers who were silent in the past suddenly started speaking out.

Interior Minister Aftab Sherpao, whose ministry had issued orders to treat Dr Arsalan extraordinarily [*just to please the CJP*], right from his posting from Balochistan to the FIA, and then allowing him to get police training along with probationers of the Police Service of Pakistan (PSP Cadre) said that the junior VVIP got special treatment because of his father.

[It is a known typical characteristic of Pakistani bureaucracy that they would go to the last extent to please their sitting bosses by saying anything, mostly twisting the facts and sometimes turning to 180 angles in their narrations. Every member of this bureaucracy tries to take a role of approver in the changing power scenarios amidst getting higher rewards for themselves and their kinship. It has become a distinctive trait of Pakistan's elite now. Lotacracy has very deep roots in the Superior Civil Service of Pakistan, too.]

Whereas the fact remained that Dr Arsalan, CJ Iftikhar Chaudhry's son, was appointed in the FIA on deputation after seeking the consent of the DG FIA but his induction was processed by the Secretary Interior and with Interior Minister's written consent. The FIA Director General Tariq Pervaiz had rightly held that it was the interior ministry's initiative which led to the appointment of the Balochistan official as Assistant Director in the FIA. No doubt, such developments do not happen in vacuum and of course, such opportunities are not available ordinarily; but it had been the practice in Pakistan since early ages and still in vogue.

CJP Iftikhar Chaudhry was not the only judge to avail those fruit of their elevated positions; there were more examples available from the past. The son in law of CJP Sajjad Ali Shah (1994-97) was a clerk in CM Sindh Abdullah Shah's office. The CJP got him inducted in the civil service as Assistant Commissioner under Benazir Bhutto's special orders. He was sent to Peshawar for training and was kept at Supreme Court Rest House for nine months. CJP Sajjad Ali Shah used to send Justice Bashir Jehangiri and Justice Fazal Elahi to hear cases at Peshawar bench because they both were residents of Peshawar. None of them needed the rest house otherwise CJP's son would have suffered with discomfort.

The CJP Sajjad Ali Shah had also availed an official residence at Karachi which was beyond his entitlement. In Rawalpindi the CJP had taken possession of CJ's official residence attached with old SC Building on Peshawar Road. Previously that residence was kept by J Nasim Hasan Shah for years and when it got vacated it went in the hands of J Sajjad Ali Shah. Legally both could live in only one official residence and just for one month after retirement.

CJP Sajjad Ali Shah had moved a case for change in his date of birth and he announced that he would continue living there till the decision on his petition comes up. Such benefits, including Arsalan Iftikhar's transfer to FIA, could be considered minor but in confrontations these are exploited.

A CJ SEEKS RELIEF FROM HIS OWN COURT:

26th March 2007: The deposed Chief Justice had planned to give first public appearance to the Rawalpindi Bar Association, on the 17th day of historical judicial crisis in Pakistan. Ladies and gentlemen lawyers were occupying their seats in the Bar Room in a dignified way when a veiled lady sitting with the women lawyers, suddenly stood up, dramatically unveiled her face and announced:

'I am Sajida Chaudhry, serving Civil Judge Gujar Khan (a town 30 miles away from Rawalpindi), and have come here to show solidarity with my Chief Justice of Pakistan.'

The announcement received a thunderous applause. She calmly told the reporters:

'I came here to welcome the chief justice, and it is my duty. Gen Musharraf should resign; he who is occupying the country illegally.'

The Punjab government, next day, placed her under suspension but she was successful in delivering a clear message to the incumbent judges of the Supreme Court. She was the first drop of rain in desert.

14th April 2007: During the second public appearance, Justice Iftikhar Chaudhry was to attend an annual dinner of the Sindh Bar Association Sukkur (a town 300 miles away from Karachi). On this day, the history unfolded a new leaf. Two judges of the Sindh High Court, Justice Zia Pervez and Justice Nadeem Azhar Siddiqui, had decided to follow their junior colleague Sajida Chaudhry of Gujar Khan and decided to speak about the military tyranny in Pakistan.

18th April 2007: CJ Iftikhar Chaudhry filed a petition before the Supreme Court raising the issues of:

- "Constitution of the Supreme Judicial Council without the CJP,
- The personal bias and prospects of advancement of some members of SJC,
- Alleged *malafide* of the referring authority and PM Shaukat Aziz,
- The haste with which the referring authority (the president) acted against the CJP,
- Illegal suspension and forced leave of sitting Chief Justice,
- Illegal assumption of office by the Acting Chief Justice,
- The executive's assault on the independence of judiciary, AND
- In-camera proceedings of the SJC."

Justice Chaudhry had also *'requested the Supreme Court to restrain the SJC from hearing the reference as some members harbour bias against the petitioner, rendering them ineligible to be a member of the SJC.'*

Justice Chaudhry's petition under Article 184(3) of the Constitution of Pakistan was floated through Chaudhry Aitzaz Ahsan and Barrister Gohar Ali Khan, carrying 132 points of law. In his petition he had challenged his suspension and replacement with acting chief justice, his forced leave and composition of the SJC with 'biased judges'. Apart from seeking stay order against the proceedings of the SJC, Justice Chaudhry had also sought a declaration that no reference could be filed by the referring authority or examined by the SJC against the chief justice under Article 209 of the Constitution and an acting chief justice could not head the Supreme Judicial Council.

The President, the Federation, the Supreme Judicial Council, the Registrar of the Supreme Court, the Registrar of the Sindh High Court and the Registrar of the Lahore High Court were made respondents in the petition. The petition was admitted for regular hearing.

19th April 2007, the petition was taken up by a three-member bench comprising Justice Sardar Mohammad Raza Khan, Justice Chaudhry Ijaz Ahmed and Justice Hamid Ali Mirza. The bench issued notices to the respondents to the petition and adjourned its proceedings till 24th April 2007.

21st April 2007: The deposed Chief Justice reached Peshawar after a journey of nine hours from Islamabad (normal journey time is 1.5 hours). He was showered with rose petals all the way by ordinary people, political workers and lawyers at different places during his journey. Excited people lined up all the way from his official residence in Islamabad to the Peshawar High Court building, in scorching temperature and under a blistering sun. Ten (10) judges of the Peshawar High Court welcomed him. The Chief Justice of Peshawar High Court led the reception of the deposed CJ.

[Two judges of the Peshawar HC were absent from this reception. One, Justice Talat Qayyum was a heart patient. The other one, Justice Jehan Zeb Rahim, was a party against Justice Iftikhar Chaudhry. He had written a letter against Justice Chaudhry to Gen Musharraf.]

During this high profile judicial crisis, it was also a beginning of a new chapter of Pakistan's judiciary when Munir A Malik, President of the Supreme Court Bar Association (SCBA), invited the sitting judges to join struggle with Justice Chaudhry for withdrawal of the reference and upholding the rule of law. It was the first time that judges were formally invited to join hands with the legal community.

This call got an immediate response from the Sindh High Court judges. The very next day, 15 judges of the provincial Sindh High Court were present at the reception of the defunct CJ at Hyderabad. The provincial law officer, the Advocate General of Sindh, also attended the function. Leaders of the legal community demanded unconditional withdrawal of the presidential reference and release of lawyers and other people arrested while protesting against filing of the reference.

24th April 2007, Mr Justice Sardar Mohammad Raza Khan declined to head the bench because, as a member of the Supreme Judicial Council, he was '*a signatory to the Supreme Judicial Council's endorsement of the presidential reference.*' It appeared this was a reference to the Supreme Judicial Council's order restraining the Chief Justice from functioning in his official capacity. He requested the Acting Chief Justice to '*form a full court or a larger bench to hear a number of identical petitions challenging the formation of the SJC and the reference against the suspended chief justice.*'

On **26th April 2007**, Justice Chaudhry filed an application before the Supreme Court seeking constitution of a full court, comprising all the judges on the Supreme Court, to hear his petition.

On **28th April 2007**, the Acting Chief Justice Rana Bhagwandas, taking action on that application, constituted a five-member bench headed by Justice M Javed Buttar, and additionally comprising of Justice Nasirul Mulk, Justice Raja Fayyaz Ahmed, Justice Ijaz Ahmed and Justice Hamid Ali Mirza.

On **2nd May 2007**, Gen Musharraf's government also requested a full court, arguing that the five-member bench was too junior to hear such an important matter.

On **7th May 2007** Justice M Javed Buttar, heading the five-member bench of the Supreme Court mentioned above, took up 23 identical petitions challenging the filing of reference against the CJ, composition of the SJC and its competence to try the CJ. The bench halted the proceedings of the SJC and referred the constitutional petition of Justice Chaudhry along with other identical petitions to the full court. This decision was appreciated on two counts. Firstly: for suspension of the SJC proceedings, and secondly with the request for constituting a full court to consider this matter, i.e. a bench comprising all the sitting judges of the Supreme Court, excluding those who were members of the SJC.

Next day the Supreme Court constituted a 14-member full court to hear the constitutional petition of Justice Chaudhry against the presidential reference along with 22 other identical petitions. The full court announced to take up these petitions from 14th May on day-to-day basis.

The full court was headed by Justice Khalilur Rahman Ramday and comprised Justice Muhammad Nawaz Abbasi, Justice Faqir Muhammad Khokhar, Justice Falak Sher, Justice Mian Shakirullah Jan, Justice M Javed Buttar, Justice Tassadduq Hussain Jillani, Justice Saiyed Saeed Ashhad, Justice Nasirul Mulk, Justice Raja Fayyaz Ahmed, Justice Ch Ijaz Ahmed, Justice Syed Jamshed Ali, Justice Hamid Ali Mirza and Justice Ghulam Rabbani. However, Acting CJ Rana Bhagwandas, Justice Javed Iqbal, Justice A Hameed Dogar and Justice Sardar Muhammad Raza Khan, were not made part of the full court because of being party to the proceedings of the SJC.

The suspension of the SJC proceedings was an initial legal victory for the deposed CJ Iftikhar Chaudhry against Gen Musharraf and was widely welcome for the following reasons:

- Under established norms of judicial conduct, members of the SJC with a manifest conflict of interest should have voluntarily dissociated themselves from the reference proceedings. The Supreme Court's decision to stay the SJC proceedings was thus welcome, because such proceedings were tainted by allegations of bias and were unlikely to further the cause of justice irrespective of the outcome.
- The SJC was a disciplinary judicial body constituted to investigate charges of misconduct against judges of the higher judiciary and accordingly make recommendations to the president for disciplinary action; a constitutional prerequisite for removal of a judge who is offered security of tenure by the Constitution. Thus it was not a court as such.
- The Supreme Court was the apex constitutional body that had the last word on what the Constitution meant. The Supreme Court could not shrug off its responsibility to resolve elementary constitutional issues, to name a few, such as:
 - whether the SJC was competent to investigate allegations of misconduct against the Chief Justice of Pakistan,
 - the appropriate composition of the SJC in a reference against the chief justice,
 - whether or not the SJC could be constituted by someone other than the Chief Justice,
 - whether or not the head of the judiciary could be suspended from office by a head of the executive, while allegations of misconduct were pending investigation etc.
 - It was logical to determine the constitutionality of the reference and the scope and composition of the SJC before it was allowed to proceed with the presidential reference. The whole set of proceedings by the SJC would have ended in futile had the SC observations surfaced otherwise later.

On **12th May 2007**, Justice Iftikhar Chaudhry was scheduled to be in Karachi to address lawyer's community at the premises of Sindh High Court but he was not allowed to come out of the airport lounge. Outside lounge there were blockades done with containers & long vehicles and propelled riots throughout Karachi. The day ended with 43 deaths and hundreds wounded. A full description is available on separate pages under the title of **'Karachi Greets a Chief Justice'**.

On **14th May 2007**, the full bench started conducting daily hearings on the case but on that day, at the first hearing of this bench, Justice Falak Sher refused to sit on the bench citing:

'On account of seniority and being the senior-most judge in the country, it would be improper for him to hear a case in which the chief justice is a party, who like other judges of the Supreme Court is junior to him from four to nine years.'

Nevertheless, the hearing continued with 13 judges.

During the night between 13-14th May 2007 the Personal Staff Officer of Justice Iftikhar M Chaudhry, named Hammad Reza, was shot dead at his official residence in Islamabad. He was a DMG officer of 1996 batch but had been taken on deputation by the Supreme Court with a rank of Additional Registrar. He was killed allegedly by the mighty secret agencies, every one believed but no body could dare to express openly.

The Supreme Court felt embarrassed, took cognizance of the issue, asked the investigation officer to put up progress report to the SC on daily basis and ordered a senior police officer to supervise the investigation but could not get justice for Reza's family. The government wanted to convey a message to the Court through this brutal act but the bench had not taken any effect. Mr Reza had told his family and friends during the last two months that on a number of occasions he was summoned by agencies who were trying to get information about the alleged 'wrong doings' of Justice Chaudhry. He, according to his friends, was being pressurized to give evidence in support of reference.

Meanwhile, another chaos surfaced when the news came out that:

'The federal government is seriously considering the filing of another reference against [the Chief] Justice Iftikhar Chaudhry over politicizing the presidential reference.'

It was based on reports that most of the lawyers with Justice Chaudhry were affiliated with political parties and they were using the presidential reference for their peculiar objectives. Daily **'the News' of 15th May 2007** also opined that the reference was ready against the judges who had participated in the functions of Justice Chaudhry while hearings were under way in the SJC and the Supreme Court against him. Due to timely intervention of advisors the government dropped the idea at the last moment.

On **16th May 2007**, Sharifuddin Pirzada, the President's Counsel, giving an overview of the judicial history of the country with regards to references filed against judges, argued against the maintainability of Justice Chaudhry's petition.

Mr Pirzada had argued before the full Court that the first reference in the judicial history of the country was filed against Justice Hasan Ali Agha in the Federal Court of Pakistan during 1951; the second reference was filed against Justice Ikhlaq Hussain, the third against Justice Shaukat Ali while the fourth one was filed against Justice Safdar Ali Shah. Justice Ramday, however, observed that all those references were filed during the martial law regimes except the one against Justice Hasan Ali Agha that was filed in a civilian regime and he was exonerated of all charges in 1951.

[The reference against Justice Ikhlaq Hussain was made out in Gen Ayub's regime; Justice Shaikh Shaukat Ali faced reference in Gen Yahya's regime and Justice Safdar Ali Shah in Gen Ziaul Haq's regime. All these cases were made out in peculiar circumstances and were settled on different grounds. In all the three references filed during respective military regimes, the judges were sent home. Justice Shaukat Ali was removed on the basis of the reference but the decision of his removal remained controversial and he was later elected president of the bar.]

It may not be out of place to mention that during the days of his turmoil, while his petition was being contested by Aitzaz Ahsan and his helping barristers in the Supreme Court, Justice Chaudhry remained busy in having by-road tours in Punjab and NWFP provinces of Pakistan. The lawyer community made his tours successful by boycotting the courts, arranging huge gatherings of people around and taking frequent help from workers of anti-Musharraf political parties. On the main roads wherever J Chaudhry passed, the crowds of people welcome him with banners and flags but he deliberately avoided to address them.

Justice Iftikhar Chaudhry's tours were covered by the local and western world's media moments by moments and two Urdu TV private channels named ARY and GEO constantly telecasted his live movements which were otherwise viewed throughout the world.

The media coverage spoiled Gen Musharraf's image worldwide and the feedback of extensive criticism from all corners disturbed the government. The general populace started processions in favour of Justice Chaudhry and raised voices against the army rule openly violating the law and order. The proceedings in the Supreme Court were also covered by the media alive and the arguments forwarded by Justice Chaudhry's panel of barristers were hailed by intelligentsia and the general public equally.

GEN MUSHARRAF ATTACKED MEDIA:

Getting annoyed over the situation Gen Musharraf's regime took another turn by imposing censorship on the print and electronic media through an ordinance from the president's camp, which was government's new tactic to keep the people in dark over the CJ's popular move. Warnings to the media in the name of 'national interest' do not work in this age; rather they go thoroughly counter-productive and only exacerbate an already tense situation.

The reason for the clampdown on media was the thinking then prevailing in military junta's circles that the whole crisis had been blown out of proportion by the media and hence it would be deflated once the media, especially the TV channels, are brought under the censorship restraints. Till that moment the general populace of Pakistan had gone genius enough to frame their minds for:

- Gen Musharraf made the Chief Justice of Pakistan non-functional.
- Gen Musharraf threatened the Chief Justice in military General's uniform in the Army House and did not allow him to leave the Army Camp Office for 5/6 hours.
- In a wrong manner an action against the Chief Justice was taken and a presidential reference filed before the Supreme Judicial Council.
- The charges that the CJP was fond of extra protocol or that he asked for favours for his son were true; the same could have been dealt with in a dignified way. [*The CJP could have been called to explain or proceeded against separately for any such charge without calling him in person at the Army House and asking him to resign. The requirement was to uphold the rule of law whatsoever*]
- Attacks on the office of Geo TV and the top newspaper in Islamabad were wrong; thus condemned.
- Army spy chiefs confronted the Chief Justice on 9th March at the Camp Office and tried to impress on him to quit his post.
- Gen Musharraf stood by and idly watched as 43 people lost their lives in Karachi on 12th May 2007; did nothing as the offices of a TV channel came under attack by armed men for several hours on 12th May and then proceeded to hold a 'National Unity' rally the same evening in Islamabad, where PTV showed participants doing the *bhangra* (a Punjabi folk dance) and having a generally fun time.
- Army sponsored administration prevented the chief justice from leaving the premises of Karachi airport on 12th May for address.
- Uncharitable remarks against judges of the Sindh High Court were raised after the court took *suo moto* notice of the tragic events of 12th May [*till today there is no report or final outcome of that court proceedings, what a mockery of justice*].
- Those days the Sindh government illegally prevented Imran Khan from entering Sindh and confined him to Lahore for three days.
- Gen Musharraf got declared names of 12 prominent journalists for calling them enemies of the people and placed bullets-filled envelopes in the cars of three of them.

Referring to an editorial note of **'the News' of 3^d June 2007**, more questions could be added to the above list. Gen Musharraf's team was unable to grasp the fact that the media was a mirror and was bound to reflect reality. Also, if for the sake of argument, it is accepted that the media was presenting an unbalanced anti-military version then what about coverage in world media.

Next day the lawyer's forum including the Supreme Court Bar Association, who was boldly handling the CJ's issue, announced that the lawyers of the whole country would also fight this censorship against the media taking it another army attack on the fifth pillar of democracy in Pakistan. How the world media reacted to Pakistan's situation in those days, an opinion of **'Nigerian Observer'** is placed below:

"Pakistan's recent and ongoing experiences in the last two months in its Judiciary is proof, if any were needed, that once a military man always a military man, whether in or out of uniform. Sometime in March this year, President Pervez Musharraf (dressed in military uniform) tried unsuccessfully to force Pakistani Chief Justice Iftikhar Muhammad Chaudhry to resign.

When the Chief Justice refused to be intimidated, the President placed him on a highly controversial and contestable compulsory leave, skipped the next senior Justice said to be on a visit to neighbouring India and appointed another Justice to do his bidding as Chief Justice. Since then Pakistan has been thrown into the chaos which is brought daily into our living rooms via satellite television.

Today, Musharraf has exposed himself as a wolf in sheep's clothing. A military mind-set brooks no divergent views; it is used to giving orders and being obeyed without question. President Musharraf's misguided attempt to humiliate and tame the Judiciary has backfired and several prominent lawyers have declined to represent the government. To worsen his embarrassment, the whole world is watching the unsavoury drama, and ahead of this year's national elections Musharraf is not looking too good."

(Ref: Nigeria: Avoiding the Pakistani Pitfall by Funke Aboyade appearing in **'This Day' of Lagos dated 14th May 2007**)

For the military adventurers of the future, there were many lessons.