

Scenario 124

GEN MUSH'F IN TREASON etc CASES:

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On **8th April 2013**, the Supreme Court of Pakistan summoned Gen Musharraf to appear before it next day in response to a petition claiming that his actions in toppling an elected government, suspending the constitution and sacking judges amount to treason; calling for the death penalty if found guilty. Justice Jawad Khawaja said "**...the state had a duty to take effective measures against Musharraf and others who subverted the constitution.**"

It was the latest blow to Gen Musharraf's far from triumphal homecoming on **24th March 2013** after about five years exile. Many of his former enemies were in powerful positions. His court appearance brought him face to face to those '**brother judges**' whom he sacked in 2007 and placed under house arrest.

A brief background: that before the general elections of **11th May 2013**, many political leaders addressed big rallies and public meetings urging in loud voices that '**Gen Musharraf should be taken through judicial process for sending an elected government home in October 1999**'. There were countless hands gesturing that the General should be tried for 3rd November 2007's emergency ONLY and should be chastised as per SC's judgment dated 31st July 2009 strictly.

While debating in favour of the later option the political elite actually wished for NOT opening that '**Pandora box of Treason**' which had been orchestrated on the apex court's floor time and again then. They wanted to finish this treason case in an artistic manner so that names of '**respectable stamping judges & parliamentarians**', could be avoided as co-culprits of treason; not a bad strategy anyway.

The main allegation raised was that Gen Musharraf had flouted and disobeyed Pakistan's sacred Constitution. Leave it aside for a while whether he did it once or twice; in 1999 and 2007. Just consider the golden words of Mr Justice Jawwad S Khwaja that '**Even parliament can't ratify dictator's action.....**' [Top story of '**the News**' dated **26th April 2013** is referred]; from here we'll travel back.

In my humble opinion, the Constitution had already been defied and contravened before 1999 by the then Prime Minister Nawaz Sharif who, under the false interpretation of 'heavy mandate' had broken the limits imposed on the Chief Executive by the Constitution itself.

Sharif government introduced 13th Amendment to the Constitution, on **3rd April 1997**, that did away with article 58 (2)(b) and deprived the President of the power to dissolve the National Assembly. One can condone it because this clause was 'misused' twice each on Nawaz Sharif and Benazir Bhutto but why, under the same 13th Amendment, the Prime Minister:

- Once again got that the governors of the respective provinces could only be appointed by the President 'ON THE ADVICE' of the prime minister.
- Once again acquired the powers to appoint the Services' Chiefs, which earlier were with the President.

Nawaz Sharif had sent President Farooq Leghari, Chief Justice Sajjad Ali Shah and COAS Gen Jahangir Karamat home; and the Armed Forces had to anticipate that he might attempt to remove another of their Services Chief Gen Musharraf any time.

Over-confident and more reckless, Nawaz Sharif, in late afternoon of 12th October 1999, thought it prudent and announced, the dismissal of Gen Musharraf as the COAS, precisely when the General was already on board a PIA aircraft on his return journey from Colombo where he had represented Pakistan. Nawaz Sharif appointed his handpicked and trusted man, Lt Gen Ziaud Din, then incumbent Chief of the ISI, as the COAS. The incumbent, DG ISI, failed and Nawaz Sharif fell prey to inability of the COAS designate.

The Corps Commander Karachi acted very swiftly to take the situation under his control, and Gen Musharraf landed safely at the Jinnah Terminal, Karachi. Within a few hours, it was announced on Radio and Television that the armed forces had seized power and Gen Musharraf was in command.

His taking over of 12th October 1999 was challenged in the then Supreme Court. After regular hearings of the constitutional petitions, the Supreme Court delivered its Short Order (Judgment) **on 12th May 2000**, the Supreme Court, *inter alia*, stated:

" With the repeal of Article 58 (2)(b) of the Constitution, there was no remedy provided in the Constitution to meet the situation like the present one with which the country was confronted, therefore, constitutional deviation made by the Chief of the Army Staff, General Pervez Musharraf, for the welfare of the people rather than abrogating the Constitution or imposing Martial Law by means of an extra-constitutional measure is validated for a transitional period on ground of State necessity and on the principle that it is in public interest to accord legal recognition to the present regime with a view to achieving his declared objectives and that it is in the interest of the community that order be preserved."

17. That having regard to all the relevant factors involved in the case three years period is allowed to the Chief Executive with effect from the date of the Army takeover i.e., 12th October, 1999 for achieving his declared objectives.

18. That the Chief Executive shall appoint a date, not later than 90-days before the expiry of the aforesaid period of three years, for holding of a general elections to the National Assembly and the Provincial Assemblies and the Senate of Pakistan.

On 27th April 2002, the Supreme Court, **in Syed Zafar Ali Shah Case**, gave a short order validating the holding of the referendum. Significantly the Supreme Court's Order stated:

"13. As regards the grounds of challenge to the consequences flowing from the holding of referendum under the Referendum Order, apparently these questions are purely academic, hypothetical and presumptive in nature and are not capable of being determined at this juncture. Accordingly, we would not like to go into these questions at this stage and leave the same to be determined at a proper forum at the appropriate time."

Further; in the LFO challenge case on appeals of Lawyers Forum and others it was heard and decided by a larger bench comprised of CJP Nazim Hussain Siddiqui, J Iftikhar M Chaudhry, J Javed Iqbal, J Abdul Hameed Dogar and J Faqir M Khokhar,

on 13th April 2005, *inter-alia*, holding; “.....on facts, which are incontrovertible, there is no basis for initiating such a prosecution.”

[Throughout that process the incumbent Honourable Chief Justice Supreme Court of Pakistan was at that time Chief Justice of the Balochistan High Court (BHC), having been elevated on **22nd April 1999** and took oath along with four other High Court judges under **Order No. 1 of 2000, dated 25.1.2000 and was, after ten days i.e. 4th February, 2000 elevated as Judge of the Supreme Court and took oath of office under PCO.]**

*91. "The petitioners also submitted that it is imperative to **take action against the President under Article 6 of the Constitution Const. P. 12 / 2004 etc because under section 3 of the High Treason Act, 1973, no court can examine a charge on grounds of treason unless a reference is forwarded to the court by the President, which in this case is not possible. It is noted that section 3 ibid does not require a reference from the President but this duty has been assigned to the Federal Government. This provision remains in its original form since enacted. The petitioners' argument is misplaced.***

*The petitioners do not seek a striking down but virtually insist on re-writing the same and pray that after doing so, this Court may take cognizance of the matter and initiate a prosecution against the President. Suffice it to say that it is not the function of the courts of law. **Even otherwise, on facts, which are incontrovertible, there is no basis for initiating such a prosecution.**"*

*"92. In consequence, the petitions are dismissed. Above are reasons for the short order announced **on 13 April 2005.**"*

The 17th Amendment also gave indemnity to Gen Musharraf for subverting the Constitution and validated the referendum of 2002 as a substitute for presidential election which Gen Musharraf was declared to have won. Next, Gen Musharraf was duly sworn in for a term of five years as 'elected' president.

GEN MUSH'S SELECTIVE TRIAL:

On 3rd November 2007; Gen Musharraf in his capacity as Army Chief proclaimed a state of 'emergency' and issued Provisional Constitutional Order [PCO] which replaced the Constitution of 1973.

On 24 November 2007; a larger bench of the PCO-Supreme Court under the Chief Justice, Justice Abdul Hameed Dogar, validated the Proclamation of Emergency of 3 November 2007 and the Provisional Constitutional Order of the same date. It also directed the Chief Election Commissioner [CEC] to announce the result of the presidential election. However, it asked Gen Musharraf to relinquish the office of the Chief of Army Staff.

On 28 November 2007; Gen Musharraf resigned as the Army Chief and the following day he was sworn in as President for a second term. He lifted the 'emergency' on 15 December 2007 and revived the Constitution of 1973. A few months after the general elections of February 2008, he faced the threat of impeachment from the newly elected National and Provincial Assemblies and had to resign **on 18 August 2008**. He left the country in disgrace.

Once pre-PCO judiciary was restored in March 2009, the Supreme Court in its Short Order dated 31st July 2009 declared unconstitutional, *ultra-vires* of the Constitution and consequent-

ly illegal and of no legal effect, *inter alia* Proclamation of Emergency and PCO of 3rd November 2007 and the Oath of Office (Judges) Order issued in exercise of powers under the aforementioned and all other allied executive orders of the same day.

The Parliament in PPP regime also declined to indemnify Gen Musharraf for his subversion of Constitution when it approved the 18th Amendment. Instead, when Gen Musharraf declared that he would return to Pakistan in January 2012, the Senate had passed a resolution on 23rd January 2012 calling for his trial on the charges of high treason. Senator Raza Rabbani moved the resolution which was adopted unanimously. Rabbani moved the motion saying that: '*...that Musharraf twice abrogated the constitution, arrested the judges of superior judiciary and compromised the national interests.*'

It was only after the dissolution of the National and Provincial Assemblies in mid-March 2013 and formation of an interim government that Gen Musharraf returned to the country.

After Gen Musharraf's arrival in Pakistan, the Senate, **on 19th April 2013**, unanimously passed similar resolution again calling for General's trial under Article 6 of the Constitution for derailing democracy and abrogating the constitution. This time the resolution was tabled by PML[N]'s Senator Ishaq Dar and was approved by all members of the Senate.

In some quarters it was also debated that perhaps Gen Musharraf had secured guarantees from the military establishment and / or some Arab countries that he would not have to face a trial for high treason in Pakistan. Certain legal minds had, however, held that *prima facie*, Gen Musharraf and those who abetted him in subverting the Constitution could be made guilty of high treason. The trial of Gen Musharraf for high treason was considered only a formality as his conviction was almost guaranteed in the light of the Supreme Court **Judgment dated 31st July 2009**.

But contrarily the PML[N] went for selective justice – only to penalize Gen Musharraf for November 2007 action but ignoring some other paragraphs of the SC's same decision dated 31st July 2009; see the next paragraphs:

"Those high-ranking military officers, bureaucrats and politicians who abetted Musharraf in the commission of a crime that had been categorically declared an act of high treason are also guilty. They were no fools and fully knew that Musharraf's sole aim was to remain entrenched in the presidency by hook or by crook.

The then corps commanders ignored the popular sentiments against Musharraf and supported a Chief who had become a burden on the institution of the armed forces. They were not bound to obey unlawful commands. They could have taken cue from the so-called ex-service men's society which was very vocal in condemning Musharraf for his policies and performance and demanded his resignation."

During the last week of **June 2013**; the PML[N] government decided to prosecute only Gen Musharraf for his 3rd November 2007's extra - constitutional actions. The top military brass was taken into confidence on the subject, **sarcastically emphasizing that the government would not open the issue of 12th October 1999 coup**. The government had also not found anything concrete to conclude that others, whether in the government or in the military on that occasion in 2007, had abetted the dictator in the abrogation of the Constitution. The **31st July 2009's SC order had settled the issue** by ruling:

"The actions of General Pervez Musharraf dated 3rd November, 2007 were the result of his apprehensions regarding the decision of Wajihuddin Ahmed's case and his resultant disqualification to contest the election of president. Therefore, it could not be

said that the said actions were taken for the welfare of the people. Clearly, the same were taken by him in his own interest and for illegal and unlawful personal gain of maneuvering another term in the office of president; therefore, the same were malafide as well.

The statement made in Proclamation of Emergency that the situation had been reviewed in meetings with the Prime Minister, Governors of all the four Provinces, and with Chairman, Joint Chiefs of Staff Committee, Chiefs of the Armed Forces, Vice Chief of Army Staff and Corps Commanders of the Pakistan Army, and emergency was proclaimed in pursuance of the deliberations and decisions of the said meetings, was incorrect.

The Proclamation of Emergency emanated from his person, which was apparent from the words 'I, General Pervez Musharraf.....' used in it."

The PML[N] government held that the forces desirous of involving many like the then PM, his cabinet, services chiefs and some judges in the said case, wanted to create confusion between different state institutions merely to save Gen Musharraf. The government was conscious of the trial of Gen Musharraf in no manner should be interpreted as friction between the civil and military. That was why the PM had taken the top military leadership into confidence before unveiling his surprising move to proceed against the dictator.

The intelligentsia wondered that the ***SC's order of 31st July 2009 was written by some of the same judges who had earlier declared the coup of 1999 against Nawaz Sharif as OK; then how can the state of emergency declared by the same person not OK in 2007*** - did not make sense at all; both were doctrines of necessity.

However, most analysts argued that Gen Musharraf's trial for high treason would open a Pandora's Box. They correctly apprehended that the military establishment would not tolerate the prosecution of their former Chief and Corps Commanders in any way. The military establishment would exert covert pressure to suppress the trial. There were fears that if the Supreme Court ordered for the trial of Gen Musharraf, the military would be left with no choice other than to opt for constitutional deviation, although the chances of any such eventuality were quite remote then.

A midway course was to form a ***Truth and Reconciliation Commission*** before which all those who were involved in the unconstitutional act of 3rd November 2007 could submit the whole truth, admit their fault, repent, seek forgiveness from the nation and pledge to respect the Constitution in future in letter and spirit. However, the Care Taker set up didn't have the courage or motivation to act like that – they preferred to wait for new political set-up to take reins of government affairs.

Coming to article 6, one may say that irrespective of the fact whether any such provision is there in a constitution or not, no constitution can legitimately be abrogated, subverted or put into abeyance by an individual or group of individuals at his / their personal whims.

Only in case of a popular revolution, like the one in Iran in 1979, or through the people at large, the constitution would be discarded or replaced or amended. Performance of the incumbent governments and public opinion seen in the highest order are the best safeguards against constitutional deviations.

JUSTICE OR PERSONAL VENDETTA:

On 20th April 2013, a message titled [***The Fate of General Musharraf***] was circulated by an 'insider' on the Internet media 'revealing' the truth about Gen Musharraf while adding '***I see the media, the politicians and the judiciary asking for his head -- the same people whose heads should also roll if the Constitution is applied to them! This is the irony.***' Some of the points mentioned therein were:

[Message begins]

"Musharraf is in custody today; this is natural justice for the mistakes he committed during his rule.

Musharraf had chosen his allies and advisers very badly. He was destroyed by Shaukat Aziz, Tariq Aziz, Altaf Hussian and the PML(Q) which were his allies. Today, they have all abandoned him. This happened as he chose the corrupt, the Qadianis, the enemies of Pakistan and opportunists as advisers.

But his actions harmed Pakistan just as Zardari's actions and CJ's decisions are harming Pakistan today. Both Zardari and the CJ would also meet the same fate which Musharraf is facing today. [Both Mr Zardari and CJP Iftikhar M Chaudhry were in saddles then]

*Musharraf is guilty of following crimes; **indeed major crimes** having lasting consequences.*

1. ***NRO***, which imposed upon hapless Pakistan this bunch of crooks in the name of democracy. ***Those who ruled Pakistan for the last five years were not only corrupt; they are traitors.***

2. He allowed the proliferation of electronic media [***foreign funded – mostly by Indo - Zionists***] without ensuring that control did not fall in foreign or hostile hands. Now the same media is skinning him alive.

3. He allowed the CIA to create TTP, offering Pakistan land to NATO unconditionally to supply weapons for terrorist and separatist groups like TTP, BLA and MQM. Thousands of "Raymond Davis" were allowed into Pakistan to wreck havoc with Pakistan's security.

*[Rehman Malik's issuance of about 6000 visas to CIA agents, in the garb of security contractors, without scrutiny or security clearance by the ISI or IB, is referred. Some of them used their '**address of staying in Pakistan**' as **President House Islamabad or Bilawal House Karachi.**]*

But Musharraf is NOT guilty of following crimes:

1. He or the army did NOT kill Akbar Bugti. That is a lie. Bugti was killed as the roof of the cave he was hiding in, collapsed. Details of the incident have already been discussed many times.

2. Musharraf did NOT kill Benazir Bhutto. That is a lie as well. BB was killed by the TTP. That has been confirmed by every investigation agency that looked into it.

3. The case of Lal Masjid is not so clear. It was confirmed that the TTP used it as a terrorist den. The use of force may have been excessive but the rebellion – whatever its scale or form – has to be put down firmly with force.

Also, remember this:

- *A case or FIR cannot be registered against the President on internal security duties or conducting an operation. Are we registering FIR's against Zardari or the PM for all the violence going on in the country? NO! **Then how can FIR be registered against Musharraf for Bugti, Benazir or Lal masjid?***
- ***Would that not be Target killing through the judiciary?***

The present rulers including bureaucrats and judges should learn a lesson. Their fate is also going to be the same to the extent as they act as tools of foreign intelligence to destabilise Pakistan today."

[Message ends]

The above message demanded a fair treatment and judicious handling of Gen Musharraf's affairs and certainly NOT tainted with personal vendetta of 'some' judges in line. Some segments of the media and the judiciary were, no doubt, complicit in this score balancing game while wrongly amalgamating Musharraf's affairs with the army as an institution.

The whole nation invariably and always hailed, more during the dark years of 2008-13, the statutory role of the army; especially when Asif Zardari allegedly acted deceitfully on two occasions. Firstly, when he put the nuclear arsenal of Pakistan on sale for just about 100 billion dollars; Israel had publicly recommended that the USA should accept the offer.

Secondly, when the Memo, Zardari sent through Hussain Haqqani to the USA, asking a deal for Pakistan's nuclear capabilities in the name of '**democratic civilian control**' over the armed forces including the ISI.

After Gen Musharraf's trial under Article 6 of the Constitution, the intelligentsia suggested to bring Zardari, some Justices, some Chaudhrys and some Maulanas in the same dock. ***Over this message, Maj Gen (rtd) Shafique Ahmed tagged a much appealing note*** that:

'.....let us not mix up..... Unlike ZIA whose neck was in danger, Musharraf is no threat to anybody. Let the law take its course. A fair trial even if prolonged is the need of the hour.

Pakistan Army should also forget about it..... Musharraf took all criminal decisions as president, and not as COAS. In fact he is guilty of dragging Army into many of his criminal activities un-necessarily and is instrumental in disgracing the good name of Pak-Army.

.....There is a long list of charges against ex COAS Musharraf like Kargil Operation, and as president.....What was the need to employ commandoes to conquer JAMIA HAFSA, OR EVEN CAPTURE AKBAR BUGTI. He misused army as a personal property and not as per procedure IN AID TO CIVIL POWER. His unilateral decisions succumbing to the USA..... going for operations against FATA, giving Bases, allowing supply routes, removing Chief Justice of Pakistan, misconduct in organising 'mujras' etc etc have disgraced Pak-Army.

Dealing with those who obeyed and assisted him in these disgraceful acts is a secondary issue and need not be touched now.

There is a misconception of loyalty in many quarters. In Pak-Army we serve the state and not any individuals. We are promoted and given appointments on merit alone. [exceptions notwithstanding]. Paying respect to our elders is something different but, in state affairs the national interest comes first. And the black sheep who are instru-

mental in disgracing and causing COLLOSAL damage to the NATIONAL POLICIES, NATIONAL AND MILITARY STRATEGIES, and governance and even to the Ideology of Pakistan must account for their misdeeds.'

Earlier; in a live **TV program of ARY News dated 27th June 2009**, the veteran Army General of Pak-army and the ISI's former Chief Gen Hamid Gul had said:

'..... Shariat ko badnaam is [Gen Musharraf] ne karwaya, un logon ko dehshat gard dikha ker, un logon ko jaan boojh ker bandooq se muqabla karwa ker, unko askariat pasand dikhaya, aur Shariat pasand logon ko shiddat pasand dikhaya. Is shakhs ki kabar me jo scene ho ga - wo nakabile bardasht ho ga. General Musharraf,,, jo naam hai duniya ke sab se ghaleez zehniat wale shakhs ka.'

[He (Gen Musharraf) had given bad name to the Islamic *Shariah*. He got declared those Islamic people 'Terrorists' by showing them fighters and gun-bearers. There would be extremely awful and distressed scene in Gen Musharraf's grave; that would be un-bearable. Gen Musharraf is the name of a person who keeps the dirtiest and filthy mindset.]

In another live TV program '**Jawab Deh' of 28th March 2010**, Gen Hamid Gul had said the same thing in loud words that '***Gen Musharraf should be court martialled for his sins and crimes disgracing the Pakistan Army as an institution'***.

Both the said videos are still available on youtube.

For the past five years, Gen Kayani, the incumbent Army Chief, has been keenly cultivating an image of a professional soldier who wanted democracy to continue. In continuity he decided NOT to interfere with the judicial process or to rescue Gen Musharraf from his legal miseries; thus successfully avoided the possible backlash from the general populace. Gen Talat Masood opined at that juncture that:

"It is difficult for the army to defend Musharraf at this time. It would be much worse than not defending him. The moment you start defending, you are admitting your guilt and saying that you are part of what Musharraf has done."

Answering a similar question at the **GEO TV network** on the same day of Gen Musharraf's arrest, Gen Talat replied:

"..... While his arrest may exacerbate tensions between the army and the judiciary, public pressure to put him on trial may force military leaders to remain silent. This outcome is probably acceptable for the army, which is in an awkward situation, no doubt. If the army tries to protect him in any way, they will be heavily criticized."

SC ALSO ABETTED TREASON:

The Supreme Court **on 25th April 2013**, while hearing identical petitions seeking initiation of treason case against Gen Musharraf, observed that **even parliament had no authority to ratify any act of a dictator**. That was another case that CJP Iftikhar M Chaudhry was not able to recall that he himself endorsed the same like acts of the same dictator thrice in the past; in 2000, 2002 & 2005.

Ibrahim Satti, Gen Musharraf's lawyer made special mention of the LFO, saying all the judges had taken oath under the PCO and the sitting Chief Justice Iftikhar M Chaudhry was also

among them. ***"The SC indemnified all the steps of November 3, 2007 in the Iqbal Tikka case and later the reinstated judges of SC nullified it."***

Ibrahim Satti also pointed out that the Supreme Court's verdict of 31st July 2009 in the judges case had not called for any treason proceedings against his client. He repeatedly contended that the court had no jurisdiction to take action in the treason matter, saying constitutionally the Federation was competent to launch a complaint and to take action under the treason charges. Thus the SC's verdict about treason in July 2009 judgment had no value.

On that point Justice Khilji Arif Hussain said, ***"Do you intend that the current matter should be left between your client and the federal government and the apex court should not intervene in the matter."*** The option was to leave the matter to the Federation, which would form a special tribunal to hear the case where he [Mr Satti] would present all the arguments to substantiate his client's stance.

Justice Khilji asked Satti to be focused on his contention rather than delivering arguments of the trial court level, adding that the bench was bound to give a decision on the current petitions before it.

Referring to **Ikram Sehgal's** analysis appeared in ***'the news' dated 26th April 2013; ...*** [if] Gen Musharraf violated Article 6 of the constitution, overthrowing an elected government in 1999, **the Supreme Court also became an abettor to the coup by default** when it gave him legal cover under the 'doctrine of necessity' **with some honourable judges taking fresh oath under the Provisional Constitutional Order**. Prosecution for the imposition of emergency in November 2007 is even murkier legally, restored by newly elected PM Gilani in April 2008. Why were legal proceedings not initiated through that time (in five years)?

The various allegations being levelled against Gen Musharraf included negligence leading to the assassination of Benazir Bhutto, Bugti's murder, the Lal Masjid episode, etc. Placed under house arrest, Gen Musharraf was charged with incarcerating judges after proclaiming emergency in November 2007. Looking at the speed with which he was being legally pursued, one could feel that Gen Musharraf was being hounded, negating the perception of a fair and impartial judiciary. **Certainly it was revenge.**

No case or FIR can be registered against the army, the army chief or the president or the police on internal security duties or for conducting an operation. Gen Musharraf was the president in November 2007, Zardari was the president in those days – were the FIRs registered against Zardari or the PM Gilani or PM Raja for all the killings and violence then going on in the country? How could an FIR then be registered against Gen Musharraf for Bugti, Benazir or Lal Masjid?

Issues of national importance and public interest, notwithstanding, settling of personal scores were the legal priority those days. The caretaker government sensibly decided that indicting Gen Musharraf in Article 6, the high treason, was beyond its limited mandate. **Bugti Case** - four army officers negotiating Bugti's surrender were also killed. They were killed along with Bugti when some explosives detonated bringing down the roof of the cave where the negotiations were on. If army wanted to murder Bugti, a rocket launcher fired into the cave would have been enough from a distance; could the army contingent attack the cave knowingly that their senior officers were inside.

Ikram Sehgal further opined that:

'What about Rehman Malik's rather bizarre behaviour in running off with the backup car abandoning his grievously injured leader, Benazir Bhutto, bleeding to death? Have the honourable judges gone through the findings of the UN Commission? Why should the buck stop at Musharraf's for failing to give Benazir adequate protection?'

And was it deliberate? Why not prosecute the entire chain of command from the federal Interior Ministry to the local civil administration and the police?

Justice Shaukat Aziz Siddiqui, who cancelled Gen Musharraf's bail in a bail-able offence, **got 12,000 votes as the MMA candidate in the 2002 elections from NA-54**. This raises a question of conflict of interest and fair play. **J Siddiqui was Mullah Aziz's lawyer in the Lal Masjid case, did his choice meet the parameters of justice?** Intelligentsia could understand that J Siddiqui should have avoided hearing Gen Musharraf's bail matter because he had also on 'score balancing' spree and took revenge of Lal Masjid episode on behalf of Maulana Aziz.

See another tragedy with Gen Musharraf that his case was placed before an ATC judge named Kauser A Zaidi, who happened to be a brother of Capt (r) Mansur Zaidi, supposedly once court-martialled, on the charges of being a BlackWater-XE contractor, on the orders of Gen Musharraf being the Chief of the Army Staff. However, Mr Zaidi behaved in a routine manner while sending Gen Musharraf on judicial remand.

Gen Musharraf basically suffered due to his disillusion for expecting the streets to rise in protest, raising him high in politics. Unfortunately, he excelled in choosing his allies and advisers very badly. Benefiting from Gen Musharraf's generosity and compassion, many deserted him in the countdown to his forced resignation in 2008. No doubt a patriot but patronising western liberal secularism in the name of 'enlightened moderation', Gen Musharraf created extremism that polarised the society.

Gen Musharraf's hasty departure on extremely bad legal advice from the premises of the Islamabad High Court [IHC] was played up out of proportion by the media. This also complicated matters and eroded his stature in public perception – he could have faced that adversary with grace.

In Inqilab Hall of the Pakistan Military Academy [PMA], it is carved:

"It is not what happens to you that matters but how you behave while it is happening".

CH NISAR SPILLED BEANS:

On 22nd April 2013: the interim government refused to try former president, Gen Musharraf for treason under Article 6 of the Constitution. In its reply to the apex court, the interim government said that considering, deliberating or commencing any legal proceedings under Article 6 of the Constitution would be a measure not in its mandate. The reply further said that the interim government was busy with the security of election candidates.

Justice Jawwad S Khawaja remarked that the court had been seeking an answer for the last eight days and [that day] the interim government said that nothing would be done.

Justice Khawaja further remarked that the interim government said it was not in its mandate to initiate proceedings and in the future it may say that FIR could not be lodged. The hearing of the case was deferred till 23rd April when the lawyers of Gen Musharraf would start their arguments.

On 18th November 2013; the Interior Minister Ch Nisar Ali Khan addressed an unscheduled news conference to let all and sundry know that Gen Musharraf was being put on trial under Article 6 of the Constitution, which might take the accused to the gallows in case the charge

stood proved. He told the media that procedural formalities for the purpose would start soon as the government was writing a letter to the Chief Justice Inftikhar M Chaudhry – requesting him to nominate three judges of provincial high courts to conduct the trial; a public prosecutor was also nominated for assisting the court during trial.

The interior minister could not choose a better time to deflect public attention from the Rawalpindi's major terror incident. It was Gen Musharraf who was to remain in news in the days and weeks ahead while the killings in Rawalpindi gradually went into the background.

Might be just a coincidence that it was also Ch Nisar who had proposed the name of Gen Musharraf as army chief in 1998 when PM Nawaz Sharif had forced the then COAS Gen Jehangir Karamat to step down after he proposed the establishment of a National Security Council and criticised the accountability process as lopsided. Ch Nisar had to face tremendous embarrassment when Gen Musharraf overthrew the PML[N] government in October 1999.

The trial of Gen Musharraf was expected to bring many new facts to light. For example, the nation could know who were among the supporters of Gen Musharraf's plan to impose emergency; in the proclamation of emergency he had given many names of military and political leadership. All those leaders were going to prove that they were "not" on board in case they wanted to escape consequences. But if they couldn't, they were to be tied in the same rope that of Gen Musharraf. The trial was to open a new Pandora box with no one in position to predict its likely outcome.

Chief Justice Iftikhar M Chaudhry, who had to nominate the judges to try Gen Musharraf was an aggrieved party in the case. He was the one who was pulled by the hair – as recalled by the interior minister at his news conference. A cogent question was that whether an aggrieved CJP could show the moral authority to decline setting up a panel to try his perpetrators. All senior judges of the apex court were among the 'detainees' - and thus could be called aggrieved parties; that aspect had disturbed most think tanks in the government.

Another development cropped up; a resolution was passed by the Pakistan Bar Council [PBC] saying that since the CJP was about to retire, the Judicial Commission [JC] should suspend the process for the appointment of new judges. The question was: if the lawyers body didn't like new judges to be appointed till the retirement of the CJP Chaudhry, would it be fair for the government to ask him to nominate a panel of judges to try his 'adversary' who had called him '*scum of the earth*'?

The timing of opening the new trial was also important because during the next few days the prime minister was going to appoint a new army chief. And who so was to have the decoration was supposed to follow the government's policy against Gen Musharraf. In case he had reservations, a possibility could develop that it would be difficult for the army to have a cordial relationship with the PML[N] government. If tensions started immediately with a new COAS in the driving seat, the shape of the things to come was not expected to be pleasant.

It was more so important because the entire record of the matter on which Gen Musharraf's trial was based – was dumped with the GHQ. The FIA team investigating the matter was not provided with the documents being labelled as secret. Ch Nisar had once felt sorry for advising Sharifs to appoint Gen Musharraf as COAS - another embarrassment by putting the same General on trial was ahead then.

GEN MUSH'F REFUSED TO LEAVE:

On 31st October 2013; a team comprising four senior PML[N] leaders and a former foreign minister in Gen Musharraf's tenure met him at his Chak Shehzad residence during night times trying to convince him to leave the country voluntarily as he had got bail from Session's court, next day was fixed for announcement of the judgment reserved in *Lal Masjid* case.

However, Gen Musharraf told media that he had made up his mind not to volunteer into self-exile until and unless he would be exonerated in all cases. He was not ready even to pay visit to his ailing mother in Dubai had the administration offered him ground for leaving. Gen Musharraf was arrested that month on another murder charge regarding Ghazi Abdul Rashid of *Lal Masjid* during July 2007 operation in Islamabad.

In September 2013, Gen Musharraf was charged with the murder of cleric Ghazi Abdul Rashid in the *Lal Masjid* operation. The Islamabad High Court [IHC] had ordered a first information report (FIR) to be filed against Gen Musharraf on 12th July that year but it took the police nearly 50 days to do so.

The IHC passed the order after a writ petition was filed **on 7th July 2013** by Ghazi Rashid's son Haroon demanding that the police should file a case of murder against Gen Musharraf who he said was responsible for the *Lal Masjid* operation which killed his father and grandmother. Despite the High Court's order of July 12, the station house officer (SHO) had not registered an FIR when they went to the Aabpara Police Station. Haroon had initially approached the Sessions court for an FIR but failed; then he went to the IHC.

On 10th July 2007, admittedly 102 people were killed including many students of the *madrassa* in the storming of the Lal Masjid ***Jamia Hafsa complex*** after a 12-day battle between security forces and alleged militants inside. The *Lal Masjid* Commission in its final report in March 2013, held Gen Musharraf, the then PM Shaukat Aziz and others responsible for the operation and recommended murder cases to be filed against them.

It was generally perceived that Gen Musharraf, despite falling from the fame and power, had strong affiliations and connections in the right places who got relief for him in every case. In the final analysis the general was likely to go Scot free from all cases and PML[N] led government was going to get a stigma on its forehead for nothing – that was why the above cited meeting was considered appropriate.

Earlier, Gen Musharraf was bailed out by the Supreme Court which held that there was no substantial evidence about his involvement in the killing of Baloch nationalist leader Nawab Akbar Khan Bugti. He had also secured bail in two other cases including the Benazir Bhutto assassination case. The rumours of his leaving the country were rife after he got bail in the last case, which were, however, refuted.

Two weeks later, the media brought news that top mediators of the PML[N] government appeared to have succeeded in convincing Gen Musharraf to leave the country after the later was released from a six-month house arrest at his own residence. The first step was to move the Sindh High Court for removal of his name from the Exit Control List ECL, which the court had ordered on 29th March 2013, soon after his returning home from self exile. Although the General had made the ground for leaving the country to take care of his ailing mother, but in fact he was doing so on the advice of security agencies who had warned him of serious threats to his life if he stayed back.

It seemed the history was repeating itself and Gen Musharraf was tasting the same medicine which he had prescribed for the Sharif family 13 years ago on the advice of a friendly country, Saudi Arabia, which was also a guarantor for protecting him against incarceration / execution in the treason case. The media opined that:

"It is now up to the PML-N government to put a stop on his planned exit from the country on the grounds that an inquiry is pending against him for trial for the abrogation of Constitution and slapping emergency in the country. It appears everything is going well about the government's plan to get rid of the General."

The Sindh High Court had put his name on the exit control list barring him from leaving the country till he was cleared of various court cases pending against him. In his application, Gen Musharraf had prayed that:

".....he wants to be with his mother after being released on bail in all the cases against him. His inclusion in the ECL is a violation of his fundamental rights. It was further prayed the court to modify an earlier order restraining him from leaving Pakistan without permission from courts hearing cases against him."

A division bench headed by Justice Sajjad Ali Shah had accordingly issued notices to the Deputy Attorney General and Sindh's Advocate General and Prosecutor General, asking them to respond to the application.

The days and weeks passed without any cogent development in General's trials. In the meantime, Gen Musharraf filed a petition before the IHC and the Special Court pleading that the said treason case be referred to the GHQ for the court martial as he had been an Army General. In the petition, Gen Musharraf through his lawyers had contended that:

'....he [Gen Musharraf] imposed the emergency on 3rd November 2007 as Chief of Army Staff therefore the military court was the relevant forum for his trial for any alleged offence. Also that the government is trying to deprive me of my fundamental right to a fair trial as enshrined in Article 10-A and Article 25 of the constitution by not transferring his case to the military court.'

On 23rd December 2013; the IHC's single bench dismissed the petition. Justice Riaz Ahmed Khan held that the special court had taken cognizance of the matter and that Article 6 of the constitution under which the federal government had filed the complaint against Gen Musharraf had overriding effect on the Pakistan Army Act, 1952 hence the trial could not be transferred to the military court.

On 21st February 2014; a 3-members bench of the special court headed by Justice Faisal Arab of Sindh High Court [SHC] had rejected the plea for transferring the high treason case to the military court. Then the special court had said:

"....the offences under the High Treason (Punishment) Act, 1973 are exclusively triable by the special court established under the Criminal Law Amendment (Special Court) Act, 1976 as its Section 3 (2) ousts the jurisdiction of all other courts."

On 20th March 2014, the registrar office of the Islamabad High Court [IHC] returned the petition of former president Gen Musharraf **he had filed before the court regarding his trial in high treason case under Army Act.** The registrar office held that since the special court, seized with his high treason trial, had earlier rejected an identical petition for transferring the said case to the military court therefore being the appellate forum such petition could only be filed in the Supreme Court.

On 2nd April 2015, Additional District and Sessions Judge Islamabad Wajid Ali issued warrants for Gen Musharraf over his repeated absence in the murder trial of *Lal Masjid* cleric Abdul Rasheed Ghazi. Two days later, Gen Musharraf challenged the said non-bailable warrants.

In that petition, filed through advocate Malik Tariq, Gen Musharraf contended that police had declared him innocent after a thorough investigation in the case and had placed his name in

column 2 of the investigation report, prepared under section 173 of the CrPC and commonly known as the case challan. The petition requested the court to set aside the non-bailable arrest warrants. In October 2013, local police had already submitted the *challan* to the Session's court, declaring Gen Musharraf innocent and left him at the mercy of the court.

The petition also stated that on 2nd April 2015, Gen Musharraf had to appear before a medical board constituted to ascertain his health under the directions of a Quetta Anti-Terrorism Court (ATC), where the Nawab Bugti murder case was pending adjudication. Following the ATC's order, the Secretary Health Quetta constituted a nine-member medical board consisting of surgeons, cardiologists, ENT specialists and physicians to examine the former military ruler.

The medical board at Quetta was asked to ascertain whether Gen Musharraf was suffering from some disease and whether or not he was fit to travel. The nine-member medical board had advised Gen Musharraf not to travel out of the port city.

On 19th June 2015; District and Session Judge Islamabad Kamran Busharat Mufti again issued non-bailable arrest warrant against Gen Musharraf in the same *Lal Masjid* case. The court also rejected a plea requesting complete exemption for Gen Musharraf from appearing in the court. Police was ordered to arrest the General and bring him in court on 24th July 2015. The lawyers panel of Gen Musharraf again approached the IHC to get that warrant vacated.

On 28th July 2015, Islamabad High Court [IHC] set aside the said non-bailable arrest warrants issued for Gen Musharraf in the murder case of *Lal Masjid*. IHC Justice Aamir Farooq referred the matter back to the Session's judge to decide on the plea for exemption of Gen Musharraf, on the basis of new medical report submitted by the counsel for former president.

Earlier, **on 7th July**, the IHC, while overlooking nine Doctors Board's report of April 2015, sought a fresh medical report from Gen Musharraf's counsel after an initial hearing on the petition. However, in the new medical report, the doctors once again advised the former military ruler not to travel outside Karachi. The report was placed before the special bench seized with the '**high treason trial**' of Gen Musharraf and the three members' bench considered it.

Even the ATC Islamabad considered the report and exempted Gen Musharraf from personal appearance in the judges' detention case.

On 27th October 2015; the special court expressed displeasure with the prosecution for not filing an amended complaint by nominating the co-accused of former president Pervez Musharraf in the high treason case. The case was adjourned till 27th November because the matter was sub-judice in the IHC. The IHC was considering the petitions filed by former PM Shaukat Aziz, former CJP Abdul Hameed Dogar and former federal minister Zahid Hamid against their implication in the treason case.

The trial in the treason case was stopped in December 2014 when the IHC admitted three identical petitions filed by Shaukat Aziz, Abdul Hameed Dogar and Zahid Hamid against the Special Court's order. The Special Court on 21st November 2014, had ordered the federal government to include these three persons in the treason case as they had allegedly facilitated the imposition of the 3rd November 2007 emergency for which Gen Musharraf was facing the treason trial.

Dr Tariq Hassan, the special prosecutor of the FIA, contended that the court could proceed with the trial of Gen Musharraf as there was no stay order. However, Justice Faisal Arab remarked that under the CrPC, there should be a joint trial of the main as well as the co-accused persons.

Moreover, the amended complainant had not been filed before the Special Court yet by the secretary interior after including the co-accused in it. The court was told that the IHC had

reserved its verdict on the identical petitions of the co-accused; and the federal government had also expressed willingness before the IHC to proceed against the 'co-accused' persons.

Ansar Abbasi, through his essay in **'the News' of 20th November 2015** claimed that:

*"Sh Akram the Special Prosecutor, had told him that he had received federal governments fresh instructions to proceed with the high treason case - **also that the high-treason trial of Gen Musharraf was not welcomed by the military establishment.** Though the government had initiated the former dictator's trial on the apex court's instructions yet it faced serious problems from what had been generally referred to as the remnants of Musharraf.*

The 2014 decision of the Special Court to include former PM Shaukat Aziz, ex-CJP Abdul Hameed Dogar and former Law Minister Zahid Hamid as abettors in the high-treason case had disappointed the government, which appeared to have lost interest in the case."

In this nine-page judgment of the IHC, Justice Noorul Haq Qureshi and Justice Aamir Farooq severely admonished the federal government and the Federal Investigation Agency (FIA) for poor investigation and directed it for re-investigation.

The case was adjourned till 12th December 2015.