

SUPERIOR JUDGES' COMMITMENT TO JUDICIAL INDEPENDENCE IN PAKISTAN

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ABSTRACT

Independence of judiciary cannot depend solely on the structure of the government and the judiciary's formal role within it. It also depends on the judges themselves. This paper aims at examining the judicial commitment to independence of judiciary in Pakistan. This study covers collective role as well as individual role of the judges of the superior courts in Pakistan from 1947 till the restoration of Judges in March 2009. It elaborates the importance of integrity and character of the individual judges for judicial independence. This paper critically studies the role of those judges who by their behaviour undermined the independence of the judiciary and severely damaged the confidence of the public in the judiciary of Pakistan.

INTRODUCTION

Independence of judiciary does not mean merely independence from outside influences but also from those within. A former justice of India, Mr. Verma, is of the opinion that dangers to judiciary from within have much larger and greater potential to harm than dangers from outside (Verma, 2000). Professor Dam differentiates between structural independence and behavioral independence. The latter is more important than the former (Dam, 2006). The former term as used here, refers to the way in which government is constitutionally structured. Does that structure secure independence of judiciary? Behavioral independence resides in the judge as a person. Is the judge independent? An independent judge is not just dispassionate and free from bias, but willing to take difficult position to resist political or any external pressure, to reject any temptation of

corruption and to make truly independent decisions. Prof. Dam has rightly referred to the British constitutional system, in support of his view that behavioral independence is more important and more effective than structural independence in the context of independence of judiciary (Dam, 2006). The British judiciary has not traditionally been structurally independent is shown by the intermingling of judicial, executive and legislative functions at the highest level. Until the Constitutional Reform Act 2005 was passed, the Law Lords who formed the Highest Appellate Court in the British Judiciary also sat in the House of Lords – the upper house of the British Parliament. More amazing was the position of Lord Chancellor, who presided over the Law Lords as well as the House of Lords and was a member of the cabinet also at the same time. The Law Lords transferred to the newly

created Supreme Court in 2009 under the Reform Act 2005. That is why it is said that the structural arrangement in Britain made structural judicial independence unlikely, yet still the fact is that British judiciary, particularly at the highest level, was known for its independence (because of behavioral independence). Behavioral independence was acquired after a long struggle in which many British judges were willing to stand up to the British sovereign at great personal risk during the Tudor and Stuart periods, even before the Act of Settlement of 1701, gave judges life tenure on good behavior (Dam, 2006).

Although the independence of the British judicial system was established by behavioral independence rather than structural independence, it does not follow that a developing country like Pakistan can afford to neglect structural independence. Structural independence and behavioral independence can support each other and in a country seeking to overcome legalized abuse of the executive authority, it is mars to see judicial independence “fully secured” if one does not foster both.

JUDICIARY AS AN INSTITUTION

The preceding history of Pakistan tells the fact that judges could not develop the judiciary as an institution. They never responded collectively as an institution to a threat or direct interference in the independence of judiciary. For example the Chief Justice of Pakistan, Justice Yaqoob Ali Khan was arbitrarily

removed by the military government in 1977. The whole process was accepted by the judiciary with very ease without any murmur on its part. The judges of superior courts had been asked four times (i.e. in 1977, 1981, 2000 and 2007) by the military dictators to take a new oath under Provisional Constitutional Order (PCO). They have never been able to act collectively and to resist as an institution, the executives measures undermining the prestige as wells as independence of the judiciary. Each time except in 1977, a good number of judges of the superior judiciary were arbitrarily removed by the military regime, simply not inviting them to take new oath. Their only fault was that they were not under the influence of the government and were apparently known as independent judges. There were also certain noble judges who individually refused to take new oath under PCO and preferred to sacrifice their prestigious service at the altar of their conscience.

The most shocking and painful episode was the oath taking of several judges of the superior judiciary under PCO 2007, promulgated on November 3, 2007 by General Musharraf as Chief of Army Staff. Anticipating something unusual, several senior judges of the Supreme Court including the Chief Justice remained in the Supreme Court till late afternoon on Saturday (November 3, 2007). As they came to know about the declaration of Extra-Constitutional Emergency and promulgation of PCO

2007, they immediately assembled in a court room. In an unprecedented move, seven judges of the Supreme Court headed by Chief Justice Iftikhar Muhammad Choudhry overturned the PCO and restrained the Chief of Army Staff, Corps Commanders, Staff Officers and other civil and military officers from acting under PCO. The court directed the President Musharraf and Prime Minister Shaukat Aziz not to take any action contrary to the independence of the judiciary and asked the judges of the Supreme Court and the High Courts, including their Chief Justices, not to take an oath under the PCO or follow any other extra-constitutional step. This order of the court was distributed among the media men present at the time (Dawn, The News, The Nation etc dated November 4, 2007). The same was communicated to all Chief Justices and judges of the Supreme Court and High Courts (The News, 4-11-2007). In spite of the clear order from the Supreme Court, there were certain judges who took new oath under PCO without any hesitation and in complete violation of the Supreme Court's direction. Though this time majority of the judges resisted the powerful establishment but their stand was destroyed by some self-centered judges. On November 3, 2007, 13 judges out of 17 Supreme Court judges including the Chief Justice of Pakistan and 49 judges out of 77 judges of the High Courts refused to take oath under PCO. Justice Abdul Hamid Dogger was sworn in as Chief Justice of Pakistan. Within few days some other

judges also switched over to the government's side. At the end 5 Supreme Court judges and 40 High Courts judges took oath under PCO 2007. A very good opportunity of collective stand as an institution has been missed by the judges who preferred their personal perks and privileges over institutional interests.

Judges of the superior judiciary not only failed to collectively resist the onslaught on the independence of judiciary but they have been so docile and passive that they could not protest even at humiliation of their brother judges. For example, during General Yahya Khan's martial law in 1969, as Sub-Martial Law Administrator, General Abu Bakr Usman Mitha issued a notice of contempt of martial law to two justices of the West Pakistan High Court and both judges were asked to appear before the General. They were blamed in the notice for staying an order of military court. According to Justice Nasim Hassan Shah – one of the two judges to whom the notice was issued – almost all judges of the West Pakistan High Court kept silent and was avoiding taking open stand and supporting their colleagues against General Mitha (Shah, 1997). Another shocking episode of judges' disgrace happened in 1981, during General Zia's regime, where three judges of the Lahore High Court were returned from the Governor House because they were not to be given oath. Other brother judges present including the Chief Justice of the Lahore High

Court did not take any stand for the colleagues who were so blatantly insulted and humiliated (Khan, 2001).

On March 9 2007, the Chief Justice of Pakistan, Justice Iftikhar Muhammad Chaudhry was summoned by General Musharraf to his army office, there he was pressured to quit. On the refusal of the Chief Justice to do accordingly, he was detained in the army office up to five hours. In the meanwhile another judge of the Supreme Court, Justice Javid Iqbal, was appointed and sworn in as acting Chief Justice of Pakistan. The irony is that the fellow judges of Justice Iftikhar instead of inquiring about the well being of their Chief and ordering of his production and availability in the Supreme Court, rather they went ahead and took oath as was desired by another Chief (COAS) and people saw them congratulating each other on this victory. Sweets were presented to one another on this happy occasion (Malik, 2007).

In short when it is time of judicial unity you can always find judges, who will come forward and act against their own peer. Solidarity amongst the judges would be a better guarantee than that offered by a Constitution which could be abrogated by a stroke of the sword. Respect and stature of institutions grow with sacrifices. High traditions are never established by taking apologetic attitude. A question comes to one's mind. What would have happened if all of the judges of the Supreme Court and High Courts, at any of the past four occasions, had

declined to take oath under PCO? In a society like Pakistan, even a dictator would think a hundred times before sacking the entire judiciary. In the days of General Ayub Khan's regime, where the Chief Justice of Lahore High Court (one of the noble exceptions) learnt that a writ issued by the High Court was not going to be honored by the government, the Chief Justice threatened Ayub Khan that the whole Court would resign in bloc. It is said that Chief Justice was carrying the letters of resignations of the judges in his pocket. There upon a strong dictator like Ayub Khan backed down (Samdani, 2004). But this example is unique in the judicial history of Pakistan.

ROLE OF THE INDIVIDUAL JUDGES OF THE SUPERIOR COURTS

The role of the individual judges in achieving and preserving the independence of judiciary can hardly be overemphasized. Similarly a judge's adverse role is also more injurious to the judicial independence than any other factor. A former Indian judge says "the functioning of institutions and the conduct of the individual judges is the sine quo non for independence of the judiciary. The damage caused by the institution, either by its decision----- or by the conduct of the judges is far more injurious to the independence of judiciary than the external assaults" (Anklesaria, 1991).

It takes years and decades of dedicated and conscientious work to build an institution, according to Justice Khanna,

but institutions can be destroyed over night by the ambition, waywardness, pettiness or weakness or by one or the other of these taints at the hands of, sometimes, adventurist or self-seekers and at other times of petty minds or those who cave in under fear and even those well intentioned but carried away by exuberance of their ideas (Khanna, 1985).

History tells us that great institutions have sometimes been damaged by internal forces proven to violate established code and norms of behavior. The inevitable effect is that they erode the institution from within and defile its image. The same thing happened with the judiciary of Pakistan. The majority of the judges of the superior courts in Pakistan, except on one occasion (i.e. the judges' resistance to PCO 2007); instead of protecting the image and integrity of the judiciary from the onslaught of the external factors, they facilitated the external factors in trespassing the independence of judiciary. Before the British left this country, one of them remarked that of all the institutions, they were leaving behind, judiciary was one which could never come to harm except from inside (Samdani, 2004). This is exactly what befell Pakistan's judiciary.

The judges of the superior courts take an oath that they will "preserve, protect and defend the Constitution" and they will do justice "according to law without fear or favor, affection or ill-will" (6th Schedule of the constitution of Pakistan). Article II of the Judicial Code of

Conduct provides that a judge shall be careful to preserve the dignity of the court. Article III directs a judge to be above reproach, and for this purpose to keep his conduct in all things, official and private, free from impropriety or even the appearance of impropriety, to avoid infractions of the law even in the smallest things. Certain judges particularly Chief Justices of the superior courts had been involved in certain activities which could not be reconciled with the oath taken by the judges as well as with the Judicial Code of Conduct.

In spite of the fact that judges were bound by their pious promises made under the oath to preserve, protect and defend the Constitution, some of them presented their services, for legal advice/legal drafting, to the actors responsible for assault on the Constitution, disruption in the legal order and destruction of the political institutions of the country. Examples start from the tenure of Justice Munir as Chief Justice of Pakistan. Justice Munir used to give his legal advice, on important legal and constitutional issues to President Iskandar Mirza and General Ayub Khan – the First Martial Law dictator (Khan, 1967 & Mahmood, 1992). Justice Munir was also helpful in drafting the Laws (Continuance in Force) Order 1958, promulgated by martial law regime of General Ayub Khan. He stated, after his retirement, that a few hours after declaration of martial law, he was called by the

President to Karachi and he took the first available plane. He continued, "I was to scrutinize the draft instrument which the law secretary had been required to prepare-----and in a meeting which was attended by the President and Chief Martial Law Administrator who was accompanied by a young army officer, the law secretary and myself, I suggested certain modifications. The instrument was entitled the Laws (Continuances Force) Order and purported to be promulgated in the name of the President."(Mahmood, 1992).

The Chief Justice of Pakistan having associated himself with the drafting of the Laws (Continuance in Force) Order 1958, then presided over the Bench of the Supreme Court which gave validity to this order in Dosso's case. An analyst termed this shocking episode as a "mockery of judicial propriety and judicial independence"(Mahmood, 1992).

General Zia's martial law received the blessings of the judiciary right from the beginning. The General, who started function as CMLA by imposing martial law in July 1977, consulted the Chief Justice of Pakistan on almost every important legal matter (Samdani, 2004). After taking over the government, General Zia drew to the Supreme Court to meet Chief Justice Yaqoob Ali Khan in seeking his constitutional advice and the steps to be taken in the matter. It is no secret that Justice Yaqoob advised him to put the constitution in "abeyance"

(Kadri, 1990). Again it was Chief Justice Yaqoob Ali Kahn who recommended advocate Sharif-ud-din Pirzada to be the Attorney General and chief advisor of General Zia's regime (Kadri, 1990).

In Begum Nusrat Bhutto's case (1977) the Supreme Court not only validated General Zia's martial law but General Zia was empowered to perform all acts of legislative measures which could have been made under 1973 Constitution including the power to amend the constitution. Justice Dorab Patel, a judge of the Supreme Court Bench that validated General Zia's coup, narrated in later days, that the aforesaid underlined words were not included in the typed judgment circulated amongst members of the Bench and these words were later added by Chief Justice Anwer-ul-Haq after getting the judgment signed from other members (Khan, 2005). General (Retd) K. M. Arif -one of the confident generals of General Zia- has further elaborated the same shocking episode in these words: "One day before announcement of the judgment, the Chief Justice met Sharifuddin Pirzada (Attorney General of General Zia regime) at a party and told him that the judgment would be announced the next morning, at 9 am, adding that the court had decided to hold the promulgation of martial law as legal. He enquired from Pirzada if he would be attending court. Pirzada asked if the power to amend the constitution was also conceded to the chief martial law administrator. Justice Anwer replied in negative. 'In that case'

replied Pirzada, ‘the government would have to swear in a new chief justice.’ Anwer inserted the words, ‘including the power to amend it’ (constitution) in the sentence in his own hand.” (Arif, 2001)

In May 1980, General Zia called the Chief Justice of Lahore High Court, Justice Mushtaq Hussain and the Chief Justice of Pakistan, Justice Anwer-ul-Haq for consultation. Both Chief Justices prepared a draft for the General to make amendment in the Constitution. This draft was written by Justice Mushtaq Hussain in his handwriting and Justice Anwer-ul-Haq scrutinized it and made some corrections in it. This draft became Article 212A of the Constitution (Patel, 2004). Article 212A was added in the Constitution through amendment order promulgated on May 27, 1980 barring the High Courts from making any order relating to the validity of martial law regulations or martial law orders. It restricted the writ jurisdiction of the High Courts. Furthermore, the provision in Article 212A was violation of the express direction in the Supreme Court’s judgment in Begum Nusrat Bhutto’s case that the High Courts and the Supreme Court would continue to exercise their powers of judicial review against all orders of martial law authorities.

After the coup on October 12, 1999 General Pervez Musharraf held two meetings on the same day, with the Chief Justice of Pakistan seeking his consultation and advice over the new

administrative set up of the government and other related constitutional and legal issues (Zafar, 2002). The extra official consultation and personal advisory function of the Chief Justices had not been limited only to military dictators. The practice of appeasing the executive by giving extra official advice had been carried on by the Judiciary during civilian governments also. For example, President Farooq Laghari, after dissolution of Benazir Bhutto’s government on November 5, 1996, invited the Chief Justice, Justice Sajjad Ali Shah to President House, where the Chief Justice was briefed of the entire situation which led the President of Pakistan to dismiss Benazir Bhutto’s government (Zafar, 2002). The Chief Justice could not realize that in the near future, he could be on a bench to decide over the legality of the President’s action of dissolving the Assembly. The Prime Minister Nawaz Sharif intended to enact anti-terrorism law. In August 1977, Prime Minister Nawaz Sharif, Chief Justice of Pakistan Justice Sajjad Ali Shah, Chief Minister of Punjab Shahbaz Sharif (Nawaz Sharif’s younger brother) and Majeed Nizami of the *Nawa-i-Waqt* group met at the Lahore residence of Nawaz Sharif to discuss the proposed anti-terrorism law and to arrive at some settlement (Mian, 2004). One fails to understand how the Chief Justice of Pakistan could hold talks with Prime Minister and other persons about a proposed law. Under what authority could he arrive at any settlement over a proposed law that was apparently

unconstitutional? The same law, when enacted, was challenged in the Supreme Court and some provisions of the law (Anti-Terrorism Act 1997) were held by the Supreme Court unconstitutional, hence declared void (Mehram Ali versus Federation of Pakistan, 1998).

The Constitution of Pakistan is based on the doctrine of separation of powers. It clearly defines the domain of each organ. The judiciary is entrusted the power to interpret the law and if any provision of law violates any fundamental right guaranteed by the Constitution, the judiciary can strike it down as ultra vires of the constitution. The judiciary or the Chief Justice has no power under law and constitution to propose legislation or participate in any such process.

EXTRA-JUDICIAL DUTIES ON THE PART OF JUDGES

Under Article III of the Judicial Code of Conduct, judges are required to avoid extra-judicial duties or responsibilities, official or private to the greatest possible extent. But judges of the superior courts particularly of High Courts do accept extra-judicial duties, like appointment as acting Governors, membership of the Universities' bodies like Senate and Syndicate.

Under article 104 of the Constitution, the President of Pakistan may direct a person to act as Governor of a province when the Governor of that province is absent from Pakistan or is unable to

perform his functions of his office due to any cause. It must be noted that Governor of a province in Pakistan is not an elected person but he is appointed by the president after consultation with the Prime Minister and holds office during the pleasure of the President (Article 101 of the Constitution of Pakistan). Whenever the office of the Governor of a province becomes vacant, due to his absence or inability to function, usually the Chief Justice of the High Court of the concerned province is directed by the President to act as a Governor of that province. In the early history of Pakistan, the Chief Justice of High Court was casually appointed as acting Governor. It became practice from days of General Zia's regime.

The direction of President to Chief Justice of High Court to act as Governor was challenged on several occasions. In most of these cases main controversy was, whether a Chief Justice of a High Court could be directed by the President to perform as acting Governor or not? The decisions of the courts were that the Chief Justice of a High Court could be directed by the President to act as Governor in absence of Governor from Pakistan or where the Governor is unable to perform his functions due to any cause (Rizvi, 2005).

The disappointing episode in this context was appointment of all Chief Justices of the High Courts as acting Governor of their respective provinces by General Zia's at the dawn of his martial law in 1977, with the consent of the Chief

Justice of Pakistan. Under post-proclamation order # 2 of 1977, acting Chief Justices were appointed for the High Courts. The High Courts remained under acting Chief Justices for long time. In this way new trend, detrimental to the independence of judiciary, was started and usually the Chief Justices of the High Courts were kept acting even by the political executives, after General Zia's regime, till 1996 when it was discarded by the Supreme Court in the judgment of Al-Jihad Trust's case 1996.

This practice of appointment of Chief Justice of High Court, on several accounts, is not good rather detrimental to the independence of judiciary. Article 175 of the Constitution of the Pakistan provides for the separation of judiciary particularly from the executive. The willingness of the Chief Justice of the High Court to function as acting Governor goes against the concept of separation of powers. Secondly when the Chief Justice assumes the executive office as acting Governor, he becomes head of the provincial executives. And his executive's orders or administrative actions or provincial legislation ascended to by him, maybe challenged in the court of law of which he is the Chief Justice. In such an eventuality, will not his colleagues/judges feel embarrassment in over-ruling the executive's order of their own peer? Thirdly the judiciary, by accepting the office of the acting Governor, gives an opportunity to the executives to get ride of an unwanted Chief Justice during

some important and crucial constitutional cases' proceedings. For example in 1990 petitions were filed in the Sindh High Court challenging the President's order of dissolving Benazir Bhutto's government. The petitions were entertained by the then Chief Justice of Sindh High Court, Justice Sajjad Ali Shah and a bench of five judges headed by the Chief Justice was formed for the hearing of the constitutional petitions fixed for September 24, 1990. On September 19, 1990 the Governor of Sindh went to Saudi Arabia for *Umrah* (a religious pilgrimage). The Chief Justice of Sindh High Court was appointed as acting Governor. The initial tour of Governor was for three days. But it was extended on the pretext of his illness. He stayed abroad up to disposal of the petitions. After rejection of the petitions, the Governor came back and the Chief Justice was relieved to resume his own duties (Shah, 2001). Justice Sajjad Ali Shah was appointed as acting Governor just to keep him away from the bench hearing the petitions against the dissolution of Benazir's government.

The appointment of Justice Shahab-ud-din, a judge of the Federal Court, as acting Governor of East Bengal Province in 1955 caused disastrous consequences for democracy in Pakistan. (The Province of East Bengal was a province of Pakistan later renamed as East Pakistan, separated in 1971, and adopted the name of Bangla Desh.) As Tamiz-ud-din Khan's case moved to the Chief Court of Sindh, Justice Shahab-ud-din

was temporarily assigned by the government to fill the office of Governor of East Bengal. The appointment was unexpected and unusual because it was practice to have Chief Justice of High Court of the province fill in for an absent Governor. The Governor General replaced Justice Shahab-ud-din with S.A. Rehman, the Chief Justice of Lahore High Court, as acting judge of Federal Court. He has served in the Lahore High Court under Chief Justice Munir. Justice Shahab-ud-din was not only a strong minded as Justice Munir but had already taken position on the core issue in Tamiz-ud-din Khan's case that is the Governor General's assent to the constitutional legislation (McGrath, 2000). Chief Justice feared that with the Justice Shahab-ud-din and Justice Cornelius on the Court, he might not be able to carry the majority of the court with him. So Justice Munir requested Governor General to get justice Shahab-ud-din out of the way so that he could manage the majority of the court in his favor (Khan, 2005).

The fourth draw back of the appointment of the High Court's Chief Justice as an acting Governor is that the first priority of every judge must be an even and speedy administration of justice. By assuming the function as an acting Governor, the basic function of the judge, that is, administration of justice, will certainly suffer. Lastly, the Chief Justice appointment as acting Governor is not in conformity with Article VII of the Judicial Code of Conduct which

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provides, "Extra-Judicial duties or responsibilities, official or private should be avoided to the greatest possible extent".

It is noteworthy that 18th constitutional amendment passed in 2010 has stopped the misuse of the above referred provision of the Constitution by adding new provision that in the absence of the Governor of a province, the Speaker of the Provincial Assembly of the concerned province shall be acting governor of the province.

FAVOR TO JUDGES DUE TO THEIR OFFICES

Article VIII of the Judicial Code of Conduct, provides that a judge must refuse everything which comes as a favor due to his office. The code of conduct asks for refusal, on the contrary some judges had been found requesting for favor. During the earlier days of General Zia's martial law, the Chief Justices of the High Courts were appointed as acting Governors of their respective provinces. They wanted to import for their personal use a duty free Mercedes car each. The federal law secretary opposed the proposal on the ground that by accepting the office of the Governor, the Chief Justice did not cease to be judges and to import a car in such a manner was not among the judge's privileges. Therefore it was inappropriate for them to do so. But the military government wanted to oblige the Chief Justices. So the CMLA referred the matter to the Chief Justice of Pakistan. Instead of refusing to give

advice as he was not the government advisor, he wrote back an opinion which accorded with the wishes of the government (Samdani, 2004). Chief Justice Anwer-ul-Haq could not realize that his opinion was inconsistent with the article VIII of the Judicial Code of Conduct.

Several governments allotted residential plots to the judges of the superior courts to win over their loyalty (Khan, 2001). In 1986, under a scheme, plots were allotted to almost all judges, save few ones, of the Sindh High Court by the Chief Minister of Sindh, Ghous Ali Shah. When a judge pointed out to the Chief Minister, in an informal meeting, that by allotting plots of land to some of the judges, he had compromised the position of the judiciary, his reply was that he had been pressed hard by some of the interested judges (Mian, 2004).

In March 2007, President General Musharraf sent a reference to the Supreme Judicial Council to conduct an inquiry against the Chief Justice of Pakistan who was accused of misconduct. It was alleged in the reference that the Chief Justice had got his son, Arslan Iftikhar, admitted to Bolan Medical College, Baluchistan in 1996 on the recommendation of the Chief Minister Baluchistan. The posting of Arslan as Section Officer in civil secretariat Baluchistan, was allegedly made, outside of merit. His subsequent postings and transfers were allegedly possible due to special favor with him.

One of the allegations among others was that the Chief Justice of Pakistan had been using seven official vehicles whereas one car was allowed for him (The News, March 21, 2007). But all these remained mere allegations because no inquiry about the allegations was conducted as the reference against him was held by the Supreme Court void and illegal. The agitating lawyers, members of the civil society and other critics of the reference against Justice Iftikhar Muhammad Chaudhry, were not debating the allegations, nor were they defending the allegations, they were critical about the timing of the reference and the ideas behind the reference which were, according to them, based on prejudice, bias and personal interests of General Musharraf.

Chief Justice Iftikhar challenged in the Supreme Court the reference against him as well as the composition of the Supreme Judicial Council. One of his objections against the composition of the Supreme Judicial Council was that the acting Chief Justice Javid Iqbal was not entitled to sit in the Supreme Judicial Council and conduct inquiry against him because Justice Javid Iqbal had also got his two daughters admitted in the same medical college on the nomination of the Chief Minister of Baluchistan and got his son-in-law appointed (The News, March 19, 2007).

Article IX of the Judicial Code of Conduct says that a judge should, in his judicial work and his relations with other judges, act always for the maintenance of harmony among all courts and the

integrity of the institution of justice. There are several examples of gross violation of this Article IX of the Judicial Code of Conduct. Once it was violated by almost all judges of the Supreme Court of Pakistan, that is, the removal of Justice Sajjad Ali Shah from the office of the Chief Justice of Pakistan in 1997 by a Bench of Supreme Court consisting of ten judges. The revolting judges succeeded with clear support of Nawaz Sharif's government, in removing their own senior peer with disgrace and in unprecedented way. Justice Sajjad Ali Shah, once Chief Justice of Pakistan and an honorable brother judge of the other Judges of the Supreme Court was sent to his home even without a reference in his honor. All these judges of the Supreme Court were bound to "preserve the dignity of the court" under Article II of the Judicial Code of Conduct and "to maintain harmony in relations with other judges and integrity of the institution of the justice" under Article IX of the Code of Conduct.

CONCLUSIONS

Independence of judiciary does not mean merely independence from outside influences but also from those within i.e. from the judges of weak character and doubtful integrity. It goes without saying that a judge having a weak character cannot be a good judge. Without good judges, an independent and competent judiciary will remain only a dream. Judges having weak character and doubtful integrity are more detrimental

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to judicial independence than any other external factor. To protect judges from damages which emanate from sources outside there are many others who can help, so far as the dangers from within are concerned, judges are the one primarily responsible for them and judges are the ones primarily who can avoid them.

The foregoing study demonstrates that, unfortunately, the judiciary in Pakistan miserably lacks behavioral independence. Consequently, the image of the judiciary had been lowered in the eyes of the public, the dignity of the judiciary tarnished and judicial independence surrendered at the preference of the judges' personal gains, self-interests and official perks and privileges.

Although this paper is for a limited period as stated in the abstract yet it will not be out of context to say few words about the present superior judiciary of Pakistan. After restoration of the judges of the superior courts in 2009 due to Lawyers Movement, the judiciary particularly the Supreme Court and the High Courts have dared to function as per law without accepting any influence/pressure. That is why the public confidence in the superior judiciary has been restored to great extent. The difference between the past judiciary and present judiciary is not due to structural independence but due to behavioral independence.

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