

ANALYSIS OF JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY IN PAKISTAN

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ABSTRACT

Independent judiciary is much needed for true rule of law; safeguarding of fundamental rights and checking of misuse of government powers. At the same time judicial accountability is a vital component of judicial independence. This paper studies the historical background, theoretical and factual position of judicial independence and judicial accountability in Pakistan.

INTRODUCTION

The importance and need of independence of judiciary in modern state can hardly be over emphasized as the role of the court has been changed. In the earlier period of history, the court was to settle disputes mostly of civil nature between private citizens or to determine the guilt of the persons accused of offences and the punishment to be imposed upon them. One of the essential functions of the modern court is as the arbiter of disputes between the states and the individuals. Due to the multifaceted function of the government, it is acquiring more and more powers. Acquisition of most powers by any human institution including a government which too operates through a human agency is always connected with the danger of abuse of power. The liberties of the individuals face real danger from the abusing of powers by the government machinery. The universally known quote of Lord Acton, 'power tends to corrupt and absolute power tends to corrupt absolutely' is true even today as was in past and it applies to every nation, every government and every society. It, therefore, has become essential that the most power of the government in

modern society must be cushioned with safeguards for an individual's rights.

Consequently the judiciary must be rested with power to ensure the protection of those rights of the individuals and to see that the powers by the government are not abused and such powers are exercised in accordance with the laws enacted for the purpose. As Alexander Hamilton pointed out that limitation on government could be preserved in practice no other way than through the medium of courts of justice and without this all reservations of particular rights or privileges would amount to nothing (quoted by Wallace, 1998). This vital jurisdiction of the court can effectively and properly be exercised by an independent judiciary. Independent court is the most vital and indispensable condition for guarantying rule of law and safeguarding fundamental rights particularly rights of minorities (Khanna, 1985). Justice Clifford Wallace is of the same view that independence of judiciary is vital for preserving a system of liberty and rule of law Independent judiciary is now-a-days accepted as an essential trait of free democratic society.

Thus the need for judicial independence is not for judges or the judiciary per se, but for the people, so that the Rule of Law is ensured, the rights and liberties guaranteed by law are protected, the abuse or misuse of powers by the government machinery is checked, political victimization is disallowed etc. It is a fundamental principle that no judiciary can function effectively unless their tenures and conditions of services their salaries and privileges are guaranteed either by constitution or statute. To check unauthorized exercise of powers effectively judges must be beyond the reach of those who would transfer or remove them because of their decision. Similarly judges must have legal immunity for their judicial action being called in question by an authority other than a judicial authority.

When we speak of judicial independence, the question of judicial accountability comes unbidden, for they are interdependent. The Chief justice of Malaysia very beautifully expresses this phenomenon, "Indeed independence is a vital component of a judge's accountability since a judiciary which is not truly independent, competent or possessed of integrity, would not be able to give any account of itself." Then he stresses on the accountability. "Thus judicial accountability is an indispensable to judicial independence, for an unaccountable judge would be free to disregard the ends that independence is supposed to serve" (Abdullah, 2002). However judicial accountability must be developed, consistent with the principles of judicial independence and integrity. The purpose of the judicial accountability must be to advance the cause of justice. Judicial independence is a means to the end of justice for all, since independence is not for the personal benefit of the judges but for the protection of the people.

This paper studies the theoretical as well as factual position of judicial independence and judicial accountability in Pakistan. The judicial system of Pakistan may broadly be divided into two categories, that is, constitutional courts which are also called superior courts and lower courts or district courts. Constitutional courts are established by the Constitution of Pakistan whereas lower courts are created by ordinary laws. This paper is limited to examine judicial independence and judicial accountability of superior judiciary in Pakistan.

Judicial Independence as an International Obligation:

Judicial independence has been recognized as a universal human right: "Every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in determination of his rights and obligations and of any criminal charge against him" (UDHR, 1948). The seventh UN Congress on the prevention of crime and the treatment of offenders, held at Milan in 1985, formulated and adopted 20 Basic Principles to assist the member states in their task of securing and promoting the independence of judiciary. These Basic Principles on Independence of Judiciary were endorsed by the General Assembly Resolutions 40/146 of December 13, 1985. The first principle declares that "the independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary". Article 14 (1) of International Convention on Civil and Political Rights reiterates the independence of judiciary in these words: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law,

everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". International Commission of Justices emphasized on the principle of independence of judiciary in its New Delhi deliberations in January 1959, by stating that "an independent judiciary even though appointed by the Head of the State, is an indispensable requisite of a free society under the rule of law" (quoted by Haq, 1993). So an independent and impartial judiciary is universally recognized as a basic requirement for the establishment of the Rule of law, an inevitable and inseparable ingredient of a democratic and civilized way of life. It is, now, not only domestic requirement but an international obligation also of the governments to provide and preserve the independence of judiciary.

Judicial Independence in Pakistan:

The judges in Pakistan enjoy the legal immunity for their judicial action under ordinary law whereas the services and privileges of judges of the Superior judiciary are protected by constitutional provisions. The Judicial Officers Protection Act 1850, provides that no judge, magistrate, justice of peace, collector and other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction. It has been provided in the Pakistan Penal Code that nothing is an offence which is done by a judge when acting judicially in the exercise of any power, which is or which in good faith he believes to be given to him by law (Section 77 of PPC). Section 135 (1) of the Civil Procedure Code protects a judge, a magistrate or other judicial officer from arrest under civil

process while going to, presiding in or returning from his court.

The superior courts of Pakistan have been empowered under Article 204 of the constitution and the Contempt of Court Act 1976, to punish a person for contempt of court in accordance with law. A person accused of having committed contempt of court may be punished with simple imprisonment which may extend to six months or with fine or with both; provided that the accused, at any stage, may submit an unconditional apology and the court, if satisfied that it is bona fide, may discharge him or remit his sentence (S. 4 of PPC).

Services of the judges of the superior court are protected under the Article 209(7) of the constitution which ensures that a judge of the Supreme Court or of a High Court shall not be removed from office except as provided by the Article.

Historical Background of Judicial Independence in Pakistan:

A reader, not well acquainted with the judicial history of Pakistan, will have a misconception from the foregoing discussion that the judges of the Superior Courts in Pakistan have completely been independent. They enjoy constitutional protection and guarantee against arbitrary removal or termination. Again such conception is in contrast to the factual position. Article 209(7) of the constitution provides protection to the judges of the Superior Courts against arbitrary removal from service but on the contrary several judges have been removed arbitrarily and not under the procedure laid down by Article 209. Unfortunately, the constitution of Pakistan 1973, in some aspects, is a self contradictory document. Some provisions of the constitution provided for the removal of a judge of a High Court in obvious contradiction to the Article 209. If a judge of a High Court did not accept his transfer

to another High Court under Article 200 or appointment as a judge of the Federal Shariat Court under Article 203C, he would cease to be a judge and would be deemed as retired. In past several judges of High Courts had lost their offices under these provisions of the constitution. Recently these articles have been amended in Eighteenth Constitutional Amendment 2010 and the provisions in contradiction to Article 209 have been abolished.

In addition to the removal of judges under these Articles (200 & 203C) of the constitution, many judges have arbitrarily been removed from their offices during military regimes. More than 90 judges of the Superior Courts including Chief Justices were arbitrarily removed by military dictators. In September 1977 General Zia removed the Chief Justice of Pakistan Justice Yaqoob Ali Khan. Under Provisional Constitution Order (PCO) 1981 promulgated by General Zia four judges of the Supreme Court including the Chief Justice of Pakistan and more than a dozen judges of High Courts including the Chief Justice of Baluchistan High Court were arbitrarily removed from their services. The same process was repeated by General Musharraf in January 2000 where six judges of the Supreme Court including the Chief Justice of Pakistan and seven judges of the High Court lost their offices which were protected and guaranteed by Article 209 (7) of the constitution. The Chief Justice of Pakistan, Justice Iftikhar Muhammad Choudhry was suspended in March 2007 by General Pervez Musharraf and kept under undeclared house arrest up to five days. Justice Iftikhar challenged his suspension in the Supreme Court and in the result of the court's ruling he was restored. The most shocking and painful episode is the PCO 2007 issued by General Musharraf on November 3, 2007. Under PCO 2007 twelve judges out of 17 judges of the

Supreme Court including the Chief Justice of Pakistan and 48 judges out of 77 judges of the High Courts including two Chief Justices of two High Courts were arbitrarily removed from their offices and they were kept under house arrest for more than three weeks. The deposed Chief Justice Iftikhar Muhammad Chaudhry was under house arrest till March 21, 2008. His detention came to an end when the New Prime Minister of Pakistan, Yusuf Raza Gilani announced freedom for all arrested judges after his election from the National Assembly as Prime Minister of Pakistan.

During the period of military regimes, unfortunately Army has ruled Pakistan for longer period than politicians, the constitutional protection becomes meaningless. The judicial history of Pakistan has another unique example of removal of the Chief Justice of Pakistan Justice Sajjad Ali Shah by order of his associate judges with open support of the Executive in 1998 but not in accordance with procedure laid down in Article 209.

Judiciary after Restoration:

As above stated, on November 3, 2007, General Musharraf arbitrarily removed 60 judges of the superior courts including the Chief Justice of Pakistan. That is why, General Musharraf's Declaration of Emergency on November 3, is regarded a Coup against Judiciary. Lawyers started a movement for restoration of the unconstitutionally sacked judges of the Superior Courts. Lawyers' Movement was supported by civil society and several political parties. For the first time in the history of Pakistan, the nation took a strong stance. Lawyers started a Long March from Lahore towards Islamabad on March 15, 2009 to compel the executive to the judges. The leadership of Pakistan Muslim League (Nawaz), Pakistan Tahrek-e-Insaf and Jamat-e-Islami fully supported and

participated in the Long March. The protesters were still on the way, the Prime Minister of Pakistan announced the restoration of all judges including the Chief Justice of Pakistan. The people of Pakistan made history on that day.

In the beginning it was all about 'Judicial Independence'. The period between March 9, 2007 (i.e. suspension of the Chief Justice) and Nov. 3, 2007 (i.e. Musharraf's second coup) is characterized as a struggle for judicial independence. But after restoration of the judges in March 2009, the battle moved on from judicial independence to judicial activism.

The real test of judiciary comes when it decides a case of high profile against executive. In Pakistan executive has always been in dominating position. During the last three and half year, the superior judiciary of Pakistan has emerged as vibrant pillar of the state and delivered many land mark judgments on issues/cases of national importance like the National Reconciliation Ordinance (NRO); 18th Constitutional Amendment; Pakistan Steel Mills privatization; waived off loans; the PCO Judges; parliamentary committee decision; breaches in embankments during 2010 floods; Scandal of National Insurance Company Ltd; Rental Power Scandal; illegal promotion of 54 bureaucrats; Hajj Corruption; appointment of NAB Chairman and Memogate Scandal etc. All these judgments irked the powerful executive. That is why constant tension between executive and judiciary remained during this period.

Confrontation between the two institutions started after the Supreme Court's judgment, on December 16 2009, to declare the NRO null and void and directing the executive to send a letter to the Swiss government for re-opening of cases against the then President Asif Ali Zardari. Later on the Chief Justice formed a special bench

for the implementation of the NRO-related judgment. The proceedings of this bench had profound repercussion on relationship between the judiciary and the executive as due to the tension between the two institutions, several officials; for example, two attorney generals, one law secretary, NAB chairman and several others left their offices.

The Supreme Court decided to initiate contempt of court proceeding against the then Prime Minister of Pakistan for not writing the letter to the Swiss government regarding the reopening of cases against President Zardari. Ultimately a bench of the Supreme Court issued a short judicial order dated June 19, 2012, for removal of the Prime Minister Yousuf Raza Gilani, who enjoyed the support of an overwhelming majority in the National Assembly.

It has also been witnessed that since his reinstatement in 2009, the CJP has not avail his annual vacations or special leave. Everyone is appreciating his stamina of work. A judge of the SC, recently retired, Justice Muhammad Sair Ali has expressed his assessment of the CJP in these words: 'He has the soul of a puritan, heart of a mountain and mind like a crystal ball. He fearlessly raises issues, artfully battles with them and prudently resolves them with ease' (Quoted by Malik, 2012).

Legal Accountability of the Superior Judiciary in Pakistan:

Pakistan experimented several methods of judicial accountability in its very short history. Under the Government of India Act 1935, which Pakistan inherited from the British Government a judge of the Federal Court and of a High Court could be removed from his office by the order of the Governor General of Pakistan on the ground of misbehavior or of infirmity of mind or body if the Judicial Committee of

the Privy Council, on a reference being made to them, reported the judge ought, on any of the said grounds, to be removed. The function of the Judicial Committee of the Privy Council was given to the Federal Court of Pakistan under the Privy Council (Abolition of Jurisdiction) Act 1950 passed by the Federal Legislature of Pakistan. The first Constitution of Pakistan 1956 changed the method of removal of a judge of the superior courts. Under Article 151 of 1956 Constitution a judge of the Supreme Court could be removed by the President on an address by the National Assembly and as per Article 169 of the same Constitution a judge of a High Court could be removed by the President if, on a reference made by him, the Supreme Court recommended judge's removal. In the second constitution of Pakistan, promulgated in 1962, the Supreme Judicial Council was introduced for the removal of the judges of the Superior Courts. The Supreme Judicial Council was retained in the interim constitution of 1972 and in the constitution of 1973. The wisdom behind the idea of the Supreme Judicial Council was to give more protection to the judges of the superior courts in the light of the independence of judiciary and to make them free from the blackmailing of the politicians as complaints against them will be inquired not by politicians but by their own peers.

Article 209 of 1973 constitution provides the forum and the procedure for the removal of a judge of the Superior Courts. Clause (2) of Article 209 constitutes the Supreme Judicial Council consisting of the Chief Justice of Pakistan, two next Senior Judges of the Supreme Court and two most Senior Chief Justices of the High Courts. Under clause (5) of the Article, the President of Pakistan is empowered to direct the Council to inquire into the matter / complaint against a judge of the Supreme

Court or a High Court. The President can initiate such enquiry on information received from the Council itself or from any other source. Such inquiry against a judge of the superior courts can be conducted on either of the following allegations:

The judge is incapable of performing his duties by physical or mental incapacity; or is guilty of misconduct. Clause (5) of the Article has been amended in August 2002 by the Legal Framework Order 2002 prior to the amendment the Council could not start inquiry on its own initiative. After the amendment, the Council can start inquiry itself on information received by the Council or from any other source.

If there is difference of opinion amongst the members of the Council, according to clause (4) of the Article the opinion of the majority shall prevail and the report of the Council to the President shall be expressed in terms of the view of the majority. After inquiry into the matter, if the Council, finding the judge incapable of performing duties of his office or guilty of misconduct, recommends removal of the judge, the President "may" remove the judge from his office. The expression "may" conveys that the recommendation of the Council is not binding on the President. Reading this provision along with Art 48 (1) of the constitution, it is clear that the President shall exercise this power on the advice of the Prime Minister or cabinet.

Pakistan's History of Legal Accountability of the Judiciary:

In Pakistan no proper attention has been given to legal accountability of the judiciary. The Supreme Judicial Council has not even handedly been utilized. In the whole judicial history of Pakistan, since 1947 to 2007, there are only six instances of inquiry being conducted against the judges of the superior courts. In 1951,

inquiry was conducted against a judge of Sindh High Court Justice Hassan Ali Agha. Allegations against him could not be proved and he was exonerated. The second reference was made against a judge of West Pakistan High Court, Justice Akalaque Hussain in 1958 during the period of General Ayub Khan's Martial law, and he was removed on the ground of misconduct. But the impression was that the cause of his removal was his leftist's thoughts as at that time, Pakistan was actively collaborating with the anti-socialist bloc (Ali, 2007). In 1969-70 the Martial Law of General Yahya Khan started inquiries against two judges of West Pakistan High Court. Justice Fazal-e-Ghani was accused of selling a gun he brought from Britain for his personal use, hence allegedly committed misconduct. The judge did not contend the allegation and resigned from the High Court. Justice Shaukat Ali was accused of misconduct on the ground of having shares in his family firm. He was removed from the service on the recommendation of the Supreme Judicial Council. During the third material law regime of General Zia, a Presidential reference was sent to the Supreme Judicial Council in 1979, to conduct inquiry against a judge of the Supreme Court, Justice Safdar Shah, who fled away from the country just to save his life. The sixth reference was against the Chief Justice of Pakistan, Justice Iftikhar Muhammad Choudhry in March 2007, again by a President cum Chief of Army Staff General Musharaf. In this instance the Supreme Court set aside the reference as void and unconstitutional.

The following points may be deducted from the discussion of the reference against the judges of the superior courts:

- Except the first one, all references against the judges of the superior

judiciary were sent by military dictators.

- All the references, except the first and the last, were made when the constitution was either abrogated or held in abeyance.
- The idea behind the creation of the Supreme Judicial Council was to strengthen the independence of the judiciary, but the Supreme Judicial Council, somehow, stifles the independence of the judiciary. It has become a vehicle in the hands of the Executive against an independent judge whom it can undermine by threatening that his case would be sent to the council.

Analysis of the Judicial Accountability in Pakistan:

After the discussion of the judicial accountability ones, therefore, can draw one of the following conclusions:

- That all judges of the Superior Courts, particularly appointed or working since 1962, (the Supreme Judicial Council has been introduced first in the Constitution of 1962) except for the cases mentioned above, have not suffer from any mental or physical infirmity or none of them have ever committed any act of misconduct.
- OR
- That the Supreme Judicial Council and its procedure regarding the accountability of judges are not effective due to some inherent drawbacks or have been kept dormant through these years except for the cases mentioned above.

The first conclusion is very difficult to justify because it is more than clear that not all the judges who had served over these years were angels. At least they were human beings and members of a society where constantly increasing corruption no

longer remained a shameful act. There are several instances where misconduct of the judges of the superior courts have been either alleged by senior advocates, or acknowledged by the Supreme Court in hearing appeals or recommended by the Chief Justice of Pakistan, but for reason not known, no action has been taken in this regard.

In April 2001 the Supreme Court while deciding the appeal filed on behalf of Benazir Bhutto, found the conviction of Benazir Bhutto and her husband politically motivated, hence it was set aside and the case was sent back for retrial. The Supreme Court also found Justice Qayyum of Lahore High Court and Justice Rashid Aziz Khan (former Chief Justice of Lahore High Court) a Judge of Supreme Court, guilty of bias and misconduct. Justice Rashid Aziz was specifically cited by the Supreme Court as being instrumental (as the then Chief Justice of Lahore High Court) in asking Justice Qayyum to try the cases of interest to the then government. But the judges, found guilty of misconduct by the highest court of the country were not referred to the Supreme Judicial Council for conducting inquiry against them. It was only after great outcry and constant criticism from the bar and media that the judges were pressurized by the government for resignation (The NEWS, June 28, 2001) and they resigned in the end of June 2001.

In November 1997, the then Chief Justice of Pakistan Justice Sajjad Ali Shah recommended to the President of Pakistan to direct the Supreme Judicial Council to conduct inquiry against a judge of the Supreme Court Justice Saeeduzzaman Siddiqui. The President wrote to the Prime Minister of Pakistan for having his advice to direct the Supreme Judicial Council to conduct inquiry against the said judge. The government did not take any action as the said judge was in its good book (Shah,

2001). Another former Chief Justice of Pakistan also laments over the lack of judicial accountability by saying, “during my tenure as the Chief Justice, I had asked the President and the Prime Minister to refer cases of judicial misconduct against the judges who did not enjoy a good reputation, but there was no response” (Mian, 2004). The Chief Justice of Pakistan, Justice Iftikhar Muhammad Choudhry, showed his non-confidence in the composition of the Supreme Judicial Council, which was to conduct inquiry against him as three members out of the five members of the Council, according to him, were facing different serious charges of misconduct (The NEWS, March 12, 2007). The advocate for the Chief Justice also objected to the composition of the Council on the ground that two members of the Council Justice Abdul Hameed Dogar, a judge of the Supreme Court and Justice Iftikhar Hussain, Chief Justice of Lahore High Court had references pending against them (The NEWS March 18, 2007). Another eminent lawyer Habibul Wahab Ali-Khairi filed an application before the Supreme Judicial Council on July 23, 2004, leveling serious allegation of misconduct against the Chief Justice of Lahore High Court Justice Iftikhar Hussain. No procedure of judicial accountability has been processed in all these complaints/allegations of misconduct against the various judges of the superior courts.

The foregoing episodes, which are obviously not the only unhappy instances of the misconduct on the part of the judges of the superior judiciary, convincingly lead us to the above second conclusion, that is, the machinery of the judicial accountability in Pakistan is dormant and not effective. The wisdom behind the creation of the Supreme Judicial Council was to regulate and discipline the judges of the superior

courts by the judiciary itself, but Supreme Judicial Council proved to be a failed institution so far as its function of judicial accountability is concerned. It has rather, in the words of an eminent lawyer, degenerated into a judges' club meant primarily to protect rather than punish judges for their wrong doings (Khan, 1999).

Unlike other civil services of Pakistan, the judicial accountability is provided with one option, of course very extreme option, that is, removal from services under a procedure provided by Article 209 of the constitution on grounds of proved misconduct or incapacity. Such removal from office may be for gross misconduct and should not be always resorted to, except in extreme cases. But judges do indulge in many kinds of misconduct which may require serious notice and even punishment, falling short of removal from office. But in the system of judicial accountability applied in Pakistan, no other method of check or ensure is available except removal from service.

All other civil services' laws in Pakistan provide various kinds of punishment such as termination of service, compulsory retirement, reversion to lower grade/position, stoppage or withdrawal of annual increment, sending on compulsory leave, suspension, notice of warning. Due to non-existent of minor punishments in the judicial accountability for minor misconduct or small wrongs the commission of some acts by the judges of the Superior Courts not befitting with them, go un-noticed and unchecked. Every big evil is the result of small evil.

Public Accountability of the Judiciary:

Much more than executive arbitrariness is judicial arbitrariness (Khanna 1985). The effective and corrective way is the public

censure of the judicial excesses (Iyer, 1987). Again to have judicial independence and allowing the public criticism of the judges at the same time seem a paradox because there is no office which is so infinitely powerful and at the same time frightfully defenseless as that of a judge (Khanna, 1985). The judges from the nature of their office, cannot reply to criticism nor can they enter public controversy, much less of a political nature. But at the same time we are to remember the wisdom of Chief Justice William Howard Taft who said, "Nothing tends more to render judges careful in their decisions and anxiously solicitous to do exact justice, than the consciousness that every act of theirs is to be subject to the intelligent scrutiny of their fellowmen and to their candid criticism" (quoted by Abdullah, 2002). The right of the public to criticize judgments is an important feature of free speech and for the judiciary to be accountable as a public institution (Das, 2005). Judicial independence was debated by experts from Commonwealth, at Latimer House in London in June 1998, resulting in a set of guide lines for good governance called "Latimer House Guidelines". Article VI (1) (b) of the Latimer House Guidelines declares that legitimate public criticism of judicial performance is a means of ensuring accountability and contempt proceedings are not appropriate mechanism for restricting legitimate criticisms of the court.

It is to be admitted that free criticism is the life breath of democracy even if it over steps limits according to Justice Krishna Iyer. One important corrective is freer criticism of judges and judgments, factually founded, responsibly worded and correctionally oriented (Iyer, 1987). The USA Supreme Court speaking through Burger, gives its opinion about public

criticism: “criticism of court administration, even when expressed in ‘ill-mannered’ terms with ‘unlawyer-like rudeness’ cannot form the basis for action (quoted by Iyer, 1987).

Public accountability of the judiciary though recognized by all civilized nations in modern world is like a forbidden tree in Pakistan. Public criticism even of the judgments is not allowed. A former judge of the Supreme Court of Pakistan describes thus: “Many our political battles are fought in the courts, but newspapers are discouraged from performing their duty of informing the public about matters debated in the courts” (Patel, 2004). The ages old law of contempt of court is always there to suppress the voice which tries to expose the weaknesses in the administration of justice. The law of contempt in Pakistan is always subjectively and selectively applied. More often than not, by the ruthless enforcement of the law of contempt the judges manage to successfully suppress the truth, shield the evil, allow the act complained of to go unpunished and instead punish the complainant himself. Thus by applying the law of contempt all approaches to the issue are closed and the expositor is effectively silenced in the interest of preserving ‘the dignity and independence of the judiciary’. Perhaps the administrators of justice in Pakistan do not remember the prophetic saying of Lord Denning: “Justice has no place in darkness and secrecy. When the judge sits on a case he himself is on trial if there is any misconduct on his part, any bias or prejudice there is a reporter to keep an eye on him” (quoted by Anklesaria, 1991).

CONCLUSION:

To summarize in possible few words, on one hand even the services of the judges of the superior courts in Pakistan are not really protected and guaranteed where as

on the other side judicial accountability is also not in practice. Consensus is found among the jurists that competent and independent judiciary is first prerequisite for good governance, for real democracy, for rule of law and for enforcement of fundamental rights. And the competency and independence of judiciary cannot be preserved without effective and constant judicial accountability both legal and public accountability.

In past history Pakistan badly needs both judicial independence and judicial accountability. But after restoration of judiciary in 2009, the superior judiciary has emerged as an independent judiciary and delivered many landmark judgments that too against the powerful executive of Pakistan without any fear and favour. The CJP introduced many reforms for the betterment of the judicial system such as the New Judicial Policy enforced in May 2009. Another important factor has been seen that very few dissenting notes came by the SC judges in high-profile cases and almost all decisions in such cases were delivered unanimously by the SC judges.

The sitting superior judiciary has been able to restore the public faith and confidence in the judiciary. That is why the presence of the politicians in the SC remained dominant during the last five years. Despite resolving issues in parliament, parliamentarians appeared in the superior courts against each other in different cases. Faisal Saleh Hayat of the PML (Q) and Khawaja Asif of the PML (N) filed petitions against awarding of contracts of Rental Power Projects (RPPs) to companies that have consumed 14% money of the total project in advance. Similarly, in the case relating to breaches in embankments, Marvi Memon, a PML-N leader, appeared before the court; while in Hajj corruption case one federal minister stood as a witness against another federal minister. In the

Reko Diq case 22 Senators have become party. Pakistan Tehreek-e-Insaf (PTI) chief Imran Khan also approached the SC for the preparation of electoral lists.

In an unprecedented move, Chief Justice Iftikhar set a rare example of giving jobs on merit on January 22, 2011. The CJP removed 15 of his own appointed additional judges of High Courts declaring them as not competent to continue as regular judges of High Courts. Such decision has never been witnessed in the history of the country.

The Judiciary should develop the attitude of tolerating public bona fide criticism of orders/judgments of the court. The less exercise of contempt law would improve the image of judiciary. The judicial independence achieved by lawyers' movement still needs constant support of vigilant Bar and active Civil Society of Pakistan.

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