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ضیائے تعلیم



SUPERIOR
COLLEGE OF LAW

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ڈاکٹر اویس فاروقی

رسودہ نظام بدلنے کیلئے ٹیکنو کریٹس اور تعلیم یافتہ نوجوان آگے بڑھیں

DOCTRINE OF NECESSITY

Pakistan's poodle judiciary learnt its lessons well

A retired senior judge recently told of an incident that reveals the contempt with which Pakistan's army holds the judiciary. Justice Nasir Aslam Zahid, who had served on the Supreme Court and had been Chief Justice of Sindh, told nationwide Geo TV on June 4 that when the Supreme Court judges went to take their oath of office under the new military government in 2000, they were presented with empty pieces of paper from which to read.

The higher court judges had been ordered on January 19 to take a new oath under a provisional constitutional order, some three months after General Pervez

without seeing any text. Well, at least some of them did: Justice Saeed-uz-Zaman was not among them. Army personnel had surrounded his house while a colonel kept him in his chair, and out of the bench. It seems that the army was trying to spare him the indignity of the oath-taking pantomime.

The story would be funny were it told on a comedy programme and not by a retired judge. Unfortunately, it only serves to remind us of how Pakistan's judiciary has debased itself over the last half-century. General Musharraf may have said in recent weeks that he is "nobody's poodle", but there is no question that the judiciary is his poodle--or that of whichever general happens to be in power at the time.

Whenever Pakistan's top judges have been faced with a critical decision on the constitution or military rule, they have gone to the door of General Headquarters in order to be told what to iterate in the Supreme Court. The iteration is the same, and its genesis was in a strange idea known as the "doctrine of necessity".

In 1954, just seven years after the creation of Pakistan, Governor General Ghulam Mohammad dissolved the first constitutional assembly and the government of Prime Minister Khawja Nazim Uddin. The president of the assembly, Moulvi Tamiz Uddin, challenged him in the

Sindh High Court and won: the dissolution was held to be illegal and unconstitutional. On appeal to the Chief Court of Pakistan, which was later renamed the Supreme Court, Chief Justice Munir decided in favour of the governor general. The basis for his decision was the "doctrine of necessity": meaning that to preserve the country the constitution had to be abandoned.

From this point on, a so-called doctrine, rather than the constitution, national or international law, became the basis for every decision on the legitimacy of a military takeover. With one blow, Chief Justice Munir destroyed the foundations of constitutional rule in Pakistan. In one move, he opened wide the door for the army to walk into government any time it wanted.

It didn't take too long for that to happen: in 1958 General Ayub Khan imposed martial law, dissolved both assemblies of parliament and abrogated the 1956 Constitution. His coup was challenged in the Supreme Court, which held--wait for it--that it was legal, in accordance with the doctrine of necessity. Thanks to this judgment, the general ruled for nearly 11 years, during which time all civil liberties were suspended.

In 1977 General Zia-ul-Haq dissolved parliament and abrogated the constitution, which had been unanimously approved by all political

With one blow, Chief Justice Munir destroyed the foundations of constitutional rule in Pakistan. In one move, he opened wide the door for the army to walk into government any time it wanted.

Musharraf had taken power and scrapped the constitution. According to Justice Zahid, when they were to take the oath the following day, the registrar gave the judges blank forms from which they were to recite. Egged on by Justice Irshad Hassan Khan, who then became chief justice, they took their oaths

parties in 1973. Nusrat Bhutto of the Pakistan People's Party, which had been in power, again went to the court for relief. Perhaps he should have known better. The chief justice toddled off to a briefing at headquarters before announcing the court's judgment in favour of, and in front of, General Zia. The decision, needless to say, was again based on the doctrine of necessity. The military then enjoyed another 11 years of power uninterrupted by the courts. In 1979 it also used the Supreme Court to execute the former prime minister, Zulfikar Ali Bhutto; the chief justice was again seen hanging around General Headquarters beforehand.

History and the court both repeated themselves in 2000, when Zafar Ali Shah challenged the constitutionality of the October 12 military coup of the year before. At the time that General Musharraf took power he appeared to have strong political backing. Still, when the chief justice was asked about the constitutionality of the coup, he said that any petition coming to the court would be decided on its merits. One day before the Supreme Court was due to make its decision, off he went to headquarters for a briefing. (This is the same guy who goaded bemused fellow judges with their blank slips of paper on January 20 to "hurry up, take the oath [because] we have to save the country".) The following day the full bench judgment not only upheld the coup but went so far as to give General Musharraf unlimited power to amend the constitution as he

pleased. Yes, you guessed it: the doctrine of necessity was pulled out and shook around one more time. Some in Pakistan's legal circles claim that this decision was literally written outside the court and handed to the judges to pronounce without even having had time to read it

Perhaps we should feel sorry for Pakistan's judges for having lost their dignity to the country's generals. Perhaps they only have themselves to blame.

properly. Pakistan's poodle judiciary has been taught and learnt its lessons well. On but a few occasions in the last half-century has the Supreme Court declined to use the doctrine of necessity, and even then the attendant circumstances have meant that its actions were meaningless. After General Ayub Khan was forced out of power by a mass movement in March 1969 he handed over the reins to the Army Chief of Staff, General Yahya Khan. A petition was filed against the transfer of power. Two and a half years later, after the general was also already removed, the Supreme Court was so brave as to declare him a "usurper" rather than invoke its favourite doctrine. Then in 1993, after the president sacked the government, the court for once decided against the takeover. However, after the decision, the army chief intervened: the prime minister "resigned" and new elections

were announced. The chief justice lost his job. Since Chief Justice Munir sacrificed constitutional law for expediency, the judiciary of Pakistan has been forced into a role not as the arbiter of justice but as the defender of the armed forces. However illegal or unconstitutional its actions may be, under the doctrine of necessity the army can do no wrong. The doctrine can at any time be used to throw out an elected government and keep the constitution in abeyance. Under these circumstances, the people of Pakistan can only ask, what is the point of an election or a constitution at all? By subordinating itself to the military, Pakistan's judiciary long since passed over the threshold of reality and into a fantasy land. It is a land in which you can read other people's judgments as if they are your own. It is a land in which you can swear on a spotless piece of paper. It is a land in which you must wear a blank expression and carry around an empty mind. It is a land in which the law exists in a vacuum.

Perhaps we should feel sorry for Pakistan's judges for having lost their dignity to the country's generals. Perhaps they only have themselves to blame. The problem is that because of their failings, because of their misinterpretations, and because of their stupid doctrine, millions of others have lost far more: their lives, their homes, their hopes, their democracy, their human rights, their country. And it is for this that Pakistan's poodle judiciary must ultimately be held responsible*✽

Present status of independence of judiciary must be protected at all cost

from page 08

remains incomplete

and may be a trivial and superficial. In order to understand the present situation that as already elucidated above, independence of judiciary is not an end rather it is beginning of a new era and formation of a civilized society we ever fascinated while gazing towards the excellent judicial system of the West.

The impartiality and independence only help in securing and maintaining judicial impartiality. It is possible that a judge may be absolutely independent but he still may be partial in many ways and, thus, his independence may not be of any avail because the end result may not be just, fair and correct as suppose to be.

There are many cases like current wave of terrorism, etc. wherein the judge's personal safety and security of his immediate family is an issue and a judge who is weak from within may find it hard to resist the pressure.

There may also be cases where a judge disagrees with majority of his colleagues/ brother judges on an issue of principle and in such matters only a judge possessing influence of personality can obtain a stand according to his convictions.

History is full of examples where judges with no sanctuary of tenure and missing proper protections, amenities or salaries had been taking bold and independent decisions.

It was surely their personal metal and obligation to their profession rather than anything else that had made them truly independent.

A judge known to be afflicted with his own individual

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prejudices may be independent from irrelevant influences but he cannot be professed by the public at large as an independent judge if he does not make a decision on his cases with an independent mind.

It is, thus, but natural that every judge tends to look at the facts of a case from his own individual perceptions and this is why many a time different judges handling the same case and the same set of facts arrive at different conclusions on the facts, therefore if the ideal of independence of judiciary is to be achieved in any meaningful manner then a system has to be evolved whereby the individual judges are to be trained to look at and examine the facts of a case from a position which is entirely detached from the judge's own personality.

In some parts of the civilized world despite a great fanfare about independence of judiciary, judges are selected and appointed to the hierarchy of courts, including the apex court with particular reference to their known conservative or liberal approach towards the national or moral issues.

With great respect it is considered such a practice to be negation to impartiality of judiciary and can only be sympathized with the litigant taking his case to such a judge when he knows in advance that the judge openly holds and is expected to express a view other than that which the litigant is about to canvass before him.

It may be difficult to achieve the highest status of independence of judiciary as we done it after a great struggle and sacrifices and now it become our prime duty to protect it and make endeavor to maintain it once for ever for ourselves and for generation to come*

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The Power of Woman

There were 11 people - ten men and one woman - hanging onto a rope that came down from a helicopter.

They all decided that one person should get off, because if they didn't, the rope would break and everyone would die.

No one could decide who should go, so finally, the woman gave a really touching speech saying how she would give up her life to save the others, because women were used to giving up things for their husbands and children, giving in to men, and not receiving anything in return.

When she finished speaking, all the men started clapping*

In general, there are three stages that most legal systems progress through:

from page 09 offense of a dog bite, the penalty for which was to surrender the dog wearing a three-cubit-long wooden collar. Solon even made laws to serve as guidelines for the spacing and placement of houses, walls, ditches, wells, beehives, and certain types of trees.

Family Laws

Solon also created many family laws, which were laws that regulated the behavior of men and women. He wrote laws on allowances in marriage and adoption, as well as laws concerning inheritances and supporting roles of parents. Penalties for these laws were not set, but were enforced by the head of the particular family. Linked to family laws were laws concerning women, whose role in Greek law was extremely small. This is because they were under constant supervision by their *kyrios*, or "official guardian." Most often this was a girl's father, or if she were married it was her husband. Because of this supervision, women's role in law was limited to rare court appearances, where she was either presenting evidence in a homicide case, or was being displayed along with her family to try to evoke pity from the jury.

Public Laws

Public laws dictated how public services were to be provided and how public functions should be conducted. Solon contributed some of these laws. He wrote

laws that required that people who lived a certain distance from public wells needed to dig their own, laws that forbade the export of agricultural goods except olive oil, laws that restricted the amount of land a man could own, laws that allowed vendors to charge any kind of interest rate they wanted to, and even laws that prohibited dealing in perfume.

Procedural Laws

Procedural laws were guidelines that told judges how to use other laws. These laws told in step-by-step detail how law should be enforced. Procedural laws even included such minute details as how many witnesses must be called forward for someone to be found guilty of homicide.

Law Givers

Law givers were not rulers or kings, but appointed officials whose only job was to write laws. Most of the lawgivers were middle class members of the aristocracy and many were *arkhons* before becoming a law giver. The officials in the government wanted to make sure that law givers would not take sides or be a part of just one group, otherwise laws might be unfair. Because of this, law givers were not a part of normal government, and they were considered political outsiders.

One of the most famous law givers in Athens was Draco. His homicide law is the first known written law of Ancient Greece. He was appointed law giver in Athens after a failed Cylon attempt to

overthrow the government. Draco earned a reputation for being extremely severe with his punishments, and it is even argued that he set death as the penalty for all offenses. He served as law giver until he was succeeded by Solon in about 594 BC

Solon was appointed law giver in Athens because he did not take any sides. He was known to be a fair man, and so he had full support from all of the various political parties. When he replaced Draco, Solon threw out all of the old laws except for the homicide law, and he created many new laws, especially in the categories of tort and family laws.

Courts and Judicial System

In order to have punishments carried out, the Ancient Greeks needed some sort of system to "try," "convict," and "sentence" guilty persons. To do this, they created a court system. Ancient Greek courts were cheap and run by what people today would call amateurs. Court officials were paid little, if anything, and most trials were completed in the same day, private cases even more quickly. There were no "professional" court officials, no lawyers, and no official judges. A normal case consisted of two "litigants," one who argued that an unlawful act was committed, and the other argued his defense. The audience, or "jurors," would vote for one side or the other. The result was either a guilty or not guilty,

LEGAL SYSTEM

after which another vote by the jury would decide the punishment.

Oratory Rhetoric

Oratory rhetoric was divided into epideictic, deliberative, and forensic. Deliberative was used to address the people in the general Assembly. Forensic was delivered in the law courts. These are usually called political oratory because they both deal with government. Epideictic or display oratory included all other orations, such as those delivered during festivals, public rites, or moral discourses. While under Macedonian rule oratory rhetoric languished and Athens became a provincial town. Other cities succeeded Athens, the "School of Greece" as Pericles had called her. However, oratory eventually degenerated into declamation.

The Areiopagos

The Areiopagos is reputed to be the most ancient homicide court in Greece. It first tried cases of homicide, but later began to try other cases as well. It was made up of former arkhons, or magistrates. Actual arkhai (plural of arkhon) were court officials who could conduct a preliminary hearing, but who otherwise had no power over the court or its proceedings. Among the arkhai was a board of eleven members called the Eleven. The Eleven was in charge of prisoners and executions. They had the right to arrest any criminal that had been denounced to them, and could even execute the criminal if he was 'ep autophoro' - caught in the act. conduct a preliminary hearing, but who otherwise had no

power over the court or its proceedings. Among the arkhai was a board of eleven members called the Eleven. The Eleven was in charge of prisoners and executions. They had the right to arrest any criminal that had been denounced to them, and could even execute the criminal if he was 'ep autophoro' - caught in the act.

Around the fifth century BC, the Areiopagos was split into four types of courts, each trying a different type of homicide case. The Areiopagos remained but now dealt primarily with religious and political cases.

The four new courts were the Prutaneion, which tried cases of death caused by an animal or inanimate object, the Palladion, which dealt with cases of involuntary homicide and the killing of non citizens, the Delphinion, which tried cases of justifiable homicide, and the Phreatto, which tried those who, while in banishment for involuntary homicide, were charged with murder or intent to harm. These courts were ruled by a group of about fifty-one members, called the ephetai. These members were selected from the Areiopagos and remained in charge of the courts until about 403 or 402 BC, when they were replaced by dikastai, democratically selected jurors.

Dikastic Courts

With the emergence of the ephetai came a new age of dikastic courts. Previous courts were replaced with one, which heard every kind of case. Regular public prosecutions were referred to as a graphe, and a dike was a private prosecution. The

SUPERIOR COLLEGE OF LAW

dikastai had the power to decide the law, to decide the facts, and to pass sentence on the party/parties involved. To qualify as a member of the dikastai, one needed to meet three requirements. The potential dikastes needed to have full citizen rights, be at least thirty years old, and he had to be one of the six thousand fully qualified citizens that took the dikastic oath at the start of that year. For normal cases the dikastai was made up of about 500 members, and for private cases either 200 or 400, depending on the sum involved. Fulfilling the requirements of the dikastai did not require the individual to then be available to try cases every day. Each panel of dikastai was simply made up of those legitimate dikastai members that showed up that day. Those that joined the dikastai for that day would oversee a typical case consisting of a dispute between two litigants. The verdict in the case was a vote for one or the other. Verdicts in Athenian courts were not subject to appeal, and sometimes the dikastai would vote after the trial to find a penalty as well.

Ancient Greek law is a branch of comparative jurisprudence relating to the laws and legal institutions of Ancient Greece. Greek law has been partially compared with Roman law, and has been incidentally illustrated with the aid of the primitive institutions of the Germanic nations. It may now be studied in its earlier stages in the laws of Gortyn; its influence may be traced in legal documents preserved in Egyptian papyri;

BIOGRAPHY

Those who criticize the current government for passing the Women's Protection Bill would do well to remind themselves of the long and extremely effective legislative career of Pakistan's founding father, Mr. Mahomed Ali Jinnah, as a member of the central legislative assembly of India.

Indeed the greatest tragedy of the subcontinent is that both India and Pakistan have chosen to selectively remember this great man, especially by choosing to ignore his politics prior to the



SUPERIOR COLLEGE OF LAW

day lead Muslim League to hilt against the Congress, defeated the Muslim Leaguer Rafiuddin Ahmad from Bombay to successfully enter into the legislative council. Who could imagine then that this young Congressman barrister would one day end up becoming Muslim League's most famous leader.

Barely a month into the assembly, he took on Lord Minto by denouncing the "cruel and harsh treatment that is meted out to the Indians in Natal" in support of Mohandas

Jinnah's legislative career

Yasser Latif Hamdani

Pakistan Movement. However if both India and Pakistan were to revisit Jinnah's pre-1937 Indian nationalist career, we would find much to celebrate together, even if we continue to differ on his later role as the champion of Muslim separatism.

Jinnah's legislative career spanned over close to four decades, out of which 37 years were spent serving the cause of India's progress. Most ironic was his very first election in 1910, where Congressman Jinnah, who was to one

Gandhi, who too was to become his principal foe in the future. When Lord Minto reprimanded him for using "harsh language", he replied, "Well my Lord, I should feel inclined to use much harsher language."

In 1912, Jinnah alienated many of his Muslim supporters by giving his wholehearted support to the Special Marriage Amendment Bill, which sought to provide mixed religion marriages legal protection. He argued that the bill would provide equality but he was opposed

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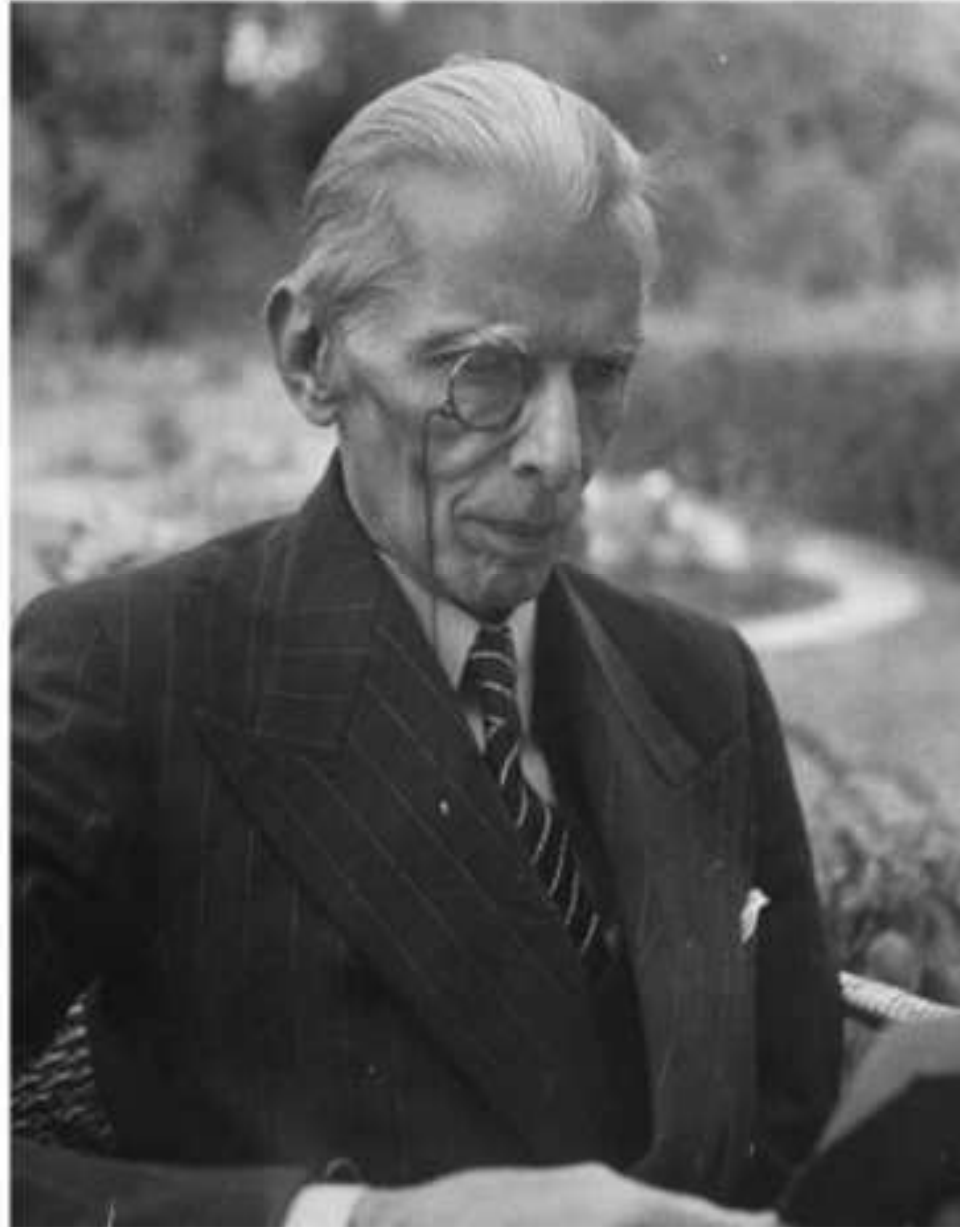
He stood up to argue that universal elementary education ought to be "compulsory". He declared unfettered by any opposition religious or otherwise:

by many members on the grounds that the bill contravened the Koran. Undaunted Jinnah asked the law member who had opposed the bill if he "would deny that there is a certain class of educated and enlightened people who rightly think that a gravest injustice is done to them as long as liberty of conscience is held from them".

Rubbishing the idea that Muslim sensibilities would be hurt, he asked: "Is this the first time in the history of legislation in this country that this Council has been called upon to override Musalman Law or modify it to suit the time? The Council has over ridden and modified the Musalman law in many respects." It was the same year that he stood up to argue that universal elementary education ought to be "compulsory". He declared unfettered by any opposition religious or otherwise:

But I shall be told that people are already taxed. I shall be told that we shall face great unpopularity My answer is that we should do all this to improve the masses of this country to whom you owe a much greater duty than anyone else. My answer is that you should remove the reproach that is leveled against the British rule, that is, the neglect of elementary education. My answer is that it is the duty of every civilised government to educate masses, and if you have to face unpopularity, if you have to face certain amount of danger, face it boldly in the name of duty."

Later defining self government, he spoke of a



government for the people and by the people unfettered and unconditionally. Here too Jinnah was at his best, a secular liberal politician who fought for what he believed in. While he opposed forces of religious reaction and espoused the cause of freedom, he did not turn his back to the legitimate demands of his community and this manifested itself in form of the Wakf Bill, which was his great legislative triumph for the Muslims. But if the Muslims thought Jinnah had changed his ways, they were sorely mistaken when he supported the Child Marriages Restraint Bill which outlawed

marriages of girls below the age of 16. When questioned, Jinnah declared that religion had nothing to do with it, but that this was a question of common sense.

At other times, he pushed forward an agenda that sought to drive the British into a corner. In February 1924, he introduced a legislation that called for the Government of India to buy its stores through "Rupee tenders" instead of Pound sterling which had proved costly for India and had blatantly favored the British. In introducing this measure, he

recounted 75 different British imperial purchases that had inhibited India's economic development. His resolution passed and has been held by many historians as the single most important event in India's pre-partition history that had stimulated indigenous

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“CORRUPTION IS THE BIGGEST CURSE” QUAID

Mr. Jinnah's presidential address to the Constituent Assembly of Pakistan



Mr. President, Ladies and Gentlemen!

I cordially thank you, with the utmost sincerity, for the honour you have conferred upon me - the greatest honour that is possible to confer - by electing me as your first President. I also thank those leaders who have spoken in appreciation of my services and their personal references to me. I sincerely hope that with your support and your co-operation we shall make this Constituent Assembly an example to the world. The Constituent Assembly has got two main functions to perform. The first is the very onerous and responsible task of framing the future constitution of Pakistan and the second of functioning as a full and complete sovereign body as the Federal Legislature of Pakistan. We have to do the best we can in adopting a provisional constitution for the Federal Legislature of Pakistan. You know really that not only we ourselves are wondering but, I think, the whole world is wondering at this unprecedented cyclonic revolution which has brought about the clan of creating and establishing two independent sovereign Dominions in this sub-continent. As it is, it has

been unprecedented; there

is no parallel in the history of the world. This mighty sub-continent with all kinds of inhabitants has been brought under a plan which is titanic, unknown, unparalleled. And what is very important with regards to it is that we have achieved it peacefully and by means of an evolution of the greatest possible character.

Dealing with our first function in this Assembly, I cannot make any well-considered pronouncement at this moment, but I shall say a few things as they occur to me. The first and the foremost thing that I would like to emphasize is this: remember that you are now a sovereign legislative body and you have got all the powers. It, therefore, places on you the gravest responsibility as to how you should take your decisions. The first observation that I would like to make is this: You will no doubt agree with me that the first duty of a government is to maintain law and order, so

First duty of a government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State.

The second thing that occurs to me is this: One of the biggest curses from which India is suffering - I do not say that other countries are free from it, but, I think our condition is much worse - is bribery and corruption. That really is a poison. We must put that down with an iron hand

HISTORY

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Black-marketing is another curse. Well, I know that blackmarketeers are frequently caught and punished. Judicial sentences are passed or sometimes fines only are imposed. Now you have to tackle this monster, which today is a colossal crime against society, in our distressed conditions, when we constantly face shortage of food and other essential commodities of life. A citizen who does black-marketing commits, I think, a greater crime than the biggest and most grievous of crimes. These blackmarketeers are really knowing, intelligent and ordinarily responsible people, and when they indulge in black-marketing, I think they ought to be very severely punished, because the entire



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SUPERIOR COLLEGE OF LAW

system of control and regulation of foodstuffs and essential commodities, and cause wholesale starvation and want and even death.

The next thing that strikes me is this: Here again it is a legacy which has been passed on to us. Along with many other things, good and bad, has arrived this great evil, the evil of nepotism and jobbery. I want to make it quite clear that I shall never tolerate any kind of jobbery, nepotism or any any influence directly or indirectly brought to bear upon me. Whenever I will find that such a practice is in vogue or is continuing anywhere, low or high, I shall certainly not countenance it.

I know there are people who do not quite agree with the division of India and the partition of the Punjab and Bengal. Much has been said against it, but now that it has been accepted, it is the duty of everyone of us to loyally abide by it and honourably act according to the agreement which is now final and binding on all. But you must remember, as I have said, that this mighty revolution that has taken place is unprecedented. One can quite understand the feeling that exists between the two communities wherever one community is in

HISTORY

majority and the other is in minority. But the question is, whether it was possible or practicable to act otherwise than what has been done, A division had to take place. On both sides, in Hindustan and Pakistan, there are sections of people who may not agree with it, who may not like it, but in my judgement there was no other solution and I am sure future history will record is verdict in favour of it. And what is more, it will be proved by actual experience as we go on that was the only solution of India's constitutional problem. Any idea of a united India could never have worked and in my judgement it would have led us to terrific disaster. Maybe that view is correct; maybe it is not; that

remains to be seen. All the same, in this division it was impossible to avoid the question of minorities being in one Dominion or the other. Now that was unavoidable. There is no other solution. Now what shall we do? Now, if we want to make this great

State of Pakistan happy and prosperous, we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If you will work in co-operation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that everyone of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges, and obligations, there will be on end to the progress you will make.

I cannot emphasize it too much. We should begin to work in that spirit and in course of time all these angularities of the majority and minority communities, the Hindu community and the Muslim community, because even as regards Muslims you have Pathans,

SUPERIOR COLLEGE OF LAW

Punjabis, Shias, Sunnis and so on, and among the Hindus you have Brahmins, Vashnavas, Khattris, also Bengalis, Madrasis and so on, will vanish. Indeed if you ask me, this has been the biggest hindrance in the way of India to attain the freedom and independence and but for this we would have been free people long long ago. No power can hold another nation, and specially a nation of 400 million souls in subjection; nobody could have conquered you, and even if it had happened, nobody could have continued its hold on you for any length of time, but for this. Therefore, we must learn a lesson from this. You are free; you are free to go to your temples, you are free to go to your

mosques or to any other place or worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State. As you know, history shows that in

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England, conditions, some time ago, were much worse than those prevailing in India today. The Roman Catholics and the Protestants persecuted each other. Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. Thank God, we are not starting in those days. We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. The people of England in course of time had to face the realities of the situation and had to discharge the responsibilities and burdens placed upon them by the government of their country and they went through that fire step by step. Today, you might say with justice that Roman

Catholics and Protestants do not exist; what exists now is that every man is a citizen, an equal citizen of Great Britain and they are all members of the Nation.

Now I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.

Well, gentlemen, I do not wish to take up any more of your time and thank you again for the honour you have done to me. I shall always be guided by the principles of justice and

Now, if we want to make this great State of Pakistan happy and prosperous, we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If you will work in co-operation, forgetting the past, burying the hatchet, you are bound to succeed.

fairplay without any, as is put in the political language, prejudice or ill-will, in other words, partiality or favouritism. My guiding principle will be justice and complete impartiality, and I am sure that with your support and co-operation, I can look forward to Pakistan becoming one of the greatest nations of the world.

I have received a message from the United States of America addressed to me. It reads: I have the honour to communicate to you, in Your Excellency's capacity as President of the Constituent Assembly of Pakistan, the following message which I have just received from the Secretary of State of the United States:

On the occasion of the first meeting of the Constituent Assembly for Pakistan, I extend to you and to the members of the Assembly, the best wishes of the Government and the people of the United States for the successful conclusion of the great work you are about to undertake*.

If the Quaid-e-Azam's speech of 11th August 1947 had been delivered today by present rulers it would have been like this:

"YOU ARE FREE - YOU ARE FREE TO LOOT AND PLUNDER, TO TAKE THAT WHICH IS NOT YOURS, AND TO BUILD APARTMENT COMPLEXES ON LAND MEANT FOR PARKS. YOU ARE FREE TO CONSTRUCT SHOPPING MALLS ON THE SEASHORE. THE PEOPLE OF PAKISTAN DON'T NEED PARKS AND BEACHES. YOU ARE FREE TO TAKE COMMISSIONS AND KICKBACKS, YOU ARE FREE TO SIPHON AWAY YOUR ILL-GOTTEN WEALTH INTO FOREIGN BANK ACCOUNTS. YOU MAY HAVE MANSIONS AND PALACES ANYWHERE IN THE WORLD: THAT HAS NOTHING TO DO WITH THE BUSINESS OF THE STATE. IN DUE COURSE OF TIME, YOU WILL BE ABLE TO BUY ANY GOVERNMENT IN POWER AND RETURN TO THE COUNTRY AS HEROES. REMEMBER, THE PEOPLE OF PAKISTAN ARE MORONS AND DESERVE TO HAVE LEADERS LIKE YOU. SO GO AHEAD AND PLUNDER THE COUNTRY, YOU WILL NEVER BE PUNISHED, NO MATTER HOW MUCH YOU HAVE LOOTED PAKISTAN"*

POLLUTION TSUNAMI IS LOOMING OVER PAKISTAN

“ Surprisingly, we are less concerned about this approaching death and destruction. Our environmental laws are either obsolete or dysfunctional and are unable to thwart this self created calamity under irresistible processes.” *Dr. Owais Farooqui*

Pollution tsunami propelled by rampant corruption is looming over Pakistan. Surprisingly, we are less concerned about this approaching death and destruction. Although we are not the sole victim of this ultra fatal problem, but our case is more serious as it is substantiated with acute callousness on part of our incompetent leaders; who are more interested in unscrupulous machinations than any tangible planning to control the alarming situation. However, this time those who are on the helm won't be able to flee to safer shores, leaving us on the mercy of the nature; as the developed countries are contributing more air pollution than their share to the planet.

Presently the world is united and running after Taliban and Al-Qaeda to crush this menace from the face of the earth, but woefully ignoring the environmental issues that are posing threat to the entire mankind. The fact is also supported by the latest reports about environment risks published in the international press that reveals the magnitude of this problem. Mother Earth is just about at the point of no return and only the global climate change is enough to kill billions of people in this century as the earth

reaches a “coma” state from which it may not be possible to recover.

According to the World Health Organization (WHO), an analysis of health conditions in 192 countries showed that every nation in the world is affected by pollution and environmental degradation. Food and water shortage resulting in search and importation of food from far away lands carries hazard of entry of human retrovirus, parasites and rare bacteria responsible for a variety of health problems and ailments. We are familiar with Dengue fever, monkey pox, bird flu and mad cow disease etc. Reducing environmental risks could save 13



millions lives every year. Influenza, malaria and measles alone worldwide affect 57 percent of populace and responsible for mortality of nearly 6 million children annually according to research of Cornell University.

Unfortunately, the developed and industrialized countries are not taking this issue seriously that covers all living and non-living things that occur naturally on the earth. Their efforts are focused on global greenhouse gases (GHG) emission from burning of fossil fuels. However, since the Kyoto protocol was signed in 1992, the GHG has increased by 35 percent. The Arctic seasonal sea ice melts outpaced normal levels and shot up to 34 percent in 2008. The industrial countries are reluctant to abide by the protocols signed by them and have callously shut their minds to the fact that environmental protection is essential to long term economic growth, poverty alleviation, human health and conservation of natural resources.

In Pakistan, the situation is more precarious and serious as its implications are multi-dimensional due to uncontrolled population growth, lack of infrastructure for human development, political instability and poor governance. No successive government has yet formed any long term cohesive national policy to improve environmental conditions and

consequence of climate change. In absence of any tangible plan for the rectification of multiple problems including uncontrolled population growth, lack of research and development of alternate energy source, the factors that affect human health and wellbeing, aquaculture & agriculture production, are on auto-pilot. Unplanned urbanization, unchecked construction of



factories is usurping the cultivatable land at a rate of 3.5 percent which at present spells out as 34.5 percent and in year 2015 it would have consumed 40 percent of the land. Add to this the lack of public transport system and spiraling cities will only add fuel to the fire by burning more of fossil fuel. Unmanaged municipal and industrial waste will make a disastrous landscape for the masses to cope and survive. Open discharge of chemical waste and flow

Mother Earth is just about at the point of no return and only the global climate change is enough to kill billions of people in this century as the earth reaches a “coma” state from which it may not be possible to recover. However in Pakistan, the condition is more precarious as its implications are multi-dimensional due to uncontrolled population growth, lack of infrastructure for human development, political instability and poor governance. No successive government has yet formed any long term cohesive national policy to improve environmental conditions and consequence of climate change.

in to the water course has affected the local inhabitants in and around Sialkot, Gujranwala and Qasur districts and many other areas where 50 percent of population is suffering from habitat.

Our meager resources and inadequate allocation of finances are

unable to cope with increasing pollution and environment deterioration. It is equally important to note that ignorance about the genesis of the space we occupy in this world and violation of trust that nature bestowed upon us to preserve its integrity and purity is almost criminal. I hope our next generations are more forgiving than we have been towards our environment ❁



Independence of judiciary

“our judiciary by itself came under the influence of intruders” Prof. Akhtar Ali Kureshi

If some body has taken this soft impression after restoration of deposed judges and Chief Justice of Pakistan that we have achieved an independent judiciary, than it has to be added here that independence of judiciary is not an end for diversify reasons.

All of us can visualise an otherwise free judiciary may still not be impartial and that is why sheer accomplishment of independence of judiciary may not be excellent if the true goal of impartiality still remains a fantasy.

As the Supreme Court of Pakistan is the sole residuary custodian of the constitution and liable of its own independence, whereas the SC decided in many cases and particularly in famous case of Al-Jehad Trust (PLD 1996 SC 324), commonly recognized as the judges case and in that milestone verdict approximately every boulevard of intrusion with independence of judiciary was not

only fully attended to but also a luminous endeavor was made to interpret the important articles of the Constitution in such a way that intimidation to independence of judiciary and its exploitation were curtailed.

Since 1996 this is second round as earlier our judiciary by itself come under the influence of intruders and lost its precious independence as all of us observed through many judgments of the SC after October 1999. In a well-cultured and predominantly in a democratic society the significance and importance of independence of judiciary is usually understood and widely respected.

It is frequently identified that in order to secure and then safeguard the independence of judiciary, the following factors can play a vital role: constitutionally inherited courts, security of tenure of service, neutral appointment system followed by a fair procedure, expressed judicial ethical code, equal and fair discipline, reasonable and constitutionally protected handsome remuneration, physical

and mental security, immunity for judicial performance, liberty from intrusion in decision-making from superior judiciary, separation of the judiciary from the executive, freedom from unnecessary transfers, government support to implement court's order, executive support to prosecute and punish wrong doer, an independent and vocal Bar, an educated public demanding an impartial judiciary and last but not the least a free and impartial press. After suffering a lot in many decades only a few were already attained on various above sited imperatives of independence of judiciary but regrettably security of tenure and a government conscious to the public opinion happen to be two serious areas where everything achieved through the other factors stands destabilized from time to time by the so-called PCOs.

Independence of judiciary which is commonly ignored but the said aspects are so important that without attending to them the whole superstructure of independence of judiciary

continued on page 22



An exclusive interview with Principal Aatir Rizvi

I BELIEVE IN CONCEPTUAL EDUCATION

“LAW STUDIES SHOULD BE COMPULSORY FOR ALL”

Aatir Rizvi, the debonair principal of SLC, Lahore is a new breed of lawyers: articulate, unpretentious and clear-headed. He is probably the youngest principal of a professional law of repute – barely in his thirties. He has been a model student throughout his academic career and a position holder right from primary upwards; that is the reason, he is not satisfied with only a law degree- he holds masters' degrees in political science as well as in history. And to top it all, he has done his LLM from the venerable Cambridge University in UK.

The editorial panel of Zia-Taleem (ZT) met him in his office at Superior Law College, Lahore, to share his views on law, education and related issues. We are producing below salient excerpts of his interview.

Although, Aatir's father is a distinguished Supreme Court lawyer; yet surprisingly, a legal career was not his first choice. After graduating from the famous Government College Lahore (now ridiculously renamed Government

College University), his excellent result earned him a seat in the UET to study engineering. But, succumbing to the inevitable pressure of genes, Aatir abandoned a potential engineering career and enrolled to study law.

Well in any case getting admission in UET looks like an anomaly to Aatir in retrospect, considering the “legal” ambience of his home. Aatir concedes that with his dad being a lawyer, studying law was natural for him. His classroom studies were supplemented by his evening discussions of legal issues at home with his dad. Therefore, it is not surprising that

Aatir secured a first class first in LLB, along with four gold medals – a record for the university. Lest it be misconstrued that his academic distinction came about due to the mentoring of his lawyer father; it was due to the dint of sheer hard work that Aatir won his laurels. But of course, he is quick to concede that the insights and tutoring of his father supplemented his endeavors.

continued on page 16



ECOLOGY of KNOWLEDGE

"The empires of the future would be the empires of the mind" Churchill



Lt. Col (r) Abdul Naeem

A university professor set an examination question in which he asked, what is

the difference between ignorance and apathy? The professor had to give an A+ to a student who answered: I don't know and I don't care. This dual syndrome of ignorance and apathy poignantly mirrors our present state of affairs. We are lodged deep into a dual quagmire of ignorance and apathy.

Pakistan and South Korea came into being at approximately the same time, with a similar per capita income. Today our per capita income is \$430 and that of South Korea: \$10,500. Our country possesses many natural resources, tiny Singapore none. Yet Singapore is the IT and financial hub of Asia-Pacific. The difference lies in the knowledge differential of both the countries; the variation in human resource development and transition from a feudal society and democracy, in the case of Singapore and maintenance of status quo in case of Pakistan.

Jawahar Lal Nehru, the first Indian Prime Minister grasping the essence of the potential of knowledge; while touring MIT in 1950, requested the Americans to establish MIT-type institutions in India.

This is the century of knowledge. At no point in the annals of human history was the adage: "knowledge is power", more applicable than today. Knowledge has replaced all other factors of production viz: land, labor, machine and capital. Knowledge, not material assets today hold the key to progress and development. Intellectual capital is the new currency and the resource to create value. Yogesh Gendera, a management expert

says: "In contrast to the traditional factors of production that were governed by diminishing returns, every additional unit of knowledge used effectively results in an incremental increase in performance". Indeed knowledge is the only instrument of production that is not subject to diminishing returns.

Jawal Lal Nehru, the first Indian Prime Minister grasping the essence of the potential of knowledge; while touring MIT in 1950, requested the Americans to establish MIT-type institutions in India. Today India boasts of 8 such prestigious centers of learning called IITs. And on the other hand, we have anachronistic madrassas churning out

continued on page-12

