**[Sword versus pen](https://www.dawn.com/news/1825613/sword-versus-pen)**

[Faisal Siddiqi](https://www.dawn.com/authors/216/faisal-siddiqi) Published April 4, 2024 Updated a day ago

*“Changes in society are due chiefly to the development of the internal contradictions in society … it is the development of these contradictions that pushes society forward and gives the impetus for the suppression of the old society by the new.” — Mao Zedong*

THE [letter](https://www.dawn.com/news/1824028) dated March 25, 2024, written by six judges of the Islamabad High Court (IHC) against the intimidation and interference of state agencies in their judicial work will perhaps go down as one of the greatest judicial acts in world judicial history. It signifies extraordinary judicial courage, a deep sense of constitutional duty, a heightened sense of moral clarity, and equally important, an understanding of relevance and immediacy, which requires action to be taken now, not tomorrow.

But this letter of resistance also signifies something more fundamental. Firstly, this is the latest, most prominent example of its kind in the continuing conflict in Pakistan between de jure (constitutional) power of the pen/ judiciary and the de facto (actual) power of the sword/ establishment. Secondly, in historical terms, it denotes the age-old problem of power: the taming of the sword or raw power by the pen or ethics. In other words, is the pen mightier than the sword?

**Letter of resistance:** The tone of anxiety underlying this letter reflects the deep unease of living a judicial life of constitutional hypocrisy and pretence. Consumed by the state agencies’ intimidation and interference in their judicial work, the judges’ solution is to speak ‘truth to power’ by publicly disclosing the ugly reality of political engineering through the judicial process. An examination of the letter shows that these six brave judicial souls are not interested in personal restitution of the grave injustice done to them. They do not look to the past for personal justice. In fact, their letter of resistance seeks to stop such interference and intimidation now and in the future.

Their principal focus is clearly stated in the first and last paragraph of this letter for “the Supreme Court [SC] to consider how best to protect independence of the judiciary, put in place a mechanism to affix liability for those who undermine such independence and clarify for the benefit of individual judges the course of action they must take when they find themselves at the receiving end of interference and/ or intimidation by members of the executive”.

The judges’ letter seeks to stop the security agencies’ meddling now and in the future.

The six-page letter documents in detail two other important issues. Firstly, the judges’ lack of confidence in the leadership of the IHC chief justice: before these six judges wrote to the SC, they had written two letters dated May 10, 2023, and Feb 12, 2024, to the IHC chief justice. The outcome had been a shocking silence on most issues raised or weak action. Secondly, it gives a detailed account of instances of interference and intimidation by state agencies, which to even well-informed lawyers and media persons was shocking. But this complaint against their own chief justice and the detailed narration of interference and intimidation form the context of their main cry for action, ie, how do we stop this unconstitutional interference in the future and what process is to be adopted by individual judges in the face of such unconstitutionality?

Regarding the government’s mala fide questioning — especially by the PML-N and its media supporters — of the timing of the letter, the answer is simple. As the letter itself details, the judges have been complaining about this interference and intimidation in written form and in meetings with the SC since May 2023. Moreover, they felt encouraged to write this letter to the SC now because of the recent SC judgement (March 22, 2024) in favour of retired justice Shaukat Siddiqui, which brought into focus the interference of state agencies. In short, the SC judgement itself catalyzed the writing of this letter.

**De jure versus de facto power:** The dominating establishment system of de facto power and undemocratic political and judicial elites between 1948 and 1971 led to the dismemberment of Pakistan in 1971. The 1973 Constitution is a continuing attempt to constitutionally control the de facto power wielded by dominating power elites in state and society. But it has not worked, as evidenced by the two military takeovers of 1977 and 1999.

However, as a result of the lawyers/ judges movement and the revival of democratic politics in 2007-08, de facto power elites faced their greatest challenge. They could no longer impose direct military rule and dissolve the distinction between de jure and de facto power by taking over and creating a new de jure unconstitutional order with non-democratic elites dominating the state.

It is precisely this lack of option to overthrow the constitutional order, which gave birth to the hybrid model in force since 2018. The task of this hybrid model was simple: retain the formal structures or the facade of democracy, judicial independence and freedom of speech/ media, but actually run state and society through de facto power or actual power of the sword/ force.

But this was unsustainable as long as the 1973 Constitution was formally intact and it gave rise to various forms of judicial resistance, ie, the treason trial of Musharraf, the resistance against the malicious presidential reference implicating Justice Qazi Faez Isa, the declaration of unconstitutionality by the Supreme Court of military trials. This letter of resistance is a continuing reminder that as long as the de jure/ constitutional power of the 1973 Constitution is alive, the hybrid model based on de facto/ actual power will lead to contradictions and conflict between the sword and the pen.

In the end, no one can predict whether the winner will be the pen or the sword. But there should be no doubt that this contradiction and conflict between the two will continue. And as long it continues, this country and its people will live in chaos and violence. No doubt, the pen/ judiciary, the people/ democracy and the sword/ establishment are essential for this country’s survival and prosperity but the desire of the sword to recreate a pre-1971 Pakistan is a self-destructive pipe dream.

*The writer is a lawyer.*

*Published in Dawn, April 4th, 2024*