

A dream deferred

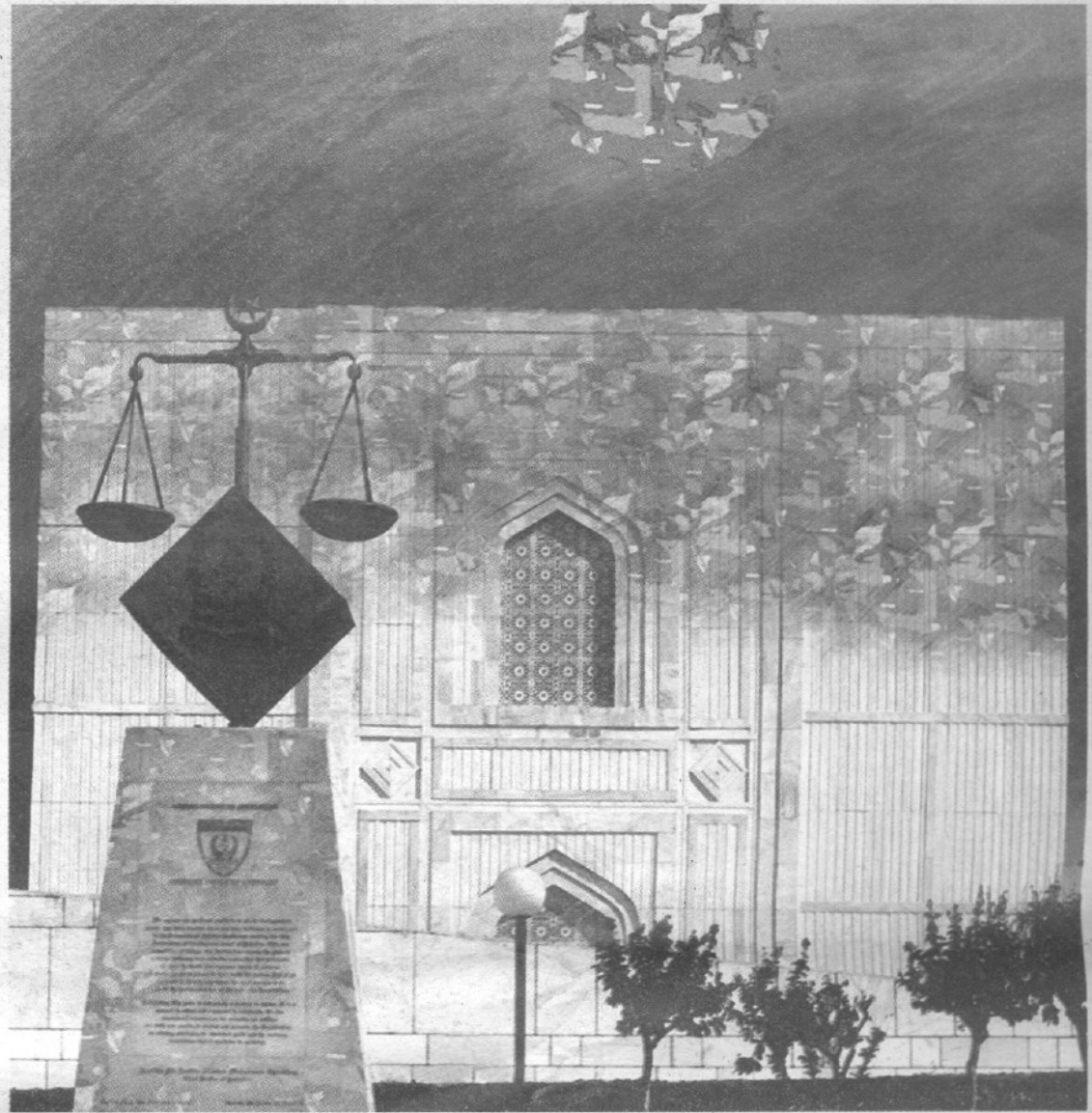
THE year 2007 brought the cherished dream of the rule of law and independence of the judiciary close to reality, but, in the end, tyranny, personal ambition, political opportunism and betrayal coalesced to shatter the vision. Pervez Musharraf, who had launched his first coup in 1999 when he was removed from the post of COAS, struck once again on November 3, 2007, and imposed what was tantamount to a second martial law to save his self-assumed presidency.

While his first coup was against an elected government and parliament, by the time of the second one, he had taken care of these two organs of state through a fraudulent referendum and a farcical election. Not being content with eight years of absolute power, he wanted to perpetuate this arrangement with yet another sham exercise whereby the outgoing assemblies purportedly elected him as president for another term, notwithstanding a glaring constitutional bar which disqualified him for the office. Having overcome all other obstacles, only the judiciary remained untamed and appeared to be blocking his ambitions.

Never before in our history did our dictators have to worry about the judiciary, let alone be confronted by it. Indeed, the judiciary had always facilitated, and even legitimised, the usurpation of power by the military. The year 2007 was the turning point. How did we get there?

Having thwarted the plunder of national assets in the name of privatisation, the Supreme Court, under the leadership of Chief Justice Iftikhar Mohammad Chaudhry, was entering uncharted territory.

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This act of defiance and courage captured the imagination of the people and awakened their long suppressed aspirations for freedom, the rule of law and democracy. At last, the time had come to throw off the shack-

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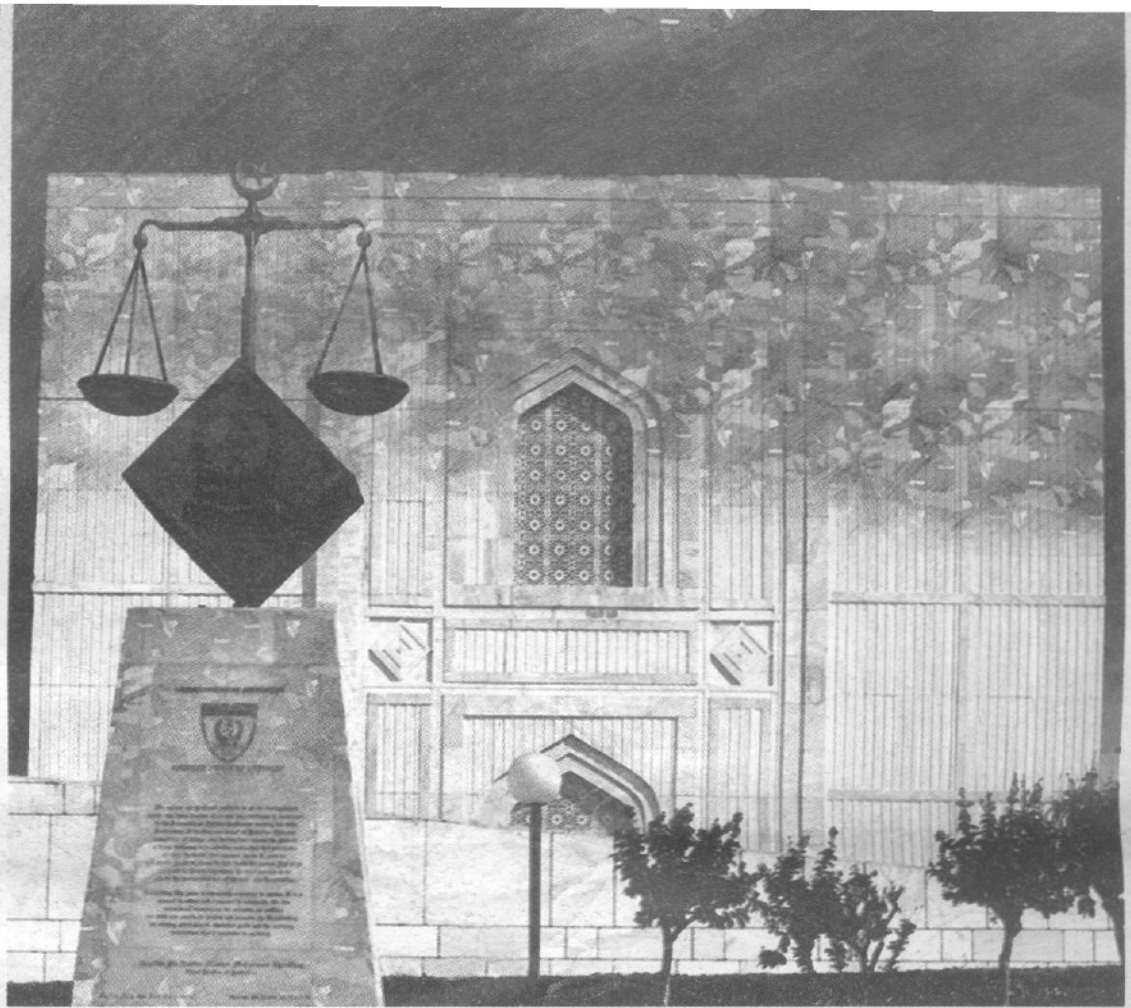
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There was no immunity for the government with regard to the application of laws. The intelligence agencies were called to account for the mysterious disappearance of citizens. The Supreme Court was becoming a people's court. On the mere application of ordinary citizens, high functionaries of state were summoned to the court to justify their conduct in the presence of the victims. This was unprecedented. The judiciary was beginning to follow the mandate of the Constitution by performing its functions without fear or favour.

Pervez Musharraf realised that his ambition to remain in power notwithstanding, a glaring constitutional bar would not survive judicial scrutiny. The judiciary had to be tamed and subdued.

The first assault on the judiciary was launched on March 9 when Chief Justice Chaudhry was asked to resign. Then the unthinkable happened. He



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This act of defiance and courage captured the imagination of the people and awakened their long suppressed aspirations for freedom, the rule of law and democracy. At last, the time had come to throw off the shackles of the past and redeem the constitutional promise of an independent judiciary. The legal fraternity led by courageous men like Aitzaz Ahsan, Muneer Malik, Tariq Mahmood, Ali Ahmed Kurd, Hamid Khan and others seized the moment. All those who witnessed that epic struggle launched by the legal fraternity and civil society in the summer of 2007 will cherish the memory.

On July 20, 2007, by majority a larger bench of the Supreme Court headed by Justice Khalilur Rehman Ramday threw out that odious and patently mala fide document purporting to be a reference against Chief Justice Chaudhry under Article 209 of the Constitution. The nation still

awaits the detailed reasons of the majority judgment which now has to be recorded by the lone surviving judge of the majority Justice Muhammad Nawaz Abbasi.

The order of the Supreme Court restoring Chief Justice Chaudhry to his office was a turning point. It was not only unprecedented but also unthinkable. It gave rise to a great sense of empowerment among the people in general and the legal fraternity in particular.

But like all epochal moments, this too was a very delicate one. While the euphoria warranted jubilation, it also called for prudence, maturity and magnanimity as the real test comes at the moment of triumph. All victories require consolidation lest they be squandered in the passion of the moment. To win the war, some battles are best deferred for another day. With the benefit of hindsight it appears that pragmatism warranted some tactical adjustment to the strategy of all sail and no anchor adopted by the legal fraternity. But then, we are all wiser after the event.

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ting their separate deals with the dictator, the Supreme Court was once again dragged into the political quagmire to atone for the sins committed by everyone else. The Supreme Court remained dignified and committed to the rule of law. Being the custodian of the Constitution, it could not act otherwise and shirk from its constitutional obligation.

Before the larger bench headed by Justice Javed Iqbal could decide on Musharraf's disqualification under the Constitution, the president panicked. He could launch the country into risky adventures from Kargil to Swat, he could overthrow the Constitution not once but twice, he could plunge the country into America's war against terror after one phone call, he could order a military operation in the Lal Masjid case, but he could take no chances with his own future, for that came first.

Prompted by the instinct of self-preservation, Pervez Musharraf launched his second coup on November 3, 2007, against the judiciary. The Constitution was once again subverted. Virtually the entire supe-

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administering oath to judges under a Provisional Constitution Order was repeated for the umpteenth time.

The judiciary was once again reconstituted. The doctrine of necessity was promptly brought to life once again to legitimise this usurpation of power. All this has been done without paying the slightest regard to the irreparable harm and damage caused to the country by this wanton destruction of the institution of the judiciary.

On December 15, 2007, the emergency was revoked and the Constitution restored. However, the Constitution was yet again mutilated by the president in the name of amending it. He has purportedly given legal protection to this constitutional subversion and destruction of the institution of the judiciary and is deluding himself by calling it a past and closed transaction. The independence of the judiciary is not a transaction. It is a constitutional commitment and aspiration. Long after Musharraf is gone, it will still be there.

The revived Constitution contains so many non obstante and deeming clauses that they completely shatter the delusion of legitimacy. It is not possible to acquire legitimacy by deeming oneself to be legitimate. Notwithstanding his pretensions to the contrary, all Musharraf's actions remain unconstitutional and illegal cognisable under Article 6 of the Constitution, unless the next parliament ratifies them. The people can frustrate his designs to confer legality on this subversion by thwarting the Eighteenth Amendment.

As to the independence of the judiciary, does it mean the end of the dream? Certainly not. A dream once dreamt cannot die. It acquires an eternal life and continues to inspire until it becomes a reality. Until 2007, the ideals of the rule of law and the independence of the judiciary had no martyrs. No cause succeeds without sacrifice and no sacrifice is complete without martyrs.

The historic movement for the independence of the judiciary in 2007 propelled its martyrs on the national horizon. The names of Chief Justice Iftikhar Chaudhry and his brother judges who responded to their conscience and refused to surrender to the force of tyranny on November 3, 2007, will continue to enliven the hearts of freedom-loving people everywhere. The dream of independence of the judiciary and the rule of law has not died. It has only been deferred. It is a matter of time before the flame is reignited. ■