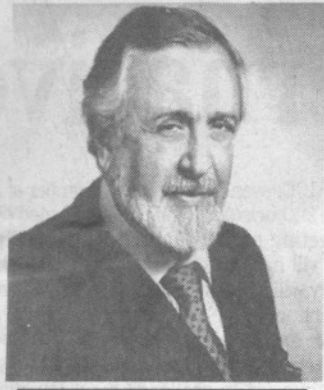


# Freedom of the Press



Ardeshir Cowasjee

Man is born free and till his dying day strives to remain free. But freedoms are difficult to attain and still more difficult to preserve.

Last week, many men and women of the Press converged in Islamabad to hear in the Supreme court of Pakistan the contempt of court case. Cr. O.P 5 95, filed by Syed Masroor Ahsan, Petitioner, against Ardeshir Cowasjee & Others, Respondents. The Others, Respondents No. 2 and 3 were, respectively. Ahmad Ali Khan, Editor of Dawn and Ghulam Ali Mirza, the Printer and Publisher of the newspaper.

Initially the case was to be heard on April 9 before a Bench comprising Chief Justice Sajjad Ali Shah, and Justices Irshad Hasan Khan and Bashir Jehangiri. Subsequently it was adjourned to April 11 and was heard by a Bench comprising Justice Fazal Illahi Khan, and Justices Mohammed Munir Khan and Mir Hazar Khan Khoso.

Masroor Ahsan, the petitioner was represented by Advocate Raja Mohammed Anwar and by Advocate on Record Raja Abdul Ghafoor.

I, Respondent No. 1, was represented by the senior most advocate of the Supreme Court Barrister Sharifuddin Pirzada, former law minister and former attorney general (thrice), Senior Advocate of the Supreme Court (AoSC) Aziz Munshi former attorney general (thrice), senior AoSC Mansoor Ahmed Khan, barristers Makhdoom Ali Khan and Mohammed Gilbert Naim-ur-Rahman of Karachi. Barrister Baachaa of Peshawar. Advocates Rustom Feroze Virjee and G M Qureshy of Karachi, and Advocate Asma Jehangir of Lahore, chairperson of the Human Rights Commission of Pakistan.

Editor Ahmad Ali Khan was represented by Barrister Khalid Anwer and Advocate Sabihuddin Ahmed. The Printer and Publisher was represented by Barristers Makhdoom Ali Khan and Gilbert Naim-ur-Rahman. The Pakistan Newspapers and Publications Organisation (PNPO) and the National Editors Council of Pakistan (NECP) were represented by Advocate Sabihuddin Ahmed.

Advocate on Record for all the Respondents was Chaudhry Fazal-i-Hussain of Lahore. In Court on April

11, *inter alia*, statements on behalf of the three Respondents were filed by Sharifuddin Pirzada, Khalid Anwer and Makhdoom Ali Khan. Sharifuddin then arose to address the Court on my behalf. The honourable judges expressed their appreciation at having him there and deemed it a privilege to hear him. He succinctly informed the judges that I hold the institution of the judiciary in high esteem, that I have committed no contempt that whatever I wrote was written in good faith, in the public interest and in temperate language, all done in the exercise of the fundamental rights guaranteed under Article 19 of the 1973 Constitution, specially the rights of freedom of speech and expression and the freedom of the Press. Sharifuddin laid great stress upon the necessity to guard and protect these freedoms.

Then, as the gravity of the occasion demanded, emulating the style of his mentor, the founder of our nation, Barrister Mohammed Ali Jinnah, Sharifuddin bowed and solemnly drew the attention of the Bench to the Petition filed on October 10, 1990 by the murdered (political?) and highly respected editor of Takbeer, Shaheed Salahudin, who accused Mohtarma Benazir Bhutto of having committed grave contempt of court by certain writings in her autobiography, Daughter of the East, and by certain remarks made at the seminar she organised, chaired by a former judge of the Supreme Court, Justice Dorab Patel, during her first term as prime minister. The seminar was held on the occasion of her father's death anniversary and amongst matters discussed was his trial in the Lahore High Court and his appeal to the Supreme Court. He informed the Court that the fate of this petition was unknown, whether the Court had taken cognisance, or whether the issue was pending. He humbly suggested that the Court trace this petition as the Respondents would like to be guided by the findings of the learned judges in the case. If it, however, for some reason or the other had not yet been heard, he requested that it be heard along with the present petition. Next to rise was our erudite Cicero, Khalid Anwer, who in his written statement filed with the Court had "submitted that the present petition is politically motivated". He concentrated on the freedoms guaranteed in Article 19 of the Constitution. He very specifically drew the Court's attention to the fact that our Constitution, as distinct from any other Constitutions, named the Press as a body to which the freedoms were guaranteed, subject to certain reasonable restrictions. He requested that the Court take into account the fact that the Press has a duty and a responsibility, that it is the eyes and ears of the public and as

such has a right to know and a right to publish, and this right is essentially that of the public for whom it is a trustee. There is a fundamental dichotomy which must also be considered which is that between a criticism of the judiciary as an institution and a criticism of executive policies and acts in relation to that institution. Executive policies which, in the public eye, are seen to be harmful to that institution are free and open to fair comment by members of the public and by the Press. All matters and issues of relevance and importance having been brought to the notice of the Court, our astute young constitutional lawyer, Makhdoom Ali Khan, did not consider it necessary to rise to his feet. An emphatic request was made by all the Respondents that the case be heard by a full court, i.e. by all the Judges of the Supreme Court. This request was noted and will be considered. Advocate Sabihuddin Ahmed requested the Court that the PNPO and the NECP be allowed to be joined in the case. Raja Mohammed Anwar, counsel for the Petitioner, repeated all that had been stated in his petition and added that the columnist in question is a man, who has been writing and scandalising the courts for the past ten years, with his "juicy" offerings to the public. As Sharifuddin rose in my defence the senior most member of the Bench, Justice Fazal Illahi Khan, a man of imposing personality and bearing, genially remarked that he supposed that Sharifuddin was about to ask that had the columnist been committing contempt for ten years, why has the court not taken any action so far. Sharifuddin, with a laugh, answered that he merely wishes to reaffirm that his client has never scandalised, nor intended to scandalise, the court for which he has the greatest respect. The Court issued notice to the Attorney General, adjourned the case to a date to be fixed in office.

On April 12 and 13, Dawn published in full the statements of the Petitioner and the Respondents as filed in the Supreme Court. The courtroom and the upper gallery were packed to capacity that morning, with many interested observers standing in the entrance. The court administration was most considerate and ordered that extra chairs be brought in. Thanks to the publicity initially provided by the government controlled PTV which is monitored internationally, and later to the publicity it received in the Press and by word of mouth, the contempt case had aroused much interest. The foreign Press was formidably

represented in court in there was Daniel Lack of the BBC, Douglas Bakshian of the VOA, Jennifer Griffin of the Los Angeles Times, Kathy Gannan of AP, and Richard Lyon of Reuters. A Human Rights Officer of the US Embassy was present, as was an observer from the European Community Human Rights Commission. We had Air Chief Marshal Zulfikar and four retired generals in Court that morning — General Attiqur Rahman had flown in from Lahore and was brought to court by Colonel 'Killer' Mehdi, and from Rawalpindi and Islamabad came Generals Khalid Mahmud Arif, Sabih Qamaruzzaman and Ejaz Azim. As for our own Press, amongst the many were the full Dawn Islamabad team, Editor-in-Chief Majid Nizami of the Nawa-i-Waqt and Nadira of The Nation who were there from Lahore, Ikram Sehgal had flown in from Karachi on the nightcoach, and already in town from Karachi was Dawn's *Jaywalker* who doubles as The Nation's *Jetlag*. Internet's Dr. Altamash of Karachi was also in court. From Islamabad we had former ambassador turned columnist Dr. S.M. Koreschi, Farhad Bokhari, Nasir Iqbal, Omar Faruk, Khalid Qayum, Nisar Ahmed Shaikh of the Business Recorder, and listed here last but by no means least, Dawn's own master of the written word, Chaudhry of Chakwal Ayaz Amir. The very last mention has to go to Mushahid Hussain, aka "Mushahid Sahib," that highly organised and professional journalist, who was of such great help and support. Many of my old friends from Islamabad were of course there to lend their support. Standing by were Ayub Awan, Ilahi Baksh Soomro, Chandi and Fakhr Imam, Parveen Afzal Khan, Gohar Ayub, his son-in-law and my host, Adnan Aurangzeb, Master Dissolver of Assemblies Khan Roedad Khan (now hard at work on his book *Makers and Breakers* to be published posthumously), his good friend and former ambassador Amir Usman, and Minoor Bhandara. There were many young lawyers, amongst them Zaheer Riaz, a number of young law graduates, Jamila Aslam for one, and law students, amongst whom was Zainab Niaz, who had all come to see how the old and not so old masters perform. These old and not so old masters, the battery of heavyweights defending the Respondents, all of them my friends, busy, harassed and overworked as they are, gave of their time and skill not only unflinchingly but every one of them has refused to accept any fee at all. I for one am greatly indebted to them all and thank them for their superb gesture. When it is all over there will of course, be much much more that can be written on the causes and effects of this contempt case.