* **The Pak-Turk saga**
* [Babar Sattar](https://www.thenews.com.pk/writer/babar-sattar)
* May 20, 2019

Wrestling control of Pak-Turk Schools from the Pak-Turk Education Foundation (PTEF) and handing them over to the Maarif Foundation should be taught as a case study in how the distinction between rule of law and rule of men can still be hard to make in our country. The Pak-Turk School saga further shows how one can be rendered hapless if caught on the wrong side of the system.

A Turkish NGO, the Pak-Turk International Cag Education Foundation (PTICEF), believed to be run by followers of Fethullah Gulen, began establishing Pak-Turk Schools in Pakistan over two decades ago. The PTEF was incorporated as a Section 42 Company in 2011, with a board comprising Turkish and Pakistani nationals. In 2014, the PTICEF transferred its assets (around 26 schools and colleges) to the PTEF in a transaction approved by our government.

The PTEF was on the right side of the system till the failed coup in Turkey in 2016. President Erdogan survived the coup, blamed the Gulen movement for it and resolved to neutralize Fethullah Gulen’s influence, including by taking control of educational institutions run by his followers. The incumbent Turkish regime asked Pakistan to expel Turkish teachers working in Pak-Turk Schools and hand over control of the schools to another NGO of its choice ie the Maarif Foundation.

At the time, the Sharifs were in power and enjoyed a close personal relationship with President Erdogan. PM Nawaz Sharif tasked his brother to do the needful. CM Shehbaz Sharif, with no jurisdiction in the matter, constituted a committee headed by Rana Sanaullah to sort things out. The PTEF Board was advised that if it voluntarily replaced Turks on the board with Punjab government nominees, the Turkish regime would be placated and Turkish teachers wouldn’t be expelled.

But despite the PTEF board being reconstituted as advised, our government refused to extend visas of the Turkish teachers and staff involved with Pak-Turk schools and ordered them to leave Pakistan. Turks fearing persecution on being deported approached our High Courts and got injunctive relief. Meanwhile Punjab nominees appointed on the PTEF Board made a move to assume control of Pak-Turk Schools and hand them over to the Maarif Foundation.

These actions were challenged in the Islamabad High Court (I was the PTEF’s counsel in the matter). The Punjab government then brought its Counter Terrorism Department into play to coax the chairman of the PTEF Board, a senior Pakistani citizen, to handover Pak-Turk Schools to Maarif Foundation. He in turn challenged harassment at the hands of the CTD in the IHC as well. Due to the protection afforded by the IHC, the CTD was unable to badger the chairman of the PTEF Board into resigning.

Meanwhile, the Sindh High Court had also prohibited the government from deporting Turkish teachers. Our government placed documents before the SHC, which established that Pakistan was under pressure from Turkey to expel the teachers and hand over control of Pak-Turk Schools to Maarif and that PM Sharif had directed his attorney general to have injunctive orders passed by courts vacated so that the transfer of Pak-Turk schools to Maarif could be given effect.

In proceedings before the IHC, our government pleaded without success that the PTEF posed a serious national security threat to Pakistan. The Punjab CTD also concluded its interrogation into the affairs of the PTEF and the chairman of the PTEF and was unable to find evidence of money laundering or other subversive activities. The record in fact established that the PTEF was run with the help of donations given by Pakistani and Turkish philanthropists and had never remitted funds out of Pakistan.

The Sharifs thus failed to deport Turkish teachers or deliver Pak-Turk schools to Maarif as requested by Turkey. There is no doubt that Pakistan and Turkey have always shared a bond of trust and affection that is incomparable with any of our other relationships. That we must preserve this bond is not a matter of contention.

But can we disregard rule of law to preserve this bond? In September 2017, men in ‘plain clothes’ abducted a Turkish family affiliated with Pak-Turk Schools from a house in Wapda Colony Lahore. A habeas petition was filed and the Lahore High Court ordered the government not to deport the Turkish nationals and had their names placed on the Exit Control List. Despite court orders, the abducted Turks were put on a Turkey-bound plane on October 14, 2017.

With petitions against deportation of Turkish teachers pending in various high courts and a company petition in relation to affairs of the PTEF pending in the IHC, a 184(3) petition was filed before Supreme Court on 05.12.2018. This ‘public interest’ petition sought that FETO (Gulen movement) be declared a terror outfit and Pak-Turk schools and related assets be taken from the PTEF and handed over to Maarif, and the PTEF be dissolved.

The SC issued notices to the PTEF for hearing on Dec 13, 2018. Without giving the PTEF an opportunity to even file a response to the petition, a couple of minutes into the hearing, the bench headed by the then CJP allowed the petition, ordered the government to declare the PTICEF a terror organization, ordered that Pak-Turk schools be vested in Maarif immediately, ordered the SECP to dissolve the PTEF and ordered the State Bank to freeze the accounts of the PTEF and hand over all PTEF assets to Maarif.

Two days after the decision, the then CJP headed to Turkey. He met President Erdogan on Dec 18, 2018. This sequence of events must be purely coincidental. But for a legal system that is required to ensure that ‘justice is not only done but is also seen as done’, such unhappy coincidence doesn’t inspire confidence. And what doesn’t help is that the SC’s decision in the PTEF matter is almost completely in error on facts as well as the law.

With the review against it dismissed, the decision has attained finality and while not approved for reporting it is good law and binding precedent under Article 189. Essentially without any proof or trial of facts, the SC concluded that FETO controlled the PTICEF, which in turn controlled the PTEF, and that they are all mixed up with terror.

It notes that, “there are serious allegations that schools set up by PTICEF were a façade behind which illegal activities were taking place including money laundering and generation and transfer of funds to the parent organization, namely FETO, to finance subversive and terrorist activities.” And further that authorities in Turkey have established a link between FETO and the PTICEF and “this material is adequate and sufficient for this Court to grant relief without second guessing the position taken” by governments of Turkey and Pakistan.

To hold so, the SC ruled that the PTEF was a subsidiary of the PTICEF. As a Section 42 company limited by guarantee, the PTEF couldn’t possibly be a subsidiary of another entity. The SC also held that Pakistan owed Turkey an obligation to declare the PTICEF a terror organization in view of the OIC having passed resolutions against FETO. This is also contrary to settled law that even treaties can’t be given effect under domestic law until treaty provisions are incorporated into law by legislation.

The SC thus declared that PTEF, PTICEF and FETO are one and the same (without factual basis or recording evidence) and involved in terror (because Turkish authorities said so) and that Pakistan is legally obliged to Turkey to declare FETO a terrorist outfit (because the OIC passed a resolution against FETO). And as the PTICEF was a Turkish organization (having been established in Turkey) that transferred assets to the PTEF (a Pakistani company), the latter’s assets should just be handed over to Maarif, another Turkish organization, because Turkey wishes so.

This judgment is now authority for the proposition that a guarantee company can be the subsidiary of another company, that a Section 42 company can be declared a proscribed organization without trial or due process on the basis of suspicion alone, and all its assets can be confiscated and handed over to another entity with the stroke of a pen, and that resolutions passed by international organizations create binding obligations for Pakistan enforceable in its courts.

If there is a recent judgment that encapsulates much that is wrong with Article 184(3) it is the PTEF ruling. Article 8 of our constitution excludes courts from the definition of state as in our constitutional scheme the courts are endowed with the responsibility of enforcing fundamental rights against state action. Who then should one turn to in order to have constitutional guarantees enforced if the courts step into the shoes of the executive and assume the mantle of the state?

The writer is a lawyer based in Islamabad.

Email: sattar@post.harvard.edu