

Saving the Judiciary

Law & Justice

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M.S. QAZI says that the Judiciary is leasing life to the Doctrine of Necessity providing grounds to deliver judgements of choice instead of working under the strict compliance of the Constitution

Justice Malik Muhammad Qayyum of the Lahore High Court (LHC) resigned from the high office on 26 June that he occupied on 26 October, 1998 in the most ignominious and unenviable manner. He was followed by the Supreme Court Judge Justice Rashid Aziz Khan. Their resignations had become imminent after the supreme court decision that reflected negatively on their integrity in the reference against former first couple, Benazir Bhutto and Asif Zardari, who were found guilty of accepting Kickbacks in the SGS-Contecna case by the Ehtesab Bench of the LHC. Justice Qayyum was blamed for being 'biased' against the first couple while dispensing justice and Justice Rashid was found to be facilitating Justice Qayyum to chase the reference against the first couple. The question is: Did they resign to save their own grace or the grace of Judiciary? Could they have fought back to save their honour? Where does the government stay in fulfilling her responsibility in the midst of a serious willful default by the two Justice that tarnished the image of the Judiciary?

Benazir Bhutto and Asif Zardari faced a reference against them initiated by the PML (N) government in the Ehtesaab Bench (EB) of Lahore High Court. I was alleged that the couple had accepted kickback in a pre-shipment inspection contract

be done the way it was desired by the then Prime Minister Nawaz Sharif, Justice Qayyum was rewarded and he was keen to make the former PM 'happy'.
Publication of alleged telephonic conversation had a

worked as a sort of pressure on the government to refer the case of Justice Qayyum and Justice Rashid to the Supreme Judicial Council (SJC).
Direct personal interest of a Judge and bias in favour of any one of the two parties

maintained high standard of impartiality and dispensing Justice by strictly adhering to the court procedure or he should have volunteered not to sit on the Bench, once the objection was raised. The high traditions of dispensing justice

of the Court the proceedings were drastically cut short..... it appears that Malik Muhammad Qayyum being the senior member of the Bench had exerted his influence on the second member S. Najam-ul-Kazmi J, who being an



devastating effect of reputation of the Judiciary and saving its grace was a real big challenge for the Government of Pakistan and the SC. The government disowned the alleged tapes and adopted an ambiguous stance about the authenticity to the tapes on one hand and on the other, admitted absence from service of a deputy director of the

unconfirmed Judge of the LHC, was sweating for confirmation." The observations made by the SC make it absolutely clear that Justice Qayyum had connived with the executive to flout the established norms of dispensing justice. The judgement the Bench gave and the procedure it adopted were only to punish the appellants at every cost. The blatant deviation and

It also points out deep rooted corruption that hides itself behind the prestige and grandeur of these institutions. Herculean task of cleansing the hidden corruption would only amount to adding more trouble to the existing one. The answer in such situation is to compromise.

The Judiciary in Pakistan is a pliable institution. It has upheld martial laws and declared the military dictators as usurpers only after they were out of power. It has constantly been leasing life to the doctrine of necessary which provides grounds to deliver judgements of choice rather than in strict compliance with constitutional law. For reasons best understood to the government she refrained to refer the cases of Justices Qayyum and Rashid to the SJC, an institution which can hold the judges of the Superior Courts accountable according to Article 209 of the constitutions.

Under the existing situation, the army-led rule gets legitimacy because of the support of the Judiciary which after promulgation of the PCO is free of the Judges who could have upheld the constitution and perhaps would not have validated the army. The Judiciary like the defence services is out of loop of accountability. But, it is under pressure from intelligentsia, press and legal community for being 'soft' with the army rulers. At this crucial juncture, it was neither in the interest of executive nor judiciary to move justices Qayyum and Rashid's case to the SJC. It would have opened Pandora's box, detrimental to the interests of both the institutions.

Justice Qayyum who should have resigned immediately after the SC decision preferred to fish in hot waters because he fully knew that neither the government nor the SJC

contested... were breached to the hilt by the EB as the SC judgement

Lahore High Court. I was alleged that the couple had accepted kickback in a pre-shipment inspection contract granted to SGS-Contecna case. The EB comprising Justice Qayyum and Justice Kazmi found the couple guilty. They appealed to the SC against their conviction to seek justice. Early this year a few days before the SC was to hear the

a British newspaper transcripts of the phone conversations of Justice Qayyum,

attenuacity to the tapes on one hand and on the other, admitted absence from service of a deputy director of the intelligence bureau (IB) Abdur-Rehim from December, 2000. Supposedly, the British newspaper was provided the tapes by the same deputy director of IB under a calculated move by Benazir Bhutto to influence the SC.

The SC also did not admit the tapes. Nevertheless the judgement contained excerpts from the transcripts which according to the legal experts amounted to "de facto recognition of the authenticity of the tapes." It is not clear as to why the SC preferred de facto recognition over their de jure recognition. Perhaps it was handicapped because of the decision of the government to own the tapes as it could have raised many questions that could embarrass the government. It could have

contesting a case before any court, render the Judge disqualified to hear the case. The aggrieved party has the local right to hearing of her case by a Judge in whom she has full faith. The first couple had objected to hearing of the case by an EB of LHC comprising Justice Qayyum. The Justice, notwithstanding his expertise in dealing with the company law cases, could not keep the reputation of being impartial because of political affiliation of his brother Malik Pervez with former PM Nawaz Sharif who got him elected to the National Assembly from Lahore on a seat vacated by him. Where political affiliations of a family member of the Justice were so strong. It was obligatory for Justice Qayyum to have either

were breached to the hilt by the EB as the SC judgement had very explicitly stated only to fulfill political agenda of the ruling party against leader of the opposition. Justice Qayyum did so only to win the good will of former PM Nawaz Sharif and to get petty benefits.

The SC in its judgement observed that "the order with regard to freezing of properties and assets of the appellants was passed on 27th April, 1998, while on 30th April, 1998 the PM approved the grant of Diplomatic Passports to the learned Judge and his wife, ignoring the formidable objection raised by the Ministry of Foreign Affairs." The SC also observed that the "bias is floating on the surface of the record..... on the intervention

Bench gave and the procedure it adopted were only to punish the appellants at every cost. The blatant deviation and violation of norms of doing justice with intriguing motives that were established, asked for initiating proceedings against the justices by the government in the SJC. The question if why did the government not opt for such course of action? Instead she waited till there was change in the presidency. Earlier to that Justice Qayyum was somewhat emphatic to fight back. He tried to get the remarks expunged from the judgement through an appeal to the SC which could not be sustained. Many questions prop up in order to find the answer of these questions. They bring out the fallacy and dichotomy that has deeply crept into our state institutions, the executive, judiciary and legislature.

to fish in hot waters because he fully knew that neither the government nor the SJC would opt to build a case against him on principles. The government remained mum till Justice Qayyum was supposed to have the support of former president. They day he left presidency Justice Qayyum lost his will to fight back and so was the case with Justice Rashid. Both the Justices by resigning due to compelling reasons have saved the grace of the Judiciary and perhaps their own grace also from falling into a further steep fall. Only the law of the land has suffered the most in the game of saving the grace played by the government and Justices. The could not have happened without the tact support of the Supreme Court. ■