



Environmental Protection, Rule of Law and the Judicial Crisis in Pakistan

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Abstract

In this article, the author discusses the judicial crisis in Pakistan following the dismissal from office of the Chief Justice of Pakistan in March 2007. The judicial crisis in Pakistan has shown a new-found power base in the judiciary supported by the bar associations and the public of Pakistan. This has unnerved the military rulers as an emerging strong and independent judiciary is a threat to continued or effective military rule. The article highlights that several initiatives taken by the Chief Justice to protect the environment alienated him from the government. The author recommends the demilitarisation of politics and the economy and a return to constitutional governance.

Key words

Environmental Protection, Rule of Law, judiciary, Pakistan

Editors' note

This paper was originally presented at the International Congress on Environmental Law held in Rio de Janeiro, Brazil, on 22–24 May 2007, in tribute to Professor Charles O. Okidi. On 3 November 2007, General Musharraf declared a state of emergency in Pakistan. Sixty five of the one hundred judges of the Superior Courts of Pakistan were dismissed from office for refusing to swear an oath of personal allegiance to General Musharraf. The Supreme Court's decision on the validity of General Musharraf's contentious re-election in October 2007 was imminent. At the time of writing, many judges are under house arrest. Also, on 5 November, over 500 lawyers were arrested from the Lahore High Court, including Dr Parvez Hassan. Those taken into custody were, and some continue to be, detained in inadequate and unsanitary conditions. Many lawyers are uncontactable and are believed to be in solitary confinement.

The imposition of the state of emergency and the suspension of the Supreme Court of Pakistan by President Musharraf erodes the very foundations of the rule of law and of a democratic society, and is never justifiable. We urge the government of Pakistan to lift the state of emergency and to release judges, lawyers and political opponents from house arrest and detention. We commend Dr Parvez Hassan for his tremendous personal courage and his continued defence of the rule of law in the face of the state of emergency.

The Judicial Crisis

Sixty years after its founding and following three Constitutions (1956, 1962 and 1973) and several mutilations and revivals (Provisional Constitution Orders and Revival of Constitution Orders), the rule of law remains elusive in Pakistan and a dream more distant than it appeared in 1947. The rule of law is founded and flourishes on the supremacy of law facilitated by a system of governance that is democratic, participative and transparent and, importantly, supported by a strong and independent judiciary.

That a military General, in uniform, could, on 9 March 2007, summon the Chief Justice of Pakistan to intimidate him, allegedly with the help of five other uniformed Generals, into resigning is a shameful reminder and acknowledgment of the lack of respect, at the highest level, for the integrity and independence of our judiciary, so vital for the Rule of Law. Four coups that led to military rule for as much as half out of Pakistan's total national life of six decades have positioned the military as the most dominant player in almost every aspect of its national life including politics, civil service, trade, commerce, business, real estate and corporate leadership. Even Universities, fountains of academic intellect, ideas, energy, innovation and freedoms have been placed under the regimented leadership of military Generals. The result is that, today, the military, with its uncontrolled access to the power and resource

bases of the nation, with the accompanying patronage and opportunities that it commands, is a serious threat to any effective or genuine rule of law in the years ahead.¹

When the Chief Justice of Pakistan refused to resign and showed unique courage in standing up to General Musharaf and his Generals, it was a defining moment in Pakistan's history. The Generals were totally unprepared for this defiance. What followed was the most humiliating treatment of the Chief Justice who was hurriedly replaced by an Acting Chief Justice, to whom oath was administered in indecent haste. A list of allegations against the Chief Justice was referred for investigation to the Constitutional forum, the Supreme Judicial Council, comprising of five senior Judges of the Supreme Court and the High Courts. The allegations, made public, revolved around nepotism and use of influence for the career enhancement of his son and a fondness for protocol. The Supreme Judicial Council acted immediately to bar the Chief Justice from exercising any functions of his office. All this happened during five hours when the Chief Justice was detained by the Generals. Stripped of his office in this arbitrary manner, the Chief Justice was allowed to leave the Army House, sans protocol, and forcibly taken to his house preventing his attempt to return to his office at the Supreme Court.

There was much, much more in store for the Chief Justice when he was forcibly taken to his house. He was placed in illegal detention and held almost incommunicado: his telephone and television lines were disconnected; his official cars were forcibly forklifted and removed from his house; he was disallowed any visitors; his children were not allowed to go to school and the whole nation waited in anguish and helplessness about the fate and even safety of its Chief Justice.

When, four days later, on 13 March 2007, the Chief Justice was to be taken for his appearance before the Supreme Judicial Council, he emerged from his detention to find that thousands of lawyers from all over Pakistan had descended on Islamabad to show their admiration and gratitude for his courage and defiance against the military rulers. The government was rattled, once again, by this unforeseen spontaneous support of the legal community. It panicked. In the highly charged emotional outburst of the adulating crowds that tried to shower flowers and devotion on the highest judicial officer of the land, the police and para-military forces physically manhandled the Chief Justice as he walked defiantly to defend

1 F. Babar "The Armed Forces and the Corporate Sector" *The News* 30 April 2007 documents, based on records before the Parliament, the all-pervasive intrusion of the military in several corporate and real estate enterprises, many supported by public funds, and the resultant "un-level" playing field created for other enterprises. The article records the view of a former British High Commissioner in Pakistan that the military's growing commercial interests in Pakistan were hampering poverty reduction efforts and the effectiveness of the judiciary in the country.

himself before the Supreme Judicial Council in the Supreme Court. And, all this was watched live in millions of homes all over Pakistan carried dutifully and with almost a missionary zeal by our blossoming electronic media.

At the time of writing, the events in Pakistan have taken an irrevocable direction against General Musharaf and military rule in the country. The judges of the High Courts of Pakistan have joined in the defiance by publicly attending the solidarity meetings of the bar associations all over Pakistan arranged in support of the Chief Justice. The challenge has spread to the streets and cities. Over 35 persons were killed and over 150 injured in civil strife that was generated in Karachi on 12 May 2007, allegedly inspired by the government, to abort the visit of the Chief Justice to attend a "solidarity" meeting of the Karachi High Court Bar Association. The legal battle of the Chief Justice has been escalated to the Supreme Court of Pakistan which has presently suspended the proceedings before the Supreme Judicial Council. Beyond the complicated constitutional issues to be decided by the Supreme Court, it is the Supreme Judicial Council that is required to look into the allegations against the Chief Justice referred to it. The final authority to dismiss or reinstate the Chief Justice, in the light of the findings of the Supreme Judicial Council, will, however, be President and General Musharaf.

The judicial crisis in Pakistan has shown a new-found power base in the judiciary supported by the bar associations and the public of Pakistan. This has unnerved the military rulers as an emerging strong and independent judiciary is a threat to continued or effective military rule.

The Emerging Threat to Military Rule

It is interesting to note that any analysis of the reasons for the judicial crisis would include the judicial activism of the Chief Justice, including in respect of environmental protection. Let me explain this perspective.

The judiciary in Pakistan has, in the past, been generally considered pliable (or helpless) as it has justified and legitimised each coup and military intervention inspite of a clear and specific Constitutional provision, since 1973, against high treason for abrogating or subverting the Constitution. The 1999 coup of General Musharaf was, similarly, approved by the Supreme Court. When General Musharaf saw the possibility of some challenge by certain judges, he removed them through a new constitutional oath of allegiance that such independent judges refused to take.

The suspended Chief Justice was a part of the Supreme Court that validated the coup of General Musharaf. He also took the new constitutional oath prescribed by

General Musharaf. That seemed to be the false comfort in his appointment as the Chief Justice in 2005.

However, once appointed Chief Justice, Mr. Iftikhar Muhammad Chaudhry, pursued his judicial duties to the increasing discomfort of the government. In 2006, his Court, led by him, struck down the privatisation of Pakistan Steel Mills, an important initiative of the Musharaf government. His Court started investigations of several persons who were “missing” and who were allegedly abducted by the secret service agencies and whose actions are generally not questioned by the judiciary. The Chief Justice also moved *suo moto* against human rights violations particularly against women, sexual offences and gender exploitation to the great annoyance and humiliation of arrogant and uncaring public officials.

The reason I chose the topic Environmental Protection, Rule of Law and the Judicial Crisis in Pakistan is to highlight that several initiatives taken by the Chief Justice to protect the environment alienated him from the government.

The *Shehla Zia v. WAPDA*² case, decided by the Supreme Court of Pakistan in 1994, had pioneeringly held that the constitutionally-protected fundamental right to life included the right to a clean and healthy environment. Fortunately, because of the value of precedent under the Constitution, *Shehla Zia* has enabled environmental suits before the courts and tribunals in Pakistan.³

The Chief Justice, relying upon *Shehla Zia*, intervened repeatedly to prevent ambitious development schemes of the government (New Murree Development, Murree) and private developers (Islamabad Chalets, Mini Golf, Islamabad) which environmental groups had opposed. In a recent action, he appointed Syed Mansoor Ali Shah, a leading environmentalist/lawyer to oversee pollution abatement measures in respect of industrial activities around the nation’s capital in Islamabad. What appeared particularly ominous to the government was the infectious effect of this activism on the subordinate judiciary.

This judicial activism and “independence” of the Chief Justice was apparently not acceptable to General Musharaf who needs “a more reliable judge” considering the important constitutional issues that are likely to come up before the Supreme Court during this election year 2007, including General Musharaf’s own eligibility as a Presidential candidate and to continue holding his dual offices of the Army Chief and the President of the country.

2 PLD 1994 Supreme Court 693.

3 P. Hassan “*Shehla Zia v. WAPDA*: Ten Years Later” (2005) *PLD Journal* 48 and also published in International Environmental Law Committee Newsletter of the American Bar Association’s Section on Environment, Energy and Resources 13-19 May 2005.

Rule of Law in Pakistan

Each of the Constitutions of Pakistan provided an unequivocal vision for this country: a system of governance dedicated to social justice, fundamental rights, inter-provincial co-ordination and harmony and anchored on principles of federalism and on separation of powers between the Executive, Legislature and the Judiciary. A specific and separate role was visualised and provided for each of these important organs of the State. The landmark case, *Al-Jehad Trust v. Federation of Pakistan*,⁴ explains the doctrine of separation of powers in the following words:

... the Legislature has to legislate, the Executive has to execute laws and the Judiciary has to interpret the Constitution and laws. The success of the system of governance can be guaranteed and achieved only when these pillars of the State exercise their powers and authority within their limits without transgressing into the field of the others by acting in the spirit of harmony, cooperation and coordination.⁵

However it was the Judiciary which was made responsible for checking the transgressions of the Constitutional provisions by either the Executive or the Legislature. As commented by Mr. Ajmal Mian, Chief Justice of the Sindh High Court, as he then was (and later to be the Chief Justice of Pakistan):

I may observe that 1973 Constitution was framed with consensus of all the political parties and the members of the National Assembly. It contemplated trichotomy of power between the three organs of the State, namely, the legislature, the executive and the judiciary. Each organ of the State was to function/operate within the bounds specified in the Constitution. The judiciary was assigned very important role to play, namely, to act as the Watch Dog and to ensure that none of organs or the Government functionaries acts in violation of any of the provisions of the Constitution or of any other law. Since the above role entrusted to the judiciary under the Constitution was very delicate, it was envisaged that the judiciary would be independent and separate from the other organs of the State.⁶

This important “watch dog” role is, crucially, enabled by provisions in the Constitution that secure the independence of the judiciary.

Chief Justice Hamoodur Rahman, speaking for the Supreme Court of Pakistan in *State v. Ziaur Rahman*,⁷ explained that the power of judicial review given to the

4 PLD 1996 Supreme Court 324.

5 Ibid at 399.

6 *Sharaf Faridi v. Federation of Pakistan* PLD 1989 Karachi 404 at 427–28.

7 PLD 1973 Supreme Court 49.

superior courts under the Constitution is not to be construed as the supremacy of the judiciary over the Executive or the Legislature:

In exercising this power [of review], the judiciary claims no supremacy over other organs of the Government but acts only as the administrator of the public will. Even when it declares a legislative measure unconstitutional and void, it does not do so, because, the judicial power is superior in degree or dignity to the legislative power; but because the Constitution has vested it with the power to declare what the law is in the cases which come before it. It thus merely enforces the Constitution as a paramount law whenever a legislative enactment comes into conflict with it because, it is its duty to see that the Constitution prevails. It is only when the Legislature fails to keep within its own Constitutional limits, the judiciary steps in to enforce compliance with the Constitution.⁸

The Objectives Resolution, the preamble, Article 2A, and Article 175 of the 1973 Constitution provide for the independence of the judiciary. There are other provisions that support and further such independence. These include the detailed provisions with regard to the composition of superior courts, the qualification and eligibility for appointment of judges, and the conditions of their service. Even the removal of judges is specifically provided through the Supreme Judicial Council under Article 209.

A former Chief Justice of Pakistan, Mr. Saiduzzaman Siddiqui, emphasised the central role of the appointment of judges in the independence of the judiciary in *Asad Ali v. Federation of Pakistan*⁹:

Right of access to impartial and independent Courts/Tribunals is a fundamental right of every citizen. The exercise of this right is dependent on the independence of judiciary which can be secured only through appointment of persons of high integrity, repute and competence, strictly in accordance with the procedure prescribed under the Constitution to the high office of the Judges of superior Courts. The selection of a person to the high office of the Chief Justice of Pakistan is a pivotal appointment for maintaining the independence of judiciary and for providing a free and unobstructed access to impartial and independent Courts/Tribunals to the ordinary citizens. Therefore, any deviation from the method prescribed under the Constitution for appointment to the high office of Chief Justice of Pakistan, would give rise to the infringement of the right of a citizen to have free, fair and equal access to an independent and impartial Court/Tribunal, thus violating the rights guaranteed under Articles 9 and 25 of the Constitution.¹⁰

⁸ Ibid at 70.

⁹ PLD 1998 Supreme Court 161.

Another former Chief Justice of Pakistan, Mr. Nasim Hasan Shah, summed up the consensus of jurists on the independence of the judiciary:

- (a) that every Judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without improper influences, inducements or pressures, direct or indirect, from any quarter or for any reasons; and
- (b) that the judiciary is independent of the Executive and Legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.¹¹

The matter of the separation of the judiciary and its independence from the executive came up for consideration before the Sindh High Court at Karachi in *Sharaf Faridi v. Federation of Pakistan*.¹² The Court held in this case that it is incumbent upon the government, under Articles 175 and 203 of the Constitution, to bifurcate the magistracy into judicial and executive branches, and to place the magistracy under the exclusive administrative control of the relevant High Court. The Court also dealt with the matter of the transfer of judges which could be used to victimise independent judges. It held that the transfer of judges from one High Court to another or to the Federal Shariat Court should be with the consent of the judges. The decision of the Sindh High Court was upheld by the Supreme Court of Pakistan in *Government of Sindh v. Sharaf Faridi*.¹³ The Supreme Court highlighted the need for the financial autonomy of the judiciary as an important element in its meaningful independence.

In *Al-Jehad Trust v. Federation of Pakistan*,¹⁴ and *Asad Ali v. Federation of Pakistan*,¹⁵ the Supreme Court further strengthened the independence of the judiciary by making it obligatory for the President to accept appointments to fill vacancies in the posts of judges in the Supreme Court and High Courts on the recommendations of the Chief Justice unless the President recorded “sound and valid reasons” to the contrary. Similarly, the appointment of Chief Justice is to be by seniority except for “concrete and valid reasons”. The Supreme Court also held, in these cases, that the transfer of a judge from a High Court to the Federal Shariat Court, without the consent of the judge, would violate the Constitution. All these safeguards were intended to check political influence being exercised in judicial appointments and transfers.

The classical formulation of the supremacy of the rule of law is included in Article 4 of the Constitution:

¹⁰ Ibid at 189.

¹¹ *Government of Sindh v. Sharaf Faridi* PLD 1994 Supreme Court 105 at 107.

¹² Note 6.

¹³ Note 11.

¹⁴ Note 4.

¹⁵ Note 9.

- 4. Right of individuals to be dealt with in accordance with law, etc.** (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- (2) In particular—
- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
 - (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
 - (c) no person shall be compelled to do that which the law does not require him to do.

It is one of the most valuable virtues of the Constitution that it provides extensively for the powers and functions of the superior judiciary. The power of judicial review and the other wide-ranging powers under Article 199 and Article 184 with respect to fundamental rights have given a broad sweep with respect to the role of the superior courts. A complete Chapter I in Part II deals with fundamental rights that are enforceable by the High Courts under Article 199(1)(c) and by the Supreme Court when the fundamental rights present questions of public importance (Article 184). These rights cannot be abridged (Article 199(2)).

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 had set a “common standard of achievement” for the global community and had catalysed the formulation and development of the international protection of human rights. Included in this catalogue of human rights were rights to life, liberty, security, freedom from arbitrary arrest and detention, right to a fair trial, freedom of association, religion, and expression. These declaratory principles were concretised in treaty obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966.

In the meantime, at regional levels, the European Commission and the European Court of Human Rights had developed extensive jurisprudence, under the European Convention of Human Rights, to internationalise the protection of human rights. Similarly, the Inter American Commission and the Inter American Court of Human Rights had promoted the Inter American Convention of Human Rights across national boundaries in the region.

Human Rights had, therefore, come a long way and, when the National Assembly of Pakistan undertook the drafting of the Constitution in the early 1970s, it was inevitable that it could not be oblivious to the international trends towards strengthening the rule of law in domestic regimes. Influenced by these developments, at the regional and international level and, undoubtedly, by national experiences, the 1973 Constitution made a commendable commitment to the declaration and protection of a broad range of fundamental rights covering the right

to life, safeguards against arrest and detention, right to dignity, freedom of movement, freedom of association and assembly, freedom of trade, business, or profession, freedom of speech and freedom to profess religion, and the right to acquire, hold and dispose of property. Equality of citizens and provisions on non-discrimination are also included in the fundamental rights.

For individuals and members of Pakistan's civil society, the superior courts have been a major bulwark against encroachments of their fundamental rights. The country's law reports are replete with examples when the judiciary used the Constitutional provisions to prevent oppression, usurpation and injustices. Particularly commendable has been the activist *suo moto* interventions of its superior courts in public interest litigation,¹⁶ to protect the poor, voiceless and marginalised sections of our communities, or address pressing social issues such as environmental degradation, malpractices in the educational system, bonded labour, child abuse, and victims of gender exploitation. In many ways, this experience in the protection of fundamental rights¹⁷ and the rule of law has been the finest hour of Pakistan's judiciary.

Yet in spite of these welcome gains introduced by the Constitutional framework on fundamental rights and the equally salutary jurisprudential interpretations and rulings of Pakistan's superior courts, the recent reference by General Musharaf against the Chief Justice of Pakistan, in an allegedly illegal and unconstitutional manner, highlighted the fragility of the rule of law in Pakistan.

The Way Forward

Demilitarisation of Politics and Economy

Beginning with the founding inspiration and vision of the Quaid-e-Azam, Mohammad Ali Jinnah, and the Objectives Resolution, 1949, the rule and supremacy of the law found abundant recognition in the various compacts evolved

16 See generally, P. Hassan "Securing Environmental Rights through Public Interest Litigation in South Asia" Global Judges Symposium on Sustainable Development and the Role of Law, Johannesburg, South Africa, 18–20 August 2002, organised by the United Nations Environment Program; P. Hassan and A. Azfar (2004) 22 *Virginia Environmental Law Journal* 216. See also N. Hasan Shah "Public Interest Litigation as a Means of Social Justice" (1993) *PLD Journal* 31.

17 The observance of religious freedoms under our Constitution has been dealt in an earlier article; see P. Hassan "Religious Freedom: A Comparative Analysis of the U.S. and Pakistan Constitutions" (1987) *PLD Journal* 157.

over the last sixty years. Each of the Constitutions, as noted, made a profound commitment to the separation of the three branches of the government. With the justiciability of fundamental rights and the independence of the judiciary guaranteed in the Constitution, Pakistan was all set to structure its national life and policies on the equality of all citizens, on their free access to courts and on a predictable jurisprudential regime based on the binding nature of precedents of the superior courts. Article 189 binds all courts in Pakistan to any decision on law of the Supreme Court. Article 201 mirrors a parallel provision binding the subordinate courts to the decisions of the High Courts. In normal times, this was a sure recipe for success but, unfortunately, the military Generals intervened, time and again, and for long durations, to distort and destroy the founding dream. The encroachment of the military in all aspects of Pakistan's national life has distorted the national landscape. The civil-military imbalance today is the most important hurdle in the way of the rule of the law. The military in Pakistan is the 'Big Bully on the Block' and no meaningful effort can be made to energise and strengthen the rule of law in Pakistan unless the military is, first and foremost, defanged. In any recommendatory action in this regard, priority needs to be given to reining in the secret intelligence agencies which have, illegally and unconstitutionally, intruded in private lives and national institutions and, as is well known, manipulated and rigged elections.

A possible way to move to demilitarise Pakistan's politics and economy is to capture the potential of Article 6 of the Constitution:

- (1) Any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason.
- (2) Any person aiding or abetting the acts mentioned in clause (1) shall likewise be guilty of high treason.
- (3) Majlis-e-Shoora (Parliament) shall by law provide for the punishment of persons found guilty of high treason.

Importantly, Article 6 covers both the "abrogation and subversion" or "attempts or conspiracy to subvert" the Constitution. This formulation, arguably, is broad enough to cover the actions of General Musharaf against the Chief Justice of Pakistan.

No objective of the country can be more important, and more pressing, than to restore civilian supremacy – the supremacy of the Constitution, the laws and the Parliament. The military has been allowed, with the questionable support of the judiciary, to subvert constitutional processes time and again. With the new-found and street-led popularity of the judiciary in the expression of opposition to the President in uniform, the judiciary should, in the future, interpret Article 6 of the Constitution to better accord with the intention of its draftsmen.

A minimalist approach, however, in the direction of the national accountability of the military would be to require the consideration and approval of the defence budget in the national Parliament. For too long, this sacred cow has remained outside the mainstream of public review and approval and this secrecy and confidentiality has fed uninformed debate and criticism which has eroded the image of the armed forces. Of course, allowances can be made for in-camera proceedings and hearings in respect of classified information.

Constitutional Governance

A second important recommendation is the need to declare and practice, as a national priority, constitutional governance. Dr. Tariq Hassan, in a recent article,¹⁸ highlighted that Pakistan can be steered to its rightful destiny if the governance in the country is based on the provisions of the Constitution. The adoption of the Constitution, in 1973, represented a consensus between all the Provinces that joined federal Pakistan. The rule of law may mean different things to different stakeholders. Thus, for individuals, as noted earlier, the important safeguards against abuse, oppression and injustices are to be found in the comprehensive catalogue of fundamental rights enshrined in the Constitution. For the Provinces, on the other hand, the rule of law would require that the fora established in the Constitution to safeguard and protect provincial interests such as the National Finance Commission (Article 160), National Economic Council (Article 156), and the Council of Common Interests (Articles 153 and 154), be activated and enabled to function in accordance with their Constitutional mandates. It follows that for the Provinces, important stakeholders in the Constitution, rule of law would mean facilitating their rights to natural resources as per Article 158 and their voice in economic and financial planning in the Council of Common Interests and the National Finance Commission.

Constitutional governance also requires each organ and authority of the State and each person performing functions on behalf of an organ or authority of the State to act in accordance with the Principles of Policy laid down in Chapter 2 of Part II of the Constitution. Thus, the promotion of the social and economic being of the people, promotion of social justice and eradication of social evils, the participation of women in all spheres of national life, the protection of minorities, the removal of illiteracy, ensuring inexpensive and expeditious justice, provision of just and humane working conditions, provision of basic amenities of life including food, housing, education and medical services, promotion of the education and economic interests

18 "Constitutional Governance" *The News* 27 April 2007.

of backward classes or areas and decentralisation of the government are important guidelines for all national decisions and decision makers. The National Economic Council is, particularly, obliged to take into account the Principles of Policy in formulating plans in respect of the financial, commercial, social, and economic policies for the country.

In the past, many requirement of the Constitution in respect of the Principles of Policy have not been respected. A dedicated commitment to prioritise these in the future will facilitate economic and social justice and anchor the rule of law.

Governance as per the imperatives of the Constitution would further encompass the generally accepted principles of good governance,¹⁹ compliance with which will facilitate and strengthen the rule of law in Pakistan in the years ahead. These include:

- (1) The periodic holding of elections to elect the representatives of the peoples in the Parliament and Provincial Assemblies.
- (2) The process of elections should be free and fair.
- (3) The elections should not exclude any person or political party except in accordance with the Constitution.
- (4) Elections should be held under an Election Commission that is impartial and effective.
- (5) The electoral process should be open and transparent supported by a free and independent press.
- (6) Freedom of Information legislation should ensure access of the public to information that will facilitate transparency in governance. Access to information also enhances accountability and reduces *mala fide*, corrupt and arbitrary decisions.²⁰
- (7) The empowerment of women and their protection against the cruelest forms of gender discrimination enabled in certain tribal customs and against domestic violence and sexual crimes will provide dignity, confidence and self-esteem to a majority of Pakistan's population. Particularly with economic empowerment facilitated by micro-credit schemes such as the ones initiated by the Nobel Laureate Muhammad Yunus with Grameen Bank in Bangladesh, Pakistan can look to the effective participation of its women in the economic and social justice necessary for the rule of law. The youth of this country also deserve our special attention, particularly against child abuse and malpractices and child labour.

19 See, generally, P. Hassan "Elements of Good Environmental Governance" delivered at the Asia Pacific Parliamentarians Forum, Tokyo, Japan, 10-11 May 2001, published in (2001) 6 *Asia Pacific Journal of Environmental Law* 1.

20 The international efforts to promote access to information in national laws and policies have been strengthened by the experiences with the 1998 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (1999) 38 ILM 517.

- (8) Rule of law – and economic and social justice ordained by the Principles of Policy of the Constitution – will also depend on the success, in the future, of Pakistan's efforts towards poverty alleviation and eradication, through affirmative action programs, if necessary. The poor, the deprived, the voiceless and the marginalised would have to be mainstreamed in a quest for human dignity. All the strategies focused towards poverty alleviation should be conceived within a participatory strategy which accords priority to the needs of the poor. It is also important to bring the poor onto the centre stage of development and make them involved in a close partnership with the federal and local governments, NGO's, grass-roots institutions and other private and commercial entities. Only by forging such a partnership can the poor have a more facilitative participation in their management and enhancement. Of equal importance is the need to reduce economic and opportunity disparities between the different areas and provinces of the country.
- (9) It is important to accept the principle of subsidiarity and decentralise decision-making from the central government to participants and institutions at lower levels in the political-administrative hierarchies. Governance by remote control from a distant capital ignores the role of locals and local communities that are affected by such decisions. There is improved efficiency and equity resulting from increased popular participation in public decision making.
- (10) As an environmentalist, I have always emphasised the close connect between the environment and sustainable development. This was eloquently acknowledged by the Supreme Court of Pakistan in the internationally-acclaimed *Shehla Zia* case.²¹ Good governance will require our decision makers to increasingly factor in environmental considerations to promote economic and social justice.²²

Legal Infrastructure Development

Lawyers as prosecutors and defenders, as judges, as leaders of the bar associations, as drafters of laws, as leaders of public opinion and causes, play a pivotal rule in the development of the rule of law. And, Pakistan needs to make a dedicated commitment to nurture and facilitate a quality capacity to handle this role. If the edifice of the rule of law, as guaranteed by the Constitution, is to become effective and meaningful in the years ahead, Pakistan needs to make a massive and urgent investment in the quality of its legal fraternity. The legal training of lawyers and judges undoubtedly influences the quality of the rule of law. Only if both the bench

²¹ *Shehla Zia v. WAPDA*, note 2.

²² See, generally, P. Hassan "The Role of the Judiciary and Judicial Commissions on Sustainable Development Issues in Pakistan" presented at the Pakistan Development Forum 2006 held in Islamabad on 10 May 2006.

and the bar — two wheels of the same proverbial chariot — are to lead Pakistan to its rightful destiny, Pakistan must ensure that such important actors on the national stage receive a quality legal education. Unfortunately, law schools in Pakistan, are mostly based on part-time teaching and driven by syllabi that have not kept current with changing times and challenges.

Truth and Reconciliation

Another possible way forward is with respect to the Truth and Reconciliation model so well pioneered by Chile and adopted to great national advantage and healing by Nelson Mandela in South Africa. The South African experience has shown that a nation afflicted with injustices, hatred, oppression, intolerance and bitterness can make a new beginning based on realisation of past wrongs and forgiveness.

The political, economic and social landscape in Pakistan today echos a similar divisiveness generated by the numerous transgressions by several key stakeholders, including and led by the repeated military interventions. If these transgressors can develop the maturity to publicly admit that “we did wrong and we will not do it again”, the stage can be set for a way forward based on truth, atonement and reconciliation as a grand national exercise.

Meeting the Challenges of Talibanisation in Pakistan

In the final analysis, whether Pakistan will succeed, in the times ahead, to found and sustain a genuine culture of freedom and rule of law will depend, to a large extent, on how it handles the looming threat to Talibanise its society. Any discussion of the rule of law in Pakistan in the years ahead cannot ignore the recent developments in some parts of Pakistan — including the federal capital — where certain religious and militant members and Groups have sought to demand and impose an Islamic way of life as per their own view of Islam. An important feature of this campaign is the coercive nature of compliance. This development fundamentally assaults the freedom of choice so importantly embedded in the fundamental rights guaranteed by the Constitution and so important for the Rule of Law.

The Constitution declares, in Article 2, that Islam shall be the State religion of Pakistan and, in fairness to its historical roots, this is the way it should be. But there is a fundamental difference in Islamising and Talibanising Pakistan’s polity. Any way forward which diminishes the free choice of the people of Pakistan will erode the edifice of fundamental rights and the rule of law enshrined in the Constitution.

