

Judicial Crisis in Pakistan: Musharraf goes after the Supreme Court

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The honourable Chief Justice Iftikhar Mohammad Chaudhry of the Supreme Court of Pakistan was made 'dysfunctional' by the President of Pakistan General Pervez Musharraf on March 9, 2007. It has been widely held as a dramatic move to constrain the judicial activism which became synonymous with CJ Iftikhar Mohammad Chaudhry.

The move to make Justice Iftikhar Chaudhry 'non functional' was immediately followed by yet another decision by the president to send a reference under Article 209 of the Constitution to the Supreme Judicial Council to investigate allegations of misconduct against him.

Earlier in the day he was summoned by the President in his army house where the purported meeting between the two continued for some five hours. The act of summoning the CJ in the army house itself has been considered as an unwelcome and unceremonious step.

General Musharraf appointed the third most senior judge, Justice Javed Iqbal, as the acting Chief Justice because the second most senior judge, Justice Rana Bhagwandas, is reportedly out of the country. This appointment is also controversial because different groups of legal fraternity have contested it as unconstitutional. Even the CJ Iftikhar Chaudhry has himself challenged the appointment of acting Chief Justice in his application before the Supreme Judicial Council stating,

"He (Justice Javed Iqbal) has been appointed as acting Chief justice contrary to article 180 of the constitution of Islamic republic of Pakistan which provides that acting Chief justice can be appointed when the office of the Chief justice of Pakistan is vacant or the Chief justice of Pakistan is absent or is unable to perform the functions of his office due to any other cause. The cause could be that if the Chief justice is incapable of properly performing the duties of his office by a reason of physical or mental incapacity which is not the case over here." [1]

Although, Pakistan has a chequered judicial history, various methods have always been employed to dispose of the judges not toeing the establishment line, but this is an unprecedented move of making the CJ 'non-functional'.

The CJ has several important judgments to his credit, the most significant being the case in

which he overturned the privatization of the Pakistan Steel Mills and another in which he forced the government to locate 'missing' persons, allegedly held by the intelligence agencies.

To the utter discontent of the legal fraternity in particular and the whole nation in general the Chief Justice has been held incommunicado in his home. Even though the government has claimed time and again that the CJ has his own free will to meet anybody or go anywhere, but the claim has been debunked by many people, including the CJ himself in his application before the Supreme Judicial Council. Even the lawyers who are defending the CJ in the Supreme Judicial Council complain inaccessibility.

This episode in the history of Pakistan has engendered country wide protests against the incumbent government, with all national, provincial and district associations of Lawyers at the frontline observing strikes simultaneously.

The matter of the CJ is sub judice in the Supreme Judicial Council. The first hearing of the SJC took place on March 13, 2007 and then on March 16, 2007. Aitzaz Ahsan, who is leading the panel of advocates representing CJ Iftikhar Chaudhry, sought an adjournment for hearing of the application till March 26 on the plea that he had not been able to meet his client because of hindrances created by the security personnel deployed outside the Chief Justice House. The hearing has been adjourned to March 21, 2007.

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