CAUCUS OF 50 SENIOR LAWYERS OF PAKISTAN[1]

15 April 2023

This caucus believes that never in the life of the nation have relationships between the judiciary and the executive, the judiciary and the legislature, the political parties inter se, political leadership and their voters, the judges inter se, the bar and the bench, and the military and civil society or political stakeholders been at such an ebb as today. If there is a greater divide than any of the above it is the dismal divide between the starving, homeless and jobless people of Pakistan and the powerful political and economic elite with huge and unaccounted for assets at home and abroad and the facility of transnational movement. This elite, comprising, the top business houses, industrialists, property tycoons, feudals, senior generals and bureaucrats don't even display an awareness of or sensitivity to the pain and plight of the man in the street. An entirely different and insulated system has been devised by the elite for themselves wherein they live lives of luxury in lavish ostentation. The wanton spending on their comforts and total disregard of the abject misery of the people is nothing but obscene. As a nation in a continuing seven-decade riot of wasteful consumption, we have in fact already spent on ourselves the income that another four generations will earn through hard and servile labour, for that is the way the global system appears to be heading. Our great grandchildren will be paying off the debt that we have amassed while their contemporaries will enjoy the fruits their forefathers saved.

With a comprehensive tragedy staring us in our face we have gathered to focus on one grievous situation facing us:

- The unprecedented and outright refusal of the Government to:
    - abide by Order(s) of the Supreme Court of Pakistan
    - hold elections to Provincial Assemblies within the 90 days period expressly prescribed in the Constitution.
        - The issue before us is whether that 90 days period is mandatory or not.
        - **WE BELIEVE** that it is mandatory.

[1] This issues with no disrespect for the many more, senior as well as junior lawyers, who may not be present in this caucus

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- **WE ALSO BELIEVE** that these elections are the real issue that Prime Minister Shahbaz Sharif desires to avoid, and, other matters such as formation of benches, roster fixation are obvious distractions to detract from this central issue.

- The apparent attack upon the judicial edifice from within and without, and, the persons responsible for it be they judges themselves, administrators or political parties.

- The constitutional controversies which have fractured the body politic and even caused schisms among the justices, mainly, on questions of bench formation; roster fixation; the role of judges as "*politicians wearing robes*"; or the Court as an "*imperialist*" Court, all these need to be addressed by the judges themselves in due deliberations in the first instance, and not by any institution other than the judiciary itself and not in *indecent haste*.

- The role of the Legislature and some Political Parties has also been divisive, negative and bullish and / or opportunistic in this situation, in so far as:
  - the divide in the judiciary appears to be more on account of personal linkages with parties and personal egos than on principle;
  - the divide has created a situation of the nature that divided the Judges on personal relationships and egos in 1997 with disastrous effects. The present situation appears worse;
  - the polarization of the judges is now to the extent that today upon the mere composition of the Bench, a citizen is able to predict at the outset, the ultimate outcome of any case. That is why a controversy could be created whether seven or five judges sat on a Bench that passed the Supreme Court's Final Order dt. 01 March 2023 which is yet to be obeyed and implemented. One faction believed it should have been seven judges; the other that it was indeed and in reality only five judges, as only five judges heard the arguments of the parties and were competent to pass the Final Order by a majority of 3:2;
  - a divided and weakened Supreme Court has been unable to bring to heed to such wanton acts of sheer contempt and disregard for the dignity of the Apex Court as to display huge billboards carrying

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portraits of sitting Superior Court judges and naming and shaming them in large public meetings.

- Elections
    - Elections to the Punjab and KPK Assemblies remain real, and root cause of the present disputive and ugly imbroglio. These elections must be held at the soonest.
        - because 90 days have expired on 14 April 2023 (Punjab) and will on 18 April 2023 (KPK).
        - A basic right has thus arisen in every Punjabi and KPK voter to cast his/her vote within the 90 days / stipulated period.
        - All Pakistanis irrespective of rank and status are bound to do their duty towards that purpose.
        - The Cabinet's recourse to legislation appears to be mala fide, intended only to avoid an electoral contest and to devise a method to evade elections. The Court should examine that; summon those purporting to provide means to delay or avoid the elections. If institutional respect is nevertheless to be given to the legislature, those who have decided outside legislative processes to prevent action in accordance with the Court's directions, including, among others, the Prime Minister, the Law Minister and the Interior Minister be summoned to determine responsibility and blame for violating the Constitution and contempt of this Court by flouting its Order(s).
    - To avoid elections to Punjab and KPK Assemblies the Government has come up with another novel pretext. It says that it is more convenient, always, to hold elections to all assemblies on the same day, even if one of the five assemblies has been dissolved three years before its term is over. The issues that arise are fraught with dangers to democracy and the Federation and include:
        - Will the Province with the dissolved assembly be kept bereft of a Government by "chosen representatives" for three years? or
        - Will the other four assemblies to dissolve together to hold elections to all five on the same day?

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- Will this not be taken as a revival of ONE UNIT against which the people, especially of the smaller provinces struggled from 1956 to 1969 until they were able to create a federal structure enshrined in the Constitution of 1973.

WE THEREFORE BELIEVE that:

- Elections to the Punjab and KPK Assemblies be held at once as per the dictates of the Constitution as elucidated in the Supreme Court Order(s) dt. 01 March 2023 and read with Order dt. 04 April 2023;
- That the issues internal to the Supreme Court of Pakistan be decided by the judges themselves through the comity of judges, mutual respect, due recognition of status, propriety and dignity behooving judges of the highest Court of the land;
- Any permissible legislation to regulate the Court or its processes ought not to be deployed, to destroy the Court, its independence, its dignity and authority [*McCulloch v Maryland* 17 US 316 (1819)].

WE FURTHER BELIEVE that as lawyers we are the officers of the Courts in Pakistan. As such, we are the primary stakeholders in the functioning of the Courts according to the Constitution and the law as independent bulwark of the rights of the people of Pakistan, particularly the poor and the deprived. We thus need a strong Court acting within the Constitution and according to the oath taken by the judges at all times. In so far as the Courts continue to do so, we will always support them without reservation.

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