

MEETING WITH SIR MICHAEL JAY

SPEECH IN SENATE COMMITTEE

Reference to be provided by Prof. Khurshid

PROF. KHURSHID AHMAD



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The newly elected National Assembly of Pakistan faces a number of challenges, but the most important and crucial of them all is the revival of the pre-November 03, 2007 judiciary and reinstatement of its illegally sacked judges. No civilized society can survive with honor without a free judiciary. With the independence and prestige of the judiciary go the independence and prestige of a nation. This explains why it is imperative to annul all unlawful and extra-constitutional actions, which commenced from March 09 and culminated with the declaration of Emergency on November 03, 2007. The National Assembly is already committed to resolve the issue pertaining to the restoration of the judiciary within the timeframe of 30 days, in accordance with the demands of law, Constitution and the national conscience. More than a week has passed since the cabinet took oath and the matter needs now to occupy the top most position among the list of priorities before our new legislature and the executive.

There are at least three aspects of the issue, which merit serious consideration in order to avoid recurrence of such mishaps in future. Firstly, we notice that one man has been taking drastic actions in utter violation of the Constitution, the law of the land and the Islamic values and civilized norms of the society. The Chief Justice of Pakistan was summarily dismissed, followed by as many as 63 judges' of the higher judiciary. These highly respectable figures, and in certain cases even their family members, were subjected to illegal confinement and the most inhuman treatment. This was followed by appointment in their place of the judges of the ruler's choice with a view to obtain decisions of his liking. The entire episode was nothing short of the judiciary's murder, something that has happened never before in our chequered history. Secondly, a single person enjoyed the liberty to willfully suspend the Constitution, introduce amendments suited to his designs and mould the system of governance the way he wished.

Thirdly, the PCO-inducted judiciary colluded with him to grant him extra-constitutional powers through willful amendments, which even the Supreme Court was not authorized to make and which needed two-third majority of the Parliament for passage.

These three extra-constitutional and hence illegal measures were taken by the regime and the post-03 November judiciary became equally involved in the ruler's crime by according them legal sanction. There are instances even earlier of the judiciary's abuse and we may cite in this context the sad example of Governor General Ghulam Muhammad and his accomplice Justice Munir. The rulers' favorites in the Parliament have also been involved earlier in transgressing their limits and the bounds of decency and fairplay by violating the spirit of the Constitution and sanctifying these transgressions in the form of Sections 270, 270-A and 270-AA. It was, however, for the first time that the country had fortunately a Chief Justice, who could resist such unlawful measures. Justice Iftikhar Muhammad Chaudhry and his 63 other senior fellow judges stood like a rock before all pressures and intimidations of the government. Their brave and principled stand encouraged the

country's entire lawyers' community, followed by the civil society and the political force, to rally around the Chief Justice of Pakistan in this heroic struggle for the sake of judiciary, the rule of law and supremacy of the Constitution. In the eyes of Pervez Musharraf and his cronies this was obviously the greatest crime of the Chief Justice and his fellow judges. Unprecedented in the country's history and a matter of shame for any civilized society, the government of the day went to brutalize and terrorize the honorable judges of the superior judiciary. It was in this backdrop that general elections of 18 February 2008 were held and the people of Pakistan sealed the fate of Pervez Musharraf and his favorites once for all. be evil. Yet, they were forced to resort to them for certain overriding considerations. So, I think unless we address those issues and challenges, the phenomena of terrorism cannot be resolved. As the present focus is on an elision war and not on real causes of terrorism consequently the world has become more insecure during these four years. We are playing in the hands of the terrorists and doing what the terrorists wanted to achieve. It is "Bin Ladinism" that is gaining currency. That is one issue that I would like you and the leadership in the West to reflect upon.

Secondly, I am deeply concerned about some grave fall-outs of this so-called war. Here too I want to invite your attention to at least two areas: one, is not a fact that whatever was achieved during the last two hundred years in the fields of International Law, agreements in respect of certain norms of state behaviour, commitment to certain codes of conduct, a vision of specific expectations from the civilized countries of the World the role of the U.N. and respect for its Charter and Human Rights, everything is under threat. It seems we are re-writing International Law and destroying many a great achievements of humanity. This is a very serious challenge. Similarly its consequences for even the values of the West, may the humanity so much cherish, democracy, human rights, freedom, and privacy are under threat. These are extremely important concerns and we all must reflect on these aspects of this so-called war. Is it not a fact that our one-dimensional obsession with terrorism may lead to the destruction or delusion of these achievements?

Thirdly, I would like to express my concern about another fall out of 9/11 as well as that of 7/7 for the Muslim Community in general and Pakistani community abroad in particular. I am not informing at least your good self that there have been the reports in U.K. press (The Guardian and The Independent) that shows that discriminatory actions against Pakistanis have increased almost six-times in the post-July situation. This is a very important issue for us both from the human view point as well as from the perspective of U.K.-Pakistan relations.

Finally, I would just make three very short observations. First about the issue of Palestine, particularly the supposedly "two state solution". I am afraid we all are paying a lot of lip service to it. We should be definite about what we mean by "the State". Palestinian State should mean a state in recognized terms of international law and not just a "municipality" under this rhetoric. This must not take a form of Bantonization of the Palestinian land and establishment of 'centones' under Israeli suzerainty. While one may welcome the Gaza withdrawal but I think 3"0U have to go deeper to see whether it has any real linkage with the road map proposed by the Quartet. Whether the whole idea of a unilateral withdrawal represents a de-linking from the whole concept

of road map? And what is happening after that and what is the state of Gaza, a grand prison without its own airport, without any sea links, with road links, controlled by Israeli check-posts. Is this a movement towards real peace and emergence of two states, or only one state and an appendage with some semblances of pseudo autonomy?

About Kashmir also, I would like to say that I was disappointed by the statement of the British Prime Minister made in India where differentiation between state terrorism, individual acts of violence, and national liberation struggle by the oppressed was ignored. The question of the right of a people to resist oppression and occupation was confused with terrorism. I think an earlier statement; I mean the 1996 statement at the Labour Party Convention at Brighton. If I remember correctly, a resolution reaffirming the original principled position on solution of the Kashmir dispute under UN Resolutions was adopted on that occasion. The present position of the British Prime Minister is a departure from that Labour Party resolution.

And finally I would only say that yes, we have very much appreciated what you and others did in Bosnia but it should have been done much earlier, much earlier, when the Bosnians were mercilessly butchered and driven out from their homes, when the UN safe heavens had become awesome hells. I would invite you to go through the autobiography of President Alija Izzatbegovich which has been published in English from U.K. which reveals the whole story and we find how after playing havoc with the lives of the People, some response and that too in a very mutilated form was given. Yet whatever was done, we appreciate it and thank you and the NATO, very much for that.
