

- INFORMATION PRESS - News Views Media - USA
- Chief Editor: Journalist SYED ADEEB
- <http://www.SyedAdeeb.net> -- <http://www.InformPress.com>

=====

Address of the Legal and Real Chief Justice of the Pakistan Supreme Court, Mr. Iftikhar Muhammad Chaudhry, to the New York City Bar Association

By IFTIKHAR MUHAMMAD CHAUDHRY
Chief Justice of Pakistan
<http://www.JusticeForum.info>

New York, NY, USA, 17 November 2008 (InformPress.com) - It is a pleasure and an honour for me to be addressing the members of one of the largest bar associations in the world [the New York City Bar]. I am extremely touched and moved by the honour that you have conferred upon me today. In actual fact this honour is being showered on the teeming millions of Pakistanis who have dared to stand for, struggle for and dream for those values and principles which developed societies such as yours value, cherish and I am sure at times take for granted. I stand here in solidarity with all those Pakistanis who continue to defy autocracy and repression, and have risen against despotism, dictatorship, tyranny and injustice.

My learned friends, in an ideal world I should not be standing here today giving this speech. In an ideal world where all nations bow to the rule of law, for the Chief Justice of a Supreme Court to take a principled stand against subversion of the Constitution and to warn against the erosion of the Rule of Law and Independence of the Judiciary, should be the norm rather than the exception. It is extremely unfortunate for us as a nation to have to fight for and struggle for something which should be the birth right of every human being. Winston Churchill's statement at the end of the war about his war-torn country [UK] was a deliberated comment. He said that as long as the judiciary was independent and functioning then nothing was lost. And how true that observation was, because there is an irresistible bond between an independent judiciary and a nation's capacity to resist an adversary, whether internal or external.

In any war the most effective weapon is a population with enforceable rights. Such a nation has a stake in the system and will fight to protect it. The key word here is 'enforceable'. A nation who are promised rights, even if they are enshrined in a document as sacred as the Constitution, but are denied the enforcement of those rights, then for all practical purposes they remain deprived of those rights. A system that does not enforce and protect rights alienates the people. And what good is that judiciary that is remiss in guarding a Constitution given by the people to themselves? Without an independent judiciary people lose faith and commitment to their chosen constitutional system. They become indifferent to its survival and soon become apathetic, cynical and resigned. They then choose to follow those who challenge it, even those who oppose it with military

force. And this then leads to the inevitable loss of crucial battles.

Ladies and gentlemen, no democracy can survive without an independent judiciary. No strong and stable Parliament can be constructed on the ruins of an independent judicial edifice. An independent judiciary is, in fact, the most significant protection available to Parliament. It covers the flanks of Parliament, resisting attacks from any adventurer in the wings. The entire argument that Parliament must prevail over justice and law is therefore flawed. There can be no democracy without law. Without an independent justice system even the best democratic system remains in jeopardy, and eventually degrades into lawlessness and anarchy.

My friends, we live in times of great peril and in times of great challenge to the human spirit of resilience. No battle in modern war or battles for peace can be won in lands that lack justice. Lack of justice produces economic and social inequities which in turn churn out disaffected elements that will destroy the fabric of the one just world that is our shared goal. Only justice for all can beat terrorism and tyranny. Only an independent judiciary can checkmate extremism. Rule of law is the most effective obstacle to repression, oppression and all their offshoots. There is no doubt about the fact that Parliamentary sovereignty is sacred. But only the Constitution is supreme, and it is for the legitimately constituted courts to interpret the Constitution. Parliament and parliamentarians cannot be exempted from judicial scrutiny by installing a feeble and timid judiciary in the name of the sovereignty of Parliament. Both Parliament and the Executive must be restrained and kept within the boundaries of the rule of law.

My fellow jurists, permit me to emphasize one additional point. Just as an independent judiciary is vital to sustain democracy, the independence of the judiciary itself is dependent entirely on "independent judges". For a truly independent judiciary the judges must be independent and fearless. If judges are afraid of being arrested, of being manhandled, of being imprisoned along with their families, and that too because they had the courage to take a principled stand against a dictator [Pervez Musharraf] and refused to be party to the mutilation of the Constitution, then we might as well forget about any judge ever being independent or fearless. If society turns a blind eye and condones the illegal acts of the dictator [Musharraf], then we might as well bury the hope of ever having free judges with free minds and a free conscience. Ladies and gentlemen, this is why Pakistan is going through a decisive and definitive moment in our history.

The Lawyers' Movement in Pakistan is a unique and historic struggle against all those [PPP, MQM, PML-Q] forces which are trying to stifle the rule of law and are hacking away at the foundations of our judiciary. They are trying to suffocate and bury the concept of an independent judiciary once and for all, and once that happens then the very fabric of society is destroyed resulting in a domino effect, with all the other organs and pillars of the state falling one by one. This movement is being led by the young lawyers of Pakistan who seek neither office nor power. For the last 18 months these champions of freedom have risked life and limb in the face of all odds. The lawyers' movement triggered a wave of patriotism and mixed emotions in the civil society of Pakistan - both of resentment against the forces working against the well-being of our

beloved country [Pakistan], as well as the urge and desire to come out and do whatever they could within their capacity to assist the lawyers in achieving their goal.

The [Pakistani] media has also played a remarkable role, and in a country [Pakistan] where nothing is free or independent, they have carved a place for themselves in history. There is no doubt about the fact that the media has attained the status of a fourth pillar of the state, and in the case of Pakistan, it has proved to be both powerful as well as bold and courageous.

Ladies and gentlemen, I am sure all of you are fully aware of the link between economic growth and an independent judiciary. Investment shies away from economies or countries that do not have an independent judiciary. There is a report in the June 5th 2008 edition of The Economist [Newspaper of London, UK] based on the findings of a commission on the legal empowerment of the poor released on 3rd June at the United Nations. It asserts that "one of the main reasons why so much of humanity remains mired in poverty is that it is outside the rule of law." Such economies are less productive and less attractive to capital. The term 'Legal Empowerment' is therefore likely to become a part of policy-making vocabulary just as the term 'sustainable development' has after it appeared in a similar report 3 decades ago. After all, what capital and investment, both domestic and foreign, primarily need is security. Inflation and rising prices are also part of the same phenomenon and revolve around the question of supply and demand. Without investment there can be no increase in production and opportunities of employment. Without increase in production, supplies cannot increase and meet the demands of an increasing and more demanding population. Net employment decreases and unemployment goes up, resulting in more competition for the same number of jobs. As a result, salaries and wages go down, purchasing power falls, and prices go up because productive capacity and production does not rise. Inflation, unemployment and an increase in crimes are natural consequences. As The Economist says, it is now widely understood that a vibrant, independent and fearless mechanism for imparting justice is crucial to the health of the economy.

Ladies and gentlemen of the [New York City] Bar, it is not the province of the courts to step into areas that are exclusively within the domain of the Executive or the Parliament. But, if these two institutions remain indifferent to the duties entrusted to them under the Constitution; or if they have acted contrary to the principles enshrined therein; or if their acts discriminate between the rich and the poor, or on religious, class, regional, or ethnic grounds; then judges are called upon by the Constitution, their oath and their office to act. We do not seek to deprive any other constitutional pillar of its authority or strength. In fact we seek to bolster and strengthen that authority. And above all, we owe it to the citizens of Pakistan to do our duty according to our original oath, the Constitution, the law and our conscience.

Parliament is no doubt supreme but the judiciary must be equally independent and authoritative. That is how the state and its institutions retain the confidence of the people. This is how nations develop and people prosper. People must not only have rights but must also have the means to enforce those rights. And that is only possible through an

independent judiciary, comprising of independent judges. Nations with independent judges develop fast as they attract and maintain investment, whereas a weak and compliant judiciary may benefit some individuals, but it breaks the back of the economy, the people and the country.

Finally, ladies and gentlemen, permit me to part with this ending note. In the months that I remained incarcerated with my family at the house atop the Margalla Hills, I drew strength from the light that shined through the international brotherhood of all students and men and women of law who made common cause with the lawyers of Pakistan in shared ideal of establishing the supremacy of the Rule of Law. And to the American lawyers who attired themselves in black coats and marched on the streets of New York, Washington DC and many towns and cities throughout your land [USA] in support of the thousands of lawyers who marched throughout the length and breadth of my land [Pakistan], I say thank you and remain certain that we shall overcome.

[The Association of the Bar of the City of New York (the New York City Bar Association - NYCBA) is an independent non-governmental organization of the USA with more than 22,000 members in 50 countries. The NYCBA - www.nycbar.org - was founded in 1870, and since then has been dedicated to maintaining the high ethical standards of the profession, promoting reform of the law, and providing service to the profession and the public. The Association continues to work for political, legal and social reforms, while implementing innovative means to help the disadvantaged. Protecting the public's welfare remains one of the Association's highest priorities.]

(1) PAKISTAN'S CHIEF JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY TO RECEIVE HONORARY MEMBERSHIP AT THE NEW YORK CITY BAR

http://www.nycbar.org/PressRoom/PressRelease/2008_1117.htm

<http://www.nycbar.org/Chaudhry.htm>

<http://www.abavideonews.org/ABA495/index.php>

(2) NEW YORK CITY BAR HONORARY MEMBERSHIP BESTOWED UPON PAKISTAN CHIEF JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY

http://www.nycbar.org/PressRoom/PressRelease/2008_0114.htm

(3) PAKISTAN'S CHIEF JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY ACCEPTS HARVARD LAW SCHOOL MEDAL OF FREEDOM

<http://www.law.harvard.edu/news/spotlight/ils/chaudhry.html>

(4) Pakistan Supreme Court Chief Justice Mr. Iftikhar Muhammad Chaudhry will address the Georgetown University Law Center (McDonough Hall - Room 206 - 600 New Jersey Avenue, NW) on Monday, 24 November 2008, from 5:30 pm - 6:30 pm in Washington

DC, USA. Chief Justice Chaudhry will discuss his perspectives on and participation in public interest litigation in Pakistan. He is expected to be accompanied by Pakistan Supreme Court Advocate Mr. Aitzaz Ahsan and Pakistan Supreme Court Advocate Mr. Athar Minallah who will both answer questions about the judicial crisis and the Lawyers Movement in Pakistan.

<http://www.law.georgetown.edu/news/releases/November.17.2008.html>

(5) Pakistan Tehreek-e-Insaf (PTI) - <http://www.insaf.pk>