

Pakistan's lawyers' movement

Munir Malik

The following is Mr Munir Malik's Asian Human Rights Defenders Award acceptance speech, on behalf of himself and his colleague, Mr Aitzaz Ahsan, made in Hong Kong, 13 May 2008.

Good evening.

It is a great pleasure to be here today to accept the third Asian Human Rights Defenders Award jointly presented to Barrister Aitzaz Ahsan and myself. It is indeed extremely humbling to join the company of the two previous awardees, Mr Michael Anthony Fernando and the late Somchai Neelaphaijit. The two distinguished awardees exemplified the struggle for basic freedoms in Sri Lanka and the accountability of the state for forced disappearances in Thailand, issues that are at the core of the lawyers' movement in Pakistan.

Pakistan today stands at the crossroads trying to reclaim its destiny—a destiny hijacked by a coterie of military, industrial, feudal and bureaucratic elites. Concepts such as the rule of law, trichotomy of state powers, an independent pro-people judiciary forming the bedrock of the system of dispensation of justice, and an independent, robust and free press are alien to this coterie. For 60 years this indigenized offspring of our colonial masters has clubbed together to stifle and sabotage populist democratic forces. But a feeling of change is in the air and one can sense an opportunity to wrest, or at least weaken, their stranglehold over the nation's future.

It all began with an evolutionary change in our judicial system under the stewardship of Chief Justice Iftikhar Muhammad Chaudhry, increasingly resorting to judicial activism even at the risk of being criticized for blurring the lines between the executive and the judiciary and detracting from the principle of separation of powers. The level of judicial scrutiny of executive actions maintained in Pakistan might be considered unusual in countries—for example, England—with a more traditional constitutional jurisprudence. But what is frequently forgotten is that such judicial circumspection is the outcome of a long democratic history where governments themselves display a far greater sensitivity to the wishes of their own electorate. On the other end of the spectrum, Indian courts—which operate in a legal and socio-economic framework closer to our own—have adopted an even more interventionist approach. Unfortunately in Pakistan, the legislature had completely abdicated its role as a watch-dog over the executive and left the judiciary to shoulder the entire burden. In this scenario—where the parliament had become a rubber-stamp for all and any acts of a Chief of Army Staff—it is the view of the legal fraternity that enhanced levels of judicial scrutiny over executive actions was not only desirable but imperative. Chief Justice Iftikhar Muhammad Chaudhry was someone who understood this. He was very conscious of his responsibilities and his legacy.

On 9 March 2007, a General in uniform, also wearing the hat of the President of the Islamic Republic of Pakistan, launched a frontal assault on the judiciary by suspending and detaining the country's Chief Justice. Chief Justice Iftikhar Chaudhry was summoned by General Musharraf and in the presence of five generals and the Prime Minister, asked to submit his resignation or to face trumped up charges of misconduct. In reality he was being taken to task for having chosen the less travelled road of judicial activism, challenging the conduct of the executive authorities of the state in diverse fields ranging from the privatization of state assets to asking the state to account for forced disappearances.

The Chief Justice held firm, refused to resign and preferred to defend the charges. This unprecedented “No” was to go down as a watershed in the struggle for a democratic Pakistan wedded to the concepts of constitutional liberalism represented by the rule of law, the principle of separation of powers and equality of all before the law.

How did we go about to intensify this struggle? Almost immediately, the Supreme Court Bar Association of Pakistan of which I had then been President—and Aitzaz is now—vowed to resist this frontal assault on the third organ of the State. The first aim of our struggle was to change existing beliefs that had enslaved the masses, who had—independence notwithstanding—been indoctrinated with the false idea that there were two sets of rules, one for the powerful and one for the meek; they were taught to be subservient at the cost of liberty. We sought to convince the masses that the courts are not there only to adjudicate property disputes between rich landowners or the competing commercial interests of multinational corporations, but that a truly independent judiciary will allow the common man to realize his fundamental rights. That judges with security of tenure will be fearless enough to administer true justice, that such judges will protect them from the abusive exercise of power by the establishment.

In fact, the existing system is a hangover of our colonial past and despite the departure of the British, the system of governance of and by a free-people was still wanting. The local elite who had been the handmaidens of the colonial power quietly stepped into its shoes taking undue advantage of the illiteracy of the teeming millions, and took upon itself the task of keeping the people in control and to protect the privileges of the ruling class to which they belonged. It was therefore incumbent upon us to educate the people that their fundamental rights could only be realized under an independent judiciary. That an independent judiciary meant that those who adorned the robes reserved for judges were all fearless and bold like the Chief Justice and that every judge throughout the land from the lowest magistrate to the highest judge should be possessed of the courage to look the executive in the eye and say “No, this is unjust”.

Our second aim was to change the mindset of the judges, especially those who manned the superior judiciary. Regretfully, the chequered history of the judiciary was essentially one of subservience to those who controlled the coercive power of the state. It was not that the concept of trichotomy of powers and the principle of separation of powers was alien to them, but in their own minds they viewed themselves more as civil servants than as holders of constitutional posts charged with specific duties under the Constitution. It was this state of mind that led them to rely on the reviled doctrine of necessity in validating extra-constitutional takeovers. We needed to inculcate in them the belief that the effective exercise of their writ was directly proportional with their moral authority and the credibility that they enjoyed in the eyes of the masses, and that their true duty was to provide access to justice and thereafter justice itself to the weaker sections of society; that they must be pro-people in their orientation and deed.

The third element of our movement was to remind the political leadership that a free and democratic society rests on the edifice of an independent judiciary; that the road to Islamabad runs through the towns and hamlets of our country and not from London or Washington.

Finally, the fourth element was to change the mindset of the military, bureaucratic, feudal and greedy capitalist establishment, to make it aware that the time had come for it to end its alienation from the masses; it was there to serve them instead of lording over them like a foreign force.

We must assert civilian supremacy over all our institutions. We are no longer prepared to live under the barrel of the gun. Those guns and their wielders must return to their rightful positions; facing outwards at the frontiers of our land. The people will rule themselves. Of course, our elected politicians will make mistakes, both honest and dishonest, and there will be misrule. But the court of accountability must be 170 million Pakistanis and not nine corps commanders. Elected governments must complete their tenure and face up to their failures at the time of polling, instead of being handed a convenient excuse by their forced ouster at the hands of the military. We seek to strengthen all the institutions of our state—the executive, the legislature, the judiciary as well as the media. Only by strengthening these pillars and strictly enforcing the limits on their separate powers in accordance with the Constitution can we protect

ourselves from tyranny and secure the Rule of Law. Only then can we rid ourselves of the inequities of the past.

The first milestone of our journey was 20 July 2007, when the Supreme Court historically refused to affix its imprimatur on General Musharraf's attempt to dismiss the Chief Justice, who was then restored to his office with full dignity and authority. But the General again struck back to shore up his tottering dictatorship. He imposed a state of emergency and dismissed 60 independent judges of the superior courts including the Chief Justice, replacing them with handpicked judges ever willing to legitimize the General's actions to undermine the rule of law. Thousands of lawyers were arrested and a reign of repression was let loose on the media and civil society.

At this point we added a new demand to our movement—the reinstatement of the judges unconstitutionally sacked by General Musharraf. The struggle continued to create space for the political parties to operate in and fortify their challenge to dictatorship.

On 18 February 2008 the nation voted in massive numbers to reject the authoritarian system of General Musharraf. We were beginning to think that the objectives that we had laid down for our movement were now well in sight. But alas, this has not been the case. The entrenched establishment has managed to derail the struggle for its peaceful overthrow and embedded itself in the upper echelons of political leadership. The rule of law and an independent judiciary now seem to be distant goals of the lawyers' movement, but we are committed to sharpening our struggle to establish a society that rests on the foundation of justice for all without fear or favour.

I would be remiss if I failed to pay tribute to civil society across the frontiers of land for having supported us in our struggle. International public opinion has been an indispensable ally. You at the Asian Human Rights Commission have given us invaluable moral support that has given courage to the lawyers of Pakistan to carry forward their unremitting struggle for establishing the supremacy of the rule of law, and we are at a loss of words to befittingly say thank you. Thank you ladies and gentlemen, and we look forward to working in tandem in our shared struggle for the realization of human rights.