

Speech delivered by Aitzaz Ahsan, President of the Pakistan Supreme Court Bar Association,  
during the 2008 American Bar Association Rule of Law Initiative  
Luncheon and Award Ceremony.  
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*Mr. Ahsan accepted the 2008 Rule of Law Award on behalf of those lawyers and judges in Pakistan  
who demonstrated courage in upholding the rule of law in that country.  
For more information on the ABA Rule of Law Initiative, visit [www.abarol.org](http://www.abarol.org)*

Mr. President, Ladies and Gentlemen:

It's overwhelming: the response, and the love, the affection, the admiration and the support you have bestowed upon the lawyers and judges of Pakistan. Before I begin my submissions, may I recognize some gentlemen who are here from Pakistan? Mr. Ahtar Minallah on my right, he's the Chief Justice's spokesman and counsel. From Pakistan we have also a senior corporate lawyer, one of our most distinguished legal men in the country, Mr. Pervez Ahsan. He's an old ABA member himself. From New York we have Mr. Saleem Rizvi and Mr. Ramzan Ranna. Thank you very much.

Mr. President, Ladies and Gentleman:

The American Bar Association and the Rule of Law Initiative have decided to honor those lawyers and judges of Pakistan who have stood up to the whims of a dictator and sought the reinstatement of an independent judiciary. It is my pleasure to receive this award on behalf of all the brave, fearless and dedicated lawyers who have been marching on the streets in their black suits and ties for the last seventeen months for the reinstatement of those judges.

I need not recount the facts. These are already before you. But I do need to place before you certain realities that are not being properly perceived or understood by those who run the affairs of the most powerful state in human history.

Pakistan is, no doubt, in the eye of many a storm. It is an embattled state. On its western border there is an armed insurgency. This is an insurgency the entire world is affected by and thus deeply

interested in resolving. But its leaders do not necessarily have the right solutions. I will dwell on at least one aspect of this matter in a little while.

On Pakistan's eastern border there is indeed a great and vibrant democracy. The people of Pakistan wish it well. The people of Pakistan want to see it and its people prosper and live in peace. But that democracy continues to spend enormous sums upon its defense quite disproportionate to the needs of its people. This maintains, perhaps by design, a fear psychosis in the Pakistani mind. After all the fear or mistrust of which other state or power impels both of us, India and Pakistan, to spend such vast sums on our defense when we have some of the poorest people, and some of the worst slums, in the world? The history of at least four wars during the last sixty years does not help cure people of this paranoia. India took the lead in crossing the nuclear threshold. It was natural for Pakistan to follow.

Domestically, too, Pakistan is beset with enormous challenges and problems. The economic front has become the most engaging at present. With oil and food prices spiraling world-wide, the conditions in the developing states have become precarious. Pakistan is one of them. But Pakistan, at the same time, is engaged in a war on its own territory and, in some respects and some measures, against its own people. This is quite a predicament.

And in this context the cause that the lawyers of Pakistan have been fighting for becomes more and more relevant.

The issue is all the more important because it has arisen in a war zone. That is the most important aspect. People may not be ready to believe it but the existence of an independent and functioning judiciary is quite crucial to the prosecution of a war. Britain's war-time Prime Minister, Sir Winston Churchill, is said to have been of the firm view that if her courts were independent and functioning, she could not lose the war. The implication is evident. Without an independent judiciary a contestant cannot win a war.

The response to the exclamation that: "But the US does have a fiercely independent and functioning judiciary", is simple. An independent judicial system has to be provided in the theatre of war. It is the people in that area that matter.

As Chief Justice of Pakistan Mr. Justice Iftikhar Mohammad Chaudhry has recently stated: “the most effective weapon in a war is a population with enforceable rights.” The population he was referring to is the population in the war-zone.

Pakistan is in the war zone. And America’s most “indispensable ally”, General Pervez Musharraf has hacked the justice system to the ground and pulled it out of its foundations. This has the effect, not merely of depriving the honorable judges of their exalted offices but in fact, this hacking has deprived the very people of their rights.

The Constitution of Pakistan which the General purported to suspend, amend and restore, does, no doubt, provide for an entire set of fundamental rights. And it provides, on paper now, the means of their enforcement through what, in effect, are the writs of habeas corpus, certiorari, mandamus and prohibition. But where is the machinery for the enforcement of the rights? That has been trampled under the military commander’s jack-boots.

When 60 (sixty) out of a total of 100 judges of the superior courts, were purportedly dismissed and actually, and physically, arrested and detained with their family members including their children on November 3 last, General Musharraf delivered a fatal blow to an independent and functioning judiciary in the war zone. Condone that action and you wipe out the chance of any judge in Pakistan ever becoming independent for all times to come. And independence of the judiciary does not derive merely from constitutional provisions purporting to guarantee it. A judiciary is independent when its judges are fearless and independent. This is an on-the-ground situation. It is not merely, and esoterically, conceptual.

Which judge will dare be independent if he has before him the horrible example that the General made of the Chief Justice and other judges? Each would fear not only for himself but for his wife and children, too. And as Bacon said, in times when one was not accused of male chauvinism: “He who has wife and children, gives hostages to fortune.”

Without an independent justice system, the people are deprived of the enforcement of their rights. That, in effect, is a negation of all rights. And a people deprived of rights, are, a people that become alienated from him who deprives them of the rights and those who support him.

As the Chief Justice of Pakistan, Mr. Justice Iftikhar Mohammad Choudhry has recently observed: “without an independent judiciary, therefore, people gradually lose their commitment to the Constitutional system provided by the state. More gradually they become indifferent to its survival. In the course of time they become apathetic, cynical and resigned. A system that will not enforce their rights alienates the people. They then choose to follow those who challenge it, even those who oppose it by military force. Thus are crucial battles lost. Thus are crucial battles being lost.”

The US administration takes pride in advancing the cause of democracy in Pakistan. We do not accept this claim. It is well known that before the lawyers began to march, there was no challenge to General Musharraf. Before the Chief Justice refused to resign on demand, no one had said no to the General. A dictator, weakened by the Denial and the Lawyers’ Movement, turned to Washington. That is when the US did some stitch-work and pitched in with the demand for elections. But in the process its ally had destroyed the judicial edifice.

Elections were, no doubt held on February 18 this year. But the dismissed and detained judges, who were independent minded and fearless, were not reinstated. That remains the position to date. Neither a most vigorous movement, nor a massive Long March to Islamabad has been able to persuade the leadership in the new Parliament to restore these independent judges.

At this point it is necessary to mention two salient facts. One, the lawyers’ movement is entirely non-violent and peaceful. The lawyers carry with them no weapon except the precepts of our Constitution. Their weapons are none more lethal than habeas corpus, certiorari, mandamus and prohibition. All the Bar Associations in Pakistan are structured on the principles of democracy, tolerance of diversity, peaceful means and pluralism. They are neither militants nor fanatics. They are supported by a vigorous and vibrant civil society.

Second, no democracy can survive without an independent judiciary. No strong and stable Parliament can be constructed on the debris or ruins of an independent judicial edifice. The south Asian experience, in fact is that an independent judiciary is the most significant protection available to Parliament. It covers the flanks of electoral institutions by resisting assaults from all adventurers waiting in the wings.

The entire argument that Parliament must prevail over justice and law is thus, flawed. The advice that we should let Parliament settle matters, even when Parliament refuses to undo the outrageously illegal actions of November 3, is misconceived. No democracy will survive without law. Without an independent justice system even the best democratic system remains in jeopardy and eventually degrades into lawlessness and anarchy. We want to see a truly sovereign and decisive and stable Parliament.

Thus our movement continues despite the constitution of a new Parliament. Thus we continue to bear pressure upon those who govern, this time those who inhabit Parliament. Our pressure is entirely non-violent as was established by the Long March in June. Millions welcomed the marchers as they drove through villages, towns and cities. They showered flower petals and provided them with water and food items. Hundreds of thousands came along in the last lap to the capital and assembled outside Parliament. That was on the seventh day of travel through the length and breadth of the country. The sun was rising over the Margalla hills as I began the speech that would conclude the peaceful non-violent protest march. It had risen by the time I concluded.

But the Government does not seem to have leant an ear to the protest. An International Republican Institute poll held last month asserts that 83% of the people of Pakistan want the independent Chief Justice and judges back. So we will march on.

We seek no outside intervention on our behalf by any Government. Equally, we do not appreciate such interference on behalf of the one who is perceived, by that 83%, as the adversary.

We do, however, appreciate the concern shown by the American lawyers, and particularly the American Bar Association, towards their fellow professionals. This is not intervention. This is concern. We welcome it and are grateful for it. A non-violent struggle is being waged on the streets of Pakistan for the supremacy of the Constitution and the law. It is a war in which at least one side is empty handed and without any kind of weapon or projectile. It is in the interests of the world that that side prevails.

Thank you very, very much.