

Hon'ble Mr. Justice Qazi Faez Isa
Chief Justice of Pakistan
Chairman Supreme Judicial Council
Supreme Court of Pakistan

March 25, 2024

Hon'ble Mr. Justice Mansoor Ali Shah
Senior Puisne Judge, Supreme Court of Pakistan
Member Supreme Judicial Council
Supreme Court of Pakistan

Hon'ble Mr. Justice Munib Akhtar
Judge, Supreme Court of Pakistan
Member Supreme Judicial Council
Supreme Court of Pakistan

Hon'ble Mr. Justice Aamer Farooq
Chief Justice Islamabad High Court
Member Supreme Judicial Council
Islamabad High Court

Hon'ble Mr. Justice Mohammad Ibrahim Khan
Chief Justice Peshawar High Court
Member Supreme Judicial Council
Peshawar High Court

Dear Sirs

1. We are writing to seek guidance from the Supreme Judicial Council ("SJC") with regard to the duty of a judge to report and respond to actions on part of members of the executive, including operatives of intelligence agencies, that seek to interfere with discharge of his/her official functions and qualify as intimidation, as well as the duty to report any such actions that come to his/her attention in relation to colleagues and/or members of the courts that the High Court supervises.
2. This matter has arisen in the aftermath of judgment dated 22.03.2024 rendered by the Supreme Court in the matter of Shaukat Aziz Siddiqui vs. Federation of Pakistan (C.P. No. 76 of 2018), in which it has been declared that Justice Siddiqui, who was the senior puisne judge of Islamabad High Court ("IHC"), was wrongfully removed on the basis of a report of the Supreme Judicial Council ("SJC") dated 11.10.2018, and



would be deemed to have retired as a judge of the IHC. Justice Siddiqui had been removed after he had publicly alleged that operatives of the Inter-Services Intelligence ("ISI"), led by Major General Faiz Hameed (DG-C of ISI), were determining the constitution of benches at IHC and interfering with proceedings of the Accountability Court Islamabad.

3. The Chief of Army Staff and the Federal Government had filed complaints against Justice Siddiqui, in addition to the Registrar Supreme Court bringing the allegations made by Justice Siddiqui to the attention of the then Chief Justice of Pakistan. The Supreme Court in the aforementioned judgment has held that a judge cannot be removed without an inquiry being conducted by the SJC into allegations of misconduct against the judge and the SJC may only adjudge allegations of misconduct in accordance with the Code of Conduct issued by it and not on the basis of *"unspecified, arbitrary and vague notions of what constitutes appropriate traits and patterns of behavior of a judge..."* It has been declared that the actions taken against Justice Siddiqui *"constituted mala fide and SJC had acted coram non iudice"*.
4. While the declaration issued by the SC has vindicated Justice Siddiqui to an extent, his unceremonious removal from office can understandably not be recompensed many years after his removal. Further, whether operatives of ISI, led by DG-C at the time, were in fact interfering with functioning of the IHC and the Accountability Court at the time has been left open. And if they were so interfering, how are those who undermined the independence of the judiciary and those who aided and abetted such interference are to be held accountable to prevent and deter a repeat of such conduct. After the SC's judgment, Justice Siddiqui has reiterated his demand in media interviews that allegations of interference by ISI operatives aimed at engineering the outcome of judicial proceedings be investigated.
5. We support Justice Siddiqui's request to investigate the allegations made by him and request that the scope of such investigation be expanded to determine whether such interference in relation to the administrative functions of IHC (including composition of benches and marking of cases) and judicial proceedings of the courts that IHC supervises are still continuing and whether judges of High Courts and District/Special Courts are discharging functions under explicit and/or veiled threats of coercion by intelligence agencies. We will also note that the Code of Conduct for Judges prescribed by SJC provides no guidance on how judges must react to and/or report incidents that are tantamount to intimidation and interfere with judicial independence.



6. We believe it is imperative to inquire into and determine whether there exists a continuing policy on part of the executive branch of the state, implemented by intelligence operatives who report to the executive branch, to intimidate judges, under threat of coercion or blackmail, to engineer judicial outcomes in politically consequential matters, in view of the following events:
- a. There emerged a difference of opinion between members of the bench hearing the case titled Muhammad Sajid Vs. Imran Ahmed Khan Niazi (Writ Petition No. 3061 of 2022). The matter was reserved to determine the question of maintainability on 30.03.2023. The presiding judge circulated his draft opinion finding the petition maintainable, while the other two disagreed with it and wrote a different opinion, which was circulated on 19.04.2023. Considerable pressure was brought to bear on the judges who had opined that the petition was not maintainable, by operatives of the ISI, through friends and relatives of these judges. Fearing for their security, they sought additional protection for their homes. One of the judges had to be admitted in a hospital due to high blood pressure caused by stress. The matter was brought to the attention of Chief Justice IHC. It was also brought to the attention of the then Chief Justice of Pakistan during a meeting at his residence on 02.05.2023. On 03.05.2023 six judges of IHC met with Chief Justice IHC to share their concerns re efforts of ISI operatives to affect judicial outcomes. He advised that he had already spoken to the DG-C of ISI and had been assured that no official from ISI will approach judges of the IHC. The interference on part intelligence operatives however continued.
 - b. In May 2023, the brother-in-law of a judge of IHC was abducted by armed men. He was returned at night approximately 24 hours after his abduction. He subsequently revealed that he was abducted by individuals who claimed to be operatives of the ISI, and after having undertaken surveillance of members of the judge's family, including his son, had selected the brother-in-law for abduction. During his confinement he was administered electric shocks. He was also forced to record a video on the instruction of his abductors and tortured into making false allegations. Subsequently, a complaint was filed against the judge of IHC before the SJC, accompanied by an orchestrated media campaign to bring pressure to bear upon the judge to resign.
 - c. On 03.05.2023, IHC's inspection judge for District East Islamabad reported to Chief Justice IHC that judges of the district court were facing intimidation and at least one Additional District and Sessions Judge had been threatened and



crackers were thrown into his house to intimidate him. The matter was also discussed in the presence of all judges of IHC in the tea room. The relevant District and Sessions Judge overseeing Division East was immediately called to IHC to verify reports of interference by operatives of intelligence agencies into the functioning of the district judiciary that he had shared with the inspection judge of IHC. He confirmed such reports in the presence of Chief Justice IHC and another judge of IHC. The said District and Sessions Judge was later made officer special duty and transferred to IHC, before being sent back to Punjab as he was a judicial officer on deputation. He is now posted at Bahawalpur.

- d. On 10.05.2023, the judges of the IHC sent a letter to Chief Justice IHC recording incidences of operatives of the ISI seeking to interfere with judicial matters and requested that appropriate contempt proceedings be initiated to ensure that Islamabad High Court continues to discharge its functions without interference by the executive and/or intelligence agencies. No proceedings were however initiated. A copy of the letter is attached as Annex-A.
- e. The judges of IHC deemed it appropriate to bring such matters to the attention of the Supreme Court. An appointment was sought with the Chief Justice of Pakistan. On 19.05.2023, six judges of IHC who were in attendance in office on that date (Chief Justice IHC was in Lahore and one judge was undergoing a minor surgery) met with the Chief Justice of Pakistan, which meeting was also attended by Justice Ijaz-ul-Ahsan. The matter was brought to their attention and judges of the IHC were advised that the Supreme Court would intervene after the Chief Justice of Pakistan had an opportunity to consult with his colleagues. We also met with Mr. Justice Qazi Faez Isa, the then Senior Puisne Judge, on the same day to bring the matter to his attention as well.
- f. During the summer of 2023, one of the judges of IHC moved into the official residence provided to him. During routine maintenance of the house, one of the wall-mounted lights needed to be removed. It transpired that a video camera was affixed in the light fixture, which was also equipped with a SIM-card, and was recording audios and videos from the drawing room of the residence of the judge and transmitting them somewhere. Another such camera was installed in the what was considered to be the master bedroom of the judge's home. The USBs from the surveillance equipment were recovered and they reflected stored private videos of the judge and his family members, which were played in the presence of a number of judges of IHC to confirm



their content. The matter was brought to the attention of Chief Justice IHC. There has been no determination of who installed the equipment and who is to be held accountable for putting in place a design to make recordings of the judge and his family in the privacy of their home.


- g. Five judges of IHC wrote a letter to Chief Justice IHC on 12.02.2024, mentioning accounts heard by us with regard to interference by operatives of intelligence agencies into the dispensation of duties and functions by judges of the District Judiciary, undermining their autonomy and independence. A full court meeting was sought to address concerns, *inter alia*, regarding independence of the judiciary. It was reiterated in this letter that judges of IHC had been subjected to illegal surveillance that violated their privacy in the most abhorrent fashion. While the full court meeting is yet to be convened, a copy of the letter is attached as Annex-B.
7. The aforementioned events suggest that if in our judicial history there were ever a design to undermine the independence of the judiciary and influence the outcome of cases of interest to the executive branch, such design may not have been discarded. In the matter of Shaukat Aziz Siddiqui allegations of interference by operatives of ISI have been dealt with and relief has been granted to a former judge of IHC who was wronged. We believe that while such action was necessary, it may not be sufficient.
8. As judges, we have all sworn constitutional oaths to dispense justice to do right by all manner of people, in accordance with the Constitution and the law, without fear or favor. It is public interest in the ability of the judiciary to dispense justice to every litigant without being influenced by extraneous considerations that such oath is meant to protect. While declaratory relief can correct a wrong as a historical matter, there is need to ensure that independence of the judiciary is upheld in real time, to bolster public faith in the ability of judges to be neutral arbiters of the law.
9. The Code of Conduct for judges as prescribed by the SJC provides no guidance on how judges are to react when sought to be influenced or coerced by members of the executive, including intelligence operatives. It is unclear how a judge can prove such interference and intimidation if he/she reports the same, as the onus to do so would appear to be on the judge. It is also unclear if judges are to individually ward off acts aimed at intimidating them and interfering with discharge of their functions or the judiciary as an institution can and will take steps to ensure that individual judges aren't required to fend-off coercion and intimidation on their own. While we fully support the need for judicial accountability, the trigger for searching scrutiny of a




judge's conduct must not be his refusal to succumb to intimidation by intelligence operatives or a judicial decision to the dislike of the executive branch.


10. We believe that individual judges must not be required to be as brave as Justice Qazi Faez Isa, the Chief Justice of Pakistan, to fight persecution at the hands of the executive on their own, or as resolute as Justice Siddiqui, to continue to fight a wrong for personal vindication long after removal from office. If independence of the judiciary is a salient feature of the Constitution meant to uphold fundamental rights and dispense justice in accordance with law in public interest, there is need for an institutional response to uphold and protect independence of the judiciary.
11. We, therefore, request that a judicial convention be called to consider the matter of interference of intelligence operatives with judicial functions and/or intimidation of judges in a manner that undermines independence of the judiciary. Such convention might provide further information as to whether judges of other High Courts have had experiences similar to those narrated above. Such institutional consultation might then assist the Supreme Court to consider how best to protect independence of the judiciary, put in place a mechanism to affix liability for those who undermine such independence and clarify for the benefit of individual judges the course of action they must take when they find themselves at the receiving end of interference and/or intimidation by members of the executive.


Yours sincerely


Justice Mohsin Akhtar Kiyani


Justice Babar Sattar


Justice Arbab Muhammad Tahir


Justice Tariq Mehmood Jahangiri


Justice Sardar Ejaz Ishaq Khan


Justice Saman Rafat Imtiaz



Distribution:

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9. Hon'ble Mr. Justice Irfan Saadat Khan
10. Hon'ble Mr. Justice Naeem Akhtar Afghan
11. Registrar Supreme Court of Pakistan, Secretary Supreme Judicial Council

ANNEX-A



JUDGE
ISLAMABAD HIGH COURT
ISLAMABAD

The Honorable Chief Justice
Islamabad High Court
Islamabad

May 10, 2023

Dear Sir:

We bring to your attention with anguish and concern the following events that have transpired during the hearing of cases with political ramifications.

1. Justice Tariq Mehmood Jahangiri was approached directly as well as through relatives and friends. He was requested for a meeting by Sector Commander Islamabad and a relative of Justice Jahangiri was pressurized by Sector Commander Quetta to facilitate a meeting between Justice Jahangiri and Director General (Internal) of ISI. Messages were also sent to him in an attempt to influence the outcome of judicial proceedings pending before a bench that he was a part of.
2. Efforts have been made to bring pressure to bear upon Justice Mohsin Akhtar Kayani through his relatives in an attempt to influence the outcome of cases pending before benches that he was part of. Implicit threats were made regarding initiation of proceedings through exercise of power by the executive in the event that Justice Kayani remained unhelpful and inaccessible.
3. Pressure was brought to bear upon Justice Arbab Muhammad Tahir through his relatives. On his visit to Quetta he was informed by family that ISI was probing into his tax matters in an attempt to find vulnerabilities. Sector Commander Islamabad and Director General (Internal) ISI also reached out in an effort to seek a certain outcome in a judicial matter pending before a



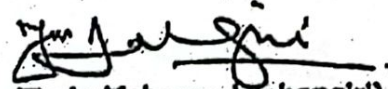
JUDGE
ISLAMABAD HIGH COURT
ISLAMABAD

bench that he was a part of, in which the judgment had already been authored.



We are of the opinion that the interference of the executive and/or intelligence agencies within the domain of Judiciary in general and efforts to influence the outcome of judicial proceedings in sub judice matters as well as where judgments have been authored and signed but not yet released coupled with intimidation and threats of dire consequences is as blatant a contempt of court as there can be. We would therefore recommend that appropriate proceedings be initiated under Article 204 of the Constitution read with provisions of the Contempt of Court Ordinance, 2003, to ensure that public faith in the ability of Islamabad High Court to dispense justice without considerations of fear and favour is preserved and protected, and Judges of the Court are able to discharge the functions of their office in accordance with oath that they have sworn under the Constitution to uphold the rule of law and decide cases with an independent mind in accordance with their conscience on the basis of merits of each case.

Yours' Sincerely

(Miangul Hassan Aurangzeb)
Judge


(Tariq Mehmood Jahangiri)
Judge 10/5/23


(Sardar Ejaz Ishaq Khan)
Judge


(Mohsin Akhtar Kayani)
Judge

(Babar Sattar)
Judge


(Arbab Muhammad Tahir)
Judge


(Saman Rafat Imtiaz)
Judge

ANNEX-B

Justice Aamir Farooq
Chief Justice
Islamabad High Court
Islamabad

February 12, 2024

Dear Sir:

We write to you troubled by the waning credibility of the Islamabad High Court (IHC) as a neutral arbiter of the Constitution and the law, occurring in the face of growing public perception that IHC is unable to "do right to all manner of people, according to law, without fear or favor, affection or ill-will" in accordance with the oath each one of us has sworn.

We all face criticism, often unfairly, which is expected in an adversarial litigation system and we embrace such criticism as our legal authority is to be exercised as a public trust. But we cannot disregard reputational harm to our institution. Our Code of Conduct requires us to work "for the integrity of the institution of justice" and ensure that "justice is not only done, but is also seen to be done." We believe that IHC is progressively wanting in this regard and we must take corrective action immediately.

We therefore request you to convene a full-court meeting to address the following:

1. **Supervision of District Judiciary.** Article 203 of the Constitution provides that the High Court "shall supervise all courts subordinate to it." Our supervision system is deficient in fundamental ways as has been emphasized to you by us since you have assumed the office of Chief Justice IHC.
 - a. The judges of the District Judiciary do not appear to enjoy autonomy and independence and suffer constant interference from intelligence agencies. (There are allegations that an Inspector of the Inter-Services Intelligence has the audacity to summon judges to ISI's local sector commander's office to issue instructions and interfere with their judicial work. If true, such allegations are very damning. They must be investigated).
 - b. One District and Sessions Judge had reported interference of intelligence agencies in judicial work of district judiciary. The matter was brought to your attention in an inspection report put together by the relevant inspection judge. The District and Sessions Judge was subsequently made Officer Special Duty. After keeping him virtually suspended for a few months, he has been sent packing to Punjab, as he was on deputation. This was done without consulting members of the Administrative Committee or even the relevant inspection judge.
 - c. There are allegations that some members of the district judiciary lack financial integrity. This has been reiterated by the corruption perception index released recently and brought to your attention. IHC has taken no corrective action. Concerns regarding the reputation of individual judges have been shared with you. Neither the judges of IHC have been taken into confidence with regard to what corrective actions have been taken (or ought to be taken), nor are Inspection Judges consulted before ordering the transfer and posting of district judges whose work they oversee, rendering the role of Inspection Judges largely redundant.
 - d. The Code of Conduct requires us to ensure that "equality should prevail in all things". Some cases in the courts under our supervision linger for years. But some trials involving political persons have been concluded with an alacrity that has drawn criticism not just from the media but even from fair-minded members of the legal fraternity. Trials in some cases have continued till midnight as if

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judges have been instructed to deliver conclusions within a predetermined timeframe. This has happened in breach of the IHC notification issued pursuant to High Court Rules (Rule 1, Chapter 1, Volume 1), which is binding and requires subordinate courts to observe court timings from 8.30 am – 3.30 pm.

2. **Bench Formation & Fixation of Cases.** The Supreme Court has recently upheld the legality of the Supreme Court (Practice and Procedure) Act, 2023, amid extensive public debate around it. The principle that has been reiterated by the Supreme Court is that the Constitution must not be read as vesting unstructured discretionary authority in the office of the Chief Justice to constitute benches and fix cases. We have emphasized to you in our informal tea-room conversations that we must follow suit to inject transparency and credibility in our case management system.
- a. The power to mark cases under the High Court Rules lies with the Registrar. Instead of the Administrative Committee laying policy guidelines re how the Registrar is to discharge such function (after forming benches that are to be assigned work on a subject-matter basis), the office of the Chief Justice has seized the marking function, while downgrading the role of the Registrar into a ministerial/ceremonial one. The system of case marking and fixation therefore needs to conform with the High Court Rules and best governance practices.
 - b. While the case marking and fixation practice has remained out of sync with the High Court Rules, during the term of Justice Athar Minallah as Chief Justice, the function of marking cases to benches had been delegated to the Senior Puisne Judge. When you became Chief Justice, you suspended that practice and decided to continue to exercise exclusive control over marking cases as Chief Justice, a power that you had continued to enjoy during the entire term of your predecessor Chief Justice in your capacity as Senior Puisne Judge. Such centralization and concentration of case marking and fixation power is neither in accordance with law nor constitutes an attractive policy choice.
 - c. There is criticism around the opaque manner in which politically consequential cases continue to be fixed within IHC. There is no explanation for why special benches are created or how expertise of judges comprising such benches is matched with the subject-matter of politically consequential cases. There is need for transparency around bench formation and case-fixation, and decisions must be taken as a collegium if we want justice to be seen as being done.
 - d. There has been one incident where a politically consequential matter already decided by two of the three judges comprising the bench has been fixed before a newly constituted bench. As the third member of the larger bench that dismissed the case as not maintainable, you had not approved of the majority decision. It is unclear what administrative authority is vested by law in the office of the Chief Justice to constitute a bench and refix a case for hearing afresh when a majority decision has already been rendered.
 - e. Justice Miangul Hasan Aurangzeb issued a judicial order in 2022 directing the Registrar's Office to ensure that cases in which stay orders have been issued are fixed within a certain period of time. This is essential to curtail the baleful litigation practice wherein interim relief is not a means to preserve status quo while a matter is adjudicated, but becomes the end goal creating an incentive for a party to delay adjudication of the matter. The Code of Conduct obliges judges "to decide cases within the shortest time". This is required more so where injunctive relief has been granted. It is baffling how the Registrar's Office has continued to disregard the aforementioned judicial order.
3. **Collective Decision-making.** The Constitution defines the High Court as comprising the Chief Justice and Judges of the High Court. This makes the Chief Justice the first amongst

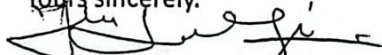
equals and the High Court Rules vest various administrative responsibilities in the office of the Chief Justice. The High Court Rules, as adopted by IHC, also specify the matters that must be considered and decided by the Administrative Committee, and the matters that must be considered and decided in a Full-Court meeting of all judges. These decision-making fora, which must function efficiently if the High Court is to exercise its administrative powers in accordance with law and High Court Rules, have been largely forsaken under your leadership. This must change so that IHC and the courts it supervises are administrated in a manner that is backed by the authority of the High Court and not just the office of the Chief Justice, which, in and of itself, does not constitute the High Court for any purpose under the Constitution.

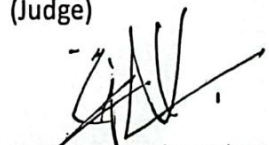
4. **Independence & Integrity of IHC.** The direct and indirect interference of intelligence agencies in the working of IHC has continued. You are aware of the various incidents where coercion and/or threat of coercion has been brought to bear on judges. In addition, at least two references have been filed against a judge, accompanied by highly defamatory press conferences held by state functionaries scandalizing the judge, to bring pressure upon him to resign. There have been incidents of illegal surveillance of judges that has violated their privacy in the most abhorrent fashion. After each incident you have reassured us that such illegal interference designed to influence the discharge of judicial functions at IHC will stop. But it hasn't. Similarly, incidents of citizens being disappeared from ICT's jurisdiction, which had been effectively curbed during Chief Justice Athar Minallah's tenure, have reared their ugly head again. As the machinery for enforcement of fundamental rights, IHC must establish that such defiance of the Constitution will not be tolerated.


The judges of IHC take pride in the fact that we enjoy an excellent relationship and function like a family. Despite differences on questions of law and policy, the High Court boasts of a congenial work environment under your leadership. We are also conscious that our Code of Conduct obliges us to try and maintain harmony within the court. But our obligation to uphold the law and the Constitution, abide by the High Court Rules, and be faithful to our constitutional oath, requires us to raise these issues that must be addressed squarely and urgently.

We would request that a Full-Court meeting be called at the earliest to discuss how best to resuscitate the institutional processes that will enable us to collectively administer IHC in accordance with the law and the Constitution. And to regain public faith in IHC's ability to dispense justice without fear or favor in times of a brewing crisis of legitimacy that could threaten our constitutional order if the judicial organ doesn't rise up to the challenge.


Yours sincerely,


Tariq Mehmood Jahangiri
(Judge)


Sardar Ejaz Ishaq Khan
(Judge)


Saman Rafat Imtiaz
(Judge)


Babar Sattar
(Judge)


Arbab Muhammad Tahir
(Judge)

Endorsement

Members of the Administrative Committee

1. Justice Mohsin Akhtar Kiyani, Senior Puisne Judge
2. Justice Miangul Hassan Aurangzeb, Judge