

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Sarmad Jalal Osmany
Mr. Justice Amir Hani Muslim
Mr. Justice Ghulam Rabbani

SUO MOTU CASE NO. 16 OF 2011

[*Suo Motu* Action regarding law and order
situation in Karachi]

AND

CONSTITUTION PETITION NO. 61 OF 2011

Watan Party & another ... PETITIONERS

VERSUS

Federation of Pakistan & others ... RESPONDENTS

Petitioner: Barrister Zafarullah Khan, ASC
(Const. P. 61/2011)

On Court notice: Maulvi Anwar-ul-Haq, Attorney General for Pakistan
Syed Ashiq Raza, DAG
Mr. M. Shoaib Shaheen, DAG
Raja Aleem Abbasi, DAG

Ms. Asma Jehangir, ASC/President SCBA
Mr. Anwar Mansoor Khan, Sr. ASC/President, SHCBA

Mr. Abdul Fattah Malik, AG Sindh
Mr. Shahadat Awan, P.G. Sindh
Mr. Wajid Ali Durrani, I.G.P, Sindh
Mr. Saud Ahmad Mirza, Addl. I.G. Sindh
Mr. Anwar Subhani, Legal Consultant

For Province of Sindh: Mr. Abdul Hafeez Pirzada, Sr. ASC
[assisted by Mr. Abdul Sattar Pirzada, Adv.]

For the Federation: Dr. Babar Awan, Sr. ASC
Mr. A.S.K. Ghouri, AOR

For M/o Interior: Mr. Arif Chaudhry, ASC
Mr. A.S.K. Ghouri, AOR

For the applicant: Syed Iftikhar Hussain Gillani, Sr. ASC
(CMA 4108/2011)

For the applicant: Mr. Abdul Mujeeb Pirzada, Sr. ASC
(CMA 531-K/2011) Mr. Mazhar Ali B. Chohan, AOR

Applicants: Mr. Muhammad Aqil, Advocate, President KBA
(CMA 532-K/2011) Syed Haider Imam Rizvi, Advocate, Gen. Secy.
Mr. Iftikhar Javed Qazi, ASC, Vice Chairman
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For the applicant: Mr. Ghulam Qadir Jatoi, ASC/AOR
(CMA 533-K/2011)

For the applicant: Khawaja Naveed Ahmad, ASC
(CMA 535-K/2011) Mr. Mazhar Ali B. Chohan, AOR

For the applicant: Mr. Irfanullah Marwat in person
(in CMA 541-K/2011)

For the applicant: Syed Iqbal Haider, Sr. ASC
(in CMA 544-K/2011) Mr. K.A. Wahab, AOR

For the applicant: Mr. Faisal Kamal Aalam, ASC
(in CMA 546-K/2011) Mr. Ghulam Qadir Jatoi, AOR

For the applicant: Mr. Rasool Bux Palijo, ASC
(in CMA 552-K/2011) Mr. Ghulam Qadir Jatoi, AOR

For the applicant: Mr. Jamil Ahmad Virk, ASC
(in CMA 555-K/2011) Mr. Mazhar Ali B. Chohan, AOR

For the applicant: Mr. Javed Ahmad Chhattari, Adv. In person
(in CMA 558-K/2011)

For the applicant: Mr. Ashraf Samoo, Advocate/ President
(in CMA 560-K/2011) Malir Bar Association

For the applicant: Mst. Surriya in person
(in CMA 561-K/2011)

For the applicant: Dr. Farogh Naseem, ASC
(in CMA 565-K/2011) Dr. Kazi Khalid Ali, ASC
Mr. Izhar Alam Farooqi, AOR

For the applicant: Afaq Ahmed (through Jail)
(in CMA 569-K/2011)

Dates of hearing: 26 & 29-30 August, 5-9 & 13-16 September, 2011

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – Islam

is a religion of peace and tolerance and it stands for safety, security and sanctity of human life. Islam abhors unlawful killing of innocent people and strictly prohibits it in a number of *Quranic* verses and *Ahadith*. In *Surah Al-Maidah* verse 32, Allah says:-

“Because of that, We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or to spread mischief in the land – it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind. And indeed, there came to them Our Messengers with clear proofs, evidences, and signs, even then after that many of them continued to exceed the limits (e.g. by doing oppression unjustly and exceeding beyond the limits set by Allah by committing the major sins) in the land.”

Some of the other verses of the Holy Quran are as under:-

“And (remember) when We took your covenant (saying): Shed not the blood of your (people), nor turn out your own people from their dwellings. Then, (this) you ratified and (to this) you bear witness.” [Sura Al-Baqarah verse 84]

“And whoever kills a believer intentionally, his recompense is Hell to abide therein; and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him.” [Sura An-Nisa verse 93]

The Holy Prophet [SAW] said –

“O People, just as you regard this month, this day, this city as Sacred, so regard the life and property of every Muslim as a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord, and

that He will indeed reckon your deeds.” [The Farewell Sermon (*Khuṭbatul-Wadā*)]

“The biggest sins are: To join others in worship with Allah; to be undutiful to one’s parents; to kill somebody unlawfully; and to take an oath Al-Ghamus.” [Sahih Bukhari, Vol VIII, P.434, Number 667]

“Narrated Abdullah bin Umar: One of the evil deeds with bad consequence from which there is no escape for the one who is involved in it is to kill someone unlawfully.” [Sahih Bukhari, Vol IX, P.2, Number 3]

2. This aspect of the Islamic teachings, as well finds its reflection in the Constitution of the Islamic Republic of Pakistan 1973. The Constitution, in its very Preamble, postulates that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed and the fundamental rights, including equality of status, of opportunity and before the law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality; shall be fully guaranteed. These very principles have been made a substantive part of the Constitution under Article 2A. Thus, it is the duty of the State to protect and safeguard all these Fundamental Rights including the right to life and liberty as envisaged by Article 9 of the Constitution, which has been interpreted by this Court in *Shehla Zia’s case* (PLD 1994 SC 693) as under: -

“Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word "life" is very significant as it covers all facts of human existence. The word "life" has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere

existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward.”

3. In case of *Arshad Mehmood v. Government of Punjab* (PLD 2005 SC 193) also, the Court observed that the word 'life' used in Article 9 of the Constitution includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. The word 'life' in the Constitution has not been used in a limited manner; a wide meaning should be given to

enable a man not only to sustain life but to enjoy it. The State is duty bound to protect the life and property of its citizens in accordance with law against all the atrocities, target killings, homicide, etc. The basic human rights of life, liberty and enjoyment of one's property have been recognized nationally as well as internationally. Article 3 of the Universal Declaration of Human Rights provides that 'everyone has the right to life, liberty and security of person', no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; everyone has the right to recognition everywhere as a person before the law; and all are equal before the law and are entitled without any discrimination to equal protection of the law. Article 17 *ibid* lays down that 'every one has the right to own property alone as well as in association with others. It is worth mentioning here that no society can make any progress in a state of chaos and disorder. It is manifest to hypothesize that the law and order condition prevailing in a country has a direct and significant bearing on the pace and pattern of economic development of that country. The existence of basic socio-economic framework of the country and the continuation of economic growth without any hindrance or interruption depends upon subsistence of better law and order situation. In case of break-down of peace on account of any factors negative effect is exerted on the economic growth. Better law and order as a determinant of economic development was spelled out in explicit terms in the theories of growth advanced by economists such as J.J Spangler and W. W. Rostow. In his *Theories of Socio-economic Growth, Problems in the Study of Economic Growth*, 1949, J.J. Spangler has mentioned that the structure of the prevalent value system of a community can reasonably be considered as an important condition of law and order,

because the value system defines the basic norms and ethos of human conduct. For example, if the value system of a society is predominated by sectarian or ethnic dispensations, then such a society would be continuously ridden by law and order problems, thus putting frequent twists and turns to the process of economic growth. W.W. Rostow, in *Politics and the Stages of Growth, 1971*, has extended the theme of *stage, 'propensities'* and their linkages to the role of political factors, institutions and the law and order framework in determining the pattern of economic growth. The primary tasks of any legal government are defined as the provision of security, welfare and growth, and constitutional order. Thus there is a clear cut interconnection between law and order and economic development.

4. Article 14 of the Constitution of Pakistan ensures dignity of every individual. In the case of 'Commissioner of Income Tax v. Eli Lilly Pakistan' reported as 2009 SCMR 1279, this Court observed that:

"It is the duty and obligation of the State on account of the various provisions of the Constitution to provide the atmosphere based on honesty by providing equal protection of law. Every citizen must be treated equally, dignity of human being life should be maintained, and liberty of life and honour must be guaranteed as envisaged in the Articles 9, 14 and 25 of the Constitution."

5. Articles 15 and 18 of the Constitution, respectively relate to freedom of movement etc. and freedom of trade, business or profession and have been interpreted by this Court in the case titled "Government of Pakistan v. Zamir Ahmad" reported as PLD 1975 SC 667, in the following words: -

"Article 18 of the Constitution of Pakistan, which relates to the freedom of trade, business or profession, which corresponds to Article 15 of the interim Constitution, and

which incidentally held the field at the relevant time, assures the citizens the right to enter upon any "lawful profession of occupation" and "to conduct any lawful trade or business". It is important to point out that the word "lawful" qualifies the right of the citizen in the relevant field. This clearly envisages that the State can by law ban a profession, occupation, trade or business by declaring it to be unlawful which in common parlance means anything forbidden by law. Prostitution, trafficking in women, gambling, trade in narcotics or dangerous drugs are common place instances of unlawful profession or trade. These are inherently dangerous to public health or welfare. Therefore, on the wording of Article 18 of the Constitution, the right to enter upon a profession or occupation or to conduct trade or business can hardly be described to be a Constitutional or Fundamental Right when such right may be denied by law. In this respect our Constitution stands in sharp contrast with the corresponding provision of the Indian Constitution which omits the use of word "lawful" in the relevant Provision."

The same principle was enunciated by this Court in the case of *Arshad Mehmood* (supra). This Court observed that the Government has the authority to regulate a lawful business or trade. Reasonable restriction, however, does not mean prohibition or prevention completely. Article 24(1) of the Constitution envisages that no person shall be deprived of his property save in accordance with law.

6. Any democratic set up consisting of citizens and functionaries in the country under the Constitution is bound to show its loyalty to the State, for to be loyal and faithful to the State is the basic duty of every citizen under Article 5 of the Constitution. This Court in the case of *Shahid Orakzai v. Pakistan through Secretary Law* (PLD 2011 SC 365) held that Article 5(2) of the Constitution has mandated that obedience to the Constitution and law is the inviolable obligation

of every citizen wherever he may be and for every other person for the time being within Pakistan. The chosen representatives, who have acquired authority on behalf of their electors as members of the National Assembly, Senate or Provincial Assemblies as per mandate of their oath, which they take before entering upon office, are bound to bear true faith and allegiance to Pakistan. The oath of the office of members of the National Assembly and Senate as set out in the Third Schedule provides that the members will perform their functions honestly, to the best of their ability, faithfully and in accordance with the Constitution and law; that they will act in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan and they will preserve, protect and defend the Constitution. Therefore, while holding a constitutional office, the chosen representatives of the people have to remain true to their oath and to observe constitutional limits in all circumstances.

7. As per the scheme of the Constitution, all the federating units, namely, *Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh* are the essential components of the Federation by virtue of the parliamentary system of government prevalent in the country. The Federal Government is being run through Prime Minister and Federal Ministers and their executive authority extends to the matters with respect to which Parliament has power to make laws, etc. Similarly the Provincial set-up is being run through Chief Minister and the Provincial Ministers. The Governor of a Province is to be appointed as per Article 101 by the President on the advice of the Prime Minister. It is to be noted that the Governor who is holder of a constitutional post and acts as the agent of the President, has to keep the Federation

informed of the affairs of the Province, although as per Article 105, the Governor shall act on the advice of the Cabinet or the Chief Minister.

8. Under Article 130 of the Constitution the Chief Minister of the Province has to be elected by the votes of the majority of the total membership of the Provincial Assembly. The member who gets majority votes of the total membership shall be called upon by the Governor to assume the office of the Chief Minister and holds office during the pleasure of the Governor, however, at any time, if the Governor is of the opinion that the Chief Minister is not commanding majority in the House, he shall summon the Provincial Assembly and require the Chief Minister to obtain a vote of confidence from the Assembly. The Chief Minister shall cease to hold office if a resolution for vote of no-confidence is passed by a majority of the total membership of the Provincial Assembly as per Article 136. The President can suspend the functions of the Provincial Assembly subject to availability of the circumstances under Article 234. The Governor shall not exercise his powers under this clause unless he is satisfied that the Chief Minister does not command the confidence of the majority of the members of the Provincial Assembly. In case the Governor intends to act against the Chief Minister, then it is incumbent upon him to summon the Provincial Assembly and require the Chief Minister to obtain a vote of confidence from the Assembly as referred to above. Reference may also be made to the case of *Muhammad Anwar Durrani v. Province of Baluchistan* reported as PLD 1989 Quetta 25 wherein the Court while interpreting Articles 107 and 112 of the Constitution observed as under: -

“Under Article 107 of the Constitution, duration of Provincial Assembly is five years. Therefore, dissolution of Provincial Assembly before its constitutional period must be justified

on the definite reasons provided by the Constitution..... extraordinary powers of dissolution of Assembly, must be exercised carefully, faithfully and in accordance with the provisions of the Constitution. According to their admissions, the Chief Minister had no clear majority except with the casting vote of the Speaker. In such circumstances, Constitution properly demanded that advice of such Chief Minister should have been weighed with caution and sanctity of basic charter should have been maintained. An Assembly is an important organ of the State and every effort should have been explored which is possible under the law to save the Assembly from dissolution. Governor, before taking extreme action of dissolution of Assembly under the advice of Chief Minister, ought to have advised him to seek vote of confidence before his advice was accepted. We have come to the conclusion that a Chief Minister who had not obtained vote of confidence from majority members of an Assembly could not advise the Governor to dissolve the Assembly under Art. 112(1) of the Constitution.”

However, a Provincial Assembly cannot be dissolved by the Governor except under circumstances warranting such dissolution as per Article 112.

9. A Proclamation of Emergency may be issued by the President of Pakistan providing for imposition of emergency due to internal disturbance beyond the power of Provincial Government to control, a resolution from Provincial Assembly of the Province shall be required, however, if the President acts on his own, the Proclamation shall be placed before both houses of parliament for approval of each house within 10 days. As per Article 232(7), a Proclamation of Emergency is to be laid before a joint sitting and shall cease to be in force at the expiration of two months, unless before the expiration of that period it has been approved by resolution of the joint sitting. A

proclamation issued under Article 234 may, by like resolution, be extended for a further period not exceeding two months at a time, but no such Proclamation shall in any case remain in force for more than six months. It is competent for the *Majlis-e-Shoora* (Parliament), in terms of Article 234(5) of the Constitution, in joint sitting to, *inter alia*, confer on the President the power to make laws with respect to any matter within the legislative competence of the Provincial Assembly. Under Article 245 of the Constitution, the Federal Government also intervenes in the affairs of the Provinces and may call upon the military to act in aid of civil administration.

10. The Federation and Provinces are equally responsible to adhere to the provisions of the Constitution, particularly for ensuring the enforcement of Fundamental Rights as guaranteed by the Constitution. The Federal and the Provincial Governments, though not directly, but indirectly share their responsibility in running the affairs of the Province in accordance with the relevant provisions of the Constitution.

11. The National as well as Provincial Assemblies have to uphold constitutional norms but unfortunately, in the past, the political parties were blamed for having failed to assert their role in bringing true democratic rule based on the norms of social justice, peace and tranquility and on account of non-adherence to the constitutional provisions, which, resulted in dissolution of these bodies. In the years 1958, 1977 and 1999, when the Army Generals, in their wisdom, dismissed the Governments, dissolved the Assemblies and imposed martial law in the country. Each time, the matter came up before this Court, but legality was accorded to the acts of the Generals. It was, however, for the first time in November, 2007 when like action taken

by the then Chief of Army Staff was not accepted by the Superior Judiciary, which ultimately led to the ouster of the retired General and restoration of the democratic set up in the country.

12. Primarily, it is the responsibility of the Provincial Government to maintain law and order in the territories of the respective Provinces for the purpose of smooth running of economic and social life and without disturbance in the daily affairs because if the life and liberty of the citizens is, in any part of a Province at stake, highhandedness continues to remain unabated; atrocious acts like target killings, torture, extortion, etc., become the order of the day and then neither the Provincial Government can discharge its duties nor the people consider themselves safe and protected. Virtually, in that case, discomfort painfully envelops the whole Province and decay soon creeps in breaking the very fabric of human life of the citizens.

13. The city of Karachi is the Capital of the Province of Sindh, and undoubtedly the hub of great economic and financial activities. Karachi continues to be an important financial and industrial centre for Sindh and the whole country and handles most of the overseas trade of Pakistan and the Central Asian countries. It accounts for a large portion of the GDP of Pakistan. Karachi's population has continued to grow and is estimated to have exceeded 18 million people. According to a legend, this city started as a fishing settlement, where a fisherwoman, *Mai Kolachi*, settled and started a family. The village that grew out of this settlement was known as *Kolachi-jo-Goth* (The Village of *Kolachi* in Sindhi). When Sindh started trading across the sea with Muscat and the Persian Gulf in the late 18th century, Karachi gained in importance; a small fort was constructed for its protection with a few cannons imported from Muscat. The fort had two main gateways: one

facing the sea, known as *Khara Dar* (Brackish Gate) and the other facing the adjoining Lyari river, known as the *Meetha Dar* (Sweet Gate). The location of these gates corresponds to the present-day city localities of *Khaaradar* (*Khārā Dar*) and *Meethadar* (*Mīthā Dar*) respectively. By passage of time, it grew into a bigger city. The foundations of a city municipal government were laid down and infrastructure development was undertaken. New businesses started opening up and the population of the town began growing rapidly. In 1878, the city was connected to the rest of British India by rail. Public building projects such as Frere Hall (1865) and the Empress Market (1890) were undertaken. In 1876, **Muhammad Ali Jinnah, the founder of Pakistan**, was born in the city, which by now had become a bustling city with mosques, churches, courthouses, markets, paved streets and a magnificent harbour. By 1899 Karachi had become the largest wheat exporting port in the east. The population of the city was about 105,000 inhabitants by the end of the 19th century, with a cosmopolitan mix of Muslims, Hindus, Europeans, Jews, Parsis, Iranians, Lebanese, and Goans. By the turn of the century, the city faced street congestion, which led to South Asia's first tramway system being laid down in 1900. In later years, so Karachi prospered as a major centre of commerce and industry during the Raj, attracting communities of: Africans, Arabs, Armenians, Catholics from Goa, Jewish, Lebanese, Malays, and Zoroastrians (also known as Parsees) - in addition to a large number of businessmen. As the movement for independence almost reached its conclusion, the city suffered widespread outbreaks of communal violence between the majority Muslims and the minority Hindus, who were often targeted by the incoming Muslim refugees. In response to the perceived threat of

Hindu domination, self preservation of identity, language and culture in combination with Sindhi Muslim resentment towards wealthy Sindhi Hindus, the **province of Sindh became the first province of India to pass the Pakistan Resolution**, in favour of the creation of the Pakistani state. The ensuing turmoil of independence led to the expulsion of most of Karachi's Hindu community. While many poor low caste Hindus, Christians, and wealthy Zoroastrians (Parsees) remained in the city, Karachi's native Sindhi Hindu community fled to India and was replaced by Muslim refugees who, in turn, had been uprooted from regions belonging to India. District Karachi was chosen as the capital city of Pakistan and it accommodated a huge influx of migrants and refugees from India to the newly formed country. As a consequence, the demographics of the city changed drastically. However, it still maintained a great cultural diversity as its new inhabitants arrived from different parts of India. In 1958, the capital of Pakistan was shifted from Karachi to Islamabad and Karachi thus became the capital of Sindh. During the 1960s, Karachi was seen as an economic role model around the world. Many countries sought to emulate Pakistan's economic planning strategy and one of them, South Korea, copied the city's second "Five-Year Plan" and World Financial Centre in Seoul is designed and modeled after Karachi. With economic growth and prosperity, peace and tranquility reigned in the city, business places were full of activity till late night with a lot of hustle and bustle seen all around and it came to be known as the city of lights. Being a big port city, it contributed, roughly stating, about 60–70 per cent of the total revenue of the country.

14. The 1980s and 90's saw an influx of illegal Afghan refugees from the Afghan war into Karachi. Political tensions erupted

and the city was wracked, at different points of time, with violence among groups widely speculated to be aligned with various political parties. In this behalf, a reference is made to the report of the Commission of Enquiry into Karachi Affairs filed by Syed Iqbal Haider, ASC, which reflects, *inter alia*, the figures relating to population, geographical area, roads, vehicles, housing, police, number of riot cases of the years from 1985 to 1989, number of persons killed/injured, number of police officers/men martyred/injured, damage to private and public property including vehicles, petrol pumps, houses, shops, factories, cinemas, offices, schools, banks, police stations, railway stations, telephone exchanges, hospitals, imposition of curfews on account of clashes between religious groups (*Shias & Sunnis*), clashes between police and residents, ethnic riots, drug mafia, firing and looting, etc.

15. The law and order worsened during the period from 1992 to 1994 when Operation Clean up was, allegedly, launched against *Mohajir Qaumi* Movement (MQM). Constitution Petition No.46 of 1994 was filed before this Court by MQM (Mohajir Qaumi Movement) through Senator Ishtiaq Azhar, Convener Central Coordination Committee. It was submitted in the said petition, *inter alia*, that the law and order situation in Karachi was deteriorating day by day, the workers of MQM were abducted, arrested and murdered and their dead bodies were not handed over to their relatives. It was further submitted that thousands of members of MQM were denied protection from illegal arrest without any warrant, extra-judicial detention, death in custody, etc. It was asserted that Fundamental Rights of the petitioner contained in Articles 9, 10, 14, 15, 16, 17, 18, 19, 22, 25 and 25 were violated, therefore, a declaration was sought that the

petitioner be allowed to function in accordance with the scheme of the Constitution. A voluminous reply was filed on behalf of the Federation and the Province denying the allegations attempting to present, allegedly, their side of the case citing horrifying instances holding MQM responsible for the worsening situation. The case was fixed on various dates, but ultimately it was not pursued and *vide* order dated 26.10.1999, the above petition was dismissed for non-prosecution.

16. It appears that on account of the worsening law and order situation, another operation was conducted during the year 1996 and similar action continued thereafter also. In this context, Constitution Petitions Nos. 6 & 13 of 1999 were filed by the MQM wherein complaints of physical torture of the MQM workers and activists by the law enforcement agencies were agitated and directions to the law enforcement agencies for pre- and post-interrogation medical examination of all persons taken into custody by them by an independent medical practitioner of their choice to enable them to obtain certificate about their physical condition, were sought. It was pleaded that no suspect be subjected to any kind of interrogation until such a certificate is handed over to the next of his kin and in the event of evidence of physical torture, the respondent Governments be directed to register appropriate criminal cases against the members of the law enforcement agencies in whose custody the suspect was entrusted for interrogation. Protection was also sought against arrest of elected representatives of MQM unless any incriminating material was available to justify such an action. The case came up for hearing on 14.01.1999, but the representative of the petitioner stated that the case was to be argued by another counsel, therefore, request for

adjournment was made. Thereafter, the petitioners never approached this Court for fixation of the petitions.

17. Critical/serious and dismal condition of law and order, once again emerged on account of various factors for the past few months, particularly in the months of July and August 2011 as widely reported in the print and electronic media, e.g. *Al-Akhbar*, *The Daily Express*, *The News*, *The Daily Nawa-e-Waqt*, *The Daily Jang*, *The Daily Times*, *The Frontier Post*, *The Daily Nation*, *The Daily Sahafat*, *Aaj Ki Awaz* and various News Channels, e.g., *Express*, *GEO*, *SANA*, *PTV*, *AAJ*, *Dunya*, *Dawn*, etc., that the lives and properties of the people of Karachi are not safe, frequent killings of innocent citizens have made their lives miserable; citizens are being abducted for ransom; beheaded dead bodies of innocent people with arms and legs tied and wrapped in sacs, are being recovered in large numbers; street crimes are in abundance and different groups are involved in target killings. Recovery of a large number of dead bodies almost everyday; brutality and heinousness of the offences; passivity of the Government functionaries; involvement of gangs in money extortion, nefarious and bloody activities of land mafia and drug mafia; damage to valuable properties of the citizens; shifting of capital from Pakistan to Malaysia and Bangladesh (as reported in some clippings) and transfer of dead bodies from Karachi to the places of their origins in different parts of the country causing discomfoting stir, harassment and fear in the minds of people, provide substantial evidence that Karachi has reached the verge of destruction posing a threat to the very stability of Pakistan. Recently, on this issue, different views were being expressed by the observers, analysts and anchor persons about causes of the catastrophe.

18. In that scenario, on a note put up by the Registrar of this Court, based on press clippings, CDs and DVDs provided by private TV Channels showing a dismal situation within the jurisdiction of several police stations of Karachi, the instant proceedings were initiated under Article 184 (3) of the Constitution vide order passed on 24.08.2011 in the following terms: -

"I have gone through above noted facts reported in the print/flashed in the electronic media, perusal whereof presents a bleak/dismal picture of bloodshed, arson, kidnapping/abduction for ransom, widespread violence, illegal collection of money (*Bhatta*) from traders, which *prima facie* are violative of Articles 9, 14, 15, 18 and 24 of the Constitution. *Prima facie*, the Executive has failed to protect the life, liberty, dignity, property and freedom of the general public as is manifested in the above note/reported. Therefore, let this note be converted into petition under Article 184(3) of the Constitution. Notice be issued to learned Attorney General for Pakistan to appear and submit a comprehensive report about the above incident, which have been taking place in Karachi for the last more than one month. The report should be based on the material to substantiate the same, which should be collected from the Federal and Provincial law enforcement and intelligence agencies.

The Chief Secretary and PPO of the Province of Sindh are directed through Advocate general to submit details of the incidents in view of the fact noted herein above in the office note. They should also provide the number of persons who have been killed/injured in these incidents for the last one month. They should also place on record copies of the daily situation reports duly prepared by the concerned police officers for the perusal of PPO and the Chief Secretary.

The FIRs and other material be also filed in order to assess violation of the fundamental rights of the citizens

noted herein above. Notices be also issued to President, Supreme Court Bar Association as well as President, Sindh High Court Bar Association to appear and assist the Court.

Put up in Court on 26th August, 2011.”

19. On 26.08.2011, this Court, after a preliminary hearing, in view of ongoing bloodshed, killing, arson, collection of *bhatta*, etc., being committed in Karachi, passed the following order: -

“2. Learned Attorney General for Pakistan has stated that due to paucity of time he could not prepare a report as per the directions of the Court, therefore, he needs some time. It has been explained to him that on account of non-adherence to the constitutional provisions, reference to which has been made herein-above, incidents of brutal murders and commission of heinous crimes have occurred in which, according to the information laid before the Court by the media, gangs are involved in extortion of money, nefarious/bloody activities of land mafia and drugs mafia and damage to the valuable properties of the citizens have taken place, therefore, relevant material need to be collected for ascertaining the extent of the violation of the constitutional provisions as such he may convey to all the law enforcing agencies at Federal and Provincial level that they should provide all the necessary material highlighting the incidents with reference to the jurisdiction of various police stations, involvement of the accused persons, their identity, if possible, and failure of the police functionaries to proceed with them in accordance with law. To achieve this object, he should convene a meeting with the concerned functionaries and place a report on the next date of hearing, as is directed in order dated 24.08.2011.

3. Mr. Abdul Fattah Malik, learned Advocate General Sindh, has submitted copies of DSRs for the period commencing from 24.07.2001 to 23.08.2011 and has also filed brief of more than 232 FIRs which, according to him, could be collected by him so far, therefore, he is required

to do the needful before the next date of hearing. Orally, he has pointed out that during the past one month 306 people have been killed and their particulars shall also be furnished. He is required to furnish the same indicating the police stations where people were killed; FIRs, if any, were registered; how many dead bodies of the killed person were found; how many of them were found beheaded and/or their arms and limbs were chopped and whether the investigation commenced and evidence collected or not against the accused involved. We have pointed out to him that he should convey to the Chief Secretary and IGP Sindh who are primarily responsible to ensure law and order in the Province that they should proceed against all types of accused persons across the board and on the next date of hearing he would arrange a presentation in the Court room with reference to details of the police stations where the incidents have taken place and the manner in which the victims were killed, the FIRs registered and the names of persons posted in the police station who are responsible etc. so we may understand that the police is serious in conducting the investigation and to report to/challan the accused; so also in prosecuting them in Courts on solid material so that they may not go scot free on the basis of said information. He is also directed to submit in the same manner the details of the injured persons and the properties destroyed in rowdyism by the culprits and whether in respect of such occurrences evidence has so far been collected or not. The report must be comprehensive one and there should be a presentation on the Power Point by the police. It is to be noted that further proceedings shall, as well, take pace in respect of violation of the constitutional position.

4. Mr. Abdul Hafeez Pirzada, learned Sr. ASC, has stated that he would appear on behalf of the Province of Sindh through Chief Executive and shall place important documents on record on or before the next date of hearing.

5. Syed Iftikhar Hussain Gillani, learned Sr. ASC, stated that he intends to file an application on behalf of Awami National Party (ANP) to become a party in the instant case. He may do so and even otherwise being a Senior Counsel of this Court he can address the argument on the basis of material if he has in his possession to assist the Court.

6. Mr. Babar Awan, learned Sr. ASC, has stated that he will represent the Federation and he has filed nomination on behalf of Secretary, Ministry of Law and Justice, Islamabad.

7. Ms. Asma Jehangir, President Supreme Court Bar Association of Pakistan, has stated that there are certain preliminaries which need to be completed by the executive in respect of registration of cases, investigation and arrest of nominated accused persons. According to her, the names of all the accused persons have not been disclosed; no action has been taken against those accused persons whose names have appeared in the FIRs and they have not been arrested. On this, learned Advocate General Sindh has replied that few arrests have taken place. Be that as it may, he is required to submit on the next date of hearing, the details of the same because, unless sufficient evidence is collected, no useful purpose will be served by sending them to face trial.

8. Mr. Anwar Mansoor Khan, President Sindh High Court Bar Association, has filed copies of resolutions of the Bar Association as well as press clippings and has pointed out that during recent incidents starting from January, 2011, nineteen Advocates have been murdered. He has also pointed out that even yesterday i.e. 25.08.2011, one of brilliant Advocates of Sindh High Court namely Mr. Muhammad Murtaza Chinnoy has been brutally yet according to his information the investigation has not been conducted properly. The IGP Sindh is directed to look into the matter personally and communicate the report in this behalf through Advocate General Sindh on the next date of hearing. Learned Advocate General Sindh is also required

to submit report mentioning the names of the culprits involved in the killings of the Advocates and showing whether they have been arrested or not.

9. The Chief Secretary and the IGP Sindh have submitted reports which may be kept on record. Let the case be adjourned to 29.08.2011 to be fixed at Branch Registry of this Court at Karachi.”

20. It is important to note that in response to order dated 24.08.2011, the Chief Secretary in his report on the affairs of Karachi, stated as under: -

- After 9/11, the Phenomenon of international terrorism emerged in which bomb blasts and beheading of foreigners attracted world attention. The terrorist groups targeted US diplomats and carried out suicide attacks at US consulate thrice. The French engineers were killed outside the Sheraton Hotel, even Muharram processions and shrines were not spared, besides suicide attack at CID building.
- During the briefing sessions, it was pointed out to me that army operation in the north and insurgency in Balochistan had caused internal displacement, in the garb of which certain criminal/hostile elements have moved into Karachi and have also smuggled arms. The hostile foreign agencies are backing up to cause chaos in the economic capital of Pakistan under a clandestine was against the state. Citing various reasons the emerging situation, I was told that Karachi population is approaching 18 million with diverse ethnic communities competing for resources. This mega city has been allowed to expand and grown in an unplanned way by the city managers in the past. Resultantly, the city lacks basic infrastructure to support such a large human settlement and provide basic civic amenities to all the growing urban jungle of *Katchi Abadies*.
- The Police have its own short coming and weaknesses both in terms of man-power and other resources, and have

further drained due to security challenged in the post 9/11 scenario.

- In early July, 2011 violent incidents took place in which 16 people were killed in Karachi. This was followed by an armed clash on 22nd July, 2011 between militant of two groups in the area of District East (Malir and Landhi), resultantly, 14 people lost their lives. The fragile peace in Orangi Town was disturbed again due to clash between two ethnic communities in the last week of July, 2011 taking a death toll of 37 lives.
- On 17th August, 2011, Five (05) dead bodies were found in PS Garden area. On the same day, Ex-MNA was shot dead. These incidents triggered violence in other area i.e. *Kharadar, Lyari, Sher Shah, Baldia and Chakra Goth*. Resultantly, 62 persons were killed and 95 got injured from 17 to 20 August, 2011, which include 03 policemen, who embraced Shahadat in line of duty.
- During the past one month there has been incidents of killing.

<u>Cases Registered</u>		<u>Persons Killed</u>
Murder Killing	232	306
Gun shot injury	98	159

STEPS TAKEN BY THE CHIEF SECRETARY, SINDH

- On 8th July, 2011, the government of Sindh entrusted powers u/s 5 of ATA, 1997 to Pakistan Rangers (Sindh) enabling and making Rangers responsible to apprehend the criminal elements involved in firing and killing of innocent citizens.
- The Government of Sindh further authorized Rangers to cordon, search and use force to control the situation in the effected areas of Karachi. Copy of the Notification bearing No.SO(LE-I)/HD/6-66/11, dated 8th July, 2011 (copy submitted as Annex A).
- On 25th July, 2011, the President of Pakistan, while reviewing the Karachi situation, directed to enhance the operational capability of Police (Annex-B). Accordingly, the

Government of Sindh immediately made available and released Rs.450 million for procurement of APCs from HIT. These 15 APCs will be delivered by end of August, 2011 to Sindh Police.

- The policy directive on the subject was issued by the Home Department vide No.SO(LE-II)/HD/3-1/2011 dated 23 August, 2011, wherein the lead implementing agency i.e. Police was reminded of legal responsibility to ensure safety of people's life and establish public order as per law, irrespective of any consideration of political linkage of anyone involved in this cycle of violence. Copy of the letter spelling out the policy of the subject is attached as Annex 'C'.

21. The IGP Sindh also filed a report to the following effect: -

- Karachi is the 7th largest city of the world having peculiar/ethnic nature comprising of Punjab, Pakhtoon, Balochi, Sindhi and Urdu speaking communities. It has a population of approximately 18th million and spread over area on 3527 sq. kms.
- The ethnic divide became pronounced during last few years as a result of influx of people from other parts of the country. With this change in demography, there are over 150 areas where two or more communities are facing each other.
- It has long history of terrorism/violence as is indicated of the cases mentioned below:

HIGH PROFILE CASES
(2004-2007)

S#	Police Station	Incidents	No. of Deceased	No. of Injured
1.	Mithadar 2004	Bomb Blast in Haidery Masjid situated inside the compound of Sindh Madrasat-ul-Islam	23	98
2.	Brigade 2004	Bomb Blast in Imam Bargah Ali Raza	22	29
3.	Boat Basin 2004	Corps Commander Motor Cade Firing incident at Clifton Bridge	10	13
4.	Site 2004	Bomb Blast at Binoria	10	44

		restaurant		
5.	Soldier Bazar 2006	Bomb Blast at Nishtar Park	55	125
6.	Various PSs 2007	12 May, 2007, arrival of Chief Justice in Karachi	40	127
7.	Bahadurabad 2007	Bomb Blast in the welcome procession of Ms Benazir Bhutto at Karsaz, Main Shahrah-e-Faisal	119	353
8.	Preedy 2009	IED explosion in Ashoora Procession near Light House Traffic Signal, M.A. Jinnah Road, Karachi	17	39
9.	Saddar 2010	IED explosion Parking Area in front of emergency JPMC Karachi	16	19
10.	Ferozabad 2010	IED explosion Ramp Shahrah-e-Quaideen Nursery Bridge	11	24

- During past one month there has been incidents of killing:

Cases Registered

Persons Killed

Murder/Killing	232	306
Gun shot injury	98	159

- In response Karachi Police has arrested 26 accused in target killings in the last month. To date 117 target killings have been arrested and 179 cases have been deterred and challenged.
- In the last one month 3075 raids have been conducted wherein 495 Pos/absconders and 1162 criminals have been arrested. 03 K.Koves, 508 Pistols/Revolvers, 02 Rifles, 13 Repeaters and 03 Hand grenades have been recovered from criminals.
- The prolonged power and water shortage in Karachi city have also resulted in frequent public disorder on daily basis, which engages the police in fire fighting duties. In the previous months police has arrested 1142 miscreants involves in arson and breach of peace.
- Action is also being taken against extortionists/Bhatta collectors. 70 Bhatta collectors have been arrested and 43 cases have been detected. In the previous month 13 extortionists were arrested.

- In spite of the limited resources the Police and Law Enforcing Agencies have made hectic efforts to combat the terrorist activities in the city and have been able to control the terrorism and target killing. The law enforcing agencies are now in full control of the situation and are prepared to met any challenging situation for ensuring the safety of life and property of the citizens.

22. On 29.08.2011, the IGP gave a power point presentation in the Courtroom, relevant excerpts whereof are as under: -

Causes of Violence

- Recent demographic changes
- Ethnicity, Sectarianism and factional in-fighting
- Clashes between land and bhatta mafias
- Deep mistrust among the ethnic groups
- Easy access to illicit weapons and misuse of Arms Licenses

Types of Killings

- Killings due to personal enmity
- Political motivated killings
- Sectarian killings
- Ethnic killings
- Gang war killings
- Target killing of Police Officials
- Victims of stray/cross fire

ETHNIC INTERFACES/FLASH POINTS IN KARACHI

Katti Pahari	Urdu speaking vs. Pathan
Qasba Colony	Urdu speaking vs Pathan
Sharafi Goth	Urdu speaking vs Baloch
Banaras Chowk	Urdu speaking vs Pathan
Quaidabad	Urdu speaking vs Sunni Tehreek
New Karachi	Sunni Tehreek vs Sipah-e-Sahaba
Sachal	Urdu speaking vs Afghanis
Surjani Town	Pathan vs Seraiki speaking
Malir City	Urdu speaking vs Baloch
Landhi	Urdu speaking vs Pathan
Al-Falah	Urdu speaking vs Baloch
Korangi 2 ½ (Chakra Goth)	Urdu speaking vs Sindhi
Khokharpar/ Saudabad	Urdu Speaking vs. Sindhi

DEAD BODIES FOUND BEHEADED/TORTURED

FROM 24-07-2011 TO 24-08-2011

POLICE STATION	NO. OF DEAD BODIES
N.K.I Area	4
Kalri	2
SITE-B	1
Docks	1
Total	8

DEAD BODIES FOUND IN GUNNY BAGS
FROM 24-07-2011 TO 24-08-2011

S.No.	POLICE STATION	NO. OF DEAD BODIES
1	Baghdadi	6
2	Nazimabad	2
3	Darakhshan	1
4	Risala	1
5	Nabi Bux	1
6	Kharadar	1
7	Bin	1
8	Sharafi Goth	1
9	Rizvia	1
10	Iqbal Market	1
11	Mominabad	1
Total		17

PATTERN OF VIOLENCE
FROM 24.07-2011 TO 24-08-2011

s. #	DATE	AREAS OF VIOLENCE	DISPUTED PARTIES	PERSONS KILLED	PERSONS INJURED
1	24 July to 31 July	Baldia Taimoria Kalakot	i. Urdu Speaking v/s Pashtoon ii. Urdu Speaking v/s Baloch	91	47
2	1 st to 3 rd Aug 2011	Surjani Town	Urdu Speaking & Seraiki v/s Pashtoon	38	53
3	6 th August 2011	Peerabad SITE, Orangi	Urdu Speaking v/s Pashtoon	13	16
4	17 th to 24 th August 2011	Kharadar, Mithadar, Lyari, Chakra Goth	Gang war converting into ethnic violence (Urdu Speaking v/s Baloch & Sindhi)	111	146

New Phenomena of abduction and killings
Starting from 17th August 2011

- Triggered by the kidnapping and killing of five Baloch residents of Singo Lane, Lyari (4 of them footballers)

Date	Death Toll	Injured
17.08.2011	17	30
18.08.2011	29	23
19.08.2011	22	39
20.08.2011	07	15
21.08.2011	13	09
22.08.2011	13	10
23.08.2011	08	09
24.08.2011	02	11
25.08.2011	04	02
26.08.2011	02	03
27.08.2011	01	06
28.08.2011	02	04

POLICE SHAHEE/INJURED
From 24-07-2011 to 24-08-2011

S#	Police Station	No of Police Shaheed	No of Police Injured
1	SITE-B	1	
2	Zaman Town	4	29
3	Rizvia	1	
4	Sharafi Goth	1	
5	Awami Colony	1	
6	Pak Colony	1	
TOTAL		9	29

23. It has been pointed hereinabove that the peace of Karachi city had been disturbed by criminals by committing both heinous as well as petty crimes. Some of the major killings have been highlighted in the presentation given by the IGP, which has been reproduced hereinabove, including 232 incidents of murder wherein 306 persons were killed and 98 incidents of gunshots causing injuries to 159 persons also took place. According to available figures, approximately, more than 50 dead bodies in gunny bags have been recovered from several localities including areas where dominant majority of people speaking *Urdu, Pashto, Balochi* etc. are living. In this behalf, the IGP Sindh furnished details along with FIR numbers and the areas where such dead bodies were found, brief of which is as under:-

Sl.No.	Police Station	Number of Dead bodies
1.	Baghdadi	06
2.	Nazimabad	02
3.	Darakshan	01
4.	Risala	01
5.	Nabi Bux	01
6.	Kharadar	01
7.	Bin Qasim	01
8.	Sharafi Goth	01
9.	Rizvia	01
10.	Iqbal Market	01
11.	Mominabad	01

24. Some torsos i.e. human bodies without heads and limbs, rendering it difficult to identify the same, have also been found. Besides, buses with passengers have been set on fire as a result whereof several passengers were burnt alive while others died inside the bus due to fear and shock. In this behalf, reference is made to FIR No. 460/2011 Police Station Jackson, West Karachi. Similarly, perusal of FIR No. 314/2011 under sections 302/324 PPC r/w section 7 ATA, dated 05.09.2011 registered at Police Station Pakistan Bazar, reveals how brutally people were killed by the criminals. Besides, so many persons were abducted and later their dead bodies were thrown in the streets. During the months of July and August 2011 the streets of Karachi, sorrowfully, saw a large number of such like dead bodies. Some of abducted persons were, however, recovered by the intervention of the law enforcing agencies and on our direction, their statements were recorded. Out of them, only four persons, namely, Muhammad Junaid s/o Muhammad Hussain, Muhammad Rafiq s/o Muhammad Hussain, Mehtab s/o Shakeel and Sarfaraz s/o M. Ahmed agreed to lodge the FIR whereas rest of them, on account of fear, were not agreeable to do it. Reference may be made to the following two statements: -

بیان

ابوبکر صدیق ولد جعفر علی عمر 22 سال ساکن فلیٹ نمبر F-1 سرجانی ویو سرجانی ٹاؤن کراچی 0312-3682437۔ شناختی کارڈ نمبر 5-42101-0597742 نے دریافت کرنے پر بتایا کہ میں پتہ بالا پر اپنی فیملی کے ساتھ رہتا ہوں اور ان کی ٹیکسٹائل میں ملازم ہوں۔ میں مورخہ 11-08-16 کو اپنے گھر سے کام پر صبح ساڑھے سات بجے گیا تھا۔ مگر کام کے بجائے اورنگی ٹاؤن اپنے دوستوں کے پاس چلا گیا تھا۔ گھر والوں کو اطلاع نہ دی تھی اور اپنا فون بھی بند کر دیا تھا۔ مورخہ 11-08-28 کو میں خود اپنے گھر واپس آ گیا تھا۔ میرے بھائی محمد صدیق نے میری گمشدگی تھانہ سرجانی ٹاؤن میں درج کرادی تھی۔ میں خود تھانہ آیا تھا اور اپنی واپسی کی اطلاع دی تھی۔ مجھے کسی نے اغواء نہ کیا تھا۔ آج تھانہ سرجانی ٹاؤن میں مجھے بلوایا گیا اور میں خود آیا ہوں اور اپنا بیان دے رہا ہوں۔

بیان

بیان ازال محمد عارف ولد محمد رفیق سکندرز دجاجی ظہور ہوٹل قصبہ کالونی کراچی نے بیان کیا ہے کہ مورخہ 11-08-10 کو میں اپنا رکشہ لے کر مزدوری کے لیے نکلا تھا لیکن ہوائی روزی تھی کام نہیں لگا۔ پتا نہیں تھا والد صاحب کے خوف سے گھر نہیں آیا تھا صدر میں ہی اپنے دوستوں کے پاس رات کو جا کر ٹھہرتا تھا۔ خود گیا تھا اور خود واپس آیا ہوں۔ میرے والد نے میری گمشدگی کی رپورٹ تھانہ درج کی تھی اب والد کے ساتھ تھانے پر آیا ہوں۔ میری تلاش بند کی جائے۔

25. When the hearing of this case was in progress, about four dead bodies were recovered and on our direction, the IGP submitted a report on 09.09.2011 to the following effect: -

“(1) An unknown dead body was found (on 5.9.2011) in Red Color gunny Bag at Katchara Kundi, Grahaib Nawaz Dispensary, previous UC-8, Office Sector-14, B Orangi Town without head, hands and legs inquest u/s 174 Cr.P.C.

has been conducted. The dead body is still un-identified. The dead body is kept in the Edhi Center. A case vide FIR No: 314/2011 u/s 302/324 PPC r/w 7-ATA has been registered through state at Pakistan Bazar Police Station against unknown accused persons, on 5.9.2011. The investigation is under way. The detail report is enclosed at Annex "A"

(2) Another dead body was found in a Bag (Bori) on road between Country Heights & Yasir view Gulzar-e-Hijri Scheme No: 33, Karachi. A case vide FIR No. 580/2011 u/s 302/365/34 PPC, at Police Station Sachal on the complaint of one Zabih Khan s/o Haji Sardar Muhammad was registered against the nominated accused namely Sikandar Javed (APMSO), (2) Ahmed Shah, (3) Umair Siddiki, (4) Zohaib, (5) Liaquat Ali Qureshi s/o Ghazi Uddin, (6) Khurram, (7) Zeeshan. The incident was witnessed by one Muhammad Hassan Saleem s/o Muhammad Saleem Hussain, (2) Syed Obaid-ur-Rehman, along with other PWS Naseeb Ullah s/o badshah Gul. The I.O arrested one accused person namely Ahmed Khan s/o Khan Muhammad on the pointation of the complainant. Later on, after the satisfaction of the complainant he was released being not involved in this offence. Hectic efforts are underway to arrest the nominated accused person, copy of the compressive report is enclosed at Annex-"B".

(3) The third dead body was found in Garage behind Car Parking of JPMC Hospital, Karachi. Proceeding u/s 174 Cr.P.C. was conducted by police. (7.9.2011). No mark of torture was found on the dead body. Postmortem was held at Jinnah Hospital Karachi by MLO vide TM No: 741/2011, dated: 07.09.2011, in which MLO opined that his death was occurred due to asphyxia/strangulation. In this connection FIR No: 281/2011 u/s 302 PPC was lodged on behalf of state at Saddar Police Station. During investigation no any eye witness has appeared/traced as yet. Efforts are underway and NADRA head office was contacted to provide assistance, who cooperated and

identify the deceased as Muhammad Farukh Nawaz having CNIC No: 56302-2990221-9, his temporary address was provided as CB-58/4, Kakool road Abbottabad. The family of the deceased was traced out by the District Police Officer Abbottabad Mr. Muhammad Kareem Khan. The brother of the deceased namely Javed (Cell #. 0334-8963217) was contacted who disclosed that his brother deceased was a chartered accountant and was doing his internship in some organization in Karachi and leaving in Defence Garden. He also disclosed that his brother returned to Karachi on 07.09.2011, after celebrating Eid with his family in Abbottabad. Further investigation is underway. The copy of the report as enclosed herewith at Annex-"C".

(4) On 7.9.2011, Police Constable No.18609 namely Javed Iqbal s/o Abdul Ghafoor was going on his Motor Cycle. Two unknown Motor Cyclist stopped him at Bakra Peri Road, near Evergreen School, Malir City Karachi and opened fire upon him who sustained bullet injuries and expired on the spot. A case FIR No.248/2011 u/s 302/34 PPC on 07.09.2011 at Police Station Malir City on behalf of state is registered. During investigation two persons from the locality disclosed involvement of two criminals namely Kaloo Baloch s/o Mawali Baloch & Akbar Punjabi s/o Baloch Khan in this offence. Hectic efforts are underway to arrest them. Copy of the report is attached herewith at Annex-"D".

The fourth death body was found of one Faheem-ul-Kareem Advocate alongwith two other persons namely Wajid & Mst. Quratul ain from a Flat No.7/C, 14th Commercial Street, DHA, Ph-II, Karachi. A case vide FIR No: 340/2011 u/s 302/34 PPC at Police Station Defence is registered. A detailed report of Mr. Tariq Razzaq Dharejo, SP Saddar Division Sought, Karachi regarding efforts made to trace and arrest the accused is attached herewith at Annex-"E". (It has been taken back)

(6) One young man namely Sahreef s/o Muhammad Anwar Baloch has been kidnapped from near NADRA Office, near Bahadurabad Police Station. In this regard FIR No.114/2011 u/s 365 PPC has been registered at Police Station Kalakot by one Muhammad Akram s/o Muhammad Anwar. Detail progress report is attached herewith as Annex-"F".

The list of 17 kidnappees supplied by Advocate Mr. Jameel Ahmed Virk on behalf of the applicants in CMA No.555/2011 who have returned to their homes in injured condition. In this regard the concerned quarters have submitted their report and in all 16 cases the FIRs have been registered the same is enclosed herewith as Annex "G". The investigation is under way.

Further 34 dead bodies have found in Bags. In this regard a comprehensive report has already been submitted before this Honorable Court on 26.8.2011.

26. It is noteworthy that the law enforcing agencies have detected a torture cell during hearing of the case at Karachi and succeeded in getting video clips of the most heinous, gruesome, brutal, horrible and inhuman acts of the criminals, who are found cutting throats of men and drilling their bodies. But, now it is informed that more such cells have been detected in different parts of Karachi.

27. As far as the injured or wounded persons are concerned, they are countless in number in all the disturbed areas of Karachi where different political parties have got dominant population on the basis of the language being spoken by them. It may be noted that the objective of above-noted brutal and gruesome incidents is to terrorize the citizens of Karachi and keep the entire society a hostage.

28. An impression has been created that on account of demographical reasons, the above issue has its origin on ethnic divides, but Mr. Abdul Hafeez Pirzada, Sr. ASC appearing for the

Province of Sindh, and Syed Iftikhar Hussain Gillani, Sr. ASC for ANP vehemently dispelled such an impression and we also tend to agree with them because we feel that it is a turf war between various groups on account of their financial and economic interests in the huge economic, industrial and commercial activities, etc. of the city of Karachi highlighted in the presentation given by the IGP, relevant aspects whereof have been noted herein above. However, there is, and has for some time in the past, been a visible element of ethnic strife in Karachi and some elements and parties benefited from keeping the tension alive. There are not only *Urdu Speaking*, (*When the Court uses the term 'Urdu Speaking' it is for a specific purpose. As it is the language common to all and even those who proudly speak Pashto, Punjabi, Sindhi or Baluchi, can and do speak Urdu*), *Pashtun, Sindhis, and Balochis, Punjabis, Saraikis*, but foreigners and others also live in Karachi and all of them are the victims of violence, crime, fear and insecurity, as is evident from FIRs, reports, etc. submitted from time to time by the police department. Some of the hardened criminals, who associate themselves with the political parties do take support of the powerful groups/political parties as is evident from the reports of the **joint investigation team of various intelligence agencies including ISI and others**. These reports have been filed by Syed Iftikhar Hussain Gillani, throwing sufficient light on the criminal activities of these heartless criminals such as Ajmal Pahari, Kamran Madhuri and many others. It is to be noted that the aforementioned JIT reports were prepared after causing arrests of various accused persons involved in the commission of offences this year in the month of March.

29. It goes without saying that if the involvement of above accused persons allegedly aligned with a political party is established, it may entail serious consequences for said political party as well, because a political party cannot be formed or cannot operate in a manner prejudicial to the sovereignty or integrity of Pakistan.

30. It is important to note that the learned counsel representing various political parties have though not categorically denied affiliation of above noted persons with their parties, but have taken exception to the JIT report; on the ground that the same are not admissible in evidence. It is also important to note that during the discussion, it has been informed that two notorious accused persons, namely, Kamran Madhuri and Sohail Commander involved in criminal activities were not nominated in the FIRs, yet on arrest of one of them he has been found in injured condition. Investigation is being conducted to collect relevant material against them. It is also astonishing that most of the accused persons nominated in crimes have got their acquittal on the plea of *alibi* and false involvement. We are surprised to know that the law enforcement agencies, who are supposed to conduct investigation honestly, had allegedly involved persons falsely or half-heartedly in the commission of offences in which their fellow policemen were murdered. Indeed, they have not shown any professionalism and have failed to bring the real culprits to book.

31. It seems that the police primarily being responsible to enforce law and order has no intention to deliver. Either they are scared or they are dishonest or absolutely lack the requisite skills. It could be that in the year 1992 operation clean up was launched against MQM wherein statedly, the police had played an active role,

but subsequently, 92 police officers/officials disappeared and up till now there is no clue of their whereabouts nor is it known that by whom, and under whose patronage, such persons were abducted and/or killed. Another reason appears to be that police force has been highly politicized, recruitments have been made on political considerations. It came to light during hearing of the case that in police force many police officers have been recruited on political considerations who have managed to occupy such posts for extraneous considerations and senior officers in the rank of SSP, SP and DSP etc. have been inducted into the force from other organizations without following any rules and even they have not undergone training for the purpose of policing. To highlight this aspect, following information has been obtained from the Advocate General, Sindh: -

1. Mr. Dost Ali Baloch from Intelligence Bureau, absorbed in Sindh Police with effect from 14.10.1998, presently working as Director General Finance, CPO Sindh Karachi (BS-20).
2. Mr. Muhammad Malik from FIA, absorbed in Sindh Police with effect from 31.10.2007, presently working as Director General Traffic, Planning & Regulation, Sindh Karachi (BS-20).
3. Mr. Muhammad Riaz Soomro from Anti-Narcotic Force, absorbed in Sindh Police with effect from 26.2.2008, presently working as SSP, District Mirpurkhas (BS-19).
4. Mr. Muhammad Ali Baloch appointed as Assistant Director (Computer) in Sindh Police on 6.4.1999, presently working as SSP, District Tando Muhammad Khan (BS-19).
5. Mr. Abdul Hadi Bullo from OMG, absorbed in Sindh Police with effect from 16.7.2003, presently working as SSP District Matiari (BS-19).
6. Mr. Attaullah K. Chandio, from Solicitor Department, absorbed in Sindh Police with effect from 1.6.1995, presently working as SP, Special Branch, Mirpurkhas (BS-18).
7. Mr. Shahid Hussain Mahesar on deputation from Intelligence Bureau, with effect from 26.7.2009, presently working as SSP Political (SB) Karachi (BS-18).

8. Mr. Zameer Ahmed Abbasi on deputation from National Accountability Bureau with effect from 31.12.2008, presently working as SDPO/Frere, District South, Karachi Range (BS-17).
9. Mr. Shiraz Asghar Shaikh, on deputation from PEMRA with effect from 23.8.2008, presently working as SDPO/Darakhshan, District South, Karachi Range (BS-17).
10. Mr. Faisal Mukhtar Vakaasi on deputation from National Accountability Bureau with effect from 31.3.2009, presently working as Principal, Training & Recruitment, Karachi Range (BS-17).
11. Mr. I. D. Mangi, on deputation from ACE, Sindh with effect from 10.4.2009, presently working as DSP/ACLC, Karachi Range (BS-17).
12. Major (R) Khurram Gulzar, re-employed on contract basis as DIGP (BS-20) for a period of one year with effect from 27.12.2010.
13. Col.(R) M. A. Wahid Khan, re-employed as Principal, S.B.B. EPT Razzakabad, Karachi (BS-19) for a period of one year with effect from 1.9.2008. Extension granted for two years with effect from 1.9.2009.
14. Major Col. (R) Muhammad Ahsan Umar, re-employed as SSP, District East, Karachi Range (BS-19) for a period of two years with effect from 24.9.2010.

32. The IGP stated that presently, the total strength of police force is 32524, out of which approximately 12000 are performing security duties, including 8000 deployed with VIPs and only 20000 personnel of police force were left for the purpose of policing of 18 million people in Karachi. He stated that by means of the Sindh (Repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011 passed by the Provincial Assembly, the Police Order, 2002 has been repealed in the Sindh Province, as a result of which the Police Act, 1861 has been revived and the IGP is helpless in transferring even a DSP from one place to another.

33. The majority of the police force performing duty in Karachi comprises brave and devoted officers and men. They risk their lives

often targeted by unidentifiable enemies enjoying mobility in action. They deserve the respect of the nation. However, as The IGP conceded that 30-40 percent of police force are non-cooperative either for the reasons that they have secured their appointments on political considerations or they have associated themselves with different groups including political parties, having vested interests in the affairs of Karachi, therefore, at times it becomes very difficult for him to effectively take action against the real culprits. When called upon to explain as to how two accused persons involved in case FIR No. 434/2011, Police Station Zaman Town, have been released by the Administrative Judge, ATC, accepting their plea of *alibi*, where a concerted attack was launched upon police officers/officials who were being transported in a private bus towards the disturbed areas for controlling riots and bringing peace, resulting in death of 6-7 policemen, causing injuries to others, the IGP disclosed that the investigating officer has been suspended and the then SHO of the relevant Police Station has already been moved out and disciplinary proceedings are in hand against him. **This categorical statement in respect of only one incident is sufficient to infer** that the statement so made by the IPG carries sufficient weight. If the police official/officers are not sincere with the victims belonging to their own rank and file, what expectation could one have from such force, which, admittedly, stands politicized, for initiating forceful action against the culprits involved in causing target killing, brutal murders, cutting limbs of human bodies and putting the dead bodies and torsos into bags with a view to terrorizing the society as a whole in general and the inhabitants of Karachi city in particular. During the period of one month, i.e. from 24 July to 24 August, 2011, as per information

submitted before the Court about the killing of people of 306 persons 232 FIRs have been registered mostly against unknown persons and on completion of investigation in many cases, reports have been submitted declaring the cases for disposal under A class, which according to the relevant Police Rules means that the crime is untraceable. Summary of the said cases is as under:-

S.No.	Police Station	FIR No. and date	Status of Investigation
1.	Aram Bagh	189/2011 dt. 31.7.2011 u/s 302/34 PPC	A-Class
2.	Darakshan	265/2011 dt. 03.08.2011 u/s 302 PPC	A-Class
3.	Eidgah	197/2011 dt. 27.07.2011 u/s 302/324/34 PPC	A-Class
4.	Eidgah	200/2011 dt. 30.7.2011 u/s 302/34 PPC	A-Class
5.	Eidgah	202/2011 dt. 01.08.2011 u/s 302/324/34 PPC	A-Class
6.	Eidgah	203/2011 dt.05.08.2011 u/s 302/34 PPC	A-Class
7.	Eidgah	206/2011 dt.09.08.2011 u/s 324/302/34 PPC	A-Class
8.	Frere	150/2011 dt.09.08.2011 u/s 302 PPC	A-Class
9.	Garden	144/2011 dt.25.07.2011 u/s 302 PPC	A-Class
10.	Garden	151/2011 dt.02.08.2011 u/s 364/302	A-Class
11.	Garden	154/2011 dt.05.08.2011 u/s 364/302 PPC	A-Class
12.	Garden	146/2011 dt.27.07.2011 u/s 302/34 PPC	A-Class
13.	Kalakot	99/2011 dt.24.07.2011 u/s 302/324/34 PPC	A-Class
14.	Kalakot	100/2011 dt.25.07.2011 u/s 302/34 PPC	A-Class
15.	Kalakot	102/2011 dt.29.07.2011 u/s 302/34 PPC	A-Class
16.	Nabi Bux	137/2011 dt.24.07.2011 u/s 302 PPC	A-Class
17.	Napier	119/2011 dt.24.07.2011 u/s 302/324/34 PPC	A-Class
18.	Napier	124/2011 dt.03.08.2011 u/s 302/34 PPC	A-Class
19.	Napier	127/2011 dt.09.08.2011 u/s 302/34 PPC	A-Class
20.	Preedy	473/2011 dt.09.08.2011	A-Class

		u/s 302 PPC	
21.	Risala	127/2011 dt.10.08.2011 u/s 302/34 PPC	A-Class
22.	Boat Basin	319/2011 dt.01.08.2011 u/s 324/34 PPC	A-Class
23.	Boat Basin	323/2011 dt.04.08.2011 u/s 324/34 PPC	A-Class
24.	Boat Basin	324/2011 dt.05.08.2011 u/s 324/34 PPC	A-Class
25.	Defence	276/2011 dt.28.07.2011 u/s 324/34 PPC	A-Class
26.	Garden	149/2011 dt.31.07.2011 u/s 324/34	A-Class
27.	Eidgah	193/2011 dt.23.07.2011 u/s 302/34 PPC	A-Class
28.	Kalri	176/2011 dt.08.08.2011 u/s 147/148/149/435 PPC	A-Class
29.	Preedy	474/2011 dt.09.08.2011 u/s 384 PPC	A-Class

34. The IGP has also made before this Court another admission while giving his presentation, summary of which has been reproduced hereinabove, that there are **no go areas** within the jurisdiction of different police stations. In this view of the matter, we are of the opinion that the police without having any commitment/dedication and other reasons highlighted hereinabove, is not in a position to make any break through unless the whole force is **de-politicized** and their morale is boosted by the senior officers, having credible service/ training, commitment, dedication always ready to discharge their functions willingly and to the best of their ability. In the briefing, it has also been pointed out that so many members of the police lost their lives in encounters with the criminals. It is a matter of great concern that the perpetrators do not feel any hesitation in killing the police personnel for the purpose of creating atmosphere of fear, harassment to terrorize the whole society. The number of such police officers has been noted herein above. In addition to it, in recent incidents on 5th or 6th September, 2011, a dead

body of a policeman, namely, Javed Iqbal was found in the area of Bakra Peri Road, near Evergreen School, Malir City Karachi, regarding which FIR No.248/2011 was registered at Police Station Malir City. The killing of the innocent persons has also not stopped even now, as has been pointed out that a dead body of an unknown person, who was badly tortured, was found lying in the car parking of a hospital, reference of which has already been made herein above. There are series of such incidents, which are taking place, one after the other. Statedly, one policeman succeeded in causing arrest of one alleged accused person, namely, Shah Zore on stated allegation that he was responsible for killing innocent persons and after his arrest, on his pointation, a dead body packed in a carton was recovered, reference of which has been made in the order dated 09.09.2011. In the case, where Rangers had succeeded in identifying a torture cell in Liyari area and a DVD was prepared in respect of an incident, reference of which has been made hereinabove, on watching it, one cannot explain in words the degree of shamelessness, cruelty, barbarity and brutality except summarizing that the heinous acts of committing sodomy upon the victims and butchering them with blunt knives/*churris* were committed brazenly. This is just one instance of the brutality and barbarity, taking place in a torture cell which has been pointed out to us, and it is not known that how many other such like torture cells are being maintained by the criminals in their dens here and there in the vastness of the city to satisfy their self as a vengeance. As a matter of tit for tat, gruesome and cruel methodologies have been adopted for the purpose.

35. On 07.09.2011, Director General Rangers Sindh, Major General Aijaz Ahmed Chaudhry appeared in Court and stated that the

problem in Karachi is very serious, rather more **serious than that of South Waziristan**. However, he submitted that if there was a will to do it and once the State decides to bring peace to the city of Karachi, no criminal could stand before the State and escape prosecution. He further stated that the factors which contributed to the problem of the city of Karachi happened to be that it is a huge city, it is based on community system, a lot of development work has been done, but there is unjust development of infrastructure on the basis of communities residing in various parts of the city. There is **polarization** to an unprecedented level on the political, ethnic, and/or religious divides. According to him one day ethnic problem occurs and next day religious problem starts. The situation has reached such a stage where even the health sector is divided on ethnic and parochial basis. A patient or injured person of one community is refused admission or medical treatment by a hospital under influence of another community. The problem can only be solved through application of special means as well as requesting **political leadership to eliminate militancy from their wings**. The political face of the city has been taken hostage by militant groups of political parties. Political parties are penetrated by the criminals under the garb of political groups who use party flags. The militants and criminals are taking refuge in the lap of political and ethnic parties which use the flags of these parties to commit illegal activities with impunity. The paramilitary force is, otherwise, fully capable of controlling the law and order situation, the deployment of Rangers be further extended to allow them to bring permanent peace in the city. There are religious gatherings, problems like KESC issue, ethnic violence, protests/riots over issues like *Watan* card distribution, *Namoos-e-Risalat*, as a result

whereof law enforcement agencies are over stretched. The Government machinery has realized the seriousness of the situation and assured that Rangers would bring the city back to normalcy and ensure that people feel safe. He also suggested the constitution of a high-level body comprising the Chief Minister and other stakeholders to monitor progress in maintaining law and order as well as ensuring good governance and social justice. The committee may be bound to send progress reports to the Chief Justices of the High Court and Supreme Court for perusal.

36. The DG Rangers further stated that he had requested in security conferences that there should be no bar for the Rangers to operate anywhere in the city, inasmuch as to go to the **offices of political parties**, which housed ammunition, weapons and criminals, and now by this notification this power has been given. According to him, in a recent briefing on the law and order situation, restrictions on the operations of the Rangers, were relaxed, directing that the police, Rangers and other law enforcement agencies should not be stopped from conducting raids in any area, including on the offices of political parties, if the criminals take refuge there. He said that Rangers had conducted successful raids and arrested culprits involved in target killings whose details would be shared with the Court. He said that Karachi is a mega city but unfortunately an unjust infrastructure had divided it on ethnic and political basis.

37. In conclusion, the DG stated that no amount of application of kinetic means, be it Rangers, or Army can fix the problem on long term, rather it is the political process, which finally prevails and provides hope to the nation. Suggesting the way forward, the DG Rangers submitted that there is a need to train prosecutors, improve

forensic evidence, etc. According to him, the recent issuance of the notification indicates that there is a realization at the political and Government level, forcing them to come up with solution. He expressed the desire that the notification should continue until peace returns and so should the drive to round up the criminals and terrorists.

38. Besides, the DG Rangers candidly conceded that *bhatta* [extortion money] is a normal practice and criminals are collecting *bhatta*, which, every day, runs into at least 10 million rupees and it is being charged from an ordinary shopkeeper, *rehriwala* (push-cart peddler) up to the top businessman by criminals who have got the backing of the **political parties** who are the stakeholders. In this behalf, Special Branch of the Police Department had filed a report confidentiality of the same has not been claimed. In this report, a list of *chanda/bhatta* collectors is available, a perusal whereof indicates that *bhatta* is being collected invariably by the persons who claim their association with ANP, MQM, PPP, *Jamat-e-Islami*, *Sunni Tehrik*, etc. Besides, activists of the organizations banned under the Anti-Terrorism Act, 1997 are also indulging in these activities. It is an admitted fact that street crime like snatching cell phones, purses, etc. from the citizens is rampant in the city and there cannot be two opinions that the citizens, by and large, are suffering filled with fear and confusion. They are so frightened that none of them comes forward even to lodge the report, rather they prefer to pay *bhatta* or unhesitatingly agree to hand over their valuables during the commission of street crimes. The whole city seems to be in the grip of fear.

39. The learned Attorney General has also submitted a report of Intelligence Bureau without claiming confidentiality and also

arranged briefing of ISI only for the Members of the Bench. The Provincial Government also produced on record report of CID and it too has not claimed confidentiality in respect of the same. Here it will be pertinent to note that although, a notice was issued to the learned Attorney General but the Federation chose to be represented through a private counsel Dr. Babar Awan, learned Sr. ASC, who remained associated with the case throughout the proceedings. As far as Province of Sindh through Chief Minister is concerned, it is represented by Mr. Abdul Hafeez Pirzada, learned Sr. ASC and the learned Advocate General who represented the Chief Secretary and IGP. The names of the interveners are available in the title of the case, which includes MQM through Dr. Farogh Naseem, ANP through Syed Iftikhar Hussain Gillani, Sindh Bachayo Committee through Mr. Abdul Mujeeb Pirzada Sr.ASC, PML (N) through Faisal Kamal Alam ASC, Awami Tehrik Party through its President Mr. Rasool Bux Palijo ASC, etc. They have also put forward their respective pleas containing allegations and counter allegations. Except the learned counsel appearing for the official respondents i.e. Federation and the Province of Sindh, all others including the interveners, **unequivocally affirmed violation of fundamental rights of the public** enshrined in Articles 9, 14, 15, 18 and 24 of the Constitution.

40. How important has been the Suo Moto intervention of this court and how vital is the "depoliticization of the administration", particularly police, is indicated in the instant case itself. Although the notification ostensibly empowering the Rangers was issued on July 8, 2011, but the killing spree did not stop because, obviously, a depoliticized administration was not available. Thus, in July alone as many as 306 people were murdered as mentioned above, and a

greater number were injured. A number of dead bodies were discovered in gunny bags, many mutilated and disfigured. The killing spree continued at this pace and in just one week before this Court, on 24.08.2011, took Sua Moto notice of the situation as many as 109 citizens had been killed as per the power point presentation given by the IGP on 29.08.2011. Out of 25 dead bodies found in gunny bags, 9 were found beheaded and tortured. These, and other related figures, mentioned in para 22 above eminently justified interference by the Court under Article 184(3). In fact the situation was so grave that the Court decided immediately to shift the venue of the hearings to Karachi. All concerned were put on notice. Although a few more tragic incidents did take place during the hearing of the case and these have been mentioned in detail herein, but there was a dramatic drop in the number of crimes of the variety presently under consideration after the court had intervened.

The lesson to be learned from this is simple. Initiation of Sua Moto proceedings by the Court sent one straight and simple message to an administration working under political pressures: "Take no political pressure from any quarter whatsoever". This was an unstated message, but it was loud and clear. The administration remained, and remains, under the political Government of the Province of Sindh but the administrators immediately understood that they would not be called upon to obey any illegal orders nor to discriminate between adversaries. They would be fair and impartial and the results have been dramatic so far. A depoliticized administration suddenly came to life in fighting crimes, criminals and Mafias, political and otherwise. That is what the intervention of the Court achieved. We the Judges have no guns to fight the terrorists, but we have the authority

to ensure and strengthen the hands of those who actually apply the law. In many cases the Suo Moto intervention of the Court has produced such results, stopping corruption and mal-administration, and Karachi demonstrates this. All over the democratic world judicial review only strengthens democracy and should be welcomed by democratic governments, not resented and resisted. It is now only hoped that this restraint on political and partisan interference will also continue after the Court winds up these proceedings so as to enable the Police, the administration, and the Rangers to do their jobs in accordance with the law.

41. Too often representatives of the Government are seen castigating the Courts for the release of alleged terrorists and criminals. This Court itself is often subjected to blistering criticism, especially by members or allies of the ruling party on talk shows and television programmes. The Court has shown restraint and has no ill-will. Even otherwise the Judges cannot enter upon a public or private debate about their performance or judgments even though the criticism is highly politicized and unjustified as it often is these days. But the burden that rests upon the executive and the legislature cannot be passed on to the Courts. Courts can only act upon evidence and material presented before them. This has to be collected by the executive. The Courts cannot be blamed if the executive/police fail in their duty. Moreover the evidence thus collected must be evaluated according to the laws and rules prescribed by the legislature. In these especial circumstances it is for the Government to ensure that cogent evidence to support prosecution is collected and presented in the Court. It is for the legislature to provide processes for the protection of witnesses, Policemen and Judges and for the executive/government to

fully implement these reforms. Intelligence sharing and action on intelligence that is uncorrupted by political or extraneous influence must also be ensured by the executive. The Court expects that a new culture of independent, depoliticized, and non-partisan prosecution comprising efficient, capable prosecutors will be established by the government to aid and assist the Courts. The Government must also depoliticize the administration/prosecution. This will be for its own good and for that of the nation. The Courts will keep a watchful eye and strike down all illegal pressures and orders that are brought to their notice.

42. Adversarial proceedings are defined as proceedings relating to, or characteristic of an adversary or adversary procedures. The term "adversarial" has been defined in the Concise Oxford English Dictionary, Eleventh Edition, Revised, as under: -

"1. Involving or characterized by conflict or opposition. 2. Law (of legal proceedings) in which the parties involved have the responsibilities for finding and presenting evidence."

In "Advanced Law Lexicon" the term "Adversarial Process" has been defined as under: -

"A process in which each party to a dispute puts forward its case to the other and before a neutral judge, soliciting to prove the fairness of their cases."

In the American Heritage Dictionary of the English Language, Fourth Edition: Published by Houghton Mifflin Company, the term is defined as under:-

"Relating to or characteristic of an adversary; involving antagonistic elements: "the chasm between management and labor in this country, an often needlessly adversarial atmosphere" (Steve Lohr)."

In Collins English Dictionary – Complete and Unabridged, it is defined as under: -

- “1. Pertaining to or characterized by antagonism and conflict
2. (Law) *Brit* having or involving opposing parties or interests in a legal contest US term adversary”

The adversarial system (or adversary system) is a legal system where two advocates represent their parties’ positions before an impartial person or group of people, usually a jury or judge, who attempt to determine the truth of the case, whereas, the inquisitorial system has a judge (or a group of judges who work together) whose task is to investigate the case.

43. The adversarial system is a two-sided structure under which criminal trial courts operate that pits the prosecution against the defense. Justice is done when the most effective and rightful adversary is able to convince the judge or jury that his or her perspective on the case is the correct one.

44. As against the above, the term “inquisitorial” is defined in “Concise Oxford English Dictionary, Eleventh Edition, Revised as under: -

- “1. Of or like an inquisitor.
2. Law (of performing an examining role)”

In “Advanced Law Lexicon” 3rd Edition, 2005, it is defined in the following words:-

“The system of criminal justice in most civil law nations, where judges serve as prosecutors and have broad powers of discovery.”

Webster's New World College Dictionary Copyright 2010, by Wiley Publishing, Inc., Cleveland, Ohio defines it as under:-

- “1. of or like an inquisitor or inquisition
2. inquisitive; prying”

Collins World English Dictionary defines it as under:-

- “1. of or pertaining to an inquisitor or inquisition.
2. exercising the office of an inquisitor.
3. law.
 - a. pertaining to a trial with one person or group inquiring into the facts and acting as both prosecutor and judge.
 - b. pertaining to secret criminal prosecutions.
4. resembling an inquisitor in harshness or intrusiveness.
5. inquisitive; prying.

45. The Free Dictionary describes it in part, as “a method of legal practice in which the judge endeavours to discover facts whilst simultaneously representing the interests of the state in a trial”. Under the inquisitorial model, the obligations of a Judge are far greater and he is no longer a passive arbiter of proceedings but an active member of the fact finding process.

46. An inquisitorial system is a legal system where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an adversarial system where the role of the court is primarily that of an impartial referee between the prosecution and the defense. Inquisitorial systems are used in some countries with civil legal systems as opposed to common law systems. Also countries using common law, including the United States, may use an inquisitorial system for summary hearings in the case of misdemeanors such as minor traffic violations. In fact, the distinction between an adversarial and inquisitorial system is theoretically unrelated to the distinction between a civil legal and common law system. Some legal scholars consider the term “inquisitorial” misleading, and prefer the word “non-adversarial”.

47. The inquisitorial system applies to questions of criminal procedure as opposed to questions of substantive law; that is, it determines how criminal enquiries and trials are conducted, not the kind of crimes for which one can be prosecuted, nor the sentences that

they carry. It is most readily used in some civil legal systems. However, some jurists do not recognize this dichotomy and see procedure and substantive legal relationships as being interconnected and part of a theory of justice as applied differently in various legal cultures.

48. In some jurisdictions, the trial judge may participate in the fact-finding inquiry by questioning witnesses even in adversarial proceedings. The rules of admissibility of evidence may also allow the judge to act more like an inquisitor than an arbiter of justice.

49. The proceedings, which are initiated as public interest litigation in civil or criminal matters cannot be treated as adversarial because of the definition of nature of the proceedings where without contest between the parties a final finding has to be recorded, as it has so been held in the case of Tobacco Board v. Tahir Raza (2007 SCMR 97). In this judgment, matter relating to maintainability of writ of quo *warranto* was considered and it was held that such writ is to inquire from a person the authority of law under which he purports to hold public office and it is primarily inquisitorial and not adversarial, for the reason that a relater need not be a person aggrieved; such exercise can be done suo motu, even if attention of High Court is not drawn by the parties concerned. The same principle has been followed by the Court in Ch. Muneer Ahmad v. Malik Nawab Sher (PLD 2010 Lahore 625).

50. In the case of Philips Electrical Industries of Pakistan Ltd. v. Pakistan (2000 YLR 2724) it has been observed that public interest litigation is inquisitorial in nature where the Court may even delve into fact finding so as to promote public interest.

51. In the case of Muhammad Munawar v. Deputy Settlement Commissioner (2001 YLR 2350) the Lahore High Court has observed that concept of adversarial proceedings under which it is the duty of the parties to produce all relevant evidence, has been departed from inasmuch as the Courts have also been called upon to share this burden either on the application of the parties or suo motu to summon and record all the relevant evidence in order to decide the case effectively and finally; such rule is one of wisdom, for if a party to the litigation fails in its duty, the Court is not denuded of its power to summon the relevant evidence so that the dispute between the parties is decided fairly and finally.

52. The Indian Supreme Court had the occasion to define these expressions in various cases, including the cases of Peoples' Union for Democratic Rights v, Union of India [AIR 1982 SC 1473] = [(1982)3 SCC 235], Bandhua Mukti Morcha v. Union Of India [AIR 1984 SC 802], Peoples' Union for Liberties v. Union Of India [AIR 1996 Cal 89] and State of Uttaranchal v. Balwant Singh Chauhal [(2010) 3 SCC 402]. In Peoples' Union for Democratic Rights' case (supra) the Indian Supreme Court has observed as follows:-

"2. We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court

not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil ? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government under the label of Fundamental Right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy simply do not exist

for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty, utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce? This was brought out forcibly by W. Paul Gormseley at the Silver Jubilee Celebrations of the Universal Declaration of Human Rights at the Banaras Hindu University: "Since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution in its chapter on Fundamental Rights and on the Directive Principles of State Policy and has already completed twenty-five years of independence, the question may be raised whether or not the Fundamental Rights enshrined in our Constitution have any meaning to the millions of our people to whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavoidable. We, in India, should on this occasion study the Human Rights declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country."

The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the International Human Rights Conference in Tehran called by the General Assembly in 1968 declared in a final proclamation:

“Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.”

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multidimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the Court. The state or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

3. There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind,

a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the down-trodden the have-nots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate, and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgment delivered by this Court in Judges Appointment and Transfer cases.”

In *Bandhua Mukti Morcha's case* (supra) after referring to the cases of *Peoples' Union for Democratic Rights*, the Court has observed as under: -

“9. We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice

has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives."

In Peoples' Union for Liberties's case (supra) after referring to the cases of Peoples' Union for Democratic Rights and Bandhua Mukti Morcha's case (supra), the Calcutta High Court has observed as under:-

"122. It is quite obvious that in a public interest litigation the petitioner and the State are not supposed to be pitted against each other, there is no question of one party claiming or asking for relief against the other and the Court deciding between them. Public interest litigation is a co-operative litigation in which the petitioner, the State or public authority and the Court are to co-operate with one another in ensuring that the constitutional obligation towards those who cannot resort to the Courts to protect their constitutional or legal rights is fulfilled. In such a situation the concept of cause of action evolved in the background of private law and adversary procedure is out of place. The only question that can arise is whether the prayers in the petition, if granted, will ensure such constitutional or legal rights."

53. We have observed during the hearing that instant proceedings are not adversarial, but inquisitorial. The information/material laid/produced before this Court by the State functionaries in pursuance of the order dated 24.08.2011, followed by the order of the Full Bench dated 26.08.2011 and the material produced by the interveners, reference of which has been made in the order referred hereinabove is sufficient for making right conclusions. We were informed that besides figures of crimes committed during one month commencing from 24th July to 24th August, 2011 noted hereinabove; about 1300 persons were killed during this year, whereas about 1800 persons similarly lost their lives in the year 2010. Thus, having gone through the material, we have no hesitation in our mind that at large scale the residents of Karachi have been subjected to bloodshed, arson, kidnapping/abduction for ransom, widespread violence, illegal collection of money (*bhatta*) from traders, etc. and that their inalienable Fundamental Rights, such as, security of person; inviolability of dignity of man; freedom of movement; freedom of trade, business or profession and protection of property have been violated.

54. The fact that deadliest criminals having affiliation with various groups are responsible for bloodshed, arson, looting, recovery of money (*bhatta*) from common citizens and traders causing terror in the city of Karachi is not denied. Fearful as they are, the people of Karachi have been spending sleepless nights particularly during the past months of July and August is also not denied. The accused persons belonging to any political or specific group are so powerful that the police for the reason stated have failed to arrest or collect evidence for proving the guilt against them before a Court of Law as

we have noted hereinabove and according to summary of disposal of cases, most of the cases have already been disposed of as "A" Class, details of which have been mentioned hereinabove. M/S Syed Iftikhar Hussain Gillani, Abdul Mujeeb Pirzada, Ghulam Qadir Jatoi, Rasool Bakhsh Palijo and Syed Iqbal Haider representing various applicants/interveners have blamed MQM to have let their activists loose who, according to them, are largely responsible for creating dismal situation of law and order perpetrating the alleged wrongful acts and causing terrorism in the city. Whereas, Dr. Farogh Naseem, learned ASC, appearing on behalf of MQM voiced in his submissions that in actual fact the Urdu speaking inhabitants of Karachi are the victims of atrocious acts of criminals aligned with various other groups, particularly having influence in Baloch area of Lyari and Kati Pahari/Qasba Colony area largely inhabited by Pashtuns. According to him, hundreds of MQM workers have been tortured and killed at the hands of such groups. Thus, it is quite evident that uncontrollable law and order situation prevails, which has wrapped the city of Karachi in terror to the utmost discomfort of common citizens including traders, remains undisputed, the details of which are stated more specifically in the foregoing paragraphs. The DG Rangers, in his submissions, has been so vocal to say that the law and order situation in Karachi is worse than it happens to be in Waziristan. The IG Police has also not lagged behind in admitting the brazen facts. This situation has not only heavily affected the common citizens of Karachi, it has virtually paralyzed the industrial and commercial activities ultimately affecting the whole country as Karachi being a port city and commercial hub of country, it contributes 60 – 70 % of revenue. Thus, there cannot be two opinions that the worsening law and order situation in Karachi

badly affecting the inviolable dignity, life and liberty of multitudes of people; so also their property, movable and immovable involve violation of Fundamental Rights constituting it a matter of public importance.

55. It is to be noted that, primarily it is the duty of the Province through its executive authorities to control the law and order situation and ensure implementation of Fundamental Rights of citizens. But *prima-facie* it seems that the Provincial Authorities have not fulfilled their constitutional duty. Under the Constitution, equally it is the obligation of the Federation to protect every Province against internal disturbances as well as external aggression and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution.

56. It has been pointed out by learned counsel for the interveners representing different parties and groups including MQM, ANP, *Baloch Ittehad Tehrik* and others that their supporters/party men have been butchered and are kidnapped and their whereabouts as yet are not known.

57. According to the opinion expressed before us, the Provincial as well as Federal Government cannot be considered to have been oblivious of their duties when right under their nose, a large number of persons were being brutally butchered everyday on the streets of Karachi, which are littered with dead bodies and torsos (human bodies without head and limbs); sometimes also found in abandoned places and the injured writhing in pain; so also when innocent citizens were being burnt inside vehicles and torture cells were being detected by the law enforcing agencies. The state of helplessness prevailed, throughout, in the city of Karachi – **the face**

of Pakistan being its economic hub – accommodating persons belonging to different communities, including Urdu speaking, *Pashtuns*, *Sariki's*, and others. The dead bodies of the persons belonging to all walks of life i.e. Urdu speaking (word used for the purpose of identifying in this case), *Pashtuns*, *Balochis* and *Punjabis* are being sent to their homes, within Karachi and outside Karachi i.e. to Khyber Pakhtunkhwa, Baluchistan and *Punjab*, which is causing insurmountable fear and harassment throughout the country badly affecting economic activities on account of disturbances taking place in Karachi. Many people have wound up their business and have shifted from Karachi to other places inside the country and outside causing colossal loss not only to the residents of Karachi individually, but to overall economy of the country. The whole nation is crying hoarse, media highlighting the tragic incidents day and night in such a state also cannot be considered to have not come to the knowledge of Provincial and Federal functionaries. Unfortunately, no appropriate and timely action has been taken by the Provincial as well as Federal Governments to stop these atrocious acts. Material has been brought on record, such as, reports of JIT, CID, IB, etc. (copies of which have been provided to us) bearing horrifying stories of heinous crimes committed by dangerous criminals aligned with various political parties and groups; besides very critical situation of law and order reflected in the classified briefing of ISI cannot be considered that the same are not within the knowledge of the Provincial and the Federal Governments. This sensitive material is, *prima-facie*, sufficient to hold that the Provincial Government has failed to perform its constitutional obligations and duties. Therefore, for the purpose of enforcement of Fundamental Rights denied to the people as highlighted hereinabove,

this Court in exercise of its jurisdiction under Article 184(3), which is in the nature of inquisitorial proceedings, has the same powers as are available to the High Court under Article 199 of the Constitution in view of the judgments passed in the cases of Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473), Syed Wasey Zafar v. Government of Pakistan (PLD 1994 SC 621), Bank of Punjab v. Haris Steel Industries (pvt.) Ltd. (PLD 2010 SC 1109) and Federation of Pakistan v. Munir Hussain Bhatti (PLD 2011 SC 752).

58. There is no denial of the fact that ensuring good governance, maintaining law and order situation and providing security to the persons is a primary duty of the Government. Our religion has also emphasized upon the significance and sanctity of 'life' as it has been noted in the opening Para of the judgment, according to which, if anyone killed a person, it would be as if he killed the whole humanity, and similarly if anyone saved a life, it would be as if he saved the whole humanity. Similarly, it is the responsibility of the ruler (government) to ensure security of all its citizens, high or low, without any discrimination. It would be appropriate to refer here to the saying of the Second Caliph *Umar ibn al-Khattab (R.A)* that *if a dog dies of hunger on the banks of the River Euphrates, Umar will be held responsible for dereliction of duty*. [Mohtsham, Saeed M., *Vision and Visionary Leadership - An Islamic Perspective*]. Mr. Abdul Hafeez Pirzada, Sr. ASC appearing on behalf of the Chief Executive of the Province suggested in his arguments that a wake up call should be given to the Provincial Government by this Court, so that it may enforce the constitutional provisions. The suggestion of the learned counsel, however, does not sound well as this is the duty of the ruler to maintain the law and order without any interference of the Court. It

is the history of this country that on account of law and order situation, disturbance, absence of peace, etc., many governments were dismissed in the past. In this behalf, reference may be made to the instruments of dissolution of Parliaments issued by civilian constitutionally elected Presidents which were upheld by the Supreme Court from time to time:-

- Order dated 29.5.1988 whereby the President of Pakistan dissolved the National Assembly under Article 58(2)(b):
 "And whereas the law and order in the country have broken down to an alarming extent resulting in tragic loss of innumerable valuable lives as well as loss of property:
 And whereas the life, property, honour and security of the citizens of Pakistan have been rendered totally unsafe and the integrity and ideology of Pakistan have been seriously endangered. [*Federation of Pakistan v. Haji Muhammad Saifullah Khan* (PLD 1989 SC 166)]
- Order under Article 58(2)(b) of the Constitution on 6th of August, 1990 dissolved the National Assembly
 (d) The Federal Government has failed in its duty under Article 148(3) of the Constitution to protect the Province of Sindh against internal disturbances and to ensure that the Government of that Province is carried on in accordance with the provisions of Constitution, despite the heavy loss of life and property, the rule of terror in urban and rural areas, riots, arson, dacoities, kidnapping for ransom, politics of violence among citizens and widely condemned failure of the Provincial Government and its law enforcing agencies, and also, in this behalf, failed to act under appropriate provisions of the Constitution. [*Khawaja Ahmad Tariq Rahim v. the Federation of Pakistan* (PLD 1992 SC 646)]
- Order dated 5.11.1996 whereby the President dissolved the National Assembly under Article 58(2)(b)

"Whereas during the last three years thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in Police encounters and Police custody.

59. In Ahmad Tariq Rahim's case (*supra*), the dismissal of government was maintained by this Court because of failure of the Federal Government to protect the Provincial Government of Sindh from internal disturbances, relevant Para therefrom is reproduced herein below: -

"28. Ground (d) in the order of dissolution is that the Federal Government had failed in its duty under Article 148(3) of the Constitution to protect Province of Sindh against internal disturbances despite heavy loss of life and property. In this respect, stand taken on behalf of the petitioner is that matter relating to law and order situation in the Province was responsibility of the Province as enshrined in the Constitution. It is stated in the rejoinder filed in the High Court that Government of PPP entered into accord with MOM accommodating its members in the Sindh Cabinet. Due to certain reasons there was unilateral break-up of the accord by MQM which had withdrawn support from the Government. The Provincial Government was doing its level best to deal with law and order situation as required under the Constitution and provisions of relevant laws. On this subject, there were several meetings between the Federal Government and the Provincial Government of Sindh and exchange of letters. took place between President, Prime Minister and the Governor of Sindh. In fact joint efforts were made sincerely to deal with the situation of law and order in Sindh to find a permanent solution. It is submitted on behalf of the petitioner that Federal Government and Government of Sindh wanted assistance of the army to the limited extent of aiding the civilian government as

contemplated under the provisions of Criminal Procedure Code but for some reason could not succeed in carrying out amendment in section 138-A of Criminal Procedure Code. One suggestion from the Provincial Government was that unlicensed arms should be recovered from people without any discrimination. Then unpleasant incident took place in Hyderabad on 26th and 27th May, 1990 in Pacca Qila. There were so many casualties in the firing. President wrote a letter on 28th May, 1990 addressed to the Prime Minister, asking her to appoint judicial enquiry Commission to fix the responsibility for the events that took place in Hyderabad expressing his opinion in favour of use of armed forces in aid of civil power as contemplated under Article 245 of the Constitution.”

Relevant Para from the judgment of this Court in Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) is also reproduced hereinbelow: -

“54. The law and order situation in Karachi and other parts of Sindh should not have been allowed to deteriorate and get out of control. The custodial killings are to be explained satisfactorily as is required under the law. The killings in encounters with police are to be explained in proper manner and the Court has to give finding whether they were justified or not. There is absolutely no explanation available or produced on the record as to how the persons taken in custody and some of them in handcuffs while leading the Police party/Law Enforcing Agencies for making recoveries, were allowed to be killed by some unknown persons who did not want recoveries to be made. If a person is taken into custody then he is bound to be dealt with strictly according to law and is to be punished only when the case is proved against him. He cannot be allowed to be killed by any person while he is in custody. If this is done then it clearly shows that there is no writ of law but law of jungle. This shows inefficiency which tantamounts to total failure of the Constitutional machinery. If both the Provincial Government and the Federal Government jointly dealing with such situation fail then it can be said that the ground is available to the President to come to the conclusion that a situation has arisen in which the Government of the Federation cannot be run in accordance with the provisions of the Constitution and the Constitutional machinery has failed.

60. It would not be out of context to note that Mr. Pirzada learned ASC had submitted that the Chief Executive was ready to take the following measures in future to maintain law and order situation in Karachi. The statement so filed is reproduced hereinbelow in verbatim:-

STATEMENT ON BEHALF OF COUNSEL FOR THE PROVINCE OF SINDH

In pursuance of the proceedings before, and the order of this Hon'ble Court in the above matter dated 30.08.2011, the undersigned counsel for the Province of Sindh has met the Chief Minister, Sindh and as a result thereof, he has been instructed and requested to make the following/submissions.

1. The Chief Minister, Sindh has expressed his resolve and determination to deal with and handle the present criminal and crime situation in the city of Karachi (the subject matter of the above proceedings) without any discrimination whatsoever, irrespective of any party affiliations, that the criminals may or claim to have and that every effort will be made to deal with and control the situation by all necessary action within the framework and letter and spirit of the Constitution the law.
2. The Chief Minister firmly believes that his Government and the law enforcement agencies and instrumentalities available to him are competent in this behalf and that there shall be no lack of will to act on their part.
3. Without prejudice to the generality of the above submission, the Chief Minister, respectfully wants to convey to this Hon'ble Court, the specific actions that he proposes to take in this behalf:
 - a. For the purpose of prevention and control of crime, steps are underway to increase the strength of the police force and supplement and buttress the same by the Rangers. It may be pointed that deployment of Rangers (which are absolutely necessary and vital to work in coordination and cooperation with the Police and are 10,000 in numbers in the city of Karachi) impose a bearable burden of less than Rs.400,000,000/- (Rupees Four Hundred Million) per year, in juxtaposition to the benefits flowing from their proper utilization. The burden of their salaries and emoluments is and continues to be borne by the Federal Government and not the Provincial Government.
 - b. 1000 additional Police force has been transferred from the interior of Sindh to perform duties in the city of Karachi. The large number of the Police force available in Karachi, which has not been allocated to crime control will be reduced beginning immediately so as to provide sufficient numbers to crime control. It may be pointed that at least a half of the number

reserved for special duties as disclosed by the Inspector General Police, Sindh, is either assigned to traffic control or security to VIP's and also non-governmental private parties and institutions. Notices have already been issued to these non-governmental and private organizations, that the force allocated to them is to be withdrawn and they have been advised to make private arrangements for their security. In the next immediate step, the force assigned to VIP's will be reduced, wherever possible in consonance with and without jeopardizing the requirement of their security.

- c. Lastly, a 5000 strong contingent Police force, is being recruited, which will be trained and fully capable of performing their duties within the next 12 months. These recruits will receive special and sophisticated training at 9 Police training centers in the Province.
- d. Closed Circuit Televisions (CCTV's) and cameras are being installed at 900 different locations in the city, which shall monitor, record and report commission of crimes. As stated in the power point presentation (from pages 48 onwards), new and effective APC's have been ordered, which will augment and enable easier penetration by the law enforcement agencies into the crime areas. As stated on page 48, a new motorcycle force named 'Eagle Force' has already been introduced and is functional.
- e. 20 mobile forensic laboratories are being acquired, which shall be manned by extensively trained personnel, with the assistance of friendly countries with advanced technology and expertise.
- f. The next important aspect in the maintenance of law and order is an effective, meaningful and productive investigation for the purpose of apprehension of real culprits, sophisticated and proper collection of evidence, witnesses and compilation of record, so as to enable the Prosecutors to go with confidence and secure convictions of the guilty. The Police Act 1861 has already been brought into force and solid investigation can be achieved through suitable amendments in the law. In this behalf, desired results can be achieved by strengthening the prosecution agencies and institutions. It may be necessary to bring suitable amendments in the existing laws, which may *inter alia*, provide for safety and security of witnesses and maintenance of full record and date of habitual offenders, so as to make it difficult for them to be release on bail as a matter of course.
- g. As far as the question of aliens/noncitizens living in Karachi and estimated to be 2,500,000, this matter relates to a considerable extent to the Federal Government and the Counsel representing it shall have better *locus standi* to address this Hon'ble Court.

4. That these proceedings have been initiated Suo Motu by this Hon'ble Court, *pro bono publico* and are not adversarial and therefore, the submissions on behalf of the Province of Sindh have been made in that context. This Hon'ble Court has also made observation to the same effect. Therefore, the right of rebuttal, of the Province of Sindh, is not waived if others parties, who have brought in their petitions or have joined these proceedings make any submissions, which are required to be answered rebutted and controverted."

But subsequently, he waived his right of rebuttal.

61. Some of the above commitments have already been reiterated by the IGP Sindh in his presentation, summary whereof has been reproduced hereinabove. Similarly, as it has been pointed out in the report submitted by the Chief Secretary Sindh dated 26.08.2011 that after large scale bloodshed in Karachi, now the Administration has realized the gravity of the situation and has conferred powers upon the Pakistan Rangers *vide* notification dated 08.07.2011, which reads as under:-

"No.SO(LE-I)/HD/6-66
GOVERNMENT OF SINDH
HOME DEPARTMENT
Karachi dated July 08, 2011

NOTIFICATION

SUBJECT: PAKISTAN RANGERS (SINDH) EMPLOYMENT IN THE MAINTENANCE OF LAW AND ORDER IN KARACHI

In the wake of recent incidents of terrorism/target killings in certain parts of Karachi, Government of Sindh, in exercise of the powers invested under section 10 of the Pakistan Rangers Ordinance, 1959, read with section 5 of the Anti-Terrorism Act, 1997, hereby make responsible Pakistan Rangers (Sindh) for the maintenance of law and order and to apprehend the criminal elements involved in firing and killing of innocent citizens in various areas and zones of the city (where situation warrants employment of Sindh Rangers). Pakistan Rangers (Sindh) are hereby authorized by the Government of Sindh to cordon, search and use force in controlling firing by the criminals in effected areas.

CCPO Karachi will extend all possible support to Pakistan Rangers (Sindh) in restoring law and order situation in any part of the city.

ADDITIONAL CHIEF SECRETARY
HOME DEPARTMENT"

The contents of the report of the Chief Secretary, particularly Paras 7 & 8 thereof, being an eye-opener, have already been reproduced hereinabove.

62. Similarly, IG Police in addition to other explanations, referred to the demography of the city and admitted extortion of money (*bhatta*) being collected from the traders.

63. Mr. Farogh Naseem, learned ASC appearing on behalf of MQM in CMA 565-K/2011, pointed out that to prevent extortion of money (*bhatta*) the Provincial Assembly had already promulgated the Eradication and Curbing the Menace of Involuntary Donation or Forced Chanda Act, 2004 [hereinafter referred to as "the Act, 2004"]. However, it seems that this legal instrument has not been applied strictly whereas other learned counsel for interveners are of the opinion that criminals involved in collection of *bhatta* are so desperate that no one – be a trader or anyone else – being fearful is interested to expose himself to the wrath of the criminals, rather they feel safety in paying *bhatta*; besides they are equally hesitant to come forward because of problems and difficulties in perusing cases and also have no trust and faith in the police. As far as the law which has been referred to by the learned counsel, cognizance of an offence under the said Act is to be taken on submission of complaint in writing by a donor within 30 days of the commission of the offence before the Judicial Magistrate having territorial jurisdiction. The victims, instead of going by the letter of the law whereunder they have to become complainants and challenge the criminals, reportedly always armed with lethal weapons, prefer to make payment of *bhatta*. This thing can

only be reversed if the trust of the citizens is restored, which of course is not possible until and unless a neutral and a depoliticized administration as well as honest and dedicated law enforcing agencies, especially police are there to protect the victims of crimes. It seems that this law was promulgated for eradication and curbing the menace of extortion of money in the shape of forced donations (*chanda*). The word "*chanda*" has not been defined, but the definition clause of section 2 contains the word "Fund" which includes donation or contribution in the shape of money or kind. Thus, taking advantage of this provision, it was argued before us that there have been complaints that in the name of payment of *fitrana*, which is to be paid as *sadqa* by all the Muslims at the end of *Ramadan* on the eve of *Eid-ul-fitr*, exorbitant amounts have been forcibly recovered instead of allowing Muslims to pay the same voluntarily to the deserving people as per Injunctions of Islam. The culprits in an organized manner receive *fitrana* and in some of the cases ten times of the original amount has been demanded. Although no documents are available on record in this behalf, but these things have been pointed out during the arguments by the learned counsel appearing for the interveners who have spoken before the Court vocally. Similarly, it has been informed that as far as the word 'kind' mentioned in the definition of "fund" is concerned, it relates to recovery of *hadia* (donation), skins of animals (*khall*) and other body parts of animals on the occasion of *Eid-ul-Azha*, however, the representatives of so called welfare organizations working under the flags of their respective political parties used to bind down the people to hand over the same to them, else to face the consequences, but according to the learned counsel for the interveners, this law has also not worked effectively and the

practice of forcible recovery of the above items, i.e. skins, etc., has been going on.

64. It may be noted that as far as offence of extortion of money is concerned, which can also be considered as *bhatta*, it is covered by sections 386 to 388 of the Pakistan Penal Code and also falls within the definition of terrorism given in section 6(1)(k) of the Anti-terrorism Act, 1997. Undoubtedly, sufficient legal framework as discussed hereinabove is available on the statute book, but the same is lying dormant because of its non-application as people do not have trust in the law enforcing agencies to counter the deadly and influential persons who happen to terrorize the innocent citizenry and due to this reason no one comes forward. It is common knowledge that *mafias* i.e. groups of criminals involved in the commission of heinous crimes, such as recovery of *bhatta*, extortion of money, business of illegal weapons, narcotics, drugs, land grabbing, etc., had been working in other countries as well in a highly organized manner. Reference in this behalf may be made to the Sicilian and American *Cosa Nostra*, an Italian group also working in New York, but in those countries the crime was controlled by promulgating and implementing stringent laws, which we also have in our jurisdiction, namely, Anti-terrorism Act, 1997, therefore, we can also control the same by applying such laws strictly. In USA, to control such underworld *mafias*, the State authorized through the courts seizure of properties of such like persons, if it was established that they had acquired such properties out of income from the proceeds of heinous crimes. In this behalf, reference may be made to the case of *Bracy v. Gramley, Warden*, [520 U.S. 899 (1997)], wherein the Supreme Court of United States did not show any concession to the culprits. There are so many

other judgments, reference of which may not be necessary at this stage, where the Governments had succeeded to control the *mafias* after applying stringent measures.

65. The history of Karachi, which has been narrated hereinabove, indicates that from 1985 onwards, the rate of crime as well as the situation of law and order have been increasing with the passage of time. Syed Iqbal Haider, Sr. ASC in CMA No. 544-K/2011, has pointed out that General Zia-ul-Haq, with an intension to further divide and de-politicize the people, created three militant groups and fully armed ethnic parties, i.e. *Muhajir Qaumi* Movement (Now *Mutahida Qaumi* Movement), *Punjabi Pukhtoon Itihad* (PPI) and *Jiye Sindh* (JS), and ethnic warfare started from the tragic road accident death of a student named Bushra Zaidi in April, 1985, followed by numerous incidents of bloody clashes between the three ethnic parties resulting in innumerable deaths of innocent citizens, destruction of public and private property and injuries to thousands of persons, particularly in Karachi and Hyderabad. Curfews, *hartals* (strikes) and close downs of routine activities of the citizens became a norm in Karachi. He further stated that from 1980 onwards, six Judicial Commissions headed by Judges of High Court of Sindh were constituted, but reports of none of those Commissions were made public nor their recommendations were ever implemented, perhaps to protect the real culprits responsible for such bloody incidents. Inasmuch as, former Prime Minister *Mohtarma Benazir Bhutto* had constituted a most powerful independent Judicial Commission headed by the then Chief Justice of Pakistan, Mr. Justice Muhammad Afzal Zullah and comprising the Chief Justices of all the four High Courts to investigate into the unfortunate incident of *Pakka Qila*, Hyderabad on

or about 17.05.1990, but according to him, after unconstitutional dissolution of the Government of *Mohtarma Benazir Bhutto*, during the days of new Caretaker Government with heavy representation of MQM both at Federal and Provincial levels, it decided to dissolve the said Judicial Commission. He handed over the implementation report of one of such Commissions headed by the Chief Secretary, Sindh constituted in 1985-86 after the incident of Bushra Zaidi. We inquired from the learned Advocate General as to whether any other Commission's report was available and whether the same had been made public or not, he stated that as per instructions, no Commission report is available in the relevant department. From the facts and circumstances narrated by the learned counsel, it seems that in the past as well, the city of Karachi had been facing the same problem with which it is confronted today in more aggravated form, but unfortunately, no plausible solution to maintain law and order and restore peace in Karachi was adopted. Inasmuch as, sometimes, there had been military operations followed by operations by the Task Forces constituted by *Mohtarma Benazir Bhutto* during her regime commencing from 1993 onwards, but without any final permanent solution of the problem. We tried our level best to trace out the reasons as to why democratic as well as non-democratic Governments failed to bring normalcy in Karachi, but nobody came forward with a convincing answer except that identical international solutions, which other Governments like in Italy, America, India, etc., had adopted are available to the State machinery in Pakistan, but no one had dared or shown any will to resolve the issue of disturbances in Karachi. Although, Karachi is a city presently accommodating about 18 million people belonging to different communities, as per the history of

Karachi who had come from India, Afghanistan and all over Pakistan and had settled permanently over there making it a cosmopolitan city, which houses *Pakistanis* as well as a large number of foreigners, about 2.5 million in number, who are also there without any check and their involvement in troublemaking can also not be overruled. But the question remains as to why law enforcing agencies have not, to say the least, checked these illegal immigrants and have not managed to deport them to the countries of their origin. The DG Rangers, who operates in the disturbed areas, appeared in person and pointed out in his briefing to the Court that the political forces of the city had been made hostage by the militant groups of political parties; Karachi was a mega city, but unfortunately an unjust infrastructure divided it into various parts on ethnic and political lines; the city was in the grip of polarization on account of which even the health sector was divided on ethnic/parochial basis, so much so that a patient or an injured person belonging to one community is refused admission for medical treatment in a hospital under the control of the rival group; and the situation in Karachi was worse than that prevailing in North Waziristan. The statement of DG Rangers has undoubtedly made important evaluation during his briefing, besides, in the reports available on record and from other credible sources, the situation in Karachi seems to be terrible and needs urgent attention of the Federal and the Provincial Government to handle the same through independent Administration to save the economic, social and political future of Pakistan, which, *inter alia*, depends upon peaceful life in Karachi.

66. Mr. Rasool Baksh Palijo, ASC appearing on behalf of *Awami Tehrik* Party in CMA No. 552-K/2011, in loud and clear words, held MQM responsible alone for the situation prevailing in the country. He

stated that over the last about 20 to 30 years thousands of criminals were not *challaned* and not a single person was awarded punishment. According to him, unless a ban is imposed upon the militant outfits of the political parties, peace and normalcy would not be brought to Karachi. Therefore, he emphasized that culprits should be brought to book and severe punishments should be awarded to them, which may serve deterrence for like minded persons. In this context, Syed Iqbal Haider, Sr. ASC agreeing with him suggested that a powerful truth finding commission is required to be constituted to decide, once for all, as to who is responsible for destroying peace in Karachi, whereas, Syed Iftikhar Hussain Gillani Sr. ASC was of the opinion that instant matter may not be disposed of finally, and an affective interim order may be passed, as this Court had done in the Petitions challenging the validity of the 18th Constitutional Amendment, enabling this Court to supervise the affairs relating to law and order situation in Karachi.

67. Mr. Abdul Mujeeb Pirzada, Sr. ASC appearing on behalf of Sindh Bachayo Committee in CMA No. 531-K/2011, after having narrated the facts and circumstances of the case also insisted for directions to the Government of Sindh to initiate the process of de-weaponization and for the assistance of Administration the military be also allowed to be called in terms of Article 245 of the Constitution because in the past as well, the Administration has been calling in aid the Armed Forces in critical situations like during the earthquake of 2005 and floods in different parts of the country in 2010, and also get implemented the orders passed by this Court by invoking Article 190, which according to Syed Iftikhar Hussain Gillani, Sr. ASC is an enabling provision on the basis of which the Court can issue directions to all executive authorities to come forward to provide aid to it in

implementation of its orders, and undue objections are being raised to invoking of the provisions of Article 190. According to them, Article 190 is like all other provisions of the Constitution, e.g., Article 187, etc., therefore, adhering to any provision of the Constitution will be tantamount to strengthening the institutions for the purpose of achieving good governance, welfare, peace and tranquility in the society. They have emphasized that no provision of the Constitution can be made ineffective, rather each provision has to be applied when the need arises. It is to be noted that as per the scheme of the Constitution, different institutions are required to fulfill their commitment because our Constitution is based on the principle of trichotomy of powers i.e. Legislature, which is responsible to legislate the laws, Executive/Government headed by the Prime Minister in the Federation and the Chief Ministers in the Provinces to fulfill their duties, and the Judiciary, which has to interpret the Constitution and the law. Violation of constitutional provisions by any of the organs/functionaries of the State is not permitted by law as held in the case of Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 876) wherein all the actions of the then Chief of Army Staff General Parvez Musharraf dated 03.11.2007, viz., Proclamation of Emergency, PCO No. 1 of 2007, Judges Oath Order, 2007, etc. were declared to be unconstitutional, illegal, *mala fide* and *void ab initio*. As a result, whatever was done extra-constitutionally was struck down. As far as the present democratic Government is concerned, it too cannot be allowed to go beyond the Constitutional provisions or allowed to fail in its implementation, particularly with regard to enforcement of Fundamental Rights. There are no two opinions that as far as Fundamental Rights/civil rights of the citizens are concerned, those are

to be enforced by the Executive and if it fails to do so, they have to face the consequences envisaged by the Constitution. The Executive functionaries who have also taken oaths both in the Province and Federation to protect and preserve the Constitution cannot be allowed to defeat any provision of the Constitution, whatever the circumstances may be. At this juncture, reference to Article 5 of the Constitution is relevant and appropriate, which commands that loyalty to State is the basic duty of every citizen and obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be, and of every other person for the time being within Pakistan. Thus, the Executive/public functionaries are bound to enforce the Constitution while protecting the Fundamental Rights of the citizens without any fear or favour or compromise for subjective purpose. Reference in this behalf may be made to the cases of *Abdul Majeed Zafar v. Governor of Punjab* (2007 SCMR 330) and *Ch. Zahur Ilahi v. Zulfiqar Ali Bhutto* (PLD 1975 SC 383). In the last mentioned judgment, the question before the Court was with regard to initiating proceedings of contempt of Court against the then Prime Minister, Zulfiqar Ali Bhutto, vis-à-vis the position of such office holder as well as the immunity under Article 248 of the Constitution, when this Court held that *even a Prime Minister is, under clause (2) of Article 5 of the Constitution, bound to obey the Constitution and law as that is the basic obligation of every citizen*. Whereas, in the instant proceedings without claiming any immunity whatsoever, the Prime Minister as well as the Chief Minister both are bound to follow the Constitution under Article 5(2) by ensuring security and safety of persons and property of the citizens. An argument could be raised that since the responsibility for incidents of violence, commission of crimes, bloodshed and looting

occurring in the society lies on criminals, who are to be held responsible and punished by the Courts of law, as such, in the instant case as well, the law enforcing agencies are performing their duties causing arrests of the accused persons to be put on trial in accordance with law. In our considered opinion, a line of distinction has to be drawn in the cases where there is insurgency in any part of the country and commission of crimes by the individuals for their personal enmities and other motives, and commission of crimes in the shape of a turf war by various groups allegedly having support of political parties to secure their vested interests, vis-à-vis unlawful gains. Such groups represent the organizations/gangs of criminals, drug *mafias*, land grabbers, etc., who operate against each other to have control over different areas of the city, considering themselves as warlords and obstruct entry of rival groups in each other's area.

68. At this stage, reference to the application of Mr. Javed Ahmed Chhattari Advocate, appearing in person in CMA No. 558-K/2011 may be made with which he has appended a coloured copy of the map to highlight the respective areas under the control of *Pashtuns* and Urdu speaking communities, divided by a hill. Allegedly, the *Pashtuns* are inhabitants on the upper side of the hill whereas the Urdu speaking people and other communities are living across and in the bottom of the same, and whenever a dispute arises, according to Mr. Chhattari, the *Pashtuns* take benefit of their location on the high side of the hill and manage to kill *Muhajirs* (Urdu speaking). He has also submitted a list of police stations, 112 in number, along with details of different communities living in their respective jurisdictions. For convenience, the same is reproduced herein below: -

S.No.	Name of Police Station	Nature of Population
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1.	<ol style="list-style-type: none"> 1. Peerabad 2. Manghopir 3. Mochko 4. Mominabad 5. Site Section A 6. Site Section B 7. Baldia Town 8. Saeedabad 9. Sohrab Goth 10. Gulzar-e-Hijri 11. Qaidabad 12. Sohrab Goth 13. Bilal Colony 	Pukhtoon Majority Police Stations
2.	<ol style="list-style-type: none"> 1. Bahadurabad 2. Nazimabad 3. Rizvia 4. Gulbahar 5. Super Market 6. Liaquatabad 7. Sharifabad 8. Gulberg 9. Yousuf Plaza 10. Azizabad 11. Joharabad 12. Samanabad 13. New Karachi 14. Sir Syed Town 15. Preedy 16. Orangi Town 17. Pakistan Bazar 18. Landi 19. Korangi 20. Zaman Town 21. Saudabad 22. Orangi Ext. 23. Shah Faisal 	Mahajir Majority Police Stations
3.	<ol style="list-style-type: none"> 1. Chakiwara 2. Bagdadi 3. Kala Kot 4. Eid Gah 5. TPX 6. Gaddap Town 7. Ibrahim Haidry 8. Malir City 9. Memon Goth 10. Bin Qasim 11. Docks 12. Kalri 13. Malir Cantt: 14. Nepare 15. Sharafi Goth 	Baloch and Sindhi Majority Police Stations
4.	<ol style="list-style-type: none"> 1. Mari Pur 2. Jackson 3. Surjani Town 4. Gulshan-e-Iqbal 5. Gulistan-e-Johar 6. Shar-e-Faisal 7. Shar-e-Noorjehan 8. Sher Shah 	

	9. Sharfi Goth 10. Mehmoodabad 11. Baloch Colony 12. Ferozabad 13. Defence 14. Clifton 15. Gizri 16. Boat Basin 17. Artillery Maidan 18. Sadar 19. Air Port 20. Civil Line 21. Darakshan 22. Frere 23. Gulzar-e-Hijri 24. Garden 25. Jamshed Quarter 26. Kharadar 27. Methdar 28. Korangi I. Area 29. Khokra Par 30. Khawaja A Nagri 31. Model Colony 32. Nabi Bux 33. New Town 34. New Karachi I Area 35. Risala 36. Soldier Bazar 37. Sukhan 38. Steel Town 39. Sachal 40. Tepu Sultan 41. Gulshan-e-Maymar	Mix Community Populated Area Police Stations
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Thus, according to Mr. Chhattari, the dispute is not confined to individuals, but mostly extends to three communities i.e. *Muhajirs*, who normally speak Urdu, *Pashtuns* and *Balochs*, all of whom try to achieve their nefarious objects by committing murders by way of vengeance and as a matter of tit for tat. The Pakistan People's Party Parliamentarians (PPPP) being the majority party in the Provincial Assembly of Sindh is the leading parliamentary party, whereas the MQM is the next majority party in the said Assembly. According to the learned counsel appearing on behalf of MQM, out of total 42 seats of MQM in the Provincial Assembly of Sindh, it has 34 seats from Karachi, and ANP has only 2 seats, whereas PPPP alone has 93 seats, which even otherwise is sufficient to form government in the Province.

However, according to him, for the reasons best known to the political groups or their leaders, a coalition government has been formed.

69. Dr. Farogh Naseem, ASC has filed an application on behalf of MQM, contents whereof are reproduced hereinbelow: -

“14. The Applicant supports an action against all the criminal elements across the board without any fear, favour or affiliation. The Applicant shuns any form of terrorism and intolerance and requests this Hon’ble Court to pass corrective orders and some suggestions in this regard are stated below in the prayer clause, while some will be furnished at the time arguments.

17. The land, arms and drug mafia predominantly thrive upon unrest in the city. The failure of law enforcement agencies is a safe haven for such mafias, which encroach upon state land and their whereabouts are not traceable, and, therefore, it is imperative that proper survey and investigation is carried out so as to discover the areas and pockets of state land which are encroached and the law enforcement agencies are employed to evict them from such state land, whereafter the perpetrators are prosecuted.”

When we inquired from him as to why precautionary measures were not taken by the party being represented by him to control the law and order situation, he invited our attention towards Para No.7 of his CMA. It is important to note that one of the most important statements of fact has been made on behalf of MQM in Para No.14 above, and at the same time he has orally stated that in view of the circumstances prevailing in Karachi, **he concedes that the Government has failed to enforce Fundamental Rights of the citizens.** In respect of presence of land and drug *mafia*, an explicit offer has been made in Para No. 17 reproduced above. As far as jurisdiction of this Court under Article 184(3) is concerned, he has conceded that because the instant proceedings are inquisitorial, therefore, in view of the judgments in the cases of *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416), *Darshan Masih v. the State*

(PLD 1990 SC 513), S.P. Gupta v. President of India (AIR 1982 SC 149) and People's Union for Democratic Rights (AIR 1982 SC 1473), this Court, in the interest of public, has jurisdiction to adjudicate upon such a matter. He further argued that unless de-politicization of the law enforcing agencies takes place and neutral investigation bodies are constituted for the purpose of conducting transparent proceedings following the due process of law as contemplated under Article 10A of the Constitution and to supervise such independent bodies, unless a Judge of the High Court is appointed to monitor the proceedings of each case, it would neither be possible to bring the culprits to book involved in the commission of crimes nor justice would be done. In this very context, he has also relied upon Vineet Narain v. Union of India [(1996) 2 SCC 199], State of Bihar v. Ranchi Zila Samta Party [(1996) 3 SCC 682], Anukul Chandra Pradhan v. Union of India [(1996) 6 SCC 354], Union of India v. Sushil Kumar Modi [(1996) 6 SCC 500], Union of India v. Sushil Kumar Modi [(1997) 4 SCC 770], Dinesh Trivedi, M.P. v. Union of India [(1997) 4 SCC 306], and Khan Asfand Yar Wali v. Federation of Pakistan (PLD 2001 SC 607). Learned counsel, instead of defending the situation prevailing in the city, has made two very important admissions on behalf of MQM, which are evident from the contents of the application reproduced hereinabove.

70. The third most important admission from the coalition partner of the Government is that it has failed to enforce the Fundamental Rights of the citizens and suggested that it be held that under no political expediency or consideration, the Provincial or Federal Government should allow bloodshed, arson, kidnapping/abduction for ransom, widespread violence, illegal collection of money (*bhatta*) from traders, etc., to continue in violation

of Articles 9, 14, 15, 18 and 24 of the Constitution or to encourage the land grabbers, drug *mafias* and gangs of organized criminals who are brutally committing murders by cutting necks and limbs of innocent people and throwing their torsos in the streets. Even if there is any expediency, it cannot be allowed to prevail at any cost, whatsoever the consideration may be, is the most important admission. Besides, it has been pointed out that except learned counsel appearing for the Government i.e. M/s Abdul Hafeez Pirzada and Babar Awan, learned Sr. ASCs, all the learned counsel for the applicants/interveners, loudly and clearly, with logical reason based on facts, have conceded that the Government has failed to combat and eradicate crimes and to protect Fundamental Rights of the citizens. The nature of the crimes and the horrible acts being shown on DVDs of a torture cell detected by the Rangers in the area of Lyari, as per statement of IGP are hair-raising wherein the criminals are shown cutting throats of persons with blunt knives and committing sodomy. Obviously, this all shows that the Executive/Provincial Government has not dealt with the criminals with an iron hand. Had the Government done so, innocent persons would not have been deprived of their lives, liberties and properties and their dignity would have been saved. It has been mentioned time and again that allowing such incidents without any resistance for the last so many years, and more particularly in the recent months of July and August, 2011, relevant details whereof have been obtained, is beyond comprehension. We may observe here that it is not the question who succeeds in forming the government both in the Centre and the Province, but here the question is of defending the Fundamental Rights of the citizens. The Executive Authorities cannot be allowed to be negligent to an extent where ultimately the sovereignty and integrity

of the country is jeopardized. Availability of heavy and light arms and ammunition, such as pistols, revolvers, rocket launchers, MG, LMGs, etc., in fact, has turned Karachi into a volcano, which can erupt at any moment, and then it would not be possible for the Executive to control the same. There are voices from different quarters, including the learned counsel appearing for the interveners that the Government should have initiated action for de-weaponization. In this behalf, Mr. Farogh Naseem, ASC has stated that a private Bill, namely, the De-weaponization of Pakistan Bill, 2011 has been moved by the MQM in the National Assembly, which is still pending with the Assembly.

71. Dr. Babar Awan, learned counsel for the Federation and learned Advocate General, Sindh were called upon to explain as to how many licenses of prohibited and non-prohibited weapons have been issued by the Federal and the Provincial Government of Sindh during the last five years. Both of them filed the reports indicating that 180956 licenses of non-prohibited bore were issued by the Home Department, Government of Sindh whereas 46114 licenses of prohibited bore and 1,202,470 licenses of non-prohibited bore were issued by the Ministry of Interior, Government of Pakistan. It is to be noted that usually crimes are not committed with licenced weapons as the criminal perpetrators use un-licenced weapons for the same.

72. As it has been pointed out hereinabove that in the past in an identical situation, the constitutionally elected President of Pakistan had dismissed the Governments and such orders were maintained up to the Supreme Court, reference of which has already been made hereinabove. It is important to mention at this stage that whosoever is ruling the country under the Constitution, he being the Leader of the House, is bound to know the constitutional commitments and

provisions of law because of the fact that he or they have taken oath(s) to preserve, protect and defend the Constitution, including Fundamental Rights as well as to show obedience to the Constitution and law under Article 5(2) notwithstanding their holding of any high office, as held in Zuhor Ilahi's case (*ibid*).

73. We may reiterate here that now it is not possible under the Constitution and law for the Armed Forces to dismiss the Government by adopting extra-constitutional measures, detailed reference in this behalf, if required, can be made to the only judgment of this Court in Sindh High Court Bar Association's case (*ibid*), but at the same time the chosen representatives also owe a duty to the Constitution and if they feel that on account of any political expediency they can allow the continuance of the present position of law and order in the Province, it will be at their own risk and cost, otherwise under the Constitution they are bound to secure lives and properties, ensuring the proprietary rights, freedom of movement, etc., and failing which constitutionally such government is likely to lose their right of ruling.

74. Ms. Asma Jehangir Advocate, in her statement, on the basis of report of Special Branch of Sindh Police, wherein names of persons belonging to different political parties including PPP, MQM, etc. involved in the collection of *bhatta* have been mentioned showed her concern and stated that it is an eye opener for the Government and despite such information, no action has been taken by the police. We have no reason to differ with her, and we are constrained to hold for this reason as well that unwillingness of the police force to combat crime could be one of the reasons on account of which criminals are let loose in the society and encouraged to commit crimes.

75. According to the assertion of Ms. Asma Jehangir Advocate, the law enforcing agencies have shown slackness in initiating action for extending powers to the Rangers and others, which, according to her, is evident from the parawise comments filed by the Chief Secretary. We have already discussed this aspect of the matter; however, we would share the concerns expressed by her. Actually, as it has been pointed out hereinabove, the situation could have been controlled conveniently, if the police had taken prompt action with full commitment, but in view of the statement of IGP that 30 to 40 percent police officials are not cooperating for the reasons already noted hereinabove, and no expectation could be made from them, unless the whole police is de-politicized by transferring the police officers of the rank of DSP and above to their parent departments, and by discontinuing the practice of allowing retired officers to join police on contract basis or bringing persons from other departments in the police department is discarded. In fact, by way of passing remarks, it may be observed that apart from the police department, the situation perhaps is worse in other departments as well, because appointments on the basis of unauthorized absorptions of different officers in the provincial and district Administration were made by the Government and a Division Bench of Sindh High Court in Constitution Petition No.932-D/2009 set aside such appointments by way of cancelling the orders of such appointments. The persons who were aggrieved by the decision of the High Court preferred petitions for leave to appeal, which were converted into Civil Appeals 404-406/2011 etc. But, in the meanwhile, Sindh Assembly passed the Sindh Civil Servants (Regularization of Absorption) Act, 2011 whereby the transfers/absorptions on permanent basis of such officers against

regular posts were declared regular notwithstanding any judgment of any Court, as a result whereof the appeals so filed were withdrawn and stood disposed of *vide* order dated 16.06.2011.

76. Mr. Muhammad Aqil, President of Karachi Bar Association, Mr. Iftikhar Javed Qazi, Vice Chairman, Sindh Bar Council and Syed Haider Imam Rizvi, General Secretary, Karachi Bar Association appeared in CMA No. 532-K/2011 and stated that about 19 Advocates have also been brutally murdered by criminals and so far no action has been taken by the law enforcing agencies. Their arguments were augmented by Mr. Faisal Kamal, learned ASC who has filed an application on behalf of the PML(N), and according to him, two Advocates who were supporters of PML(N) were also murdered. It is to be noted that as per information supplied, following Advocates so far have been killed in different incidents, during the last few years: -

1. Mr. Sardar Zulfiqar
2. Mr. Muhammad Hanif Khan
3. Mr. Altaf Hussain
4. Mr. Liaqat Qureshi
5. Mr. Nazar Abbas
6. Mr. Muhammad Kamal
7. Mr. S. M. Zia Alam
8. Syed Mukhtar Abbas Bukhari
9. Mr. Muhammad Junaid
10. Mr. Fahim Riaz Siddiqui
11. Mr. Muhammad Saleem Bhatti
12. Mr. Muhammad Murtaza Chinnoy
13. Mr. Nazeer Ahmed Khuhawar
14. Mr. Ali Muhammad Dahiri
15. Mr. Muhamma Aslam Burioro

77. It is pertinent to mention here that in some of the cases, FIRs have been registered, but the accused persons have remained

untraced. We agree with the learned counsel that if the lives of Advocates are not safe at the hands of the culprits, a set back is likely to be caused to the profession of law, which is an important tool in the system of administration of justice. However, the learned Advocate General assured that the matter will be looked into and all efforts will be made to bring the culprits to justice. He has also stated that the Government of Sindh has agreed to pay compensation of Rs.5,00,000/- and one plot to the families/legal heirs of the deceased Advocates. As far as the payment of compensation is concerned, according to him, the claims have already been approved by the Government of Sindh whereas the process of allotment of plots is in progress. The learned representatives of the Advocates, however, requested for enhancement of compensation as according to them, such lawyers have also been killed in the course of performance of their professional duties and according to the Government Policy, a sum of Rs.20,00,000/- is paid to the families of the police officers/officials who have sacrificed their lives while combating crimes. We do agree with the learned counsel for enhancement of compensation in view of the two judgments, which have been cited by Mr. Farogh Naseem, ASC. This Court, in exercise of its jurisdiction under Article 184(3) of the Constitution, has also ordered payment of compensation in the case of Saad Mazhar v. Capital Development Authority (2005 SCMR 1973) to the residents of Margalla Towers, which collapsed in the earthquake of September, 2005. However, in the instant case, this Court perhaps would not be in a position to issue any direction except observing that the cases of the Advocates, belonging to legal fraternity and being one of the important components of the system of administration of justice, if they lay their

lives on account of prevailing law and order situation in the city, without any fault on their part and also not on account of any personal enmity, deserve to be dealt with at par with the police officials who have sacrificed their lives in combating crime. The Government of Sindh may consider change in the Policy for the payment of compensation and grant of a plot of land to their families.

78. It may be pointed out that immediately after the commencement of hearing of the case, one Barrister Murtaza Chinnoy, Advocate was assassinated in his office. The office bearers of the Sindh High Court Bar Association and Karachi Bar Association pointed out this fact to the Bench, therefore, the IGP Sindh was directed to take personal interest in the matter, and later it was informed that accused persons have been arrested and *prima facie* their involvement in the murder case is on account of dacoity, as allegedly he was robbed and looted. Similarly, another Advocate, namely, Faheem-ul-Karim along with a lady and another person was killed in a flat and police was directed to expedite the investigation. Mr. Tariq Dharejo, SP Clifton submitted a report to the effect that accused persons are likely to be booked soon in this case as well. Mr. Faisal Kamal Alam, ASC who appeared on behalf of PML(N) also expressed his grievance in respect of killing of workers of the political party being represented by him, including two Advocates and argued that the Government had failed to enforce the Fundamental Rights of the citizens under Article 9 of the Constitution, which has been elaborately interpreted by this Court in the cases of *Shehla Zia* and *Benazir Bhutto (ibid)*. His grievance is that although the FIRs have been registered, but so far accused persons have not been arrested. As far as the enjoyment of the protection of life and property enshrined in Article 9 of the Constitution is

concerned, there is no cavil with the proposition as this issue has been discussed elaborately hereinabove with reference to the case of Shehla Zia, but so far as judgment in the case of Benazir Bhutto, handed down by a 7-Member Bench of this Court, a Bench larger than the present Bench hearing the instant case, wherein dismissal of Government of *Mohtarama* Benazir Bhutto and dissolution of Assemblies was challenged is concerned, it is to be noted that the President of Pakistan, in exercise of powers under Article 58(2)(b) of the Constitution, dissolved her Government and in his speech to the Parliament on 29.10.1995 warned that law enforcing agencies must ensure that there would be no harassment of innocent people in the fight against terrorism and human and legal rights of persons are to be duly protected. This advice was not heeded to and killings continued unabated. The Government's fundamental duty to maintain law and order situation has to be performed by proceeding in accordance with law. In consequence of this judgment, the Dissolution Order was maintained by a 7-Member Bench of this Court. If similar circumstances prevail today, we would be bound by that ruling. We may observe here at the cost of repetition that under Article 148(3) of the Constitution, the Federal Government is bound to assist the Provincial Government during the period of disturbances.

79. Ms. Asma Jehangir, President, Supreme Court Bar Association argued that in view of the acute law and order situation prevailing in Karachi, a change in the mindset for improving the investigation and introducing the witness protection system is called for. Her voice has been appreciated by the other representatives of the Bar Associations, including Mr. Ashraf Samoo, President Malir Bar Association who appeared in CMA No.560-K/2011 and pointed out that

the Government functionaries did not perform their duties due to fear of death at the hands of the criminals, inasmuch as, such incidents had already occurred and about 92 police officials who participated in the Operation Clean up of 1992 had been murdered through target killing. Therefore, under the circumstances, now the investigating officers are not ready to conduct investigation independently nor the witnesses dare to come forward because they do not get protection as already stated by the President of the Supreme Court Bar Association. In absence of any evidence, it is not possible to accept the statement that 92 police officers, who participated in the 1992 Operation Clean up have been murdered. It can only be considered a factor, but at the same time we, during hearing of the cases, looking to the trend of investigation of cases as well as the morale of the police, have no reason except to agree with the learned President of the Supreme Court Bar Association and other representatives of the lawyers coupled with the statement of IGP Sindh that about 30 to 40 percent police officers/officials are non-cooperative.

80. In all the civilized countries where hardened criminals are brought before the Court, full protection is provided to the witnesses so that they may not feel frightened while deposing the truth, but unfortunately, no such programme is available throughout the country despite the commission of offences, which seem to have taken place and the criminals have gone Scot free because nobody dares to depose against them and ultimately the blame is shifted to the Courts for acquitting them. In the present incidents, we have noted with concern that most of the FIRs have been registered against unknown persons and the police officers in the garb of section 173 Cr.P.C. wherein they are required to submit the challan within 14 days,

instead of filing interim challan, make request to the court to enlarge the period of investigation and after seeking permission feel satisfied in getting the FIR cancelled after declaring it as an "A" class case. As it has been noted hereinabove, comparative table of the FIRs registered during one month's period indicates that most of the cases have already been declared as "A" class. So far remaining cases are concerned, no effective progress seems to have been made, may be on account of non-commitment of the investigating officers, or for the reasons that no witness is ready to come forward. The situation in the city has gone from bad to worse to the extent that on our direction 18 persons, who were abducted, were recovered by the police. *Prima facie*, such abductees were not recovered prior to the direction of this Court because no police official was in a position to afford enmity with the criminals. The statements of two of such persons are reproduced hereinabove.

81. Thus, in view of such state of affairs, how could one believe that, in presence of the overwhelming material, which has been brought before this Court in daily situation reports, reports of Special Branch, IB and other sources as well as material discussed hereinabove, the criminals will be punished for the crimes, which they have committed. Therefore, under the circumstances, change in the investigation and improvement in the prosecution system is *sine qua non*, and that too, through de-politicized, honest and competent officers. In absence thereof the accused persons shall be encouraged if they are arrested but not sentenced knowing fully well that they though have brutally killed so many persons in violation of the Fundamental Rights of the victims, nothing would come of this barbarity.

82. Learned office bearers of both the Bar Associations noted above also pointed out that six Special Courts under the Anti Terrorism Act 1997 were lying vacant for the last several months despite the fact that the Chief Justice of High Court of Sindh was continuously pressing hard for the appointment of Presiding Officers in these Courts. Inasmuch as, Mr. Justice Javed Iqbal, former Judge of this Court, who was nominated as Judge to monitor the cases of Anti-Terrorism Courts for Karachi, in view of the observations made in the case of Liaqat Hussain (supra), had taken up the matter with the concerned authorities to ensure early appointment of the Presiding Officers, but no progress was made. This judgment, however, also contains directions which were incorporated in the judicial order to ensure expeditious disposal of cases, but it seems that the concerned authorities were not aware of the same. When we asked the learned Advocate General, Mr. Abdul Fattah Malik to explain the position of the Government, he candidly conceded that delay has been caused in not making the appointment, but as there is no difference between the Chief Minister and Chief Justice of the High Court on the appointment of Judges already recommended, therefore, notification would be issued within two days. Consequently, on 07.09.2011, all the six Judges were appointed *vide* notification issued by the Government of Sindh. It is to be noted that the Competent Authority of the Province had to make the appointments on the basis of recommendations u/s 14 of the Anti-Terrorism Act, 1997. Admittedly, in the instant case recommendations were lying with the Competent Authority since long, but it failed to make the appointments and reasons of the same have not been disclosed by the learned Advocate General except stating that some delay has occurred. In the case of Liaqat Hussain (supra),

this Court had taken upon itself the exercise of monitoring the functioning of Anti-Terrorism Courts through a nominee of the Chief Justice, therefore, vacancies of such Presiding Officers cannot be left un-filled for an indefinite period of time and the appointments have to be made as early as possible instead of causing the delay for one or the other reason. However, as now appointments have taken place and reportedly these officers have joined duty, we are confident that in future such appointments, subject to availability of the vacancies, will be made promptly.

83. Mr. Ghulam Qadir Jatoi, ASC appeared in CMA No.533-K/2011 and highlighted his grievance that one deceased Junaid Zaidi kidnapped in the month of April, 2011 by the terrorists/killers was severely tortured and was killed and his dead body was thrown on Katchra Kundi. Case has been registered u/s 302/34 PPC *vide* FIR No. 57 of 2011 in Malir Cantt. Police Station. Similarly, one Ayub Ali was killed/murdered in the month of July, 2011 by the terrorists after entering into his house when he was giving Dars-e-Quran, as such FIR No.194/2011 was lodged at Brigade Police Station u/s 302/34 PPC. This application was followed by another application wherein documents were filed to establish allegations against the sovereignty of Pakistan attributing to Altaf Hussain, leader of MQM along with two CDs. Yet another application has been filed for summoning Dr. Zulfiqar Mirza, former Home Minister, Government of Sindh, who according to him, had deposed on Holy Quran against MQM. We have pointed out to the learned counsel that he should have filed affidavit of Dr. Zulfiqar Mirza and also brought to his notice that instant proceedings are not adversarial but inquisitorial, which have been initiated in the public interest. However, the issue being raised by him is of important nature

and if he too considers it so, he can adopt the proper course for the redressal of his grievance in accordance with law. We have also pointed out that by the time it is established that Dr. Zulfiqar Mirza's statement in the newspapers has not been controverted by anyone, therefore, the same will be presumed to have been accepted as it is held in the case of Dr. Mobashir Hussan v. Federation of Pakistan (PLD 2010 SC 265). He also emphasized that murder of a man in view of the Islamic injunctions is tantamount to murder of the entire humanity, therefore, murders of all those persons, who have been killed in Karachi without any reasons being *Masoom-ud-Dum* clearly indicate failure of the Provincial Government. As far as Islamic injunctions with regard to killing of an innocent person is concerned, there could not be any two opinions. This injunction of Islam has been elaborately discussed in the case of Federation of Pakistan v. Gul Hassan Khan (PLD 1989 SC 633). However, a criminal case in adversarial proceedings is likely to be decided on merits after recording of evidence.

84. Mr. Ghulam Qadir Jatoy, learned ASC referred to the case of Sardar Farooq Ahmad Khan Leghari v. Federation of Pakistan (PLD 1999 SC 57) and contended that the Judges of the Superior Courts who have taken oath to protect the Constitution are bound to enforce Fundamental Rights conferred by the Constitution and ensure that the provisions of the Constitution are fully alive and operative. It is to be noted that in the aforesaid reported judgment the Proclamation of Emergency dated 28.05.1998, promulgated under Article 233(1) of the Constitution, was questioned and the Court concluded that it was sufficient to hold that *prima facie* there was some material on the basis of which the President could issue the impugned Proclamation of

Emergency on account of imminent danger of external aggression. However, the same did not warrant passing of an order under clause (2) of Article 233 of the Constitution suspending the enforcement of the Fundamental Rights. To strengthen this argument one of the reasons assigned in the later part of the judgment was that in spite of suspension of enforcement of certain Fundamental Rights under clause (2) of Article 233 of the Constitution, Article 4 thereof remained fully operative, which laid down that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan and in particular no action detrimental to the life, liberty, body, reputation or property of any person would be taken except in accordance with law. Therefore, according to the learned counsel, Fundamental Rights of the citizens of Karachi have to be enforced by the Court in the discharge of judicial functions. We have no cavil with the proposition and fully endorse the arguments of the learned counsel. He has also relied upon the case of Syed Jalal Mahmood Shah v. Federation of Pakistan (PLD 1999 SC 395). In this case, the order dated 30.10.1998 issued by the Federal Government under paragraph (c) of clause (2) of Article 232 of the Constitution, pursuant to the declaration of Proclamation of Emergency dated 28.05.1998 under Article 232 of the Constitution was challenged. The order referred hereinbefore was followed by another order dated 10.11.1998, issued by the Federal Government, in pursuance whereof the operation of Article 54 read with Article 127 relating to summoning and prorogation of the Provincial Assembly was suspended; however, no question with regard to the enforcement of Fundamental Rights was involved, therefore, the cited judgment in view of the facts and

circumstances of the present case is not applicable. He further contended that *Jamat-e-Islami* had issued a White Paper according to which sufferings of the citizens of Karachi were on account of commission of heinous crimes in the city since 1985, which were being committed by one party (MQM) and it was admitted and declared by the Government, that serious lawful action was, therefore, taken against them by the Government.

85. Similarly, *Awami Tehrik Party*, through its President Mr. Rasool Bux Palijo, during the arguments stated that MQM was responsible for target killing, attacks on the police, etc., and that MQM was a challenge to the country, therefore, a ban be imposed on this party as innocent people were suffering at their hands and people were so overawed that due to fear created by them, no body was ready to go before the police. He maintained that the people of Karachi are absolutely insecure, as such, ways and means be found out to give relief to them otherwise there was every likelihood that in the ultimate result there could be uncontrollable anarchy as the people in the town finding themselves without protection to their dignity, life, liberty and property might, as a last resort, take the law in their hands.

86. Mr. Irfan Ullah Marwat, petitioner, who appeared in person being the President of *Pashtun Punjabi Ittehad* too, raised similar voice against MQM.

87. From the material so brought on record, namely, reports of the JIT filed by Syed Iftikhar Hussain Gillani, learned ASC, report submitted by the Provincial Government prepared by its Special Branch, report of the IB and information collected from other credible sources during in camera briefing by ISI does highlight the role of the stakeholders and political parties, namely, ANP, PPP, MQM, *Sunni*

Tehrik, Jamat-e-Islami, etc. that in the ranks of these political parties, criminals have succeeded in making their way, some of whom are now involved in target killing, land grabbing, drug *mafia*, recovery of *bhutta* as well as forcible recovery of skins of animals during *Eid-ul-Azha* and due to their vested interests, there is a turf war. In this context the following statement of Mr. Rehman Malik Federal Interior Minister published in Daily Dawn dated 13.09.2011 is quite pertinent: -

“Interior Minister Rehman Malik said on Tuesday that ‘criminals’ arrested in Karachi during the current operation belonged to all political parties.

The government has evidences (audio and video tapes) against them which will be made public if permitted by the Supreme Court.

“I will consult with the federation’s lawyer, Babar Awan, about getting permission from the Supreme Court to make the names of criminals public,” he told reporters at the National Press Club.

Although, he said, the people arrested in Karachi belonged to all political parties, he was of the view that they had not been recruited by the parties, but they somehow managed to get refuge in them after committing crimes.

He said that police and Rangers had arrested 48 target killers, 90 criminals and 28 extortionists and seized 308 weapons.

The operation, he said, was being carried out without any discrimination, with the sole objective being to restore normality and peace in the city.

Expressing satisfaction over the way the operation was being carried out, he said there were ‘no-go areas’ in the city and police and Rangers were free to take action even in such areas where they could not enter in the past.

Mr. Malik said flags of political parties had been removed in various places and around 14,000 acres of land occupied by the land mafia had been recovered.

Rebuffing allegations leveled by the Leader of Opposition in the National Assembly, Mr. Malik said that he had no links with any terrorist. He said he had good relations with the Muttahida Qaumi Movement which was in parliament with people’s mandate.

"It will be unjustified to declare any political party 'terrorist' without any evidence," he said.

Commenting on an allegation leveled against him by PPP leader Zulfikar Mirza, he said he had not released any criminal in Karachi and if anyone had evidence he could present in the court.

The minister claimed that no foreign security agency was operating in the country, adding that he had advised foreigners to visit only permitted areas because of security concerns.

He said a committee had been formed to probe an incident in which journalists of a private TV channel had been tortured by some unidentified elements. Action will be taken on the basis of findings of this committee.

"A judicial commission was formed on the demand of journalists to probe into the killing of Saleem Shehzad and the commission has submitted its report to the interior ministry which I have handed over to NPC's President Afzal Butt," he said.

The minister said that four people had been arrested in the case about murder of journalist Wali Khan Babar."

Inasmuch as, the Prime Minister also admitted more than once that PPP men were also involved in violence in Karachi. Reference is made to the news item published in The News International dated 25.08.2011:-

"Prime Minister Yusuf Raza Gilani on Wednesday ruled out a military operation in Karachi unless all other options were exhausted first but admitted before his cabinet colleagues that PPP men were also involved in the Karachi killings.

A cabinet minister confided to The News that the prime minister told the cabinet meeting that the law enforcement agencies in Karachi were confident to control the deteriorating law and order situation in the city in just a fortnight's time provided they were given a free hand.

However, the minister did not explain if the much-demanded free hand is being given to the law enforcers to apprehend and punish the criminal elements there without any fear and favour.

Prime Minister Gilani despite being chief executive is not relevant on key policy and administrative matters including Karachi politics as the Presidency is calling the shots and takes decisions on such matters.

The prime minister, according to the source, said that the law enforcement agencies are seeking a free hand and demanding that there should be no political interference from any side to ensure early peace and stop target killings. Political interference and the backing of criminals and killers by the political parties are seen as the major hurdles in the way of durable peace in the city.

Briefing the cabinet about the Karachi situation, the prime minister admitted that besides the MQM and ANP, the PPP men whom Gilani described as "our men" are also involved in the Karachi killings.

The cabinet ministers were almost unanimous to demand that the law enforcement agencies should be given a free hand to get hold of the criminals, target killers and gangsters irrespective of their party affiliation.

Some of the ministers even demanded that the information regarding such criminals, killers and gangsters should be made public without any political considerations. The cabinet was told that there are nine troubled areas in Karachi which require focus of the law enforcers to check crime and curb target killing.

The prime minister while referring to a demand for the deployment of army in Karachi to launch operations against the criminal elements said that the government would not deploy the army in Karachi till the time all other options were availed.

The cabinet source disclosed that the Sindh government is also unhappy with the interference from the federal government through interior minister into the Karachi situation. The source said that Prime Minister Gilani sounded the provincial government's urge to let it settle the problem that falls within the provincial domain.

Only recently provincial minister Dr Zulfikar Mirza is said to have blasted the interior minister during a high-level official meeting in Karachi for the latter's uncalled for interference into the Karachi affairs. Later, however, Mirza was summoned to Islamabad by President Zardari and put up a media show with Rehman Malik to show that there was no ill will between them."

Similarly, the President of Pakistan is fully aware of the situation as it is evident from various news items appearing in different newspapers.

88. As all the stakeholders are desirous of maintaining their hold on the economic resources of Karachi, therefore, it is imperative for all concerned to take necessary steps and disband the militant

outfits voluntarily for the sake of Karachi as well as this country because on account of their criminal activities a loss of about 2.5 billion is being caused daily to the Government and ultimately this burden is passed on to the general public. All the circumstances which are prevailing in Karachi based on credible information seem to be very serious and if the situation of law and order is not controlled/improved, happening of a major debacle in Karachi city cannot be overruled, therefore, it is high time for the politicians in particular to co-operate with each other for making Karachi a peaceful city.

89. As for as banning of MQM is concerned on the basis of the material and the other information placed before us as well as the statement of Dr. Zulfiqar Mirza, former Home Minister, Government of Sindh, which is sought to be produced by Mr. Ghulam Qadir Jatoi, it may be observed, subject to all just exceptions, that the instant *probono publico* proceedings, which are essentially inquisitorial in nature, cannot be allowed to assume an adversarial character.

90. Moreover, under Article 17(2) it is the duty of the Federal Government to declare that a political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan and within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final, therefore, no further comment on this aspect of the case, lest it may cause prejudice to any of the parties, is called for.

91. According to the available record, land grabbing is one of the factors responsible for causing disturbances in Karachi and there is no denial by anyone appearing before the Court. Same position is in respect of drug trafficking, etc. Crimes are also being committed at

large scale by foreign nationals – nearly 2.5 million in number – belonging to different countries including Bangladesh, Burma, India, etc. As far as the question of de-weaponization is concerned, no one amongst the interveners has opposed it, therefore, a methodology has to be devised by the Government by following the law on the subject i.e. Surrender of Illicit Arms Act, 1991, and/or if need be, further laws on the subject can be enacted/promulgated to achieve this object. In this behalf, in Bangladesh following steps were taken.

- (i) Illegal arms collection programme carried out in 2002-2003 as part of Bangladesh's crackdown on criminals, operation Clean Heart.
- (ii) Bangladesh's biggest illegal arms haul took place in Chittagang on 02.04.2004.

92. An identical situation was prevailing in Malaysia and that Government with full commitment and sincerity had also collected illicit arms from the criminals. Similarly, this task can be completed in our country as well; if there is honest commitment on the part of the law enforcing agencies but in the instant case without depoliticizing the police, positive result apparently seems to be an uphill task, however, to ensure peace in Karachi, certain steps will have to be taken. The law enforcing agencies will have to be de-politicized as well as for recovery of illicit arms effective measures will have to be taken under a proper programme to be launched by the Government. As far as the question of presence of 2.5 million aliens in Karachi is concerned, it is more alarming compared to the activities of the criminals involved in heinous crimes, like target killing, etc. This aspect of the case would reveal that the presence of such persons is not only a factor for increase in crime, but at the same time without proper registration, they are a burden on the national economy, inasmuch as their presence can give rise to so many other administrative problems,

including obtaining of National Identity Cards by them. If they have succeeded in this venture and claim themselves to be citizens of Pakistan and have also succeeded in registering their names in the electoral list, it would be tantamount to depriving the actual electorate from choosing their representatives, inasmuch as due to their presence, areas have expanded considerably, which directly affects the delimitation of the constituencies meant for holding elections of the Provincial Assembly and the National Assembly, therefore, the Government should take immediate action against them in accordance with law, namely, the Foreigners Act. NADRA and the Police must undertake a careful cleansing process of such people and NADRA must have separate records and computer files based on proper and cogent evidence. NADRA and police should co-operate in Karachi through an intensive drive to identify foreigners, block their NIC cards after due process of law and special teams should be appointed and dedicated for this job by DG NADRA and IGP so that this can be completed in the course of next one year or so. Then the law must take its own course in each case. This must be given high priority.

93. The learned Attorney General, in his submissions, also referred to the Quranic verse, viz., killing of one person is killing the entire humanity, therefore, there could not be two opinions that killings in Karachi during the last few months are condemnable, but for such reason, question for determination would be as to whether the State can be held responsible for the actions of the criminals, who have committed crimes, or the individuals are to be held responsible for their acts under the relevant laws independently. The learned Attorney General, as per the directions of this Court contained in the order dated 24.08.2011, has placed on record reports of the Special

Branch of Police, Government of Sindh and the IB, and he also arranged a presentation by ISI (however, he was not present during the presentation). As far as commission of crimes is concerned, it is always done by the accused persons individually or collectively. Ordinarily, when any crime is committed by an individual, he is considered to be the accused of the State for violating its laws and when crimes individually or collectively are committed by the perpetrators challenging the authority of the Government creating anarchy, the State is bound to control the crimes and at the same time protect its citizens against the criminals. In the instant case, according to the figures submitted by Mr. Abdul Fattah Malik, learned Advocate General, Sindh, during the hearing, in the current year 2011, 1310 persons have been murdered, whereas, in one month, figures of which have been obtained by the Court *vide* order dated 24.08.2011, admittedly, 306 persons have been murdered and 159 persons have been injured. When murders of innocent persons at the hands of perpetrators who belong to different communities are being committed as a matter for vengeance and as tit for tat without control of the executive authorities of the Provincial Government, it clearly indicates that lawlessness has reached a point where the State through the Provincial Government in exercise of its executive authority is not in a position to provide security to its citizens and on account of lack of administrative authority of the Government, so many persons have been deprived of their right to life and liberty enshrined in Article 9 of the Constitution.

94. As far as the arguments of the learned Attorney General that under the Constitution a procedure has been provided for the removal of the Provincial and Federal Governments ruling the country

after the election, therefore, it could only be possible when the procedure so laid down in the Constitution is followed. There is no cavil with this proposition; however, in the instant proceedings, this argument is not relevant. Learned Attorney General has also stated that as far as the suggestions made before the Court for imposing Emergency under Articles 233 and 234 of the Constitution, or calling the Army in aid of civilian administration under Article 245 of the Constitution, or the steps to be taken by the Provincial Government in this behalf are the actions, which are purely for the Federal Government or the Provincial Government to initiate and no direction can be given by the Court in this respect. Suffice it to observe that the Federal Government is duty bound under Article 148(3) of the Constitution to protect every Province against internal disturbances and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution, therefore, the suggestion put forward during the arguments on behalf of some of the parties does not mean that this Court has issued the directions. Only attention of the Federal Government has been drawn towards the Constitutional provisions which, according to their suggestions, should also be invoked for maintaining law and order in the Province of Sindh instead of paving way for any unconstitutional action by any adventurer as it had been happening in the past. Reference may be made to the cases of Haji Muhammad Saifullah Khan (*supra*), Khawaja Ahmad Tariq Rahim (*supra*) and Benazir Bhutto (*supra*). Similarly, exercise of the authority to call Army in aid of civil administration to control disturbances under Article 245 of the Constitution is only one of the options, which lies with the Federal

Government, as such its consequences are bound to follow strictly in accordance with the provisions of the Constitution.

95. Learned Attorney has agreed that this Court has power to pass appropriate orders as called for in view of the facts and circumstances, but his opinion was that as now situation is manageable and under control, therefore, in the instant proceedings no order is required to be passed. For the reasons which we have already mentioned hereinabove, we are not in a position to subscribe to his viewpoint because overwhelming material is available on record, reference of which has already been made hereinabove repeatedly, to persuade us to form an opinion that bloodshed, arson, kidnapping/abduction for ransom, widespread violence, illegal collection of money (*bhatta*) from traders, etc., were being committed within the knowledge of the State through Provincial Government/Executive but it remained a silent spectator and prima-facie failed to take appropriate action, may be for some political reasons, but the Constitution does not allow the Executive to compromise its position at the cost of innocent citizens who lost their lives, property, liberty and dignity because of the expediency of the Provincial or Federal Government. It may not be out of context to mention here that despite hearing of this case, during course whereof law enforcing agencies have been asked time and again to bring the criminals to book without any discrimination, the criminals continued to harass the general public/innocent citizens continuously, as in the recent past a trader has been kidnapped for ransom from Sher Shah Kabari Market. We have been informed during the hearing that there is a strike in the market and accused persons have demanded ransom, but so far the matter has not been finalized/resolved. On our direction,

concerned SSP of the area appeared in Court and stated that pickets/police check posts have been established at different places, but despite that, there is no control over the crimes. We have pointed out to the learned Attorney General that this is high time when the Executive of the Provincial Government, instead of compromising the position, on account of any reasons known to them, should come forward with iron hands to control the crimes. We may point out here that the material so brought on record and the presentation which has been given by the Intelligence Agency, must also have been brought to the notice of the Executive of the Province and by the time it has become known to everyone about the persons involved in causing disturbances because on such a large scale internal disturbances cannot take place without the support or passivity of the persons who are themselves at the helm of affairs and the Provincial Executive Authorities in such a state of lawlessness ought to have felt no hesitation to bring them to book, but here it appears that there are certain expediencies which are preventing them to do so. In such an abnormal situation the Federal Government also cannot be considered to be oblivious of the happenings, which presumably knows all these facts obviously prevailing in the economic hub of country, as the reports which we have gone through must have been brought to the notice of the Chief Executive of the Federal Government and other authorities as well, therefore, they should have swiftly moved in to take action in order to ensure that the Provincial Government is allowed to work smoothly in accordance with the Constitution. Learned Advocate General who has also pointed out in his arguments that in the police department, 1100 appointments have been made illegally. At the same time, the IGP Sindh who was present in the Court during

the hearing, also conceded that for the last about 10 to 15 years, five hundred thousands arms licenses have been issued by the Home Department for arms and ammunition of prohibited bore, however, according to him, with the assistance of NADRA, an exercise is about to commence to verify the status of the licences. He added that in the past, trucks of arms and ammunitions used to be unloaded before the police stations but police did not dare to check them. Mr. Abdul Fattah Malik, learned Advocate General made before the Court many revelations, but did not disclose the names of the groups who were challenging the writ of the Government and undermining its authority through target killings, *bhatta* collection, etc., which are committed, not for any ethnic reason, but for settling of accounts by groups among themselves in an attempt to establish their authority in the city of Karachi otherwise anyone or all of them would come forward to point out the names of militant outfits involved in the violation of Fundamental Rights of the citizens.

96. From the material so placed on record by the Advocate General it is evident that the disturbances in the Province are not recent ones, but it has been going on for the last many years, in which a large number of innocent persons have been killed by way of tit for tat and the authorities, in the past as well have failed to secure their lives, liberties, etc. According to learned Advocate General, the Province of Sindh being the land of Shah Abdul Laif Bhitai and Sachal Sarmast had been a peaceful place where, after Partition highly educated people migrated to Pakistan. They were living peacefully with original residents of Sindh, but the menace of lawlessness started from the period shown in the charts reproduced hereinabove. He conceded that 2.5 million aliens are also living in Karachi without any

registration, but so far the Government could not deport them. However, we have pointed out to him that organized crimes are being committed in Karachi and there is violation of the Fundamental Rights of innocent people and the Government has failed to protect the rights of the citizens, however, individual type of crime or killing of any person on account of personal enmity is not unusual, and for that matter the Executive Authorities cannot be held responsible, but it is to be noted that in the instant case, as discussed hereinabove in detail, the Executive Authority of the Province had prima-facie failed to exercise its powers to protect the Fundamental Rights of the citizens.

97. Barrister Zafarullah appeared in Constitution Petition No. 61 of 2011 wherein following prayer has been made: -

- (1) It is therefore respectfully prayed that the judicial Commission under the supervision of Supreme Court of Pakistan may be appointed, any Hon. Judge sitting or retired may be appointed as its Chairman.
- (2) It is further prayed that under in no circumstances Pakistan Army may be summoned to meet the situation in Karachi or to restore the law and order, since it is trap desired by foreign forces and will be breach of Articles 55 & 56 UNO and other resolutions of General Assembly."

The learned counsel has referred to the Charter of United Nations, importance of human rights and also stated that had the Court not taken cognizance of the matter, the crime rate would not have declined and if target killings, etc. had continued unabated, it would have provided a cause of interference to the United Nation Forces. Except for the dramatic drop in crime rate, we do not entertain this argument because we are of the opinion that in this country there is a written Constitution, which if implemented through the Federal and the

Provincial Governments by strictly adhering to its provisions without any political considerations, the situation of law and order can be managed. He also opposed the intervention of the Army by calling it in the aid of Civil Administration. This issue has already been discussed in the preceding paragraphs, therefore, the same need not be further dilated upon.

98. Mr. Anwar Masoor Khan, President of Sindh High Court Bar Association, at the outset, contended that Karachi is faced with complex issues of law and order, which had its origin in the politico-ethnic violence in which different communities speaking different languages like *Urdu, Pashto, Balochi, Sindhi, Punjabi*, etc. were involved. However, he admitted that members of these communities have been involved in such like activities mainly for the socio-economic reasons. As the residents of Karachi in different areas, particularly where violence is at its peak, are even deprived of basic amenities of life, therefore, these poor persons are being used by different vested interests including political parties/groups to achieve their ulterior objectives and to watch their economic interests. These persons/groups having so called vested interests are themselves well off having established businesses and are not suffering from any economic problem. The police is so scared of them that they remain under the influence of these groups who use poor persons to achieve their illicit objectives. Inasmuch as, if an ordinary person approaches the police, his FIR is not registered and if a victim succeeds in getting the case registered, prosecution does not take interest, as a result whereof their cases fail. Besides, according to him, mostly the perpetrators belong to an organized group having blessings and support of political parties, therefore, the witnesses are so scared that

they avoid to appear in court. Therefore, without addressing the aforementioned problems of persons belonging to different communities who fall within category of less resourceful persons, the law and order situation prevailing in the city cannot be controlled. He referred to a number of cases from the Indian Jurisdiction and the reports of the Indian Law Commission. However, he conceded that no witness protection program is available. When we invited his attention towards sections 21, 21A, 21B, 21C of the Anti-Terrorism Act, 1997 which provide guidelines for the protection of Judges, he submitted that these provisions of law have also not been made applicable fully, as a result whereof even in Anti-Terrorism Courts, a large number of accused have gone scot-free. Learned counsel stated that there are political parties who apparently are acting against the interests of the country and are involved in disturbing the law and order in Karachi, to achieve their nefarious objects because the persons controlling such parties have got no stake in Pakistan. Inasmuch as, there are persons who enjoy dual nationality or who have vast unexplained and unaccounted for assets outside Pakistan or who are not allied with any political party and who are against the sovereignty of the country, all such persons are required to be dealt with according to the Constitution. We have pointed out to him that Article 17 of the Constitution read with section 15 of the Political Parties Order, 2002 can be invoked if the Government succeeds in establishing that any political party is operating in a manner prejudicial to the sovereignty or integrity of Pakistan. Learned counsel emphasized that Article 4 of the Constitution is one of the most important Articles, under which a citizen is entitled to enjoy the protection of law and to be treated in accordance with law being his inalienable right, therefore, this Article confers the

Fundamental Rights upon a person to seek security of life or liberty from the State and similarly, Articles 14, 18 and 24 in respect of dignity of man, freedom of trade, business and profession and protection of property. Whereas in Karachi for the last many years the State/Provincial Government had failed to implement their Fundamental Rights and citizens are not safe and secure. According to him, too, there are target killings, murders, *bhatta mafia*, land mafia, drug mafia, dead bodies in bags are found lying in the streets and the accused persons on account of their influences or being desperate and hardened criminals, could not be arrested. He stated that as per reports, which have been placed on record by different agencies without claiming confidentiality and other information which has been received by this Court, furnish sufficient evidence to hold that the Provincial Government has not been able to act in accordance with the Constitution to protect the dignity, freedom of trade, business and profession and property. He has referred to *Islamic Republic of Pakistan v. Abdul Wali Khan* (PLD 1976 SC 57), PLD 2004 SC 363 to emphasize that it is the duty of the Government to maintain law and order. We have inquired from him as to whether in a situation where criminals belonging to all political parties are involved in disturbing the law and order, whether the Executive/Provincial Government can maintain the law and order, he stated that, in fact, the prevailing situation indicates that there is no will on the part of the Executive to run the government according to the Constitution otherwise it would not be difficult to remove such elements from their rank and file. In this behalf, it is to be noted that in the Daily Dawn dated 14.09.2011, the Federal Interior Minister made a statement that criminals arrested in Karachi during the targeted operation belong to different political

parties and that the Government has evidence (audio and video) against them, which will be used against them if permitted by this Court. However, he stated that such criminals have not been deputed by the political parties, but somehow such elements have managed to get refuge behind them after committing crimes. During hearing of this case, we have observed time and again that the political parties represented before us asserted in categorical terms, that criminals/militant outfits are not part of their political parties and declared that whosoever claims association with any political party, is incorrect. It is to be noted that in the situation as the Interior Minister has himself explained, it has become admittedly a highly difficult task for the Provincial Government to maintain law and order. Be that as it may, this all depends upon the political considerations in respect whereof we would not like to comment, but we have to confine ourselves only to the extent of the question which has been raised in the order dated 24.08.2011, namely, the situation of law and order which has been disturbed on account of bloodshed, arson, kidnapping/abduction for ransom, widespread violence, illegal collection of money (*bhatta*) from traders, etc.

99. Mr. Abdul Fattah Malik, AG Sindh has submitted a synopsis of his arguments on behalf of the Government of Sindh. It may be noted that in fact he had to appear on the Court notice and the Province of Sindh put up its appearance through Mr. Abdul Hafeez Pirzada, learned Sr. ASC who has also filed, under instructions, suggestions which have been reproduced hereinabove. However, he reserved his right to further argue the case after the arguments of learned counsel appearing on behalf the interveners, particularly Syed Iftikahr Hussain Gillani, Sr. ASC who placed on record reports of the

JIT. In the meanwhile, Intelligence Agencies also shared classified information with the Bench. The DG Rangers also appeared in person and made submissions which have been dealt with hereinabove, including one that in Karachi the situation of law and order is worse than that of North Waziristan, but surprisingly on 14.09.2011 the learned Advocate General conveyed that Mr. Abdul Hafeez Pirzada, learned Sr. ASC feels contented with the arguments made earlier and does not want to make any further arguments before the Bench. The points he has put up before the Court have been dealt with hereinabove, particularly with regard to the statement of fact in which he has suggested that this Court should give a wake up call to the Provincial Government, which according to him means that in the past violation of Fundamental Rights of the citizens particularly those whose lives and properties have not been secured, was admitted and for the future he was asking the Court to give a wake up call to the Provincial Government.

100. The learned Advocate General in the written submissions has stated as follows:-

- (1) That the government of Sindh has never failed to deal with the law and order situation in the Province of Sindh and Government of Sindh is fully determined to protect the life, liberty, dignity, property and freedom of general public.
- (2) That the government of Sindh and law enforcement agencies along with the relevant authorities are fully competent to control, curb and deal with any internal disturbance and the government of Sindh has proved it in the matter of:-
 - (a) Control of Law and Order situation in Katcha area and other parts of internal Sindh.
 - (b) To bring back normalcy in the Law and order situation in Karachi.

- (3) That the Government of Sindh denounces all forms of violence, terrorist activities, subversion and lawlessness in the Province and in this regard the government of Sindh seeks support from all the political parties.
- (4) That the Government of Sindh has unshaken, irreversible commitment and determination to deal with the criminals in city of Karachi in particular and on the province level at large and no party affiliation would deter its will and commitment.
- (5) That the government of Sindh has taken concrete steps from prevention and control of crime including the deployment of Rangers in the city of Karachi, as well as deployment of additional forces by transfer from the Interior of Sindh of Karachi.
- (6) That the coalition Government of the Province of Sindh has strong will of continuing action against criminals in Karachi and in order to deal with any uprising in crime rate, concrete steps have been taken by Government of Sindh to enhance the capacity of the police, to raise the moral of the police as well as to strengthen this institution at the provincial level.
- (7) It is categorically made clear that at no stages of these proceedings the Government of Sindh as conceded that it failed to control this situation or has shown any slackness.
- (8) It is regrettable that on behalf of political groups appearing before this Court, political insinuation and allegations were leveled upon the ruling coalition Government of Sindh in sheer violation and disregard of the observations made by this Court that these proceedings are no-adversarial.
- (9) Present elected Government is mandated by the constitution to serve the people of Sindh for 05 years, therefore, the Government of Sindh has made short term, midterm and long term strategies to eradicate the crime at all costs.

(10) It is worth mentioning that the province of Sindh unfortunately is his very severely this year as well as it was hit last year by the natural calamity. The Government of Sindh successfully rehabilitated millions of affectees of last year flood, however due to global changes in the climate Government of Sindh is demonstrating full resolve, utmost will and continuous efforts to enhance capacity for dealing with such disaster. However, side by side full attention is being given to other issues being faced by the people of this province.

101. The reports of JIT, CID, Special Branch of Police and IB and other material is available on record including presentation given by the IG Police, the submissions made by Major General Aijaz Ahmad Chaudhry, DG Rangers and admission of IG Police to the effect that 30 to 40 percent police officials are non-cooperative because of their appointments on political considerations, coupled with the fact that it is the basic duty of the police to maintain the law and order, the police has been politicized/demoralized. The learned Advocate General has also admitted that 1100 appointments made on political considerations have already been set aside. The stand taken by him in his synopsis seems to be inconsistent and not acceptable in view of the above facts. It is to be noted that as per his own statement filed in Court, following persons have been murdered during the last three years i.e. 2008 to 2011:-

2008:	1142
2009:	1083
2010:	1484
2011:	1311 (up to 31.08.2011)

He emphasized that the law enforcing agencies have succeeded in causing arrest and in this behalf he has filed the statement for the

months of January to September, 2011 prepared by the Karachi police, which reads as under:-

Year	Number of encounters	Gang Busted	Dacoit Killed	Dacoit/ criminals arrested	Arrested		
					P.Os	Abs	MDs
2010	704	512	64	5286	354	<u>6427</u>	0

However, we have noted that about 80 percent FIRs, which have been registered during the last one month, have been cancelled by declaring them as "A" class and whatever progress has been made in causing arrests of the accused, it is after instant proceedings by this Court. We have also noted as mentioned hereinabove that the Chief Secretary and the IGP Sindh have categorically stated that now powers have been given to the Rangers, so the question arises as to why the Rangers were not put into action earlier when this force was already deployed in the Province of Sindh from 1994 onward; and why the Provincial Government was not interested in securing the life, property and dignity of the citizens. Admissions made by the IGP in respect of no-go areas, drug mafia and the statement of the Interior Minister referred to above are sufficient to hold that the Provincial Government had no intention to secure the life and property of the people in the true spirit of Article 4 of the Constitution, envisaging that all citizens are entitled to enjoy the protection of law and are required to be treated in accordance with law. What protection was given to those persons who have lost their lives and property? While dealing with the argument of the learned Attorney General, we have already

emphasized that the alleged crimes have not been committed ordinarily, but these are organized crimes and it was the duty of the Provincial Government to have controlled the same, but it is only after the Court took *suo motu* notice that some improvement seems to have been made in the law & order situation in Karachi.

102. Khawaja Naveed Ahmed, learned ASC stated that he represents the Friends of Lyari International, a UK based organization. According to his version, since 2009 till date, 65 Balochi speaking people have been killed in target killings, but so far no appropriate action has been taken to trace the accused persons, therefore, it is not understandable as to whom they should blame for such atrocities. It may be observed here that in respect of all the cases in which human beings have been killed irrespective of their ethnic origins, it is the duty of the State/Executive to ensure action and bring the accused persons to book.

103. Dr. Babar Awan, Sr. ASC commenced his arguments by reciting verses No.22 & 23 from Sura Almaidah. Translation from Arabic to English has been reproduced hereinbelow: -

“[5:22] ‘O my people, enter the Holy Land which Allah has ordained for you and do not turn back, for then you will turn losers’.

[5:23] They said, ‘O Moses, there is in that land a haughty and powerful people, and we shall not enter it until they go forth from it. But if they go forth from it, then we will enter it’.”

In view of the above Injunction of Islam, as we have already noted in the opening Para of the judgment that if anyone killed a person not in retaliation of murder, or to spread mischief in the land, it would be as if he killed all mankind, and if anyone saved a life, it would be as if he

saved all mankind, which is to be accepted by all the Muslims. It is clear from the above verses that life of a human being is very precious, therefore, Allah Almighty has condemned the killing of even a single human being and has equated it with the killing of the whole humanity, and vice versa, if a man is saved, the whole humanity will be deemed to have been saved.

104. Leaned counsel candidly stated that he supports the *suo motu* jurisdiction of this Court, as according to him, in terms of Article 29 of the Constitution, the judiciary being one of the organs of the State can exercise such jurisdiction.

105. However, he complained that in respect of incident of 18.10.2007, which took place in Karachi wherein *Mohtarama Benazir Bhutto*, former Prime Minister of Pakistan was attacked by the terrorists and so many persons lost their lives, according to him, despite request made by him on 27.10.2007 before a Bench comprising one of us (Mr. Justice Iftikhar Muhammad Chaudhry) and Mr. Justice (R) Javed Iqbal, no such action was taken by this Court. It is to be noted that the statement so made by him was not based on correct information, inasmuch as *Suo Motu* Case No. 25 of 2007 was registered wherein, on 01.11.2007, he personally appeared voluntarily and comments were called, however, subsequently on 07.01.2007 Justice (R) Abdul Hameed Dogar (so called Chief Justice) directed the office to keep that file pending without any further proceeding.

106. According to the learned counsel, the executive authority of the Federation includes the four Provinces, Federally Administered Tribal Areas administered through the President, the Islamabad Capital Territory, Gilgit and Baltistan, formerly known as FANA, whereas, in respect of Province of Sindh, the authority of the Provincial

Government extends to 23 districts of the Province of Sindh. Out of these areas, internal disturbance relating to law and order had allegedly taken place only in the city of Karachi. So, his stance is that the Executive Authority has failed neither at the federal nor at the provincial level. He, however, admitted that in terms of Article 232(1) read with Article 148(3) of the Constitution, there is internal disturbance in Karachi.

107. Learned counsel further argued that neither the Federal Government nor the Provincial Government has failed to maintain the law and order in the Province of Sindh and any declaration, if made by this Court, which is the most credible institution of the State of Pakistan, being the final arbiter of all disputes and where all interpretation ends, may invite some global trouble with very serious repercussions, inasmuch as the country is in the middle of a war on the western and eastern fronts and the latter front is more hostile and sensitive, therefore, an attempt is being made by someone to obtain such a declaration that the executive authority has failed to deliver. According to him, such a declaration cannot be made as Pakistan is a nuclear State, therefore, how can it fail in maintaining its affairs. Argument so raised by the learned counsel has no substance. Perhaps he has lost sight of two important legal expressions, namely, the State and Executive or the Government. Dr. Babar Awan, learned counsel has substituted the term "executive" with the "state". Hence this requires some elaboration.

108. The word "executive" has been defined in the American Heritage Dictionary of the English Language, Fourth Edition as under:-

n. ... The chief officer of a government, state, or political division.

3. The branch of government charged with putting into effect a country's laws and the administering of its functions.

...

3. Of or relating to the branch of government charged with the execution and administration of the nation's laws.

In Collins English Dictionary – Complete and Unabridged, the term has been defined in the following terms:-

executive

n. ... the branch of government responsible for carrying out laws, decrees, etc.; administration

... having the function or purpose of carrying plans, orders, laws, etc., into practical effect

executive branch

n. ... the branch of government charged with the execution and enforcement of laws and policies and the administration of public affairs; the executive."

Some of the other definitions are as follows: -

Cultural Dictionary

"The branch of federal and state government that is broadly responsible for implementing, supporting, and enforcing the laws made by the legislative branch and interpreted by the judicial branch. At the state level, the executive includes governors and their staffs. At the federal level, the executive includes the president, the vice president, staffs of appointed advisers (including the cabinet), and a variety of departments and agencies, such as the Central Intelligence Agency (CIA), the Environmental Protection Agency (EPA), the Federal Bureau of Investigation (FBI), and the Postal Service (see postmaster general). The executive branch also proposes a great deal of legislation to Congress and appoints federal judges, including justices of the Supreme Court. Although the executive branch guides the nation's domestic and foreign policies, the system of checks and balances works to limit its power."

Oxford Guide to the US Government:

"The departments and agencies that take political direction from the President, including the 14 cabinet-level departments, constitute the executive branch of the federal government. "The executive branch" is not a phrase found in the Constitution, but it is favored by Presidents because it assumes that these departments are under their sole direction. The Constitution, however,

provides that officials of the departments are to take direction not only from the President but also from laws passed by Congress.

Top officials in the executive branch, generally referred to as "the administration," are appointed by the President with the advice and consent of the Senate, and they serve at the pleasure of the President. The President uses his Executive Office agencies to supervise their budgets, their legislative requests to Congress, and the regulations they make and enforce.

Independent regulatory agencies (such as the Federal Trade Commission), units of government that are insulated by Congress from political direction (such as the Federal Reserve Board), as well as several agencies that perform functions for Congress (such as the Congressional Budget Office) are not part of the executive branch. Presidential appointment and removal powers over officials in these agencies may be limited by Congress, and the President may not provide them with political direction.

In politics, a person or persons constituting the branch of government charged with executing or carrying out the laws and appointing officials, formulating and instituting foreign policy, and providing diplomatic representation. In the U.S., a system of checks and balances keeps the power of the executive more or less equal to that of the judiciary and the legislature."

109. On the other hand, the word "state" is defined as under: -

Advanced Law Lexicon

A body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage, by the joint efforts of their combined strength ...

Organization of the body politic or one of the constituent members of a federation or organized political community with government recognized by the people ...

The political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people ...

A state or political society is an association of human beings established for the attainment of certain ends by certain means.

A state is an institution, that is to say, it is a system of relations which men establish among themselves as a means of securing certain objects, of which the most fundamental is a system of order within which their activities can be carried on. Modern states are territorial;

their governments exercise control over persons and things within their frontiers...”

Corpus Juris Secundum

n. ... it may signify a sovereign political unity as set forth in International Law.

Collins English Dictionary – Complete and Unabridged

n. ... (Government, Politics & Diplomacy) a sovereign political power or community

... ... the territory occupied by such a community

... ... the sphere of power in such a community affairs of state

... ... (*often capital*) one of a number of areas or communities having their own governments and forming a federation under a sovereign government, as in the US (Government, Politics & Diplomacy)

... ... (*often capital*) the body politic of a particular sovereign power, esp as contrasted with a rival authority such as the Church

... ... The supreme public power within a sovereign political entity.

... ... The sphere of supreme civil power within a given polity: matters of state.

... ... A body politic, especially one constituting a nation: the states of Eastern Europe.

The concept of the state

A *state* is a form of *political association* or *polity* that is distinguished by the fact that it is not itself incorporated into any other political associations, though it may incorporate other such associations. The state is thus a supreme *corporate* entity because it is not incorporated into any other entity, even though it might be subordinate to other powers (such as another state or an empire). One state is distinguished from another by its having its own independent structure of political authority, and an attachment to separate physical territories. The state is itself a *political community*, though not all political communities are states. A state is not a *nation*, or a *people*, though it may contain a single nation, parts of different nations, or a number of entire nations. A state arises out of *society*, but it does not contain or subsume society. A state will have a *government*, but the state is not simply a government, for there exist many more governments than there are states. The state is a modern political construction that emerged in early modern

Europe, but has been replicated in all other parts of the world. The most important aspect of the state that makes it a distinctive and new form of political association is its most abstract quality: it is a *corporate* entity.

A sovereign state is a state with a defined territory on which it exercises internal and external sovereignty, a permanent population, a government, and the capacity to enter into relations with other sovereign states. It is also normally understood to be a state which is neither dependent on nor subject to any other power or state. While in abstract terms a sovereign state can exist without being recognised by other sovereign states, unrecognized states will often find it hard to exercise full treaty-making powers and engage in diplomatic relations with other sovereign states.

The word "country" is often used to refer to sovereign states, although it means, originally, a geographic region.

Sovereignty has taken on a different meaning with the development of the principle of self-determination and the prohibition against the threat or use of force as *jus cogens* norms of modern international law. The UN Charter, the Declaration on Rights and Duties of States, and the charters of regional international organizations express the view that all states are juridically equal and enjoy the same rights and duties based upon the mere fact of their existence as persons under international law. The right of nations to determine their own political status and exercise permanent sovereignty within the limits of their territorial jurisdictions is widely recognised.

In political science, sovereignty is usually defined as the most essential attribute of the state in the form of its complete self-sufficiency in the frames of a certain territory, that is its supremacy in the domestic policy and independence in the foreign one.

In the social sciences, a state is a compulsory political institution that maintains a monopoly of the legitimate use of force within a certain territory.

Etymology and definition

Etymology

The word *state* and its cognates in other European languages (*stato* in Italian, *état* in French, *Staat* in German) ultimately derive from the Latin *status*, meaning "condition" or "status."

With the revival of the Roman law in the 14th century in Europe, this Latin term was used to refer to the legal standing of persons (such as the various "estates of the realm" - noble, common, and clerical), and in particular

the special status of the king. The word was also associated with Roman ideas (dating back to Cicero) about the "*status rei publicae*", the "condition of public matters". In time, the word lost its reference to particular social groups and became associated with the legal order of the entire society and the apparatus of its enforcement.

In English, "state" is a contraction of the word "estate", which is similar to the old French *estat* and the modern French *état*, both of which signify that a person has status and therefore estate. The highest estates, generally those with the most wealth and social rank, were those that held power.

According to the *Oxford English Dictionary*, a state is "a an organized political community under one government; a commonwealth; a nation. b such a community forming part of a federal republic, esp the United States of America". However, the most commonly used definition is Max Weber's, which defines the state as a compulsory political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain territory.

General categories of state institutions include administrative bureaucracies, legal systems, and military or religious organizations.

The concept of the state can be distinguished from the concept of government. The government is the particular group of people, the administrative bureaucracy, that controls the state apparatus at a given time. That is, governments are the means through which state power is employed. States are served by a continuous succession of different governments.

Each successive government is composed of a specialized and privileged body of individuals, who monopolize political decision-making, and are separated by status and organization from the population as a whole. Their function is to enforce existing laws, legislate new ones, and arbitrate conflicts via their monopoly on violence. In some societies, this group is often a self-perpetuating or hereditary class. In other societies, such as democracies, the political roles remain, but there is frequent turnover of the people actually filling the positions.

110. As against the term "state", a government is an institution whose existence precedes that of the state. A government is a person or group of persons who rule or administer (or govern) a political community or a state. For government to come into being there must

be existence of public on the territory of a State. Ruling within a household is not government. Government exists when people accept (willingly or not) the authority of some person or persons to address matters of public concern; the administration of justice, and defense against external enemies being typical examples of such matters.

111. Article 90 of the Constitution defines "executive authority" as "subject to the Constitution the executive authority of the Federation shall be exercised in the name of the President by the Federal Government which consists of Prime Minister and Federal Ministers, who shall act through the Prime Minister who shall be the chief executive of the Federation." Whereas in relation to the Provincial Government, Article 129 with the substitution of Governor with the President defines the Executive Authority of the Province consisting of the Chief Minister and Provincial Ministers, who shall act through the Chief Minister. Both these executive authorities represent the Federal and Provincial Governments whereas the institution of State is distinguished from executive authorities as defined in Article 7 of the Constitution as under: -

"7. Definition of the State

In this Part, unless the context otherwise requires, "the State" means the Federal Government, *Majlis-e-Shoora* (Parliament), a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess."

112. Here the object of instant proceedings is not to make any declaration against the State of Pakistan, but one of the Governments, namely, the Government of Sindh Province, which is represented through its executive as defined under Article 129 referred to hereinbefore. Although Article 7 of the Constitution defines the State as the Federal Government, *Majlis-e-Shoora* (Parliament), a Provincial

Government, a Provincial Assembly and local or other authorities in Pakistan empowered to impose any tax or cess, therefore, distinction is abundantly clear as the act of the Executive of the Province is under consideration in terms of Article 129 of the Constitution, which is essentially a distinct and a different concept from the State as defined in Article 7. The order dated 24.08.2011 reproduced *supra* also explicitly makes it clear that the conduct of the Executive in enforcing Fundamental Rights of the citizens guaranteed under Articles 9, 14, 15, 18 and 24 is under examination, and as far as the State is concerned, its role has not been examined. The arguments so put forward by the learned counsel appear to be irrelevant and are not in the context of the proposition under consideration. This is not for the first time that the conduct of the Provincial Executive is being scrutinized. As such, its performance relating to enforcement of the Fundamental Rights or its failure not to enforce these rights is under examination. Admittedly, under Article 184(3), this Court exercises same powers, which are available to a High Court under Article 199(1)(c). The Court can make an order giving such direction to any person or authority including any government exercising power or performing any function and, in or, in relation to, in any territory within its jurisdiction as may be appropriate for the enforcement of Fundamental Rights conferred by Chapter 1 of part II. Reference in this behalf may be made to the cases of Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473), Syed Wasey Zafar v. Government of Pakistan (PLD 1994 SC 621), Bank of Punjab v. Haris Steel Industries (pvt.) Ltd. (PLD 2010 SC 1109) and Federation of Pakistan v. Munir Hussain Bhatti (PLD 2011 SC 752). Also see Zulfiqar Mehdi v. Pakistan International Airlines Corporation (1998 SCMR 793),

Benazir Bhutto (supra), Asma Jilani v. Government of the Punjab (PLD 1972 SC 139), Fauji Foundation v. Shamimur Rehman (PLD 1983 SC 457), Jibendra Kishore v. Province of East Pakistan (PLD 1957 SC 9).

113. So, on the basis of distinction between the State and Executive authority vis-à-vis the jurisdiction of this Court under Article 184(3), it is concluded that instant proceedings are not against the State but to consider whether the Provincial Government of Sindh allegedly had failed to enforce the Fundamental Rights of the citizens. However, Pakistan as a sovereign country as well as a nuclear power for all intents and purposes is a successful State because such a State, in the words of Max Weber, maintains a monopoly on the legitimate use of physical force within its borders. But, coming to the fundamental question of exercise of jurisdiction keeping in view of the facts and circumstances noted hereinabove in detail, it is held that this Court is empowered under Article 184(3) to consider any question of public importance with reference to enforcement of any of Fundamental Rights, conferred by Chapter 1, Part 11 and can make an order of the nature mentioned in Article 199. If the argument of the learned counsel referred to above is accepted, it would be tantamount to abdicating the powers and jurisdiction conferred by the Constitution, thereby refusing to enforce Fundamental Rights conferred by Chapter 1 of Part II in a matter relating to public importance. The scope of the jurisdiction of the Court with procedure, which is to be followed, has been examined in the case of Pakistan Muslim League (Nawaz) v. Federation of Pakistan (PLD 2007 SC 642), wherein it has been held that this Court under Article 184(3) is not dependent only at the instance of the "aggrieved party" in the context of adversarial proceedings and while dealing with a case under Article 184(3) of the

Constitution, this Court is neither bound by the procedural trappings of Article 199 *ibid* nor by the limitations mentioned in that Article for exercise of power by the High Court in any case. Relevant Para therefrom is reproduced hereinbelow:-

“20. After having discussed the law laid down in the above mentioned cases the judicial consensus seems to be as follows: -

(i) That while interpreting Article 184(3) of the Constitution the interpretative approach should not be ceremonious observance the rules or usages of the interpretation but regard should be had to the object and purpose for which this Article is enacted i.e. the interpretative approach must receive inspiration from the triad of provisions which saturate and invigorate the entire Constitution namely the Objectives Resolution (Article 2-A), 'the fundamental rights and' the directive principles of State policy so as to achieve democracy, tolerance, equity and social justice according to Islam.

(ii) That the exercise of powers of Supreme Court under Article 184(3) is not dependent only at the instance of the "aggrieved party" in the context of adversary proceedings. Traditional rule of locus standi can be dispensed with and procedure available in public interest litigation can be made use of, if it is brought to the Court by a person acting bona fide.

(iii) That the provisions of Article 184(3), provide abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction and it would be for the Supreme Court to lay down the contours generally in order to regulate the proceedings of group or class actions from case to case.

(iv) That under Article 184(3) there is no requirement that only an aggrieved party can press into service this provision. Supreme Court can entertain a petition under Article 184(3) at the behest of any person.

(v) That the Article 184(3) is remedial in character and is conditioned by three prerequisites, namely –

- * There is a question of public importance.
- * Such a question involves enforcement of fundamental right, and
- * The fundamental right sought to be enforced is conferred by Chapter 1, Part II of the Constitution.

(vi) That it is not every question of public importance which can be entertained by this Court, but such question should relate to the enforcement of Fundamental Rights.

(vii) That even the disputed questions of facts which do not require voluminous evidence can be looked into where Fundamental Right has been breached. However, in case where intricate disputed question of facts involving voluminous evidence are involved the Court will desist from entering into such controversies.

(viii) That the language of Article 184(3) does not admit of the interpretation that provisions of Article 199 stood incorporated in Article 184(3) of the Constitution. Therefore, this Court I while dealing with a case under Article 184(3) of the Constitution is neither bound by the procedural trappings of Article 199 *ibid*, nor by the limitations mentioned in that Article for exercise of power by the High Court in a case.

(McCabe v. Atchison (1914) 285 US 151, S.P. Gupta and others v. President of India and others AIR 1982 SC 149, Standard Vacuum Oil Company v. Trustees of the Port of Chittagong PLD 1961 Dacca 289, Sneed Khan v. Chairman, District Council of Bannu PLD 1967 Pesh. 347, Asma Jilani v. Government of the Punjab PLD 1972 SC 139, Muhammad Boota and 77 others v. Commissioner, Sargodha Division PLD 1973 Lah. 580, Hakim Muhammad Anwar Babri v. Pakistan PLD 1973 Lah. 817, National Steel Rolling Mills v. Province of West Pakistan 1968 SCMR 317, Fauji Foundation v. Shamimur Rehman PLD 1983 SC 457, Abanindra Kumar Maity v. A.K. Majumdar AIR .1956 Cal. 273, Fazal Din v. Lahore Improvement Trust PLD 1969 SC 223, K.K. Kochumii v. State of Madras AIR 1959 SC 725, Jibendra Kishore v. Province of East Pakistan PLD 1957 SC 9, Messrs East and West Steamship Company v. Pakistan PLD 1958 SC (Palo.) 41 and Waris Meah v. The State PLD 1957 SC (Pak.) 157, PLD 1988 SC 413, PLD 1990 SC 513, 1990 PLC 61, PLD 1988 SC 416, KLR 1988 SC 423, 1988 PSC 809.”

114. Thus, in view of the principle laid down hereinabove, this Court is empowered to examine as to whether the executive authorities of the Province have failed to enforce Fundamental Rights in terms of order dated 24.08.2011 and the objections raised by the learned counsel that any declaration in this behalf would have serious repercussions against the State of Pakistan being without any substance for the above reasons are overruled.

115. Learned counsel has emphasized that in a system based on trichotomy of powers being the basic feature of the Constitution, the Armed Forces of Pakistan are also part of the executive or the government as held in the case of Liaqat Hussain v. Federation of Pakistan (PLD 1999 SC 504). There is no doubt about the fact that the Armed Forces also fall within the definition of the executive, but in the instant case, action of the Armed Forces is not under examination. However, this Court has examined this aspect of the case in the light of the judgment cited by the learned counsel wherein it was held that Pakistan Armed Forces (Acting in aid of Civil Powers) Ordinance, 1998 as amended up-to-date in so far as it allowed the establishment of the Military Courts for control of the civilians, charged with the offences mentioned in section 6 and the Schedule to the said Ordinance is unconstitutional, without lawful authority and of no legal effect. Therefore, it can safely be held that this Court is not exercising such jurisdiction for the first time. This Court has jurisdiction to examine an instrument on the basis of which power to try the accused is conferred upon the executive or the Armed Forces.

116. Learned counsel candidly conceded that although in the 18th Constitutional Amendment, more provincial autonomy has been given to the Provinces, but in spite of it under sub-Article (3) of Article 148 of the Constitution it is the duty of the Federation to protect every Province against external aggression and internal disturbance, and to ensure that the Government of every Province is carried on in accordance with provisions of the Constitution. On having so admitted, he has cited following steps taken by the Federation to protect the Government of Sindh from internal disturbances: -

1. Placement of civil armed forces (Sindh Rangers and Frontier Constabulary) at the disposal of the Government of Sindh;
2. Monetary support of 2.5 billion specifically for training and capacity building of the police department during this financial year;
3. Sharing of real time intelligence with the Province, which is actionable intelligence;
4. Data regarding family tree of criminals maintained in NADRA and the database is shared with the Province after an order by the Interior Minister;
5. Information helped by FIA regarding different crimes and criminals shared with the Provincial Government;
6. Blocking of over 20.1 million illegal mobile phone SIMs, which are mostly used in commission of crimes;
7. Grant of 5 billion rupees outside the regular budget (besides 2.5 billion rupees) as a special initiative of the President of Pakistan for enhancing the training and capacity of provincial law enforcement personnel, directing the Provincial Government to equip the Police Department with 15 APCs [20 more APCs are in the pipeline];
8. Coordination set up is created for Sindh and Balochistan border posts – one of the infamous routes of illicit arms to the city of Karachi;
9. Customs and FIA intelligence another outfit is created to control gun running and drug trafficking into Karachi;
10. Coastal border management also ordered through the Coast Guards to control the incoming traffic of guns and drug trafficking;
11. Aerial surveillance from SUPARCO for determination of the factum of land grabbing and to control land mafia;
12. Google imageries through NADRA;

13. Complaint cell is established against *bhatta* mafia in Karachi on the complaint of Chamber of Commerce, which is being monitored by the Interior Minister directly through the police and all other intelligence sources.

117. He has further stated that the President, Prime Minister, Army Chief and Chief of every Intelligence Agency had visited Karachi and held meetings on the law and order situation. He admitted that the above steps were taken by the Federation from January, 2011 onwards; however, no documentary proof was brought on record. Be that as it may, except the stand taken by the learned counsel in respect of the steps taken by the Federal Government to protect the Province of Sindh from its internal disturbances, although most of the steps fall within the category of long term solutions for the purpose of controlling the disturbances in Karachi but unfortunately neither the executive of the federal government nor of the provincial government succeeded in controlling the internal disturbance as it is evident from the documentary evidence i.e. the report of JIT dated 31.03.2011 and the report of Special Branch of Police Department dated 18.08.2011 and the presentations of the IGP Sindh as well as the DG Rangers, and in camera briefing by the ISI to the Members of the Bench, which have already been discussed hereinabove.

118. There is no dispute with the fact that only in one month from 24th July to 24 August, 2011, 306 persons lost their lives and in this period body bags, drilled bodies of human beings as well as torsos of persons who were tortured to death were recovered. Although the Rangers, *vide* deployment notification dated 17.05.1995 was available in the Province, but in the recent past despite internal disturbances powers were conferred upon the Rangers only on 25.08.2011.

Although, admittedly the decision was taken in this behalf on 22.08.2011, yet negligence was shown in conferring the authority. In this manner, a huge loss of life and property of the citizens had occurred. It is to be noted that learned counsel, without realizing its repercussions, himself conceded the obligation of the Federation in providing assistance to the Provincial Government in controlling the disturbances in terms of Article 148(3) of the Constitution. As it has been pointed out hereinabove that at the time when in the year 1997 the Federal Government headed by *Mohtarama Benazir Bhutto* was dismissed by the President, in exercise of powers under Article 58(2)(b) of the Constitution, one of the reasons for dismissal of the Federal Government was that it had failed to discharge its constitutional obligations under Article 148(3). The principle laid down in the case wherein the order of dissolution of Assembly was maintained by this Court, is undoubtedly applicable to the present situation, as it has been explained by means of the documentary evidence produced by the learned Attorney General and the learned Advocate General before the Court. Therefore, the conclusion can conveniently be drawn that despite the steps taken by the Federation, the situation of law and order has not been controlled and the life and property of citizens in Karachi have not been secured.

119. It is contended by the learned counsel that the Speaker of the National Assembly has, with the consent of the political parties and leaderships acting in furtherance of the national call and duty, constituted a bipartisan Committee of the House to look into the issues of Karachi and Quetta and to recommend desired measures for the restoration of peace and tranquility and the Committee is holding its meetings. He has further stated that the Federation and the Provincial

Government of Sindh had the will to control internal disturbances and to achieve this object following steps have been taken and the documents produced before the Court: -

1. JIT Report dated 31st March, 2011: report is being acted upon to achieve the desired result of controlling internal disturbances in Karachi
2. Special Branch report dated 18th August, 2011, which has also been produced before this Court.

Both these reports have already been referred to hereinabove, particularly with reference to hardened and desperate criminals including one *Ajmal Pahari*, who has shown his connection with MQM. We inquired from the learned counsel that in spite of receiving credible information through both the above reports, as to whether any action has been taken while remaining within the Constitutional framework against the political party/organization with whom allegedly some of the accused have shown their linkage, he stated that as there is democratic system; the people have chosen their representatives and the Government of the day while performing its duty as per the will of the voters will take into consideration all these reports in due course of time. We have pointed out to him not only the above reports, but there are also the reports of IB, Daily Situation reports, presentations of IGP as well as other information which have been received through ISI, which are sufficient to adjudge the position of law and order prevailing presently in Karachi, which can confront not only Karachi but the whole country with a greater disaster if curative measures in accordance with the Constitution and law to control the situation are not taken. Thus, we may note that internal violence in Karachi is also being noted with concern. Reference to a write-up published in *The Economist* of 27.08.2011, which is reproduced hereinbelow: -

"ETHNIC warfare in Pakistan's most populous city has reached such a level that Karachi's ambulance service now has to send out a driver matching the racial make-up of the destination district to pick up the victims of gang attacks. Otherwise, the district's gunmen will not let the ambulance through. Now ambulances themselves are coming under fire, as gangsters try to stop them saving the lives of their enemies. Karachi's ethnic wars have claimed some 1,000 lives this year, with more than 100 in the past week alone. By contrast the Taliban and other religious extremists kill tiny numbers in Karachi.

A grisly new feature of the carnage is that people are not just being shot. They are being abducted and tortured; then their bullet-ridden, mutilated bodies are dumped in sacks and left in alleyways and gutters. Victims' limbs, genitals or heads are often severed. Torture cells operate across Karachi. The butchery is filmed on mobile phones and passed around, spreading the terror further. Most victims are ordinary folk randomly targeted for their ethnicity.

At the city's Abbasi Shaheed Hospital, a public facility, doctors treat only Mohajirs, who dominate the local district and are the biggest ethnic group in Karachi. Mohajirs are descendants of those who moved to Pakistan from India in 1947, when the subcontinent was partitioned. Ambulance crews must determine the ethnicity of patients and take them to the right hospital.

If this were just a turf war between criminal gangs, things might be brought under control. But each gang has the patronage of a mainstream political party, in a fight that exploded in 2008 when an election was held to end Pakistan's latest period of military rule. Political support for warring ethnic gangs means the police largely stay out of the conflict: each gang will call on political muscle if its henchmen are rounded up. The provincial authorities launched a crackdown this week, but little is expected of it.

The Muttahida Qaumi Movement (MQM), a party established in the 1980s that claims to represent the Mohajirs, once had an iron grip over Karachi. That monopoly is now being challenged by the Awami National Party, which says it speaks for the ethnic Pushtun population, who migrated from the north-west of the country, and the Pakistan Peoples Party (PPP) of President Asif Zardari, which heads the ruling coalition in the capital, Islamabad. Its gang following is ethnic Baloch, from the neighbouring province of Balochistan. It is the MQM versus the rest.

The conflict's ferocity may yet threaten Pakistan's fragile return to democracy. In recent days Karachi businesses have called for the army to restore order. Violence in Karachi was repeatedly used as part of the justification for toppling four national governments in the 1990s. This city of 18m people is Pakistan's economic lifeline, and the port

through which most supplies reach NATO forces in Afghanistan.

Away from the ritzy villas of Defence and Clifton districts, the people of Karachi's 3,500 square-kilometer (1,350 square-mile) sprawl live in decrepit homes and apartment blocks set on narrow, filthy streets, where gangs rule with near impunity. Trouble often flares when one ethnic ghetto abuts another.

In Korangi, a ramshackle semi-industrial district in the east of the city mainly inhabited by Mohajirs, Pervez has not been to work for 20 days. He mends tyres on Tariq Road in the city centre, a half-hour bus ride away. But since gangs started pulling people off buses and killing them, he has been too afraid to venture out. "The Pushtuns will cut your throat," Pervez says. "If I am killed, what will my children do?"

Kashif Malik, a 32-year-old rickshaw driver and PPP activist, was at home with a friend, Shoib, in Orangi Town, in Karachi's north-west, when gunmen came to the door. Shoib was killed, while Mr Malik was lucky only to be shot in the arm. He is sure the assailants were from the MQM. Mr Malik insists that joining a political party offers the safest protection these days. "A lone person cannot survive in Karachi," says Mr Malik from his bed at the Civil Hospital. Most of those killed are not involved with any political party. Language, clothes and even haircuts betray a person's ethnicity to the killing squads.

For more than two decades the MQM has collected extortion money, known as *bata*, from businesses and homes across the city. Now, using the political backing they acquired in the 2008 election, gangsters associated with the PPP and the Awami National Party, in a loose alliance, also want their share of cash, at the heart of the conflict. Businesses now have to pay off up to three rival groups. In the past week Karachi's markets selling marble, bathroom tiles and medicines have separately staged protests against *bata*.

As for the political parties, they seem to be able to turn the violence off and on as it suits them. This suggests that these are not mere criminals draping themselves in the party flag, but rather integral parts of the parties' political machines. If the violence continues, more ordinary people will be forced to seek the protection of a political party, to which they will have to pay more dues. Perhaps this is what the politicians are aiming for. "You can call this the politicisation of crime, or the criminalisation of politics," says a security official in the city. "The state has lost its writ in Karachi."

120. It has to be noted that in the past the democratic governments were dismissed either through the extra constitutional

instruments or in exercise of the powers available under the constitutional provisions, *inter alia*, for the reason that both the Federation and the Province had failed to control the disturbance in the Province. Therefore, it is now the right and appropriate time when the democratic set up must adhere to the constitutional provisions to protect the Province as well as the country from internal disturbances. However, in response to this, he has stated that a wake up call is not needed, only a call to attention is sufficient because the Federal Government is answerable to the Parliament and it is very much aware of its duties. We wish that the Federal Government as well as the Provincial Government could succeed in bringing normalcy in the Province according to the Constitution before it is too late to overcome the internal disturbances in view of the material brought before us.

121. The Federal Government could have provided assistance to the Provincial Government to control the disturbances without any delay, but we fail to understand the reasons prevailing with the Federal Government in not acting promptly as the learned counsel has himself by reciting verses from Holy Quran pointed out that killing of one human being is tantamount to killing of whole mankind. During the current year, more than 1300 persons were killed. The Chief Secretary had admitted that the decision to extend powers to Rangers to control law and order had taken place on 22.07.2011, but the notification was issued on 25.07.2011, which has already been reproduced hereinabove. Hence, the argument raised by the learned counsel in this behalf does not advance the case of the Federation in any manner. So far the remaining steps, which according to the learned counsel had been taken by the Federation, they all seem to be long term measures. The Federal Government has to protect the

Provinces against internal disturbances. Such protection, if required by a Province in terms of Article 148(3) in view of the given facts and circumstances and the scenario presupposes prompt protection and failure to do so makes the Federal Government responsible as it has been held in the cases of Ahmed Tariq Rahim and Mohtarama Benazir Bhutto (*supra*).

122. The learned counsel emphasized that the executive authorities in Pakistan had not failed in maintaining law and order position and in that behalf he quoted the example of Swat. Precisely stating, the situation in Swat was altogether different as in view of the specific facts and circumstances pertaining to the said area and there too, the civil administration had to call the military for ensuring the writ of the Government, but in Karachi, which is the hub of economic activity, breakdown of law and order for a single day allegedly causes loss of 2.5 billion rupees everyday. The Provincial Government and the Federal Government owe a duty to the citizens of Karachi to ensure their Fundamental Rights without comparing the situation prevailing over there with any other part of the country. Without prejudice to any findings recorded herein, whether it is Swat or Karachi, equal responsibility lies on the shoulders of the Provincial Government and the Federal Government to ensure the implementation of the Constitution and law.

123. Learned counsel claimed that except in Karachi in other parts/districts of the Province of Sindh, the position of the law and order is normal. We do not want to enter into this controversy because the question relating to other districts of Sindh is not under consideration, although Mr. Abdul Mujeeb Pirzada, learned ASC, who appeared on behalf of Sindh Bachao Committee, had uttered a few

words to indicate that in the interior of Sindh as well, situation of law and order was not satisfactory. However, it has been pointed out hereinabove that all the limbs of the State, administrative units, etc. have got equal importance as far as the duty of the Provincial Government/Executive or the Federal Government or executive is concerned, but when there is serious situation of law and order like in Karachi and if there is non-adherence to the constitutional provisions, the consequences are bound to reflect on the economic activity of the whole of country as well as internationally. Therefore, the argument so raised by the learned counsel needs no further discussion.

124. The learned counsel referred to the case of Jamat-e-Islami Pakistan v. Federation of Pakistan (PLD 2000 SC 111) to contend that internal disturbance cannot be equated with the failure of the executive authority. In this behalf, it may be noted that in the cited case, two petitions, bearing Petitions No. 22 & 25 of 1999 filed by Jamat-e-Islami Pakistan and MQM were filed before this Court under Article 184(3) of the Constitution, challenging the *vires* of Anti-Terrorism Ordinance (No. IV of 1999) dated 27.04.1999 on the ground of being repugnant to the Constitution and contrary to the guidelines provided by this Court in the case of Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445). This Court examined the expression 'disturbances' in the context of amendments made and provided its definition. However, no observation/comparison *vis-à-vis* executive authority of the government was under challenge, therefore, the judgment being inept is not applicable.

125. He next contended that the will of the Government can be judged from the fact that this Government has constituted JIT to dig out the truth. He referred to p. 49 of JIT report to demonstrate that

the Special Branch, CID, IB, ISI, MI and Pakistan Rangers are Federal agencies, have prepared the reports and all these reports relate to this year, so this is ample proof of the will of the executive authority to bring back normalcy in Karachi. It is important to note that this report was neither filed by the Provincial/Federal Governments nor the learned counsel called for the same. It was Syed Iftikhar Hussain Gillani, learned Sr. ASC, who had filed this report, but in view of the statement so made by the learned counsel, it is abundantly clear that with effect from the date of its compilation, i.e. 31.03.2011, the Government being aware of its contents remained silent. This report contains horrifying facts. No one has claimed its confidentiality. To ascertain the willingness of the Federal or the Provincial Governments to act on this report, life history of one of the persons, namely, *Ajmal Pahari*, without prejudice to him, is reproduced hereinbelow: -

TRAINING IN INDIAN TRAINING CAMP

I along with Zeeshan PIB Wala on the direction of Nadeem Nusrat (London Secretariat) went to Singapore in 1996. When we reached Singapore I informed Nadeem Nusrat and told my location. Nadeem Nusrat told me that I must wait and soon Jameel @ Jimmi will meet me with next schedule. We stayed for one week in hotel (name not remember) in Mustafa Market. Jameel @ Jimmy came to us from South Africa. Also Zeeshan didn't know about the programme. Jameel @ Jimmy take ours passport and photograph. Jameel @ arrange Indian Visa and send us via Singapore Airline. Sunny who was escaped from Karachi received us in India Delhi Airport, and took us to the house where we stayed for 15 days. Then he took us to the training center in a jungle near to the Delhi

OTHER TRAINING OF PARTY WORKERS IN INDIAN TRAINING CAMP

When we reached at Indian Training Center we meet Noora (Shah Faisal Colony Wala), Zafar Tension Duffer Zone

Wala), Raja (North Nazimabad Wala) Shakir Choota (Orangi Town) of MQM A group.

MOTIVATION OF TRAINING IN INDIA

After completion of our training Sunny brought different book on Revolution and every body had been motivated that if we didn't get our rights then we have to work under the Leadership of Altaf Hussain and make our separate state by unite Karachi and other major parts of Sindh.

WEAPON TRAINING DURING THE SESSION

We wake up early in the morning for exercise and running. After that we used weapons in which we used AK 47, G-3, MP-5, LMG Rocket launcher, Grenade and other weapons. Our teacher also trained original fire of rocket launcher last day of our training.

RETURN FROM INDIA TO PAKISTAN

Sunny arrange Indian guide who took us to Indian Punjab and one day at about 9'0 clock in evening we illegally crossed the Indian border and entered into Pakistan area Shakar Garh with our Indian Guide. Then that Indian Guide took us to Lahore in Suzuki pick up and went back. Then we came to Karachi in train (Rail).

MEETING WITH OTHER INDIAN TRAINEES IN KARACHI

I met Noora of Shah Faisal, Zafar Tension of Buffer Zone, Shakir Choota of Orangi Town in Karachi but I never saw Raju of North Nazimabad in Karachi."

Above named person has given details of 53 persons murdered by him from 1986 to 2000. Surprisingly, he also admitted murder of Iqbal Raad Advocate, who was former Advocate General, Sindh. He has also given the details of murder of 58 persons after his release from Jail in 2005. This document is full of information, which he has disclosed. The question here is not the veracity or correctness of his statement. The question is: what did the Federal Government or the Provincial Government do on the basis of this information. Of course the truth of the statement has yet to be determined but it was serious information

of grave crimes in an alleged confession. Inaction on the statement, whatever its evidentiary value, means a certain backing and co-operation with criminal activity. However, on the basis of this report, no action has been taken against him as well as the organization with which he showed his affiliation. According to him, he had been getting training outside the country in India, etc. The remarks of the agencies of the Federal Government and others, reference of which the learned counsel for the Federation, are as follows: -

“The subject is a hard core and high profile trained target killer affiliated with MQM (A) Group, who has been involved in heinous crimes of murder, attempt to murder, target killing, several activities of creating law and order situation abduction, kidnapping, extortion.”

Without commenting on its evidentiary value, at least when the Federal Government is relying upon it through its learned counsel, some weightage is to be given to it. We posed a question to the learned counsel that on the basis of above report, what action so far was taken by the Government, however, no explanation came forward.

126. It is to be noted that all criminals, howsoever influential, have to be dealt with across the board without any discrimination or compromising the position of the law on the subject. As we have already pointed out hereinabove that instant proceedings are not adversarial, therefore, one cannot discuss the case of all those persons whose names are mentioned in the report, but for the purpose of meeting argument of the learned counsel, reference to one of the same has been given with the observation that no prejudice will be caused to concerned persons as perhaps he has to face trial in different cases. But perusal of the report qua the argument raised by the learned counsel showing the willingness of the Federal Government

to take action in Karachi to control the law and order does not appeal to us. Thus, we are constrained to conclude that if an agency of the Federal Government possesses such overwhelming evidence, what could be the reasons for taking no action against concerned persons or organizations.

127. Learned counsel stated that every crime committed constituted violation of the Fundamental Rights one way or the other. *Bhatta, chanda*, abduction, extra judicial killing, etc., whenever committed, constitute violation of the Fundamental Rights qua the individuals against whom such crimes are committed. According to him, the Fundamental Rights of individuals have been violated due to the rivalries between the individuals, there are clashes or crimes committed by individuals against individuals and groups of individuals are pitched against each other. Assuming argument of the learned counsel is correct, then what is the function of the Executive in respect of protecting Fundamental Rights when there is a violation. It is the duty of the Provincial Government as well as the Federal Government to protect and preserve the Constitution, which confers such rights upon individuals. When violation of the Fundamental Rights is admitted, ultimately blame lies with the executive authorities, both Provincial and the Federal, for non-implementation of their rights. In this behalf, detailed discussion has been made hereinabove. When the learned counsel for the Provincial Government, Mr. Hafeez Pirzada, ASC, calls upon this Court "give a wake up call" to his client, and the learned counsel of the Federal Government concedes that a "Call Attention Notice" can be issued, what more needs to be said: If they themselves admit that the Court's reprimand is need, how can the Governments concerned be defended?

128. Dr. Babar Awan, learned counsel stated that the Federation had no intention to invoke Articles 232 to 234 or Article 245 of the Constitution presently. Undoubtedly, it is for the Federation to take a decision, but if any decision is taken, it would be strictly in accordance with the Constitution. This Court has time and again insisted that except adherence to the constitutional provisions in any situation prevailing in the country, no extra-constitutional steps have to be followed. In the neighbouring country, in case of failure of constitutional machinery in the States, Article 356 is attracted to deal with the situation. This Article is identical to Article 232 of our Constitution, therefore, application of these provisions of the Constitution is not alien to our system because on more than one occasion the Executive resorted to the same. Reference may be made to Farooq Ahmed Khan Leghari's case (*supra*) wherein it was held as under: -

"48. I am prompted to take above view inter alia for the following reasons:-

- (i) That the above view fits in with the above modern jurisprudential theory of proportionality.
- (ii) That as a rule of interpretation, the Courts should make efforts to preserve the Fundamental Rights of the citizens while construing the Constitutional provisions. This aspect, I intend to deal with hereinafter while touching upon the aforesaid second question in issue.
- (iii) That those who have taken oath to protect the Constitution, particularly, the Judges of the Supreme Court and the High Courts are bound by their oath and duties to act so as to keep the provisions of the Constitution fully alive and operative, to preserve it in all respects, save from all defects or harm and to stand firm in defence of its provisions against attack of any kind as held by this Court in the case of Fazalul Quader Chaudhry (*supra*), in which the view taken is in line with the above Constitutional mandate.
- (iv) That even in spite of suspension of the enforcement of certain Fundamental Rights under clause (2) of Article 233 of the Constitution, Article 4 thereof remains fully operative which lays down that "To

enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

In particular -

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- (c) no person shall be compelled to do that which the law does not require him to do."

as held by Salahuddin Ahmad, J. of this Court in the case of Manzoor Ilahi (supra)."

In view of the peculiar circumstances prevailing in Karachi, issuance of a large number of arms licences, both prohibited and non-prohibited, also seems to be one of the reasons for not bringing normalcy in Karachi and perhaps this is another reason that after every 2 to 4 weeks, some incident of torture, gang war, target killing, etc., takes place, which comes to an end after taking heavy toll of life. The Administration/Executive never realized the untold miseries of the sufferers including widows and orphans; therefore, the executive is bound to attend to this aspect of the case.

129. After the Court concluded the hearing on 16.9.2011 another very tragic incident took place in Karachi. A car bomb exploded outside the house of Chaudhry Aslam, SSP CID, in the Defence area of Karachi. Six Policemen and a mother along with her young son were martyred. Although this crime is apparently, and prima-facie of a different variety not related to the turf war or ethnic strife in Karachi, there is something to be learnt from it by the citizens of Karachi. The vehicle that exploded at the gate of the SP's House must have been loaded with explosives and prepared with a network of wires, fuses, projectiles such as ball bearings or shrapnels, and

triggers. A sophisticated remote control device may also have been needed although it is yet to be determined conclusively whether it was a suicide attack or not. One thing is clear that the vehicle was loaded with explosives and prepared for exploding in Karachi and nowhere else. Surely it was not brought, fully equipped and loaded all the way from the FATA area with explosives, projectiles, wires, fuses, triggers and remote control or suicide oriented equipment. It was indeed prepared in Karachi. All such vehicles and suicide bombers are finally prepared and equipped in our cities, not in FATA. Houses are previously rented for this purpose and rooms are taken in hotels. Whether the vehicle was prepared in a workshop or a house, the neighbours must have noticed some strange or at least dubious movements around and/or inside the workshop or house. The same applies to other terrorists and suicide attackers in Karachi, Lahore, Rawalpindi, Peshawar, Quetta and other cities of Pakistan. The vehicles and suicide bombers and assault teams are all assembled and prepared in our own neighborhoods and Mohallas. These then go out and attack Bazaars, shrines establishments, killing innocent men, women and children. If the citizens were vigilant and responsive, such incidents could be prevented. They must report suspicious activity. That is the best, perhaps the only way to finish this menace.

No doubt the fear of reporting to some extent is due to a lack of confidence in the administration and the Police but that confidence will have to be revived for the mutual benefit of all. It is for the Government to revive that confidence by not using the administration and the police for political or private ends. That is the responsibility of the Government of the Day. We have seen the beneficial and positive effects of a depoliticized administration with the

intervention of the Court. It is now the bounden duty of the government to continue with this status and not deflect the administration to its own benefit in preference to the citizen. The Police must also be cleansed of unmerited appointments. We intend to keep an eye on this process and will respond to any genuine complaint.

130. The morale of the police is low. Even honest Policemen are demoralized. They are caught between the devil and the deep blue sea. On the one hand, they may be punished for doing their duty if it runs counter to the political objectives of the party in power and on the other, they are afraid of being shot by the persons they have apprehended or their associates. They are conscious of the fact that so many policemen who took part in the operations of 1992 and 1996 have disappeared or have been eliminated. It is necessary, therefore, for the Police to fully and impartially investigate and find out the circumstances of each such disappearance/elimination and provide a detailed report to this Court in respect thereof.

131. Thus, from the material produced before the Court and the information conveyed during hearing of the case by the ISI followed by intensified arguments advanced by the learned counsel appearing for the Provincial and Federal Governments, learned Attorney General, learned Advocate General, learned counsel for the Province of Sindh and learned counsel for the interveners, the Inspector General of Police, the DG Rangers, the Presidents of the Sindh High Court Bar Association and the Karachi Bar Association as well as all others, we –

Observe that violence in Karachi during the current year and in the past is not ethnic alone but it is also a turf war between different groups having economic, socio-politico interest to strengthen their position/aggrandizement, based on the phenomenon of tit for tat with political, moral and financial

support or endorsement of the political parties, who are claiming their representation on behalf of public of Karachi including components and non-components of Provincial Government/ Executive;

A N D

Declare that recent violence in Karachi represents unimaginable brutalities, bloodshed, kidnapping and throwing away dead bodies and torsos in bags; as illustration, indicating toll of 306 lives in one month; detection of torture cells video of which has been produced; receiving *bhatta* to strengthen the ranks of one group against the other; grabbing land; drug mafia etc., destroying moveable and immovable properties of the citizens, establishes that the Fundamental Rights of the citizens enshrined in Articles 9,14,15,18 and 24 of the Constitution have not been protected/enforced by the Provincial Government/Executive authority and this failure has made the lives and properties of the citizens insecure, inasmuch as Federal Government/ Executive has also not protected Province of Sindh against internal disturbance, thus the government of Province of Sindh, on this account, too, failed to carry out functions in accordance with the provisions of the Constitution [Article 148(3)];

A N D

Further observe that both the Provincial and Federal Governments/Executives have to find out solutions of the present scenario as per provisions of the Constitution;

A N D

Further observe that to come out of instant grave situation of law and order in Karachi, police force being principal law enforcing agency has to be de-politicized and strengthened so that they could, with full commitment, dedication, zeal and zest, perform its bounden duty, and unless there is a de-politicized police, the situation of law and order is likely to become more aggravated, no sooner the assistance of Rangers is withdrawn;

A N D

We apprehend that any further failure to protect the lives and property of the citizens is likely to cause unprecedented disaster, therefore, all efforts should be made to avoid the same in the interest of the nation and country, which is supreme as per the mandate of the Constitution and the law;

A N D

Further observe that in respect of banning any political party including MQM, against whom all the interveners mostly had voiced complaints is not within domain of the Court at this stage as in terms of Article 17(2) of the Constitution every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and it is the responsibility of the Federal Government to act under Article 17 for action against any party violating this Article. The Court will only review such issue at any other appropriate stage or proceeding if then necessary to determine whether the actions of any party are directly or indirectly prejudicial to the sovereignty or integrity of Pakistan within the meaning of the Article. The Court will remain, in appropriate proceedings, the ultimate arbiter of this question but will not allow any government to avoid its duty under the law and the Constitution;

A N D

Further observe that as per material brought before the Court, there are criminals who have succeeded in making their ways in political parties notwithstanding whether they are components or non-components of government, and are getting political and financial support allegedly from such parties, therefore, the political parties should denounce their affiliation with them in the interest of the country and democratic set up and they should not allow them to use their names as militant outfits of the political parties. Failure to do so may entail consequences of a

penal nature against the party or person responsible, whether in office or not;

A N D

Further observe that to avoid political polarization and to break the cycle of ethnic strife and turf war, boundaries of administrative units like police stations, revenue estates, etc., ought to be altered so that the members of different communities may live together in peace and harmony, instead of allowing various groups to claim that particular areas belong to them and declaring certain areas as NO GO Areas under their fearful influence. Subsequent thereto, on similar considerations, in view of relevant laws, delimitation of different constituencies has also to be undertaken with the same object and purpose, particularly to make Karachi, which is the hub of economic and commercial activities and also the face of Pakistan, a peaceful city in the near future. The Election Commission of Pakistan may also initiate the process on its own in this behalf;

A N D

Further observe that equal chances should be provided to different communities of Karachi to participate in economic and commercial activities instead of confining the same to different political groups on the basis of parochial, racial, tribal, sectarian, partisan and provincial prejudices;

A N D

Further observe that Karachi is full of arms and ammunition of prohibited and non-prohibited bores including licensed and illicit, therefore, Karachi has to be cleansed from all kinds of weapons by adhering to the laws available on the subject, and if need be, by promulgating new legislation. All licensed arms genuinely required for security concerns and personal safety may be retained but these must also be registered with NADRA. All other licenses, where such need cannot be shown, or where multiple licenses have been issued to the same individual (as distinct from security firms) if not justified, or which are used for

unnecessary display at ceremonies or elsewhere for aerial firing should be cancelled after summary and expeditious proceedings in accordance with law;

A N D

Further observe that there is a need for a fresh comprehensive law to eliminate and punish land grabbers and encroachers. This is one of Karachi's greatest problems. The Court has already dealt with some cases Suo Motu and otherwise, and will continue to do so whenever necessary or appropriate. Sometimes this Court is the last hope of the citizens or a community which turns to it for redress when all other avenues are denied to them. But overall it is the duty of both Governments to formulate such law and initiate it in the appropriate assembly; and thereafter to implement it fully without showing any favour or immunity to any person whether a political favourite, ally or for any other personal or party consideration;

A N D

Further reiterate that monitoring of the criminal cases should take place in view of the observations made in the case of Sheikh Liaqat Hussain (*supra*). Besides, the appointments of the Presiding Officers of the Anti-Terrorism Courts should also not be delayed for any reason, as we experienced during the hearing of the case that those appointments were delayed for a period of nearly two years. However, under the direction issued by the Court, the Presiding Officers were appointed and we expect that such delays shall not be allowed to occur in future;

A N D

We observe that since innocent citizens have lost their lives, number of which comes to 1310 during the current year. Similarly, a good number of citizens have been injured and/or lost their valuable property, both movable and immovable, therefore, provincial government/executive shall constitute a Commission to assess their losses and on its recommendation,

compensation must be paid to the sufferers without partisan consideration, as early as possible;

A N D

We direct that there must be no 'NO GO AREAS' at all in Karachi. If any is found or credibly reported to the Court the Police and, if required by the Provincial Government, the Rangers shall take strong and decisive action to eliminate it. Moreover, if such an area is proved to exist to the satisfaction of the Court, we may require the IGP himself, and if necessary the DG Rangers also, to personally lead the operation into such areas. The Police and Rangers are therefore, expected to conduct the on-going operation across the board without showing any favour to any one and without being influenced from any quarter, be it political or otherwise. In case they are asked to obey any illegal orders, or to show leniency to any criminal, it will be their duty to bring it to the notice of the Court and appropriate orders will be passed accordingly;

A N D

Further direct that an independent and a depoliticized investigation agency be deputed to conduct investigation of cases fairly, honestly and without being influenced in any manner. Similarly, the prosecution agency comprising competent prosecutors and the Provincial Government/Executive must provide protection to the witnesses so that they may depose against the perpetrators of crimes without any fear, enabling the courts to decide cases against them in accordance with law. The prosecutors, particularly for the Anti-Terrorism Courts should be appointed in a highly transparent manner according to the Constitution and the law. Appointments of prosecutors are required to be undertaken without any political whims and considerations;

A N D

Further direct that DG NADRA and the IGP will set up a special joint cell with specialized officials and experts along with

sufficient manpower to establish several teams to visit on the spot and identify illegal foreigners so that they may be dealt with strictly in accordance with law after a proper hearing and opportunity to present proof of their citizenship. They should attempt to conclude this exercise preferably in one year;

A N D

Further direct that the IGP shall collect the record and facts about the disappearance or elimination of all police and other officials who took part in the Karachi operations of 1992 and 1996 or were witnesses in ethnic or related crimes and present a report to the Court within the next one month also showing whether their families were compensated or not;

A N D

Further direct that the Provincial Government shall place on record of the Court copies of all judicial inquiries instituted in the matter of law and order in Karachi since 1985. These shall be retained for perusal and for any necessary action or appraisal of the situation at any time in the future;

A N D

Further observe that the Provincial Government/Executive shall ensure smooth running of economic and commercial activities and shall take necessary steps that the protection is provided against uncalled for and illegal shutter down and strikes to the businessmen. During arguments, it was also brought to our notice that due to illegal strikes and shutter down calls, the normal life of citizens of Karachi is paralyzed, and allegedly it causes loss of billions of rupees in a day, therefore, it is observed that the Government and the political parties shall evolve a respectable way out to avoid such a situation in future;

A N D

Finally, it is directed that a Committee be constituted by the Provincial Government/Executive, headed by the Chief Justice of

Sindh High Court, who shall be assisted by the Chief Secretary, the heads of the security agencies i.e. para-military organizations and I.G. Police, to supervise and ensure that law enforcement agencies take action indiscriminately, across the board against the perpetrators involved in causing disturbances in Karachi. The Chief Justice shall convene the meeting at least once in a month to review the implementation of this judgment and copy of the proceedings shall be transmitted to the Registrar of this Court for our perusal and passing appropriate orders at a later stage, if need be.

132. In view of above declarations/observations, instant *Suo Motu* proceedings as well as Constitution Petition No. 61 of 2011 under Article 184(3) stand disposed of while parting with the saying of James Bryce that *“Our country is not the only thing to which we owe our allegiance. It is also owed to justice and to humanity. Patriotism consists not in waving the flag, but in striving that our country shall be righteous as well as strong.”*

Iftikhar Muhammad Chaudhry, CJ

Anwar Zaheer Jamali, J.

Sarmad Jalal Osmany, J.

Amir Hani Muslim, J.

Ghulam Rabbani, J.

Announced in open Court on 06th October, 2011

CHIEF JUSTICE

APPROVED FOR REPORTING