

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

Present:

**Mr. Justice Iftikhar Muhammad Chaudhry, CJ.**  
**Mr. Justice Jawwad S. Khawaja**  
**Mr. Justice Khilji Arif Hussain**

**CONSTITUTION PETITION NO.77 OF 2010**  
(President Balochistan High Court Bar Association  
vs.  
Federation of Pakistan, etc.

**AND**

**H.R.C. NO.13124-P/2011**  
(Application by Altaf Hassan Qureshi)

**AND**

**H.R.C. No. 40403-P/2011**  
(Application by Syed Majeed Zaidi)

**AND**

**H.R.C. No. 40220-G/2011**  
(News clipping)

**AND**

**H. R. C. No. 43103-B/2011**  
(Application by Haji Abdul Qayyum)

**AND**

**H. R. C. No. 17712-B/2012**  
(Application by Misbah Batool for recovery  
of her husband, Asif, FC Personnel)

**AND**

**H.R.C. 27045-K & 27619-G/12**  
(Abduction of Dr. Ghulam Rasool)

**AND**

**H. R. C. No. 30044-B/2012**  
(Anonymous application against Police Officers)

**AND**

**H. R. C. No. 30047-G/2012**  
(Application of Ms Zuhra Yousif,  
Chairperson HRCP)

**AND**

**H. R. C. No. 30711-B/2012**  
(Application for recovery of Habibullah Mujahid)

**AND**

**H. R. C. No. 30713-B/2012**  
(Application of Syed Mumtaz Ahmed Shah,  
Chief Editor, Daily Mashriq)

**AND**

**C.M.A. No. 42-43 OF 2012.**  
(Enquiry report of Kharootabad Incident)

**AND**

**C.M.A. NO.178-Q OF 2012**  
(Appeal for missing persons cases of Balochistan)

**AND**

**C.M.A. NO. 219-Q OF 2012.**  
(Application by Maj. (R) Nadir Ali)

**AND**

**C.M.A. NO. 431-Q OF 2012.**  
(Target Killing of Mr. Zulfiqar Naqvi, ASJ)

**AND**

**CMA 516-Q/2012**  
(Application by Mr. Nasrullah Baloch)

For the petitioner(s)

Syed Ayyaz Zahoor, Sr. ASC  
Mr. Hadi Shakeel Ahmed, ASC  
Mr. M. Qahir Shah, ASC  
Mr. Kamran Murtaza, ASC  
Mr. Baz Muhammad Kakar, ASC  
Malik Zahoor Shahwani, ASC/  
President Balochistan High Court Bar.  
Mr. Sajid Tareen, ASC/Sr. Vice President

For SCBAP:

Mr. Yasin Azad, ASC/President  
Mr. Jehanzeb Jadoon ASC/V.President and  
M/s Khalid Kubdani ASC, Sanauallah Ababki, ASC,  
Bashir Zahir, ASC Members Executive

For the Applicants/ :  
Complainants:

Mr. Nasrullah Baloch, (In CMA 178 & 516-Q/12)  
Ms. Tehniat Zahra, Adv./Member PIHRO  
(in CMA 3966/2012)  
Dur Khatoon, Khairun Nisa, Mahah Bibi, Bibi  
Ayesha, Bibi Raheem, Ms Javeriya, Bibi Fatima,

Gohar Khatoon, Asia Bibi, Saleem Khatoon, Sajida, Hurmat Khatoon, Ganj Bibi, Said Bibi, Bibi Haseena, Pervez Ahmed, M. Alam, Zahoor, M. Murad, Jehanzeb, Diva & Haji Naseer Ahmed.

For PMA: Dr. Sultan Tareen, Dr. Saadat Khan, and Dr. Shams Kakar,  
(applicants in CMA 524-Q/12)

***Amicus Curiae:*** Mr. M. Zafar, Sr.ASC  
Mr. Rasheed A. Rizvi, Sr. ASC  
Mr. Munir A. Malik, Sr. ASC  
Mr. Salman Akram Raja, ASC

For Fed. of Pakistan: Malik Sikandar Khan, DAG

For M/o Interior: Nemo

For M/o Defence: Commander Hussain Shahbaz, Director (L)

For Govt. of Balochistan: Mr. Amanullah Kanrani, A.G.  
Mr. Amanullah Tarin, Addl. AG  
Mr. Babar Yaqool Fateh Muhammad, Chief Secy.  
Mr. Asmattullah Kakar, Secretary Health  
Mr. Hassan Iqbal, Special Secretary, Home  
Mr. Tarik Umer Khattab, IGP  
Mr. Kambar Dashti, Commissioner Quetta  
Mir Zubair Mehmood, CCPO, Quetta.  
Mr. Hamid Shakeel, DIG (Investigation)

For IG FC: Mr. S.M.Zafar, Sr. ASC  
Mr. Obaidullah Khattak, IG, FC  
Major Sohail, HQ, FC

For FBR: Dr. M. Shamim Rana, ASC

For Mobile Operators: Nemo.

For PTA : Nemo.

Dates of hearing : 08<sup>th</sup> to 12<sup>th</sup> October, 2012.  
(current session at Quetta)

### **ORDER**

**Iftikhar Muhammad Chaudhry, CJ.**— The petitioner High Court Bar Association through its President on having witnessed repeated incidents of target killing, kidnapping, abduction for ransom and forced disappearance of the members of Bars, instituted instant petition as the lawyers' lives and properties were not secure. Detail of some of the advocates were noted as follows:

*"That some of the instances relating to the advocates are given below:*

*On 15<sup>th</sup> July, 2010, a senior advocate Mr. Habib Jalib was brutally murdered in front of his house.*

*On 7<sup>th</sup> September, 2010, Mr. Zaman Marri was murdered and his dead body was recovered from Mastung area.*

*On 14<sup>th</sup> September, 2010, three persons were abducted by the law enforcing agencies.*

*On 24<sup>th</sup> September, 2010, dead body of Mr. Sher Ali Kurd Advocate was recovered from Khuzdar area, who was abducted on 21<sup>st</sup> September, 2010 from Quetta.*

*On 21<sup>st</sup> August, 2010, dead bodies of Muhammad Umer and Arz Muhammad were recovered from Quetta.*

*There is not a day, when the print and electronic media do not report the incidents of target killing, kidnapping, abduction for ransom etc. Some of the newspapers, readily available, are attached herewith for the perusal of this Hon'ble Court."*

The lawyers apprehended serious threat not only to their lives and properties but also of the people of Balochistan as they had been continuously watching in the electronic media and reading in the newspapers about such incidents. Being educated and members of civilized society they resorted to peaceful demonstration etc. but the incidents of target killing, kidnapping, abduction for ransom were continuously happening and increasing day by day, therefore, to enforce the fundamental rights directions were sought to the respondents to protect the lives and properties of the people of Balochistan and take all such steps on account of which target killing, kidnapping, abduction for ransom etc. be controlled for the protection of their fundamental right.

2. At the initial stage Hadi Shakeel Ahmad, President of Balochistan High Court Bar Association stated that in the Province of Balochistan law & order situation is becoming bad to worst every passing day; virtually, according to him reaching unprecedented heights; the electric and gas installations, roads, railway tracks,

bridges etc. have been left no more safe with ever increasing incidents of rioting, looting, firing, abduction and explosion at the hands of notorious elements and no one including the officers and the members of the law enforcing agencies can safely undertake journey amid such an alarming situation. He also informed that during pendency of the petition Agha Zahid advocate was abducted from Quetta whereas his brother Agha Nadir was earlier abducted. On hue and cry of his abduction Agha Nadir was released and his brother Agha Zahid was abducted. Similarly, Saleem Akhtar and Tahir, advocates while travelling in between Quetta to Sibi and Dhadar through Bolan Pass were abducted. These incidents, according to him, led to the growing unrest in the legal fraternity and the members of the Bars, but no tangible progress has been made so far.

3. It is interesting to note that Mr. Amanullah Kanrani, learned ASC (now Advocate General of Balochistan) who was present in the Court during hearing of the proceedings on 25<sup>th</sup> February, 2011 informed that few days before high ups of law enforcing agencies like IGP and the Chief Secretary were targeted, fired upon and humiliated. Even Governor of the Province was not spared and attempt was made on his life. Somewhat similar incident took place where the Chief Minister was targeted within Quetta Town. He further added that in another incident D.C. Jhal Magsi and four other officers were abducted and later on released but police officials lost their lives. According to him the situation of law & order is aggravated to such a high level that at times it has become very difficult for the traffic police to stay on Chowks (squares) on roads to control the traffic and for that purpose

minimum three officials armed with rifles were detailed to perform their duty as many officials/police officials have been murdered/targeted. They further stated that people of Balochistan are dismayed because so far no effective step has been taken by the police, administration as well as Federal Government except issuing hollow statements reiterating to deal with the accused person with iron hands but practically taking no effective measures with object to bring about the improvement.

4. It is to be noted that in the replies, the Secretary Home and Tribal Affairs, Provincial Police Officer/IGP and Director General, I.B, D.G. ISI, Ministries of Interior and Defence, Government of Pakistan have not denied about the deteriorating law & order situation in the Province of Balochistan.

5. Learned counsel for the petitioner, time and again during pendency of the petition, have reiterated that indeed it is the primary duty of the of the Provincial and Federal Governments to provide protection to the life, liberty and property of the citizens within terms of Article 9 of the Constitution providing that "no person shall be deprived of life and liberty save in accordance with law" and under Article 24(1) of the Constitution, which envisages that "no person shall be deprived of his life, liberty and property, save in accordance with law".

6. It has also be observed that *prima facie* law enforcing agencies working in the Province seem to be helpless and also there could be no reason to say that the Federal Government is oblivious of such grave situation, prevailing in the Province of Balochistan. It was not less than surprise for us that the Federal Government failed to discharge its duty in terms of Article 148(3) of the Constitution of

Islamic Republic of Pakistan as it should have played its role with the cooperation, coordination and hand in hand with the Provincial Government to control and maintain the law & order in the Province. Inasmuch as vide order dated 25.02.2011, the Attorney General was asked to take up this matter with the Prime Minister and explain him the situation of Balochistan and seek his intervention etc.

7. It may not be out of place to note that as per the contents of the orders, we were informed on 2<sup>nd</sup> March, 2011 by Mr. Tariq Mehmood, Director ISI that Law Ministry has been briefed in respect of the view point of ISI in a high profile meeting held in the office of Secretary Interior and the Attorney General was aware of the same. Not only this, on said date of hearing (2<sup>nd</sup> March 2011) once again it was observed that the situation of law & order required to be tackled in accordance with the Constitution and law as it is the duty of the Provincial Government and the Federal Government to protect the life and property of the citizens in terms of Articles 9 & 24 (1) of the Constitution. Therefore, for ensuring enforcement of this fundamental right guaranteed by the Constitution, both the Governments i.e. Provincial and Federal Governments are duty bound to protect life and property of citizens without any discrimination, the local administration has to undertake the remedial measures for due implementation and to enable the Federal Government to provide all assistance to the Provincial Government. It was further observed that immediate steps are required to be taken to do the needful. The Chief Secretary of the Province was directed to suggest measures to the Federal Government as well as to this Court so we may pass

appropriate judicial order to ensure the protection of fundamental rights guaranteed to the citizens of Province of Balochistan. The Chief Secretary GOB placed on record from time to time the facts and figures in respect of the recovery of mutilated dead bodies, which were found lying in different parts of the Province in abandoned places, numbers of the missing persons, victim of target killings/sectarian killing, number of persons abducted for ransom, numbers of law enforcing agencies personnel including FC, police, levies etc. who also lost their lives. Similarly the number of the wounded persons both civilian and the members of law enforcing agencies were brought on record.

8. On passing orders from time to time for effecting the recovery of missing persons who, though, had not been produced in the Court but at their own surfaced and came to their homes, details whereof are available on record.

9. The Court directed for the registration of the cases in respect of recovery of mutilated dead bodies and missing persons. Although in the areas which are under control of police and levies for the purpose of maintaining law & order, cases were registered in respect of categories of the commission of crimes noted hereinabove but without any positive investigational results. The hearing of the case took place from time to time and upto now about 70 hearings have taken place and in the meanwhile besides this petition, 162 Civil Misc. Applications have been registered, most of which have been moved by different persons, claiming about the non recovery of missing persons.



10. It is to be noted that as far as the episode of the missing persons is concerned, it has become a dilemma as their nears and dears are running from pillar to post spending their energy despite poverty and helplessness but without any success, which aggravated the mistrust not only on law enforcing agencies but also on civil administration. Except, which we noticed at the earlier stage of the effective hearings of the case as per the record, presently more than 100 persons are still missing, whereas according to claim of Nasrullah Baloch, who has raised the voice for the missing persons, their numbers are much higher.

11. The situation of law & order has turned worsened day by day on account of which anarchy or unrest is prevailing throughout in the Province, although there is democratic Provincial Government headed by Chief Minister and its Cabinet, who are about 50 alongwith five Advisors, one Speaker and one Deputy Speaker out of total strength of 65 members of Provincial Assembly, but no one has come forward with a solution of the situation, which is unfortunately prevailing in the Province.

12. In the meanwhile another episode of sectarian killing started, which has intensified the situation of law & order. According to the reports submitted by the administration, following numbers of the sectarian killing has been taken placed during March to August 2012 on record through CMA 445-Q/2012 by the Home and Tribal Affairs Department on 05.09.2012: -

**SUMMARY OF THE TARGET AND SECTARIAN KILLINGS  
FROM MARCH TO AUGUST, 2012**

Total	Type of Incident						
	Attack on Hazara	Attack on Sunni including	Attacks on FC	Attacks on Police	Other Shia	Settlers Killing	Others

	Shia	Ulmas					
No. of Incident	21	06	33	26	07	16	16
No. of persons Killed	46	20	33 (7 Civilians)	37	14	22	19
No. of persons injured	36	67	83	50	08	27	63

It is to be noted that besides the brutal sectarian killing, the target killing including the killing of settlers or the persons who came to Balochistan for the purpose of earning their livelihood increases manifold. There is no denial of the fact that in repeated incidents the culprits on having get stopped the passenger bus, checked the I.D. Cards, singled out all them, who were found not residents of any of the cities of Balochistan and killed them brutally by making them to stand in front of killing squads. Similarly, there is no end of incidents, where people of F.C. as well as police and Levies were killed in the same manner brutally. The criminals are free to move anywhere in all parts of the Province without any hindrance and while riding the motorcycles, they use to kill the people but uptil now not a single accused actually involved in the commission of such target killings has been arrested. Similarly, the law enforcing agencies including Police and the Levies are not aware about the killers who had thrown the mutilated bodies of the citizens in different parts of the Province. Failure to maintain the law & order situation by the Police and FC, being the para-military force is visible throughout in the Province though under the law and the Constitution they have to remain within the control and perform duty as envisaged under the law but it appears that they are free to

do, whatever they like. In this behalf narration of following incidents is necessary.

(a) Reportedly an incident took place in the area of Totak on night between 17<sup>th</sup> and 18<sup>th</sup> February, 2011 wherein 30 persons were picked up by the F.C. in presence of Azam Bazai, Tehsildar and their properties were also set on fire. However, later on 14 persons were released but 16 sixteen persons were still missing. The explanation/reply was sought from the Tehsildar but he posed that he was totally unaware of the incident but when confronted, he could not deny the happening of incident and started making unnecessary statements. It was also informed to us that there had been meetings between Sardar Ahmad Ali and his sons in the office of then Deputy Commissioner Khuzdar (Dr. Parvez Ahmed). According to Brig. Shehzad, DIG, FC the incident took place but it was the exchange of fire between miscreants and the troops. Whereas, the learned counsel for the petitioner claimed that 30 persons were arrested out of whom initially 26 were released and 9 are in the custody of FC. Breakthrough of which is  $4+5=9$  as five more persons were arrested after the release of 26 persons including three children of Sardar Ali Muhammad Qalandarani.

(b) Similarly, in another incident, in which one Ali Hassan Mengal son of Khan Muhammad was picked up on 04.11.2011 from Wadd. His son Gohar Ali appeared before the Court and stated that his father has been picked up by the FC and he knows the SHO namely Jumma Khan in

whose presence his father was picked up. He also named Major Tahir Naveed and Major Nadeem. On the direction of this Court, case was registered. Gohar Ali stated before this Court that he was called in the FC Headquarters Khuzdar, where he was asked that if he will not pursue the matter and cooperate with them, his father would be released but till now his father has not been recovered.

- (c) Likewise in respect of missing of Abdul Malik son of Abdul Khalik, allegations were on FC for taking him away. Inquiry was got conducted by the Sessions Judge Noshki, who in his report concluded as follows: -

*"FC is in facta Para Military Force, if it actually involved in kidnapping/arresting of said missing persons as stated in the statement recorded by the witnesses then it is highly illegal and excess of authority. Police is authorized to arrest any person, who is involved in crime, however, it is necessary to arrest a culprit during searching by FC he may be handed over for interrogation. It is also duty of the abductee family in such cases, when the police is not going to lodge FIR, they should approach the competent court of law for lodging the FIR."*

- (d) Similarly, FIR No.36 & 38 of 2012 were lodged wherein it was recorded that FC personnel took away Mehran Baloch along with two persons namely Muhammad Khan Mari and Muhammad Nabi. The incident was witnessed by two traffic police officials (ASI Amjad Hussain and Constable Muhammad Farooq), who stated that all of them were picked up in FC vehicle near Serena Hotel and that vehicle went towards FC Headquarters. Brig.Shehzad undertook

before the Court that he will produce these missing persons, however, requested that this fact may not write down in the order and time be given to him to contact the concerned officers. We issued directions time and again to police and FC, inasmuch as, at one stage Brig. Shehzad DIG FC sought time from the Court giving the impression that he was in a position to make a statement about their whereabouts but he did not turn back immediately as such this fact was incorporated in the order dated 11.05.2012. Subsequent thereto, at one stage the police officials succeeded in getting the footage of CCTV, which was displayed in the Court Room on multimedia in the presence of I.G. FC on 14.05.2012. However, on 01.06.2012 it was sadly reported that on 28.05.2012 three dead bodies packed in gunny bags were found lying in the area of PS Shalkot. IG, Police submitted reporting CMA 440-Q/2012 wherein he has involved the FC with the allegation that FC people are responsible as they pick up the people from time to time. According to the report, in most of the FIRs allegations were leveled against FC for kidnapping the people.

- (e) In the matter of Shabbir Ahmad Sumalani, who was detained in Brewery Road Police Station along with another person namely Qari Naseer Ahmed the allegation was against the FC personnel that they were taken into custody immediately after their release on 12.10.2009 in presence of Amir Khan Dasti, the then SHO P.S. Brewery. According to the version of Saleem Khatoon, mother of Shabbir

Sumalani, the fact of picking up these two persons in front of Police Station was brought in to the notice of then SHO, who confirmed the version but could not show any entry in this regard. A report was submitted wherein names of some MI officials were mentioned. The said names were also disclosed to Brig. Shehzad, DIG, FC. Notices were also issued to Shahid Nizam Durrani, the then CCPO Quetta and Abid Nutqani, the then DIG, on whose directions, the above noted persons were detained. In the investigation Shahid Nizam Durrani disclosed the name of one Major Moeen to whom he had handed over the custody of above said missing persons. Despite repeated directions, the investigation team has failed to recover the above named missing persons.

- (f) Likewise in another case allegedly two persons namely Bansra and Kao were forcibly taken away from Dera Bugti by FC and reportedly Kao was handed over to some secret agencies whereas Bansra was taken to Chamman, from where he was allegedly involved in immigration case and he was released after receiving fine from him. He appeared before the Assistant Commissioner, Dera Bugti and recorded statement. Similarly, he also appeared before the Sessions Judge/MIT High Court and confirmed the above fact and also alleged that his brother Kao is in custody of FC in Dera Bugti alongwith so many other persons regarding whom he stated that they were about 80 persons. Col. Arshad Hussain, Commandant Bambore Rifles was named to be responsible for the same. Despite

our direction and cancellation of his leave neither he appeared before this Court nor Kao has been produced.

13. There are so many other allegations on FC for taking away the persons forcibly but few examples have been cited to substantiate that allegations against FC of taking away the persons from different places cannot be over ruled.

14. It may be observed that we have repeatedly demanded from all the law enforcing agencies including FC etc. for the production of missing persons and in this behalf categorical directions were made time and again but the orders of producing them were not carried out by simply denying that missing persons are not in their custody. Contrary to it, there is overwhelming evidence as it has been noted hereinabove, on the basis whereof *prima facie* involvement of FC cannot be over ruled. Inasmuch as on 06.02.2012 Mr. Sadiq Umrani, the Provincial Minister to the GOB disclosed the fact about involvement of FC personnel in killing some of the persons on Floor of the House, whose statement was supported by Haji Ali Madad Jatak during the proceedings of the Provincial Assembly, who while making statement had stated that incident of kidnapping of two persons had been shown by him along with Mr. Zafarullah Zahri, Home Minister and Mr. Younas Mulazai, Provincial Minister and next day when they were coming from Qalat to Quetta, they have found dead bodies of the same. Surprisingly, no action was taken on this report.

15. During hearing of the case learned counsel for the petitioner drawn our attention towards the difficulties of the inhabitants and citizens of Dera Bugti, who belong to different

tribes after the incident of killing of late Nawab Akbar Khan Bugti and because of conflict between the law enforcing agencies and the tribes, no one can visit Dera Bugti without the permission of the Local Administration and Law Enforcing Agencies. More than half of the population has migrated from there. Therefore the Secretary Home was directed to clear all the hindrances and to submit comprehensive reports in this regard. On 03.09.2012 the Court observed that as far as the Constitution and law is concerned, subject to law, it does not prohibit or restrict any citizen to move in any part of the country wherever they intent to stay without any restriction or objection of whatsoever. The Chief Secretary Balochistan on his own stated that he would be submitting report on this issue after his visit to Dera Bugti. The Chief Secretary visited Dera Bugti and prepared a report, which is reproduced herein below: -

- "a) Dera Bugti, as a civil district is dysfunctional. It appears districts heads mostly remain away from the district headquarters or stay conveniently at Sui. For instance, even the SP of the District prefers to live at Sui rather than at Dera Bugti. The result is obvious. Dera Bugti as a District headquarter is no longer providing service to the local people.*
- b) Absenteeism of government employees is across the board and not limited to district headquarters or district heads. The District Accounts Officer did not have any idea of how many government functionaries were drawing salaries from the treasury. Maximum absenteeism appeared on the education side.*
- c) Performance of social sectors like education and health appears abysmal. Clean drinking water is not available. There is hardly any road network in*



*the district. Economic sectors like agriculture and livestock do not have much to show. It is obvious why Dera Bugti is one of the poorest districts in the world in terms of economic and human development.*

- d) The role of PPL and OGDCL etc was discussed at length. While people treated these as providers of employment and facilities, maximum complaints were also against these Companies for alleged irregularities. It is true that these Companies should provide service under corporate social responsibility but this should not absolve the provincial government of its duties towards people of Dera Bugti.*
- e) During the meeting with waderas and notables, everyone stressed that Dera Bugti was not a no go area. However, there is no doubt that security situation is precarious. The road from Sui to Dera Bugti was manned and guarded by the FC. There were check posts on the road but everyone insisted they were meant for intercepting miscreants. Visibility of ordinary vehicles plying on the road was significant. Visit by members of Bar Association may give a more accurate picture. However, for ordinary residents of Dera Bugti there does not appear any problem. There is a general apprehension that members of late Nawab Akbar Bugti's family may not be comfortable in traveling to Dera Bugti. The Waderas of Bugti tribe openly stated that groups traveling with large numbers of armed guards would not be welcome. In my opinion situation is not such where late Nawab Akbar Bugti's family members can settle peacefully in Dera Bugti. For this to happen, the Government will have to create an appropriate environment."*

16. Mrs. Noor Jehan wife of Mr. Talal Akbar Bugti filed CMA No.443-Q of 2012 for declaration of orders passed against Bugti family restricting their movement as null and void. She appeared in person and stated that the administration namely, the FC, MI and ISI are causing hurdles in their movement from Quetta to Dera Bugti and that they have a constitutional right to have permanent abode in the place of their origin where they have got their estate as well as agricultural property and other interests/benefits but after the assassination of Nawab Muhammad Akbar Khan Bugti, they alongwith more than 1,50,000 people are not allowed to enter into the Dera Bugti. A number of times attempts were made by the family members of late Nawab Sahib to go to their native place but they were stopped by the administration. In the meanwhile, a separate Constitution Petition being No.107 of 2012 was filed on behalf of Nawabzada Talal Akbar Bugti for enforcement of fundamental rights of Bugti tribe. The said Constitution Petition was clubbed with the instant case and notice of the same was ordered to be issued. Mr. Amanullah Kanrani, learned Advocate General of Balochistan waived the notice and filed para-wise comments on behalf of the Provincial Government wherein it has been stated that after submission of report by the Chief Secretary as well as order of this Court dated 03.09.2012 passed in this case, nothing was to be added in response to the petition of Talal Akbar Bugti. On 08.09.2012 the Chief Secretary and the Political Agent i.e. Deputy Commissioner, Dera Bugti appeared in Const. Petition No.107/2012 and stated as under: -

- (i) A plan is being prepared to ensure rehabilitation to the IDPs as according to the Deputy Commissioner, it is not possible to ascertain the exact number of such persons

who have migrated from different areas of the district Dera Bugti towards Sindh and Punjab as well as other parts of the country. However, approximately the figure of such persons could be 14000 to 18000. The government has made available funds for their rehabilitation.

- (ii) At present, the district has become dysfunctional for the last many years, therefore, efforts are being made to make all the departments located in Dera Bugti like Education, Health, Law enforcing departments, functional.
- (iii) As there is serious problem of law and order which the government is facing for the time being, therefore, gradually steps are being taken to improve the situation which require some time as being tribal area, the people do have their differences although their number is only to the extent of 20% out of the IDPs but at time they create serious threat to the administration and it becomes difficult to maintain the law and order situation, therefore, the FC is called out to control the situation.
- (iv) The levies have also been made functional and the notables of the area who were using the levies as their personal force had been requested to surrender all these levies men and in the meanwhile about 22/30 people have returned back.
- (v) There is another problem in respect of controlling the land mines etc. which are found spread, off and on, on different areas and with the assistance of the FC and other law enforcing agencies like police and levies, a comprehensive plan shall be prepared.

The Chief Secretary stated that he would be in a position to put up a comprehensive plan about rehabilitation of IDPs etc. in the area of Dera Bugti. He was ordered to place on record the notifications on the basis of which the FC has been called out to maintain the law and other situation. However, no reply has been filed on behalf of

the Federation. The DAG requested for time to file reply and to seek instructions from the concerned quarters. It is pertinent to mention here that right to movement freely throughout the country and to reside and settle any part thereof. Reference can be made to the case of Pakistan Muslim League (N) v. Federation of Pakistan (PLD 2007 SC 642).

17. The proceedings were joined by the notables and the key figures of the Province as a news was published in the newspaper to trace the case of murder of Mir Haqmal Khan Raesani. It is painfully noted that this Youngman, who is nephew of Nawab Aslam Khan Raesani, Chief Minister of Balochistan was mercilessly murdered when he was present in football ground, but up till now despite this Court's clear directions, the authorities have failed to arrest culprits involved.

18. During hearing of this case a CMA No.190-Q/2012 was filed on behalf of Sardar Akhtar Jan Mengal for his impleadment as party in this case. He appeared on 27.09.2012 and addressed the Court contents whereof have been reduced to writing which read as under: -

### سردار اختر مینگل کا عدالت میں بیان مورخہ 27 ستمبر 2012ء

Hon'ble Chief Justice and Judges, first of all let me, on behalf of Balochistan National Party and the people of Balochistan آپ کا شکریہ ادا کرتے ہوئے اس بات کا میرے خیال میں اظہار کروں کہ بلوچستان کی تاریخ میں پہلی بار آج جو پیش ہو رہے ہیں اس سے پہلے ہم ہمیشہ ایک ملزم کی طرح عدالتوں میں پیش ہوتے رہے۔ پہلی مرتبہ ایک پارٹی کی حیثیت سے پیش ہو رہے ہیں۔

Regarding the missing persons issue, serious issue in whole the country, particularly in Balochistan اگر میں صرف مسنگ پرسنز کا یہاں ذکر کروں اور بلوچستان کی problem جو پولیٹیکل ہے اس کو نظر انداز کروں تو میرے خیال میں یہ اس missing persons کے مسئلے کو حل کرنے میں ہمارے لیے مددگار ثابت نہیں ہوگا۔

The root cause of this missing person is the political problem جو 65 سالوں سے بلوچستان میں چل رہی ہیں اور جو چلا آ رہا ہے اگر اس میں نظر نہ دوڑائی جائے اور اس کو نہ دیکھا جائے جو آئے دن بلوچستان میں ہر دور حکومت آئی واش کے طور پر یا کامیجک چینج کے ذریعے اس کو نظر انداز کرتی رہی ہے۔ آج مسئلہ اس حد تک پہنچ گیا ہے کہ ملکی اداروں سے نکل کر باہر کے ممالک کے اداروں تک یہ بات پہنچ چکی ہے اس کا ذمہ دار ہم موجودہ حکومت کو کہیں؟ گزشتہ حکومت کو کہیں؟ جمہوری دور حکومت کو کہیں یا پھر آمروں کے دور حکومت کو کہیں؟ لاپتا افراد کا مسئلہ جناب چیف جسٹس صاحب the first incident in Balochistan happend in 1976, my elder brother Asadullah Mengal was kidnapped along with his friend Ahmed Shah Baloch in Karachi, till now no one knew where he was buried? Who are responsible of his abduction. Being the citizen of this country nobody approach us, higher authorities کہ اس کی قبر کہاں ہے؟ اس کو کس جرم کی سزا ملی؟ اور آج مختلف horses mouths خبریں آ رہی ہیں کہ کوئی کہتا ہے کہ اس کو کشمیر میں نارچہ کر کے دفنایا گیا ہے کوئی کہتا ہے کہ یہیں۔ کتابوں میں بھی تحریر کیا گیا ہے، نارچہ کے بعد ٹھٹھہ کے رستہ میں دفنایا گیا ہے۔ یہ پہلا واقعہ شاید اس کو ہم وہیں یہ روکتے تو آج ہزاروں کی تعداد میں بلوچستان سے غائب ہوئیوالے لاپتا افراد آج ہم یہاں پر ڈکشن نہ کر رہے ہوتے اور شاید اس کو روک بھی سکتے لیکن افسوس کا مقام ہے کہ ہر بار ہمیں تسلیاں دے کر میں خود اس بات کا گواہ ہوں جب 2006ء میں ہم ایک

political movement and in democratic way we were establing for the rights of Balochistan, on 2nd April when we organized political relly in Quetta, on very second day they

گناہوں کا اعتراف نہیں کیا گیا۔ عام معافیوں کا بھی اعلان کیا ہے۔

جناب چیف جسٹس صاحب، آپ خود اس علاقے سے تعلق رکھتے ہیں اس علاقے کی بلوچستان کی بد حالی کا آپ کو بخوبی اندازہ ہے کیا معافیوں سے یا عام معافی سے بلوچستان کا مسئلہ حل ہوا ہے یا کہ حل ہو سکتا ہے۔ میرے خیال میں جن گناہوں کی معافیاں مانگی جا رہی ہیں پہلے تو ہمیں یہ بتایا جائے کہ گناہ گار کون ہے۔ جس کی معافی مانگی جا رہے اور اگر عام معافی کا اعلان کیا جا رہا ہے تو ہم نے کون سا گناہ کیا ہے جو کہ ہم لوگوں کے لیے عام معافی کا اعلان کیا جا رہا ہے۔ ان 65 سالوں میں جو کچھ بلوچستان کے ساتھ ہوا آج پھر ہم کشمیر، فلسطین کی جب بات کرتے ہیں اس سے بدتر حالات آج بلوچستان میں ہیں۔ بد قسمتی یہ رہی ہے کہ اسلام آباد میں بیٹھ کر بلوچستان صرف کوئٹہ، زرنون روڈ، چیف منسٹر ہاؤس اور گورنر ہاؤس ان کو بلوچستان نظر آتا ہے۔ موجودہ جو آپ کی حکومت ہے ان کے کسی ایک منسٹر سے یہ پوچھا جائے کہ انہوں نے بلوچستان کے interior کا کبھی دورہ کیا۔ فیڈرل منسٹر اپنی جگہ۔ جناب چیف جسٹس صاحب! provincial ministers کوئٹہ بلوچستان اسمبلی، سیکرٹریٹ اور چیف منسٹر ہاؤس سے باہر نہیں نکلتے۔ بلوچستان کے مسائل کو اسلام آباد 4x4 فٹ کی map پے دیکھ کر بلوچستان کے فیصلے نہیں کیے جا سکتے اور حقیقی جو نمائندے ہیں بلوچستان کے حقیقی جو قیادت ہے ان کو eliminate کر کے یا تو ان کو راستے سے ہٹا دیا جا رہا ہے یا پولیٹیکل جدوجہد کے ان کے تمام راستے بند کر کے اپنی کمپنی میں manufacture کیے ہوئے artificial قیادت کو سامنے لایا جا رہا ہے اور صرف اس شرط پر کہ جو کچھ بلوچستان کے ساتھ آج کے دن ہو رہا ہے یا ہوا ہے اس پر وہ خاموش بیٹھے رہیں۔ جناب چیف جسٹس صاحب آپ نے کوئٹہ میں بھی کورٹ لگائے اس میں سینکڑوں کی تعداد میں مسنگ پرسن کے لواحقین نے آپ کے سامنے فریادیں پیش کیں اکثر وہ علاقے ہیں بلوچستان کے یا تو وہ کوئٹہ آ ہی نہیں سکتے یا اسلام آباد میں ان کا آنا ناممکن ہے۔ خوف و دہشت اس حد تک پھیلی ہوئی ہے بلوچستان میں کہ ہم جیسے trouble political background رکھنے والے لوگ اپنے علاقوں میں رہ نہیں سکتے۔ ڈیڑھ اسکواڈ خفیہ ایجنسیوں کی سرکردگی میں بنائی گئی ہیں۔ وہی ڈیڑھ اسکواڈ جناب چیف صاحب جو مشرقی پاکستان میں البدر اور اشمس کے نام پر بنائی گئی تھیں۔ اسی طرح کی ڈیڑھ اسکواڈز بلوچ نیشنلسٹ کو eliminate کرنے کیلئے ایجنسیوں کی سربراہی میں جو function کر رہی ہیں۔ کوئی پوچھنے والا نہیں ہے۔ ان کو اسلحہ کے انباروں کے ساتھ وہ دندائے ہوئے پھر رہے ہیں۔ سرکاری رہاگاہوں میں وہ رہائش پزیر ہیں۔ منسٹروں کی گاڑیوں میں ان کے لیے آرمز سپلائی ہوتے ہیں۔ تو ہم اس کے ذمہ دار کس کو کہیں؟ اس بات کا جناب چیف صاحب اندازہ خود لگا سکتے ہیں کہ اس بلوچستان جو انفراسٹرکچر سے محروم ہے جب کسی ماں اور باپ کو

اخبار میں یا TV کی سلائیڈ میں یہ خبر ملتی ہے کہ کوئٹہ کے ہسپتال میں ایک مسخ شدہ لاش لائی گئی ہے جس کی پہچان مشکل ہے، منگ پر سنز کے لواحقین آ کر اس کی شناخت کریں اس عالم کا ہم اس لمحے کا ہم سوچیں۔

جناب چیف صاحب وہ ماں جو تربت جیسے علاقے سے 12 گھنٹے کا سفر کر کے کوئٹہ کے مردہ خانے میں جب پہنچتی ہے۔ ان آہوں سسکیوں کے ساتھ اس امید کے ساتھ نہیں کہ اسکا بیٹا اس کو زندہ سلامت اس کو ملے گا۔ صرف اس کی لاش حاصل کرنے کے لیے جب وہ وہاں پہنچتی ہے تو دیکھتی ہے کہ نہیں یہ کسی اور بد بخت کے جگر کا ٹکڑا ہے اور وہ اسی آس اور امید کے ساتھ پھر اپنے گھر میں جا کر انتظار میں بیٹھ جاتی ہے کہ اس کے بیٹے یا اس کے پیارے کی لاش کب اسکو ملے گی جناب چیف صاحب کہتے ہیں کہ نا اُمیدی گناہ ہے۔

حقیقت میں دیکھا جائے تو ہم نے اس ملک کے تمام اداروں کو آزما کر دیکھ لیا ہے اور اب ان اداروں پر امید رکھنا میں سمجھتا ہوں میں اسکو گناہ کبیرہ سمجھتا ہوں امید اگر ہمیں منگ پر سنز کے حوالے سے کیونکہ کہ بلوچستان کا تو یہ ایک پولیٹیکل ایشو ہے اور میرے خیال میں اس پولیٹیکل ایشو کو ہم نہ یہاں پر بحث کر سکتے ہیں اور اس کے حل کی طرف صرف ہم اپنی تجاویز دے سکتے ہیں۔ تو اس پولیٹیکل ایشو کو حل کرنے کے لئے چند ایک confidence building measures ہمیں لینے ہوں گے۔ سب سے پہلا منگ پر سنز کو بازیاب کرایا جائے۔ اگر ان کو اس ملک کا شہری سمجھا جاتا ہے تو اس میں ملوث ان افراد کو قانون کے کٹہرے میں لایا جائے اور قانون کے مطابق اگر انھوں نے جرم کیا ہے تو آئین کے مطابق وہ ایک مجرم ثابت ہوتے ہیں اس آئین کی ہم بات کر رہے ہیں جس آئین کے تحت اس پارلیمنٹ میں بیٹھے ہوئے، اس ہاؤس میں بیٹھے ہوئے، GHQ میں بیٹھے ہوئے تمام نے اس کا حلف اٹھایا ہوا ہے۔ اس آئین کے تحت ان کو سزا دی جائے۔ مسخ شدہ جو ساڑھے چار سو کے قریب جو مسخ شدہ لاشیں ہمیں ملی ہیں وہ کسی سونامی یا زلزلے کے نتیجے میں نہیں دی ہیں ان کے جسموں پر تشدد کے نشان ہیں اور تشدد کسی فرد کی طرف سے نہیں ہوئے بلکہ کچھ اگلوانے کے لیے ان کی طرف سے کیا گیا اور آخر میں جب ان کا کام مکمل ہو جاتا ہے تو ان کے سینے، انکی پیشانی پر گولی مار دی جاتی ہے تو ان مسخ شدہ لاشوں کے ذمہ داروں کو سزا دی جائے۔ ٹارگٹ کلنگ کے نتیجے میں چاہے وہ بلوچ ہوں چاہے وہ ہزارہ قوم سے ہوں چاہے وہ settlers ہوں وہاں رہنے والے ان کو قانون کے کٹہرے میں لایا جائے اگر انہوں نے گناہ کیا ہے ان کو بھی سزا دی جائے۔ نواب اکبر خان بگٹی جناب چیف جسٹس صاحب یہ وہ ڈیرہ بگٹی تھا جہاں پر ایک سردار تھا وہاں پر امن وامان تھا آج سرکار نے اٹھارہ سرداروں کو پگڑیاں پہنائی وہاں پر اٹھارہ سردار بنائے ہیں اور وہ ڈیرہ بگٹی آج اس حال میں ہے کہ وہاں پر بگٹی کی اولاد اس کے حقیقی وارث اس کی قبر پر فاتحہ پڑھنے کے لیے نہیں جاسکتے۔ ان کے قاتلوں و حبیب جالب اور دیگر جو ٹارگٹ کلنگ کے نتیجے میں لوگ شہید کیے گئے ہیں ان کے قاتلوں کو

سزا دی جائے قانون کے کٹہرے میں لا کر قانون کے مطابق۔ وہ علاقے جوان آپریشن کے نتیجے میں لوگ نقل مکانی کر گئے دیگر علاقوں میں در بدر ہیں۔ ان کی آباد کاری کے احکامات کیے جائیں۔ جناب چیف جسٹس صاحب تو پھر جو ہم پر الزام لگایا جا رہا ہے کہ یہ کسی سے بات کرنے کے لیے تیار نہیں تو پھر کوئی بات بن سکتی ہے بات کرنے کے لیے۔ بغیر اس کے جناب چیف جسٹس صاحب معافیاں مانگنا، packages دینا تراشیم کرنا، بلوچستان کا مسئلہ نہ پہلے اس طرح حل ہوا ہے نہ اب ہوگا اور مزید خرابی کی طرح یہ چلا جائے گا اگر حکمرانوں نے یہ فیصلہ کیا ہوا ہے کہ بلوچستان کے حالات خرابی کی طرف جائیں تو چیف جسٹس صاحب جہز ل پرویز مشرف کے دور میں یہ کہا جاتا ہے کہ تین سردار ہیں۔

یہ مسخ شدہ لاشیں ہیں جناب چیف جسٹس صاحب! یہ کسی سردار کے بیٹی کی نہیں ہیں یہ جو مسنگ پرسنز ہیں یہ کسی نواب کی اولاد نہیں ہیں، یہ پولیٹیکل ورکرز کچھ ایسے ہیں جو اپنے ماں باپ کے اکیلے سہارا تھے آج ان کی دنیا تک اجڑ گئی ہے اگر حکمرانوں نے یہ فیصلہ کیا ہے کہ لاشوں کے انبار سے بلوچستان کے مسائل حل کر لیں تو میرا خیال ہے کہ کیوں نہ ہم ایک رائے پر آجائیں۔ why should not we divorce peacefully rather than a bloody divorce یہی اس کا حل ہو سکتا ہے۔ جناب چیف جسٹس صاحب! میں آپ کا شکریہ ادا کروں گا اہل بلوچستان کی طرف سے اور ان ماؤں بہنوں کے ان آنسوؤں کی ان کی صداؤں کو آپ نے سنا اور آپ تک پہنچایا۔

19. He had also filed a statement in writing, in which he also shown confidence upon Supreme Court and stated that they are still hopeful that this Court since has already taken action to minimize the alarming situation in the Province of Balochistan. In his written statement he raised following points for resolving by the Provincial Government:

- (1) All covert and overt military operations against the Baloch should immediately be suspended.
- (2) All missing persons should be procured before a court of law.
- (3) All proxy death squads operating under the supervision of Inter Services Intelligence (ISI) and Military Intelligence (MI) should be disbanded.



- (4) Baloch political parties should be allowed to function and resume their political activities without any interference from intelligence agencies.
- (5) Persons responsible for inhuman torture, killing and dumping of dead bodies of the Baloch political leaders and activists should be brought to justice.
- (6) Measures should be taken for the rehabilitation of thousands of displaced Baloch living in appalling condition.

In the end of his statement he requested that directions may be made to solve such burning issues through negotiations by and dialogue either the leadership of Baloch in order to curtail further bloodshed of innocent persons. The Chief Secretary, Government of Balochistan was directed to convey above statement to President, Prime Minister, etc., for filing of their response. The Chief Secretary conveyed the contents of the order dated 27.09.2012 a meeting was held, in one Para of the minutes of the said meeting, a conditional statement had been made to the effect that "... .. the concerns, if any, of the inhabitants of Balochistan ... .. " will be addressed, which, *prima facie*, seems to be incorrect, inasmuch as on the basis of the orders passed by this Court from time to time during hearing of the case, one feels no difficulty in concluding that the inhabitants of Balochistan do have grave concerns about the law and order situation prevailing over there. However, reaction submitted by the Federal Government is reproduced herein below: -

"The measures which has been suggested by Sardar Akhtar Jan Mengal in a statement before this Hon'ble Court for building a conducive atmosphere for the Balochistan reconciliation process as claim by him are answered hereunder after consultation with the concerned authorities as desired vide order dated 27<sup>th</sup> September 2012, with the observation that the government is on record making statement that the genuine concerns of any person irrespective of the fact he or she, is a resident of

Balochistan, must be met so as to bring harmony and peace in a coexisting living of all citizen of Pakistan.

- (i) No covert and overt military operation is being carried out in Balochistan by the armed forces.
- (ii) No person alleged to be missing is in the custody or under detention of any law enforcing authorities or any other agency of Pakistan. Despite this all out efforts are being made to find out the whereabouts of the persons who are alleged to be missing. In this regard detailed statements and affidavit has already been filed on record of the court.
- (iii) No proxy death squads are operating under the supervision of ISI and MI. In this regard Secretary Defence has already filed a affidavit.
- (iv) The government has always believed that all the political parties in Balochistan should participate in political activities without any interference from any quarter. In this regard any concern by any person whomsoever shall be addressed so that the forthcoming election should take place in a transparent manner through participation of all political parties.
- (v) Lodging of FIR has been ordered by the government and JITS for conducting the investigation have also been constituted and recently the Government of Balochistan has approved a compensation policy for the legal heirs of deceased persons.
- (vi) Government makes a commitment to settle the displaced persons, if any, to the satisfaction of all concerned.

Chief Secretary  
Balochistan"

20. Mr. Muhammad Aslam Bhotani, Speaker of Provincial Balochistan also appeared and stated that the Chief Secretary and the IGP are trying their best to improve the law & order situation in the Province but they all are helpless before the political expediencies, therefore, the Province is facing serious law & order situation.

21. Mr. Abdul Raheem Ziaratwal and two others filed Constitution Petition No.115 of 2012 and prayed as follows: -

- “(a) That the respondents are under obligation to spend the public money fairly, honestly and in accordance with constitutional guarantees to safeguard the interest of general public.
- (b) Due to shortage of water, priority of new schemes allocation should be given for water storage dams.
- (c) That the Government of Balochistan and its departments may be restrained from spending any amount shown in the PSDP of 2012-13.”

The said petition came up for hearing before this Court on 08.10.2012 when we heard the petitioner as well as the learned Advocate General and Secretary Planning & Development and notice was ordered to be issued to the remaining respondents as well as the learned Attorney General under Order XXVII A CPC for 19.10.2012. Notice was also issued in the Misc. Application for interim relief.

22. The miseries of the citizens of Balochistan have not ended up here, because as far as kidnapping for ransom is concerned, it has become a trade. The police, levies and FC despite of full powers available to them to crack down the crime have failed to do so. There are so many people including six people belonging to minority (Hindus) in Qalat and others who had been kidnapped for ransom have not been produced so far. In this kind crime, the sitting Ministers are also being named and involved. To substantiate

the same, reference to the statement of Interior Minister Mr. Zafarullah Zehri, which has been recorded by Media and was displayed in the Court, may not be out of context, contents whereof are reproduced herein below: -

سوال۔ اچھا سر آج کا بینہ کا اجلاس ہوا۔ لاء اینڈ آرڈر کے حوالے سے بات چیت ہوئی کیا اس میں کوئی خاص اہم فیصلہ کیے گئے۔

جواب۔ جی ہاں آج کا بینہ کی میٹنگ چلی اس سلسلے میں کافی دیر تک انشاء اللہ کل تک یہ Continue رہے گا، کافی ساری چیزیں اس میں Discuss ہونیں۔ لاء اینڈ آرڈر کے حوالے سے۔ پہلے لوگ تنقید کرتے تھے کہ آپ نے کچھ بات کہی ہے کہ یہ Own کرتے ہیں یا نہیں کرتے جی بالکل میں اپنے Stand پر قائم ہوں۔ میں نے آج کا بینہ کو بریفنگ بھی دی ہے اور نام بھی اشارتاً بتائے اور چیف منسٹر صاحب کو بھی بتائے ہیں کہ یہاں کچھ منسٹر Involve ہیں Directly بھی اور Indirectly بھی اور ان کو بریفنگ بھی دی ہے اس سلسلے میں انشاء اللہ ہم چیف منسٹر کے حکم کے پابند ہیں۔ میں نے پہلے بھی اپنے Statement میں کہا تھا کہ چیف منسٹر صاحب اگر ہمیں اجازت دیں کیونکہ ہماری Collision گورنمنٹ ہے کچھ مجبوریاں بھی ہوتی ہیں اس بات پر ہم نے طے کیا ہے کہ اس معاملے پر آج کے بعد ہم کوئی Compromise نہیں کریں گے۔ یہ ایک Home منسٹر کے بس کی بات نہیں ہے اس میں آپ کو Public کا سپورٹ بھی چاہیے ہوتا ہے اور اپنے Colleagues کا سپورٹ بھی چاہیے ہوتا ہے۔

23. It is equally important to note that involvement of Provincial Ministers has also been voiced at the high pitch by M/s Usman and Nasir Ali in the National Assembly on 09.10.2012, which reads as under: -

جناب عثمان خان ایڈوکیٹ: بہت شکریہ جناب سپیکر! میں آپ کے توسط سے گزارش کروں گا کہ بلوچستان میں جولاءِ اینڈ آرڈر کی جو صورتحال ہے اور خصوصاً جو میرا حلقہ خضدار ہے۔ جناب سپیکر! خضدار میں اس مہینے تقریباً سترائیس لوگ قتل کیے گئے اور پچھلے ہفتے میں تقریباً پندرہ لوگ مارے گئے کل جناب سپیکر! ہمارے ایک نوجوان ڈاکٹر داؤد عزیز کو بیدردی سے قتل کیا گیا اور اس سے پہلے صفائی عبدالحق بلوچ کو قتل کیا گیا سمجھ نہیں آتی کہ بلوچستان میں کیا ہو رہا ہے۔ جناب سپیکر! بلوچستان میں ایک سوچے سمجھے منصوبے کے تحت سیاسی لوگ ڈاکٹر زوکلاء تا جرمز دور سب کو قتل کیا جا رہا ہے میں سمجھتا ہوں کہ اس میں وفاقی حکومت اور صوبائی حکومت دونوں کی ناکامی ہے اور یہ بات بھی سمجھ میں نہیں آتی ہے کہ جناب رحمن ملک صاحب وزیر خارجہ کے فرائض انجام دے رہے ہیں یا باہر کے ممالک میں جا کر مختلف وزراء سے ملاقاتیں کر رہے ہیں جبکہ اس کا کام ملک میں بیٹھ کر لاءِ اینڈ آرڈر کی صورتحال کو دیکھنا تھا اس کو بہتر کرنا تھا لیکن وہ اپنا کام نہیں کر رہے ہیں وہ وزیر خارجہ کا کام کر رہے ہیں امریکا یو کے اور مختلف ممالک کے دورے پر ہیں۔ جناب سپیکر! بلوچستان میں مختلف گروپس کو جدید اسلحہ دے کر ان کو مختلف ڈسٹرکٹس میں ٹاسک دیا گیا ہے کہ فلاں ڈاکٹر فلاں انجینئر فلاں سیاستدان کو کس تاریخ کو قتل کر دیا جائے گا اور یہ گروپ جدید اسلحہ سے مسلح ہو کر دن دیہاڑے بازاروں میں آکر لوگوں کو اغواء کرتے ہیں اور اگر اغواء نہ کریں تو ان کو مار دیا جاتا ہے۔ جناب ریاست کا کام لوگوں کا تحفظ کرنا ہے لوگوں کو روزگار دینا ہے ان کے جان و مال کی حفاظت کرنا ہے لیکن مجھے لگتا ہے کہ یہاں ریاست نام کی کوئی چیز نہیں ہے ریاست کی جو ذمہ داری ہے وہ اپنی ذمہ داری پوری نہیں کر رہی ہے بلوچستان میں اس وقت تمام نامی گرامی سردار اسمبلی میں بیٹھے ہوئے ہیں بلوچستان کا گورنر ایک نامی گرامی نواب فیملی سے اس کا تعلق ہے اور خود کسی قبیلے کا نواب بھی ہے چیف آف سراوان جو کہ بلوچستان کا ایک بہت بڑا نواب ہے نواب رئیسانی صاحب اس وقت وزیر اعلیٰ کی کرسی پر براجمان ہے اور اس کے علاوہ بلوچستان میں نامی گرامی سردار مختلف وزارتوں کو چلا رہے ہیں لیکن میں آج اس اسمبلی میں اس فلور پر کہنا چاہوں گا کہ تمام سرداروں کے مختلف اپنے گروپس ہیں جو لوگوں کو اغواء کرتے ہیں جو لوگوں کو مارتے ہیں اور تمام کرائم میں موجودہ اسمبلی میں بیٹھے سرداروں کے لوگ ملوث ہیں یہ بات میں نہیں کہہ رہا ہوں یہ بات ہیومن رائٹس کمیشن آف پاکستان سپریم کورٹ میں جو کیس بلوچستان سے متعلق پینڈنگ ہے اس میں یہ بات ریکارڈ پر آ چکی ہے کہ یہ وزراء بلوچستان میں مختلف کرائم میں ڈائریکٹ یا انڈائریکٹ ملوث ہیں تو میں یہ گزارش کروں گا کہ وفاقی حکومت جو یہ

کہہ رہی ہے کہ صوبائی حکومت جہاں بھی چاہے ہم فورسز بھیجتے ہیں لاءِ اینڈ آرڈر maintain کرنے کے لیے تو کیا بات ہے کہ اس وقت پورا بلوچستان ایف سی کے کنٹرول میں ہے پورے بلوچستان کو ایف سی کے حوالے کیا گیا ہے اور ایف سی کو پولیس کے اختیارات بھی دیے جا رہے ہیں خود ایف آئی آر درج کرتی ہے تفتیش کرتی ہے اور ملزموں کو گرفتار بھی کرتی ہے لیکن اس کے باوجود بلوچستان میں دن بدن کرائم ریشو بڑھتا جا رہا ہے اور میں آخر میں یہ گزارش کروں گا کہ بلوچستان میں فوراً گورنر راج لگایا جائے اور ایک ایماندار آدمی کو بلوچستان کا گورنر بنایا جائے اور صوبائی حکومت کو ڈیزالو کیا جائے اس میں آئین میں آپشن موجود ہیں اور ان تمام لوگوں کو گرفتار کیا جائے جو بلوچستان میں کرائم میں ملوث ہیں جو بلوچستان میں اغواء برائے تاوان میں ملوث ہیں اور جن لوگوں کو مسلح کیا ہے ان کو فی الفور disarm کیا جائے اگر اس طرح نہیں کیا گیا تو ہو سکتا ہے پاکستان میں کوئی اور ہنگامہ پیش بننے جائے۔ شکریہ۔



جناب ڈپٹی سپیکر: ناصر علی شاہ صاحب on a point of order

سید ناصر علی شاہ: شکریہ جناب سپیکر! میں سب سے پہلے عثمان ایڈوکیٹ نے جتنی باتیں کی ہیں اس کو سکینڈ کرتا ہوں کیونکہ حالات جو بلوچستان کے ہیں وہ سب کو پتا ہیں۔ حالات اتنے خراب ہیں کہ لوگ شہر کے اندر مود نہیں کر سکتے ہیں لوگ سکول نہیں جاسکتے ہیں لوگ بزنس نہیں کر سکتے ہیں اے دن لوگوں کی ٹارگٹ کلنگ ہو رہی ہے اور وہ بھی ایک سول حکومت کے ہوتے ہوئے اگر مارشل لاء ہوتا تو ہم کہتے ہیں کہ چلو مارشل لاء ہے ڈکٹیٹر شپ ہے مگر یہ تو سول گورنمنٹ ہے اور وہ بھی پاکستان پیپلز پارٹی کی گورنمنٹ ہے جو کہ دعویٰ کرتی ہے کہ ہم عوامی جماعت ہیں اور عوام کے خیر خواہ ہیں۔ مجھے یہ بتایا جائے

سید ناصر علی شاہ: یہ عوامی جماعت ہے اور عوام کے خیر خواہ ہیں۔ مجھے یہ بتایا جائے کہ کیا یہ وہی پیپلز پارٹی ہے جو شہید بے نظیر بھٹو کی پارٹی تھی۔ میں تو سمجھتا ہوں کہ اس پارٹی کو عوام سے کوئی سروکار نہیں۔ مگر اس پارٹی کو کوئی سروکار ہے تو اس کو اپنے اقتدار سے سروکار ہے۔ ہم ساڑھے چار سال چیختے رہے۔ میں پارلیمنٹ ہاؤس کے باہر بیٹھا رہا ہوں۔ ایک وزیراعظم اکبر چلا گیا، اس نے کئی کمیٹیاں بنائیں۔ اب دوسرا وزیراعظم آچکا ہے۔ وہ بھی کمیٹیاں بنا رہا ہے۔ کیا ان کمیٹیوں سے آپ بلوچستان میں امن لائیں گے؟ کیا کوئٹہ شہر میں امن لائیں گے۔ جب آپ سے ایک کوئٹہ شہر جو کہ ساٹھ گلیوں پر مشتمل ہے آپ اس کو کنٹرول نہیں کر سکتے تو کیا آپ پورے پاکستان کو چلا سکیں گے، کیا پورے پاکستان میں امن لاسکیں گے۔ کیا آپ پورے ڈرون حملے بند کر سکیں گے۔ کیا یہ دہشت گردی ختم کر سکیں گے۔ میری گزارش ہے کہ خدا کیلئے اگر آپ ہمیں پاکستانی سمجھتے ہیں تو آپ بلوچستان کے مسائل پر ایکشن لیں۔ اگر نہیں تو گورنمنٹ مجبوری بتائیں۔ وہ کیا رکاوٹ ہے جس کی وجہ سے وہ ایکشن نہیں لیتی۔ چاہیں وہ صوبائی حکومت ہو یا مرکزی حکومت ہو۔ مرکزی حکومت کو چاہیے جس طرح عثمان کا کڑ صاحب نے بھی کہا، میں بھی یہاں سے باہر بیٹھا رہا ہوں اور ڈیڑھ سال پہلے میں نے یہ بات کی تھی کہ گورنر راج لگایا جائے اور جو صوبائی حکومت وہاں کی ہے وہ نااہل ہے۔ وہ فیل ہو چکی ہے۔ اس کو dissolve کیا جائے۔ نئے الیکشن کرائے جائیں اور میں یہ روز سنتا آرہا ہوں حکومت کے لوگوں سے، جناب کائرہ صاحب نے بھی کہ ہم ڈائلاگ کریں گے۔ تو آپ کس سے ڈائلاگ کریں گے۔ کیا آپ پتھروں سے ڈائلاگ کریں گے یا پہاڑوں سے ڈائلاگ کریں گے یا ان لوگوں سے ڈائلاگ کریں گے جو affected لوگ ہیں۔ جو متاثرین ہیں۔ تو آج تک آپ نے کیا کیا ہے؟ میں سمجھتا ہوں کہ آپ کی صوبائی حکومت بالکل فیل ہو چکی ہے۔ اور جو کچھ میں یہاں پر کہہ رہا ہوں تو میں مجبور ہو کر کہہ رہا ہوں اور مجھے یہ بھی معلوم ہے کہ آپ کچھ نہیں کریں گے اور موجودہ حکومت کچھ نہیں کرے گی، ہم کتنا بھی چیخیں، ساڑھے چار سال تک چیختے رہے ہیں اور اس کے بعد بھی مجھے کوئی امید نہیں ہے کہ آپ کچھ کریں گے۔

جناب محبوب اللہ جان: شکریہ جناب سپیکر صاحب۔ میرے پاس دو suggestions ہیں پہلا یہ ہے کہ یہ بلوچستان کے سلسلے میں جو ہماری حکومت ایک serious اقدام لے کر چل رہی ہے کمیٹی بنائی ہے وہاں کی جو لوگوں کے محرومیوں کو ختم کرنے کے لئے اس میں میری suggestion یہ ہے کہ یہاں پہ جو ہمارے elected members ہیں بلوچستان سے خاص طور پر ان ساروں کو علیحدہ سے بیٹھا کے اس کام کا آغاز میں جناب نوید قمر صاحب چونکہ ہماری اس کمیٹی کے چیئر مین ہیں جو کہ بلوچستان کے حالات کو ٹھیک کرنے کے لئے بنائی گئی ہے۔ اس میں سرسری suggestion یہ ہے کہ بلوچستان سے جو elected members ہیں ان کو بیٹھا کے جس طرح سے ناصر شاہ صاحب نے کہا اور ہمارے جو بھی بلوچستان سے elected members ہیں ان کو پہلے سب سے پہلے ان کو بیٹھائیں ان سے ہی رائے لے کے پھر بے شک بلوچستان میں جائیں جو elected نہیں یا وہ حکومت میں شامل نہیں ہیں یا جو جنہوں نے اسے لیکشن میں حصہ نہیں لیا ان کو بعد میں لے لیں لیکن پہلے یہاں جو elected ہیں ان سے لے لیں۔

24. The Ganges for the offence of kidnapping for ransom are operating throughout in the Province without any hindrance and ransom is paid to them as per their demands. Following two

incidents about the involvement of police were reported wherein it was alleged that it is not possible without the patronage of some influential persons: -

- (i) On 23.07.2011 complainant Zohaib Hassan caste Qureshi, resident of Kansai Road Quetta reported that his maternal uncle Riaz Kansai was abducted by some unknown persons in 2-D Car. Later on the kidnappers demanded Rs.20,00,000/- as ransom, which was paid. FIR No.121/2011 u/s 365,34 PPC at Police Station Shalkot was registered. On one of the dates of hearing Mrs. Farah Riaz and Adeel Ahmed the relatives of the abductee stated that one SP Zaman Tareen persuaded them to make payment of Rs.20,00,000/-. The IGP was directed to look into the matter personally for affecting the recovery of abductee but so far no progress has been made.
- (ii) The other incident took place in the area of Quetta Town, from where Dr. Ghulam Rasool was kidnapped for ransom, who paid about 1,00,00,000/- and was got himself released. Cognizance of this matter was taken by this Court through HRC No.27045-K and 27619-G/2012 and the case was heard before one of us (Justice Iftikhar Muhammad Chaudhry, CJ.) in Chamber on 23.08.2012 at Quetta.
- (iii) Similarly, two doctors namely Farid Barrech and another were also kidnapped for ransom. Medical services remained suspended throughout in the Province for a considerable period due to strike but on

the intervention of this Court, vide order dated 03.09.2012 same was called off. When we inquired from CCPO Quetta about the progress. He replied that efforts are being made and the police is likely to succeed in nabbing the accused.

- (iv) It is to be noted that though this fact is not on record that Mukesh Kohli, advocate son of Mr. W. N. Kohli, ASC was also abducted for ransom and remained in custody of kidnappers and was released after making payment of ransom.

25. There are so many other cases, which can be quoted to establish that no citizen in the Province feels himself secure at the hands of kidnappers. This type of crime is increasing day by day in the Pashtoon Belt as few days before one Farhan Agha son of Ahmar Din Agha was abducted perhaps on account of some business deals and the administration after great difficulty succeeded in effecting the recovery without effecting arrest of the kidnapper. Still there are so many other cases of abduction wherein abductees so far have not been recovered.

26. The issues of target killing highlighted by the print and electronic media has not been denied by the authorities. We have noticed that in the Province of Balochistan such crimes are committed by using the smuggled/Kabli vehicles including the motorcycles, rikshaws etc. smuggling of which into the country, otherwise is crime under the Customs Act, therefore, we asked the Chairman FBR and the officers of Customs Department to control the same and in this context it was directed vide order dated 23.08.2012 passed in Chambers that the authority should launch a



campaign to impound the vehicles plying on the roads unauthorizedly. In this behalf, the Secretary Excise was directed to put up a comprehensive report showing that how many vehicles have been registered by the Excise & Taxation Department throughout in the Province in accordance with the Motor Vehicle Ordinance, 1965. The Excise Department of the Province was also directed that without collecting and examining the record and import documents of such vehicles same should not register and if such registration had taken place, action in accordance with the law be taken. IGP was also asked to cooperate with the Excise Department in this behalf.

27.           Reportedly the Law Enforcing Agencies including, ISI are issuing *Rahdaries* for the vehicles, arms & ammunition etc. to their favourites. When we inquired from Secretary Defence that under what authority such *Rahdaries* have been issued, he stated that there is no such law and he had issued directions for the cancellation of the same. We directed him to provide list after collecting the figures from all concerned agencies showing the number and names of the persons who have been allowed to keep the unlicensed arms, ammunition and similarly non-custom paid duty vehicles, the names of the persons to whom *Rahdaries* were given throughout in the Province with the names of the authorities who have issued the same and how many arrested so far and the persons from whose names *Rahdaries* have been cancelled. The representative of Ministry of Defence on 11.10.2012 submitted list in compliance to our order and undertook to surrender all vehicles in respect of which *Rahdaries* were issued to Customs authorities within 3 days.

28. The Home Secretary informed the Court that on account of easy availability of activated Mobile SIMs in market the crimes including kidnapping for ransom are increasing day by day as this mode of communication is a big source of increasing crime ratio. The service providers working in the Province were asked by him to cooperate but nothing has been done, we, therefore, directed to the Service Providers (Ufone, Warid, Mobilink, Zong, Telenor and V-PTCL) through the Chairman PTA to cooperate with the Home Secretary and IGP Balochistan and in this regard meeting of Home Secretary was convened with the Director PTA and the representatives of Service Providers based in the Province of Balochistan. On the next date of hearing the Home Secretary complained that the Service Providers are not cooperating with the administration, even during the meeting 6 SIMs which were purchased from open market, duly activated were presented to Director PTA but he failed to question about the same to the Service Providers, who were present in the meeting. As we were informed that PTA without adhering to the relevant provisions of law, has allowed to each service provider to sell at time 10 SIMs and if there are more than one companies, the customers at one time can purchase 10 SIMs from each company, therefore, we directed to the Director PTA to immediately convene a meeting with the Service Providers and submit report that:

- (i) How many SIMs are in use of person to whom same was not issued?
- (ii) How many Service Providers have sold more than one SIM against one CNIC?
- (iii) What procedure is to be followed for the purpose of blocking the SIMs, which were purchased from market

without activation and for which no record is maintained?

The Chairman PTA was also directed to reduce the number of SIMs from 10 to 5 only, to be purchased against one CNIC, whether from one or more Service Providers and if the Service Providers were not ready to adhere to the directions made hereinabove, he would cancel their licenses to the extent of Balochistan. D.G. NADRA was also asked to provide assistance to PTA in implementation of above order. It is not out of place to mention here, on the direction of this Court, in one day about 1435 activated SIMs were collected from market.

29. On having noticed the grave deteriorating law & order situation, we direct to the IGP and the Home Secretary to adopt necessary measures for providing safety to the life and property of the citizens including recovery of the illicit arms & ammunition by adhering to the provisions of surrender of illicit Arms Act, 1991 because object of the present proceedings are to enforce the fundamental rights of the citizens; it seems that perhaps notification has been issued but no effective progress has been made.

30. On 24.07.2012 the Court having observed that no progress has been made despite orders passed time and again to protect the life and property of the citizen in Province of Balochistan. We directed the Provincial Authorities, the Federal Government and the representatives of FC and Ministry of Defence to put their respective statements in Court under the signatures of competent and concerned officers, indicating as to why the Constitution is not being fully enforced and that State machinery

has failed to control law and order situation as it had become routine in the Province of Balochistan where the innocent persons might be civilians or in uniform including FC, Coast Guards and persons belonging to religious sect are murdered, abducted and kidnapped for ransom. The requisite joint statement was filed on 31.07.2012 contents whereof are reproduced herein below: -

"In compliance of Hon'ble Supreme Court of Pakistan order dated 24<sup>th</sup> July, 2012, passed in the subject petition, the Federation of Pakistan and Government of Balochistan submit as under: -

That the Federation and the Provincial Government are highly conscious about their constitutional obligations with regard to the security of life and property of citizens as envisaged in Article 9 of the Constitution of Islamic Republic of Pakistan.

That the Federation and Provincial Government through their LEAs and intelligence Agencies will make all out efforts to ensure early and safe recovery of missing persons, take steps and measures to identify and arrest the culprits involved in the target/sectarian killings, kidnapping for ransom and put them to justice and will further strengthen/enhance the level of coordination at the highest level amongst the different stakeholders to efficiently discharge with their constitutional obligations and restore peace and harmony amongst all the segments of society in the province and create conducive environment for the economic development, well being and prosperity of the Province.

Sd/  
Secretary  
M/o Interior  
Islamabad

Sd/-  
Secretary  
M/o Defence  
Rawalpindi

Sd/-  
Chief Secretary  
Govt. of Balochistan

Sd/-  
Inspector General of Police  
Balochistan

Sd/-  
Secretary Home &  
Tribal Areas Deptt,  
Quetta."

Sd/-  
IG, FC

The above statement is self explanatory. However, it was pointed out by the Advocate General that improvement has been made. He submitted the following Chart: -

**TARGET/SECTARIAN KILLINGS, RECOVERY OF DEAD BODIES,  
MISSING PERSONS AND KIDNAPPING FOR RANSOM.**

**JULY TO 8<sup>TH</sup> OCTOBER, 2012**

Nature of crime	July			August			September			8 <sup>th</sup> Oct			Total	Re co ve re d	Pen ding
Kidnapping for Ransom	20			15			05			01			41	30	11
Recovery of Dead bodies	14			03			02			00			19		
Missing person	-			-			-			-			-		
Target Killings	Ins	Killed	Inj	Ins	Killed	Inj	Ins	Killed	Inj	Ins	Killed	Inj	Ins	Killed	Inj
Police	04	03	02	05	06	22	02	03	02	01	02	02	12	14	28
FC	04	09	02	11	07	04	05	01	02	00	00	00	20	17	08
Settlers	03	04	00	02	00	02	04	04	00	00	00	00	09	08	02
Sectarians	05	07	03	03	09	04	07	16	11	03	04	02	18	36	20
Others	01	07	12	06	02	13	06	14	07	02	01	02	15	24	34
Total	17	30	19	27	24	45	24	38	22	06	07	06	74	99	92

31. It is to be noted that with the intervention of this Court PSP officers have been transferred by the Federal Government but we received an anonymous application (HRC No.30044-B/12) wherein it was pointed out that the police officers who were transferred to Balochistan, their services are not being utilized and instead of posting them in the field, they have been posted in the offices or against the posts which are not so important in view of the situation of law and order prevailing in the Province. The Chief Secretary stated that he will look into the matter. On 09.10.2012 Mir Zubair Mehmood CPO Quetta submitted a report on behalf of IGP mentioning therein that out of 38 officers, 22 have been posted in the field, 05 as Staff Officer, 04 in specialized units, 03 have

proceeded on training whereas only 04 officers are awaiting posting. This clearly demonstration the lack of will on the part of administration to safeguard the life and property of the residents.

32. It is to be noted that learned Attorney General has not shown interest in the instant proceedings despite our observations, made time and again during the proceedings of the Court as well as in the orders, showing displeasure during the time when Maulvi Anwar-ul-Haq was the Attorney General and thereafter when Mr. Irfan Qader as Attorney General was called to appear subject to making statement in writing that Secretary Defence and Secretary Interior desired that he would be allowed to appear on their behalf. Such statements. made on 19.09.2012 read as under: -

**"SUBMISSION OF REPLY ON BEHALF OF SECRETARY DEFENCE**

"In compliance of Para 12 of the Hon'ble Supreme Court of Pakistan order dated 8<sup>th</sup> September, 2012 passed in the subject petition and subject to Article 100 of the Constitution, it is submitted that Ministry of Defence vide uo Note No.1/313/Director (Legal)/10 dated 14<sup>th</sup> September, 2012 while furnishing necessary input has requested Ministry of Law and Justice to submit a consolidated response of the Federation in the Apex Court through learned Attorney General for Pakistan. A meeting was also held between Law Minister, Law Secretary, Learned Attorney General for Pakistan and Defence Secretary on 18<sup>th</sup> September, 2012 where it was agreed that learned Attorney General will represent Ministry of Defence on 19<sup>th</sup> September, 2012 and thereafter. However, written response of Ministry is not available.

In view of the above, it is requested that learned Attorney General of Pakistan may please be allowed to represent Ministry of Defence in this case before this Hon'ble Court".

**SUBMISSION OF REPLY OF SECRETARY INTERIOR**

2. That on 4<sup>th</sup> of September, 2012 an order was passed by this Hon'ble Court wherein it was mentioned that the Attorney General

shall not be allowed to appear in this case unless the Secretary Interior and Secretary Defence made a request before the Court.

3. Accordingly, in the course hearing a request in this regard is being made by the applicant.

It is, therefore, prayed that the applicant be permitted to be represented by the Attorney General for Pakistan."

Again, during proceedings of this case at Quetta, learned Attorney General did not appear and the case was entrusted to a Deputy Attorney General. This indicates the interest of Federal Government in this case. Importantly, it is necessary to bring on record that learned Attorney General and DAG have not dispelled that fundamental rights of the citizens living in the Province of Balochistan are not being enforced as per the mandate of the Constitution of Pakistan.

33. Hadi Shakeel Ahmad, ASC, former President of Balochistan High Court Association and Malik Zahoor Ahmad Shahwani, incumbent President as well as Mr. Sajid Tareen, ASC/Sr. Vice President appeared on behalf of petitioner body. M/s M. Zafar, Sr. ASC, Munir A. Malik, Sr. ASC, Rasheed A. Rizvi, Sr. ASC and Salman Akram Raja, ASC appeared as amicus curiae, whereas Mr. S.M.Zafar, learned Sr. ASC appeared on behalf of FC and addressed their respective arguments. We are thankful to them as they suggested ways and means to improve the situation of law and order and also to enforce the fundamental rights in the Province. We are specially thankful to Hadi Shakeel Ahmad, learned ASC, Malik Zahoor Shahwani, learned ASC and Mr. Sajid Tareen, ASC who followed the proceedings whole heartedly.

34. It is to be noted that in a parliamentary system of Government, federating units like Government of Balochistan and others enjoy provincial autonomy, thus are responsible to ensure that affairs of the Provinces and are run independently according to the constitutional provisions as it has been envisaged in Article 2A of the Constitution, according to which the Territories included in or in accession with Pakistan and such other territories as may be hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed. Article 137 of the Constitution empowers executive authority of the Province to make laws in the matter with respect to which the Provincial Assembly. it provides that subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws. Provided that, in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof.

35. Admittedly, the Provincial Government has power to make laws for maintaining law & order situation in the Province and to the extent of its territory. There is no limitation on its powers to make laws as far as subject under discussion is concerned, except that no law shall be made which is against the fundamental rights guaranteed by the Constitution including Articles 9, 10A and 24



thereof. It has been noted earlier that the due process of law was not one of the fundamental right but after the 18<sup>th</sup> Constitutional Amendment was made part of Chapter 18 and Part II and the Constitution as one of the fundamental rights. It provides that for the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. Thus, it is the duty of the State i.e. Provincial Government (in terms of Article 7 of the Constitution) to enforce fundamental rights of citizen and protect their life, liberty and property and anyone of them if charged for any offence, he has to be dealt with in accordance with law by providing fair trial and due process. However, it is strange that State (Provincial Government) in view of overwhelming material available on record has not only failed to enforce fundamental rights of the citizen but in fact violated the same. In such situation one can asked about the authority of such Government to rule the people. Answers to it lies in the judgment titled as Watan Party v. Federation of Pakistan (PLD 2011 SC 997) relevant paras therefrom are reproduced hereinbelow: -

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 not 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.

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.

36. Material brought on record and statements which are available on record, on close scrutiny persuaded us to hold that the affairs of state in the Province of Balochistan are not being carried out in accordance with the Constitution due to which internal disturbance is increasing.

37. Once it has been agreed that there is internal disturbances and the Provincial Law Enforcing Agencies including FC, police and Levies have failed to ensure protection of life and property of the people living in the Province and appears to have lost its Constitutional authority to carry out affairs of the Province as lives of the people cannot be left at the mercy of a Government who had lost its credibility in view of facts and circumstances noted above, particularly, with reference to the circumstances prevailing in the Province of Balochistan where there are serious charges against the sitting member of the Cabinet and about their involvement in abduction for ransom some of the police officers as well, including FC personnel of course criminals belonging to different organizations are also effectively involved but no case has been traced of any kind of heinous crimes i.e. missing persons, target killings, recovery of mutilated dead bodies, kidnapping for ransom against them.

38. Under the circumstances, endeavor has to be made to ascertain whether any other Constitutional authority is duty bound to take action against internal disturbances. Reference may be made to Article 148(3) of the Constitution, which reads as under: -

"148. Obligation of Provinces and Federation.

(1) The executive authority of every Province shall be so exercised as to secure compliance with Federal laws which apply in that Province.

(2) Without prejudice to any other provision of this Chapter, in the exercise of the executive authority of the Federation in any Province regard shall be had to the interests of that Province.

(3) It shall be the duty of the Federation to protect every Province against external aggression and internal disturbances and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution."

39. Now the question, required consideration is the duty of the Federation in view of internal disturbances in the Province. This issue has been considered in the case of Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1), Jamat-i-Islami Pakistan v. Federation of Pakistan (PLD 2000 SC 111), and Mohtarma Benazir Bhutto v. President of Pakistan (PLD 1998 SC 388). Relevant paras therefrom read as under: -

Khalid Malik v. Federation of Pakistan (PLD 1991 Karachi 1)

Article 148 (3) casts duty upon the Federation to protect and save the provinces from external aggression and internal disturbance. It also compels the Federation to see that the Government of the Province is carried on in accordance with the provisions of the Constitution. Therefore, it is the duty of the Federation not only to take measures to protect the provinces from internal disturbance but can also devise ways and means to ensure that the Government of the province is run in accordance with the provisions of the Constitution. In certain cases even directions can be issued to the provinces. The words 'internal disturbances' in the wider constitutional background do not refer to minor clashes, riots, strikes or incidents of similar nature which may disturb the peace and tranquillity of a province in a localised manner. Such small incidents may be every day happenings in the provinces which their Governments fully equipped with power and resources, are expected to deal with such situation. However,

if situation arises that the internal disturbances are of such a serious nature that the Provincial Government has failed to control them or that it is unable to manage it then Federation may take steps to protect the Province from such internal disturbances.

Jamat-i-Islami Pakistan v. Federation of Pakistan  
(PLD 2000 SC 111),

10. The learned counsel for the petitioners and the learned Attorney-General have not drawn our attention to any other statute wherein definition of the term "internal disturbances" has been given. The above term has not been defined in the Constitution. Under Article 232 thereof, it is merely stated thereunder that "internal disturbances" refer to. those disturbances which are beyond the power of the Provincial Government to control. Therefore, while construing the term "internal disturbances" the term is to be understood in terms of general parlance. "Internal disturbances" in the context of civil commotion may include an outbreak of large scale violence due to disturbances in any part of the country. The term "strike" is popularly used in labour laws of the country and is generally understood as a simultaneous cessation of work on the part of the workmen, and its legality or illegality depend on the means by which it is enforced and upon its object having reference to specific provision in the relevant laws. The "strike" is the combined effort of workmen to obtain higher wages or other concessions and privileges from their employers by stopping work at a pre-concerted time until their demands are met. The question as to whether a call of strike given by workmen or members of Labour Union or members of the Union of workers/employees is lawful or otherwise depends upon the facts and circumstances of each case having regard to the specific provisions laid down in the relevant statutes and the object sought to be achieved. Distinction between lock-out and strike is depicted in a case from American jurisdiction *Dail-Overland Co. v. Willys-Overland, D.C. Ohio, 263 F.171, 186*, wherein it was observed that "A 'strike' where men quit because the employer refuses conditions demanded of him, and a 'lock-out' where employees refuse to return to work unless the employer meet their demands". (Refer Words and Phrases, Permanent Edition, Volume 40, p.471). In *City of Wilmington v. General Teamsters Local Union 326 Del.*, 321 A.2d 123, 126, it was held that "In order for there to be a 'strike,' there must be some concerted action or combined effort by group which is designed to exert pressure on an individual or entity to accede to certain demands."

Lock-out distinguished from strike

Work stoppage is a lock-out and not a strike. However, in certain conditions a "work stoppage" may be synonymous with the word "strike", for instance, where stoppage of work may arise because of strike, but picketing by employees during work stoppage as a result of lock-out generally does not mean that the employees were on "strike". Strikes and lock-outs in labour or industrial disputes may be permissible

as well as impermissible, legal as well as illegal, depending upon the facts of each case with reference to the relevant provisions in the relevant statute. Strike is also understood to mean cessation of economic activity including ' Paiyya Jam (Wheel Jam) and closure of shops and establishments at the call of a political party to press for their political demands in furtherance of their manifesto, policies or programmes. Strike may also be in the nature of sympathy strike which is a common manifestation of traditional solidarity with a cause. Sympathy strikes are a common manifestation of national solidarity on any national or international cause in endeavouring to preserve and strengthen a noble cause. Sit down strike is generally observed at the call of a political party by resorting to "Dherna" (sit down).

Mohtarma Benazir Bhutto v. President of Pakistan  
(PLD 1998 SC 388)

37. It is thus clear that the above mentioned provisions in the Constitution regulate relationship between the Federation and a Province in a situation in which Federal law is applicable in that Province and a situation has arisen in which it is to be considered as to how the Federal law is to be made applicable so that it should bring about the desired result and be effective so that proper remedial measures are adopted to contain and control the situation in which the Federal Government has to adopt supervisory role and give directions to the Province in which is being applied the federal law.

40. The Federation of Pakistan apparently provided some protection to Provincial Government of Balochistan against internal disturbance by deploying FC in the Province. Detail in this behalf has been filed by Secretary Home, Government of Balochistan, according to which FC is assisting to provincial law enforcing agencies to maintain law and order. The fact has also been admitted by Mr. S.M. Zafar learned Sr. ASC appearing for FC. He explained that vide letter dated 28.12.2009 Government of Pakistan Ministry of Interior placed FC at the disposal of Government of Balochistan for assistance and support for maintenance of law and order almost in entire Province. Subsequent thereto, FC has been posted almostly in all the districts of the Province as a civil armed force. It is to be noted according to Home Secretary FC was

deployed in the Province prior to letter referred to hereinabove. It is also to be noted that as per information given by the learned counsel of FC that since 2006 till 10.10.2012 432 personnel of FC have embraced Shahadat whereas 604 were injured. On our query he stated that except in one case in which accused persons were arrested in the year 2009, no arrest was affected so far. It is important to note that against casualties and in the case of injured personnel of FC only 69 FIRs have been registered. On our further query it was pleaded that earlier no FIR in respect of incidents were lodged. Such information was quite surprising for us because it is the basic law of criminal administration of justice that no sooner a cognizable offence is committed, matter is to be reported to law enforcing agency.

41. It would be equally important that in respect of recovery of mutilated dead bodies, target killing and etc. people are reluctant to lodge FIR due to fear or due to lack of confidence on law enforcing agencies. As far as missing persons are concerned, people are so scared that they avoided to report the matter to the police because there is strong presumption that instead of return of missing person, they have to receive the dead bodies of their near and dears, however, due to intervention of this Court people started lodging FIRs. In most of the FIRs under section 365 PPC FC was blamed to be accused for the commission of offence, as it has already been noted above.

42. It is equally important to point out that a large number of civilians belonging to different ethnic groups including Pashtoon, Baloch, Sindhi and settlers belonging to different religious sects i.e.

Sunni & Shia have been killed during the period from 2006 onward, besides killing of police, levies and FC personnel.

43. In the Province of Balochistan disturbance has started from August, 2006 when Nawab Muhammad Akbar Khan was killed and so many persons had lost their lives. Similarly, a good number of people males, female and children belonging to different linguistic groups residents of Balochistan were made victim. Their valuable properties have been disposed. They have lost their business and are not in a position even to earn their livelihood because of serious law and order position and they expressed their dissatisfaction and lack of confidence on the administration. Invariably people (the victims) protest issue, call for strike, shutter down, wheel jams etc.

44. Province of Balochistan is backward area for the reasons as no long term development projects have been undertaken and except in some parts of district Lasbella there is no industries functioning, the people are not getting their due share in economic development and despite of existing of king size cabinet people do feel that they are not being represented in the Parliament and the Provincial Assembly as these institutions except obliging the MPs are not extending any relief to them. It is to be noted that according to Budget documents, at the disposal of each MPA, Rs.30 crore has been allocated enabling them to identify development schemes, according to their own desire as a result of which benefit of development are not reaching to the masses. Contrary to it, serious allegations of misappropriation of amounts are leveled. Similarly there is no writ of the Government in the Province, people are scared and apprehend danger to their life and are not in a



position to enjoy their fundamental rights according to the Constitution.

45. It is also to be noted that there are serious allegations of corruption against the Provincial Government and people do feel that there is no socio economic uplift in the Province and when there is such a situation prevalent in the province, it creates disappointment in the people and they do get involved in criminal activities.

46. M/s S.M. Zafar, M. Zafar, Munir A. Malik, Salman Akram Raja, learned counsel conceded frankly that there is serious violation of human rights and fundamental rights guaranteed by the Constitution and such fact has also been reported by Pakistan Human Rights Commission in their report of 2010-11. Mr. S.M.Zafar, learned counsel for FC also conceded that despite of posting/deployment of good number of the FC troops out of 50,000 to maintain law and order situation in the province is not improving. We have noted that due to interference of different forces in the administration of Province it has become almost difficult to maintain law and order or to ensure enforcement of fundamental right of the people. As noted herein above that Secretary Defence has ensured that no violation shall be allowed now by issuing *Rahdaris* to Secret Agencies and all *Rahdaris* previously issued stand cancelled and all vehicles plying without payment of customs duty will be surrendered within three days. The list of persons to whom *Rahdaris* were issued by the agencies was shown claiming privilege we have accepted the plea. Number of such vehicle is 98. We fail to understand that under which provision of law, such *Rahdaris* to ply vehicles without paying customs duties etc. were issued by law

enforcing agencies. This action on the part of security agencies is without lawful authority. Thus, they are restrained in future not to issue any *Rahdari* for plying any vehicle without paying customs duty etc. nor such concession should be extended in future for carrying illicit arms ammunition.

47. Above narration of facts and the constitutional provision cited on the subject i.e. Article 148(3) of the Constitution caste duty upon the Federation to protect provincial Government of Balochistan against internal disturbance which has been established by relying upon undisputed facts reference of which has been noted above and the authority who has a duty which had to be exercised by the Federal Government as a Constitutional duty and for exercising such duty no departure is possible because performance of duty is an obligation. In this behalf reference may be made to the case of Alcock A. & Co. v. C. Revenue A (AIR 1923 Privy Council 138). Relevant paras therefrom are reproduced hereinbelow: -

Their Lordships, however, agree with the Bombay High Court that this is too narrow a construction of the section, Take first the case which is last in the clause, If the assessee applies for a case, the Authority must state it, unless he can say that it is frivolous or unnecessary. He is not to wait for the Court to order him to do it; it will be a misfeasance and a breach of the statutory duty if he does not do it. Put that case aside. The rule here is supported upon the earlier part of the section. No doubt that part does not say that he shall state a case, it only says that he may. And as the learned Counsel for the respondent rightly urged, may does not mean "shall Neither are the words "it shall be lawful those of compulsion, Only the capacity or power is given to the Authority. But when a capacity or( power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of *Julius v. Lord Bishop of Oxford* (3).

"There may be something in the nature of the thing empowered to be done, something in the object for which is to be done, something in the conditions under which it is to be done, something in the title of the person or persona for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

In their Lordships' view, always supposing that there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the Court, and if he does not appreciate that there is such a serious point, it is in the power of the Court to control him and to order him to state a case.

So far their Lordships are in agreement with the High Court. There remains the question which has led to this appeal. The High Court has apparently considered that there is no serious point of law involved in this case. It was, indeed, contended by counsel for the respondent that the High Court had accepted the position that there was a question of law and then had gone on to decide it adversely to the appellants ; but their Lordships think this contention inadmissible. If there is a point of law, it ought to be decided in a regular manner and upon proper materials; and here it should be said that the manner is not regular and that it is at least doubtful whether the materials are complete.

21.Their Lordships must therefore consider whether the High Court should have ordered a case to be stated. This, as it appeared to the learned Chief Justice, depended upon the question whether the Chief Revenue Authority had reasonable grounds for being satisfied that a reference was necessary. This is not quite the way in which their Lordships would put it. But to proceed: In the view of the Chief Justice profits not employed in the business are not capital for the purpose of this Act, and profits intended to be employed in the business are not therefore necessarily to be treated as capital, and finally, whether profits are or are not employed in the business is a question of fact to be determined by the Authority. Fawcett J. agreed, and held that it was not shown to be clearly incumbent on the Chief Revenue Authority to refer these questions to the Court, and that he had reasonable grounds for being satisfied that the reference was unnecessary.

48. Unfortunately in the instant case Federal Government except deploying FC troops, has also failed to protect Province of Balochistan from internal disturbances. Similarly, as far as Provincial Government of Balochistan is concerned it had lost its constitutional authority to govern the Province because of violation of fundamental rights of the people of Pakistan.

49. Thus in view of the above discussion, the following order is hereby passed: -

1. This Court in exercise of jurisdiction under Article 184 (3) of the Constitution has jurisdiction to enforce fundamental rights conferred by Chapter-I of Part II of the Constitution as it considers that a question of public importance involving enforcement of Fundamental Rights enshrined under the Constitution viz. section 4 read with fundamental rights under Article 9, 10A, 14, 15, 17, 18, 24 & 25 of the Constitution, have been violated.
2. The incumbent Provincial Government has failed to establish writ of law in the Province on account of which the fundamental rights of the citizens, noted hereinabove, have been violated. The people of Balochistan also include civilians, the members of law enforcing agencies i.e. Police, Levies, BC, FC and reportedly the armed personnel of the Coastal Guard, as a result whereof the Provincial Government has lost the ability of governance and constitutional authority to govern the Province of Balochistan in accordance with the Constitution of Islamic Republic of Pakistan and to ensure the enforcement of above noted fundamental rights under the Constitution.

3. The Federal Government of Pakistan though has attempted to protect the Provincial Government against internal disturbance in discharging of its functions under Article 148(3) of the Constitution as, from 2006 onward the FC was deployed to assist the Provincial Government for the purpose of controlling disturbances but as it has been stated that during this period, 432 personnel of FC were killed and more than 600 were injured. Inasmuch as on 11.10.2012, according to DSR supplied by the Home Secretary, four personnel of FC were killed in Dera Bugti. There are *prima facie*, serious allegations of the involvement of FC as it is evident from the report submitted by the Inspector General of Police that in every third case, the FC personnel are being named as accused regarding missing persons. For the last four years, mutilated dead bodies had been recovered from the abandoned places of the Province of Balochistan. Neither the Provincial Government nor the Federal Government succeeded in identifying the culprits involved in the killing of such persons inasmuch as no report was registered by the law enforcing agencies. Same is the position in respect of the missing persons, target killings, abduction for ransom and sectarian killings. This Court, during the pendency/hearing of this case has got registered FIRs but not a single accused has been brought to book. It is a routine exercise in the province that a great majority of the cases of the same kind are found untraced. The people in general and the employees both civilians and non-

civilians have no protection as to the security of their lives and properties, dignity and professions. The Provincial Government as well as the Federal Government, despite clear directions of the Court including obtaining the commitment on 31.7.2012 which has been signed by: -

- a. Secretary, M/o Interior, Govt. of Pakistan.
- b. Secretary, M/o of Defence, Govt. of Pakistan.
- c. Chief Secretary, Govt. of Balochistan.
- d. Secretary Home, Govt. of Balochistan.
- e. Inspector General of Police, Balochistan.
- f. Inspector General, FC.

They have failed to honour the above commitment, as a result whereof disappointment, despondency and anarchy is increasing day by day among all the citizens.

4. Under the circumstances, it was the constitutional obligation of the Federation to exercise all constitutional options to ensure that the fundamental rights of the people of Pakistan are fully protected and secured particularly relating to the security of their lives. But no option has so far been exercised as such like options are to be followed or exercised taking into consideration the political decisions by the democratic governments while remaining within the four corner of the Constitution but regrettably, despite having noticed the situation prevailing in the province of Balochistan, nothing so far has been done. However, we are of the view that even now it is the constitutional obligation/duty under Article 148(3) of the Constitution to control the internal disturbance in the province of Balochistan as early as possible to provide

security to the lives of the people of Balochistan, the Provincial Government which had lost its constitutional credibility cannot be allowed to continue as a silent spectator to the violation of fundamental rights. The Federal Government is, therefore, called upon to ensure immediate action under the Constitution to provide the security to the people of Balochistan against all the criminal aggression including the recovery of mutilated dead bodies, missing persons, target killings, abduction for ransom and sectarian killings because we are of the opinion that without fulfillment of constitutional obligations/duties, the above objects cannot be achieved. We had already directed registration of cases in respect of the mutilated dead bodies, missing persons, abduction for ransom, sectarian killings etc. and on our intervention the government of Balochistan had decided to register criminal cases and make payment of compensation to the heirs of the persons whose dead bodies were recovered. We direct the government of Balochistan to accelerate this process and at the same time prepare a scheme for the purpose of providing maintenance etc. to the families whose persons have been killed.

5. The Federal Government/Provincial Government should take steps for the rehabilitation of more than 150000 IDPs particularly in Dera Bugti immediately and necessary steps should be taken not only for the restoration of their properties but also by providing security to their lives and

property and restore civil administration such as schools, hospitals, Courts, police stations etc.

6. The interference in the affairs of the province of Balochistan by the secret agencies has also been *prima facie*, established as it has been noted hereinabove that a good number of people are being obliged for the reasons best known to the agencies by allowing *rahdaris* to persons who keep plying smuggled vehicles (also known as *kabli* vehicles) without registration and without payment of customs duty. The *rahdaris* are also reportedly issued to allow unauthorized possession of illicit arms and reportedly whenever such persons are apprehended being involved in the crimes they take shelter behind such unlawful *rahdaris*/documents. Although a statement has been given by the Secretary Defence that such *rahdaris* which were issued earlier, had already been cancelled and in pursuance of our directions, 98 vehicles which were being plied on the basis of such *Rahdaris* by the different persons are to be impounded. Therefore, we reiterate that in future, no such *rahdaris* either for the vehicles or for the arms shall be issued by any of the secret agencies i.e. ISI, MI, IB or the Federal or the Provincial Governments. If any such *rahdaris* are produced by any person, the law enforcing agencies, functioning under the government of Balochistan, shall arrest such persons to be dealt with strictly in accordance with law without any exception. The Customs Department of the government of Pakistan had also its role in creating a poor situation of law and order



because knowing well that thousands of smuggled vehicles are being plied throughout the province and are being used in the crimes to disturb the law and order situation. Therefore, in view of earlier directions, the FBR is directed to recover all these vehicles as early as possible and in future no such vehicle including motorcycles etc. shall be allowed to ply without the payment of customs duty and if any such vehicle is found, the same shall be impounded and the accused persons shall be dealt with under the law.

7. The problem in maintaining the law and order, as it has been noticed, is also because there is no prohibition of purchasing telephone SIMs. In this behalf, we have already issued directions on 21.5.2012 that this should be located and dealt with strictly in accordance with law.
8. The people of Balochistan suffer from various deprivations as there is little industry, no chances of jobs with the result the youngsters who after having obtained education fail to get a suitable job/work to earn their livelihood. They start showing frustration because merit is totally disregarded. Therefore, the constitutional functionaries in the province, are hereby directed to take all necessary steps to remove the sense of deprivation and it is only possible if the due share in the resources of the province of Balochistan after passing of the constitutional amendment, as notified under Article 172 (2) of the Constitution are made available to the province as early as possible and are spent transparently through an honest constitutional dispensation in the province. The allegations of corruption

against the government functionaries are also required to be looked into by constitutional functionaries both by the province as well as by the federation and it should also be ensured that in future the development funds etc. are spent transparently and the persons who are responsible for misappropriating such funds, already available to the province, should be brought to book and dealt with strictly in accordance with law.

9. The learned Advocate General representing the Province of Balochistan stated that the only solution according to him regarding internal disturbances within the Province is the holding of true, free and fair elections to ensure representation of the people by their duly elected representatives. In view of this categorical statement on behalf of the Province, it is observed that the Federal Government must fulfill its duty and obligation under Article 148(3) of the Constitution.
10. On our directions, investigation being carried out against the culprits allegedly involved in the commission of forced disappearances (missing persons, abduction for ransom, sectarian killings, target killings and recovery of mutilated bodies), we are not satisfied with the level of investigation either by the police or by the levies, therefore, we direct that all these cases shall be transferred to CID which vide notification No. 23988-24010/1(262)/A, dated the 2<sup>nd</sup> November, 2000, has jurisdiction all over the province to investigate into the criminal cases. The Inspector General of Police is directed to provide adequate manpower and

facilities to the CID by deputing honest, upright and daring officers to conduct the investigation. The CID shall submit the challans of these cases before the High Court of Balochistan directly so that these cases may be decided expeditiously.

11. As under the Constitution of Islamic Republic of Pakistan, the elections are likely to take place, therefore, the Federal as well as Provincial constitutional functionaries are required to create an atmosphere and exercise their constitutional authorities for the purpose of electing true representation.
12. Mr. S. M. Zafar, learned counsel appearing for the FC had placed on record sufficient material, perusal whereof suggests that whenever there is any incident of killing innocent persons both uniformed and civilian, the newspapers come forward to issue publication regarding the responsibility by different organizations which increases a sense of insecurity among the people of Balochistan. Such publication is contrary to the provisions of section 11-W of the Anti-Terrorism Act, 1997 which reads as under: -

***“11-W. Printing, publishing, or disseminating any material to incite hatred or giving projection to any person convicted for a terrorist act or any proscribed organization or an organization placed under observation or anyone concerned in terrorism. (1) A person commits an offence if he prints, publishes or***

*disseminates any material, whether by audio or video-cassettes [FM radio station] or by written, photographic, electronic, digital, wall-chalking or any the method which [glorifies terrorists or terrorist activities] incites religious, sectarian or ethnic hatred or gives projection to any person convicted for a terrorist act, or any person or organization concerned in terrorism or proscribed organization or an organization placed under observation:*

*Provided that a factual news report, made in good faith, shall not be construed to mean 'projection' for the purposes of this section".*

13. We are told that in this behalf restraint order has also been passed by the High Court of Balochistan, therefore, we confirm the order which has been passed by the High Court of Balochistan that in future the above provision of law shall be followed strictly both by the electronic and print media.

50. This order is interim in its nature on the basis of the material facts and circumstances brought before the Court during the 71 dates of hearing of this matter but the same is not being decided finally as the instant order is passed as an interim measure and the Secretary Interior, Govt. of Pakistan as well as the Chief Secretary, Govt. of Balochistan are hereby directed to put up a comprehensive report in respect of the steps which have been taken in pursuance of the this interim order by all the constitutional

functionaries both in the Federation as well as in the Province on fortnightly basis. In the meanwhile all the directions in respect of the recovery of missing persons etc. shall continue and the matter is adjourned to be fixed at Islamabad on 31.10.2012.

Chief Justice

Judge

Judge

Quetta, the  
12<sup>th</sup> October, 2012  
Nisar/\*

APPROVED FOR REPORTING