

**Asif Saeed Khan Khosa, J.:** I have had the privilege of going through the proposed judgment authored by my learned brother Nasir-ul-Mulk, J. and I am in respectful agreement with the same. I would, however, add the following note to the proposed judgment.

2. In the context of the case in hand I am reminded of the following unforgettable words of Khalil Gibran that paint a picture which unfortunately appears quite familiar:

### **Pity the Nation**

Pity the nation that is full of beliefs and empty of religion.

Pity the nation that wears a cloth it does not weave,  
eats a bread it does not harvest,  
and drinks a wine that flows not from its own wine-press.

Pity the nation that acclaims the bully as hero,  
and that deems the glittering conqueror bountiful.

Pity the nation that despises a passion in its dream,

Pity the nation that raises not its voice  
save when it walks in a funeral,  
boasts not except among its ruins,  
and will rebel not save when its neck is laid  
between the sword and the block.

Pity the nation whose statesman is a fox,  
whose philosopher is a juggler,  
and whose art is the art of patching and mimicking.

Pity the nation that welcomes its new ruler with trumpeting,  
and farewells him with hooting,  
only to welcome another with trumpeting again.

Pity the nation whose sages are dumb with years  
and whose strong men are yet in the cradle.

Pity the nation divided into fragments,  
each fragment deeming itself a nation.

3. With an apology to Khalil Gibran, and with reference to the present context, I may add as follows:

Pity the nation that achieves nationhood in the name of a religion  
but pays little heed to truth, righteousness and accountability

which are the essence of every religion.

Pity the nation that proclaims democracy as its polity  
but restricts it to queuing up for casting of ballots only  
and discourages democratic values.

Pity the nation that measures honour with success  
and respect with authority,  
that despises sublime and cherishes mundane,  
that treats a criminal as a hero and considers civility as weakness  
and that deems a sage a fool and venerates the wicked.

Pity the nation that adopts a Constitution  
but allows political interests to outweigh constitutional diktat.

Pity the nation that demands justice for all  
but is agitated when justice hurts its political loyalty.

Pity the nation whose servants treat their solemn oaths  
as nothing more than a formality before entering upon an office.

Pity the nation that elects a leader as a redeemer  
but expects him to bend every law to favour his benefactors.

Pity the nation whose leaders seek martyrdom  
through disobeying the law  
than giving sacrifices for the glory of law  
and who see no shame in crime.

Pity the nation that is led by those  
who laugh at the law  
little realizing that the law shall have the last laugh.

Pity the nation that launches a movement for rule of law  
but cries foul when the law is applied against its bigwig,  
that reads judicial verdicts through political glasses  
and that permits skills of advocacy to be practised  
more vigorously outside the courtroom than inside.

Pity the nation that punishes its weak and poor  
but is shy of bringing its high and mighty to book.

Pity the nation that clamours for equality before law  
but has selective justice close to its heart.

Pity the nation that thinks from its heart  
and not from its head.

Indeed, pity the nation  
that does not discern villainy from nobility.

4. I must clarify that I do not want to spread despair or despondency and it may be appreciated that no reform or improvement is possible until the ills or afflictions are identified and

addressed. The respondent's conduct in this case regrettably appears to be symptomatic of a bigger malady which, if allowed to remain unchecked or uncured, may overwhelm or engulf all of us as a nation and I recall here what John Donne had written:

Each man's death diminishes me,  
For I am involved in mankind.  
Therefore, send not to know  
For whom the bell tolls,  
It tolls for thee.

5. Khalil Gibran had also harped on a somewhat similar theme as under:

### **On Crime and Punishment**

Oftentimes have I heard you speak of one who commits a wrong as though he were not one of you, but a stranger unto you and an intruder upon your world.

But I say that even as the holy and the righteous cannot rise beyond the highest which is in each one of you,

So the wicked and the weak cannot fall lower than the lowest which is in you also.

And as a single leaf turns not yellow but with the silent knowledge of the whole tree,

So the wrong-doer cannot do wrong without the hidden will of you all.

Like a procession you walk together towards your god-self.

You are the way and the wayfarers.

And when one of you falls down he falls for those behind him, a caution against the stumbling stone.

Ay, and he falls for those ahead of him, who though faster and surer of foot, yet removed not the stumbling stone.

And this also, though the word lie heavy upon your hearts:

The murdered is not unaccountable for his own murder,

And the robbed is not blameless in being robbed.

The righteous is not innocent of the deeds of the wicked,

And the white-handed is not clean in the doings of the felon.

Yea, the guilty is oftentimes the victim of the injured,

And still more often the condemned is the burden bearer for the guiltless and unblamed.

You cannot separate the just from the unjust and the good from the wicked;

For they stand together before the face of the sun even as the black thread and the white are woven together.

And when the black thread breaks, the weaver shall look into the whole cloth, and he shall examine the loom also.

6. I deem it important and relevant to explain here the conceptual basis of the law regarding contempt of court. The power to punish a person for committing contempt of court is primarily a power of the people of this country to punish such person for contemptuous conduct or behavior displayed by him towards the courts created by the people for handling the judicial functions of the State and such power of the people has been entrusted or delegated by the people to the courts through the Constitution. It must never be lost sight of that the ultimate ownership of the Constitution and of the organs and institutions created thereunder as well as of all the powers of such organs and institutions rests with the people of the country who have adopted the Constitution and have thereby created all the organs and institutions established under it. It may be advantageous to reproduce here the relevant words of the Preamble to the Constitution of the Islamic Republic of Pakistan, 1973:

“we, the people of Pakistan ----- Do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this Constitution.”

It is, thus, obvious that a person defying a judicial verdict in fact defies the will of the people at large and the punishment meted out to him for such recalcitrant conduct or behavior is in fact inflicted upon him not by the courts but by the people of the country themselves acting through the courts created and established by them. It may be well to remember that the constitutional balance *vis-à-vis* trichotomy and separation of powers between the Legislature, the Judiciary and the Executive is very delicately poised and if in a given situation the Executive is bent upon defying a final judicial verdict and is ready to go to any limit in such defiance, including taking the risk of bringing down the constitutional structure itself, then in the final analysis it would be the responsibility of the people themselves to stand up for

defending the Constitution and the organs and institutions created and established thereunder and for dealing with the delinquent appropriately. It shall simply be naïve to underestimate the power of the people in matters concerning enforcement of their will. The recent phenomenon known as the Arab Spring is too fresh to be ignored or forgotten. Going back a little, when told about the Pope's anger over the ruthless Stalinist suppression of dissent within Russia Joseph Stalin dismissively made a scornful query "The Pope? How many divisions does he have?" History tells us that the will of the Russian people ultimately prevailed over the Soviet Union's army of countless divisions. A page from our own recent history reminds us that the Chief Justice of Pakistan did not possess or control any division when he refused to obey the unconstitutional dictates of General Pervez Musharraf, who commanded quite a few divisions, and still emerged victorious with the help of the people. The lesson to be learnt is that if the cause is constitutional and just then the strength and support for the same is received from the people at large who are the ultimate custodians of the Constitution. I am not too sure as to how many divisions would a population of over 180 million make!

7. The respondent is the Chief Executive of our Federation who has openly and brazenly defied the Constitutional and legal mandate regarding compliance of and obedience to this Court's judgments and orders. The following words of Justice Louis Brandeis of the United States Supreme Court in the case of *Olmstead v. United States* (227 U.S. 438, 485) seem to be quite apt to a situation like this:

"In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The respondent is our elected representative and our Prime Minister and in his conviction lies our collective damnation. This surely calls for serious introspection. I believe that the proposed judgment authored by my learned brother Nasir-ul-Mulk, J. is a step towards the right direction as it kindles a flame of hope for a future for our nation which may establish a just and fair order, an order wherein the law rules and all citizens are equal before the law.

**(Asif Saeed Khan Khosa)**

**Judge**