

**JUDICIARY AND DEMOCRACY IN PAKISTAN:
(2000-2008)**

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**NATIONAL UNIVERSITY OF MODERN LANGUAGES
ISLAMABAD**

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Abstract

Judiciary and democracy are hot debate topics, which have made the political and constitutional history very interesting. This study therefore shed spots light on the era of Musharraf's Military government from the perspective of judiciary role in strengthening democracy. In the history of Pakistan the initial involvement of the military in politics led to the formation of a hierarchical government in which the military has always dominated. The evidence from history suggested that the military has always enjoyed dominance over this power while influencing the other state institutions including judiciary and legislature. To prolong their tenures, the military dictator tried to include people in their power politics through direct means which resulted in the formation of the particular political class which was loyal to their military bosses. Contrary to that, resentment among the people also developed which suggests that the continuous but slow development of democracy; separation of East Pakistan being an example of the military took over whenever this political class threatened to acquire more shares in the power. On the other hand, every military rule had always been validated by the judiciary which suggests that the judiciary had always played the subservient role and allowed the military to influence the institutions. Various evidences from history support this argument. Judiciary had its conflicts with peoples' representatives but never remained in direct conflict with Military till 2007.

General Musharraf took power in 1999, ousted the sitting government. The history repeated itself and his rule was validated by the judiciary although General Musharraf dismissed the sitting chief justice of Pakistan. As per the military tradition of rule, General Musharraf started a local government system to include people in politics. The massive flow of information on behalf of multiple news outlets accelerated the process of democracy. The superior judiciary which had been working under the PCO started to take sou moto actions. The judiciary interfered in the privatization process initiated by General Musharraf which led to conflicts between the two institutions. General Musharraf removed the chief justice yet again which he had done in the past. However, the whole judicial setup turned against the military regime and started movement. The media courage, inclusion of political parties, and return of exiled political leaders increased the magnitude of this movement which led to the establishment of the democracy in 2008. The movement later established judiciary public support at its back, it succeeded in acquiring a share of power.

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Acronyms

CDA	Capital Development Authority
COAS	Chief of army staff
CJ	Chief justice.
FCR	Frontier crime regulations
FSC	Federal Sharita Court
HC	High Court
JCPR	Judicial Commission of Pakistan Rules
JI	Jamiat Islami
IJI	Islami Jamhuri Ittehad
ISI	Inter Service Intelligence.
KPK	Khyber Pakhton Khan
LHC	Lahore High Court
LDA	Lahore Development Authority
LFO	legal frame Order of Work
MMA	Mujtahid Majlis-e- Amal
MFLO	Muslim Family Laws Ordinance
NSC	National Security Council.
NAB	National Accountability Bureau
OCAC	Oil Companies Advisory Committee
PCO	Provisional Constitutional Order
PML (Q)	Pakistan Muslim league Q
PLD	Pakistan Law Decisions
PEMRA	Pakistan electronic media regularity authority
PML (N)	Pakistan Muslim League Nawaz
PSM	Pakistan Steel Mills
PSO	Pakistan State Oil
PTCL	Pakistan Telecommunication Ltd.
PCRLJ	Pakistan Criminal Law Journal
PPP	Pakistan People's Party

SCBA Supreme Court Bar Association
SJC Supreme Judicial Council.
SCC Supreme Court

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CHAPTER 1

INTRODUCTION

This chapter comprises of the background of the study, the statement of the problem, the research objective and question. In addition, it contains justification and significance of the study as well as scope and limitations. Support at its back, it succeeded in acquiring a share of power.

Social development, prosperity, and the strengthening of democracy in any society depend on complete justice, an independent judiciary, peace, and rule of law. But these cherished goals can be achieved only if all institutions of the state function with dedication, devotion and respect the bounds and confines as prescribed by the constitution and the law. Since Pakistan's inception, the judiciary played a very critical role in the constitutional and democratic transition. The judiciary significantly contributed to shaping, promoting, upholding, democracy and Constitution. However, for numerous reasons judiciary has not been able to direct the state for upholding rule of law and democratic norms: a fragile tendency towards constitutionalism, judiciary's dependence on other state organs for its institutional development and enforcement of its judgments, and lack of lasting judicial-autonomy from other state-actors and institutions. As evident from the legal and political history of Pakistan, whatever judicial autonomy has achieved is more likely due to changes witnessed in the democratic transition, rather than its struggle for independence.¹

In Pakistan, the declining path of the courts is usually drawn back to the decision of the federal court in the Maulvi Nazimuddin Khan Case, comprising of a trial of three decisions. The first was the judgment in the case of Nazimuddin Khan itself, the second was the judgment in the case of Patel, and the third was the decision in the 1955 reference of the governor-general. Under the doctrine of necessity, Justice Munir justified the unlawful act of the then Governor-General, Ghulam Muhammad. Consequently, in the politics of the country, dictators such as Iskandar Mirza, Ayyub Khan, Yahya Khan, Zia ul Haq, and Pervez Musharraf also contributed to constraint democratic growth in the country. The principles that directed the decision of the Supreme Court in 1955 were later used to give legitimacy to Pakistan's first military interference.²

President Iskandar Mirza abrogated the 1956 Constitution on October 7, 1958, dissolving the national and provincial assemblies. The court validated the military takeover during the hearing of these regular appeals by arguing that a credible coup d'état is a legal way to change a constitution. The key decision runs to a mere six pages. As arbitral tribunal, the court did not find it appropriate to

¹ Muhammad Raheem Awan. "Judicial Activism in Pakistan in Commercial and Constitutional Matters: Let Justice be Done though the Heavens Fall", *journal of international criminal justice*, vol., July, 2014

² Khalid, Iram. "Role of Judiciary in the Evolvement of Democracy in Pakistan." *journal of political studies*, 19, no. 2 2012.

request the assistance of senior counsel. The Begum Nusrat Bhutto Case, which justified General Zia ul Haq's seizure of power, was based on the federal court's judgment in the 1955 reference to the Governor-General. General Zia referred to his trust in the independence and impartiality of the judiciary, his acquaintance with the demands of justice, the circumstances in the country, and the dictates of democracy. Centered on the rule of necessity, the court's decision backed the martial law government.³

The political economy of Pakistan began to change rapidly in 1999 when General Pervez Musharraf imposed the Marshall Law and took over the government. The changes were introduced in the system by Musharraf's government and the economic development, particularly in the fields of communication and mass media, resulted in the change of social structure which started influencing the power structure.⁴The social change resulted in the democratization of the groups and classes; particularly the rising urban middle class which demanded further democracy. The opportunity was cashed by the judiciary which started exercising the power of judicial review against Musharraf's dictatorial regime.

The clash of the executive and the judiciary disturbed the balance of power with the populist movements, the process of democracy was further enhanced and ultimately, a democratic regime was established in 2008. The success of the populist movement, establishment of democracy, and later free judiciary indicated that the role of the military, for a time being, was marginalized in politics for a while. However, the struggle of power by the Apex Judiciary to exercise its power was directly aided by the people. This study has focused on the judiciary role in process of democratic strengthen in Pakistan during the hierarchical government and has also looked upon the struggle of the judiciary in exercise its share of power by direct conflict with the Musharraf regime.

1.1 Research Problem

The focus of the study is to explore the role of the judiciary in strengthening the democratic process in Pakistan during a uniform regime .The chosen period of this study is 2000- 2008. These years were important to Pakistan's judiciary history where the judiciary started participating in matters of Public interest litigation by taking 'Suo Motu' actions actively against the uniform regime. Series of events after 2005 started to create different images of the judiciary as the judiciary had always been

³ Khalid, Iram. "Role of Judiciary in the Evolvement of Democracy in Pakistan." *journal of political studies*, 19, no. 2 2012.

⁴ Ibid.p.7-9

considered as the tool of De-facto governments in the history of Pakistan, before 2005, suggest likewise.

1.2 Aims of the study

- i. To focus on the role of the judiciary as pro-democratic institution in Pakistan (2000- 2008).
- ii. To analyze, how the judiciary's exercised its power through judicial activism.

1.3 Main Research question

How did the judiciary remain effective in strengthening the democratic process in Pakistan during the uniform regime?

Supporting questions:

- i. What role the judiciary along with other actor's i.e. media and civil society have played in embedding the process of democracy during the given period (2000-2008)?
- ii. How did the judiciary struggle to exercise its share of the power by involving in direct conflict with Musharraf?

1.4 Literature review

This section contains a review of already existing literature on judiciary and democracy in Pakistan. It also shows the identified gaps that were left by other scholars as well as highlights the theoretical framework that was used in the study.

S. Akbar Zaidi addresses issues related to the process of democratization, decentralization, governance, and civil society in Pakistan in his book 'Military, Civil Society and Democratization in Pakistan. 'This book shows the structural transitions and transformations in economy and society, and shows how the emergence of new socio-economic groups and classes often came up against older and more established structures and institutions. It is a very interesting book; however, the author takes a discourse in which the democracy and political parties are completely dominated by the military establishment.⁵ On the other hand, the evidence of the post-Musharraf era and establishment of a democratic regime suggest that this hypothesis should be further analyzed, and therefore, democracy as an institution is to be included in this proposed research work to close this gap.

⁵ S. Akbar Zaidi, *Military, Civil Society and Democratization in Pakistan*, (Banquet Printing Press, Lahore: 2011). p.13

Ayesha Siddiqi, in her book 'Military Inc., the military is described as a corporate entity within Pakistan's military economy that has its financial interests along with its professional responsibilities. It is named 'Milbus' by her. Milbus refers to military capital that is used, especially the officer frame, for the personal benefit of the military fraternity, but is neither reported nor part of the defense budget. She also explains that this phenomenon intensifies the military's interest in staying in power or direct/indirect governance influence. This does not promote the development of democracy or the rule of law and makes it the most precarious form of Milbus.

Therefore, by regulating government, she also points out a battle for dominance within the military.⁶ However, this research is intended to explain that brief period where, after Musharraf, the military was not able to control the government and hence the struggle for power among the other institutions emerged which was, before that, only in the hand of the military in Pakistan especially during the period of Musharraf's dictatorial regime.

Paula R. Newberg in her book 'Judging the State' thoroughly describes the structure of the state and how did the courts in Pakistan play their role in maintaining or else, changing the structure of the state. She provides a very meaningful insight on how the various cases shaped the structure of power and gave the advantage of elaborating the constitution to the apex courts. She critically analyze, that the power struggle between the ruling executive and political class. She states that the courts have always sided with the executive since the first major constitutional trial of Mulvi Tamizuddin Khan's case in which the courts defined the public order as the paramount task of political rule and hence, putting the differences in the doctrine of necessity.

She divides the periods into categories of military and civil rules and focuses on the exertion of power by the courts and how the executive responded.⁷ However, her analysis does not define the events that changed the power struggle on the part of the apex judiciary after Musharraf; although, it does contain evidence that suggests that it might come to that particular end which happened in and after November 2007. This study is aimed at exploring and filling this particular gap.

Michael Kent Curtis in his research article "Judicial Review and Populism" writes about the need for judicial review and how populists' demand of abolishing judicial review is unjust. He gives an in-depth account of criticism that has been made upon the practice of 'Judicial Review' and

⁶ Ayesha. Siddiqi, "*Military Inc. inside Pakistan's Military Economy*", (Pluto Press, London: 2017.) P. 1-3

⁷ Paula R. Newberg, "*Judging the state*", (Cambridge University Press: 1995). PG.

counters it. He states that the populists are of the notion that instead of judicial review, the powers must be transferred to the people as they have the right to elect their representatives. However, the question that what if the democratically elected government starts taking wrong decisions? How would people be able to respond to certain circumstances?

On the matter of the debate on the issue of the legality of judicial review, he argues that the Courts being the guardian of the constitution, have the knowledge and wisdom to use the powers of judicial review. He also argues that as the democracy is not strong enough, therefore, the power of judicial review is indispensable.⁸ The ideas are invaluable that is given by the author; however, the populists' arguments cannot be validated alone. And the author's work lacks the arguments of the representatives of the people which is aimed to be addressed through this research.

Advocate Hamid Khan gives a detailed history of the Judiciary in his book 'A History of the Judiciary in Pakistan' and also describes the prominent features of the judiciary. He gives a detailed insight into the configuration and structure of the Judiciary that had been existing since the time of inception of Pakistan. On the subject matter of this particular research, the book of Advocate Hamid Khan provides detailed information about judicial activism that led to the emergence of the conflict between the government and the judiciary and it continued even after regime change. The book also contains the cases against the government and the reaction on the part of the government.⁹ The author, however, does not define the phenomenon of political cases.

The author also blames the democratic governments for being an obstacle in the way of judicial independence; however, neither defends nor rejects the idea of judicial review that has been taken on a larger scale by the Supreme Court during these years. The Courts have exercise their power through the judicial review which is aimed to be discussed in this research work and also its impacts on the struggle of power among the state institutions.

In her research paper 'Genesis and Assessment of Public Interest Litigation in the Supreme Court of Pakistan: Toward a Dynamic Theory of Judicialization,' Maryam S. Khan writes about the political difficulties that have arisen because of the apex court's indulgence in political matters. She specifies the types of political cases that created a huge political gap. She writes that judicial power striving on the part of the Apex Court of Pakistan was a part of the global expansion project of judicial

⁸ Curtis, Michael Kent. "Judicial Review and Populism", *Public Law and Legal Theory Research Paper Series*, (Forest University, no. 06. April, 2003). P. 320

⁹ Hamid, khan, "Judicial history of Pakistan," (oxford university, 2016) 1st edition.

powers. She questions the legality of Suo Motu actions that according to her, the Supreme Court says, are mentioned under article 184 (3) of the constitution. She also addresses the shift of behavior of the court from Public interest Litigation or PIL cases to political cases.¹⁰

This article also criticizes the lack of action on behalf of the apex court during the late 1980s and 1990s when the constitution was being amended against the principles that were agreed upon. However, she doesn't give an account of public opinion. She also lacks the effect of PIL activism against democracy and democratic institutions. This research is aimed at filling these gaps. However, if the above literature is reviewed from the viewpoint of this research project, there is a visible gap of knowledge which needs to be filled logically and academically. The above reviewed and available literature provides space to the present research work which is 'judiciary and democracy in Pakistan (2000-2008).

1.5 Contribution to the knowledge.

There is a gap in the literature on how the judiciary remains effective in the democratic process in Pakistan during hierarchical government. However, there has been literature that takes the subject of the judiciary and democracy with different dimensions. But we still lack a comprehensive study conducted to highlight the judiciary's role in strengthening democracy in Pakistan. The present study will be a contribution to fill this gap in literature.

1.6 Research Methodology

The method of the research which the researcher have chosen and used in conducting this research is qualitative approach and correlational method. The Purpose of qualitative studies is a precise summary, in layman words, of any particular issue, event or any episodic social problem experienced by and individual, a group of individual and a society as whole. This methodology deemed to evaluate Cases which is rich in data related to society .In this connection such methodology derives correlational impact of independent and dependent variable. Likewise, judicial activism is an independent variable which has long lasting impact on democratic process of society.

¹⁰ Maryam, Khan. *Genesis and Evaluation of Public Interest Litigation in the Supreme Court of Pakistan: Toward a Dynamic theory of Judicialization*, February 02, 2015. P. 03

There is no manipulation of variables in qualitative research design. Data collection of qualitative study focuses on discovering the common feature of the specific event under the study thus data collection involves specific to general, observation and examination records reports and documents. This study relies on primary as well as secondary data. Primary data was PLD (Pakistan legal documents), Constitution of Pakistan and ruling of Supreme Court have been consulted. Secondary data was Books, Journals, Articles and Newspaper like Daily Dawn, Express Tribune the News etc. This study likewise, focuses on examination of historical documents and jurisdiction.

1.7 Theoretical Frameworks

This study has two dimensions: One deal with democracy and the other deals with the judiciary's struggle to acquire its share of power. The mass mobilization of people who started supporting independence for judicial movement and the judiciary, when established, took certain unique steps and decisions that had never been taken in history, are the two important themes that need to be taken into consideration. Therefore, to explain this phenomenon, Ran Hirschi's work on new constitutionalizing and judicial empowerment which he calls 'Juristocracy' is being considered. This work by Ran Hirschl is a part of his book 'Towards Juristocracy: The Origins and the Consequences of New Constitutionalism'. In his books, he defines that the constitutional reforms have transferred an unprecedented amount of power from representative institutions to judiciaries all around the world.

He claims that this transfer of power has happened because of judicial activism that resulted in the acquisition of powers of judicial review by the judiciaries.¹¹ He argues that the judiciary in modern democracies plays a key role in resolving most contemptuous social and political issues; however, the field of comparative judicial studies in general and study of the political origins and consequences of judicial empowerment, in particular, remain under-researched and under-theorized. He presents six broad scenarios of constitutionalism and the establishment of judicial review in the post-World War II era: The reconstruction wave, the independence scenario, the single transition scenario, the Dual Transition Scenario, the Incorporation Scenario and the no Apparent Transition Scenario . In all these scenarios he explains that the transition has happened worldwide one way or the other.

Although his theory is focused on the explanation of judicial empowerment, new

¹¹ Ran Hirschl, '*Towards Juristocracy: The origins and consequences of new constitutionalism*' (Harvard university Press, Massachusetts: 2004). P. 01.

constitutionalism and its consequences, it does not include the effects it creates on the process of democratization. Therefore, the research work would take the assumptions and scenarios into consideration and this theory would be applied on the collected data regarding the judicial movement and the establishment of independent judiciary after Musharraf.

1.8 Significance of the Study

An autonomous judiciary performs a huge role as a leading course for the persistence of democratic reinforcement generally in the world and Pakistan in particular. The judicial role becomes pivot for endorsing democratic process in Pakistan quite during a dictatorship government. Though Pakistan, in theory, is a democratic country based on parliamentary form of government, yet practically, it has observed more than its half age under auspice of dictatorship rule. The democratic culture is not yet entrenched in Pakistan; however, democratic process has been on practice without any meddling of Military bureaucracy since the end of Musharraf regime.

The taken era of this study is 2000- 2008 -these years- were important to Pakistan's judiciary history where the judiciary on track vigorously contributing in matters of public interest litigation by taking 'Suo Motu' actions against the military government. Therefore, every learned man of Pakistan, cliques from scholars, reformers and civil society as entity should keep abreast their knowledge why and how judiciary successfully brought democratic process back on its track. This study has unearthed all significant chains of events after 2005, which started to create vigorous changes in images of the judiciary in Pakistan. Moreover, an institution maintains its autonomous role through prevailing public trust.

This research work enables the readers to know how judiciary in Pakistan has abled to get public trust during subjected period through a series of suo moto actions compliance with public interests such as rule of law and human rights propagations. The prolonged decline and derailing of democracy in Pakistan since its inception until 2008 and then stable upbringing of democratic process seems after ramifications of the revolutionary actions taken by the then judiciary as an institution.

In this connection, thoroughly this dissertation contributes a literature to the subject about Judiciary and Democracy and shed light on different perspectives as well as it raises many questions on the subject for future study. For instance, scholars can probe either judiciary still making efforts to obtain its share of the power by involving in direct conflict with the government or separation of

power among institutions has evolved and enabled judiciary to maintain its autonomy.

1.9 Organization of the study

The proposed research work is organized in the following chapters to modifications on the consent of the research supervisor.

Chapter: 1 Introduction

This is the first chapter of the present research project. This chapter consists of a research synopsis. It introduces the problem in a broader way in the form of the statement of the problem, objective of the study, research methodology research question and literature review.

Chapter: 2 Theoretical framework

In this chapter of the current research project, democracy has been discussed as a concept and its indicators have been identified. Moreover the theoretical concept of Ram Hershel “Juristocracy” has been consulted. The arguments of the theory support how the judiciary exercises its share of power and its role in strengthening democracy is clearly defined.

Chapter: 3 historical overview of democracy and judiciary In Pakistan 1947-1999

In this chapter, the democratic and judicial history of Pakistan from 1947 to 1999 has been evaluated. This chapter divides the history of Pakistan into five major categories: the post-independent decade, Ayub Khan's era, separation of East Pakistan, Bhutto's regime, General Zia ul Haq regime, and political chaos from 1988-1999. The judicial cases of these five eras are also consulted where the judiciary endorse extra-constitutional steps and the case where the judiciary reinforced the democratic institutions in Pakistan

Chapter: 4 Pakistan under General Pervez Musharraf: the first seven years (1999-20005)

In this chapter of the thesis the process of democracy and judiciary role during the Musharraf regime till 2005 has been discussed. Moreover, changes that Musharraf brought and their impact with the reference of democracy have been critically analyzed.

Chapter: 5 Military vs. judiciary and Pakistan towards democracy.

In the last chapter the conflicts between judiciary and government have been discussed. Moreover, the struggle of the judiciary that supports strengthening the democratic process in Pakistan and fall of military government has been critically analyzed in this chapter.

1.10 Delimitation of the study

Keeping in view the time and resources constraints, this research has been limited to the judiciary and democracy in Pakistan during Musharraf era. Specially, this study focuses judiciary role in strengthening democratic process in the given period. The first part of this study will be based on brief historical details of democratic evolution and judiciary, which will focus on explaining past decision given by judiciary both in favor and against the democratic government. No details other than the major stakeholders in top level politics will be included in the brief history. In the latter part of the study, the research defines the judiciary role in strengthening democratic process in Pakistan under Musharraf government and judicial conflicts. It also defines how the judiciary obtains its share of power by direct conflict with government.

CHAPTER 2

CONCEPTUAL AND THEORETICAL FRAMEWORK

In this chapter of a current research project, the researcher has discussed democracy as a concept and identified its indicators. After it, the concepts of judicial activism and *sou moto* action have been debated upon. However, to meet the requirement of the theoretical framework the present chapter proceeds in an organizational way with supplementary theory for every concept. The main theme of this section is that how the judiciary acquires its share of power and its role in strengthening democracy is clearly defined through the lens of Ran Hershel. In order to explain this phenomenon, Ran Herschel's work on new constitutionalizing and judicial empowerment which he calls 'Juristocracy' is being considered.

2.1 Defining democracy

Democracy is a form of government or a system in which citizens play their role in political decision-making. In a democratic form of government, state law ensures peoples' fundamental and constitutional rights. In this system, political, constitutional, and economic decisions are being made through the consensus of state institutions.¹² It is a system in which the power of decision-making is exercised by elected officials. For this purpose, free and fair elections are conducted. Similarly, broad suffrage and liberty of expression are allowed to function. Moreover, citizens enjoy the independence of seeking information.

They are allowed to have independence of association. It is argued that democracy is an independent form of government, which is based upon representatives of people, and they (representatives) function under the law.¹³ Democracy is embedded in political culture in which differences of opinion and responsibility are appreciated. Some other scholars argued that democracy is a system, through various institutional means and mechanisms, where political power relies upon the will of the common masses.¹⁴

Democracy is a broad base term. Generally, democracy is defined as the inclusive participation of state stakeholders and the public in all spheres of knowledge. A study was conducted by National

¹² Frank Cunningham, *Theories of Democracy: A Critical Introduction*. New York and London: Routledge, 2001

¹³ Coglianese, Cary. "Michigan Law Review", no. 6 (1990): P. 67.

¹⁴ Boutros Ghali, "An agenda for democratization", United Nations: New York, 1996.P,1

Democratic Institute’’ in which J Brian O Day has identified ten indicators of democracy: civil right, economic and social right, political participation, rule of law, free and fair election, military control, government accountability, and media¹⁵. Furthermore, another African journal of legal studies by Alytus Agbor has also identified indicators of democracy such as human rights, free civil society, rule of law, peaceful alternation of power, and independence of the judiciary. However to meet the requirement of this study, the researcher has also identified some democratic indicators opposite to the study, which have been described in detail. The study has unearthed how these indicators are supportive and interlinked to the judiciary in the strengthening of democracy in the defined period. These indicators are following.

2.1.1 Free and Fair Elections

Free and Fair Elections for the success and progress of democracy, free and fair elections are prerequisites. Free and fair elections mean that all citizens have equal access to the electoral process and ballots which are secret and free. Additionally, fair elections will help citizens to elect the representatives of their own choice and if they do not work for the welfare of citizens then voters can reject them in the next elections

2.1.2 Media and Democracy

Media and Democracy in the Modern States, the role of media, newspaper, and television is very important to create awareness among the public as free media will encourage citizens to take part in politics. Moreover, highly public participation in politics has been observed in those countries where media is free. For the success of democracy and good governance, the role of mass media is vital. Media shapes public opinion, creates awareness and provides a platform for discussions on political and social issues which help to educate voters and also encourage tolerance for others that in turn plays a positive role in the progress of democracy. Furthermore, for the election campaigns and coverage, the media can play both positive and negative roles. Though, even in the U.S, the presidential candidates spend a huge amount on their advertisements on television and in newspapers.

2.1.3 Democracy and Human Rights

Democracy and human rights share a mutually inclusive relationship as there can be no human rights without democracy and vice-versa. The existence of this relationship is not new: it is expressly specified in numerous international human rights instruments. The UDHR provides that ‘everyone has

¹⁵ J. Brian O’Day, “Democracy indicators”, *National democratic institute*, 14 april,2007,p,3-5

the right to take part in the government of his country, directly or through freely chosen representatives. It further stipulates that equal access to public service in one's country is a right, adding that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

2.2 Judicial Activism: the Concept

The concept of judicial activism has been around for longer than the term itself.¹⁶ The term "judicial activism" was first used in 1947. In the 1950s, the term "judicial activism" appeared twice in judicial opinions. In the 1960s, it had been reported fourteen times. In the 1990s, judicial activism and judicial activist have been reported dramatically. In judicial opinions, it has been reported 262 times whereas, in law journals and law review articles, it has been reported 3815 times.¹⁷ Unlike the previous decades, modern-day judges are more likely to accuse their colleagues of judicial activism. Astonishingly, this term has become more ambiguous despite its increasing use, due to its definition in different and contradictory ways.

The scholars as well as judges recognized this problem and continued to speak about the concept without defining it. From the very beginning, judicial activism lacked any accepted definition rather it encompasses a variety of concepts. The idea of judicial activism is older than the term. Till the twentieth century, there were debates in the legal fraternity regarding the conceptualization of judicial legislation that referred to the making of law by the judges.¹⁸ Blackstone regarded it as an important feature of common law, whereas, Bentham considered it as an encroachment to the legislative functions.¹⁹

In January 1947, Arthur Schlesinger Jr. was the first to introduce the term judicial activism.²⁰ His article profiled all the nine justices of the US Supreme Court and elaborated alliances and divisions among them: four judges were placed as judicial activists, three were placed as champions of

¹⁶ Gerhardt, Michael J. "The Rhetoric of Judicial Critique: From Judicial Restraint to the Virtual Bill of Rights." *Wm. & Mary Bill Rts. J.* 10 (2001): 585.

¹⁷ Kmiec, Keenan D. "The origin and current meanings of judicial activism." *Cal. L. Rev.* 92 (2004): 1441, 148.

¹⁸ Thayer, Ezra R. "Judicial legislation: its legitimate function in the development of the common Law." *Harvard Law Review* (1891): 172.

¹⁹ Cosgrove, Richard A. *Scholars of the law: English jurisprudence from Blackstone to Hart.* (NYU Press, 1996): 56-57.

²⁰ Schlesinger, Arthur Meier. *The colonial merchants and the American Revolution, 1763-1776.* No. 182. (Columbia University, 1918): 202, 208.

self-restraint, and the remaining two were placed as a middle group.²¹ Schlesinger referred to several meanings that are reasonably similar to the present-day definitions of judicial activism, such as judicial activism is the overturning of democratically enacted statutes. Justice Bhagwat of India observed that in every political system, judicial activism is an essential attribute of an impartial judiciary.

Public Interest Litigations in India and suo motu actions in Pakistan have further enlarged the scope of the judiciary. Judicial activism is the expanded role of the judiciary encompassing an area of the legislative vacuum in the domain of human rights. Since the inception of Pakistan, the judiciary has undergone an incredible transformation and is being identified by itself as well as by the people as a last resort.²²

2.3 Judicial empowerment and The Constitutionality of Sou mo

Judicial Empowerment is the authority granted to courts and judges by the Constitution and other laws to interpret and decide, based on sound legal principles, and rule accordingly. This power allows judiciary authorities to determine the legality of arguments, proofs, and facts in order to execute a sentence or a ruling. In modern democracies, active and impartial Judiciary is imperative to ensure the proper functioning of the state organs.²³ In the Mughal era, Diwan-e-Mazalim was considered to be the highest office in the judicial fabric.

During the British Raj, a new judicial configuration was devised in the Subcontinent. After partition in 1947, both India and Pakistan established their own constitutional schemes based on the Government of India Act, 1935. This Act empowered the courts to check the constitutionality of the enactments under Section 223A.²⁴ In Pakistan, the Constitution envisages tracheotomy of powers whereby every state organ is required to work within its constitutional limits. The Superior Courts entrenched power of judicial review by Section 223, 223-A and 204 of 1935 Act. Later on, the Indian Act of 1935 was replaced by the Constitution of 1956 that conferred power of judicial review to the High Courts and the Supreme Court under Article 170 and Article 22 respectively.

In 1958, the Constitution was abrogated by the Chief Martial Law Administrator. Afterwards, the Constitution of 1962 introduced presidential form of government and its Article 98 articulated

²¹ Ibid, pp, 74-78

²² Kmiec, Keenan D. "The origin and current meanings of judicial activism." *Cal. L. Rev.* 92 (2004): 1450-51.

²³ Thayer, Ezra R. "Judicial legislation: its legitimate function in the development of the common Law." *Harvard Law Review* (1891): 172.

²⁴ Mahmud, Tayyab. "Jurisprudence of Successful Treason: Coup d'Etat & (and) Common Law." *Cornell Int'l LJ* 27 (1994): 49.

about judicial review. However, the Constitution of 1962 was replaced with an interim constitution by military dictator. With the consensus of all political parties, the Constitution 1973 of Pakistan was passed without any substantial lingual changes. In this Constitution, power of judicial review was conferred to the High Courts and the Supreme Court by virtue of Article 199 and 184(3) respectively. The SC in various cases assumed its authority where question of public importance or protection of fundamental rights was involved.²⁵

Suo Moto is a Latin word which means “on its own motions_an_act of authority taken without formal prompting from another party. Meaning that, a judge may take an action without a request made by the party to the court. The SC in various cases assumed its authority where question of public importance or protection of fundamental right was involved.²⁶The Supreme Court by invoking its suo motu jurisdiction has broad powers to review an administrative action on various grounds such as if the act is biased, mala fide, or unreasonable. The Court has also been empowered to strike down any legislative enactment or any part thereof if that is offensive to any provision of the Constitution. Article 184(3) articulated essential conditions for invoking jurisdiction of the Court: question of public importance and matter is associated with the protection and enforcement of fundamental rights.

2.4 Consolidated roots of judicial empowerment: Ran Herschel

To understand and theorize Judiciary and Judicial activism in the early 21st century, Ran Hirsch’s book on Juristocracy has been consulted. Ran Herschel in his book gives an extraordinary insight of the four judicial systems including South Africa, Canada, Israel and New Zealand where the judiciary had started their active involvement in the matters of the executive while using their right of Judicial Review. He argues that the judiciaries all over the world have acquired executive power through constitutional reforms. He calls it a ‘Global Trend’ which is seen in later part of 20th Century and early part of 21st Century. Ran Hirschl presents six broad scenarios of Constitutionalization and the establishment of Judicial review at the national level of various nation states in post-World War II era. These scenarios are as follows:

- “The Reconstruction Wave” in which empowerment was a by-product of political reconstruction in the wake of World War II. He gives the examples of Japan where the constitution had been revised, Italy where the Italian Constitutional Court had been

²⁵ Fuji Foundation v. Shamim-ur-Rehman, PLD 457 (SC 1983); State v. Zia-ur-Rehman, PLD 49 (SC 1973); Abu-ul-ala Maudoodi v. West Pakistan, PLD 49 (SC 1973).

²⁶ Ibid,

established, France where the fifth republic had been enforced and Germany where Federal Constitutional Court had been established.

- “The Independence Scenario” where Constitutionalization of rights and establishment of judicial review were parts of the decolonization process. British colonies of Africa and India could be taken as the prime examples in this regard.
- “The Single Transition Scenario” in which the Constitutionalization of rights and the establishment of Judicial review are the byproducts of the transition from quasi-democratic or authoritarian regime to democracy. The examples of South Africa, Colombia and Brazil are presented in this regard.²⁷
- “The Dual Transition Scenario” in which Constitutionalization is part of a transition to both a western model of democracy and market economy. The examples of post-communist states have been given in this regard.
- “The Incorporation Scenario” in which Constitutionalization is associated with the incorporation of international and transnational or supra-national legal standards in to domestic law. The incorporation of such laws by the European countries to meet the Euro
- “The no Apparent Transition Scenario” in which constitutional reforms have been n either accompanied by nor the result of any apparent fundamental changes in political or economic regimes. The examples of Sweden, Israel and Mexico are presented in this regard.²⁸

The case of Pakistan is unique in this regard because of the military rule. There, the most appropriate scenario might be the ‘Single transition scenario’ that is being considered in order to apply on the case study of Pakistan. Ram Hirschl further suggests that judicial empowerment through Constitutionalization should be taken as the strategic interaction between three key groups:

1. Threatened political elites who, while supporting democracy, try to protect their political interests in particular and policy making interests in general.
2. Economic elites who take advantage of restrictions imposed upon the government.

²⁷ Ran Hirschl, *Towards Juristocracy: The origins and consequences of new constitutionalism*, Harvard university Press, Massachusetts: 2004 p.4

²⁸ Ibid. p. 07-08

3. Judicial elites and national high courts who strive for enhancing their political influence as well as their international stature.²⁹

In case of Pakistan, all these elites have remained under the influence of the military for so long and with the passage of time, political elites were the one approved and even brought in by the military itself; especially during General Zia's regime. It was the same regime during which Ayesha Siddiqa argues that the military had started to become more and more corporate institution and hence; it can be concluded that a fair chunk of the economic elites during General Musharraf's time belong to the military; especially the retired designated personnel. Therefore, this different scenario makes the case study of Pakistan more interesting. While considering the above given scenario, Ran Hirschl explains three factors which help in shifting of power towards the Judiciaries around the world. These factors are:

- i. Judiciary in general and the Supreme Court in particular, produce such kind of decisions that serve their interests and reflect their ideological preferences. The Supreme Court concludes these decision as it considers itself to be the only legitimate interpreter of laws and hence, its interpretations cannot be challenged.
- ii. The political elites in order to show support towards their principles of supremacy of the law and independence of the judiciary, grant their control to the Courts (whether willingly or unwillingly).
- iii. The existence of widespread public trust in the political impartiality of the Judiciary.³⁰

With respect to Pakistan, the third scenario of 'Single Transition' is applied in the study. However, this scenario explains the borderline of the actual happening in Pakistan. It does not include the involvement of various other factors such as mass media which changed the magnitude of the transition in Pakistan; from quasi-democratic to democratic. The word 'democratic' is debatable in context of Pakistan; however, just for the sake of argument, the establishment of democracy by the direct participation of common masses through elections in which the political parties have participated without any restriction and resultantly a government of the people's representatives is established, is what being called a 'democratic' government.

The functioning of 'democratic' government' is not being discussed as it is not the topic of this

²⁹ Ran Herschel, *"Towards Juristocracy: The origins and consequences of new constitutionalism"*, Harvard university Press, Massachusetts: 2004.

³⁰ Ibid, p.10

research. Therefore, this research includes the application of 'Single Transition Model' of the three models presented by Ran Herschel in order to explain the transition of democracy and in order to explain the main feature of this transition i.e., the Lawyer's movement, the conceptual understanding of 'the politics of reciprocity' between 'the Bench and the Bar' is being applied.

However, as per Ran Herschel suggests, the 'Global trend' of judicial activism was influencing the judiciaries all around the world; the effect of this wave could be seen with regards to Pakistan. The judiciary which was following its functions suddenly deviated from its course and the system abruptly crashed. The only problem with applying Ran Hirsch's theory on this case is that he suggests that the judiciaries acquire these powers through reforms whereas in this case, the judiciary exercises this power all on its own, without having any reform and that too, under the authoritarian regime.

CHAPTER 3

HISTORICAL OVERVIEW OF DEMOCRACY AND JUDICIARY IN PAKISTAN (1947-1999)

3.1 Process of democracy (1947-1958)

The state of Pakistan, at the time of independence, had inherited two opposite ideas: vice-regal traditions of colonial India and liberal traditions of opposing colonial activities. Together, these two distinctive ideas anchor the real and the ideal in Pakistan. This conflict between vice-regal and liberal can be seen as contests between the executive and parliamentary power, and between central authority and local self-rule.³¹ Due to intensity of these conflicts, the institutions of the state were drawn into them.

The institution of the military, after the independence, was soon invited into the corridors of political power by the political elite and hence it resulted in the control of the military over the entire state just after a decade of independence. Before that, the process of democratization was happening at a very slow pace as it happened before the independence. The legislature which was responsible for the legislation had been operating under the colonial constitution of 1935 and due to various reasons, including regional, economic, lingual, and most importantly political, the work on drafting a constitution was also lagging.

The apex judiciary came to play its part when Mulvi Tamizuddin filed a petition against the dissolution of the federal legislature by the then governor-general. The case continued from provincial to the federal level of Courts. The provincial court of Sindh gave its verdict in the favor of the applicant; however, when this case was brought to the appellate court, the federal court annulled the decision of the provincial court and tried to resolve the differences by putting into the doctrine of necessity.³² Hence it strengthened the hands of the executive. The apex court defined that the paramount task of the political rule was to maintain public order and hence, the relationship between the executive and the judiciary began on its voyage in which the former always had the superiority over the latter and the apex court never went against the decisions made by the executive till the later period of Musharraf's regime. (One of the aims of this study)

³¹ Shafqat, Saeed. "Democracy in Pakistan: Value change and challenges of institution building." *The Pakistan Development Review*, 1998: 281-298

³² Ibid.

After independence, the legislature struggled to exert its preeminence as a legislative body primarily because the representatives that were elected in the elections of 1945-1946, did not have any political root in the Western part of the subcontinent as mostly were elected from the central legislative domains of unified India. Therefore, these political elites in fear of losing power always contested the idea of fresh elections after the establishment of independent Pakistan.

Their fear of losing power put them in direct conflict with the executive and executive, in order to exert its power and authority, which encouraged the military to join its ranks. The tussle between the executive and legislature forced them to go into the court which sided with the executive and the military, when provided with the opportunity, toppled the government and hence stamped its hegemony over the state.³³ The history of Pakistan is filled with the repetition of these power struggles and it is one of the aims of this study to find out the reasons how these power struggles have played their part in structuring the state and creating impacts on the process of democratization.

Pakistan, after independence, had inherited the colonial structure which shaped not only its politics but also the ideas of democratization and therefore, the colonial legacy must not be overlooked. For instance, Pakistan inherited the already deployed colonial constitutional framework, the civil service set up and structure, the judiciary, official laws and the military. In further categorization, the military inherited the same organizational structure, bureaucratic norms, fighting doctrines, training regimes, and, above all, a belief that the military and civilians had separate jurisdictions of responsibility that neither should breach. Similarly, the politics was run by either the highly educated or the feudal class which was mostly privileged by the British colonizers.³⁴

The process of democratization was mostly in the hands of the executive and the rarely according to the demands of people. The political participation was based on communal and religious identity which was introduced in the system after the reforms of 1909. The system of governance was present to ensure the smooth running of the government for which the use of force had always been an important tool for maintaining the colonial writ. The British set up the provincial legislatures in order to comply with the demand but the members of these legislatures were mostly the beneficiaries of colonial largesse. They also put limits on the powers of the provincial legislatures and almost the entire executive powers were entrenched in the federation.

³³ Tasneem Sultana. "Montesquieu's Doctrine of Separation of Powers: A Case Study of Pakistan." *Journal of European Studies*. Jan. 2011. p.13-16

³⁴ Ibid,

All these exercises can be seen throughout the history of Pakistan which show that the colonial structuring of institutions, politics and means of power have always existed and continue to exist in the structure of the state of Pakistan. The state of Pakistan started its voyage after independence with the inherited colonial structure. Various other reasons played their part in further structuring the state after independence. For instance, the founding party, All India Muslim League, was actually leading the independence movement. It was a party which was weak both at its membership and ideology. The only credit to this party was that it had utilized the idea of separatism successfully by declaring the Muslims different from the Hindus in accordance with the two-nation theory.

However, when the purpose of this religious-political slogan was served, the newly developed state was exposed with various challenges including ethnic representation, lingual bias and power struggle of the politicians which started to shape the structure of the state. Among them, the idea of “Muslim nationhood” was particularly meaningful to a particular class. Hamza Alavi defines them as ‘Salariat’. This class was the one that belonged to the ‘essential class’ and it had its link with the ‘fundamental classes. But as a class the Salariat itself has a propensity to be easily fractured into different ethnic groups which vie with each other for preference and privilege. Such groups are not defined and determined, once for all, by cultural, linguistic, religious or regional criteria.³⁵

There is, rather, a process of definition and redefinition of ethnic identity in changing political contexts, on the basis of perceptions of the distribution of privilege and politically viable options, as they are brought into focus from one stage to the next. Thus, in Pakistan Muslim ethnic identity, once it had fulfilled its purpose for the salariats of Bengal, Sindh, Sharad (Now KPK) and Baluchistan, gave way to the respective regional ethnic identities. After Pakistan was created the slogan of Islam was adopted by the dominant component of the salariat in Pakistan, the Punjabis and, for a time, the Urdu-speaking Muhajirs, who feared the challenge of regional ethnic movements. It was invoked at first only nominally.

In so far as it was included in the vocabulary of political debates in Pakistan during the first thirty years, only a few symbolic concessions were made to men of religion to make the argument look convincing. It was no more than a political argument that was used by the dominant Punjabis against the assertion of the new regional and linguistic ethnic identities of Bengalis, Sindh is, Pathans and

³⁵ Bakht, Munir. evolution of democracy I Pakistan: a case study of superior court judgments, *journal of research society of Pakistan*, volume, 56, issue No .1,2019

Bloch. The ruling bureaucratic-military oligarchy, which has dominated Pakistan since its inception, had no intention, thereby, of allowing mullahs and Islamic ideologues to encroach on their monopoly of power and privilege. Along with many other problems initially, the most important problem with Pakistan was that it lacked the essential element like national unity for democracy. Pakistan was comprised of various ethnic something necessary to keep the national integrity.

However, it damaged not only the declining national cohesion but also indicated that the internal security challenges had become far more crucial for a state to survive rather than the external security challenges. The violence was used by the executive against the agitators both in the East and in West Pakistan. Also due to the political space left by the demise of Liqueate Ali Khan, the first Prime Minister, there was an ongoing quarrel between the legislators. This provided the governor-general Ghulam Muhammad with the opportunity to exert its executive power which was invested in him through the colonial Indian act of 1935 which was still being used in Pakistan with slight modifications.³⁶

This attempt of power exertion sparked the conflict between the legislature and the executive. The executive, backed by the military, the vice-regal executive sacked noncompliant civilian cabinets (1953), delayed constitution making, disbanded the central legislature (Constituent Assembly) when it crafted a federal democratic constitution (1954), removed an elected government in East Pakistan (1954), and ultimately amalgamated the provinces of West Pakistan into what is called One Unit to create parity with East Pakistan (1955– 1956).

The issue of dissolving the constituent assembly was taken to the court where the court, too, decided in the favor of the executive and hence strengthened its hands. Due to lack of national integrity and national solidarity and low capitalist development, civil society was weak and hence could not play its part especially on the national level. One of the reasons given by the governor general while dissolving the federal assembly was that the representatives had lost the confidence of the people, was also groups and nationalities which were unified in the name of the religion prior to independence. After the independence, these separate ethnic groups were ruled by the political elite which had migrated, mostly, from the central Indian provinces.

This political elite believed that ruling Pakistan is their right as they sacrificed much in the movement for Pakistan. With this combination, the sense of nationalism was lost and hence, these

³⁶ Ayesha, Sidiqa. “*military Inc. inside Pakistan’s military economy*”, (ploto press, London:2017)

ethnic groups when started further democratization and began the politics of agitation, this particular political elite, in fear of losing its control over the power, had no other option but to use the vice-regal means of suppression by using violence and justifying the violence as it was reason why the civil society was not mobilized for establishing national consensus over the issues related to democracy. The civil society was active merely for the ethno-political gains.

After establishing the hegemony over power, the executive with the help of military and civil bureaucracy started influencing the process of constitutional development. Under the military backed executive, the formulation of the constitution of 1956 was done in which the political disputes were attempted to be resolved through political measures. The provinces of West Pakistan had already been merged to form one province (One Unit Act) and the issues related to Bangla language were resolved by declaring it a national language under the constitution of 1956.³⁷ The office of governor general was replaced with the President who was declared commander-in-chief of the military forces and his powers were shortened compared to what the governor general had prior to him and hence another conflict emerged over political as well as executive power.

Judiciary, on the other hand, had adopted a submissive role from the colonial structure. The judges enjoyed utmost respect in the society and absolute privileges from the state but because of the colonial structure set up by the British, the Judges had no part to play on the state level. The role of the judiciary was minimal and they worked under the given manual of rules and regulation. After independence, the judiciary started its voyage with the same colonial structure that had suppressed its role in decision making.

The Colonial masters had no legal misperception regarding policy making as they had to follow the orders directly from the top and so was the judiciary. With this colonial mentality, the superior judiciary worked as subordinate of the executive even after the independence.³⁸ Moreover, the judges like the politicians, were mostly migrated and therefore, it can be argued that it was necessary for them to cooperate with the executive in order to sustain the existing system which was already on the verge of collapsing. However, it also indicates the inheritance of colonial structure by judiciary which was not to meddle in the affairs of the executive and hence, the judiciary after independence, accepted its existing subordinate role.

Another key institution that played a key role in shaping the structure of the state was the civil

³⁷ Ibid.25-27

³⁸ Iram. Khalid "Role of Judiciary in the Evolvement of Democracy in Pakistan." *Journal of Political Studies* ,19, no. 2 (2012)

bureaucracy. The civil bureaucracy, after independence, comprised mostly of migrated bureaucrats and it was the well-organized civil institute. The bureaucracy was surrounded by the indigenous feudal and land lords who are controlling the means of power in the early years. Therefore, in order to acquire power, this bureaucratic elite started supporting the executive and started placing industrialization over agriculture in order to break the very core of the power of those feudal. The growth rate in agriculture sector was dismal and hence suggested the priority of the bureaucracy towards industrialization.

As the industrialists were dependent on the bureaucracy for their licenses to operate businesses, the bureaucracy encouraged the industrialists by providing them with state patronage and hence, with state patronage the access to power corridors. This resulted in creation of a parallel political group with far greater resources which were utilized by both the executive and the bureaucracy against the feudal and land lords. On the other hand, the political tussle between these land-owning classes did not allow them to emerge as unified group to counter the growing industrialists' power and hegemony over the means of economy.

The military, being governed by the migrated and mostly West Pakistani high-ranking officials, had no intention of recruiting the soldiers from Bengal which was another extension of colonial structure in which the Bengalis were always excluded from Military. Therefore, the military, with its strict hierarchy and a very marginal presence of the Bengalis, had become predominantly West Pakistani and therefore, after the takeover of military, all the means of power were merged in the military high command i.e. West Pakistan³⁹ The enactment of the constitution of 1956, the military feared that if a national election took place, it might install a government of autonomist Bengalis and their West Pakistani allies which would be against the growing power of the military and this was one of the reasons why military took control of the steering wheel of the state.

The growing disarray in the ranks of the political groups, lack of national integrity and national solidarity, the absence of strong political parties, lack of strong political roots and political ideology, divided public opinion, growing ethnic conflicts, the absence of quick-witted civil society, growing influence of power of the industrialists than that of land owing classes with the support of civil bureaucracy and under the state patronage, the use of violent means over the agitators by the executive, the involvement of military in the political sphere of executive power and the process of

³⁹ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and Judiciary." *Contemporary South Asia*, vol. 20, no. 1 (2012).

decision making, the stand position of apex court to ensure public order and the development of military, primarily for the purposes of defense, were all the reasons that played their part in the inevitable takeover of the country by the Military. In October 1958, the military abrogated the constitution and established a “preventive autocracy” to put an end to what it described as absurdity, chastise the selfish politicians, and to put Pakistan on the way of political progress and modernization; hence turning Pakistan into ‘Praetorian Democracy’.⁴⁰ In the words of one former army chief of general staff, the “concept of takeover to improve the country” had become part of the “army’s DNA” by 1958.

By the time the military took control, there was no institution left to counter its hegemonic design. The apex judiciary had already announced a verdict with reference to the doctrine of necessity and the legislature had been dismantled. The process of democratization had already been facing serious challenges because of the presence and pursuit of colonial mentality. However, despite the strict military rule after 1958, the process of democratization continued and transformed the societies present in both East and West Pakistan radically.

3.2 Ayyub Khan’s Regime and Pakistan

The military under General Ayyub Khan assumed control of the state on October 27, 1958 after the Martial Law was imposed and the constitution was abrogated. The martial law was imposed by the President Iskandar Mirza who, despite being a close friend of General Ayub himself, was removed from power. The military had assumed the role of the executive and started shaping the structure of the state. The Military was invited to the power by the executive. The then governor general Iskandar Mirza had given extension to General Ayub Khan twice and it had proven to be a very costly decision in the future.

The army initially ruled directly by imposing martial law. This status was changed when Ayub Khan introduced the second constitution in 1962 and imposed his own idea of rule over the country. The Parliamentary system was replaced with the Presidential system in which the President had all the executive powers. Being the Army chief, Ayub Khan assumed role of a virtual sovereign in the state and hence controlled every single aspect and dynamic of power. A third change took place in 1969 when Ayub Khan was replaced by the army chief Yahya Khan, who ruled until the army was

⁴⁰ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and Judiciary." *Contemporary South Asia*, vol. 20, no. 1 .2012.p 13

compelled to withdraw from politics after the humiliating defeat in 1971–1972.⁴¹ During his rule, Ayub Khan introduced various changes in the structure. The abrogation of the constitution and the rule of military itself was a major change. All the political parties as well as political activities were banned. The formulation and forceful imposition of Muslims' Family Law ordinance in 1959 was also the first major attempt by the executive to indulge itself with the religious matters. The resistance against this activity was dealt with the iron fist and hence, the law was vehemently implemented all over the country.

In matters of economy, General Ayub Khan acquired his natural support from the bureaucracy which had already been trying to pursue the process of industrialization. General Ayub Khan introduced land reforms in 1959 which helped him to break the hold of large landowners and feudal. This step and various other developments in the agricultural sector including the provision of subsidy on tractors, seeds and pesticides resulted in the development of agriculture which started shaping the rural classes financially.

These classes who had been transformed by the agricultural policies of General Ayub Khan, started emerging to be a dominant class in the economy of Pakistan. With the introduction of Basic democracies system to elect the president, General Ayub Khan basically provided this emerging agriculture class with a way to become a part of power structure while keeping a complete control over them.⁴² Hence, the military kept its rule over the newly developing economic classes in the name of “give them something by give them nothing”. Ayub Khan's shifting of Capital from Karachi to Lahore and then Rawalpindi and Islamabad also resulted in more representation of the rural class of Pakistan.

The Pakistan Army under Ayub Khan sought an equal relationship with the civil bureaucracy, to stabilize the political situation and manage the country more efficiently than the distraught politicians. The military did not push the bureaucracy towards the positions of government because of its lack of experience in the field. The military, however, did need the support of the bureaucracy in order to further weaken the political class which it successfully did and the bureaucracy served at the pleasure of the military.⁴³ The primary reason of this servitude was that the military had the sword of the ‘Public Offices Disqualification Order’ which it introduced in 1959 in order to keep the individual and rebel civil servants in line.

⁴¹ Ghous, Ghulam, and Zahid Bashir Anjum. "Judiciary and Democratic Process in Pakistan: A Study of Supreme Court Judgments (1988-2000), *Asian Journal of Humanities and Social Sciences*, vol. 2, No. ,2014,p.7

⁴² .ibid.p.13-14

⁴³ Muhammad Raheem Awan, “Judicial activism in Pakistan in Commercial and Constitutional Matters: Let Justice be Done Though the Heavens Fall. *International Criminal Justice, Research* vol.1, 2014.p.6

This order empowered the executive remove the civil officers from the service and many officers were sacked under this order. On the other hand, the civil servants who readily agreed to support the regime, were given privileges and positions in the administrative structure. The political class that later emerged as a result of agricultural development schemes and their accommodation in basic democratic scheme marked the beginning of the apprenticeship of the politicians of this class by the military in Punjab. The military and the bureaucracy under Ayub Khan formed a formidable alliance with the emerging rural and urban middle classes in Pakistan that further enhanced the economic development and political participation of these groups under the shadow of military.

The basic democracy system of 1959 later provided the civil bureaucracy with the opportunity to be directly involved in the processes of development with close assistance of the emerging political middle class. The beginning of this partnership has been continuing since then and shaping the very grass root structure of the politics of development in Pakistan. The progress in urban areas industrialization resulted in a very rich industrialist class, patron to which was the executive military. This industrialist class, after the inclusion of retired military personnel, played a very important role in shaping the structure of the state in future, particularly during and after Zia-ul-Haq's period.

Under the constitution of 1962, the role of the judiciary was marginalized. Although the independence and empowerment of judiciary was guaranteed in the constitution, the judiciary was neither independent nor empowered. The problem of the courts, especially the apex court, was to adjudicate a constitutional issue in the absence of the formal constitution and this problem occurred before the enforcement of the constitution of 1962. The apex court was open but they did not have the legal authority to challenge the new setup of the government. The judiciary, which had already declared in the case of *Mulvi Tamizuddin* that the primary purpose of political rule was to establish political order and therefore, their choice, was clear.

They opted for order rather than anarchy and clash with the most powerful institution of the state. In *Dosso* case, the apex judiciary under Justice Munir, made politics and legality the same. Justice Munir interpreted legality the same as legitimacy while knowing that this interpretation and this verdict, which was once again defined through the doctrine of necessity, would be used by the military government to validate itself in the public opinion.⁴⁴ The court's majority accepted the limits

⁴⁴ Osama, Siddiqi. "Pakistan's experience with formal law: an alien justice." *Cambridge university press*, 2013.p.65-

on judicial action stated in the first proclamation.

The application of legal positivism as a doctrine by the superior court, the unfaltering support of the bureaucracy, strict control and maintenance of hierarchy among the ranks of the military itself, the emergence of rural and urban middle classes as a result of agricultural and industrial development and their involvement in domestic politics under the shadow of military provided Ayub Khan with the opportunity to extend his command and control over the entire county for eleven years. Later, when the military regime allowed the formation of political parties and limited protests, the magnitude of the protests was unprecedented.

The use of vice-regal means to establish control over East Pakistan where the people were politically more aware and had a greater sense of regional and ethnic identity had proven to be futile. The introduction of government's influence during the elections by using the government machinery during the presidential elections of 1965 also created a huge impact on the people who had been protesting for the establishment of their rights. The sense of economic deprivation elevated in East Pakistan where a nationalist party emerged under Sheikh Mujeeb-ur-Rehman that demanded rights and political autonomy on behalf of the people of East Pakistan. In the West, a socialist-reformist party under the leadership of Zulfikar Ali Bhutto emerged which demanded the shift of executive control back to the civil government.

The emergence of these parties and popular support for these parties in the latter half of the 1960s indicated that despite all the strict control of the military executive over the institutions of the state, the process of democratization continued. The rising urban and rural middle class, when deprived of power, started demanding further democratization which was then supported by the common public and when the political parties were formed under the charismatic personalities of Zulfikar Ali Bhutto in the West and Sheikh Mujeeb-ur-Rehman in East Pakistan, this middle class opted to support them in pursuit of power which the military had started losing.⁴⁵ The attempt to restore power on the behalf of military resulted in violent measures to tackle the protestors and political agitators which further radicalized the process of democratization. This ultimately resulted in the formation of Bangladesh.

⁴⁵ Bakht Munir and Attaullah Khan Mahmood'' Evolution Of Democracy In Pakistan: A Case Law Study Of The Superior Courts Judgments'' *Research Society of Pakistan*, Volume No. 56, No. 1 January - June, 201p.3-4

3.3 Zulfiqar Ali Bhutto and Democracy in New Pakistan

After the war of 1971, Zulfiqar Ali Bhutto assumed charge of the office and later introduced a new constitution which established democracy in New Pakistan. Prior to that, the decade of development under Ayub Khan brought various changes in the political as well as economic sphere. Industrial as well as agricultural development gave rise to the urban and rural middle classes on one hand and provided the people with an opportunity, once their financial necessities were met, to strive for political power on the other hand. Zulfiqar Ali Bhutto, with his social reformist agenda, successfully exploited the political strive of this emerging urban as well as rural middle classes. These emerging social groups who had never been the beneficiaries of political power, all started supporting Bhutto's ideas.

Zulfiqar Ali Bhutto, after coming into power, started attempting to apply his reformist policies which were against the vested interests of the industrialists and the civil bureaucracy. The military had already been sidelined and discredited after the humiliation it faced in East Pakistan. The bureaucracy had worked really hard to break the hold of the large land owners by putting industrialization at its top priority. Therefore, Zulfiqar Ali Bhutto started making foes of himself as well as his reformist program in the very beginning. ⁴⁶Bhutto, too, announced land reforms in order to further abuse the large land owners to exaggerate his authority over them. However, the political settlement in early Bhutto period soon changed as the high tiers of society, except large industrialists, which had been targeted by the government, soon found their way back to the corridors of power.

Zulfiqar Ali Bhutto, in order to implement his policies of nationalization, needed bureaucracy and hence, the bureaucracy started acquiring favor of the government. The military, which had been discredited, was again needed when Zulfiqar Ali Bhutto had to crush the armed rebellion in Baluchistan. The large landowners were needed in order to ensure the political success of Zulfiqar Ali Bhutto and his party after constituting and implementing the constitution of 1973. The land reforms which had been introduced earlier were never implemented.

Zulfiqar Ali Bhutto had been the only civil Martial law administrator and probably that was the reason why he was in favour of concentration and centralization of power. The constitution of 1973 indicated that he had assumed control of most of the executive authority and hence never really attempted to devolve power further. Also, the fear of electoral politics and competition never let him

⁴⁶ Ibid.p-6

devolve the powers from top to the bottom of society.⁴⁷ Therefore, in order to rule and administer the society down to the basic tier, the bureaucracy was needed and hence the bureaucracy started gaining more power than before. The apex court also regained its lost powers. The judicial powers had been undermined under General Ayub Khan's government but under LFO (legal framework order) of General Yahya Khan, further embargos were put on judicial powers.

Therefore, when the *Asma Jilani vs state of Pakistan* case was put in front of the Supreme Court, it invalidated the actions taken by Yahya Khan and declared his Martial Law illegal. However, the court's behavior with the government of Bhutto was generous as the courts validated the government despite the fact that that government had formed under Yahya Khan's Martial Law. This attitude of generosity by the courts continued throughout his rule.

The process of democratization before the separation of East Pakistan had already been radicalized as the politics of agitation became one of the most important tools to demand political rights. The element of violence had also been introduced and in order to curtail it, Bhutto administration, like the ones before it, started using force against the political opponents. In order to diminish political agitation through force, Bhutto administration used military agencies in general and military force in particular; especially in Baluchistan.

The absence of local government provided civil bureaucracy with the opportunity to regain its place and favor in power circle. Therefore, the emerging middle classes became subservient to civil bureaucracy in order to meet their rights and social desires. The judiciary, after spending a decade out of the highlights of social order, regains its status after the enforcement of the constitution of 1973. However, with their well learned past, the apex judiciary yet again sided with the executive by declaring the Bhutto regime legal. The nationalization policy of Bhutto created huge impacts on the economy which resulted in its shrinking and declining.

The inflation rate rose and the common people started comparing Bhutto's administration policies with that of Ayub Khan's government. The popular support for Zulfikar Ali Bhutto which was its power source, started declining rapidly. The actions against political opponents left him with no one vowing for him in political fraternity. The military and civil bureaucracy who had already worked

⁴⁷ Bakht Munir and Attaullah Khan Mahmood "Evolution of Democracy in Pakistan: A Case Law Study Of the Superior Courts Judgments" *Research Society of Pakistan*, Volume. 56, No. 1 January -2014

together with firm control previously, yet again formed an alliance and together they toppled the sitting democratic government successfully without any political resistance in 1977. The other political parties including NAP (National Awami Party) even welcomed the military. Zulfikar Ali Bhutto was removed from power, arrested and then faced a trial for murder in which the apex court awarded him with death sentence in 1979. With Zulfikar Ali Bhutto's removal from power, another era of military supremacy began under General Zia-ul-Haq which thoroughly changed the structure of the state.

3.4 Zia-ul-Haq period

The use of religion has always been a key characteristic of the politicians as well as military. During PPP's government, the government gave more and more space to religious-political forces by taking various steps like declaring Ahmadis' non-Muslims and banning alcohol etc. Prior to martial law, Pakistan National Alliance was formed by the opposition parties which were mostly religious parties who had urged the Military to take over and to impose the religious rule or 'Nizam-e-Mustafa'. The movement against the government started by Pakistan National Alliance (PNA) started becoming popular because this movement had included religion and religious slogans. Bhutto's wish to remain in power by using every possible mean was matched with resistance from both PNA as well as civil society.⁴⁸

The army was caught in the middle and therefore, it decided to take matters into its hands because the situation of law and order had started to become worse. The then Army Chief, Zia-ul-Haq, took charge of the office of the executive. He initially announced elections within 90 days; however, his mind soon changed and he constantly promised democracy without ever really giving it during the 11 years he ruled Pakistan. He imposed martial law on July 5, 1977, removed Bhutto's government which had been accused of rigging the 1977 elections.

Zia-ul-Haq, after coming into power, invited religious clerics to politics and inducted four ministers in his cabinet that belonged to Jamat-i-Islami (JI). He introduced various changes in the laws, judicial system and the system of economy. His major introductions in these fields were imposition of *hudood* (hudood ordinance) which meant certain crimes like drinking and adultery were punishable the way they were declared in Quran and Sunnah, imposition of zakat and usher, imposition of respect of Ramadan ordinance, establishment of Qazi courts as well as Sharia bench in

⁴⁸ A. G. Naidu, 'Pakistan After Zia-ul-Haq, Islamabad Policy option', *The Indian Journal of Political Science*, Vol. 50, No. 3(July - September 1989,p.13

the Supreme Court, and the establishment of the office of federal ombudsman.

In terms of Media, the radio channels and television were bound to air and broadcast call for prayers 5 times a day. 126,000 mosques were included in the state structure and 4000 clerics were made school teachers. They were also bound to air and broadcast hajj rites and hajj sermon and also to hold special transmission in Ramadan. During soviet Afghan war, the support of Afghan fighters through both covert and overt means and acceptance of afghan refugees were also major steps that created magnificent changes in the society. All these changes penetrated deeply into the society and created a long-term effect which can still be measured after almost three decades.

The interesting thing about these changes were that the military, which was responsible to carry out these changes, was itself exempted from any obvious or drastic change. There was a ban on liquor for sure; however, courts or benches for armed forces personnel were not established. Army personnel were not imposed with any special taxes and hence they became a class in their own. Their influence over the civil society and business class started to increase. The bureaucracy was marginalized because Zia-ul-Haq had appointed military personnel on every key administrative positions.

The judiciary had no control over any means of power. General Zia-ul-Haq thoroughly controlled the judiciary. He established Martial Law Courts whose decisions could not be challenged in civil courts. He barred High Courts from making any order relating to the validity of Martial law regulations. He established a Federal Sharia Court and barred other superior courts from examining any law if it was in accordance with Islamic injunctions. He created permanent benches of the Lahore High Court in Bahawalpur, Multan and Rawalpindi in a bid to weaken the mischief potential of Lahore High Court Bar Association which was politically troublesome.

The legislator had already been dissolved after the successful military coup d'état. The political workers and agitators were lashed openly and many of the political agitators were put to jail by the authoritarian military regime. All the political parties were banned and Zia-ul-Haq had absolute authority over all the means of power with no viable civil or political resistance. In 1981, in order to further pursue his agenda of Islamization, he formed *Majlis-i-Shoora*, a federal council which had no executive authority. It served at the pleasure of the President. He could nominate its members and dissolve the council anytime he pleased. Therefore, the legislative, judicial and executive control was all taken in the hands by General Zia-ul-Haq at once.

Interesting thing was that General Zia-ul-Haq knew the causes of downfall of General Ayub and he knew that in order for his rule to survive, he needed the support of higher military officers and that was the primary reason why he had never imposed his agenda of Islamization deep in the military. In other words, he acquired the support of the officer corps not by changing them but by giving them the authority to change. General Ayub Khan had given the control over military affairs to his subordinate General Yahya Khan and when General Ayub was in dire need of the support of the military, the military backed out. Later, higher echelon of officer corps abandoned General Yahya Khan as well. Therefore, General Zia-ul-Haq, along with all executive powers and control over judiciary and legislature, also taken the control of military affairs in his hands because he knew that control over military was in fact the control over the country.⁴⁹

That was the reason why the military, which had lost its prominence after the war of 1971, yet again became the most important player and stake holder and had remained for a very long time. The control over the state and introduction of religion in the structure started transforming the structure which further increased the process of democratization. Democratization could be seen as the people, despite all the warnings and harsh punishment, kept on resisting the military regime. An important feature of this resistance was that the women started coming out and they protested along with the male members of civil society.

Various women forums were established to encourage women to come out and protest for their rights. With the changes in the constitution, Zia-ul-Haq managed to keep running the affairs of the state according to his will. The elections of 1985 were taken place on non-party basis. However, the demand of democratization was not curtailed.⁵⁰ The death of Zia-ul-Haq left a huge space which was only to be filled by the political leadership because of the pressure of civil society. In spite of the movements for establishment of political rule and demand of democratization, the military, by the time of Zia-ul-Haq's death, had transformed into a corporate organization.

The continuous rises of urban middle classes, especially conducting medium businesses needed patronage in order to further enhance their businesses. Therefore, the retired military personnel were hired in the name of security officers as well as business advisors. The military officials were allowed to take a job mantle outside the country; especially in the Middle East.

⁴⁹ A. G. Naidu 'Pakistan After Zia-ul-Haq, Islamabad Policy options' *The Indian Journal of Political Science*, Vol. 50, No. 3(July - September 1989).p 22

⁵⁰ Hamid Khan, *Constitutional and Political History of Pakistan*, 2nd ed. 4th imp. (Karachi, Oxford University Press, 2012), p.44

The retirement benefits had already been increased by the Zia government for military officials and therefore, this military class which once only had the power had started to become more and more powerful in economic terms. The retired military generals were allotted massive pieces of land and some military personnel started running their businesses which were protected by the state. Therefore, the change ultimately happened in the psyche of the military as it happened in the structure and society throughout the country. The judiciary however, was stuck with its submissive role and never interfered in the working of the military regime.

3.5 Struggle for democracy (1988-1999)

3.5.1 Post Zia-ul-Haq Era

The untimely demise of the then President Zia-ul-Haq had brought further instability. Along with him, many high-ranking military officials had also died in the plane crash and therefore, the control of military over the country had weakened. Therefore, the elections were announced in order to maintain the situation of law and order. Benazir Bhutto led Pakistan people's party was the only party that had suffered by the hands of the military and hence, Benazir Bhutto's struggle before the elections was solely based on how to re-institutionalize democracy. However, the country which had already seen about 28 years of military could not easily be transformed into a complete democratic society. The military had penetrated the democratic institutions so deep that it had already taken the control over the means of shadowing the civilian ruler which had to be elected after the elections.⁵¹ The military wanted to have the final say even if there was a civil democratic rule.

3.5.2 First Term of Benazir Bhutto as the Prime Minister

The rule of the military had brought legality to the inclusion of military in national politics. Many retired military personnel had already joined national politics and many others had been appointed heads of various national institutions. Some were even nominated Ambassadors to different countries and hence military had been controlling the domestic policy matters as well as the foreign policy matters for a long time. Moreover, the inter-services intelligence (ISI) had been playing a key role in Afghan War.

The success of ISI in Afghanistan had made it the most influential intelligence agency in the region. Therefore, this intelligence agency had started to further strengthen the military control over

⁵¹ Shafqat, saeed. "*Pakistan under Benazir Bhutto*", (California university press, Lahore: 1996). p.04-8

the country. This Intelligence agency had been involved in politics since then and at that time, it gathered the favorable politicians to create Islami Jamhoori Ittehad (IJI) against Benazir Bhutto led Pakistan People's Party in order to challenge its political popularity and its increasing chances of winning the elections.

Hence, the influence of the military could not be overlooked. Benazir Bhutto realized it and therefore, during her campaign against the military, she assured the military establishment that she would not do anything that might be against the interests of the military. Soon after the elections and successful transfer of power, Benazir Bhutto called the then Army Chief General Mirza Aslam Baig and a deal was struck between the civil representatives and military establishment in which both mutually agreed to perform their respective roles. With this back door deal, the military establishment was further strengthened by the sitting members of legislative assembly and the democracy was "allowed" to work under the shadow of military establishment.

The victory of Benazir Bhutto led Pakistan People's Party unconvincing. Despite a good turnout, it only took 38.52% of the total vote and won only 93 seats out of 207. This result indicated the involvement and interest of the military in this process of transfer of power as they were not in favor of letting any political party to have a comprehensive control over the national politics.⁵²The result of that deal could be seen when Benazir Bhutto agreed to retain Sahibzada Yaqoob Ali Khan who had been elected as a senator on the ticket of IJI. She agreed to as a nominal head of the defense committee, to not interfere in the internal affairs of the military, agreed to retain a large budget for the armed forces, and let the military handle Afghan policy.

She also agreed to support the candidacy of Ghulam Ishaq Khan as president, and said she would abide by agreements that had been signed by the interim government with the IJI. However, the gulf started to widen as Benazir Bhutto started bashing and criticizing the role of intelligence agencies in the public. She started to exert its power within the professional domain of the military. In order to have her control over ISI, she named a retired general Sham-ur-Rehman Kallu to be the next Director General ISI which was against the military decorum as they had always been a serving general leading the ISI. The military establishment had come to the conclusion that Benazir Bhutto was not in the favour of sharing power, rather she wanted to have a major chunk which was not acceptable to the military.

⁵² Shafiqat, Saeed, *Pakistan under Benazir Bhutto*, (California university press, Lahore: 1996). p.9

Therefore, during the corps commanders' meeting in July 1990, the generals decided that they could not support Benazir Bhutto as the Prime Minister. COAS General Bag met with the President in August 1990 and conveyed him the message. The President complied and dismissed Benazir Bhutto's government on the charges of corruption, inefficiency and misconduct of power under the article 58 - 2/B of the constitution. All the provincial assemblies were also dissolved under the presidential order. The President formed a caretaker government and imposed emergency. New election for national assembly and provincial assemblies were announced on October 24 and 27 respectively.

Benazir Bhutto had to run again for the premiership of the country against the military backed Nawaz Sharif who was now leading Pakistan Muslim League (PML) which was re-created under Zia-ul-Haq's regime and was thought to be the horse of establishment in that electoral derby. The success of military in Afghanistan had already maintained its popularity at the local level. Therefore, all the dices were in hand of the establishment and the establishment played its part in formulating a government which is more loyal and less problematic for its interests.⁵³The winning of 1990 election by IJI gave establishment the opportunity to share a small necessary chunk of power with a much reliable and favorable political group led by Muhammad Nawaz Sharif.

3.5.3 First Term of Mian Muhammad Nawaz Sharif as the Prime Minister

Mian Muhammad Nawaz Sharif came to power in the center for the first time in 1990 after winning the elections through IJI's platform. Islami Jamhoori Ittehad or IJI was the construction of General Hameed Gul and ISI when he was in charge of this notoriously famous agency. The military establishment used ISI to counter balance Benazir's PPP in order to maintain its share of power and dominance over the structure of the state. Benazir's popularity led her to win the elections of 1988; however, IJI had been a major opposition before and after the election. Mian Muhammad Nawaz Sharif was leading IJI and with the support of the military, his alliance won a comprehensive majority in the national assembly as well as majority in 3 of the four provincial assemblies and hence he was able to form more stable government than its predecessor.

Mian Muhammad Nawaz Sharif's political upbringing had been done under Zia-ul-Haq's regime. Therefore, the military favoured him even more than Benazir. However, Sharif's relationship with the armed forces did not always run smooth. His policy with the Gulf countries was openly

⁵³ Shafiqat, saeed. *Pakistan under Benazir Bhutto*, (California university press, Lahore: 1996).p.8

criticized by the then COAS Gen. Mirza Aslam Baig.⁵⁴ After his retirement, Mian Muhammad Nawaz Sharif tried to bring in someone more favorable to him rather than General Asif Nawaz Janjua. Consequently, General Asif Nawaz Janjua never favored Nawaz Sharif's government thoroughly. Military actions in Sindh despite the will of the Prime Minister further strained the civil-military relations; however, Nawaz Sharif did not meet with the similar fate as Benazir Bhutto, during the first two years of his term, because he never openly questioned the COAS about his actions.

During this time, the structure of the state had three major power holders: The President, the Prime Minister and the COAS. The latter had been the most powerful of all given the historical context of the center of power. The president had also become a powerful entity since the 8th amendment that had given the authority to the president to dismiss the government without the consent of the Prime Minister. The Prime Minister, being the executive head of the government, had its powers but he did not have the de facto powers to influence the structure.

Therefore, Mian Muhammad Nawaz Sharif thought that he could improve the relationship between the offices of the Prime Minister and the President. Given a clear majority in national assembly and the Islamist ideology on his back, he started taking initiatives on his own. In order to balance the equation of power, he tried to bring a more favourable general as COAS; an attempt which met failure and created a gap between the Prime Minister and the President. This gap widened when the President started criticizing Sharif government's policy initiatives.

After the sudden death of COAS General Asif Nawaz Janjua in January 1993, the President appointed General Abdul Waheed Kakar as the next COAS after superseding the two most senior generals of the military which took the matters to a no return point. The Prime Minister was aware that the President was looking for the replacement opportunities.⁵⁵ However, his tactics forced Benazir Bhutto to consider the politics of rapprochement. With this policy of rapprochement, Nawaz Sharif and his cabinet commenced reviewing of the Eight Amendment of the Constitution. Feeling his powerful stature as President in Danger and believing that the backdoor unity of both the political parties would never let him run for the President's office for the second term consecutively, the President acted and dismissed the Nawaz Sharif's government in the same fashion as its predecessor.

⁵⁴ Samna Yasmeen "democracy in Pakistan: the third dismissal" *Asian servy*, 14, June 1994, vol.34. p.4

⁵⁵ Naidu "Pakistan after Zia-ul-Haqq, Islamabad Policy options" *The Indian Journal of Political Science*, Vol. 50, No. 3(July - September 1989). p.13-15

COAS General Kakar, who himself disliked Nawaz Sharif, did not oppose the decision. After removing the government and dissolving the assemblies, the President Ghulam Ishaq Khan needed political support and hence, it was provided by a large group of the former Nawaz Sharif government's cabinet members. PPP under Benazir Bhutto soon joined hands and hence joined the care taker cabinet.⁵⁶

Since the beginning, the judiciary had always been siding with the executive which, in most of the cases, was military. However, at this moment, the executive head of the State was a Civilian President and therefore, the court had to restore its credibility. Nawaz Sharif filed the petition of April 19, 1993. The intensity of constitutional debate in the Apex Court changed the perception of the people about the Judges and the Courts. Chief Justice Naseem Hassan Shah categorically said that Justice Munir's mistake was not forgotten by the people.

After a month-long hearing of the case, Supreme Court gave its verdict that the President had no subjective authority to dismiss the government over the charges of corruption.⁵⁷ The court thus restored Sharif's government on May 26, 1993. It is a clear indication that the judiciary had opted its active role.⁵⁸ Judicial review had its worth and the statement of Justice Naseem indicates that the Apex Judiciary was willing to accept its mistake while opting for its constitutional and active role.

However, the President started to support Sharif's rivals in the provincial assemblies and in-house changes occurred in the provincial assemblies of Punjab and NWFP. Consequently, Nawaz Sharif started initiated reviewing the matter of Eighth amendment due to which the political situation deteriorated further. Amid this, Benazir Bhutto announced along March in July. Fearing the situation might turn in to a civil war, COAS General Kakar stepped in and arbitrated a deal among Nawaz Sharif, Benazir Bhutto and the President Ghulam Ishaq Khan.⁵⁹ Benazir Bhutto agreed to call off his long march and Both Nawaz Sharif and Ghulam Ishaq Khan agreed to step down from their respective offices. The assemblies were dissolved and new elections were announced.

3.5.4 Benazir's Second term in the office

PPP under Benazir Bhutto won the most seats in October 1993 elections however the elections resulted in forming a hung parliament where none of the major political parties namely PPP and PML (N) had the clear majority. However, PPP succeeded in forming the government by gaining the

⁵⁶ Samna Yasmeen "democracy in Pakistan: the third dismissal" *Asian servy*, 14, June 1994, vol.34

⁵⁷ Hamid Khan, *Constitutional and Political History of Pakistan*, 2nd ed. 4th imp. (Karachi, Oxford University Press, 2012), p.44

⁵⁹ *Ibid.*47

support of independent candidates. The military made it impossible to achieve a greater majority for any of the political contenders in order to maintain their control over the policies intact. Formation of this weak government also indicated that the military does not want to change its power tool i.e., the Eighth Amendment.

Benazir Bhutto, in order to survive for the entire term, nominated his confidant Mr. Farooq Ahmad Khan Laghari for the office of the President. Mr. Farooq Laghari won and became the President. Amid political chaos in Karachi and Sindh, Benazir Bhutto did not interfere in the policy matters of Afghanistan where the military had been involved in raising Talibans. Similarly, in 1994, she agreed to the military operation in Sindh. ISI had taken the firm control over both policy as well as political matters of Afghanistan. In Pakistan, Benazir had become in a position to maintain and run the system smoothly as she had appointed a senior and a close member as the President.

She had acquired the power to appoint COAS as well as chief justices of all the national courts. She appointed Justice Sajjad Ali Shah as the chief justice of the Supreme Court and instead of appointing permanent chief justices, she appointed acting chief justices of all the provincial as well as Sharia Court of Islamabad. General Jahangir Karamat was appointed by her as COAS with reference to his seniority.⁶⁰ However, Benazir's popularity started to fall when corruption scandals of her government began to surface. It led to displeasure of both the President and COAS which cost Benazir Bhutto their support.

Prime Minister Bhutto lost the support of her appointed chief justice in accordance with the decision of the case *Al-Jehad Trust v Federation of Pakistan* in which the Supreme Court declared that the executive had no legal authority to appoint the temporary chief justices and the Supreme Court also declared that Chief Justice must be consulted before the appointment of any judge in the courts both at provincial as well as national level. Politics of conflict by the opposition had made the situation worse which forced the military to take action.

Therefore, COAS asked President Laghari to dismiss the government. President Laghari complied and dismissed Benazir's government. Later, in the session of National Assembly, he claimed that he dismissed his own party's government because it is involved in unconstitutional activities. He claimed that Supreme Court had advised him through a letter to take matters in to consideration as

⁶⁰ Samna Yasmeen, "Democracy in Pakistan: the third dismissal". *Asian servy*, 14, June 1994, vol.34, o.6

there had been many custodial killings which were claimed to be the work of the government. Benazir Bhutto took the case to the Court but unlike last time, the Court upheld the decision of the President upon which the President announced new elections.

3.5.6 Nawaz Sharif's Second Term and Military Coup d'état

The military had sided with the President in order to remove Benazir's government. Before the Presidential decision, the military had already taken control of the country. Military establishment wanted a major role in controlling the political scenario of the country and therefore, just a month before the election, President Laghari had ordered to form a Council for Defense and National Security which was a supra-constitutional body that had given a greater role in national politics to the military.

Nawaz Sharif won the elections of 1997 with an overwhelming two-third majority and became the most powerful Prime Minister of Pakistan in history. The mandate he got gave him the power to restructure the state and hence, he abolished the Council for Defense and National Security giving military the chance to be aggrieved.⁶¹ The next step he took was to De-constitutionalize the Presidential powers given to him under the Eighth amendment of the constitution. With the help of PPP, Nawaz Sharif repealed the Presidential powers to remove any elected government under thirteenth amendment.

With this amendment, Nawaz Sharif acquired control over the appointments of services chiefs and the judges of the superior courts. When this power was used by Nawaz Sharif and he neglected the names for the judges suggested by Chief Justice Sajjad Ali Shah, the chief justice moved against him and annulled the thirteenth amendment providing the President the opportunity to remove Sharif's government as he had been aggrieved on the removal of his Presidential powers. However, the Chief Justice faced opposition from within the Superior Court and later his decision was reversed. As the removal of a political government elected with two-third majority would seem irrational, the ultimate broker on any political chaos, the military, stepped in and resolved the crisis.

Nawaz Sharif, after acquiring such prodigious power, fired General Karamat the COAS which had never happened in the history before. This decision made the military more critical of the government. He then appointed General Musharraf as the new COAS however, the breaking point occurred when PM Nawaz Sharif signed Lahore declaration with Indian Premier Mr. Atal Bihari

⁶¹ Hamid Khan, "*Constitutional and Political History of Pakistan*", 3rd ed. 4th imp. Karachi, (Oxford University Press, 2012), p.46

Vajpayee. The military considered it selling of national narrative on Kashmir as the democratic government was trying to pursue peace talks. Therefore, the military started a covert operation in Kashmir which later resulted in Kargil War in which the military forces faced humiliation. Prime Minister Nawaz Sharif wanted to remove Pervaiz Musharraf but when he did, the Army, upon the orders of General Musharraf, overthrew the government on October 12, 1999 and took control of the state and hence the country faced another Marshal Law.⁶² The power and control over the state was yet again acquired by the military comprehensively.

3.6 The Question of Democracy

The process of democracy continued as the people participated in electoral process on multiple occasions throughout that decade. However, the democratic governments failed miserably to deliver according to their promises. Therefore, the people had always hoped for a military intervention in order to stabilize the deteriorating economy, the increasing unemployment and spreading political chaos. The other dominant narrative was that the military, despite its failure in Kargil, had succeeded in cashing the Kargil war which had mobilized the general population. The people who had supported the military could not turn on their support once the army took control of the country.

The judiciary had problems with the democratic government and hence, when the military took over, the judiciary did not oppose it. Unlike last time when Nawaz Sharif's government was overthrown, Nawaz Sharif was captured this time and sent to the prison. Majority of his political confidants were arrested and a sizable group joined hands with Musharraf which brought him the political support in later years. Therefore, the democratization that had happened in the decade went all in the favor of the military which helped it to control the state directly for some next years to come.

3.7 Judicial case review where judiciary permitted Extra-Constitutional Steps

3.7.1 Federation of Pakistan vs. Molvi Tameez-ud-Din case

The Governor General, Gulam Muhammad dissolved the Constituent Assembly, presided by Moulvi Tameez-ud-Din who was serving as Speaker, and challenged that impugned order before the Sindh Chief Court. The Court decided the case in petitioner's favor. On Appeal, however, it turned over against the petitioner and decided in the appellant's favor by validation of dissolution of the Constituent Assembly. For the first time, the Court introduced the necessity doctrine and relied on

⁶² Hamid Khan, "*Constitutional and Political History of Pakistan*", 3rd ed. Karachi, (Oxford University Press, 2012), p.48

Bracon's maxim, which is otherwise unlawful can be made lawful by necessity.⁶³

On October 24th, 1954, the Governor General dissolved the Assembly, which was assigned with the task of drafting the first Constitution of Pakistan, on the pretext that the state affairs cannot be carried out in accordance with the spirit of the Constitution. The Governor General directed that till fresh elections the country's administration shall be carried on by the re-constituted Cabinet. The alleged proclamation order was challenged on the grounds of an act without jurisdiction, illegal, void, and ineffective. Two Writ Petitions were filed in the Chief Court of Sindh: firstly, writ of Mandamus or any other appropriate writ restraining the respondents from the enforcement of the proclamation order.

Secondly, writ of Quo Warrant was filed whereby the respondents' authority of claiming to be members of the Council of Ministers was challenged. Cornelius, reversed the Chief Court's decision and observed that Section 223-A of the Government of India Act, 1935, on the basis of which the Sindh Chief Court issue the writs has not yet become law for it has not yet received Governor's assent. Further, the respondents' appointments as Ministers neither caused any personal injury to the petitioner nor adversely affected his interest. The petition for Quo Warrant was, therefore, not maintainable.

The power to dissolve assembly is the Crown's prerogative vested in the Governor General by virtue of Section 5 of the Independence Act, 1947. The Federal Court validated the dissolution order in view of the following seven grounds: Firstly, Pakistan being dominion of the British Crown, the legislature had been vested with the authority to dissolve the Assembly unless that authority had been superseded or regulated by legislation. Secondly, it was the prerogative of the Crown to dissolve the Constituent Assembly, which could be taken away only by an Act of the British Parliament or a law passed under Section 8 of the Indian Independence Act. The petitioner had not claimed that any such law has been passed.

Thirdly, the Governor General represented the Crown with all such powers by virtue of Section 5 of the Independence Act. Fourthly, the petitioner referred to and relied on the Rule 15 of the Constituent Assembly, which provided that the Assembly could only be dissolved by a two-third majority. The respondents, however, claimed that the Rules of Procedure was not a law for two reasons: the Rules were beyond the powers conferred on the Assembly and lack of Governor General's

⁶³ Federation of Pakistan v. Moulvi Tameez-ud-Din, PLD 240 (FC 1955).

assent.

Fifthly, the Constituent Assembly of Pakistan was established under the authority of the Governor General of India. The Governor General of Pakistan was authorized by the Section 19(3) of the Independence Act to revoke or vary orders of the Governor General of India and to make further orders. Sixthly, the respondents denied the power to dissolve the Assembly, conferred on the Governor General of India, from the Governor General of Pakistan, under Section 5 of the Independence Act. Seventhly, the proclamation order of October 24th 1954 was within the authority of the Governor General. For establishment of the validation of the order, the respondents presented various grounds: the constitutional machinery has been broken down; the constituent assembly has lost public confidence, and had failed to perform its functions in accordance with the provisions of the Indian Independence Act, 1947.

The Federal Court's decision about Governor General's consent regarding the Constituent Assembly's legislation marked the foundation for constitutional and political crisis in Pakistan. The decision also invalidated forty-six Acts passed by the Constituent Assembly, from its establishment till dissolution, without formal consent of the Governor General. In response, these constitutional crises were further deteriorated with the Emergency Power Ordinance (IX of 1955) whereby the Governor General was authorized to legalize selective laws passed by the Constituent Assembly with retrospective effect. Interestingly, the same bench of the Federal Court invalidated the Emergency Powers Ordinance (IX of 1955) in subsequent case.⁶⁴

3.7.2 Usif Patel and Others v. the Crown

The District Court of Larkana convicted the appellants under the Goondas Act. The appellants filed an appeal against the impugned order in the Sindh Chief Court under Section 491 of the Cr. P.C.⁶⁵ The Court while rejecting the appeal held that the Governor-General Act under which action was taken against them was not ultra vires and their detentions under the said Act were legal.⁶⁶ On appeal from the Chief Court, The Court declared that the dominion-Governor General was not competent to issue an ordinance on constitutional matters, hence Emergency Power Ordinance (IX 1955) was invalid. The validity of section 92-A of the Government of India Act, 1935 was the main issue before the Federal Court. It was alleged that the insertion of any provision, without the consent of the

⁶⁴ Federation of Pakistan v. Moulvi Tameez-ud-Din, PLD 240 (FC 1955 p. 240

⁶⁵ Usif Patel and Others v. the Crown, PLD 387 (FC 1955

⁶⁶ Governor's Act, XXVIII of 1952

Governor-General, to the Government of India Act 1935 Act was invalid and alleged that appellants' detention under such law was invalid. The Court held that the appellants' detention is unlawful.

The Court further observed that the Governor-General was not authorized to substitute the Constituent assembly. The Court directed for the formation of another representative body, in order to validate invalid legislation. The Court also laid down that any legislative provision that relates to a constitutional matter is solely within the powers of the Constituent Assembly and the Governor-General is thereby precluded from exercising those powers. The Court observed that the Indian Independence Act, 1947, whereby Governor General's authority was extended in the constitutional making, was itself never been validated. So, the revision of the Government of India Act, 1935 under this Act was also invalid. In response, the Governor-General issued another proclamation assuming all necessary powers.⁶⁷ The country continued to experience despotic regime in its pre constitutional period.

The Governor-General sent a reference to the Court for seeking an advisory opinion. The Court declared that the emergency powers exercised by the Governor-general were ultra vires. The Court reiterated the necessity doctrine as a constitutional justification for his wide-ranged powers. The doctrine deemed that where an unavoidable situation created the Governor-General had the authority to dismiss the assembly. The Court permitted him to continue with extra-constitutional authority, in order to give effects and to validate the laws retrospectively, until its legality has been decided by the newly reconstituted assembly. The Court, however, declared that the Governor-General cannot issue an ordinance on constitutional matters.⁶⁸ Both these cases left a major impact on the democratic culture that shook the entire political and administrative set-up of the state to its very foundation. The superior judiciary embarked on an aberrant jurisprudence for Pakistan's legal scholarship.

In *State v. Dosso*. The respondents were convicted by the Deputy Commissioner for murder under Section 11 of the Frontier Crime Regulations, 1901(FCR) and were referred to the Council of Elders, Special Jirga, which found the respondents guilty. The representatives of the respondents filed writ petitions of Habeas Corpus and Certiorari at the High Court. It was alleged that the provisions of the FCR, enabling the executive authorities for referring criminal cases of a particular sect of the society to the council of elders, were repugnant to the Constitution Article 5, which declared the equality of law and equal protection of law and Article 7, which gave the right of legal representation,

⁶⁷ Iram , Khalid . "Role of Judiciary in the Evolvment of Democracy in Pakistan." *journal of political studies*, 19, no. 2 (2012): 128.

⁶⁸ Syeda Saima.,shabbir. "Judicial Activism Shaping the Future of Pakistan." (2013): 7

hence void under Article 4, which dealt with the right of individuals to be dealt with under the law. The Court while accepting the contention set aside the conviction.⁶⁹

On October 7th, 1958 the President, Iskander Mirza, declared Martial Law and thereby annulled the Constitution, ousted jurisdiction of the Superior Courts, dissolved the Federal and Provincial Cabinets and Assemblies, and appointed the Commander-in-Chief, Ayub Khan, as the Chief Martial Law Administrator. The President issued the Law Continuance in Force Order, 1958, which validated laws other than the Constitution and restored courts' jurisdiction. Four Appeals of the same nature were brought before the Apex Court. To check the validity of the writs issued by the High Court in respect of the order of reference to the council of elders or convictions under Section 11 of the FCR on the ground of Article 5 of the Constitution.

The Court held that according to the new legal order, Article 5 of the Constitution had lost its effectiveness. Nevertheless, the FCR was still effective and the references made to the council of elders and the subsequent proceedings thereof were good. The Court while validating martial law applied the same test of state necessity and observed that a victorious revolution is an internationally recognized legal instrument for changing a constitutional order. For its validity, the existing legal order must comply and adhere to the new order.⁷⁰ The Court further observed that even jurisdiction and functions of the courts remained subject to the new constitutional order.

The President, Iskander Mirza, was deposed by Ayub Khan who introduced the concept of Basic Democracy, which could not be accepted as a substitute for the assemblies. That system, however, initiated the concept of concentration of powers in one person, which was contrary to the principles of democratization. Had judiciary resisted the first military intervention, the situation would have been different. Judiciary validation to the extra constitutional actions must have been motivated by various elements: external pressure from military and its affiliates, fragile civilian government to stand with judiciary, and survival of judiciary as an institution as well as of its judges in their individual capacity.

3.7.3 Begum Nusrat Bhutto v. Chief of the Army Staff and Federation of Pakistan

The Court once again validated the military coup on ground of state necessity. On July 5th, 1977, General Zia-ul-Haq proclaimed Martial Law and became the Chief Martial Law Administrator,

⁶⁹ The Constitution of Pakistan 1956.

⁷⁰ Iram., Khalid "Role of Judiciary in the Evolvement of Democracy in Pakistan." *Journal of Political Studies* 19, no. 2 (2012): 129- 130.

removed the PPP government, suspended the Constitution, dissolved the Assemblies, and charge of acting governor of the provinces were entrusted in the Chief Justices of the respective Provinces. The president was permitted to continue as nominal head of the state.⁷¹

Mr. Zulfiqar Ali Bhutto along with ten other leaders of the PPP were arrested and detained in various prisons in different Provinces of Pakistan. The petitioner filed petition in the Supreme Court and contended that the Chief of Army Staff leveled unfair allegations against the PPP government, in order to justify PPP leadership detention and intention to prosecute them before Military Courts or Tribunals to ensure public accountability. The Petitioner challenged the proclamation of Martial Law and detention of the PPP leadership on various legal and constitutional grounds. The petitioner alleged that the detentions were based on mala fide coupled with the ulterior motive to prevent the PPP from effectively participating in the anticipated elections of October 1977.

On the ground of non-maintainability, the Court dismissed the petition. The Court while legalizing Martial Law observed that the government was unable to maintain law and order situation and political crisis led to constitutional breakdown. The Chief of Army Staff intervened for the state's integrity, in order to rescue the country from bloodshed and chaos and was justified to suspend fundamental rights of the citizens. Further, the Court gave directions for making arrangements so as to ensure fair elections.⁷² This case turned out military coup for more than a decade at the expense of the fragile democracy.

Once again, the army availed the opportunity resulted from the executive malfunctioning, which was endorsed and validated by judiciary. In most of the cases, the incapacity or despotic and autocratic executive created opportunity for military takeovers. Military directly and indirectly influenced judiciary: the judges' appointments and all other incentives were made by the President, being head of the executive, who remained influenced by Military. This is how military not only legalized its direct rule but also entrenched its authority in the civilian governments, which was reflected in the judicial decisions.

3.7.4 Ahmad Tariq v. Federation of Pakistan

On August 6th, 1990, the President, in exercise of his authority under Article 58 (2) (b), dissolved the Assembly on the pretext that the government affairs could not be carried as per spirit of

⁷¹ Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan, PLD 657 (SC 1977)

⁷² Irum Khalid "Role of Judiciary in the Evolvment of Democracy in Pakistan." *Journal of Political Studies*. 19, no. 2 (2012):69

the Constitution so an appeal to the electorate was indispensable.⁷³ The petitioner challenged the impugned order in the Lahore High Court. The Court while dismissing the petition held that the President was justified in forming the opinion to dissolve National Assembly. On Appeal, the petitioner contended that the impugned order cannot be sustained in the light of the principles elucidated by the Court that dissolution of the National Assembly can be justified only where there is an actual constitutional breakdown. In the instant case, there was no constitutional breakdown and the President could resort to alternative powers instead of taking such drastic step of dissolving the Assembly.

The Court dismissed the petition with response to the various objections raised by the petitioner: firstly, with reference to the alternative powers the Court declared that the President's authority for the exercise of the alternative powers is subject to the Prime Minister's advice. The President, however, cannot act entirely at his own discretion in this regard. Secondly, the argument that the National Assembly is directly elected by the people of Pakistan, its dissolution should not be left at the mercy of the President. The Court held that the Constitution expressly authorizes the President to exercise his power to dissolve the National Assembly. Fourthly, the petitioner objected various grounds such as horse-trading, corruption, nepotism, and violation of individual constitutional provisions continued to be taking place even after the impugned action.

The Court held that identification of an evil is followed by remedial and corrective measure. Fourthly, the petitioner objected that the dissolution, being an extreme authority, should only be exercised in exceptional circumstances of actual breakdown of the constitutional machinery. Nevertheless, the same should not be exercised in the absence or failure to observe a particular constitutional provision, which is different from the constitutional breakdown.⁷⁴ The Court held that the order of dissolving assemblies may rightly be exercised when a country is governed by an extra constitutional mean as opposed to the constitutional order.

3.7.5 In Syed Zafar Ali Shah and others v. General Pervez Musharraf

The Court legalized the Provisional Constitutional Order of 1999, whereby General Pervez Musharraf proclaimed emergency and the Oath Order. The Court, however, limited the scope of the regime, required to conduct the elections within three years.⁷⁵ In this case, the Court addressed various

⁷³ Ahmad Tariq v. Federation of Pakistan, PLD 646 (SC 1992)

⁷⁴ Ibid,

⁷⁵ Sayed Zafar Ali Shah and others v. General Pervez Musharraf, PLD 869 (SC 2000).

legal and constitutional issues: firstly, the country was facing a situation where military intervention became inevitable. This military intervention is validated on the touchstone of necessity doctrine, which is recognized not only in Islam but also in other religions, and the same has also been recognized by prominent international jurists such as Hugo Grotius, Chitty, and De Smith.

Secondly, the through extra constitutional arrangements. These materials are very relevant and admissible for, all the executive actions, which were federal government provide sufficient material in support of military intervention of the intervention. Thirdly indispensable for running the state affairs and public welfare, were declared valid. Fourthly, The Constitution of Pakistan, 1973 remained the highest and ultimate law of the land⁷⁶. Nevertheless, some parts of the Constitution were held in abeyance on the basis of state necessity.

Fifthly, judiciary has to carry on its functioning under the Constitution and the same position has not been derogated by the judges' oath to the Oath Order. Sixthly, previous order of emergency of May 1998 was proclaimed by virtue of Article 232(1). However, the present emergency of October 1999 was imposed through an extra constitutional step fallowed by the Military takeover, stood valid though the previous emergency was still intact. Seventhly, the judges of the superior judiciary who either refused to take oath under the Oath Order or to whom the oath has not been given, are hit by 'past and closed transaction' doctrine, hence cannot be reappointed.

Eighthly, the government should advance the accountability mechanism to ensure transparency and to further make sure that even the superior courts' judges are not above the law and the Constitution. They are also subject to accountability as envisaged by Article 209 of the Constitution. Ninthly, removal of Musharraf without observing principle of natural justice was ab initio void, having no legal effects. Tenthly, the Chief Executive shall hold election within three years and the Court has the authority to review the continuation of emergency of October 1999 at any subsequent stage.⁷⁷

3.8 Judicial case review where, judge strengthened the democratic institutions

3.8.1 Miss Assama Jelani v. the Punjab government and another

The appellant's father, Malik Gulam Jilani, was arrested in Karachi under Defense of Pakistan Rules, 1971. The Appellant challenged the detention at the Lahore High Court, which was allowed for hearing and notice was served to the government. Nevertheless, a day before the hearing, the

⁷⁶ Virk, Muhammad Nasrullah. "Doctrine of Necessity Application in Pakistan." (2012): 86.

⁷⁷ Ibid, p,88

impugned order was substituted by another order issued by the Martial Law Administrator Zone “C” in the exercises of authority conferred on him by virtue of Martial Law Regulation No. 8. The government raised objection regarding jurisdiction of the Court due to bar imposed on courts’ jurisdiction by the last Martial Law regime.⁷⁸ The High Court while relying on the Dosso case gave validity to the Jurisdiction of Courts Order, 1969 and declared that it had no jurisdiction to entertain the petition.⁷⁹ The Supreme Court, however, overruled the decision and the proclamation of martial law by General Yahiya Khan on March 25th 1969 was held to be void.

3.8.2 Federation of Pakistan v. Muhammad Saif ul Allah Khan

General Zia-ul Haq dismissed Junejo’s government on May 29th, 1988 and dissolved assemblies under Article 58 (2) (b) on four grounds: firstly, the national assembly was not able to meet the objectives for which it was elected.⁸⁰ The Court while replying to this ground held that the President’s reason being too wide does not hold the ground. Secondly, law and order situation went so worst that it created immanent loss to public lives and properties. The Court responded to this argument that the issue of law and order should have been addressed under the emergency powers, provided under part X of the Constitution.

Thirdly, there was imminent threat to the lives, dignity, and security of people. The Court declared this ground to be patently too wide. Fourthly, public morality declined exceptionally. The Court struck down this justification that such general argument changed by generations. The dissolution of assembly could not be validated. The Court declared that all four grounds given for the justification of dissolution of assemblies were ambiguous, broad, fictional, and could be passed anytime. Further, the Constitution neither envisages dissolution of assemblies at the will nor at the whim, the dissolution order could not be sustained.⁸¹ The Court invalidated the dissolution of assemblies. However, the court did not restore Junejo’s to his office and allowed fresh elections to take place.

General Zia had dissolved Junejo’s government without appointment of any caretaker Prime Minister. Zia’s death deprived Pakistan of the President, the Prime Minister, and the Provincial Assemblies. This state of vacuum continued until Benazir Bhutto took charge of the Prime Minister’s

⁷⁸ Miss Asma Jilani v. The Government of the Punjab and another, PLD 139 (SC 1972)

⁷⁹ State v. Dosso, PLD 533 (SC 1958)

⁸⁰ Federation of Pakistan v. Muhammad Saifullah Khan, PLD 166 (SC 1989)

⁸¹ Azeem, Muhammad. "Law, State and Inequality in Pakistan." (July, 2017): 169

office in 1988. Haji Saifullah Khan case also raised the issue about the legal status of all governmental actions during that period.

The Court declared the inevitability of the Prime Minister's office as its default would have caused alteration of the character of the Constitution to the Presidential system rather than the democratic system. The Court provided conditions for the justification of dissolution of the government: the president can dissolve National Assembly when the state machinery has completely broken down and the government affairs cannot be carried out according to provisions of the Constitution. In the instant case, these conditions were not satisfied. Additionally, the general elections were scheduled for the next month, November 1988, so the Court declared that it would not vitiate the illegal dissolution keeping in view the national interest to continue election process.⁸²

3.8.3 Muhammad Nawaz Sharif v. the President of Pakistan

The President, Ghulam Ishaq Khan, in exercise of his discretion under Article 58 (2) (b) dissolved the Assembly and dismissed the Prime Minister. The petitioner filed a writ petition under Article 184(3).⁸³ The petitioner contended that the impugned order was based on mala fide and passed without lawful authority. The petitioner prayed that the impugned order should be rendered null and void, the functioning of caretaker government should be declared void, the President should be restricted from intervening with the affairs of the government, and no obstacles should be created in smooth functioning of the National Assembly.

The Court held that the dissolution order was not within the exclusive authority of the President, conferred under Article 58 (2) (b). The court further held that the other enabling powers available to the president have been passed without lawful authority having no legal force. The court directed for the restoration and resuming functioning of the national assembly, the senate, and the prime minister. Unlike previous cases the court not only validated the dissolution order but also restore the deposed government. The process of democracy since independence and the preparation and mindset of the military was addressed in the chapter; however, the mechanism of promotions that was lacking in the initial years of Pakistan was another significant factor in this respect. Army generals were pushed out of the blue and made army generals without going through a proper promotion process.

⁸² Ibid,71

⁸³ Muhammad Nawaz Sharif v. the President of Pakistan, PLD 43 (SC 1993).

This has influenced military discipline and they acquired a more 'hands-on' attitude to remaining in control. As per its inherited position, the apex judiciary endorsed the executive and acknowledged its submissive role. In order to reinforce its own position, the bureaucracy took the side of the executive, which was military for much of the time, and it became its instrument of control. Since 1966, politicians who were the reason for the breakdown of civil law were disqualified and dismembered from politics. After 1966, a new period began in which East Pakistan followed an extreme nationalist strategy, while the leading PPP of Zulfikar Ali Bhutto opted for a radical approach aimed only at governing the region. The circumstances of the 1971 war contributed to East Pakistan's split, for which the military was discredited.

The military was embarrassed, but when the Balochistan Campaign was initiated by Z.A Bhutto in Balochistan, it was again welcomed into power corridors. In order to restructure its lost prestige, the military instituted Martial Law and began governing again. It played the religious card this time, in order to build its legitimacy, to cater to the religious feelings of the popular masses. Furthermore, the Afghan Jihad credited the military and, thus, once effectively built its legitimacy and sought to ridicule lawmakers. As per its position and military power, the Apex Judiciary remained until the end of this military rule following its submissive role.

CHAPTER 4

PAKISTAN UNDER THE GENERAL PERVEZ MUSHARRAF: THE FIRST SEVEN YEAR (1999-2005)

4.1 Continuation of Colonial Legacy

General Pervez Musharraf came into power in a dramatic fashion. He went to Sri Lanka and in the meantime, Prime Minister Nawaz Sharif moved against him to sack him which was against the military legacy and the colonial legacy that the military had been carrying for so long. The military had already bearded the shame of the sacking of one COAS and it could have accepted the sacking of another. On the other hand, the war on Kargil had already lowered the morale of the soldiers which could have jeopardized everything which the high-ranking officials of the military had worked so hard for. The military could not have another crisis on their hand. The firing incident was the one when the plane of General Pervez Musharraf was not cleared for landing.⁸⁴ General Pervez Musharraf, during his speech on 17th October, discussed the consequences which had paved way for him to impose the Marshal Law. He said:

“My fellow Pakistanis, as you are aware, I took over in extremely unusual circumstances – not of my making. It is unbelievable and indeed unfortunate that the few at the helm of affairs in the last government were intriguing to destroy the last institution of stability left in Pakistan by creating dissention in the ranks of the armed forces of Pakistan. And who would believe that the Chief of Army Staff, having represented Pakistan in Sri Lanka, upon his return was denied landing in his own country and instead circumstances were created which would have forced our plane either to land in India or crash.

Providence ultimately intervened. Praise be to Allah that the plane landed safely when barely seven minutes of fuel was left. I salute my soldiers and men for acting courageously in the supreme interest of the nation. Most of all I salute our people who stood solidly with their armed forces at that critical hour. Quite clearly, what Pakistan has experienced in the recent years has been hardly a label of democracy not the

⁸⁴ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and Judiciary." *Contemporary South Asia* 20, no. 1 (2012): 21

essence of it. Our people were never emancipated from the yoke of despotism. I shall not allow the people to be taken back to the era of sham democracy, but to a true one. And I promise you I will Inshallah.

My dear countrymen The choice before us on 12th October was between saving the body – that is the nation, at the cost of losing a limb – which is the Constitution, or saving the limb and losing the whole body. The Constitution is but a part of the nation therefore I chose to save the nation and yet took care not to sacrifice the Constitution. The Constitution has only been temporarily held in abeyance. This is not martial law, only another path towards democracy. The armed forces have no intention to stay in charge any longer than is absolutely necessary to pave the way for true democracy to flourish in Pakistan.”

His speech clearly dictated that he had no intention for staying in power for long and he, upon time, would give up the power in order to establish true democracy but, as the history suggests, it was another manipulative move by the command centre of the military. Musharraf, like his predecessors, followed the exact same path. On October 15, 1999, General Musharraf enforced Provincial Constitutional Order “PCO”. Which conferred that the military had come into power once again without having the intention to leave early.⁸⁵ PCO stated that:

“In pursuance of Proclamation of the 14th day of October, 1999, and in exercise of all powers enabling him in that behalf, the Chairman Joint Chiefs of Staff Committee and Chief of Army Staff and Chief Executive of the Islamic Republic of Pakistan under the Proclamation of Emergency of 14th day of October 1999 (hereinafter referred to as the Chief Executive) is pleased to make and promulgate the following Order:

I

1. This Order may be called Provisional Constitution Order No.1 of 1999;
2. It extends to the whole of Pakistan;
3. It shall come into force at once.

II

1. Notwithstanding the abeyance of the provisions of the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, Pakistan shall, subject

⁸⁵Provisional Constitution Order No. 1 of 1999, Issued 1 a.m. (Pakistan Standard Time), October 15, 1999.

to this Order and any other Orders made by the Chief Executive, be governed, as nearly as may be, in accordance with the Constitution.

2. Subject as aforesaid, all courts in existence immediately before the commencement of this Order, shall continue to function, exercise their respective powers and jurisdiction provided that the Supreme Court or High Courts and any other court shall not have the powers to make any order against the Chief Executive or any person exercising powers or jurisdiction under his authority;
3. The Fundamental Rights conferred by Chapter I of Part II of the Constitution, not in conflict with the Proclamation of Emergency or any Order made thereunder from time to time, shall continue to be in force.

III

1. The President shall act on, and in accordance with the advice of the Chief Executive;
2. The Governor of the Province shall act on, and in accordance with the instructions of the Chief Executive.

IV

1. No Court, Tribunal or other authority shall call or permit to be called in question the proclamation of Emergency of 14th day of October, 1999 or any Order made in pursuance thereof.
2. No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the Chief Executive or any authority designated by the Chief Executive.

V

Notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the Chief Executive, all laws other than the Constitution shall continue in force until altered, amended or repealed by the Chief Executive or any authority designated by him.

VI

The Proclamation of Emergency issued on 28th day of May 1998, shall continue but subject to the provisions of Proclamation of Emergency dated 14th day of October 1999 and this Provincial Constitution Order and any other Order made thereunder.

VII

All persons who, immediately before the commencement of this Order, were in the service of Pakistan as defined in Article 260 of the Constitution and those persons who immediately before such commencement were in office as Judge of the Supreme Court, the Federal Sharia Court or a High Court or Auditor-General or Ombudsman and Chief Ehtesab Commissioner, shall continue in the said service on the same terms and conditions and shall enjoy the same privileges, if any.⁸⁶

Under this provincial constitutional order, General Musharraf took a self-proclaimed responsibility of Chief Executive of the country who had complete control over all the pillars of the state. With military backing him, the country under his rule started to move slowly towards quasi-democracy from brute dictatorship. The military tactics to govern the country had changed but colonial legacy continued.

4.2 Consolidation of Power by General Pervez Musharraf

After a successful coup, the military wanted to consolidate its control in order to run the affairs of the state smoothly and therefore, General Pervez Musharraf had announced some very catchy things that the people were not accepting and these tactics were directly linked with the consolidation of power as well as the continuation of his regime for a longer period of time.

4.2.1 Announcement of Accountability

General Pervez Musharraf, in his address to the nation on 17th October 1999, promised to start the process of accountability. He said:

“The next aspect is accountability. Lack of accountability has resulted in corruption of horrendous proportions, threatening the very basis of our society. The term ‘‘Ehtesab’’ has been abused to an extent that it has lost its meaning. There is thus a need to re-establish faith in the process of accountability. The process of accountability is being directed especially towards those guilty of plundering and looting the national wealth and tax evaders. It is also directed towards loan defaulters and those who have had their loans re-scheduled or condoned. The process of accountability will be transparent for

⁸⁶ provisional Constitution Order No. 1 of 1999, Issued 1 a.m. (Pakistan Standard Time)

the public to see.

My advice to the guilty is to return voluntarily national wealth, bank loans and pay their taxes before the hand of law forces them to do so with penalty. As a last chance I urge all defaulters to come forth and settle their debts within a period of four weeks, after which their names will be published and the law will take its due course. They owe this to Pakistan and I expect their spirit of patriotism to guide them.”

Later, on 19th of November 1999, General Pervez Musharraf established National Accountability Bureau (NAB) which immediately started investigation against all those political leaders who had evaded him; primarily Nawaz Sharif and his family.⁸⁷ In August 2000, Nawaz Sharif was thrown into the jail on the charges of Plane kidnapping of Musharraf up on his return; however, the Saudi Arabia’s government brokered a deal between general Musharraf and Nawaz Sharif. In accordance with the deal, Nawaz Sharif, along with 18 members of his family, left the country for 10 years in December 2000. "Nawaz Sharif and family have been exiled to Saudi Arabia.

The decision has been taken in the best interest of the country and the people of Pakistan," the Pakistan government said in a statement. “This is purely a humanitarian gesture by the kingdom and has nothing to do with politics. Mr. Sharif has pledged not to undertake any political activity while in Saudi Arabia," a Saudi official said. It was later confirmed by General Musharraf that he had released Nawaz Sharif on the advice of King Abdullah of Saudi Arabia. In order to validate his government’s stance of accountability, Musharraf’s government forfeited Nawaz Sharif’s worth 8.3 million US dollars and imposed a 500,000 US\$ fine to which he complied and paid to leave for Saudi Arabia.⁸⁸ With Nawaz Sharif and his family out of the country, Pervez Musharraf had successfully established a smooth government with stability while forming a King’s party.

4.2.2 Formation of National Security Council

The military wanted to have its firm control over the policy making of political government and this issue became one of the reasons of dispute between civilian government and military establishment during Nawaz Sharif’s tenure; primarily between General Karamat and Mian Nawaz Sharif. COAS General Karamat had to lose his job on this issue as he was an ardent supporter of National Security Council. In an interview, general Karamat stressed upon the necessity of the

⁸⁷ Ghias, Shoaib A. "Miscarriage of chief justice: judicial power and the legal complex in Pakistan under Musharraf." *Law & Social Inquiry* 35, no. 4 2010, p.9.

⁸⁸ Henry, “constitutional and Political Change in Pakistan: The Military-Governance Paradigm” *In Prospects for Peace in South Asia*, 2005, p.37-74.

formation of National Security Council in order to create a balance between military and civil government as the civil government was being responsible for handling the economic, defence and foreign policies in bad manner. The military wanted to have its final say in these policy matters but the civilian government under Nawaz Sharif sacked general Karamat to set an example which was not received well in the military power spheres.⁸⁹ Therefore, when the military removed Nawaz Sharif and formed its own government, it announced the formation of National Security Council in which it gave military a further high hand in policy matters of the political governments to come. In his address to the nation on 17th October 1999, General Musharraf announced the formation of a NSC. He said:

“Second – A National Security Council headed by the Chief Executive with six members. These members will be Chief of Naval Staff, Chief of Air Staff; a specialist each in Legal, Finance, Foreign Policy and national affairs. A think-tank of experts shall be formed as an adjunct to the National Security Council to provide institutionalized advice and input.”

NSC was formed through a presidential ordinance and it was later constitutionalized by the parliament which was formed after 2002 elections. It shows that the military establishment, if once taken decisions, never revert back. The formation of NSC was military’s objective and as per their training, they must acquire their objective one way or another.⁹⁰ The formation of NSC put all the decision matters in the hands of the military and general Musharraf became sole responsible for the policy affairs of the country which strengthened his position in power.

4.2.3 Formation of a Political Party and political support

The advisors of general Musharraf at the time of coup knew that this coup would not be greeted both domestically as well as internationally. Therefore, unlike his predecessor General Zia, General Musharraf, in his address to the nation said:

“The Constitution has only been temporarily held in abeyance. This is not martial law, only another path towards democracy. The armed forces have no intention to stay in charge any longer than is absolutely necessary to pave the way for true democracy to flourish in Pakistan.”

⁸⁹ Rafiq and Henry, ‘‘constitutional and Political Change in Pakistan: The Military-Governance Paradigm’’. In *Prospects for Peace in South Asia*, 2005, p.19-21

⁹⁰ Ghias, Shoaib A. "Miscarriage of chief justice: judicial power and the legal complex in Pakistan under Musharraf." *Law & Social Inquiry* 35, no. 4 2010, p.6

The Supreme Court had validated General Musharraf's government in its verdict in 2000 and according to the verdict, General Musharraf was given the time of three years to conduct elections. To run the affairs of the state, General Musharraf needed a team of trusted advisors who could work under NSC's supervision.⁹¹ Therefore, he formed a cabinet consisting of 20 members initially which were mostly retired armed force personnel and bureaucrats and later raised the number of members up to 26. This cabinet worked till the quasi-democratic government was formed after the elections of 2002.

Since the military took over in 1999, the international pressure had been on Musharraf's regime and Musharraf's government was in desperate need of international approval. After the incident of 9/11, the international pressure lowered because Pakistan's government had agreed to be involved in War on Terror against Al-Qaeda militants in Afghanistan; however, the internal pressure had been mounting up. General Musharraf had taken charge of the President in 2001 while removing the sitting President unconstitutionally. General Musharraf had some liberal politicians supporting him but not a party and therefore, ISI was tasked with forming a King's Party in order to validate his unconstitutional decisions constitutional through the forum of the Parliament which was to be formed after the elections of 2002.

In order to acquire political support and ensure political stability, ISI formed a right-wing party named Pakistan Muslim League Q (Quaid-i-Azam) which included the deserted member of former ruling party PML-N and some members of PPP by using various illegal methods.⁹² The overwhelming support of PPP in Sindh had to be neutralized and therefore, General Musharraf started supporting relatively smaller parties like MQM and PML-F. With Musharraf's overwhelming support, these parties were able to oust PPP from Sindh. The formation of MMA proved useful in ousting PML-N from NWFP (now KPK) and PLM-Q proven to be enough to quell PML-N's support in Punjab. Hence, with the formation of King's party and favoring groups, Musharraf was able to strengthen his position and with political support, Musharraf was able to constitutionalize his unconstitutional decisions.

4.2.4 From Chief Executive to the President

Mian Nawaz Sharif, after forming his government named his close associate Mr. Muhammad Rafiq Tarar who was a former Judge of the Supreme Court and a former Chief Justice of Lahore High

⁹¹ Rafiq and Henry, "constitutional and Political Change in Pakistan: The Military-Governance Paradigm". *In Prospects for Peace in South Asia*, 2005, p.37-74.

⁹² Muhammad, Waseem. "Judging the democracy in Pakistan: conflict between the executive ad judiciary", *cotemporary, South Asia Journal*, volume, 2o.

Court. He remained in the office during the coup but as the powers had been taken away from the President under the article 13 of the constitution, President Rafiq Tarar had a ceremonial post and had no actual power. Therefore, General Musharraf was not bothered by his presence in the office of the President. According to PCO 1999, the President of Pakistan had to comply with the orders given to him by the Chief executive of the country which was the sitting Army Chief. However, the growing political alliance against General Musharraf forced him to remove Mr. Rafiq Tarar from the office and assume responsibilities of both Chief executive and the President. After his oath taking ceremony, he said to media, “The decision has been taken in the supreme national interest. If I have a role to play in the stability of the country. I will not shirk it or back down.”⁹³

Later, the changing domestic and regional situation forced General Musharraf to conduct a referendum in which General Musharraf asked people whether they wanted to see him as the President or not. The Referendum was conducted in late April 2002 in which General Musharraf got the public approval for his next 5 years in the office as President and further enhanced his power and international stature.

4.2.5 Legal Framework Order 2002

In December 1999, General Musharraf created National Reconstruction Bureau (NRB) which was tasked with the development of plans in order to introduce political and structural reforms. NRB proposed the enforcement of Legal Framework Order (LFO) in order to validate and legalize the acts, decrees and actions taken by the Military regime. This LFO was implemented in August 2002 which legalized Musharraf’s referendum and his President ship with the military uniform. This act once again gave President the authority to appoint and remove services chiefs, Judges of the Supreme Court and dissolve national and provincial assemblies. LFO legalized and enhanced military’s direct role in politics which continued till the end of Musharraf’s regime.

LFO was not a new term being introduced in the political system of Pakistan. It was first introduced by General Yahiya Khan in 1970 to organize elections and it ended after the enforcement of the constitution of 1973. Following this tradition, general Musharraf’s introduction of LFO was also primarily focused on elections of 2002. The difference, however, was that in 1970, the military had lost control over the politics and it was a temporary measure whereas in 2002, the military was in all

⁹³ Rafiq and Henry, ‘‘constitutional and Political Change in Pakistan: The Military-Governance Paradigm’’. *In Prospects for Peace in South Asia*, 2005

control over the politics.⁹⁴The military regime had been supported by the international powers since 9/11 and Musharraf's policy of "media liberalization" had played its role in further consolidation of power by him.

4.2.6 Devolution of Power, Local Body Elections and General Elections 2002

Article 32 and Article 140-A of the constitution deal with devolution of power and involvement of local bodies in the political process. Article 32 of the constitution states:

"The State shall encourage local Government institutions composed of elected representatives of the areas concerned and, in such institutions, special representation will be given to peasants, workers and women."⁹⁵

Whereas the Article 140-A of the constitution states:

"Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments."⁹⁶

General Musharraf in his inaugural address to the nation presented his 7 points agenda in which he said, "Cementing the Federation is very vital. This will be achieved through devolution of power, from the center to the provinces and from the provincial to the local government as actually enshrined in the constitution."⁹⁷ Local body elections were also introduced by General Ayub Khan during his regime and it also helped him stabilize his regime for a while. The similarity existed in Musharraf's case as well.

According to the proposed policies of NRB, General Musharraf imposed Local Government Ordinance 2001 which was later rectified by all the provincial assemblies in accordance with the Article 140-A of the constitution. The local body elections started to occur which provided the newly emerged middle class during the 1990s to compete. This newly emerging middle class jumped on General Musharraf's Bandwagon as PPP and PML-N, the two major political parties had lost their political power as their top tier leadership had been living in exile. Most of this newly emerged middle

⁹⁴ Muhammad, 'Waseem. Judging the democracy in Pakistan: conflict between the executive and judiciary'. *Cotemporary, South Asia Journal*, volume, 20.

⁹⁵ Constitution of Pakistan 1973, Article, 32.

⁹⁶ Constitution of Pakistan 1973, article.140. A.

⁹⁷ Hamid Khan, *Constitutional and Political History of Pakistan*, 2nd ed. 4th imp. (Karachi, Oxford University Press, 2012)

class joined PML-Q for the upcoming political opportunities. Local bodies' elections had mixed results; however, the victory was shared by the King's Party and its affiliates. These elections were very important for the stability of Musharraf's regime which he acquired through devolution of power. This increased Musharraf's support among the masses for a while which helped him in strengthening his position in the upcoming general elections 2002.

The simplicity of local body system was the key to its success. Under his policy of devolution of power, the city mayors received multiple authorities and good amount of funds that helped in development of various cities. ⁹⁸Karachi was a prime example in this regard where Musharraf's supported MQM developed the city that helped them increase in their public support in the later years to come. Salman Abid, an expert on local government systems said during an interview,

“During the early part of the General Musharraf era, after the local body elections in 2000, the local government system was working somewhat better and power was devolved to the lower tiers. But after the 2002 elections powers of the local government were gradually taken back. All the four local government systems that we have in place right now negate Article 140A and do not completely address its principles. Having said that, of the four examples that we have in our provinces, Khyber Pakhtunkhwa had a better local government system in place. In Punjab, they managed to capture all powers of the local government by making various authorities and task forces. The Sindh and Balochistan governments had more or less the same approach.”

Heavy development budgets were given to the local authorities whom helped developing in political stability as well as public support for General Musharraf for few upcoming years.

4.3 Elections 2002 The Essence of Musharraf's power display

In order to strengthen his position in General Elections of 2002, PML-Q was created from within PML-N which disrupted its vote bank in Punjab. PML-Q, with the help of independent candidates and religious groups formed government in Punjab. MQM was funded and supported in Sindh along with other political actors who later helped in forming Musharraf's favored coalition government in Sindh. Mutahidda Majlis-e-Amal (MMA) was an alliance formed by all the religious parties in the country, won majority in NWFP province and Balochistan was controlled by a coalition

⁹⁸ Satish Kumar, “judicial subservices hampered democracy in Pakistan” *south Asian perspective*, vol.2 no.6, 2007.

government of nationalist parties all of which were supported by the military regime.⁹⁹In the center, a hung parliament was formed. PML-Q, with the help of its allies, was able to form a government with the majority of only one vote. The instability of the parliament resulted in the stability of Musharraf's regime and he was able to extend his reign further.

The general elections of 2002, according to various media reports, were allegedly rigged. General Musharraf's controlled bureaucracy had facilitated the workers and candidates of the King's party. Najam Sethi, a famous journalist and TV anchor commented on the situation, said:

"Senior government officials are openly soliciting votes and making and breaking candidates. There is an element of desperation. The new Musharraf is a man who will bend any law and make any alliance in order to stay in power."

After the elections, the formation of Musharraf's favored governments in the center as well as in provinces indicated that General Musharraf had acquired complete dominance over the political system of Pakistan. The military had established its complete hegemony over the structure once again.

4.4 Manipulation through Media

In his first address On October 17, 1999, He announced:

"Media forms an integral part of statehood in this era of information. I have great regard and respect for the media; I trust it to play a positive and constructive role. I am a firm believer in the freedom of the press and am even considering liberalizing the policy on the establishment of private television and radio channels."

General Musharraf's policy of liberalization of media was the only deviation from the traditional military rules that had been in the country, from time to time, for quite a long time. The traditional military rule in Pakistan had always been focused on censored media in order to have complete control over the information but during Musharraf's time, the policy of liberalization of media had many benefits which his administration could not neglect. The most important factor was the influence over media. The liberalization of media provided him with the opportunity to favour the

⁹⁹ Roy, M.C. Worthy.' Musharraf regimes rigging in election', *The Guardian*, September,16,2002, P.3

newspaper owners who then opened up various news channels. In order to control the newly developing electronic media, General Musharraf established Pakistan Electronic Media Regularity Authority (PEMRA) to have his government's influence over the flow and magnitude of the information. The boom of electronic media opened up hundreds of employment opportunities which Musharraf's government took credit for. Another purpose which it served was that it helped Musharraf to finally grow an international image.

In foreign affairs, the newly developing media started to portray Pakistan's perspective at the international level which helped the country to counter the blames that had been putting on it on the matters of Kargil war.¹⁰⁰ With the help of media, General Musharraf started propagating his government's achievements to a larger audience which also helped the military to retain the losing image. However, this liberalization of media later came under fire when General Musharraf started to quell the protests against his dictatorial regime in the later part of his reign. All broadcast channels via any electronic means were banned after General Musharraf declared emergency in November 2007.¹⁰¹ Despite providing boost to the economy and better image of the Armed forces, liberal media became one of the reasons in Musharraf's downfall.

4.5 The International Factor

General Musharraf's regime had not been welcomed by the international community and General Musharraf was in desperate need of the international approval. His military coup happened at the time when Pakistan was facing economic sanctions from the United States as it had tested the nuclear weapons in 1998. The Kargil War led to further deterioration of the country's image and then this military takeover almost led to international isolation for Pakistan.

What soviet invasion did for General Zia-ul-Haqq, Al-Qaeda's attack on the World Trade Center in New York did for General Musharraf. The incident of 9/11 provided General Musharraf with the opportunity to have the international approval. The United States announced war on terrorism and attacked Afghanistan where Osama bin Laden was hiding under Taliban Rule. The Taliban government refused to hand over Osama despite various offer made by the United States. Therefore, the war in Afghanistan began and Pakistan aligned itself with the United States and became a front-line state in the war. The United States, in return, lifted all the economic sanctions and announced to

¹⁰⁰ Ibid.

¹⁰¹ Zafar Iqbal. "media and Musharraf: a marriage of convenience" *European scientific research*, vol.8, no 4

give Pakistan five billion US dollars as military and economic aid. The lifting of sanctions and the role of Musharraf's government, despite heavy losses to both the civilians and the military, served the purpose and General Musharraf's dictatorial regime was recognized by the United States and its NATO allies. The recognition and lifting of sanctions brought various economic benefits which later helped in developing a new middle class in the country that later played its part in Musharraf's downfall.

4.6 General Pervez Musharraf's PCO and the Supreme Court of Pakistan

When General Musharraf came into power, the Supreme Court of Pakistan was consisted of 13 judges and it was headed by Justice Saeed uz Zaman Siddiqui. The military had not interfered with the apex judiciary in the earlier months. However, the Supreme Court soon accepted the petitions on the legality of the coup. The Oath of Judges order was released by Musharraf's government just a week before the scheduled hearing of the case related to the legality of the military coup. The motive behind it was the immediate authentication of the military rule.¹⁰²

This PCO had restrained the judiciary from performing its constitutional role. After release of the order, Justice Saeed uz Zaman Siddiqui said, "I have not resigned. I have refused to take the oath. I am on record that I will work under the constitution, not under the provincial constitution." Justice Saeed-uz- Zaman Siddiqui and five of his colleagues of the Supreme Court refused to take fresh Oath and hence, they were removed from their positions by General Musharraf. On the occasion, General Musharraf told the reporters, "Whatever has been done is in the best interest of the country and the nation."

The removal of six judges including the Chief Justice was condemned by various countries and civil rights organizations. The remaining seven judges of the court took oath under the PCO swore to validate the military rule. The Supreme Court of Pakistan validated General Musharraf's government in case PLD 2000 SC 869 Syed Zafar Ali Shah vs. General Pervez Musharraf¹⁰³ validated him as Chief Executive of the country declaring all his illegal action legal. The Supreme Court also ordered Musharraf's government to conduct elections within three years. Chairman Human Rights Commission of Pakistan Mr. Afrasiab Khattak said, "By its swearing of new allegiance, the judiciary has become a creature not of the Constitution but of the army chief of staff."

The most important incident which strengthened General Musharraf's rule at the very

¹⁰² "Pakistan Judges Refuse Oath demanded by Pakistan's Rulers", *Waycross Journal-Herald*, January 31, 2000. Pp. 15.

¹⁰³ ¹⁰⁶ PLD, 2000 .SC 86

beginning was its validation by the Supreme Court of Pakistan. Supreme Court had its differences with Nawaz Sharif's political government which led to various cases of contempt of court against him. The clashes between the executive and the judiciary were gone too far and political workers once attacked the building of Supreme Court. Like the military dictators in the past, General Pervez Musharraf had to turn towards judiciary in order to acquire the license of legal validity of his actions and therefore, under PCO, General Musharraf received legal validation. The defiance showed by the judges of the Supreme Court became historic and it laid foundation of the judicial movement which occurred in later part of Musharraf's era.

The Supreme Court had become subservient to General Musharraf's dictatorial regime. A 5-member bench of the Supreme Court validated and approved General Musharraf's LFO and the amendments he had made in the constitution on October 07, 2002. With the help of King's party and its allies, General Musharraf succeeded at controlling the parliament and provincial assemblies. On 29th December 2004, The King's party and its allies collaborated to pass the 17th constitutional amendment and succeeded in getting it approved with 2/3 majority in both houses of the Parliament which allowed President Musharraf to hold dual offices at once. On 13 April 2005, the 5-member bench of Supreme Court gave judgment in favor of 17th amendment and President's uniform. General Musharraf continued to rule until the 'unprecedented' happened in 2005 and he was forced to shed his uniform in 2007.

4.7 Democracy under Musharraf, a Blessing in Disguise

After General Musharraf's take over, various important decisions were made by his government which supported not only his regime for the time being but also developed the attitude of the society towards the establishment of democracy. Resulted development of this attitude can be seen in the later part of Musharraf's era when a massive judicial-political movement emerged against General Musharraf and eventually led to the establishment of democratic regime in 2008.¹⁰⁴ Following are the indicators which hint towards the possible growth of democracy under Musharraf.

4.7.1 Local body Elections

In order to minimize the vote bank and popularity of PPP and PML-N, General Musharraf announced non-party-based elections; a similar tactic which General Zia used in 1985. The non-Party based elections provided the opportunity to the local businessmen, landlords and local politicians to

¹⁰⁴ Hamid Khan, *Constitutional and Political History of Pakistan*, 2nd ed. 4th imp. Karachi, (Oxford University Press, 2012)

indulge themselves in the politics and the policies of devolution of power made their political power grow. Resultantly, this political elite grew to replace the national level politicians in the years to come.¹⁰⁵ Another important factor in this regard was that General Musharraf had made it compulsory for a politician to have at least bachelor's degree in order to participate in general elections. With this compulsion in place, various politicians were left out of race to the parliament; the ones who belonged to the rural background in particular. Those politicians were replaced by these emerging politicians which reshaped the traditional structure of the politics.

The local body elections provided funds and authorities, for a brief amount of time, to the lowest tiers of society. The people became aware of the functioning of the government which developed a political sense in them. This political sense prevailed and resulted in the growing resentment against General Musharraf's regime in the later part of his rule and ultimately brought down his government.

4.7.2 Development of Mass Media

The development of democratic thinking was brought in the main stream by mass media. General Musharraf's policy of media liberalization provided him the opportunity to manipulate and influence media houses but the opening of multiple media outlets began a race among them. Resultantly, this provided the general public with a massive flow of news, views and opinions which were too much to be censored by the government all at once. This massive flow contained the views of both pro and anti-government factions but media's approach had always been cautious during Musharraf's regime which indicated that journalism had been under the shackles.

The flow of information through media, particularly in the later part of general Musharraf's government, provided political awareness to the people and helped in the establishment of anti-Musharraf movement.¹⁰⁶ A fact, however, in this regard is that General Musharraf only allowed the media channels to operate but the process had been going on since the time of Main Muhammad Nawaz Sharif and the applications had been pending before he was removed from the office?

4.7.3 Human right cell

When Chaudhry became chief justice in 2005, his judicial philosophy underwent a fundamental transformation, rather than acting Agent of the power elite, Chaudhry sought to become a

¹⁰⁵ Zafar Iqbal 'media and Musharraf: a marriage of convenience'' *European scientific research*, vol.8, no 4.p.9

¹⁰⁶ Ibid, p.11

guarantor fundamental rights of Pakistani citizen. Soon after being sworn in, he established a “human right cell” in the Supreme Court. Through this forum Choudhry started accepting the petitions from the public against violation of constitutionally guaranteed rights. The cases taken up by the court incrementally tightened the nose of legal around the Musharraf regime. All these factors indicate that the process of democracy was continuing in the background and the result could be seen in the next phase of General Musharraf’s regime where the people actually started to demand democracy.

CHAPTER 5

MILITARY VS. JUDICIARY AND PAKISTAN TOWARDS DEMOCRACY

5.1 The Bench and the Bar

In order to understand the complexity of the Court system in Pakistan, it is essential to understand the relation between 'The Bench and The Bar'. As Halliday and Karpik suggest, "The autonomy of the judiciary and the autonomy of the bar are the principal conditions for the fight of lawyers on behalf of a moderate state." Therefore, it is necessary to understand about the autonomy of the bar consisting of independent lawyers who, as we see, participated in majority to re-establish the Judicial freedom which was sabotaged by General Musharraf in 2007.

In 2005, when Justice Iftikhar Chaudhary became the Chief Justice of Pakistan, the judiciary intervened in the matters of bars in order to protect the lawyers and their autonomy. Also, the Supreme Court Bar Association had the prominent lawyers including Munir A. Malik, Ali Ahmed Kurd, Asma Jahangir, Barrister Aitezaz Ahsan etc. who were already engaged on different forums against General Musharraf's authoritarian regime. For instance, Ali Ahmed Kurd had been arrested during an attempt to conduct a prayer offering for the absentee funeral of Nawab Akbar Khan Bugti who was allegedly killed by the military in Balochistan in 2005.¹⁰⁷

Ali Ahmed Kurd hailed from Balochistan, the province from where Justice Chaudhary belonged and both had contested bar elections and therefore had a strong connection which later helped in igniting the Lawyers movement. General Pervaiz Musharraf appointed Chaudhary Iftikhar Muhammad as the 20th Chief Justice of Pakistan on June 30, 2005. Chief Justice Iftikhar Chaudhary had just been ascended to the Superior Court three years prior. He had served as Chief Justice of Balochistan High Court till 2002. Iftikhar Chaudhary was one of the seven judges who had taken oath under General Musharraf's PCO of 2002.

Besides that, he had been a great asset for General Musharraf's authoritarian regime. He was among those judges who validated General Musharraf's coup on grounds of necessity in Zafar Ali

¹⁰⁷ Ali, khan. The lawyer movement I Pakistan: law beyond politics, social science newtwork.3. december.2007.p.9

Shah vs General Musharraf Case. He was one of the judges who validated General Musharraf's referendum; he was also in that bench which allowed General Musharraf to contest Presidential election in uniform. With all these credentials, General Musharraf had never considered him a threat. Judicial history also indicated that General Musharraf and his authoritarian regime had no threat from the judiciary because the judiciary had always remained subservient in all military rules that had ever been in Pakistan.¹⁰⁸ In the early years of General Musharraf's authoritarian regime, the judiciary followed the standards of protocols which it was supposed to follow.¹⁰⁹

Many questions occur here. For instance, how did the apex judiciary acquire this power under the authoritarian regime? How did it establish its autonomy as well as the autonomy of the bar? The answers to all these questions are tried to answer in this chapter. Justice Iftikhar Chaudhary's led Supreme Court, in order to establish the autonomy of the Judiciary, successfully intervened in Supreme Court Bar Association (SCBA) politics in order to bring likeminded lawyers at the leading front. In the 2006 elections of SCBA, Munir A. Malik was elected the President for the next year. With pro-bench bar in place, Chief Justice Iftikhar Chaudhary must have worked to establish the autonomy of the bar which later helped him in establishing the autonomy of the bench. Therefore, in order to understand it, a close look at the structure and hierarchy of composition of bars is essential.

Both Bar Councils and Bar Associations operate in their constitutional framework in Pakistan. The structure of bar associations is hierarchical in nature and the discipline is strict. The bar associations have elections every year. The Supreme Court Bar Association, established 1989, is the highest bar association and therefore, it comprises of Supreme Court advocates from all around the country. These Supreme Court Lawyers are the senior lawyers and most of them have their own law firms in which the junior lawyers or the lawyers associated with high court bars and district bars work. Therefore, these senior lawyers have their groups and lobbies for elections and they influence the lower tiers of bar associations.

Every Provincial High Court has its own bar association in which all the lawyers who could practice in the High Courts are included. However, the high court bar associations and their elections are always dominated by the groups of senior lawyers who, in order to win the elections, try to include and rally most of the lawyers behind them. Every district in Pakistan has its own district bar

¹⁰⁸ Shuaib and Ghias, "miscarriages of chief justice: judicial power and legal complex in Pakistan under Musharraf" *law and social inquiry*, 2010, vol.35, no 10,

¹⁰⁹ Muhammad Raheem Awan. "Judicial Activism in Pakistan in Commercial and Constitutional Matters: Let Justice be done though the Heavens Fall", Bedfordshire, United Kingdom, (December 2013): 14.

associations which include the lawyers form a specific district. District bar associations are where the man power of the lawyers lie and therefore, the elections of these associations are also influenced by the top tiered groups of senior lawyers.¹¹⁰ Despite having electoral competitiveness among these lawyer groups, the fraternity always remains strong among them. A lawyer always supports the other lawyer or lawyers in police matters as well as court proceedings. This shows discipline and respect of the seniority which runs from top to the bottom among the lawyers.

The highest elected and representative body of the lawyers is Pakistan Bar Council which was established under the constitution of 1973. The attorney general of Pakistan is its President and it has 22 elected members constituting its governing body. Pakistan Bar Council issues acceptance letters to the lawyers who fulfill the requirements to practice in Supreme Court and it can also revoke this permission. Every Province also have their own bar councils which have the same functions as Pakistan Bar Council but at provincial level. (Islamabad Bar Council is also established in Islamabad which performs the same duties but within federal capital territory related to Islamabad High Court. It was established through the executive order by General Musharraf during the state of emergency in 2007.) Azad Jammu and Kashmir Bar Council and bar associations are also present and they also follow the designated roles.

In October 2006, the elections of SCBA were held in which an anti-regime and active lawyer Munir A. Malik was declared winner by the margin of four votes by outgoing President of SCBA Abdul Qayyum. Advocate Abdul Qayyum was a pro-regime lawyer and had already been granted with funds by General Musharraf's regime for which he was criticized by Pakistan Bar Council as well. Advocate Abdul Qayyum, for an official result, recounted the votes and declared Raja Haq Nawaz Khan the winner annulling its previous announcement of the winner. The aggrieved contestant Munir A. Malik challenged this decision in PBC.

PBC ordered Munir A. Malik to continue working as president until the matter is resolved. Raja Haq Nawaz Khan, who was a pro-regime lawyer, challenged this decision in Lahore high Court and he accused Hamid Khan, Chairman Pakistan Bar Council at the time, of campaigning for Munir A. Malik. Lahore High Court. Lahore High Court declared Mr. Khan the winner, but this decision was challenged by Munir Malik in the Supreme Court and hence the test of the bench began. During that time, the Supreme Court had already taken various actions against the government and had been on the

¹¹⁰ Mustafa, Tamir, and Tom Ginsburg, Eds. 'the Functions of Courts in Authoritarian Politics. In Rule by Law: The Politics of Courts in Authoritarian Regimes' (New York: Cambridge, 2008)pp.-22

path of extending its power.

Chief Justice Iftikhar Chaudhary knew the importance of this matter and therefore, in order to give this matter extraordinary prominence, Chief Justice Iftikhar Chaudhary ordered formation of a 12-member bench which, according to the rules, could only be formed for the matters of paramount national importance. In other words, this matter was given the importance as a national matter and this matter was covered throughout international as well as national media.¹¹¹ Justice Iftikhar Chaudhary presided over the bench and started hearing the case. In a very strategic decision, the SC authorized PBC to decide this case on the bases of merit and evidence.

Chairman PBC, after being accused of campaigning for Munir A. Malik, recused himself from this task and therefore, new elections were conducted in which Munir A. Malik won and elected as the President of Supreme Court Bar Association. Giving this case the utmost national importance and trusting the lawyers to resolve their matters by authorizing the highest elected body of the lawyers built up the trust between ‘the bench and the bar’. In the elections of 2007 at Pakistan Bar Council, Qazi Muhammad Anwar won as the Chairman and Mirza Aziz Akbar Baig won as the vice-Chairman. Qazi Muhammad Anwar was also an active member of Awami National Party and had also been its President.

The politics of Awami National Party is primarily nationalist and anti-dictatorship. Mirza Aziz Akbar Baig was also senior advocate of the Supreme Court. Both of them were supported by senior lawyers such as Ali Ahmed Kurd and Aitezaz Ahsan. On the other hand, in Supreme Court Bar Association, Advocate Munir A. Malik had won who also was an active and outspoken lawyer against the military regime. As Supreme Court Bar works under Pakistan Bar Council, therefore, Pakistan Bar Council had tremendous influence on its working; especially with the groups which contest its elections and the groups are generally controlled by the most senior lawyers at Pakistan Bar Council which has already been mentioned.

The point is that the Pakistan Bar Council as well as Supreme Court Bar association both were managed by anti-Musharraf and pro-judiciary factions. The Apex Judiciary had already taken the actions which had shaken the military regime to its core. It had started to expand its power while interpreting the Constitution in a way that the military dictator had not anticipated.¹¹² Along with the

¹¹¹ Ali, Khan. ‘‘The lawyer movement in Pakistan: law beyond politics’’ *social science network*.3. december.20. p.6

¹¹² Shuaib and Ghias, ‘‘miscarriages of chief justice: judicial power and legal complex in Pakistan under Musharraf’’ *law and social inquiry*, 2010, vol.35, no 10, p.8.

expansion of its power, the judiciary also successfully established and maintained the autonomy of the lawyers and united the under the most senior lawyers, a move which later proved its worth when the Judiciary came face to face with the regime. The bench and the bar were aligned. This structure of the Court and the bars allowed Justice Iftikhar Chaudhary to call on the bar associations when he needed them and due to this established trust, the bars responded and movement against the regime emerged in 2007.

5.2 The Expansion of Power by the Apex Judiciary

Chief Justice of Pakistan Justice Iftikhar Muhammad Chaudhary started his ambitious program of power expansion. He initiated the public interest litigation and established a Human Rights Cell at the Supreme Court and hence, started deviating the course that the courts had been following during under authoritarian regimes. Therefore, in order to get to the breaking point of the beginning between the Judiciary and General Musharraf's regime, it is important to look at the important cases, initiated with *Suo Moto* notices, which led to the conflict between these two institutions of the state. For understanding, *Suo Moto* means 'On its own Volition'.¹¹³ It is an action by the court in on its own accord without having any request or petition filed by the involved party or parties.

5.2.1 Margalla Towers Tragedy

On October 08, 2005, an Earth Quake of 6.7 magnitude on the rector scale hit the Northern Areas of Pakistan; among which Kashmir was the most affected one. The Earth Quake and its aftershocks were also felt in the federal capital. Consequently, one tower of Margalla towers collapsed in Islamabad in which 75 people died and over 200 families were displaced in this 'Margalla Towers Tragedy'. Some of the people who died in this incident were foreigners of different nationalities. The four owners of the flats and apartments in the collapsed Margalla tower filed a petition in Supreme Court few days after the tragedy.¹¹⁴ The Supreme Court immediately responded and the Chief Justice took this opportunity to increase his influence to the common people.

After initial hearing, the Supreme Court ordered Capital Development Authority (CDA) to provide accommodation to the affected people of this tragedy and to find the parties responsible for the design, manufacturing and passing of the design of the towers. After two months, in December

¹¹³ alman Husain, "rule of law justice and constitutionalism: political mobilization in the 'lawyer movement for the restoration of judiciary and democracy in Pakistan (2007-2009) international affairs'", *south Asia program* 2016.p.24

¹¹⁴ Sajjad Shah. "Blessings of Judicial Activism", 26, 2006.p.8-9

2005, the Supreme Court turned this case into a large-scale judicial investigation. The Court ordered CDA to present the lists of all the official buildings including government offices, schools, colleges, universities etc. that had suffered the damage of the Earth Quake. The Supreme Court also ordered CDA to provide it with the list of the officials because of whom the buildings have suffered damage and also asked about the official action against the suspected government servants.¹¹⁵

This case was the first step in the direction of Court's involvement in administrative affairs. While expanding the case and turning it into a judicial investigation, the Supreme Court became able to understand and intervene in the matters of urban planning and management; a beloved portfolio of the governments to showcase their performance to the people. The Apex Court's investigation, with its involvement in the matters of public safety related to urban planning and management, exposed the negligence of the government in these matters in the months to come. For instance, in April 2006, the Supreme Court's investigation found out that Lahore Development Authority had no structural engineer working with it as construction safety specialist.

The Media which had been given various compensations by General Musharraf's regime provided a full coverage to the incident of Earth Quake. The people were sentimental. The tragedy of Margalla Towers was covered by both national and international media. When the case went to the Supreme Court, the remarks of Chief Justice made the headlines. The coverage of media started to reach to the every corner of the society and the society, at this sad hour, appreciated the efforts of the Court and hence the efforts of the Chief Justice. The proceedings of the court in this matter were made public and hence the Court started the process of extracting power from its very source: The people General Musharraf's led administration had already in deep crisis and was in desperate need of international attention. Therefore, in this time of crisis, General Musharraf did not bother with the case as it did not affect the interests of his authoritarian regime directly. However, the beginning point of judicial expansion of power was the starting point of General Musharraf's decline.

Cases regarding Oil and Sugar Prices

The Supreme Court under Chief Justice Iftexhar Chaudhary took another step which resulted in its popularity among the masses and consequently increase in its influence. General Musharraf's led government had delegated the power of changing the oil and gas prices to a syndicate of different oil

¹¹⁵ Haris Gazdar, 'Judicial activism vs Democratic Consolidation in Pakistan', *Economic and Political Weekly*, Volume XLIV, no 32. August 08, 2009.

companies named Oil Companies Advisory committee OCDC. OCDC increased the oil prices after prices hike at international level in the earlier days of August 2005. However, when the prices went down later that month, OCDC refused to bring the prices down. The political critics of the government criticized the formula adopted by ODCD to fluctuate the oil prices.

Senator Rukhsana Zuberi, Zafar Iqbal Jhagra and Maulvi Iqbal Haider, Advocate, filed petitions in the Supreme Court and challenged the adopted formula. In May 2006, the Court setup a 3-member bench for this case to investigate the allegations made by the petitioners that OCDC collaborated with officials of petroleum ministry for price fixation and its formula. The larger bench ordered National Accountability Bureau NAB to investigate.¹¹⁶ In December 2006, NAB presented its investigation report in front of the bench and told the court that its report is under review by the government. In December, 2006, Justice Iftikhar Muhammad Chaudhary gave his remarks regarding the importance of this issue and hence announced the formation of a larger bench to investigate this matter of corruption via increasing oil prices.

Along with this case, the Sugar Crisis also emerged in Pakistan. The seed of the crisis was sowed in 2003-2004, when Pakistan produced 4 million tons of sugar. 0.5 Million tons had already been in the stock so after the domestic consumption, about 0.8 million tons of the stock remained due to which the sugar prices went down all over the country.

Sugar Mills requested the government to purchase some additional sugar upon the condition that Sugar Mill owners would clear the dues of the farmers. The farmers didn't receive the full payment and therefore, they diverted their efforts toward different crops in the next year 2004-2005. Pakistan produced 3.2 million tons of Sugar in the next crushing season which was 20% less than the previous session. However, due to the previous stock there had been no shortage of sugar in the country. However, due to high demand of the sugar and no additional supply, the prices of the sugar hiked and the government allowed the import of additional raw sugar.

The benefit of this import went directly into the pockets of the Mill Owners. In the next season, 2005-2006, the sugar cane production was low again and at that time, the international prices of sugar had also gone high. Now the sugar cane farmers started to curtail the supply of the sugar to the Mills and consequently the Mills delayed the supply of sugar into the markets which created a sugar crisis

¹¹⁶ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and Judiciary." *Contemporary South Asia*, vol. 20, no. 1 (2012): 24.

because of which the Supreme Court under Chief Justice Iftikhar Chaudhary intervened and CJ took a ‘Suo Moto’ notice of the issue.¹¹⁷ The Supreme Court gave the task of investigation to NAB in January 2006. NAB investigation indicated that the politicians have monopoly on sugar supply and sugar mill owners stockpiled the sugar in 2006.

The report included Asif Ali Zardari, Nawaz Sharif, Shahbaz Sharif, Chaudhry Shujaat Hussain, Jahangir Tareen, Mian Azhar, Anwer Cheema, Nusratullah Dareshak, Haroon Akhtar, Mian Altaf Saleem, Shamim Khan and others. The Supreme Court criticized the government institutions and it was broadcasted through media channels which reached to the people who were aggrieved and affected by the hike in sugar prices. Hence, the Court moves further to establish its standing among the people and the media became the medium of communication between the people and the Court. Both these cases continued till Justice Iftikhar Chaudhary was forcefully removed from his position; however, Justice Abdul Hameed Dogar closed this case in 2008.

5.2.2 Pakistan Steel Mills Privatization Case

Mr, Shaukat Aziz was the handpicked Prime Minister of Pakistan and he was also the Chairman of Privatization Commission. In April 2006, Privatization Commission announced the privatization of Pakistan Steel Mills PSM. The labor union of PSM started protesting and with the help of opposition parties, they took this case to the Supreme Court where the Court set the date of the hearing (*Watan Party v. Federation of Pakistan* 2006). The hearing continued for 3 months and in August 2006, the 9-member larger bench of the Court led by Chief Justice Iftikhar Muhammad Chaudhary declared the privatization null and void and reversed the sale.

The Court also declared in that order that it was not its duty to interfere in the policy-making domain of the executive. Barrister Zafarullah Khan of Watan party stated that this decision had made people put more trust in the judiciary and he also stated that this decision would lead the democratic norms to prevail. This was the first case which had threatened the authoritarian regime of General Musharraf to its core. The media coverage to this case made it the roots of the judiciary among the people via political parties and it benefited the Court in the longer run a bigger case than anticipated. The political parties started to become more vocal. This started strengthening.

5.2.3 Missing Persons’ Case

General Musharraf agreed to participate in US ‘War on Terror’ in Afghanistan in 2001. Among

¹¹⁷ ‘‘Larger Supreme Court Bench to Hear Oil Prices Cases’’ *Business Recorder* December 11, 2006

the other evils that it brought, it allowed the state institution particularly the military agencies to arrest and detain the people illegally. The military agencies had been using these tactics for a long time. The political rivals, vocal journalists and progressive writers had faced these kinds of illegal detentions during General Ayub Khan's and General Zia-ul-Haq's era. General Musharraf followed the stepping of his predecessors and continued with the illegal detention program. The Human Rights Commission of Pakistan documented the missing of 400 people and filed a petition in the Supreme Court in November 2006 claiming that the government agencies had illegally arrested and detained the 41 people.

The Supreme Court of Pakistan ordered the government institutions to present the detained people in front of the Court. The institutions, at first, denied the knowledge of the existence of such missing persons; however, in December 2006, due to continuous pressure from the Supreme Court, 20 missing persons were found by the officials. The case continued as the Human Rights Commission presented another list of missing people in the Court. Chief Justice Iftikhar Chaudhary led bench sent notices to the federal and provincial governments and the next day, he was removed from the office.¹¹⁸The missing persons' case was the breaking point for General Musharraf as well as for the military as the institution. The credibility of the military and its agencies was being questioned and Justice Iftikhar Chaudhary was gaining support both at national as well as international level because of his activism. Shoaib A. Ghias also indicated that Justice Chaudhary would move to the address the question of General Musharraf's legality as the President in Uniform and General Musharraf knew that he could not trust the judiciary with his Presidential elections. Therefore, General Musharraf removed Chief Justice Iftikhar Muhammad Chaudhary from his post.

5.3 The Removal of Justice Iftikhar Chaudhary and the Lawyers' Movement

“Justice Iftikhar Muhammad Chaudhary was an arrogant person with political ambitions which can be seen as he has established his political party right after his retirement”, says Mr. Hammad Kiyani. “After what happened with Justice Siddiqui, Justice Iftikhar Muhammad Chaudhary and the whole judicial setup, including the lawyers and the some of the judges, raised their concerned. The judges of the Superior courts have multiple rulings in which they taunted their powerless stature and therefore, it can be said that Justice Iftikhar Chaudhary wanted to regain power to strengthen the judiciary by strengthening himself as the Chief Justice”, says Mr. Abdullah.

¹¹⁸ Ahmed, Khaled. “*the Musharraf Years Political Developments in Pakistan – 1999-2008*”. (Lahore: Maktaba Jadeed Press, 2010) p.21-26.

General Musharraf invited CJ Iftikhar Chaudhary to President's Camp Office adjacent to his residence in Rawalpindi for an already planned meeting. General Musharraf accused CJ of misusing his powers which he denied. The chiefs of intelligence agencies and the Prime Minister later joined the meeting and it was suggested to him either to resign with honor or to face Supreme Judicial Council. The Chief Justice accepted the latter one and refused to resign upon which he was threatened and detained in the camp office for a few hours.

General Musharraf told him that he had been made 'un-functional'. Iftikhar Chaudhary, after being released from detention, tried to go back to the Court but he was stopped on the way and the police escorted him to his house where he had been house arrested.¹¹⁹ The President also sent a reference to Supreme Judicial Council under the article 209 of the constitution to investigate the allegations of misconduct against him made by the President's Office. To run the affairs at the Court, Justice Jawed Iqbal was appointed as an acting Chief Justice who soon initiated the proceedings of Supreme Judicial Council to investigate the allegations of misconduct against Iftikhar Chaudhary. The Council ordered Iftikhar Chaudhary to refrain from performing his duties as a judge until the Council made its decision. Iftikhar Chaudhary was asked to present itself in front of the Council on March 12, 2006 to initiate the proceeding.

According to the Constitution, The President has the authority to relieve any Judge from performing his duties only on the recommendation of the Supreme Judicial Council SJC. Supreme Judicial Council was established under the constitution to review the cases of misconduct against the judges of the Courts. It comprises of Chief Justice being its chairman, two most senior judges of the Supreme Court and two most senior judges of every provincial high court. The registrar of the Supreme Court is its secretary. In case where the inquiry of misconduct is being taken place against any member of this council, he is to be replaced by the next senior member from his domain.

The SJC acts either on the presidential reference or Suo Moto action taken by the Chief Justice. However, the President has no authority to suspend or make a sitting judge 'un-functional'. The President is bound to act on the recommendation of the SJC. So when General Musharraf suspended Iftikhar Chaudhary, he took an unconstitutional action for which he had to face the consequences later.¹²⁰ The suspension of Iftikhar Chaudhary was highlighted in both national as well as international

¹¹⁹ Carlotta and Salman, "Musharraf Files Papers for Election in Pakistan," New York Times, September 28, 2007.

¹²⁰ Waseem, Mohammad. "Judging democracy in Pakistan: conflict between the executive and Judiciary." *Contemporary South Asia*, vol. 20, no. 1 (2012): 24.

media. The lawyers started their initial protests on March 10, 2007. General Musharraf's communication ministry released an explanation and government's stance to the press with the pictures of the meeting in which General Musharraf was seen sitting in the uniform. The pictures were heavily criticized and the public opinion which had already against General Musharraf's regime started becoming more vocal. Iftikhar Chaudhary, during the days of his house arrest, could not even arrange the lawyers for his defense.

However, after the first hearing in which he presented the case himself, the SJC allowed him to hire a team of lawyers and also ordered to remove barricades from his house and lifted the travel restriction forcefully imposed on him. The senior advocates of the Supreme Court including Munir A. Malik, Aitezaz Ahsan, Aasma Jahangir, Hamid Khan and Ali Ahmed Kurd. Despite leading the protests, this legal defense team was also trying to buy some time before the pro-regime bench could decide it according to the will of the regime.

The defense team of Iftikhar Chaudhary filed direct petition in the Court challenging the authority of the President to remove the sitting Chief Justice. Justice Rana Bhagwan Das had already returned and took charge of acting Chief Justice. He was an impartial and professional Justice and therefore, he accepted the petition. He constituted a 5-member bench for this hearing but later he turned this bench into 12-member bench¹²¹ these legal procedures took time and Iftikhar Chaudhary, in the meantime, started his move against the President.

On March 12, the lawyers all over Pakistan started protesting and were soon joined by the political parties. The lawyers on appointed posts started resigning. Within the two weeks of the start of the hearings, 3 judges of the Lahore high court resigned from their posts. The lawyers, on March 12, 2007, started 'Save the Judiciary Movement' which was named in the media as the Lawyers' movement. The lawyers started conducting rallies, processions and meetings. They also started boycotting the proceeding of the court which had put enormous pressure on the regime. Consequently, the authoritarian regime started experimenting inhumane tactics including beating, baton charge, and tear gas shelling, and arresting and jailing¹²¹ the prominent lawyers in the movement.

Iftikhar Chaudhary had been put under house arrest but on Supreme Court's orders, he was released from the house arrest and was allowed to travel. On May 06, 2007, he travelled from Islamabad to Lahore and he was given a hero's welcome throughout the journey because of which his

¹²¹ Syed Mudassir Ali Shah, "Ramifications of Emergency," Dawn, November 6, 2007.

address to Lahore High Court Bar Association was delayed. In Lahore, he was greeted by various political parties' members, leaders, serving and retired judges and many lawyers. During his address, he said:

“The nations and states based on dictatorship, instead of supremacy of constitution, rule of law and protection of basic human rights are destroyed. There is no more concept of dictatorship. These all are bitter lessons of history, and the nations which do not learn from history and repeat mistakes have to pay the price.”

This statement fueled the protest and showed the grittiness of Iftikhar Chaudhary that he was willing to take the chance against a sitting military ruler. The ‘bench and the bar’ had been in a direct confrontation with each other and therefore, the regime started using oppressing tactics. Later that month, Iftikhar Chaudhary travelled to Karachi to address the lawyers’ convention but the city went up in flames. The riots emerged killing dozens of people. It was reportedly the rival political parties MQM and PPP whose supporters clashed. Iftikhar Chaudhary was confined to the airport lounge and then he returned without speaking at the convention.

General Musharraf’s regime had started to create instability to be able to impose restrictions on this movement. Resultantly, along with the rioters, many active lawyers were also captured and imprisoned. However, the magnitude of the protest began to enhance. The media coverage had given it a new dimension as the common man had now been directly involved and affected by the situation broadcasted through various news channels. The riots and governments’ tactics were covered by the media which only resulted it further hatred for the regime in the hearts of the people and Iftikhar Chaudhary successfully acquired the sympathy of the common man.

5.4 Reinstatement of Iftikhar Chaudhary as Chief Justice

The expansion of lawyers’ movement and involvement of political parties and civil society’s prominent figures had created pressure on the regime as well as on the Judiciary. The lawyers were involved in protests due to which the affairs of the courts had become difficult to run throughout the country. The trail of Iftikhar Chaudhary proceeded for about four months and on July 20, 2007 the Supreme Court issued its verdict in which it reinstated Iftikhar Chaudhary as the Chief Justice of Pakistan with all his powers effective immediately. The Court, in its verdict, declared the actions of general Musharraf illegal.

The victory of Justice Iftikhar Chaudhary was perceived as the victory of the common man; the

one who had been striving for his rights in authoritarian regime.¹²² Despite a victory, the conflict between the judiciary and the military regime had not settled. Rather it had transformed into a war between the two institutions of the state. The authoritarian regime was trying to hold and maintain the power and the Judiciary was trying to get the major chunk of the share of power with unlimited and unquestionable authority. This power struggle had made the situation even worse.¹²³

Justice Iftikhar Chaudhary, after his reinstatement, started working as per his activist style. However, he was in search of an opportunity so he could deliver the final blow to General Musharraf's regime. This chance was created when on October 06, 2007, General Musharraf re-elected himself as the President for the next tenure. General Musharraf was also trying to seek political support from the opposition parties and therefore, he had been involved in negotiations with Benazir Bhutto, the leader of PPP.

However, his election result was not confirmed as the legality of General Musharraf's election in uniform was challenged in the Supreme Court. It gave the opportunity to Chief Justice to reconsider the election. Despite the promise of shedding the uniform, General Musharraf himself and his advisors anticipated that the decision would be against their interest.¹²⁴ The Supreme Court announced to issue its verdict on November 06, 2007 but on November 3, 2007, General Musharraf imposed emergency, abrogated the constitution and started dealing with the matters forcefully.

5.5 3rd November Emergency and the fall of Musharraf

In order to avoid the Court's verdict and maintain his rule, General Musharraf imposed Emergency on November 03, 2007. The military and security forces once again took control of the country. The Constitution was suspended, the Judges of the Apex Court were dismissed and were put on a house arrest. However, this time the outburst against the emergency rule was of much bigger magnitude which resulted in the arresting and jailing of thousands of lawyers, political party workers and members of civil society. General Musharraf, while addressing to his international audience on November 04, 2007, defended the emergency and stated:

“Pakistan is on the verge of destabilization. If not arrested in time, now, without losing any further time or delaying the issue. The saddest part of everything which saddens me

¹²² Masood, Salman. ‘‘A. Suspension of Jurist Unleashes Furor against Musharraf’’. New York Times, March 15, 2007

¹²³ Ibid.p.8

¹²⁴ Osama Siddique, ‘‘Judicialization of Politics: Pakistan Supreme Court’s Jurisprudence after the Lawyers Movement, Unstable Constitutionalism: Law and politics in South Asia’’ New York: Cambridge, 2015.

the most that all we have achieved in the past seven years, I see in front of my eyes, Pakistan's upsurge taking a downward trend. I, personally, with all my conviction and with all the facts available to me, consider that inaction at this moment is suicide for Pakistan and I cannot allow this country to commit suicide. (A brief pause) Therefore, I had to take this action in order to preserve the democratic transition which I initiated 8 years back. I would like to repeat that which I have said it in Urdu that I started with a three stage transition: the first stage from '99 to 2002, where I remained in control; the second stage 2002 to 2007, five years of democratic rule, all assemblies functioning, local government functioning, I only oversaw it as the Chief of Army Staff and the President combined and now I was launching a third phase which was to be completed in only a few months, where complete democracy, return to civil rule, myself only being a civilian president if elected. It is that third stage that is being subverted today.”

General Musharraf also stated that the superior judiciary was working against the executive and legislature in the fight against terrorism (probably referring to Judiciary's involvement in missing persons' case). General Musharraf also accused the judiciary of demoralizing the Police and intelligence agencies in this fight. The soldiers of the military, on the eve of emergency, also shut down the private news and radio channels and also the mobile services were disconnected. The judges and senior media personnel were restricted and were not allowed to make contact.

General Musharraf announced another PCO 2007, under which some judges of the Supreme Court took Oath and Justice Abdul Hameed Dogar was made the new Chief Justice of Pakistan even though Iftikhar Chaudhary's tenure had remained. However, at this time, General Musharraf had lost the ability to control. The protests erupted all over Pakistan in which all the classes of the society participated which resulted in a huge amount of pressure on General Musharraf. On November 08, General Musharraf announced that the elections would be conducted in January 2008 but the process of successful transition of power to people's representatives would be completed. However, it only added fuel to the fire as it was perceived as General Musharraf was losing. The military could not afford the loss of its credibility; especially at this juncture where it was involved in 'War on Terror' and militant attacks against the soldiers and convoys in North Western and South Western parts of Pakistan.¹²⁵

¹²⁵ Aqil Shah, “*the Army and Democracy: Military Politics in Pakistan*” (Harvard, : 2014).p.221

Therefore, the pressure started mounting from within the military which forced General Musharraf to shed the uniform on November 26, 2007, only 23 days after the emergency. General Musharraf became a civilian president and took oath of the office on November 28, 2007. His rule and the actions taken on 3rd November were validated by the Judges who took oath under PCO. However, many of the judges refused to take oath under PCO and many judges started joining the protest by refusing to take oath and handing over their resignations. Over 60 judges of the Courts (mostly high courts and session courts) tendered their resignations. The 12 judges of the Supreme Court had been dismissed including the Chief Justice Iftikhar Chaudhary.¹²⁶ However, the lawyers once again took the roads to protest and the protests soon became violent which further increased the problems for General Musharraf and eventually it led to his fall. Following are the major reasons of General Musharraf's fall:

5.5.1 Problems with the Judiciary

After the restoration of the judiciary in July 2007, both the pillars of the state, the executive and the judiciary, have been at each other's throat. General Musharraf could not take into consideration the popularity of the Chief Justice as he always thought that he was still famous among the masses.¹²⁷ General Musharraf counted on people's support through the support of the political leaders who worked under him but this proved to be a goose chase.

5.5.2 Loss of Military Support

The military could not bear the loss of its (so called) credibility among the masses as the people were not only abusing General Musharraf but were also criticizing the military as a whole. Therefore, the core commanders proposed General Musharraf to resign as the Army Chief. The loss of uniform was the vital blow to General Musharraf as it had lost his control over the military which had been the sole reason of the longevity of his tenure.

5.5.3 Terrorism and Extremism; Increase in Talibanization

Pakistan's involvement in War on terror in Afghanistan created a huge backlash in the tribal areas of Pakistan where there had been various safe houses for the terrorists and extremists to operate across the border. The extremists had local support in those areas. In order to quell the extremism, General Musharraf launched military operations in which scores of people were killed including

¹²⁶ Samina Yasmeen, "democracy in Pakistan; the third dismissal", *Asian survey*, June 1994.vol.34, no.6. p.3

¹²⁷ Maryam, khan. Genesis and evolution of public interest litigation in Supreme Court: toward dynamic theory of Judicialization, February 02, 2015. P.3

civilian which were termed as ‘collateral damage’. The military also used the tactics of forced disappearances in the tribal belt which only created more resentment among the locals.

The militants, on the other hand, were looking for their support in urban areas and they received the support of various urban based extremist groups after the massacre at Lal Mosque in Islamabad. On General Musharraf’s order, the military operation took place at Lal Mosque in which hundreds of religious students, both male and female, including one of their leader Ghazi Abdul Rasheed was killed and the other leader Maulana Abdul Aziz was arrested and humiliated in front of the whole national as well as international media. Ghazi Abdul Rasheed was a prominent figure of the War against Soviets in Afghanistan and was respected among the Taliban.

The military action against the mosque created a massive backlash among the local people as well as the extremist groups who then started to attack the urban centers with the support of urbanized extremist groups. Another reason which happened in this context was the loss of support for General Musharraf in the religious groups and religious political parties of Pakistan. Under Musharraf, MMA, an alliance of religious parties, was ruling over the North Western Frontier Province.¹²⁸ After this action, MMA was forced to withdraw its support for Musharraf and hence General Musharraf lost another ally.

5.5.4 Return of PPP and PML-N leadership

The leadership of PPP and PML-N, the two major political parties had been living in exile. General Musharraf’s led administration could not afford to allow them to return as it would increase the political pressure over General Musharraf. On September 09, 2007, Nawaz Sharif’s plane landed but he was not allowed to set foot in Pakistan and was sent back to his exile in Saudi Arabia. This all was done against the orders of the Supreme Court in which the Court had given the ruling that any Pakistani had the right to return to his motherland and the Court had described it as a basic right.¹²⁹

Therefore, when Nawaz Sharif attempted to return on November 25 the same year, he was allowed to return home and was allowed to campaign for the general elections. Benazir Bhutto returned home on October 18, 2008 where thousands of her followers greeted her. However, when her motorcade was on the way two bombs exploded due to which more than 180 people died and over 500 sustained injuries. Benazir Bhutto survived but this attack made it clear that her life was in danger and

¹²⁸ Benazir Bhutto. ‘‘Reconciliation: Islam, Democracy, and the West’’.15, February. 2008.p.202

¹²⁹ ibid

this added further to the agitation.

Mohtarma Benazir Bhutto started her political campaign and tried to make an alliance with PML-N but PML-N was hesitant to contest elections under Musharraf as Nawaz Sharif was of the view that the boycott of elections would increase pressure on General Musharraf and the opposition should form a joint alliance and demand his resignation. Benazir Bhutto, on the other hand, was of the view that they should not leave the field open as General Musharraf might get involved in the elections to elect his favorable personnel in order to prolong his rule. The discussions were continuing between both the parties during which, in a political rally, Benazir Bhutto was assassinated.

5.5.6 Lifting of Emergency Rule and restoration of the Constitution

General Musharraf failed to cope up with the deteriorating situation and therefore, he was forced to lift the emergency on December 15, 2007. The lifting of emergency had provided most benefit to the political groups who had now been provided with full media coverage. The media, which had been blocked by General Musharraf, had now become totally against his rule. Therefore, the private owned media channels broadcasted election campaign slogans and ads of various political parties who were contesting against General Musharraf's or The King's party PML-Q.¹³⁰ The private owned media channels became the source of credibility and trust among the people and therefore, the media was credited with raising the awareness among the masses at that critical political juncture of the Country's history.

5.5.7 The Killing of Benazir Bhutto

Benazir Bhutto, during her election campaign, was set to address the mass gathering of the people in Liaquat Bagh, Rawalpindi. After her address, a killer fired at her and then exploded himself in which she along with 23 other people died. Benazir Bhutto was the top political leader and with her death, the violent protests erupted. The people started looting and burning the government's property. Various buses, motorcycles, cars etc. were torched during the protest and the hatred against Musharraf reached to its peak.

The media coverage of the incident provided various political leaders and workers who survived this catastrophe, all pointed out at but one man: General Musharraf. When all the support of the military had already been drawn, General Musharraf had left with no maneuvers. The elections,

¹³⁰ Saeed ,shah ‘’.Pervez Musharraf, resign as president of Pakistan’’ *the guardian*,august,18,2018

however, were delayed for a month. The actual reasons and the people involved in her killing, however, have not been confirmed yet. Her killing is still an unsolved mystery. Various theories have been existing but the empirical evidence is lacking.

5.5.8 General Elections 2008

The killing of Benazir Bhutto brought PPP and PML-N together and both parties agreed to participate in the general elections that were postponed to February 28, 2008. Initially, after the killing of Benazir Bhutto, PML-N was not eager to participate in the elections. Nawaz Sharif said:

“The holding of fair and free elections is not possible in the presence of (President) Pervez Musharraf. After the killing of Benazir Bhutto, I announce that the Pakistan Muslim League-N will boycott the elections. I demand that Musharraf should quit immediately.”

However, he was persuaded by the political party leaders of other parties including PPP and ANP to contest the election upon which he agreed.¹³¹ The elections were conducted in a tense environment following the death of Benazir Bhutto and the turn out remained at 44%. PPP, under the leadership of its Co-Chairman Asif Ali Zardari, won the elections and formed a coalition government.

5, 5.9 Murree Declaration

- a) Both parties agreed to form a coalition government.
- b) Both parties agreed that the Judges would be resorted to their respective positions prior to November 03, 2007 within 30 days of this declaration through a parliamentary resolution.
- c) The candidate for the post of Prime Minister will be supported by the coalition partners.
- d) Speaker and Deputy Speaker of National Assembly would be from PPP whereas Speaker and Deputy Speaker of Punjab Assembly would be from PML-N.
- e) PML-N would be a part of federal whereas PPP would be the part of Punjab government.
- f) It was declared that the coalition parties were ready to form the government and demanded the summoning of the session of the parliament immediately.¹³²

The Murree declaration brought all the two major parties together and a sense of political homogeneity was established, at least for the time being.

¹³¹ Salman Husain, ‘‘rule of law justice and constitutionalism: political mobilization in the ‘lawyer movement for the restoration of judiciary and democracy in Pakistan (2007-2009)’’. june2016.p.18

¹³² Point Murree Declaration Text of the summit declaration, The News, March 09, 2008.

5.5.10 The Resignation of President Musharraf

PML-N had its grudges against President Musharraf and after cutting its every source of power, PPP and PML-N both agreed to kick Musharraf out of the office. For this purpose both parties agreed to ask him to take vote of confidence from the elected members of assemblies and also to begin the impeachment proceeding against him. Due to enormous pressure, the President Musharraf agreed to resign and took the deal of medication in the West according to which all the charges dropped against him. President Musharraf resigned on August 18, 2008 and with him, his 9 year long reign ended.¹³³The democratic transition was completed with the civil President as after him, Asif Ali Zardari took oath to the office of the President.

The single transition scenario presented by Ram Herschel cannot be applied in the Pakistani context because the Superior judiciary became active during the authoritarian regime and it was backed by media, political parties and civil society. The single transition scenario, as presented by Ran Herschel, claims that the power of judicial review is the byproduct of the transition of a society from authoritarian to democratic regime. However, after 2005, we see that judicial activism was the one that laid the foundation of the transition and therefore, it could be called as the ‘reverse single transition scenario’.

This reverse single transition scenario was made possible by the superior judiciary by maintaining its hold over the representative associations of lawyers including bar associations and bar councils. ‘The bench’ created its trust on ‘the bar’ by referring and allowing PBC to resolve the issue of SCBA elections. Hence, by preserving the autonomy of the bar, the bench preserved its autonomy through them which can be seen when the Chief Justice was made ‘un-functional’ by General Musharraf but the lawyers took the stance against it in such a way that it created a huge pressure both on the judiciary where the case was being heard and at the executive which was the target of media criticism.

The Superior judiciary’s stance against the authoritarian regime proved to be the ray of hope in a society where the common man was feeling oppressed with increasing political instability, deteriorating law and order situation, terrorism and extremism, forceful detention of civilians and sometimes journalists, and rise in the prices of life sustaining necessities. This stance and its propagation through media created a public opinion which was in favor of the Superior judiciary. Later, when the emergency was declared, the public opinion had become totally against the sitting

¹³³ Saeed, shah. ‘Pervez Musharraf, resign as president of Pakistan’, *the guardian*, august,18,2018

executive.

The return of exiled political party leaders further enhanced the intensity of the protests and hence, the dictator was forced to announce the elections. The military as an institution had become the target of the criticism by the public and it had also losing its personnel during the skirmishes and operations in the North West and South West regions of Pakistan. Therefore, the military was forced to withdraw its support for Musharraf due to which he shed his uniform and became a civilian. The military, however, had never been out of the power. The military, as an institute, has always been able to retain its prestige and honor in the society by simply putting its leader on the line to face the music. The judiciary, as the observation suggest, was able to acquire a major share of the power but after Musharraf, the democratic regime was the one which had to pay the price of judicial activism.

The most important thing that can be observed, while answering how judiciary exercises its share of power in four steps: through the consolidation of bench and Bart. After consolidation the judiciary was influenced by international wave of judicial activism the judiciary under international wave of constitutionalism, tried successfully to turn external factors like the civil society and mass media in its favor by associating itself with the common masses which ultimately kindled the demand of the establishment of democracy that triggered the whole society and hence, can be called as the result of the process of democracy.

CONCLUSION

The decline of Musharraf and the transformation of Pakistan into a democracy was a major event in the history of Pakistan. The resignation of General Musharraf allowed the representatives of the people to appoint a civilian as their President and hence, the democratic transition was completed. However, this authoritarian regime ended in a far different manner and under far different circumstances than the previous military rules in the country which made this study more interesting. Following are the conclusions and of this research:

This event in the history was an ‘unprecedented’ event because the Judiciary had deviated from its traditional role under authoritarian regimes and the military ruler could not restrain the increasing popularity of the Superior Judiciary. The military ruler’s actions against the Superior Judiciary further contributed in the cause of his decline and with him, his handpicked politicians were rejected by the people in the General elections of 2008. General Musharraf could not take into account the increasing unpopularity of his regime among the masses and he could not take any measures to restore his stature among the masses. Hence, the Judiciary filled this gap and swoop in to establish its links with the people via media. This failure on part of General Musharraf and his advisors led to his decline.

The activism on the part of the Judiciary was not a new phenomenon. The Judiciary had exercised the authority of judicial review in the past but it had always been during a civil regime. The Judiciary had always served to the pleasure of the military rulers. When General Musharraf came into power, the Judges of the superior judiciary validated his rule despite their Chief Justice being removed by General Musharraf. However, the judicial activism after 2005 was the first of its kind where the Superior Judiciary came in direct conflict with the military regime.

The Judiciary was influenced by the international wave of judicial activism as pointed out by Ran Herschel in his work. The emergence of mass media brought a massive flow of instant information which added to make the rise of Judiciary extraordinary. In order to control the media, the authoritarian regime adopted the obsolete methods of arresting and disappearing media workers and journalists despite the fact that its information might reach to the people within a very short passage of time. The media houses were constantly threatened by the agencies over the flow of information which increased the agitation of the media owners and media representatives. Therefore, after the opportunity presented itself, the media played the most important part in bringing down the authoritarian regime and became the flag bearer of the process of democratic transition.

In accordance with the definition presented by S. Akbar Zaidi, the process of democracy did

happen in Pakistan and it helped in the establishment of democracy in 2008. Judicial activism and its propagation through media provided people the opportunity to represent their grievances. Later, during the lawyers' movement, the support of the people for the Judiciary indicated that the society was being democratized through the flow of information provided by the media. The increase in political awareness resulted in the in strengthened in democracy.

The process of democracy or the demand of democracy happened because of judiciary. During General Musharraf's regime, the political parties of the opposition were not functional as their leaders were in exile. The protestors were dealt with force and hence the people who wanted to express their grief were in desperate need of a forum. This forum was directly provided by the lawyers' movement and indirectly provided by the Judiciary because of which the movement had actually occurred. Therefore, the civil society participated in those protests which forced the partially functional opposition parties to join the resistance.

In the Second phase of the lawyers' movement, the people joined in much bigger numbers and soon the political parties owned the resistance movement as their leaders had returned. The massive gatherings of the people at political rallies and processions indicate that the people wanted to change the existing behavior of the state which, in fact, is the primary indication of democratization

Democracy as a concept is debatable as already mentioned in this research. Democracy has always been a challenging concept to define in the context of Pakistan because it does not come up on the standards of western democracies. The elections, the methods of representation and the concept of democratic rule are all compromised. However, in reference to this research, the transformation of rule from an authoritarian regime towards the elected representatives of people is termed as 'Democratic Transition'.

Findings

Following are the findings of this research:

- The Judiciary had exercised its power of judicial review in the past but it had always been during a civil regime. The judicial activism after 2005 was the first of its kind where the Superior Judiciary came in direct conflict with the uniform regime. The Judiciary was influenced by the international wave of judicial activism as pointed out by Ran Herschel in his Work.
- The local body elections provided funds and authorities to the lowest tiers of society. The people became aware of the functioning of the government which developed a political sense in them. This political sense prevailed and resulted in the growing resentment against General Musharraf's regime and started struggle to strengthen democratic process in the later part of his rule and ultimately brought down his government.
- The development of democratic thinking was brought in the main stream by mass media. General Musharraf's policy of media liberalization provided him the opportunity to manipulate and influence media houses resultantly, this provided the general public with a massive flow of news, views and opinions. The flow of information through media, particularly in the later part of general Musharraf's government, provided political awareness to the people and helped in strengthened democratic process in Pakistan.
- After 2005, judicial philosophy underwent a fundamental transformation, rather than acting Agent of the power elite, chief justice sought to become a guarantor fundamental rights of Pakistani citizen. He established a "human right cell" in the Supreme Court. Through this forum Choudhry started accepting the petitions from the public against violation of constitutionally guaranteed rights. The cases taken up by the court discriminately squeezed the authority of the Musharraf regime and established a way for democratic transition in Pakistan.
- Judiciary, not directly but indirectly, remain effective in strengthening the process of democracy. The core reason supporting this argument is that during General Musharraf's regime, the political parties of the opposition were not functional as their leaders were in exile. The protestors were dealt with force and hence the people who wanted to express their grief were in desperate need of a forum. This forum was directly provided by the lawyers' movement and indirectly provided by the Judiciary because of which the movement had actually occurred.

- The judiciary tried to exercise its power in four steps:
 - i. Through the consolidation between bench and bar.
 - ii. After consolidation judiciary was influenced by international wave of judicial activism.
 - iii. Then it started establishing its credibility in the public.
 - iv. This venture was covered by the mass media and the people showed their views during the judicial movement. These four steps helped to acquire its share of power by direct conflict with Musharraf.

Recommendations

- Judiciary should obey with oath and code of conduct of their respective offices. Both necessarily entails and implies to uphold the Constitution, rule of law, and supremacy of Constitution. By ensuring strict compliance to oath and institutional code of conduct, inter-branch harmony and their working environment can be improved, which eventually helps institutional infrastructure and constitutionalism.
- Courts should keep a reasonable distance with media and public gatherings, judges should speak by their judgments not by other mediums and need not justify their impartiality through press conferences and media briefings.
- The superior judiciary should focus on bringing reforms in subordinate judiciary. The domestic courts have been facing so many challenges, which affect the overall administration of justice: inconsistent between judges and pending cases, lack of professionalism and legal skills, insufficient staff and resources, corruption, and influence from the Superior Judiciary, politicians, and bar.
- Instead of preferring political and suo motu cases, the Superior Judiciary should focus on the above-mentioned challenges, in order to alleviate the problems and earn a repute title for the judiciary.
- For a successful democratic transition, the government must reinforce its institutions. Further, the government should facilitate and should make the civilian institutions resourceful so that they may combat the modern and sophisticated means of crimes and terrorism related activities.
- The government needs to promote democratic culture, which revolves around the institutions and not essentially empowering individuals at the expense of the institutions. The government needs to make the representative institutions strong enough to rein in the entrenched military and its transformative preservation. The government should focus on the uplifting of the institutions and should not necessarily undermine Military.
- For long-term consolidation of democracy the government should devise policies according to public inspirations. The institutional, internal, and foreign policy must reflect the popular will. Most importantly, both Military and the government should be on the same page while designing foreign policy.

BIBLIOGRAPHY

Official Documents

Federal cabinet under the leadership of the chief executive of the Islamic republic of Pakistan from 12.10.1999, to, 23.11.200, available. <http://www.cabinet.gov.pk->

Suspension and Reinstatement of the Chief Justice of Pakistan: From Judicial Crisis to Restoring Judicial Independence? <https://www.loc.gov/law/help/pakistan/justice.php>

List of Cases

Ahmad Tariq v. Federation of Pakistan, PLD 646 (SC 1992).

Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan, PLD 657 (SC 1977).

Federation of Pakistan and others v. Moulvi Tamizuddin Khan, PLD 240 (FC 1955).

Federation of Pakistan v. Muhammad Saifullah Khan, 41 PLD 166 (SC 1989).

Miss Asma Jilani v. Government of the Punjab, PLD 786 (Lahore 1969).

Pakistan Lawyers Forum v. Federation of Pakistan PLD 57 (SC 2005). 2000).

Syed Zafar Ali Shah and others v. General Pervez Musharraf, PLD 869 (SC 200)

State v. Dosso and Others case, PLD 533 (SC 1958).

Books

Aqil Shah, *the Army and Democracy: Military Politics in Pakistan*, Harvard University Press, and Massachusetts: 2014.

Siddiqi A, *Military Inc. inside Pakistan's Military Economy*, Pluto Press, London: 2017. iii. R. Newberg, Paula Judging *the State*, Cambridge University Press, Cambridge: 1995.

Zaidi Akbar, *Military, Civil Society and democratization in Pakistan*, Banquet Printing press, Lahore: 2011.

Khan Hamid, *a History of the Judiciary in Pakistan*, Oxford University Press, Karachi: 2016.

Hirschl Ran, *Towards Juristocracy: The Origins and Consequences of New Constitutionalism*, Harvard University Press, and Cambridge, Massachusetts: 2004

Ginsburg and Mustafa Ed. Al., *Rule by Law: The Politics of Courts in Authoritarian Regime*, Cambridge University Press, and New York: 2008. Pp. 330.

Research Articles

A. G. Naidu, *Pakistan After Zia-ul-Haq*, Islamabad Policy options, The Indian Journal of Political Science, Vol. 50, No. 3 (July - September 1989).

Ali Khan, *the Lawyers' Movement in Pakistan: Law beyond Politics*, Social Science Research Network, 3, December 26, 2007.

Anil Kalhan, *Gray Zone Constitutionalism and the Dilemma of Judicial Independence in Pakistan*, Vanderbilt Journal of Transitional Law, Volume 46. No. 1, January 2013.

Bakht Munir and Ataulah Khan Mahmood, *Evolution Of Democracy In Pakistan: A Case Law Study Of The Superior Courts Judgments*, Journal of the Research Society of Pakistan, Volume No. 56, Issue No. 1 (January - June, 2019) Cas Mudde, and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction*, Oxford University Press, New York: 2017.

Cristóbal Rovira Kaltwasser, *Populism vs. Constitutionalism: Comparative Perspectives on Contemporary Western Europe, Latin America, and the United States*, The Foundation for Law, Justice and Society, Centre for Socio-Legal Studies Wolfson College, University of Oxford. Available at www.Fljs.org accessed on April 07, 2019.

Haris Gazdar, *Judicial activism vs. Democratic Consolidation in Pakistan*, Economic and Political Weekly, Volume XLIV, no. 32. August 08, 2009.

Jordyn Phelps, *Pakistan's Lawyers Movement (2007-2009)*, International Center on Nonviolent Conflict, 2009.

Kiran Hassan, *why did a military dictator liberalize the electronic media in Pakistan?* Media South Asia Volume. Available at <http://www.academia.edu>.

Maryam S. Khan, *Genesis and Evaluation of Public Interest Litigation in the Supreme Court of*

Pakistan: Toward a Dynamic theory of Judicialization, February 02, 2015.P. 03. Available at www.jstor.org accessed on March 26, 2019.

Michael Kent Curtis, *Judicial Review and Populism*, Public Law and Legal Theory Research Paper Series, Wake Forest University, Paper no. 06. April, 2003. P. 320

Mohammad Waseem, judging democracy in Pakistan: Conflict between the executive and judiciary, *Contemporary South Asia*, 20:1, 19-31, available at <https://doi.org/>accessed on March 12, 2020.

Saeed Shafqat, *Pakistan under Benazir Bhutto*, California University Press, Lahore: 1996.

Saeed Shah, *Pervez Musharraf resigns as president of Pakistan*, *The Guardian*, and August 18, 2008. <https://www.theguardian.com/world/2008/aug/18/pakistan>

Samina Yasmeen, *Democracy in Pakistan; the third Dismissal*, *Asian Survey*, Jun., 1994, Vol. 34, No. 6 (Jun., 1994).

Satish Kumar, *Judicial Subservience Hampered Democracy in Pakistan*, *South Asian Perspectives*, Vol.2, No.6, June 2007. https://carnegieendowment.org/newsletters/sap/pdf/june07/judicial_subservience_hampered_democracy_pakistan.pdf accessed on March 02, 2020.

Shoaib A. Ghias, *Miscarriage of Chief Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf*, *Law & Social Inquiry*, Fall 2010, Vol. 35, No. 4 (Fall 2010)

News Paper Articles and Magazines

Pakistan Judges Refuse Oath demanded by Pakistan's Rulers, *Waycross Journal- Herald*, January 31, 2000. Pp. 15. Available at <https://news.google.com/newspapers?> Accessed on June 13, 2020.

Ahmed Rashid, *Coup chief declares himself president*, *The Telegraph*, June 21, 2001, available at: <https://www.telegraph.co.uk/news/worldnews/asia/pakistan/1310136/Coup-chief-> accessed on June 12, 2020.

Ilyas M. Khan, *Musharraf faces legal nightmare*, *BBC News*, July 20, 2007. http://news.bbc.co.uk/2/hi/south_asia/6909279.stm

- Luke Harding, *Pakistan frees Sharif to exile in Saudi Arabia*, The Guardian, and December 11, 2000. Available at: [https://www.theguardian.com/world/2000/dec/11/pakistan.saudi Arabia](https://www.theguardian.com/world/2000/dec/11/pakistan.saudi%20Arabia) accessed on June 02, 2020
- Nicola Lacey, *Populism and the Rule of Law*, Working paper 28, January 2019. International Inequalities Institute.
- Reforming the Judiciary in Pakistan*, Asia Report N°160 – 16 October 2008. Published in International Crisis Group.
- Rory McCarthy, *Flawed referendum gives Musharraf victory*, The Guardian, May 02, 2002. Available at <https://www.theguardian.com/world/2002/may/02/pakistan.rorymccarthy> accessed on June 06, 2020.
- Rory McCarthy, *Musharraf regime 'is rigging election*, the Guardian, September 16, 2002. Available at: <https://www.theguardian.com> accessed on June 06, 2020.
- Salman Hussain, *Rule of Law, Justice and Constitutionalism: Political Mobilization in the 'Lawyers Movement for the restoration of Judiciary and democracy in Pakistan (2007-2009)*, Network of researchers in International affairs, South Asia program June 2016.
- Sameen Daud Khan, and Asad Farooq, *'State of emergency': A timeline of the long-drawn high treason trial of General Pervez Musharraf*, The Dawn, and December 17, 2019. <https://www.dawn.com/news/1517639>
- The Pakistani Lawyers movement and the Popular currency of Judicial Power*, Harvard Law Review, Vol. 123, No. 7 (MAY 2010), pp. 1705-1726. Available at: www.jstor.org accessed on April 03, 2019
- Dr. Nazir Mahmood, *A look back at Benazir's politics*, The News, November 27, 2016. <https://www.thenews.com.pk/tns/detail/562205-lookback-benazirs-politics>, accessed on March 05, 2020.
- Zafar Iqbal, *Media and Musharraf: A Miscarriage of Convenience*, European Scientific Journal, February edition. vol. 8, No. 4.
- Zeeshan Haider, *Musharraf prepares to shed army uniform*, November 27, 2007. The

Reuters, <https://www.reuters.com/article/us-pakistan/musharraf-prepares-accessed>
November 2020.

News from Newspapers

Article 140 A of the Constitution is being mocked: CJP, The Express Tribune, March 05, 2020.
Available at <https://tribune.com.pk/story/2169886/1-article-140-> accessed on May 22,
2020.

Benazir Bhutto killed in attack, BBC News, 27 December, 2007 <http://news.bbc.co.uk>

Benazir violated rules: Leghari, The Dawn, and December 28, 2003.

Hamid Gul accepts responsibility for creating IJI, The Dawn News, and October 30, 2012.
<https://www.dawn.com/news/760219> accessed on February 24, 2020.

Larger Supreme Court bench to hear oil prices cases on December 11,
<https://fp.brecorder.com/2006/12/20061201503003/>.

“Musharraf Gives Up Army Uniform,” BBC News, November 28, 2007.

“*Musharraf sweeps vote, victory hangs on court*”, One India, October
6, 2007 <https://www.oneindia.com/>

Pakistan legal crisis widens as two judges resign, The New York Times, March 19, 2007
<https://www.nytimes.com->

Riots disrupt Karachi calm: •34 killed, 140 injured •rivals trade allegations, The Dawn, May
13, 2007. <https://www.dawn.com/news/246766/riots-disrupt-Karachi-calm-34-killed-140-injured-rivals-trade-allegations>.

SC overturn Steel Mills privatization, The News, <https://www.thenews.com.pk/>

States cannot survive under dictatorship: CJ, The Dawn, and May 07, 2007.
<https://www.dawn.com/news/>

What's really behind the sugar crisis? The Dawn, February 20, 2006.
<https://www.dawn.com/news/> Television News

King Abdullah said Nawaz was his friend, had to let him go: Musharraf, Dunya News,

November 07, 2016. <http://dunyanews.tv/en/Pakistan/359991-King->

NAB submits report on 2006 sugar crisis in Supreme Court, <https://dunyanews.tv/en/Pakistan/> -
.com.

E.Sources

Rights Group Condemns Dismissal of Pakistani Judges: Attack on Independent Judges Should Inform Clinton Decision, Human Rights First, February 01, 2000. Available <https://web.archive.org> accessed on June22, 2020.

Musharraf defends emergency rule 03 Nov 07, Al-Jazeera English. <https://www.youtube.com>

Provisional Constitution Order No. 1 of 1999, Issued 1 a.m. (Pakistan Standard Time), October 15, 1999, ORDER NO. 1 OF 1999. No. 2-10/99-Min. I. Dated

14th October, 1999. Available at <http://www.pakistani.org/pakistan/constitution> accessed on June 23, 2020.

Six-point Murree Declaration Text of the summit declaration, The News, March 09, 2008. <https://web.archive.org/web/20081>

Supreme Judicial Council, <https://www.supremecourt.gov.pk/supreme-judicial-council/>
<https://web.archive.org> accessed on June22, 2020.

Musharraf defends emergency rule 03 Nov 07, Al-Jazeera English. <https://www.youtube.com>

Provisional Constitution Order No. 1 of 1999, Issued 1 a.m. (Pakistan Standard Time), October 15, 1999, ORDER NO. 1 OF 1999. No. 2-10/99-Min. I. Dated

14th October, 1999. Available at <http://www.pakistani.org/pakistan/constitution> accessed on June 23, 2020.

Six-point Murree Declaration Text of the summit declaration, The News, March 09, 2008. <https://web.archive.org/web/20081>

Supreme Judicial Council, <https://www.supremecourt.gov.pk/supreme-judicial-council/>