

**“Rule of law and Democracy in Pakistan:  
An Analysis (1988-1999)”**

T07504



**By**

**ZARQA WASEEM**  
MS Politics and IR  
43-FSS/MSPSIR/F08

**A thesis submitted in partial fulfillment of  
the requirements of the degree of  
Masters of Philosophy in  
Politics and International Relations**

**DEPARTMENT OF POLITICS AND INTERNATIONAL RELATIONS**

**FACULTY OF SOCIAL SCIENCES**

**INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD.**

**2010**



Accession No. TH 7509

MS  
323  
ZAR

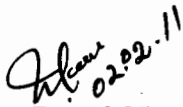
- 1- Democracy - Pakistan
- 2- Rule of law - "

D.E.  
K  
3-3-11

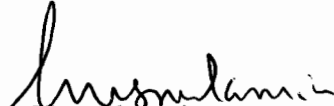
## Certification

Certified that contents and form of thesis entitled "**Rule of Law and Democracy in Pakistan: An Analysis (1988-1999)**" submitted by **Zarqa Waseem Reg # 43-FSS/MSPSR/F08**, have been found satisfactory for the requirements of the degree of M.S/M.Phil Politics and International Relation.


Supervisor


  
Professor Dr. M. Nazrul Islam  
Department of Politics and International Relations  
International Islamic University,  
Islamabad

Internal Examiner

  
Dr. Husnul Amin  
Assistant Professor  
Department of Politics and I.R  
International Islamic University  
Islamabad

External Examiner

  
Dr. Muhammad Islam  
Associate Professor  
Area Study Centre  
Quaid-i-Azam University  
Islamabad

  
Professor Dr. M. Nazrul Islam  
Head Department of Politics and International Relations

&

Dean,  
Faculty of Social Sciences,  
International Islamic University,  
Islamabad

## **ABSTRACT**

The objective of the research is to examine the relationship between judiciary and democracy after independence in general and during 1988 to 1999 in particular. It is believed that the judicial system we practice today has evolved over a long period of time but after independence with due adaptations and modifications, the British system continued to exist. Pakistan has a life history of two thirds of a century in which it has mainly vacillated between a so called elected government which was almost dictatorial and a military organization which tried to simulate a sort of democratic facade. Thus a false hope was generated that things might go for a democratic system. All the three constitutions guaranteed judicial independence but democratic and undemocratic governments always tried to curtail the powers of judiciary. From 1988 to 1999, five assemblies were dissolved on the allegations of corruption, inefficiency, political vendettas and as a result democratic transition first faltered, then evaded. The credibility of both the politicians and judiciary was undermined. The political elite for its vested interest deliberately did not strengthen any democratic systems. The "doctrine of state necessity", has been used in different ways by the judiciary on the dubious argument that it is because of the pressing need for political stability. It is worthwhile to emphasize that the role of politicians during these democratic governments and democracy failures cannot be examined in isolation from the overall role of superior judiciary during this decade. The thesis has been divided into chapters, starting from the constitutional developments after independence and then describing the role of judiciary and its effects on democracy during this decade.

## **ACKNOWLEDGEMENTS**

Research on Judiciary and democracy is very challenging and vital because there is a dire need to find out the solutions which help in re-erecting Pakistan's fragile democracy and grounded judiciary. It was very difficult to find out the relevant written material on this topic so my research largely based on other sources and personal interactions.

My supervisor Professor Dr.M.Nazrul Islam, a very co-operative, encouraging and motivational person always persuaded me to work consistently and persistently. He sacrificed his precious time and guided me in a very articulate way. He always responded my queries patiently and never discouraged my frequent visits.

I also thank my all university teachers of MS who contributed in not only broadening my vision of the subject but also enhanced my research potentials.

I want to thank the library of Islamic International University, National Library Islamabad, Quaid-e-Azam University Library, Iqra University Library, Library of Parliament house, Supreme Court (SC) Bar Library, Library High Court Bar Association Rawalpindi, Lahore, Department of Political Science and International Relations of Quaid-e-Azam University, Judges Library High Court, who are always available to me to meet my requirements regarding the thesis relevant material.

I am thankful to the staff of Department of political science and International Relations, Islamic International University Islamabad who always obliged me in the moment of need.

At the end, I am very thankful to my family who spared me for and extended their help in the completion of this work.

## Table of Contents

Abstract	Page
Acknowledgements	
List of Tables	
Acronyms	
<b>CHAPTER 1: INTRODUCTION</b>	<b>1-8</b>
1.1 Introduction	1
1.2 Statement of the problem	1-2
1.3 Hypothesis	2
1.4 Literature Review	3-5
1.5 Objectives of the study	5-6
1.6 Methodology of study	7
1.7 Related Questions	6-7
1.8 Justification of the study	7
1.9 Chapter Description	7-8
<b>CHAPTER 2: CONSTITUTIONAL DEVELOPMENT IN PAKISTAN (1947-1971: Ph-1)</b>	<b>9-30</b>
2.1 Interim Constitution, Parliamentary Democracy and the state of Judiciary (1947-1956)	12-18
2.2 The ML (Martial Law) Administration -I and the state of Judiciary (1958-1969)	19-24
2.3 The ML Administration -II (1969-1971) and dismemberment of Pakistan.	24-30
<b>CHAPTER 3: CONSTITUTIONAL DEVELOPMENT IN PAKISTAN (1973-1999: Phase-II)</b>	<b>35-42</b>
c	
3.1 Third Constitution 1973 of Pakistan and Revisiting PD (Parliamentary Democracy)	35-38

3.2 Amendments to Constitution	38-42
<b>CHAPTER 4: RETURN OF THE ML ADMINISTRATION AND DEMOCRACY REVISITED (1988-1999)</b>	<b>44-50</b>
4.1 The Zia-ul-Haq era.	44-48
4.2 End of ML and beginning of democracy decade	48-50
<b>CHAPTER 5: STATE OF JUDICIARY (1988-1999)</b>	<b>52-55</b>
<b>CHAPTER 6: CONSTITUTIONAL INTERPRETATIONS IN DEMOCRATIC ERA AND DECISIONS UNDER THE DOCTRINE OF NECESSITY (1988-1999)</b>	<b>56-64</b>
6.1 Benazir First Government (1988-1999)	56-57
6.2 Nawaz Sharif Government (1990-1993)	57-58
6.3 Benazir Bhutto Government II Term (1993-1996)	58-60
6.4 Nawaz Sharif Government II Term (1997-1999)	60-63
6.5 Is it democracy?	63-64
<b>CHAPTER 7: CONCLUSION</b>	<b>68-73</b>
7.1 Recommendations	74-78
<b>BIBLIOGRAPHY</b>	<b>79-81</b>
<b>PAKISTAN LEGAL DECISIONS</b>	<b>82</b>
<b>CENTRAL STATUTES GOVERNMENT OF PAKISTAN</b>	<b>83</b>
<b>NEWSPAPER</b>	<b>84</b>
<b>WEBSITE</b>	<b>85</b>

## List of Tables

---

<b>Subject</b>	<b>Title</b>	<b>Page</b>
Table 2.1	Distribution of seats among the nine units of Pakistan – 1947	12
Table 2.2	NA of Pakistan, 1970 (The number of seats allotted to East Pakistan and the four provinces of West Pakistan in 1970 elections)	25
Table 2.3	Pakistan NA elections, 1970-71	26
Table 2.4	Pakistan Provincial elections, 1970-71	27



## **ACRONYMS**

(CJ)	Chief Justice
(LHC)	Lahore High Court
(SC)	Supreme Court
(CMLA)	Chief Martial Law Administrator
(PD)	Parliamentary Democracy
(CA)	Constituent Assembly
(PM)	Prime Minister
(NA)	National Assembly
(ML)	Martial Law

## **CHAPTER 1: INTRODUCTION**

### **1.1 Introduction**

The application of law is imprecise because it diversifies according to every nation. Applicative Law with its legal traditions manifests itself in diverse manners among the different countries of the world. However, it can be understood as a manifestation of the workings of a legal political regime. Thus as per the rules of justice it is a restraining factor on the relative governments domain of actions like encouraging some specific freedom, enforcing common law and order, assuring the country's proper functioning. The most important ingredient in the system of any government is Rule of Law because it adjudges the credibility of a nation. It is worthwhile to understand the basic pillars on which Rule of Law operates. Basically Judiciary applies Rule of Law with the help of different organs of state in every kind of nation. But in democratic systems, the role of judiciary becomes predominant and more effective. So it is important to understand that how Rule of Law with Judiciary and Judiciary with democracy works in a country which is the main purpose of research.

### **1.2 Statement of the Problem**

It is a system that fairly tries to establish the Constitutional rights of its people whether it is written or unwritten and so manages to keep the government actions into its legitimate domain. It is a safety for the common people from capricious and obnoxious use of government supremacy. As a matter of fact law is a set of Rules approved by the state and can be altered, modified, aborted according to its implications after implementations. But when there is a democratic government then most of the actions taken are by the will

of the people and for the interest of the people. Consensus is always supreme in such conditions, which becomes more vibrant and effective if supported by independent, fair and powerful judiciary. The Constitution says nothing about the fairness of laws but simply provides a framework in which the government and judiciary operates. Even the countries, which are not democratic and are working as modern dictatorships, can have a set of rules and a body of Constitution but there exists no respect of common people voice. Effective Judiciary is always a prerequisite for Rule of Law and gets its nourishment from democracy .The institutional democracy of all the organs helps judiciary to run its affairs smoothly which leads to continuance of democracy itself. But how much they Judiciary and Democracy effected each other in this particular period of time as far as Pakistan is concerned would be the main objective of this research.

### **1.3 Hypothesis**

Judiciary and democracy are inter-related to each other. They are dependent in a sense that if democracy continues to exist, it gives energy to judiciary. And if there is a free and fair judiciary it supports democracy. If we consider effective judiciary and continuing democracy as two variables they are directly proportional in a sense that if one works positively the other also and if one is grounded the other one is also endangered.

In other words safeguarding the Constitutional requirements can be called the true Rule of Law. Thus the equation is that the supremacy of the Constitution only exists if exists the Rule of Law. So Constitutionalism needs effective laws and its application is held within the framework of its organizational structure.

## 1.4 Literature Review

There are plentiful of literature and source materials related to the Judiciary and Democracy. Within the limited scope and time the following material and other related papers will be reviewed to supplement the proposed study:

Paula R. Newberg is a researcher who has a solid contribution in the field on International Relations. In her book *Judging the State Court and Constitutional in Pakistan*, argues that in Pakistan mostly rules are modified and renegotiated. There is no set pattern on which these rules can be readjusted. Pakistan is a country where ML is not very uncommon and a place where civilian governments are free to exercise their unconstitutional powers. Every government tarnished and spoiled the Constitution more than its ancestors.

Lawrence Ziring a renowned scholar in the area of Pakistan's political development. He wrote a lot about the history of Pakistan in detail. He touched almost all the areas deeply. He says that Pakistan is working in a power separation system and judges are appointed here to protect the Constitution. But under the pressure of rulers either democratic or undemocratic they are often unable to resist and fulfill their unjust demands by abrogating the Constitution.

With *Memories and Reflections*, Justice Nasim Hassan Shah who was also a member of the hanging bench in the trial of Zulfikar Ali Bhutto made it evident that dictatorship demolishes the entire system and mostly involves bloodshed putting a new system based upon certain negotiated terms.

In a book *Pakistan Political roots and development 1947-1999* written by Dr Safdar Mahmood, points out the reasons which cause fragile short term democracies in Pakistan. He states number of factors behind this poor democracy, like poor management of economy, low political culture, lack of governance, undemocratic party systems, dominance of the feudalism in politics, etc.

*Towards Good Government* was a book written by bureaucrat Tasneem Ahmed Siddiqui. The moral crises of Pakistan is very deep which has been amply elaborated in this book. Greed, selfishness and opportunism is a common characteristic prevailing in the political leadership of this country. He is also of the view that all of the politicians have sold their souls to Mephistopheles. There is in fact a lack of understanding on the part of the ruling elites because they have been observed enjoying the crippled judiciary and political instability.

General Khalid Mahmud Arif is a lieutenant in the Armour Branch and chairman of the Pakistan Security and Development Association, a non government and autonomous research body. He is a prolific writer who contributed articles to national newspaper. In his book *Khaki Shadows* the argument is that democracy moves on the triad wheels of parliamentary judiciary and executive bodies. The elected government has adopted two tracks approach to the constitution passing it in rhetoric and often manipulating it for the reasons of the political expediency. To add to the anxiety of democracy constitution was usually stabbed more than once with the dagger of ML.

Hamid Khan *Judicial Organ*, another erudite work that highlights the power of parliament and points out that power amend the Constitution lies with parliament and

should be exercised when constitution fails to provide a solution for the declared objectives. To remain personally in power is not one of the declared objectives.

Chief Justice (retd) Sajjad Ali Shah a name that has become synonymous in the legal history of Pakistan with integrity, justice and fair play was able to explore and explicate the whole sordid business of barbing and corrupting the judiciary for short term political gains at the expense of whole country. It has been repeated again and again. Every Government treated judiciary as its opposition instead as an instrument for providing justice and guardian of fundamental rights. He also added that prevalence of such pressures contributed towards denting the good image of judiciary. The scholarly efforts of justice KMA Samdani in his book *Jaiza* Focuses on the importance of independent judiciary and called it a basic requirement for the establishment of Rule of Law and an inevitable and inseparable part of a democratic and civilized way of life. An independent judiciary free from the pressures is regarded as a prerequisite in the democratic or other form of government.

### **1.5 Objectives of the study**

The issues which are political as well as constitutional in nature were / are influenced by the political actors during and after the time framework of the Research Proposal.

The role of judiciary has been for all the times, a significant factor in the context with how to save the Rule of Law vis-à-vis democracy in a modern state.

\*The first objective of the study is to highlight the role of judiciary in the political process of Pakistan.

\*The second objective of the study is to find out the basic link between democracy and effective Judiciary.

\*The third and final objective of the study is related to the constraints of judiciary that eventually limited its scope of Rule of Law and Democracy in Pakistan.

### **1.6 Methodology of study**

The study is based on both primary and secondary source materials.

The primary source materials include the data collection through sample survey from selected quarter. This is designed to obtain viewpoints of the cross-section of academics, politicians, parliamentarians, lawyers and service-holders in Pakistan. The various official Reports to Judicial Commissions, Pakistan legal Decisions (PLD) s, other official Documents, Government statements and parliamentary Debates will be reviewed to collect information related to Rule of Law and democracy in Pakistan and its state of affairs.

The secondary sources include articles, books, newspapers, journals, periodicals and other materials relevant to the topics.

In this context some related questions may be asked to investigate:

### **1.7 Related Questions**

\*What was the role played by the Judiciary during the period-the research proposal is looking for?

\*What are the constitutional provisions that guarantee the independent dispensation of Judiciary in Pakistan?

\*What are the limitations of the Judiciary which have been preventing them from performing independently?

\*And finally what are the circumstances which led to the failure of democracy vis-à-vis Rule of Law and that in return paved the way for totalitarianism in Pakistan's polity?

### **1.8 Justification of the study**

Although there are limited studies regarding on the problems of democracy and Rule of Law in Pakistan in general, but there is hardly any work addressing the nature of the problems of the working of democracy in Pakistan. In fact, this is one of the least researched academic areas and thereby remains a neglected field.

Thus, the proposed study seeks to examine the different, dimension of the problems vis-à-vis challenges in institutionalizing democracy alongside:” *Rule of law*” in the third world countries including Pakistan.

### **1.9 Chapter Description**

**The first chapter** is the introductory chapter which includes statement of the study, theoretical frame work, literature review, objectives of the study, related questions, justification of the study, Methodology of study, and chapter wise description.

**In second chapter, the** evolution of constitutional development in Pakistan has been discussed. In the first phase period from 1947 to 1971 is evaluated. The problems of constitution making ,developments in Constitution making, political parties role, and the bureaucracy, judiciary and governor general role has been examined along with the Parliamentary democracy. The cause of the failure of Constitutions and democracy, the imposition of ML, and their role in the separation of East Pakistan is analyzed.

**In third chapter** With the separation of East Pakistan and the creation of Bangladesh, Pakistan entered a new phase of Constitutional development under the guidance of



Zulfiqar Ali Bhutto, a civilian PM duly elected by the people. Zulfiqar Ali Bhutto introduced reforms and implemented the Constitution of 1973. The revival of democracy with changes in the Constitutions for the sake of more power is also elaborated.

**In fourth chapter** Third ML in Pakistan by Zia Ul Haq was imposed as a result of political crises. It remained for nine years in which heavy amendments took place in the name of Islam. During this period the judiciary remained under stress. The dissolution of National Assemblies and dismissal of governments remained a practice till 1999 in the hands of presidents under the power 58(2).

**In fifth chapter** the pressures on judiciary through various means have been examined at length from 1988 to 1999. The chapter is concerned about the role played by the different institutions and personalities towards the institutional development of the judiciary in Pakistan.

**In sixth chapter** all the decisions and judgments taken by the president and the courts are discussed. The use of "doctrine of necessity" and constitutional interpretations in democracy have been discussed in all four cases. At the end keeping all the phases in mind nature of democracy prevailing here in Pakistan is criticized.

**Chapter seventh** is an attempt to sum up our findings on the role of judiciary and its relationship with democracy. Our conclusion ends with a number of recommendations for improving the image of Pakistan's democracy and judiciary which was badly mottled during the period under investigation 1988-1999.

## **CHAPTER 2:**

# **CONSTITUTIONAL DEVELOPMENT IN PAKISTAN**

### **(1947-1971 : Phase-I)**

Colonial India had suffered two hundred years of British imperial Rule before independence. The local kingdoms ruled them before the advent of the British Rule so Pakistan had to frame a new political system after its independence from India. On the contrary the Federal system of the Pakistani state has all through its existence vacillated between either semi democratic or a fully military regime. This led to a mixed and confused governmental methodology which had no definite aims except self preservation leading to general chaos and instability.

Naturally the result of this uncertainty bore a drastic effect on all socio economic organs such as judiciary and democracy .The dominative factor in its history has been personalized of a single politician whether he be elected or by a coup. The example of this is that even supposed democratic parties do not have any procedural continuity in elective systems to nominate its office bearers. Each of these people tried to shape the future which suit their vested interest as a result Pakistan has to suffer from socio political and economic instability. To understand the course of a country's history one must examine the cards played by its leaders under a parliamentary system. Normally the president should be only a moral symbol as a head of state of the country, with actual authority lying with the PM. However, at various times of political history of Pakistan it was observed that amendments to the Constitution were brought about to make the Presidency all powerful. For example 17<sup>th</sup> amendment to Constitution gives the President

reserve powers - subject to SC approval or veto - to dissolve the National Assembly (NA) of Pakistan and thereby to dismiss the PM and triggering for fresh elections.

On the basis of the Indian Independence Act 1947, both the Dominions of India and Pakistan were set to frame their Constitution. While the Constituent Assembly (CA) of the former took only two and a half years to start a Constitutional journey, the latter Pakistan took nine years to complete its Constitution. It was the failure of the politicians who delayed the task of Constitution making due to their focus on non issues.

Constitution making was a serious task and needed a strong and serious political commitment. It is maintained that politics of Pakistan like today had always been in a jumbled state. Pakistan faced turmoil on many occasions due to many irresponsible actions of Governments. We can quote here the actions taken by Governor-General Ghulam Mohammad who dissolved Khawaja Nazim-Ud- Din Cabinet in 1953, and dismantled CA in 1954. Both the actions were supported by the then SC of Pakistan. Since then it has been observed that Judiciary has been playing a significant role in protecting the unconstitutional decisions of Governments. The working of the Judiciary along with political culture of that time may be discussed to understand the Constitutional development in Pakistan. In other sense to analyze the Constitutional development in Pakistan is to understand the role of the Judiciary and nature of politics in the country. In fact there has been a strong relationship between these two organs of the government and they are interdependent on each other.

The basic aim of Judiciary in any state is to guard the Constitution and protect fundamental rights of the people. But when there is a continuous haggling between democracy and dictatorship, the role of Judiciary is of extreme importance and vital to

the resolution of a crisis. The dominance of executive organ over Judiciary is reflected on many occasions. Judiciary is supposed to work independently as a Constitutional organ has mostly been under the dominance of executive organ and thus lost its importance among masses. It is observed that Judiciary exploited the axe of law of necessity frequently and favored the ruling governments which enabled the governments to abrogate the Constitution to suit their own interest.

In this chapter the Constitutional development in Pakistan from 1947 to 1971 is examined. Since this period was full of events related to the Constitution it may be divided into three parts.

Since the birth of Pakistan till the making of its first Constitution is the first period (1947-1956). The second period from 1958-1969 is the period of Ayub Khans personal rule which brought about the end of Parliamentary Democracy (PD) in Pakistan. The third period from 1969-1971 marked the fall of Ayub regime and beginning of the second military rule under General Yahya Khan which ultimately led to the break up of united Pakistan and emergence of a new nation state Bangladesh in 1971. These three parts make up the first phase of this thesis. In this long 24 years career of Pakistan's political history, PM was not given a fair trial and the judiciary which was the guardian of the Constitution, protector of fundamental rights of the people was kept handcuffed and paralyzed. It was the start of making judiciary weak and crippled. It left a bad image on the minds of people of Pakistan. Constitution in spite of protecting the Judiciary left it alone at the mercy of the politicians.

## **2.1 Interim Constitution, PD and the state of Judiciary**

### **(1947-1956)**

At the time of independence, Pakistan had no Constitution of its own. But it is not possible to run a country without a Constitution so Government of India Act 1935 with some modifications was adopted as an interim Constitution.<sup>1</sup> Although pre-partition Constitution was implemented but due to certain differences between states of Pakistan it was not possible to make a Constitution.<sup>2</sup>

In the beginning there were nine units of Pakistan. In inherent CA these units were allocated the seats according to this table.

**Table 2.1**

#### **Distribution of seats among the nine units of Pakistan – 1947**

---

East Bengal	44
West Punjab	22
Sindh	5
N.W.F.P	3
Balochistan	1
Balochistan States	1
Bahawalpur	1
Kalpur	1
N.W.F.P States	1

---

*Source: Dr, M, Nazrul Islam, Pakistan and Malaysia: A comparative Study in National Integration, p.115*

Untimely death of the Quaid-e Azam diverged the minds of people. Their minds were not focalized on serious issues .Constitution making was not an easy chore and needed

serious and sincere political understanding. Quaid-e- Azam on the eve of Independence announced that new state would be a democratic state<sup>3</sup>. This is also pertinent to mention here that the leader of the country assumed maximum power that a head of the state can ever had, leading to an authoritarian democratic rule. Where the government is civil but power is concentrated in one hand. Due to utmost sacrifices of our great leader this autocratic power was not criticized by the people of Pakistan.<sup>4</sup>

Death of Quaid e Azam created a great vacuum which was filled by Liaquat Ali Khan to some extent. Born to a Punjabi landed family, Liaquat used his experience in law to frame a Constitution along the lines of the British Westminster system of Parliament. He failed to a large extent because neither the Muslim League (ML) nor the CA was equipped to resolve the problem of PM. He tried to resolve the conflicts in the role of Islam and the degree of autonomy for the provinces in a parliamentary manner. At that time it is maintained that the political elites were incapable to develop unanimity or create a consensus even on the basic characteristics and features of the Constitution of Pakistan.

Next significant step was Objective Resolution in March 1949 by the CA. It provided basic principles of Constitution making such as sovereignty of God, democracy, freedom tolerance, equality and social justice.<sup>5</sup> Many objections were raised but one of the main was mixing up of politics with religion and reducing the rights of minority communities. Ulema wanted Sharia rule to be enforced with true spirit in the whole country which was an issue of conflict between different segments of society<sup>6</sup>. Most of the sections wanted to follow Quaid e Azam thinking which was not to rule the country by priests This all aggravated the differences and led to delay in Constitution making.<sup>7</sup> In spite of all this

disarray one of the major step was making of a Basic Principle Committee along with subcommittees to calculate the details of the Constitution. The Committee presented its report on 7th September, 1950 which was strongly decried by the Bengalis of East Bengal . The basic bone of contention was the issue of Urdu language, which was given the status of national language. It was the theme borrowed by the great leader the father of the nation who expressed on many occasions emphatically that Urdu shall be the national language. Due to the extended gumboil in the country which was leading towards the destabilization .Liaqat Ali Khan democratically took a commendable step and postponed the report and asked for suggestions from the general public in January 1951.<sup>8</sup> Liaqat Ali Khan was assassinated in October the same year. The next PM Khawaja NazimUd Din presented the second draft of the BPC to CA on 22<sup>nd</sup> December, 1952 .This report was also criticized in both the wings and led to another turmoil like situation. All these actions and reactions were actually seeding the partition of country.<sup>9</sup> On 28<sup>th</sup> December, 1952 all the parties called the BPC report undemocratic, unconstitutional and infringement of their rights.<sup>10</sup> In this report the basic issue was the numerical majority of East wing which was bitterly discounted. Thus the BPC report was postponed for indefinite period. This report was called Bengali Punjabi crisis report. It was alleged that all these developments were strengthening parochialism politics and sabotaging the real cause of Pakistan movement which was to develop a strong Muslim state where there was no loose federation with provinces getting their due rights.<sup>11</sup>

Another important event was in 1953 in which a religious group of Punjab Ahrar Party held demonstrations against Ahmadis<sup>12</sup> This group was said to oppose the independence of Pakistan. It was trying to restore its image by using these tactics.<sup>13</sup> Their opposition

was so vocal and candid that they needed such type of moves for their face saving. Law and order situation was so worst that Central Government had to impose ML. PM had sympathies with anti Qadiyanis demands but couldn't profess due to international pressure<sup>14</sup>. The uncertain attitude of PM was greatly disliked by across the country and opposed strongly by military civil and politicians. In all this scenario Army came out with a strong message to the Government, general public and the USA that they would not allow the lawlessness in the country and they were above all in power. Army appeared to be a most powerful and organized institution of the country.<sup>15</sup> Bureaucracy-military nexus with the help of Governor-General judged the parliament weak and the environment undemocratic and thus hit hard to oust the PM. Cabinet was also ordered to resign. The PM refused due to his majority in the government but article 10 was used to dismiss PM and his cabinet.<sup>16</sup> There was a deadlock in the Constitution which was adjudicated by sacking of Khawaja Nazim-ud-Din .He was replaced by Muhammad Ali Bogra as PM. It was said that Muhammad Ali Bogra was a personal choice of the Governor General.<sup>17</sup>

In October 1953 Muhammad Ali Bogra presented his famous formula later known as Bogra formula. Under new formula there was no permanent domination of any wing. There was a balance in power according to numeric. The main feature was that no government could be formed or continue its office unless it had 30% of members of each zone.<sup>18</sup> However, demands for provincialism, grant of equal power to upper house, fair distribution of power between Federal and Provincial Governments continued to increase<sup>19</sup>. Six point agenda of Awami League was presented in which there was clear reflection of all these points.<sup>20</sup> The issue of Urdu language was resolved by taking the



decision that Urdu and Bengali would be both national languages.<sup>21</sup> Thus the BPC decided to present its second report to SC. Interpretations of law were the requirement by the supreme law authority.<sup>22</sup> During this period elections were held, Jukto Front (United Front) secured majority and demanded resignation of Central Government and dissolution of CA. It was rejected by Muhammad Ali Bogra. Now the job of drafting Constitution started but during that period Governor General Ghulam Muhammad got annoyed and dissolved CA which was illegal and undemocratic. He was annoyed because of the two bills passed which were an attempt to constrain discretionary and undemocratic power attributed to his position.<sup>23</sup> Another Cabinet was formed by Mohammad Ali Bogra with General Ayub Khan as a Federal Minister. Ayub Khan had a reputation of courage and stability in face of imminent crises. But the civilian government was weakened by its handpicked Generals.<sup>24</sup> This was the beginning of direct and open army intervention and domination in politics for the first time. Semi dictatorial executive was in practice.<sup>25</sup>

The famous Constitutional case of Maulvi Tamizudin, a landmark in the history of judiciary is worth mentioning here. Maulvi Tamiz ud Din Khan Speaker of the NA challenged the dissolution of NA by the Sindh High Court. The full bench of High Court decided in favor of the Speaker. Judiciary played its role in an uninfluenced and confident manner. The effects of the orders were restoring of NA, declaring the orders of Governor General ultra vires.<sup>26</sup> It also mentioned that Indian Independence Act did not contain any express provisions for dissolution of the Assembly.<sup>27</sup> On this decision of Sindh High Court Federal Government filed an appeal before Federal Court. Federal court set aside the judgment of Sindh High Court and decided in favor of Governor General that he can dissolve under Indian Independence Act 1947.<sup>28</sup>

It was alleged that Justice Munir intentionally supported the Government and gave biased decision. On his retirement addressing the Lahore High Court Bar on 22<sup>nd</sup> April 1960, he accepted the mental anguish caused to the Judges by these cases. He explained that Pakistani Judiciary passed through tremendous pressures in times of tensions and crises.<sup>29</sup>

It is observed that when there was a haggling between military and civil, the court passed through surmounting pressures resulting in the situations of blood shed.<sup>30</sup> But this is a lame excuse. Munir should have issued a notice even he couldn't enforce it.<sup>31</sup> Justice Munir remained apologetic throughout his life and demoed this feeling on many occasions. But history never forgets and forgives the decisions and acts done in times of crises on nations.<sup>32</sup> It keeps on repeating the gallantries that attributed to people and make precedents for the nations to suffer.

Governor-General got more strength and then tried to restart the making of Constitution by calling the Constitutional Convention of the Provincial Assemblies. This was a show of bad intentions because next step was indeed dissolution of Assemblies. He called constitutional convention elected by existing provincial assemblies to make the Constitution of Pakistan.<sup>33</sup> Federal Court on 10th May, 1955 declared that Governor-General had the power to summon a new CA. Governor-General issued orders to set up CA that would be elected by Provincial Assemblies under the principle parity of representation.<sup>34</sup> Position of parties was also different from the previous ones. ML loosing its absolute majority but emerged as a big party in West Pakistan. A coalition of the ML and United Front was formed. Chaudhry Mohammad Ali became PM of coalition Government.<sup>35</sup>

A newly elected Cabinet was formed on September 1955, one Unit Act was passed by the CA .The act merged the 4 provinces of western part of Pakistan into one unit.

The basic objective was making of Constitution in an easy manner and to get rid of provincial enviousness with each other which was slowing the process.<sup>36</sup> Daultana, former Minister of the Punjab with a predisposition of politics flashed integration formula. According to Daultanas anticipation, the objective could be easily achieved by this formula but Army and Civil bureaucracy were in hurry and ignored the political parties<sup>37</sup> At last by devoted efforts of Chaudhry Mohammad Ali Constitution was drafted in January 1956.It was passed and implemented on 23 rd March, 1956<sup>38</sup>.

It was a long and hard journey before 1<sup>st</sup> Constitution of Pakistan was formulated. General public along with many other fragments of society were satisfied over the main features of Constitution. The main features of 1<sup>st</sup> Constitution of Pakistan were Parliamentary and Federal system, unicameral legislature, protection of fundamental rights, Islamic and democratic system.<sup>39</sup> Elections were also promised after the proclamation of Constitution but it could not be held till 1958.It is alleged that the Constitution of 1956, in spite of its 9 year long awaited struggle in making and then implementation failed due to weak political culture and over riding influence of the military-bureaucratic elite civil Government. <sup>40</sup> During all this period it was found that there was no common ideological basis among the PM and coalition Ministers .As a result Government utterly failed to perform its functions and pay attention to the problems faced by nation.<sup>41</sup>

## **2.2 The ML Administration -I and the state of Judiciary (1958-1969)**

If we analyze the main reasons, absence of law seems to be the main reason for this, Lack of political integrity, haphazard floor crossing leading to relative political instability for self-advancement.

The first general elections were notified for initial months of 1959 but Sikandar Mirza nullified the Constitution and dissolved all assemblies. He imposed ML on 7<sup>th</sup> October 1958 .He selected and appointed General Muhammad Ayub Khan, Commander-in-Chief of the Army. Aziz Ahmad was chosen as Secretary General and Deputy Chief ML Administrator.<sup>42</sup> General Ayub Khan had already been criticizing the government months before. So in just after few days he removed Sikandar Mirza and took the post of President. This was the first step towards the militarization. Ayub Khan being a great observant during his consolidated stay in army observed political culture of Pakistan very deeply. No doubt the army coup was the result of strong coalition between Mirza and Ayub Khan but General was the master mind. Ayub's lust for power was even lurking during the days of his ministership but couldnot conclude due to unfavorable timeline. Intentions of both were not appreciable because on one hand Mirza was trying to use ML tool to give lesson to those members of opposition who were challenging his authority and on the other hand Ayub Khan was dreaming about the absolute power. Public held Iskandar Mirza responsible for his bad intentions to derail and destabilize the democratic system so it was very easy for Ayub Khan to eliminate him on 27<sup>th</sup> October 1958.<sup>43</sup> His objectives were well planned to assume powers even before 1953 but it took almost five years to conclude.<sup>44</sup> One of most undemocratic steps he took was the creation of *The Elective Bodies Disqualification Order* EBD O which made cases against the former

politicians. If the cases were unbiased it might have led to some good, but unfortunately most of these actions were carried out on personal dislikes. Thus if the accused agreed to eliminate himself voluntarily from politics prosecution could be avoided. It amounted to a surprising 7000 figure which sowed the seeds of permanent military intervention in democratic procedures for all times.

He also declared strong disapproval for 1956 Constitution because of the reasons that it is full of dangerous compromises with a potential for disintegration of the country.<sup>45</sup> He introduced new legal order to fill the legal vacuum after the abrogation of Constitution. The courts were not free at that time; they were debarred to issue writ against Chief ML Administrator or any body working under him. This order and ML was soon challenged in SC but Justice Munir again maintained the position of the ML.<sup>46</sup>

Ayub Khan continued his dictatorial government under ML regulations. He even made it clear that ML will be a document and act as a future foundation to govern the country.

Ayub introduced a new political system in 1959 called as "Basic Democracy" which may be termed as a form of representational dictatorship.<sup>47</sup> To hold his power he advanced the concept of Basic Democracies. This eliminated competent individuals replacing them by a composite of uneducated persons. These low level administrators were given restricted powers thus assuring that the top echelons remained always in command. Further more their scope of responsibilities was in the domain of local government and rural development. Thus they had nothing to do with federalism, which slowly turned into elite power. This double channel favored supposedly communication between Ayub Khan and the common people, a hypothesis that can be questioned in practical efficiency. So this was a system designed to institute a very slow social change.<sup>48</sup>

Under the four tier model of Basic Bureaucracies, bureaucracy emerged as a strongest institution .<sup>49</sup> Under the President's Order the Basic Democrats cast their vote in referendum for President and elected Ayub Khan as a President for five years and also empowered him to make a Constitution of his own choice.<sup>50</sup>

President Ayub Khan nominated a Constitutional Commission on 17<sup>th</sup> February 1960 to critically analyze the parliamentary system of Pakistan. Other aims were to propose the principles on which a Constitution based on the Islamic principles of justice, equality tolerance, integrated national system and stable system of government can be promulgated. After 1 year and 3 months Commission submitted its report. It was based on Presidential form of government with an independent legislature. <sup>51</sup>. Another Committee was appointed by the President to prepare a Constitution on these lines. It was observed that Commission formulated the Constitution according to the desires of Ayub Khan in such a way that all the powers be concentrated in one hand<sup>52</sup>. The Constitution was prepared and enforced on 8<sup>th</sup> June ,1962 .<sup>53</sup>Anti democratic trends were obvious as people of Pakistan were not involved in the process of Constitution making. Chaudry Muhammad Ali well described the whole process as Government of Pakistan, by the President and for the President .<sup>54</sup>The will of the people was not given any importance rather what's good for the people was decided.<sup>55</sup>

All national affairs were being controlled by President and NA. Every institution was handcuffed especially Judiciary and unable to take independent decisions .The control over the bureaucracy and the political forces were in practice. Last nail in the coffin was pertaining powers to President for dissolving Assemblies through Constitutional provisions. People were frustrated to see the impingement of their basic rights and zero

role of their political leaders in Assemblies. They started pressurizing their leaders to get pass the bill of their fundamental rights. By passing of this bill, Constitution was democratized to some extent and rule of law fully restored in Pakistan.<sup>56</sup> Another Ordinance, West Pakistan University Ordinance 1962, faced protest by students and Jammat-e-Islami. Both the Governments declared Jammat-e-Islami as unlawful party.<sup>57</sup> These notifications were challenged in High Courts of Lahore and Dacca. Dacca accepted while Lahore rejected the petitions.<sup>58</sup> A joint appeal was made to the SC, the SC unanimously declared that both notifications by provincial governments are unlawful. This decision of the court was one of the most important in the judicial history of Pakistan as it provided protection to political parties against the ruling governments.<sup>59</sup>

On 14<sup>th</sup> February 1965, first term of Ayub Khan as a President had to be expired. General elections were held in January 1965 under the 1962 Constitution. Basic democrats for their personal interests casted their votes in favor of Ayub Khan.<sup>60</sup> It was alleged that Basic democrats (BD) were raised for this purpose years back. In opposition Mader-e-Millat Fatima Jinnah as a unanimous candidate for all opposition parties took part in elections but failed due to massive rigging. High level government machinery was used to win the elections.<sup>61</sup> Opposition demanded fair and free re-elections under a caretaker government but Government abnegated the proposal.<sup>62</sup> Opposition became fragmented and weak to sustain the pressure of powerful government. To some extent the media also supported Ayub Khan. Ayub Khan on this entire situation was very satisfied and sailing its boat with his selective colleagues.

There had always been tensions on Indo-Pak cease fire line since 1949. This situation exaggerated into a full scale war of September 1965. The war ended in a draw but

Pakistani Government through media propagated a good resistance in the battle field against Indian forces. The war culminated by the UNO resolution of ceasefire passed on 20<sup>th</sup> September 1965 which created anguish among the people because of a psychological winning position. The two events of war and Tashkent agreement proved to be political death of Ayub Khan.<sup>63</sup> According to Tashkent declaration Pakistan and India withdraw their troops to the position of 5<sup>th</sup> August 1965 to end the dispute before open belligerency erupts.<sup>64</sup> West was reproving the agreement while East stayed neutral on this issue demanding their provincial autonomy.

Ayub did not understand the critical situation arising in the country. He was ignoring the sentiments of people who were turning against him. His mind was so obsessed with power that he could not give due or proper weightage to issues arising in all corners of the country and all segments of society. In October 1968 Ayub decided to celebrate his development decade but people did not involve in it and criticized the concentration of wealth.<sup>65</sup> All of a sudden a major crisis erupted in the country when a fabricated case was registered against few students. Already there was resentment among the masses and students, a large scale demonstrations and agitations started. Zulfiqar Ali Bhutto and many other leaders got a chance out of this situation and started supporting this agitation of students emphatically.<sup>66</sup> On this Zulfiqar Ai Bhutto and many other leaders were arrested. This turned demonstrations and agitations to clashes and violence. Many institutions were closed.<sup>67</sup> There was already a great vacuum in the opposition so Bhutto gained much popularity. His party manifesto Roti, Kapra aur Makan, in the west wing and AL in the East wing jolted the politics of that time erupting a long awaited silent



volcano of sentiments to burst.<sup>68</sup> Motive of political leadership was to topple down the Government of Ayub Khan by exploiting this already exacerbated situation.

Military bureaucracy nexus was also looking helpless in front of this highly charged situation. They outdistanced themselves from Ayub's Government. This all along with deteriorating health broke Ayub Khan from all sides. He resigned from the post by committing his failure and that was the end of a long authoritarian 1<sup>st</sup> ML of Pakistan.

### **2.3 The ML Administration -II (1969-1971) and dismemberment of Pakistan.**

Protests broke out in October 1968 in West Pakistan over food prices and lack of political freedom which engulfed East Pakistan very soon.. The Basic Democracies system began to collapse and the situation kept escalating until Ayub Khan was forced to resign in March 1969. Instead of calling for fresh elections as the 1962 Constitution demanded, Ayub handed over power to another army chief and ML was declared throughout the country for the second time in Pakistan's history. Pakistan People Party (PPP) emerged as a dynamic force in West Pakistan And AL with its 6 point agenda in the East..<sup>69</sup> It was an unconstitutional step by Ayub Khan giving powers to Yahya Khan. It was an abrogation of the Constitution 1962. Yahya Khan imposed ML, dissolved all Assemblies and banned all political activities.<sup>70</sup> General Yahya's regime made no positive endeavor to make a Constitution under the pretext the new CA would solve the problems by holding unbiased elections.<sup>71</sup>

An LFO was promulgated by President Yahya Khan on 30<sup>th</sup> March, 1970 spelling out the future Constitutions fundamentals.

The main principles of the LFO were as follows:

1. Pakistan would be a Federal Republic based on Islamic Ideology;
- 2-Pakistan will have a democratic Constitution to provide free and fair elections at proper time ,the basis was adult franchise on demographic population.
- 3-Territorial integration of the country must be upheld in the Constitution.
- 4-Maximum autonomy for Provinces. The Federal Government was allowed to maintain its previous legislative, administrative and financial powers which also allow it to take decisions regarding country's independence and integrity.
- 5-The discrepancies among provinces and different areas in a Province must be removed by Statutory and other administrative measures.

Yahya's LFO was criticized by many of the political parties in East Pakistan and termed the President's authentication to the Constitution Bill as "only a procedural formality"<sup>72</sup>

**Table 2.2**  
**NA of Pakistan, 1970**  
**(The number of seats allotted to East Pakistan and**  
**the four provinces of West Pakistan in 1970 elections)**

	General	Women
East Pakistan	162	7
The Punjab	82	3
Sindh	27	1
Balochistan	4	1
Khyber Pakhtoon Khawa	18	-
Centrally Administered Tribal Areas	7	1
<b>Total</b>	<b>300</b>	<b>13</b>

Source:Dr,M,Nazrul Islam, *Pakistan and Malaysia:A comparative Study in National Integration*,op.cit., p.160

He limited the freedom of NA and legalized his authoritarian rule. LFO as a basis of future Constitution was another shift of power only. It was in the hands of same military

bureaucracy. No political power was shifted.<sup>73</sup> In the December of 1970 simultaneous free and impartial elections were held concurrently for National and Provincial Assemblies .It seems that government gave a free hand and didn't intervene in any matter whatsoever. The previous members of Ruling Councils were debarred and so automatically eliminated. No rigging accusations were launched as the inbuilt system self defended itself.

The detailed election results for both the National and Provincial Assemblies are shown in Tables III:2 and Table IV:2

**Table 2.3**  
**Pakistan NA elections, 1970-71**

Party	Punjab	Sindh	NWFP	Balochistan	West Pakistan	East Pakistan	Total
AL	-	-	-	-	-	160	160
PPP	62	13	1	-	81	-	81
PML (Q)	1	1	7	-	9	-	9
PML (convention)	7	-	-	-	7	-	7
JU	-	-	6	1	7	-	7
MJU	4	3	-	-	7	-	7
NAP (W)	-	-	3	3	6	-	6
JI	1	2	1	-	4	-	4
PML (C)	2	-	-	-	2	-	2
PDP	-	-	-	-	-	1	1
Ind.	5	3	7	-	15	1	16
<b>Total</b>	<b>82</b>	<b>27</b>	<b>25</b>	<b>4</b>	<b>138</b>	<b>162</b>	<b>300</b>

*Table 1: Source: Dr, M, Nazrul Islam, Pakistan and Malaysia: A comparative Study in National*

*Integration, op, cit. p.162*

**Table 2.4**  
**Pakistan Provincial elections, 1970-71**

Party	Punjab	Sindh	NWFP	Balochistan	West Pakistan	East Pakistan	Total
AL	-	-	-	-	-	288	288
PPP	113	28	3	-	144	-	144
PML (Q)	6	5	110	3	24	-	24
PML (convention)	15	4	1	-	20	-	20
JU	2	-	4	2	8	-	8
MJU	4	7	-	-	11	-	11
NAP (W)	-	-	13	8	21	1	22
JI	1	1	1	-	3	1	4
PML (C)	6	-	2	-	8	-	8
PDP	4	-	-	-	4	2	6
Ind.	28	14	6	5	53	7	60
Others	1	1	-	2	4	1	5
<b>Total</b>	<b>180</b>	<b>60</b>	<b>40</b>	<b>20</b>	<b>300</b>	<b>300</b>	<b>600</b>

*Source: Dr. M. Nazrul Islam, Pakistan and Malaysia: A comparative Study in National Integration, op.cit., p.163*

It can be seen in the last general elections proved disastrous because it left no provision for national uprightness and national harmony. No single force emerged as a unifying cementing element in Pakistan lacking the confidence of general public in overall Pakistan. But it was a significant step towards the restoration of civil government.<sup>74</sup> The AL had fought the elections on the basis of their six point's formula. They declared that none would be able to stop them from framing a Constitution on basis of Six Point Programme.<sup>75</sup> Since beginning, political leadership of East Pakistan was annoyed with the attitude Of West wing. Concerning West Pakistan the six-point plan of Sheikh Mujibur Rahman was launched .It was a not an ultimate solution of the problems but a good effort. Six points were properly pronounced on 12<sup>th</sup> February 1966.

1-A Government based on a Federal Parliamentary structure in which direct elections would determine membership in both central and provincial legislatures, on basis of population distribution.

2-The powers of Federal government were to be limited to national defense and foreign affairs and, to a limited extent, to the issuance of currency;

3-Either two separate currencies, which were freely convertible, or one currency with adequate constitutional provisions, provided to ensure no flight of capital from the East to the West, were to be established

4-All power of taxation to be left in the hands of the federating units, while the center would receive some fixed share for the expenses, which it incurred;

5-All foreign trade and foreign exchange matters were to come within the sphere of provincial powers; this included the economic transactions between the various provinces and other nations. In this provision also the centre would be forced to rely on the province for a fixed ratio of the foreign exchange income to meet their requirements.

6-The Government of the federating units to be empowered to raise and maintain such military establishment as was found necessary for preserving national security.

AL and Government came to headlocks after the elections of 1970 on the distribution of power due to the foundation laid by Six-Point Program. <sup>76</sup>Central Government was not paying any heed to 6 points. But AL in all circumstances focused their attention on it. After winning elections AL was more confident and decided never to bow as a nation and become a colony. <sup>77</sup> In early 1950s the first person to feel and float the idea of independent East Pakistan was Maulana Bhashani. He rejected the idea of united Pakistan

with western domination. He always dreamt of independent Bangladesh and decided not to participate in elections of 1970s. <sup>78</sup>Yahya tried to bridge the gap between both wings but Bhutto did not want negotiations to succeed. Yahya tried to forcefully settle the issue. Mujib was in the hands of extremists who due to their extremist's object of secession of East Pakistan were making things difficult day by day. <sup>79</sup>Bhutto was a power hungry man. He had no interest in whether Pakistan remain divided or united. Bhutto was a very sharp and intelligent man ,he knew that chances of grabbing a high post are very low in united Pakistan. His thoughts were reflected on many occasions among his friends and party members. <sup>80</sup>

TH 7504

The postponement of the NA session scheduled to be held in Dhakka on 3<sup>rd</sup> March,1971 and the army action in the midnight of 25<sup>th</sup> March,1971 pushed the unarmed people of East Pakistan to cross the border to India and seek shelter from India. These all forces were triggered when India started overindulging in the affairs of Pakistani politics. Indian Parliament passed a resolution moved by Indira Gandhi.On 31<sup>st</sup> March 1970 which called upon Pakistani government to stop the massacre of defenseless people in East Pakistan.India helped in establishing Mukkti Bhannis base camps by the border security force and army which was a very important assistance. It organized them properly to fight back <sup>81</sup> The crises of this sort was sensed by India as well. This crises situation was well exploited by India by using its strategic position. India attacked East Pakistan on 22<sup>nd</sup> November, 1971 .Many factors were included in the defeat of East Pakistan but the major ones were a thousand miles separation,use of high-tech weapon.In such a situation defeat was almost certain.Pakistan surrendered in almost twenty five

days leaving a great number of prisoners of war.<sup>82</sup> It was a disgrace of Pakistan Army and Yahya resigned by the pressure of army officers and public demonstrations against military regime<sup>83</sup>.

Bhutto became President and chief ML Administrator. Pakistan was facing a very bad time after independence. It lost its credibility all over the world. It lost a province of 70 million people. A land of 54,501 sq. miles with 56 percent of the total population was a great mishap and shock after independence for Pakistan. People of Pakistan turned against military and were in no mood to tolerate the military dominance again. Yahya Khan was held responsible for all this catastrophe. Disappointment was prevailing in all sections of society.

## REFERENCES

- 1- Mehmood, Safdar. Dr. *A Political Study of Pakistan*, Lahore : Sang-Meel-Publications, ,1987, p.43.
- 2- Chaudhry ,G.W. *Constitutional Development in Pakistan* London, Longman, ,1957, p.174.
- 3 Muneer, Mohammad, Justice. (Retired), *From Jinnah to Zia* , Lahore , Vanguard Books Ltd, ,1980, p.29.
- 4- Chaudhry ,G.W, op-cit, p.2.
- 5- Dawn ,13<sup>th</sup> March 1949
- 6 Mehmood Safdar Dr, *Objective Resolution 1949*, text, *Studies in the Constitution Of 1973*, Lahore Macmillan ,2000, p.156.
- 7- Ahmed, Jamil, ud Din, *Speeches and Writings of M.r Jinnah vol.II*, Sh. Muhammad Ashraf, Lahore, 1966, p.463 .
- 8- *The Pakistan Observer* , Dacca, 1<sup>st</sup> October 1950
- 9- Sayyed , Bin .Khalid, *Politics in Pakistan* , New York, USA, praeger publishers, 521 fifth avenue , p.62.
- 10- *Dawn* , Karachi, 29<sup>th</sup> December , 1952.

- 11- *The Constitutional Assembly Debate, vol I, 1956* , Manager of publications ,Government of Pakistan Press ,p.1816.
- 12- Sayyed, Khalid Bin ,*The Political system of Pakistan* , Boston, Houghton Mifflin Company , , 1967,p.70.
- 13- Jalal,Ayesha, *Democracy and state of ML* , Cambridge ,Cambridge university press, 1990,p.151.
- 14- Sayyed,Khalid Bin,op-cit,p.70.
- 15- Khan,Hamid , *Constitutional and political History of Pakistan* , Karachi ,Oxford University Press, ,2001,p.120.
- 16- Ayesha Jalal,*Democracy and authoritarianism in south Asia*, Lahore ,sang-e-meel publications, , 1995, p.178.
- 17- *Dawn*, Karachi, 17<sup>th</sup> April 1953.
- 18- Government of Pakistan, *Basic Principles Committee report 1955*, Karachi, (Bogra Formula) Manager of publication, , p.10.
- 19- Chuhdry,G.W,op-cit,p.155.
- 20- Chuhdry,G.W,op-cit,P.79.
- 21- *Dawn*,Karachi,21<sup>st</sup> March 1948.
- 22- Ahmad,Mushtaq, *Government And Politics in Pakistan* , Karachi ,Space Publishers, ,1970,p.150.
- 23- Chuhadry,G.W,op-cit,p.137.
- 24- *Amendment of interim constitution and repeal of PRODA act 1954*
- 25- Khan, Muhammad Ayub,*Friends Not Masters* , Karachi ,Oxford University Press, ,1967.pp.51-53.
- 26- *Writ Petition Moulvi Tameezuddin Khan 1954, NoNo. 439/1954*
- 27- *PLD 1955 SC\_ p.96(Moulvi Tamizzuddin Khan Vs Federation of Pakistan)*
- 28- *PLD 1955, Federal Court, p.240.*
- 29- Nazir, Hussain .Chaudry, *CJ Muhammad Munir\_* Lahore, Research society of Pakistan ,University of Punjab,1993.p.20.
- 30- *Ibid*,p.21.
- 31- Khan,Hamid,op-cit,p.142.
- 32- Qudrut, Ullah. Shahab, *Shahab Nama*, Lahore Sang-e-meel Publications, 1995,p.664.



- 33- Chuhadry,G.W,op-cit,p154.
- 34- *PLD 1955, Central Acts and Notifications, Vol VII,p..118(Governor General order VIII of 1955)*
- 35- Maluka ,Zalufqar,Khalid , *The Myth of Constitutionalism in Pakistan* , Karachi, Oxford University press, 1995,p.143.
- 36- Chuhadry,G.W, op-cit.p 159.
- 37- Ibid
- 38- *Dawn* ,Karachi,24<sup>th</sup> March 1956
- 39- Shah,Hussain ,Naseem,(Retd) Justice ,*Constitution ,Law and Pakistan Legal System*, Lahore, Research Society of Pakistan ,University of Punjab , ,1999,p.26.
- 40-Rizvi,Hasan ,Askari , *The Military and politics in Pakistan* ,Lahore ,Progressive Publishers,1987,p.54.
- 41- Ziring ,Lawrence *Pakistan in the twentieth century* , Karachi ,Oxford University press , ,1997,p.219.
- 42- Ibid.p.222.
- 43- Ahmad,Masood,(Retd) Justice ,*Pakistan , A Study of its Constitutional History*, Lahore, Research Society of Pakistan, University of Punjab , ,1983,p.49.
- 44- *The Pakistan Times* ,Lahore,8<sup>th</sup> October 1958.
- 45-*PLD 1958 SC* , .(*State Vs Dosso*) , p.533.
- 46- Hussain ,Shabir,Syed, *Ayub, Bhutto And Zia*, Lahore ,Sang –e-Meel Publications, ,2001,p.57.
- 47- Maluka ,Zulfiqar, Khalid ,op-cit,p.180.
- 48- Ghous, Khadida, Ahmad,Manzoor,(Edited) *Pakistan , Prospects, and Perspectives*, Karachi,Royal Book Company, 1999,p.20.
- 49- Gauhar, Altaf, *Ayub Khan*, Lahore Sang-e-Meel Publications, ,1998,pp.169-170.
- 50- Afzal,Rafique,M *Pakistan History and Politics 1947-1971*, Karachi ,Oxford University Press, ,2001.p.235.
- 51- Maluka ,Zulfiqar, Khalid ,op-cit, p.360.
- 52- Mehmood, Safdar.Dr.op-cit,p.54.
- 53- *Dawn* ,2<sup>nd</sup> April 1963
- 54- Ahmad, Masood, op-cit,p.82.
- 55- Maluka, Zalufqar,Khalid,op-cit,p.185.

- 56- Khan Hamid, op-cit.p.296.
- 57- *Dawn*,Karachi,6<sup>th</sup> January 1964
- 58-PLD 1964, *Dacca*,p.795 .(*Tamizzuddin Khan Vs Province of East Pakistan*)
- 59- Khan, Hamid, op-cit,p.299.
- 60- Feldman,H,A.*Constitution for Pakistan*,Karachi,Oxford University Press,pp.68-84.
- 61- Maluka, Zalufqar,Khalid,op-cit,p.190.
- 62- *The Pakistan Times*,22 nd October 1964.
- 63-Raza, Maroof,(Edited), *Generals And Governments in India And Pakistan*\_New Delhi ,Har-Annand Publications pvt Ltd, ,2001,p.82.
- 64- *Dawn* Karachi,11th January, 1965.
- 65- Khan , Hamid,op-cit,p.345.
- 66- Ibid,p.354.
- 67- Rizvi ,Hassan Askari,*The military and politics in Pakistan*,Lahore,progressive publishers,p.153.
- 68- Maluka ,Zalufqar,Khalid.op-cit,p.195.
- 69- Ahmad,Mushtaq,op-cit,pp.314-315.
- 70- Ahmad,Mushtaq,op-cit,p.322.
- 71- Chaudhry ,G.W, *The Last Days of United Pakistan - (Review by Louis A. Delvoie)* ,*Dawn* ,10.6.1994 .
- 72- Islam,M,Nazrul,Dr,*Pakistan and Malaysia:A comparative Study in National Integration*,New Delhi :Sterling Publishers Ltd,1989,p.159.
- 73-Rizvi, Hasan,Askari,op-cit,p.168 .
- 74- *Asian Survey (Banter,Pakistan Votes 1970) Vol-XI No.3<sup>rd</sup> March, 1971.*
- 75- *The Pakistan Observer*,Karachi,4<sup>th</sup> July ,1971.
- 76-- Islam,M,Nazrul,Dr,*Pakistan and Malaysia:A comparative Study in National Integration*,New Delhi :Sterling Publishers Ltd,1989,op.cit.p.148.
- 77- *Pakistan Observer*,Karachi, 5<sup>th</sup> July, 1971
- 78- *Times Prophet of violence* Friday April 18 ,1969

79- Khan , Hamid,op-cit, p.398.

80- According to G. W. Choudhury that it was quite evident from his discussion with Mujib that he was not interested in becoming the PM or president of a united Pakistan. G. W. Choudhury, *The last days of united Pakistan*, p.9 .

81- *The Guardian*, London, 1st April, 1971.

82- Rizvi,Hasan Askari,op-cit,pp.162-213.

83- Chauhdry, G.W, op-cit,p.33.

84-For details please see Islam,M,Nazrul,Dr,*Pakistan and Malaysia:A comparative Study in National Integration*,New Delhi :Sterling Publishers Ltd,1989,op.cit.pp. 115 to168.

85- For tables see Islam,M,Nazrul,Dr,*Pakistan and Malaysia:A comparative Study in National Integration*,New Delhi :Sterling Publishers Ltd,1989,op.cit.pp. 115-160-162-163.

## **CHAPTER 3:**

### **CONSTITUTIONAL DEVELOPMENT IN PAKISTAN**

#### **(1973-1999: Phase-II)**

This period in the history of Pakistan was full of events. Bhutto's gift of 1973 Constitution to the people of Pakistan, following Zia dictatorship for many years and then again democratic governments one after the other, unable to complete their tenures. This all period reflects continuous Constitutional crises and stressed judiciary. For critical analysis this period has been divided into three segments. Here we will discuss the Zulfiqar Ali Bhutto's reforms and implementation of the 1973 Constitution with a comeback of PD after a greatest tragedy of East Pakistan.

#### **3.1 Third Constitution 1973 of Pakistan and Revisiting PD**

Out of this whole debacle Z.A. Bhutto got a chance of grabbing both seats of president and Chief ML Administrator (CLA) on 20<sup>th</sup> December, 1971. Bhutto started making his position clear and introduced a new Constitution. He assured the people of Pakistan that he will make a new Pakistan and bring back all the glories. People who were already shattered after the defeat and developing hatred against the army had to trust him.<sup>1</sup>

As a first civilian ML Administrator, it was observed that he had immense power to decide and issue orders and pronouncements carrying whole range of subjects. On 2<sup>nd</sup> January, 1972 Bhutto announced under ML regulation the nationalisation of all major industries. No court could call in question any provision of this order.<sup>2</sup> The land reform regulation, Government management of private schools and colleges were another bold steps under ML regulations. Another important reform was that Government can prosecute against any government servant who was corrupt or known to be corrupt, guilty

of misconduct, inefficient or barred any court jurisdiction.<sup>3</sup> In the concluding analysis, nationalization caused colossal loss not only to the national treasury but also to the people of Pakistan. These all reforms were unfavourable for investors which made them hostile against Bhutto. Passing of an interim Constitution in assembly was another important event in Bhutto's era on 14<sup>th</sup> April, 1972. After the enforcement of Constitution Bhutto lifted ML in an acute move and sworn in as President on 21<sup>st</sup> April, 1972.<sup>4</sup>

Zulfiqar Ali Bhutto was a very intelligent and skilful man. He never liked opposition and showed great strength against them. Even he was a civilian but he always used ML regulations to make the situations favourable for him. He always talked about democracy and fundamental rights but his government depicted something opposite. This incident is showing how Bhutto reacted with critics. Malik Ghulam Jilani a political leader from Lahore, Altaf Gohar Editor-in-chief, Dawn, Karachi, were arrested and kept under detention under Pakistan Rules and ML regulation no 78. These were challenged in High courts of Lahore and Sindh. After dismissal from both courts, petitions were filed in the SC. A famous case of state vs Dosso was kept under consideration by High Courts in dismissing the constitutional petition. Two questions were raised by the SC. First whether the jurisdiction of courts exists under the provisions of the jurisdiction of courts, secondly, whether the doctrine enunciated in the case of state vs Dosso was correct and applicable. SC held that these assumptions were not justified, so ML was also declared illegal. Kelson's Theory in law was also not accepted.<sup>5</sup> It was held that the theory is independent of morality. It does not matter which particular *Grand norm* is adopted by a legal order.<sup>6</sup>

But opponents were taking this Constitution as a national asset. They were demanding restoration of Constitution because in their point of view this Constitution was representing a broad national consensus.<sup>7</sup> No matter Bhutto also played a role in producing this consensus but opposition was also realistic and very reasonable.

Bhutto since the beginning wanted to form his government in NWFP and Baluchistan. For this reason he tried to destabilize National Awami Party Jamiat Ulema Islam. He was ambitious to form a government in these provinces also. Government alleged that the tribesmen of Baluchistan were equipping with weapons so they could separate their province. Bhutto got a chance to uproot Baluchistan government by charging it with opposing the use of federal troops to control the uprising of Jamote tribe in Lasbella. In NWFP Awami party Jamiat Ulema had an alliance with government. So they also resigned in protest. This also paved way for Zulfikar Ali Bhutto. Thus both the provinces were placed under Governors rule causing great disillusionment to the people. Bhutto who was a champion of democracy dismantled majority provincial governments, suspended the fundamental rights and undermined the provincial autonomy.

Sindh was subjected to intra-provincial ethnicity issues due to language issues. Mumtaz Ali Bhutto unjustified support to PPP became the cause of this situation. It was the first seed sown in the hearts of Muhajirs which was later rectified by declaring Urdu and Sindhi as both national languages. Bhutto with the same hungry power mind tried to limitize the powers of bureaucracy by introducing many new reforms.<sup>8</sup> Zulfikar Ali Bhutto endeavors started related to Constitution making. He started meetings with the parliamentary leaders and their members. He had long debates with them which finally agreed upon making a "Constitutional Accord". First major task was preparation of the

initial draft of Constitution. For this purpose a 25 member committee was selected on 17<sup>th</sup> April 1972. Within six months a draft of Constitution was ready and introduced and finally introduced in the assembly as a bill. It was unanimously accepted and passed by all the Assembly. On 14<sup>th</sup> of August 1973 Constitution came into effect. Power was again centralized in this Constitution as seats were increased to 114 as compared to the Government of India Act 1935, Constitution of 1956 and 1962.<sup>9</sup>

It was one of the greatest achievements by Zulfikar Ali Bhutto. There were always forces working against the Constitution making in Pakistan. And every time different issues came forward creating hindrances like, Islam role in the functioning of a state, Provincial autonomy, Executive Role. Bhutto was the person who made it possible that all the parties agreed on this Constitution. All the issues resolved after this.

Powers concentration was also noticed as it was centralized as well as an institution was established called Senate. We cannot see such an example all over the world where such a single unit is holding immense powers. Islam was declared the religion of the state.<sup>10</sup>

Bhutto efforts in making of this Constitution were commendable. But as he declared himself as champion of democracy, he could not materialize it in practical. He took control of almost all the institutions and meddled with them. He was not liked on this account among his friends circle. He annoyed many of his sympathetic friends in pursuit of monopolistic power.

### **3.2 Amendments to Constitution**

A Constitution is the most vital document in the way a modern country operates. Its sanctity cannot be challenged anywhere in the world. It grows with the passage of time and nourishes within the society in accordance with the requirements of time and society.

When we call it a document which changes then the amendments in it have to be a reflection of a serious commitment. It must be presented before the public through different channels like media or papers. Refrendum can also be one of them. At last debates in the parliament by the opposition and government to end up in a conclusion. Z.A Bhutto inspite of being a democratic government began to find the deficiencies and started amendments. Mostly the amendments were introduced to increase the executive powers.

The first amendment was done in 1974. On the eve of 2<sup>nd</sup> Islamic Summit Conference held in Lahore Pakistan recognized Bangladesh as an independent Muslim state. This issue was unresolved since the day Bangladesh was separated. For this purpose 1<sup>st</sup> Article was amended. With this major amendment some other were also made like amendment in political parties act 1962, procedure for transfer of high court judges from one court to another, and establishment of services tribunal for employees.<sup>11</sup>

The 2<sup>nd</sup> amendment was a landmark in the history of Pakistan. Bhutto raised the issue of Ahmadis and after extensive discussions and debates, Ahmadis were called non Muslim minority. Another clause 3 was added in the Constitution which gave the definition of Muslim.<sup>12</sup>

The third amendment was about the curtailment in powers of judiciary. The motive was to demoralize judiciary and also an act against opponents. It is because judiciary always favored opposition and provided relief to it which was not liked by the government.

Under this amendment unregistered cases were prohibited to grant a prearrest bail. The proclamation of emergency was announced for indefinite period which was later on lifted



by the disapproval of joint session. According to this amendment Pakistan remained under emergency for more than twenty years for political reasons.<sup>13</sup>

In 4<sup>th</sup> amendment judiciary was more squeezed and jurisdiction of the courts for granting relief to political opponents, particularly in exercise of constitutional jurisdiction under article 199 was curtailed.<sup>14</sup> Another severe action was taken against opposition. They were thrown out of the NA to pass the bills in their absence.<sup>15</sup>

The 5<sup>th</sup> amendment was also about judiciary. It was for the establishment of high courts for Balochistan and Sindh ,extending the period of judiciary from the executive, the fixation of terms of the CJ of high courts and SC, compulsory transfer of judges from one court to another, new laws about contempt of court, and restriction of jurisdiction of high courts to grant interim bail.<sup>16</sup> The bill was presented in the assembly and judiciary was targeted to indulge in the affairs of legislature and executive.<sup>17</sup> and the independence of judiciary did not mean the supremacy or sovereignty of the judiciary<sup>18</sup>.Opposition criticized the bill and walked out from the assembly but just after 3 days bill was passed by NA and senate both.<sup>19</sup>Politicians, opposition and lawyers criticized the amendment for it harmed the independence of judiciary as third pillar of state. The amendment was passed and done but it was disputed. The sixth amendment bill was moved before the house before the dissolution of assembly for fresh elections. It was passed very quickly. The amendment extended the terms of JC of SC and high courts. It extended the terms beyond age of retirement. The CJ who had attained the age of retirement and had not completed the term of office would continue to hold the office, as the case may be.<sup>20</sup>

This all exercise was done in order to protect CJ Yaqoob Ali who was a close friend of Bhutto. He had to retire in the middle of 1977 after serving less than two years as CJ of

Pakistan.<sup>21</sup> These all amendments were just manipulations of the ruling party. This type of document was accepted all over the country but controversial and doubtful.

Another important event was on 8<sup>th</sup> February, 1975 which made the Federal Government to move and declare Awami National Party as unlawful was Death of Hayyat Muhammad Sherpao in an explosion. Many of its offices were closed and arrested its leaders through an executive order.<sup>22</sup> National Awami Party was declared to be operating in a manner detrimental to the sovereignty of Pakistan. The Federal Government filed a reference in the SC that this party never reconciled itself to the existence and ideology of Pakistan, and had attempted to bring secession through insurrection, terrorism, and sabotage. It was an ex parte judgment based on ex parte proceedings.<sup>23</sup> The Federal government through all these measures and inducing defection in the members of the party was successful in forming its government in NWFP and Balochistan.<sup>24</sup>

PM Z.A Bhutto dissolved the NA on 7<sup>th</sup> January and announced general elections in March with assurance of a free and fair elections.<sup>25</sup> Nine parties joined together to form Pakistan National Alliance to oppose Pakistan People Party. Bhutto was very popular among general public but his party leadership was corrupt and ineffective.<sup>26</sup> Both the parties were considered equal so the campaigns were very lively. Bhutto on the other hand was very confident of win. He was trying to convince the masses that he want another change in the country's political and constitutional structure.<sup>27</sup> The results were very surprising for both the sides, PPP won with great majority. PNA rejected the results by calling them unfair. They also boycotted the provincial assemblies elections.<sup>28</sup> The PNA launched a movement against the government and demanded resignation of Bhutto,

dismissal of newly elected assemblies and holding of new elections under the supervision judiciary and Army.<sup>29</sup>

This movement gained so popularity and momentum that PPP had to negotiate with the opposition. ML was imposed partially in three cities under article 245 of constitution on 26<sup>th</sup> April 1977. It was challenged before LHC. The full bench declared it undemocratic and unconstitutional.<sup>30</sup> This was a troublesome situation for Bhutto in which he tried to come out through referendum.<sup>31</sup> To make this referendum constitutional 7<sup>th</sup> amendment was passed.<sup>32</sup> During this period inspite of ML ,political dialogue and constitutional steps continued side by side. At the end both the parties reached a conclusion on 4<sup>th</sup> July 1977 and decided to sign an accord .<sup>33</sup>

## REFERENCES

- 1- Chaudry, G.W, op-cit, p.33.
- 2- *Dawn*, Karachi, 3<sup>rd</sup> January 1972.
- 3- *Dawn*, Karachi, 2<sup>nd</sup> April 1972.
- 4- *Dawn*, Karachi, 22<sup>nd</sup> April 1972.
- 5- *PLD 1972, SC*, p139 (Asma Jilani vs Government of the Punjab)
- 6- *West's Encyclopedia of American Law*, edition 2. Copyright 2008 The Gale Group,
- 7- Khan, Hamid, op-cit, p.481.
- 8- [http://workmall.com/wfb2001/pakistan/pakistan\\_history\\_zulfiqar\\_ali\\_bhutto\\_and\\_a\\_new\\_constitutional\\_system.html](http://workmall.com/wfb2001/pakistan/pakistan_history_zulfiqar_ali_bhutto_and_a_new_constitutional_system.html)
- 9- Azfar Kamal, *Pakistan, Politics and Constitutional dilemmas*, Karachi ,Pakistan Law House, ,1987, p.244.
- 10- *US Country Studies*. "Zulfiqar Ali Bhutto" (PHP). <http://countrystudies.us/pakistan/20.htm>. Retrieved 2006-11-07.
- 11- *PLD1974 central statutes*, vol. XXIV, p.252
- 12- *PLD1974 central statutes*, vol. XXIV, p.425 (article 260(3))

- 13-PLD1975 central statutes, vol. XXVII, p.109
- 14- PLD1975 central statutes, vol. XXVII, p.337
- 15- Dawn, 15<sup>th</sup> Novemer 1975.
- 16-PLD1976 central statutes, vol. XXVIII, p.538
- 17-Dawn, Karachi, 4<sup>th</sup> September 1976
- 18-Dawn, Karachi, 5<sup>th</sup> September 1976
- 19-Khan Hamid, *Constitutional and Political History of Pakistan*, Oxford University Press, 2001,p. 535
- 20- PLD1977 central statutes, vol. XXIX, p.46
- 21- Khan Hamid, op-cit, p.538
- 22- Dawn, 9<sup>th</sup> February 1975.
- 23-PLD1976 SC, vol. XXVIII, p. 57
- 24- Maluka, Zulfqar, Khalid, op-cit, p. 530
- 25-Dawn, Karachi, 8<sup>th</sup> Januray 1977.
- 26-Governmenmt of Pakistan, Rashid, Rao, 29-5-76 Wrote to PM, p. 2!2-216 (white paper)
- 27-Burki, Javaid. Shahid, *Pakistan under Bhutto, 1971-1977*, Hong Kong,Mcmillan Press, , p. 182-183.
- 28-Mehmood, Safdar, Dr, Pakistan, op-cit, p.91.
- 29- Bhutto, Ali, Zulfiqar, *If I am assissinated*, New Delhi ,Vikas Publishing House Ltd, ,1979,Ch 2, p. 16
- 30- PLD1977, Lahore, p. 846.
- 31- Dawn, 14<sup>th</sup> May 1977
- 32-PLD1977 Central statutes, vol. XXIX, p. 304
- 33-Dawn, 4<sup>th</sup> July 1977.

## **CHAPTER 4: RETURN OF THE ML ADMINISTRATION AND DEMOCRACY REVISITED (1988-1999)**

### **4.1 The Zia-ul-Haq era.**

The army staged third coup d'état in Pakistan's history when General Ziaul Haq overthrew the government of PM Zulfikar Ali Bhutto and took over as Chief ML Administrator (CMLA) on 5<sup>th</sup> July , 1977. The federal and provincial governments were dismissed; political parties were banned; national and provincial assemblies and the Senate were dissolved; the constitution was put in abeyance; civil courts continued to function as usual but fundamental rights were suspended.<sup>1</sup>

Bhutto was irritating the Military Government which resulted in opening of a murder case of Nawab Muhammad Ahmad Khan against him in November 1977. Bhutto was arrested but granted bail on the ground of circumstantial evidence.<sup>2</sup> When bail was granted to Bhutto, he threatened the military rulers who decided to get rid of him once for all. The full bench of LHC cancelled his bail on grounds that respondent has been guilty of an offence punishable with death sentence or imprisonment for life.<sup>3</sup> High court convicted all the accused for criminal conspiracy and murder and sentenced them to death. This decision maligned the image of judiciary all over the world.<sup>4</sup>

The majority of PNA members demanded postponment of elections and complete accountability before holding elections.<sup>5</sup> In those days Nusrat Bhutto was leading the party and becoming very popular and attracting large crowds.<sup>6</sup> Zia was quite perturbed over the situation and finally on 16<sup>th</sup> October 1979, Zia announced postponment of

elections on request of politicians for the sake of accountability and for the restoration of law and order situation.<sup>7</sup> After postponement Zia came out with actual designs and said clearly elections will be held when he and his colleagues were certain of positive results.<sup>8</sup>

Begum Nusrat Bhutto on 20<sup>th</sup> September 1977, filed a petition before SC of Pakistan against ML and detention of Bhutto in its original jurisdiction. Immediate transfer of Bhutto and other accused to Rawalpindi was ordered.<sup>9</sup> The military rulers were worried due to the role of CJ who was CJ due to sixth amendment. The army as a precautionary measure issued order no 6 of 1977. By this order 5<sup>th</sup> and 6<sup>th</sup> amendment were withdrawn. By this CJ Yaqoob Ali who had crossed the age of retirement, ceased to hold the office of CJ of Pakistan.<sup>10</sup>

On next hearing council faced Justice Anwar ul Haq .He declared ML valid under *law of state of necessity*.<sup>11</sup> The petition also dismissed the detention of Bhutto as incompetent under the ML order no 12. The court authorized Zia-Ul-Haq to amend the Constitution. In Zias words , What is a Constitution .It is booklet of just ten or twelve pages.I can tear it and say from tomorrow we will live under a new system.He violated and defaced the Constitution.<sup>12</sup> This verdict had a great impact on military government and it postponed the elections,all parties dissolved,political activities banned. Censorship on all type of media. Another important announcement was that decisions made in the ML courts could not be challenged in the civil courts.The process of Islamization would speed up.<sup>13</sup> Zia became a complete dictator by adding an amendment of Article 212-A in which powers of judicial review reserved for superior courts by the SC in the judgement of Nusrat Bhuttos case were completely abolished.<sup>14</sup>

The ML government promulgated a constitutional amendment on 27<sup>th</sup> May 1980 barring the high courts from making any judgment relating to the validity of ML regulations.<sup>15</sup> This was all done to reduce the power of civil courts and make the military and ML regulations more effective and influential. Any action taken by the Military court could not be challenged in any court of law. Military courts were given exclusive jurisdiction under Pakistan Penal Code (PPC) over case of treason, subversion, sedition, sabotage, activity prejudicial to ML and ridiculing members of Armed forces.<sup>16</sup> The case of Maulvi Mushtaq, the humiliating way in which he was sent to SC reflects Zia instability. His military justice was the best in his eyes. The Baluchistan High court stood firm in the decision to execute the death sentence and made it possible that military could not carry out the sentences.<sup>17</sup> Baluchistan high court continued to hear the cases in which vires of article 212-A had been challenged.<sup>18</sup> It declared that amendments have failed to come up to the test of necessity in Nusrat Bhuttos case. The division bench of Balochistan high court held that an ordinary citizen could not be tried by a military court for offence created by ordinary laws provided such offence was not committed by way of resistance to ML itself.<sup>19</sup>

The Federal Shariat Court a calculated move by Zia, soon started creating problems for him. Zia increased the judges number to five to make Ulema happy. Zia tried to establish a court which would be analogous hierarchy in the judiciary.<sup>20</sup> Provincial Constitution Order (PCO) was enforced on 25<sup>th</sup> March 1981 to serve as the Constitution Of Pakistan in place of 1973.<sup>21</sup>

Now there was no chance for judiciary to challenge lawful authority of Zia. According to PCO superior court judges were required to take a new oath under PCO. It was provision of President to give or not give oath to any judge. It was a humiliation of judiciary. Some judges did not take oath under PCO declaring it a disgrace by military government.<sup>22</sup>

But many of them accepted it causing a great damage to judiciary. PCO was challenged in LHC but declared valid.<sup>23</sup> How could the judges invalidate PCO who gave powers to CML to amend the Constitution. The Federal Council (Majlis e Shura) was a body who could recommend to the president the enactment of law, or amendment of an existing law. It was a fake parliament.

Another step taken to degrade Judiciary was establishment of Wafaqi Muhtasib.

It was an attempt to fill the gap of representative institution in the country.<sup>24</sup> There was a continuous pressure by internal and external forces on Zia to restore democracy. Zia gave his Constitutional plan on 12<sup>th</sup> August 1983.<sup>25</sup> Zia announced elections but he was very worried about his position after the elections. Due to his fears he decided to hold a referendum order in 1984. He devised such a question that No was very difficult to say in any respect. He won the referendum by getting 97.77 votes and secured his future.<sup>26</sup> The Constitution of 1973 was comprehensively amended on 2<sup>nd</sup> March 1985 and known as Revival of the Constitution of 1973 (RCO). As many as sixty five articles were amended. It replaced PCO.<sup>27</sup>

On 23<sup>rd</sup> March 1985, Junejo was nominated by Zia. Junejo wanted that arrangement should be made in which democracy could be restored. Junejo moved a Constitutional bill 18<sup>th</sup> amendment and paved the way for lifting the ML. The amendment was a compromise on the part of civilian government to get ML lifted.<sup>28</sup>



ML was lifted on 30<sup>th</sup> December 1985. Benazir returned but did not challenge the government backed by military. Geneva accord, stand on Ojhri camp incident by Junejo were not acceptable by military leadership. So they decided to uproot the democratic experiment.<sup>29</sup> On 29<sup>th</sup> May 1988, using 58-2(B), he dissolved the assembly and dismissed Junejo government.<sup>30</sup> The order was challenged in LHC and SC but court declined the request for restoration of Government.<sup>31</sup> After Zia tried again to politicize Islam by an Order to enforce Shariah in Pakistan. Sharia was declared the supreme source of law in Pakistan. All the provisions of law were required to refer in Federal Shariah Court.<sup>32</sup> Zia was killed in an accident on 17<sup>th</sup> August 1988. Ghulam Ishaque Khan, chairman senate took over as acting president. He arranged for elections as scheduled by Zia.<sup>33</sup> Political parties were involved in the election. Benazir Bhutto after the alliance took the oath as PM on 1<sup>st</sup> December 1988.<sup>34</sup>

#### **4.2 End of ML and beginning of a democratic decade**

Benazir Bhutto won the election and voted for Ishaq Khan who was with them in restoration of democracy.<sup>35</sup> The distribution of power was like this that PPP formed governments comfortably in Sindh and NWFP, Nawaz Sharif in Punjab and a very weak government in Baluchistan because Jamiat Ulema Islam and Baluchistan National Alliance were not willing to sail smoothly.<sup>36</sup>

After one year Benazir lost confidence of main allies MQM (Muhajir Quami Movement) and Awami National Party (ANP). Nawaz Sharif submitted a no confidence resolution but the motion was defeated.<sup>37</sup> Soon after this it has been observed that PM and President developed a conflict due to appointment of military chiefs and judges of the superior courts. This conflict aggravated to such an extent that President using his powers of 58(2)

(b) issued an order to dissolve the assemblies.<sup>38</sup>The orders were challenged in LHC, SHC, and later on in SC. But all decided to uphold the orders of dissolution passed by the president. Aftab Sher Pao also challenged the dissolution of provincial assembly. The dissolution was declared ultra vires but soon suspended by SC.<sup>39</sup>

The general elections of October 1990 resulted in a strong Mr Nawaz Sharif. He formed a strong government at federal level and in Punjab also but not in other provinces.<sup>40</sup>

President had good relations with PM initially but later on differences developed due to many political and constitutional reasons. President dissolved the NA and dismissed on 18<sup>th</sup> April 1993.<sup>41</sup>The SC restored the dismissed government. After restoration Nawaz Sharif decided to destabilize Punjab government. Watto was chief minister he advised governor to dissolve the assembly. The LHC declared it illegal. Just after restoration it was dissolved again. The Federal Government used proclamation under article 234 of constitution. No petition was decided in the face of a compromise between president and PM. A caretaker assembly was held responsible to hold elections.<sup>42</sup>

Again results were in favour of Benazir with Farooq Leghari as a president. On 5<sup>th</sup> November 1996 president dissolved the assembly. It was challenged before SC but dismissed again.<sup>43</sup>As a result of elections Nawaz Sharif again formed the government with coalition. He was elected as PM. The CJ and government were in conflict with each other due to many issues like anti terrorist law, appointment of judges, arrest of some officers.<sup>44</sup>President Farooq Laghari resigned on 2<sup>nd</sup> December 1997 due to its hostilities with government and Waseem Sajjad took over as an acting president. After him Rafique Tarrar was chosen as a president.<sup>45</sup>. Nawaz Sharif wanted to gain maximum power but Kashmir issue and nuclear tests put the government in difficulty again. Military took

control and overthrew the government .The same actions of PCO ,amendments in the Constitution ,referendum were repeated.

It is observed that in this period democracy judiciary manipulated the situation used the law of state necessity abruptly. It did not differentiated between democratic and undemocratic rules at the time of taking decisions. It always worked on the lines which suit it. It supported the unconstitutional acts no matter from any government.

## REFERENCES

1-Dawn,8<sup>th</sup> July 1977

2-PLJ 1978,Criminal Case,Lahore,p.9

3-PLD 1978,Lahore,p.523

4-Khan ,Hamid,*Constitutional and Political History of Pakistan*,Karachi,Oxford University Press ,2001,p.598

5-Dawn,Karachi,26<sup>th</sup> July 1977

6-Arif,K.M,*Working with Zia*,Karachi,Oxford University Press,p.194

7-Dawn,20<sup>th</sup> October 1977

8-Dawn,24<sup>th</sup> February 1978

9-Dawn,21<sup>st</sup> September 1977

10-PLD 1977,Central Statutes,Vol XXIX,p.441,(22<sup>nd</sup> September 1977)

11-PLD 1977,SC p.657

12-The Pakistan Times,10<sup>th</sup> April 1989

13-President Zia's Address,16<sup>th</sup> October 1979,Pakistan,Ministry of Information.

14-PLD 1979,Central Statutes,Vol XXXI,p.567(addition article 212-A)

15-Dawn,Karachi,22<sup>nd</sup> May 1980

16-PLD 1980,Central Statutes,Vol XXXII,P.152

17-Muree,Bakhsh.Khuda,*A judge May Speak*, Lahore,Ferozsons, ,1992,pp.96,120

18-Muree,Bakhsh.Khuda,op-cit,pp.96,120

- 19-PLD 1979, *Quetta*, p.179
- 20-PLD 1983, Federal Shariat Court, p.255
- 21-PLD 1981, *Central Statutes*, Vol XXXIII, p.183 (CMLA Order No-1 of 1981)
- 23-PLD 1981, *Lahore*, p.462 (Tajamal Hussain vs Federation of Pakistan)
- 24-PLD 1983, *Central Statutes*, Vol XXXV, p.17 (Presidents order NO-1 of 1983)
- 25-*President's speech in Majlis-e-Shura*, *Nawa-I-Waqt*, Jang, 13<sup>th</sup> August 1983
- 26-*Daily Nawa-I-Waqt*, Jang, *Imroze*, 20<sup>th</sup> and 21<sup>st</sup> December 1985
- 27-PLD 1985, *Central Statutes*, Vol XXXVII, p.449
- 28-PLD 1986, *Central Statutes*, Vol XXXVIII, p.1 (Constitution Amendment Act XVIII of 1985)
- 29-Khan Hamid, op-cit, p.689
- 30-*The Muslim*, Islamabad, 30<sup>th</sup> May 1988
- 31-PLD 1988, *Lahore*, p.725
- 32-PLD 1988, *Central Statutes*, Vol XL, p.29 (Enforcement of Sharia ordinance 1988)
- 33-*The Muslim*, Islamabad, 20<sup>th</sup> November 1988
- 34-*The Muslim*, Islamabad, 2<sup>nd</sup> December 1988
- 35-Khan Hamid, op-cit, p.714
- 36-PLD 1989, *Quetta*, p.25 (Nawa-i-Waqt, Lahore, 24<sup>th</sup> January 1989)
- 37-*The Muslim*, Islamabad, 24<sup>th</sup> October 1989
- 38-*The Muslim*, Islamabad, 7<sup>th</sup> August 1990
- 39-PLD 1990, *Peshawar*, p.192
- 40-Mirza, S. A., *Privatization in Pakistan*, Ferozsons(pvt)Ltd, Lahore, 1995, pp.32.33
- 41-*The Muslim*, Islamabad, 18<sup>th</sup> April 1993
- 42-*Daily Dawn*, *The Muslim*, *Nawa-I-Waqt*, 19<sup>th</sup> July 1993
- 43-PLJ1998, SC, p.27
- 44-*Daily Dawn*, *The Muslim*, *Nawa-I-Waqt*, 29<sup>th</sup> November 1997
- 45-*Dawn*, 1<sup>st</sup> January 1998

## **CHAPTER 5: STATE OF JUDICIARY (1988-1998)**

Judiciary is a key pillar of a state. Without its proper functioning people of a country cannot live a civilized way of life. Rights of citizens cannot be safeguarded without independent judiciary. A free and fair judiciary can change the history of nations.

Pakistan inherited a very dignified judicial system but Judiciary itself and other institutions of state distorted its image. Constitution but certain situations arise which has special ramifications. These situations needs some extra Constitutional steps. Although abrogation ,modification or alteration of the Constitution is unlawful but it has to be done when interest of the country is involved .This tool of doctrine is also used to protect democracy,government,rule of law, and sometimes Constitution itself.We can conclude by saying that Rule of Law has to be biased and Constitution can be dilapidated in case when country's integrity is at stake.This doctrine is left to be used by the persons themselves and liberating them from any Constitutional bindings.In Pakistan this doctrine has been exercised but first time it was used in 1954.The Governor General dissolved the assembly on the pretext that they no longer represent the people of Pakistan.SC validated these un constitutional actions by using the doctrine of necessity.CJ not only validated the actions but also remarked that it is in the best interest of the people of Pakistan .

The decision under doctrine of necessity by the judiciary in Pakistan during 1988 to 1999 has put a great impact on the socio-politico environment of the country. In the chapter an attempt has been made to reveal the role of judiciary during democratic decade. How

the assemblies were dissolved and decisions of judiciary changed from case to case.

### **Benazir Bhuttos first Regime 1988-1990**

Benazir was elected as a PM in 1988. The first dispute between PM and President was on the appointments of judges in the high courts. Both were challenging that powers belong to them.<sup>1</sup> LHC gave the decision during Zia period that only president can appoint the judges. Federal Government challenged the judgment before the SC and requested for interpretation of the Constitution again.<sup>2</sup> Benazir Bhutto was worried about the PPP workers and wanted them to be the judges at any cost.<sup>3</sup> It was criticized by President Ghulam Ishaque Khan. Federal Government then withdrew the petition and left it on both PM and president to resolve the issue. This problem was unresolved and aggravated which led to sacking of Benazir Government by the president.<sup>4</sup>

### **Nawaz Sharif 1990-1993**

The initial period of Nawaz Sharif was very amiable with the President. Special Courts were set up after passing 12<sup>th</sup> amendment. Both PM and president were appointing the judges with mutual coordination which based upon the desires of both parties and not exactly on merit.<sup>5</sup> When judges were appointed not on the merit then the outcome was an incompetent judiciary with its own designs. They were under the influence of political leaders of that time. This effected the performance of other institutions of the state also.

### **Benazir Bhutto 2<sup>nd</sup> Term**

In the second term Benazir Bhutto was enjoying good relations with Farooq Ahmad Laghari who was also a party worker. Benazir appointed twenty judges of her choice in LHC.<sup>6</sup> The government did not confirm additional judges of Nawaz Sharif.<sup>7</sup> Like the past

her desire was still to have a control over judiciary. In Sindh High Court in spite of CJ Sajjad Ali Shah refusal nine PPP judges were appointed.<sup>8</sup>

All the appointments were not on merit. She did not end up here and appointed Sajjad Ali Shah as CJ by superseding three other senior judges.<sup>9</sup> Public was criticizing her and there was also a quite agitation from one corner of judiciary. The turning point became the “Judges Case” in which she was unable to appoint judges to superior courts. She was very upset on all this situation and blamed opposition. On an occasion she suggested Jahangir Badar as CJ of Pakistan.<sup>10</sup> All the party workers, opposition, media workers criticized her for making a mockery of judiciary.<sup>11</sup>

### **Care taker Government 1996**

On 5<sup>th</sup> November 1996 President Farooq Ahmad Laghari issued a Dissolution order that dismissed the government of Benazir Bhutto. Caretaker government of Malik Maraj Khalid did not let the option go of appointing judges and show the influence of executive over judiciary. They appointed seven judges in LHC. It should have been left on the discretion of elected government.<sup>12</sup>

### **Nawaz Sharif 2<sup>nd</sup> Term**

Although there was a decision of 20<sup>th</sup> March, 1996 which handcuffed the executive about the appointment of judges but Nawaz Sharif was still not accepting it with full heart.<sup>13</sup>

He developed a dispute with CJ of Pakistan regarding promotion of High Court judges.<sup>14</sup>

Nawaz Sharif also triggered ethnicity by appointing nine new judges of MQM and not confirming Sindhi Additional Judges. The idea about judiciary was a complete domination over it by picking only favorite judges.<sup>15</sup> The main area of stress was Federal

Shariat Court where they could appoint judges of their own choice near elections to get the support in next term.

Democracy and judiciary are so interdependent that without judiciary it is not possible that democracy can be institutionalized and developed. The countries can only be won by war but by fair and free judiciary develops them. In Pakistan like many other third world countries judiciary has always been subjugated by executive and army which resulted in poor democracy.

## References

- 1-Khan,Hamid,*The Judicial Organ*,Lahore,Freedom Forum of Human Rights and development,1999,p.67
- 2-Zafar,Muhammad Syed ,*Masrany Mashhoor Maeeday*,Lahore,Brite Book Publishers,2003.p.640
- 3-Bhauly,Arif,Mahmood,*Siasat Ka Roobroo*,Lahore,Nagarshat,1991,p.33
- 4-*PLD 1990,SC*,p 209,189
- 5-Shah,Ali Sajjad Syed,*Law courts in a glass house*,Karachi,Oxford University Press.p.237
- 6-*The Muslim*,Islamabad,7<sup>th</sup> August 1994.
- 7- Shah,Ali Sajjad Syed,op-cit,p.237
- 8-*Dawn*,11<sup>th</sup> April 1995,*Dawn*, Karachi,11<sup>th</sup> April 1995,Sajjad pp.237-239
- 9-Mian,Ajmal,A judge speaks out,Karachi,Oxford University Press,2004.p-
- 10-*Nawa-e-Waqt*,Lahore,11<sup>th</sup> January 1996
- 11-*Jang*,Lahore,22<sup>nd</sup> January 1996
- 12-Shah,Ali Sajjad,law,po-cit,p.642
- 13-*PLD 1996,SC*,p.324
- 14-Mian,Ajmal, op-cit,p-221
- 15- Shah,Ali Sajjad Syed,op-cit,p.642



## **CHAPTER 6: CONSTITUTIONAL INTERPRETATIONS IN DEMOCRATIC ERA AND DECISIONS UNDER THE DOCTRINE OF NECESSITY (1988-1999)**

The term *doctrine of necessity* is a term of law which is used for the safeguard of the steps that do not fall in the domain of Constitution but are sometimes taken for the political stability and interest of the country. Everything must remain in the domain of Constitution.

### **6:1 Benazir First Government (1988-1990)**

On becoming PM Benazir Bhutto had to face many problems. In order to attain maximum powers one of the biggest hurdle in her way was 8<sup>th</sup> amendment.<sup>1</sup> Benazir had differences with Punjab Government and President from the very beginning which proved disastrous at the end. There was also irritation related to the appointment of judges of High Court.<sup>2</sup>

The dispute on the direct launching of peoples works programmes in the province also became a cause of tension for provinces of Baluchistan and Punjab<sup>3</sup>. In Sindh law and order situation deteriorated due to her husband Asif Ali Zardari. These all evidences and horse trading of such an extent was depicting clearly that democracy has disappeared from the scene.

Eventually these all issues pressed Ghulam Ishaque Khan to use his powers under article 58(2)(b) of the constitution and dissolved NA on 6<sup>th</sup> August 1990.<sup>4</sup> Provincial Assemblies were also dissolved by governors using powers under article 112 of the Constitution.

Ghulam Ishaque Khan order consisted the reasons of dissolution in which he mentioned corruption, horse trading, high level conflicts with provincial governments, violation of Provincial autonomy under article 59, non protection of Sindh province under article

148(3),challenging of the Constitutional institutions like judiciary and senate,exercise of article 45 by Federal Cabinet without prior approval of the president.<sup>5</sup>

The order was challenged in the high court but decision was in favour of President.The court following not precedent but its practice,decided against Benazir government.Three years later in a same reference the same court held that the dismissal was not in accordance with the Constitution.<sup>6</sup> The courts followed political desires and did not examine the soundness of presidents arguments<sup>7</sup>.But this is also a fact that whenever there is a constitutional issue ,it needs a debate in the parliament before orders.

### **6:2 Nawaz Sharif Government ( 1990-1993)**

Two main parties of October 1990 elections were Islami Jamhuri Ittehad with main party PML(Pakistan ML) and Pakistan Democratic Alliance (PDA) including PPP as a main party.PML won the elections by 105 seats.PDA alleged government of rigging and president was also held responsible for doing speeches on TV,radio against them.<sup>8</sup> To some extent it was true but not completely.<sup>9</sup> IJI got the majority in three provinces but Sindh was dominated by PDA.Later on with the help of President Ishaque Khan and Jam Sadiq Ali things reversed in favour of IJI.<sup>10</sup> This was the beginning which later on destroyed the law and order situation.

Relationship of president and PM was cordial but in 1993 after the death of Asif Nawaz Juneja dispute broke out on appointment of chief of army staff.(COAS).History was repeating itself and 8<sup>th</sup> amendment again became an issue of conflict for PM and president<sup>11</sup> President appointment of General Abdul Wahid Kaker as new army chief without consultation of Nawaz Sharif shocked the IJI government.IJI wanted support of PDA to repeal 8<sup>th</sup> amendment which didn't materialize.<sup>12</sup> Finally Nawaz Sharif attacked

president on radio and TV by announcing that president is hatching conspiracies against him.<sup>13</sup> President Ishaque Khan called Sharif ud Din Peerzada a lawyer who always supported military and despotism. He was also known for distorting constitution for his masters. On 18<sup>th</sup> April 1993, Ishaque Khan used his power 58(2)(b) and dissolved the assembly.<sup>14</sup> But reaction of public this time did not favour president.

Mr Gohar Ayub speaker of NA challenged the action in LHC. Nawaz Sharif also challenged it directly before the SC.<sup>15</sup> On 26<sup>th</sup> May 1993 SC accepted the constitutional petition of Nawaz Sharif and ordered that dissolution did not fall within the domain of the president.<sup>16</sup> The court acted with great courage and readiness. It was the first time in the history of Pakistan when court decided against the desires of president.<sup>16</sup>

Justice Sajjad Ali Shah pointed out that different yard sticks are used to decide the fate of Benazir Bhutto and Nawaz Sharif. Article 58(2)(b) was used to differently for Sindh and Punjab.<sup>17</sup> The Pakistani people and press praised the decision and role of CJ. Supremacy of constitution and role of SC proved to be a mile stone in the history of Pakistan.<sup>18</sup>

### **6:3 Benazir Bhutto Government II Term(1993-1996)**

The general elections were held in October 1993 which were observed to be free and fair. PPP won 86 seats and PML(N) 72.<sup>19</sup> Benazir Bhutto was elected PM by securing support of small groups and independents and Farooq Ahmed Khan Laghari as a president.<sup>20</sup> PPP began their play to overthrow NWFP government headed by Aftab Sherpao. All efforts were used to get the required motive. On failure governors rule was imposed with the blessings of president. At last with huge sums of money, PPP was successful in weakening NWFP government. As a result governors rule was lifted and PPP formed the government.<sup>21</sup>

Another important incident was splitting up of Bhuttos family. Benazir and Asif on one side and Murtaza Bhutto with his mother on the other side. Murtaza Bhutto was killed on 20<sup>th</sup> September 1996, and it was alleged that Asif Ali Zardari is the perpetrator of all this plot.<sup>22</sup> She also suspected President to be part of all this. Law and order situation deteriorated in the province especially in Karachi but government did not take notice of it.<sup>23</sup> Benazir husband was openly involved in bribery, commissions and kickbacks which was distorting her image as an individual and as a party.<sup>24</sup>

Benazir's relation with America were also not very conducive due to continuance in the nuclear programme and support of Mujahideens in Kashmir.<sup>25</sup> Popular judgement commonly called Judges case was also not honoured by Benazir in fact ridiculed on the floor of NA and so the issue of appointment of judges again cropped up.<sup>26</sup> Economic policies of Benazir were also very nonproductive which effected textile and banking sector especially.<sup>27</sup>

Ultimately Benazir government was dismissed on 4<sup>th</sup> November 1996 which was hailed by the general public.<sup>28</sup> It was challenged before SC under article 184 by Syed Yousaf Raza Gillani, speaker of NA on 11<sup>th</sup> November 1996 followed by Benazir Bhutto after two days.<sup>29</sup> The main issues were ridiculing judiciary, deliberate delay in implementing SC judgement of 20<sup>th</sup> March 1996, and corruption.<sup>30</sup> There was not a full bench to hear such a significant petition which could set the future course of the country.<sup>31</sup> SC upheld the president's order just four days before the general elections which brought a very bad impression on the minds of the voters.<sup>32</sup> The political analysts and judicial thinkers were astonished that SC did not give the same relief to Benazir like Nawaz Sharif in 1993. The answer could be the grounds were not the same.<sup>33</sup> Benazir Bhutto blamed judiciary and

political forces for the dismissal of her government <sup>34</sup>but actually her confrontation with the president and judiciary brought her downfall.

#### **6:4 Nawaz Sharif Government II Term (1997-1999)**

The general elections were held on 3<sup>rd</sup> February 1997 in which Nawaz Sharif enjoyed sweeping victory.<sup>35</sup> They were successful in making governments in the center Punjab and NWFP, but Baluchistan and Sindh remained out of their hands. In fact no party had absolute majority.<sup>36</sup>

The first big achievement by Nawaz Sharif government was repealing of 8<sup>th</sup> amendment and passing of 13<sup>th</sup> amendment.<sup>37</sup> Now all powers were in one hand which again is a source of conflict with other institutions. President Fraooq Ahmed Khan Lagahari resigned on 2<sup>nd</sup> December 1997 and blamed Nawaz Sharif for constitutional crises.<sup>38</sup>

Nawaz Sharif selected Rafiq Ahmed Tarar who was no doubt an honest and religious man but also very close to the Nawaz family. Now all roads were clear for PM but soon issues started cropping up. Issue of freezing foreign accounts, non cooperative attitude with MQM and Baluchistan National Party, no significant revival of economy, lack of vibrant and effective economic policies, tension of Kala Bagh Dam, secretarian violence, humiliation of judiciary, deterioration of law and order and above all all powers in one hand like a private empire.

General Jahangir Karamat proposed on 5<sup>th</sup> October 1998 establishment of National Security Council for dealing important issues. He was considered a potential threat and was forced to resign.<sup>39</sup> Genearl Musharaf was nominated as COAS after this humiliating resignation. PM tried to stabilize the ties with India but soon there was a cessation due to Kahmiri Mujaheedin who took control of Kargil Drass Mountains just across the

LOC. It was a great achievement which India undermined through propaganda on international level and succeeded ultimately with the withdrawal of Pakistani forces. PM alleged army for all this catastrophe.<sup>40</sup> A seed of rift was sown which again cropped up the idea of sacking General Musharaff in the mind of Nawaz Sharif. He tried to materialize his idea and promote Lt General Zia but Army Corps did not allow him to fulfill his designs. He planned all this when General Musharaff was on the official visit of Sri Lanka.<sup>41</sup> It was right that constitution authorize PM to retire General Musharaf but it was going to be done without any solid grounds in a very indignified way. This all was not bearable for army.<sup>42</sup>

On 13th October 1999 General Pervaiz Musharaf announced that Nawaz Sharif government has been removed and army has taken control of all the affairs. He himself assumed the office of chief executive while president continued its function.<sup>43</sup> He also made some other announcements like courts cannot make any decision against chief executive or any other person under his authority.<sup>44</sup> President will take advise from chief executive. He also announced six member National Security Council for the decisions in all important policy matters.<sup>45</sup> Many petitions were filed challenging the military take over. On 25<sup>th</sup> January Oath of office (judges) order 2000 was pronounced.<sup>46</sup> All the judges were forced to take oath under it. This Provisional Constitutional Order will be amended from time to time. The judges will perform their duties in accordance with the emergency of 14<sup>th</sup> October 1999. It was also mentioned in the order that if a judge will not take an oath he will cease to hold the office.<sup>47</sup> Only 7 out of 13 judges took the oath. Irhad Hassan Khan was appointed as CJ. The petition of Syed Zafar Ali Shah was heard by a full bench on 12<sup>th</sup> May 2000 which validated the decision of army.<sup>48</sup> SC allowed military

to rule for 3 years and also conferred powers to chief executive for amending the constitution.<sup>49</sup> Court justified all the steps of military and concluded that all institutions of state were being systematically destroyed.<sup>50</sup>

Pakistani leaders could not provide an environment for the consciousness of democracy. From 1988 to 1999 almost five assemblies were dissolved almost on same allegations. Judiciary decided these cases under immense pressure or constitutional provisions. The leaders of this country put the highly dignified institution of judiciary under trial before people due to their inabilities and lack of political culture and leadership qualities.

We can now give a statement that doctrine of necessity is although necessary but it is very difficult to justify its implementation. It must not be exercised in a hurry or in some personal interest rather it should be used as the last resort. All the organs of the state who have the power to use it or influence it must exercise it for the larger benefit of the country. No personal interest should be involved. Unfortunately in Pakistan this law has been used as a weapon that can be loaded to penalize or intimidate the government with the help of judiciary. Judiciary has been used as a puppet judiciary in such cases. Pakistan proved to be a bad example which should be followed as a role model.

In short we can say that third world countries where democracy is not that developed and corruption with lack of good governance is a common practice, this doctrine is used mercilessly and frequently. It is a common understanding that every act comes under law and law is binding on everyone. But as there is a question of human psychology in it so every act cannot be incorporated. We have to choose one lesser evil between two keeping

all the considerations in mind.

### **6:5 Is it democracy?**

Since beginning Pakistan has been fluctuating between democracy and dictatorship.No situation remained durable and enduring.Some beginnings started for just an end and some beginnings started for never end.The future of democracy in Pakistan is hopeful but first a political culture must be developed and then citizens ,politicians and military leaders must learn to respect their own laws and constitution.In Pakistan whenever there is no solution of a problem,instead of doing everything possible to strengthen the institutional foundations of democracy ,individual culprits are persecuted out of office and democracy itself is questioned.<sup>51</sup>

The decade revealed a strange alternance between Nawaz Sharif and Benazir.Corruption and chaos was prevailing all over the period.Both leaders were a hope for new generation of leaders. They both promised to uphold the Rule of Law but unfortunately both have shown strong, autocratic tendencies as soon as they assumed power.Both failed to uphold supremacy of law.They did not create conditions for consensus building and always mishandled opposition being in power.<sup>52</sup>

Judiciary sandwiched between the crude relationship of parliament and president.They encouraged undemocratic norms which polarized the society and deepened crises of governance.In these years the legislative performance of the parliament has been very disapproving.Due to the absence of consensus extra constitutional ,extra parliamentary tactics continued to dominate Pakistani politics.This period can be marked as a transition



to PD and one of the longest period of civilian led regimes.

Although none of the government has been able to complete its five years term. It is observed that both leaders proved to be the spoilers of democracy just because of the persistent ambition to centralize all powers.<sup>53</sup> Whenever there is an extra constitutional military coup or military supported constitutional coup the logic given is that elected people cant solve the problems of countrys dire economic and social crises. The mechanisms of democracy are not at fault but sometimes over expectations reject the process of democracy.

These expectations pressurized the presidency to play its role which indirectly is a burden on judiciary to face the nation time and again. The SC decisions have shown that the judges tried to save their skin temporarily and spoiled the image of judiciary as a whole. It also hampered the process of democracy many times.<sup>54</sup>

It is observed from the foregoing analysis that results of parliamentary democracy from 1988 to 1999 are mixed. Pakistan witnessed a rule of self serving political leaders, who were unable to deliver substantially and judiciary had been unable to perform well due to extreme pressure. Powers of the president were exploited but doubtful in the lyrics of nation, which demeaned the president also.

The most dignified institutions of a country, presidency parliament and judiciary due to lack of confidence on each other, continued to reveal lack of commitment to the principles of democracy in this period. This practice not only derailed the democratic process again and again but also inflicted irreparable damage to the institutions of state.

## References

- 1-PLD 1977,*Suprem Court* ,p.657
- 2- PLD 1977,*Suprem Court* ,p.519
- 3-*The Muslim*,24 the May,1997
- 4- *The Muslim*,20 August,1997
- 5-*Dawn*,16<sup>th</sup> August 1997
- 6-*PLD 1998,SC* ,p 1462,1464
- 7-*Dawn*,2nd April 1997 (Speeches of MNAs in the NAon 1<sup>st</sup> April 1997)
- 8-*Dawn*,4<sup>th</sup> April 1997
- 9-*The Muslim*,2<sup>nd</sup> July 1997
- 10-PLD 1997,Central Statutes,Vol XLIX,p.324(Act XXIV of 1997)
- 11-PLD 1997,Central Statutes,Vol XLIX,p.324(Act XXIV of 1997)
- 12-Mehmood,Safdar,Dr. *Pakistan;Political Roots and Development*,Karachi,Oxford University Press 2000,p.3
- 13-Ziring Lawrence,*Pakistan in the Twentieth Century*,Karachi,Oxford University Press,1997,p.556
- 14-*PLD 1997,Central Statutes* ,Vol XLIX,P324-325
- 15-Arif,Mehmood Khalid,*Khaki Shadows*,Karachi,Oxford Univerisity Press, 2001,p317
- 16-*PLD 1998,SC*,p1292
- 17-*The Muslim,Nawa-e-Waqt*,30<sup>th</sup> October 1997
- 18-Shah,Ali Sajjad,*Law Courts in a glass house*,Karachi,Oxford University Press 2001,p453-454
- 19-*PLD 1998,Central Statutes*,Vol L,p.237 (Act ii of 1998)
- 20-*The Muslim*,20<sup>th</sup> November 1997
- 21-Bexter,Craig,Kennedy,H.Charles,(Edited)*Pakistan 2000*,Karachi,Oxford University Press,p.4
- 22-*The Muslim*,21<sup>st</sup> November 1997
- 23-*The Muslim*,26<sup>th</sup> November 1997

- 24-PLD 1998,SC,p.1999
- 25-*The Muslim*,24<sup>th</sup> November 1997
- 26-PLD 1998,SC ,p221
- 27-*The Muslim*,29<sup>th</sup> November 1997
- 28-Shah,Ali Sajjad,op-cit,p.508
- 29-*The Nation*,*The frontier Post*,*The News*,29<sup>th</sup> November 1997
- 30-*Dawn*,2<sup>nd</sup> December 1997
- 31-PLD 1998,SC ,p.204
- 32-PLD 1998,SC ,p.207,*Dawn*,3<sup>rd</sup> December 1997
- 33-Arif,Mehmood Khalid,op-cit,p.323
- 34-Mian,Ajmal,*A Judge Speaks Out*,Karachi,Oxford University Press 2004,p-227
- 35-PLJ 2000,SC,Vol XXVIII,p.1733
- 36-*The Muslim*,15<sup>th</sup> May 1999
- 37-PLJ 2000,SC ,Vol XXVIII,p.1729
- 38-PLJ 2000,SC ,Vol XXVIII,p.1739
- 39-PLD 1998,SC,1318
- 40-PLD 1998,SC,p 1443
- 41-*Dawn*,18<sup>th</sup> October 1998
- 42-*Dawn*,20<sup>th</sup> October 1998
- 43-PLD 1998,*Central Statutes*,*(Extraordinary Part 1,20<sup>th</sup> November 1998(Ordinance XII of 1998)*
- 44-*Constitutional Petition No ,37 of 1998(Liaqat Hussain Vs Federation of Pakistan)*
- 45-PLD 1999,SC,p.504
- 46-PLD 1999,SC,pp.628,805
- 47-PLD 1999,SC,pp 638,853
- 48-PLD 1999,SC,p .1217
- 49-Bexter,Craig,Kennedy,H.Charles,op-cit,p.18

- 24-PLD 1998,SC,p.1999
- 25-*The Muslim*,24<sup>th</sup> November 1997
- 26-PLD 1998,SC ,p221
- 27-*The Muslim*,29<sup>th</sup> November 1997
- 28-Shah,Ali Sajjad,op-cit,p.508
- 29-*The Nation*,*The frontier Post*,*The News*,29<sup>th</sup> November 1997
- 30-*Dawn*,2<sup>nd</sup> December 1997
- 31-PLD 1998,SC ,p.204
- 32-PLD 1998,SC ,p.207,*Dawn*,3<sup>rd</sup> December 1997
- 33-Arif,Mehmood Khalid,op-cit,p.323
- 34-Mian,Ajmal,*A Judge Speaks Out*,Karachi,Oxford University Press 2004,p-227
- 35-PLJ 2000,SC,Vol XXVIII,p.1733
- 36-*The Muslim*,15<sup>th</sup> May 1999
- 37-PLJ 2000,SC ,Vol XXVIII,p.1729
- 38-PLJ 2000,SC ,Vol XXVIII,p.1739
- 39-PLD 1998,SC,1318
- 40-PLD 1998,SC,p 1443
- 41-*Dawn*,18<sup>th</sup> October 1998
- 42-*Dawn*,20<sup>th</sup> October 1998
- 43-PLD 1998,*Central Statutes*,*(Extraordinary Part 1,20<sup>th</sup> November 1998(Ordinance XII of 1998)*
- 44-*Constitutional Petition No ,37 of 1998(Liaqat Hussain Vs Federation of Pakistan)*
- 45-PLD 1999,SC,p.504
- 46-PLD 1999,SC,pp.628,805
- 47-PLD 1999,SC,pp 638,853
- 48-PLD 1999,SC,p .1217
- 49-Bexter,Craig,Kennedy,H.Charles,op-cit,p.18

50-Mian,Ajmal,op-cit,p.322

51-Khan, Muqtedar *Future of democracy in Pakistan* Amid Emergency Rule, Instability, and *Regional Challenges* ,United States ,Publishing of Islamic studies university Delaware,November, 2007

52-<http://www.ghazali.net/book3> , *hegemony of the political elite*, Mera Pakistan Directory, Pakistani Resource Directory, Politics in Pakistan Directory

53- *What is Democracy?* Lecture at Hilla University for Humanistic Studies, January 21, 2004

54- Sherryx, *Problems of democracy in Pakistan: A Class Analysis*, Posted by under Pakistan, socialism  
December 23, 2009

## CHAPTER 7: CONCLUSION

In Pakistan it is almost impossible to ascertain the state of judiciary and democracy in isolation because many state and non state actors are directly or indirectly involved in it. The influence of Army, foreign hands and constitutional deviations either felicitous or not are quite disturbing in the history of Pakistan.

“Law of necessity” has been used as an effective tool in the hands of dictators and democrats. To understand how damage was done to democracy by judiciary and to judiciary by democrats, we need to understand the relationship of these two organs of the state. How much dependent and independent they are when their working relationship is examined.

After the abrogation of 1956 Constitution by Ayub Khan era of Bhutto begins. He was a real democratic leader in a sense that he enjoyed the support of masses genuinely. The Constitution of 1973 was a historical event and the credit goes to Z.A. Bhutto, a champion of democracy. But unfortunately even during his period Judiciary was not left alone to exercise. Politicians were unable to run the country on democratic lines. Bureaucracy with military and feudal politicians played a negative role in democratic culture of Pakistan. We have noticed that even in the democratic period judiciary was not allowed to function freely. The political crises invited military to intervene in July 1977. General Zia ul Haq paralysed the judiciary by doing lot of amendments to Constitution in his 11 years of dictatorship. He tried to befool the nation by sharing power with civilians Government of Muhammad Khan Junejo. It is an established fact that democracy cannot flourish in

the lap of dictatorship. So the government was uprooted again in a very short span of time. It was looking impossible to get rid of dictatorial rule but Allah had planned something else. A sudden plane crash in 1988 ended the autocratic period of Zia-ul-Haq leaving many issues unanswered. The period of much awaited democracy began with a ray of hope.

A decade of democracy (1988-1999) exerted immense pressure on the institutional structure of judiciary. There was a clear missing for the definition of the functions of the institution which could serve Pakistan well. One of the problems successive periods of democracy had faced is the lack of clarity as far as its functioning is concerned. This has created repeated episodes of turmoil. We saw these under Nawaz Sharif and in other times as well. A ruling defining roles could result in conflict being avoided in future and all institutions adhering to what has been assigned to them. And this can happen only if there is no attempt to undermine the courts and there is a willingness to accept its ruling. The failure to do so in this period has been unfortunate. Pakistan inherited a very competent and independent judicial system. There were constitutional safeguards to judiciary in interim Constitution but with the passage of time, attempts were made to weaken judiciary through different means. One cannot blame only external forces in maligning the image of judiciary. We could easily point out the black sheeps within judiciary also.

Pakistan is a surreal country. Only here we have long extended struggles for democracy and only here we are almost always ready to spoil democracy. The study period of 1988 to 1999 shows how judiciary was kept under stress to gain the political motives. Since the time of Ayub Khan the judiciary of Pakistan remained under trial. There is a need of

balance between different organs of state for the smooth running of a socio political system. But unfortunately in Pakistan there is a potential clash of the key organs legislature and judiciary. Sometimes there is a real logjam but occasionally situation is exaggerated and misplaced for personal motives. The balancing of the organs is carried out through the Constitution of a state which is considered as a guiding document. Judiciary tried to maintain the balance as custodian of the Constitution but not up to the standard. Amendments allowed in the Constitution proved unbearable losses to the form and fame of the Judiciary. Pakistan is facing a weak democracy where powers are usually concentrated in unelected people rather than in governing elected people. In such type of situations the amendments in Constitution cannot be proper.

Pakistan history teaches us some interesting though unpleasant lessons. There have been a variety of pressures exerted on Judiciary since 1958, some of which are following. But this point should always be kept in mind that whether its democratic or undemocratic president, the presidency is driven by nothing higher than the instinct for self preservation. There could be abrupt changes on the political and military fronts. But the presidency is familiar only to the music of saving its skin.

Appointment of judges on merit is the pivot of independent judiciary. But unfortunately process of picking candidates is not transparent and it sifts out unworthy candidates. Almost all the institutions of Pakistan have many undesired black scars on its face. Democracy is not damaged only by the undemocratic forces but also by the people who call themselves as champions of democracy. Constitution of Pakistan is spoiled by dictatorial and democratic rules both. Military rulers in an effort to protect the country



and democratic rulers to serve the nation undermined the Constitution of Pakistan. The framework of Constitution has been modified and abrogated number of times by ruling elites. No form of government lasted long.

Constitution of Pakistan is abrogated several times and has become a common feature in the history of Pakistan. President Iskandar Mirza in 1958 abrogated the Constitution first time. He appointed Ayub Khan as CMLA and pronounced ML in the country. It was a step taken in protection of his power. It paved the way for others and set a wrong precedent. The Constitution of 1973 accumulated the power in PM with the section that anyone who abrogated or tried to abrogate will be penalized for high treason. But General Zia- ul- Haq in 1977 found the solution for this by replacing the Constitution with PCO. This PCO gave two benefits to him, one is continuation of military rule in such a way that no one can challenge it and second is right to amend the Constitution. Military rulers had always been taking such measures. They took the help of bureaucracy in strengthening themselves and cornered politicians for their ulterior motives. They interfered in democratic governments and judiciary affairs. They even tried to appoint the politicians of their own choice. The role of judiciary is to safeguard Constitution but occasionally they accepted changes in the Constitution giving the plea that it was need of the time. They justified their actions on all accounts.

During 1988-1999 judiciary was not allowed to act independently in this democratic decade. Their decisions effected the political system and judiciarys image as a whole. Executive maintained pressure on judiciary for favourable decisions. The judgments were no way impartial and independent. Judiciary could not become an

independent and impartial and completely powerful institution. Judiciary was unable to implement the provisions of Constitution strictly so that no one could dare to break the provisions of constitution and democratic process. It could not succeed to uphold the rule of law. It decided cases according to the circumstances and fell back on the law of state necessity unnecessarily. It became the part of an undemocratic culture and failed to show the legal way for the better future of the nation. Democracy cannot survive without survive without active and effective Constitution which is guarded by an independent strong judiciary. An active and effective Constitution is the fundamental requirement to sustain democracy. Unfortunately all three components executive, parliament and judiciary have different priorities, constitution as their last priority.

The establishment of Federal Shariat Court, implementation of a parallel hierarchy was a surprising and bold step which can be considered as one of the unprecedented deformation. The judiciary performed inconsistently as far their performance is concerned which gave them respect and disrespect in different situations. In 1988 a case against the dissolution of NA was decided in favour of the petitioner. This was a fair and judicious judgment and it restored the lost glory of judiciary to a greater extent. In spite of many impartial decisions in favour of democratic forces there was a continuous war going on between president and PM. In 1990 president dissolved Benazir Government on the charges of corruption and inefficient. SC upheld the order of president as valid. The democratic circle could not accept the decision as it was not favouring them. Dissolution of NA in 1993 was challenged directly in SC. Dr Nasim Hassan courageously decided the case and proved that there can be a judgement against president's action. It was applauded

and considered as the as the victory of nation, Constitution and success of democracy. One of the very crucial 8<sup>th</sup> amendment which gives strength to parliament and democracy was also challenged. But it was decided purely on merit and held that political questions should be solved politically. In 1996 president again dissolved the NA which was challenged unconstitutional. SC upheld the presidents order as valid but delaying tactics of court indicated how judiciary is involved in politics and subversion of democracy in Pakistan. In spite of this decision the conflict continued to persist between president and PM in which judiciary also got involved later on. All these 3 pillars of state got themselves involved in politico intrigue. At last Nawaz Sharif government came face to face with the most powerful institution that is armed forces on 12<sup>th</sup> of October 1999 .

Democracy is a will, a commitment that the process of democracy never derails. Democratic institutions can flourish if democracy is preferred even in worst possible situations. The process of democracy must go on and on till it flushes all the ills. There is no denying the fact that a democratic, politically stable, and moderate Pakistan will serve its own interests. The democracy in Pakistan has not worked to its full potential not because something is inherently wrong with it or with the country as such but simply because the ruling elite resisted it in a bid to maintain the status quo.

There is a general consensus in Pakistan that democracy must be restored but without a due process of law and checks on the power of the executive, it would remain a sham democracy. It appears that the people of Pakistan are losing faith in the present political system.

## **7.1 RECOMMENDATIONS**

After this all research few recommendations are suggested here for the uplift of maligned judiciary and fragile democracy in Pakistan.

Appointment of judges is a key factor that can play an overall vital role in independent, fair judiciary which will then indirectly play a role in continuation of a healthy democracy. Supreme judicial council must take the responsibility of appointing judges, The council will have its own procedures to hunt the talent. The procedures can be like an exam for those aspiring to become judges or advertisements in papers inviting people interested in becoming judges to take a test. After scrutiny and strict examinations with interviews a list will be recommended by the council for judge's appointments.

Supreme Judicial Council is such a supreme body which must include a high level of competency. The appointments should be on merit from executive and Judiciary. No one organ must be the sole authority. The appointments of such a highest level cannot be left on the discretion of one authority and one person because it hampers the process of democracy. The accurate and absolutely right appointment is not confirm in all kinds of process but at least a positive effort should be done .Several characteristics should be kept in mind in appointments of judges like, good lawyers, unbiased persons, air and dauntless people,committed,dedicated,having fair knowledge of society in which they are working with quality experience. They must be supported in all respects like giving them good pays, and proper working environment. They must be provided such a conducive environment in which they can take fair and free decisions. Their judgments can be impartial in such conditions where they are not under pressure of any kind. This all is possible when effective democracy is prevailing with strong and unbiased leadership.

It has been observed that democracy for a longer or prescribed period in Pakistan resulted in chaos and corruption of highest level. This situation allowed army and Judiciary to intervene. It can be avoided by judicial activism. But this judicial activism must also be exercised in a certain limit in order to save it as an independent institution. This judicial activism can give benefit in two ways, one as a support of democracy and second a blockade against army to intervene in politics.

Judiciary must avoid interference in micro managements of government. It should handle the Constitutional matters of a country in a highly respectable manner. For this reason section 62 be ensured and endorsed in an effective manner. Over burdened judiciary cannot always under perform in a strained environment.

Therefore, in the efforts to uphold the independent powers of judiciary, besides managing a democratic government, as based on law, it is also very important to manage social life and promote a culture of law obedience, and the respect for judges and judicial powers.

Education and awareness are the two factors that can bring improvements in the masses. With the help of these two powers the people can participate in the electoral process effectively and positively.

All the amendments including 18<sup>th</sup> Amendment in the Constitution which act as hurdles in functioning of independent judiciary must be revoked. With this powers will also be distributed among provinces keeping the democracy in a right track.

The political parties also need some changes in themselves. The parties must run democratically. The free and a fair election within the party for the nominations of office bearers is a healthy sign for democracy. But if this process is hampered the party workers will be disappointed and their affiliations with the party are effected badly. This micro

democracy within the parties leads to the overall democracy of the country. It becomes the part of our leaders' personality to act democratically even afterwards.

In a democratic government greater democratic oversight openness and access to information is required by all sectors of government.

There should be proper accountability of the politicians by fair and free institution in case of corruption charges during the government.

The formal power of judiciary which is independence of judiciary and power of judicial review comes from the Constitution itself which can remain intact as long as there is a civilian constitutional rule. In order to ensure constitutional stability the Pakistani superior judiciary has to find ways of dealing with constitutional evils and violations in a way that it does not destabilize the civilian rule. Defacto judicial power in Pakistan is derived from public legitimacy and power of public mobilization in favour of the courts. This power of will only be preserved and enhanced if it makes a constant effort to enforce the constitution against politicians, military, powerful private groups and even the judiciary itself. Therefore superior judiciary is caught between the contradictory demands of its formal and defacto sources of power. Balancing of this irreconcilable contradiction is the judicial challenge of our times.

The conflicts' arising between executive and judiciary becomes also a cause of democracy derailment. It is the job of judiciary to contain the other organs of state so that stop interfering in constitutional matters.

Stretching the law of necessity to its outer limits and spuriously equating revolutionary legality with legitimacy CJ (CJ) Munir and three fellow judges of the then apex Federal Court created a demon doctrine. This demon has danced in the SC every time judicial sanction is needed to legitimize dictatorship and accepting the sweet will of politicians or president. Law of necessity must be wiped out. Decisions must be only on constitutional and legal notes irrespective of personal choice. The doctrine can at any time be used to throw out an elected government and keep the constitution in abeyance.

Transfers and adhoc appointments must be restricted permanently.

Federal Shariat Court role must be re-evaluated and re-examined in order to minimize its pressure on judiciary. Its construction and selection system should be rationalized.

A process of regular meetings of judges must take place in order to examine the judicial process critically. Problems to judges in facing the delivery of justice must be shared.

Judiciary must discourage undemocratic steps because judiciary is required to facilitate democracy. Judiciary and democracy should act as vanguard of each other because both are directly related to each other.

Amendments in Constitution for making the system powerful not only a single man.

Complete critical examination and renovation of judicial system must be carried out to remove its discrepancies.

There seems to be a large gap between national and local leaders which effects the high leadership to touch the masses problems .This gap can be reduced when local leaderships are allowed to participate in the process of elections democratically. They are popular among the people where they live, so can serve better.

Strengthening the principle of parliamentary responsibility in government, to foster cohesive assembly-based parties. To reduce barriers against new parties, I have argued that members of the NA should be free to change parties, and I have suggested that runoffs or approval voting could allow voters to consider third-party candidates more seriously in assembly elections. In Pakistan's federal system, local and provincial democracy also help to reduce political entry barriers, by creating opportunities for responsible leadership which can qualify politicians to become candidates for power at higher levels. But there may be advantages to subdividing provinces that contain too large a portion of the national population.

The analysis here has been based on a perception that successful democracy requires a flexible system of strong competitive parties and a plentiful supply of candidates who have good reputations for responsible public service

My essential point is that parliamentary government, federalism, local democracy, and open-list electoral systems should be seriously considered as constitutional structures for lowering entry barriers into politics and for developing the nation's supply of responsible democratic leadership.



## BIBLIOGRAPHY

Ahmad,Manzoor and KhalidaGahaus, *Pakistan , Prospects, and Perspectives*, Karachi,Royal Book Company,1999

Afzal,M.,Rafique,*Pakistan History and Politics 1947-1971*, Karachi ,Oxford University Press, ,2001.

Ahmed,Jamil,ud Din, *Speeches and Writings of M.r Jinnah vol.II*, Lahore,1966.

Ahmad,Masood Justice , ,(Retd) ,*Pakistan , A Study of its Constitutional History*, Lahore, Research Society of Pakistan,1978

Ahmad,Mushtaq, *Government And Politics in Pakistan* ,Pakistan Publishing House,Lahore,Lahore,1963

Arif,K.M,*Working with Zia*,Karachi,Oxford University Press.1995

Arif,K.M., *Khaki Shadows*,Karachi,OxfordUniverisity Press, 2001.

Ayesha Jalal, *Democracy and authoritarianism in South Asia*,Lahore ,Sang-e-Meel publications, 1995.

Azfar, Kamal,*Pakistan:Politics and Constitutional dilemmas*, Karachi ,Pakistan Law House, 1987

Baxter,Craig, and Wasti,SyedRazi,*Pakistan Authoritarianism in 1980s*.Vanguard Books,Lahore,1991

Bhally,MuhammadAsif ,*SiasatKa Roobroo*,Lahore,Nargashat,1991.

Bhutto, Zulfikar Ali, *If I am assissinated*, New Delhi ,Vikas Publishing House Ltd, ,1979

- Burki, Shahid Javaid, *Pakistan under Bhutto, 1971-1977*, MacMillan Press, 1980
- Chaudhry, G.W., *Constitutional Development in Pakistan*, London, Longman, , 1969
- Feldman, H., *The Constitution of 1956*, Karachi, Oxford University Press, 1956
- Gauhar, Altaf, Ayub Khan, *First Military Ruler*, Lahore, Sang-e-Meel Publications, , 1993.
- Hussain, Shabir, Syed, *Ayub, Bhutto And Zia*, Lahore, Sang –e-Meel Publications, 2001.
- Islam, M, Nazrul, Dr, *Pakistan and Malaysia: A comparative Study in National Integration*, New Delhi :Sterling Publishers Ltd, 1989.
- Jalal, Ayesha, *The State of Martial Rule*, Cambridge, Cambridge university press, 1990.
- Khan, Hamid, *Constitutional and political History of Pakistan*, Karachi, Oxford University Press, 2001.
- Khan, Hamid, *The Judicial Organ*, Lahore, Freedom Forum of Human Rights and development, 1999.
- Khan, Muhammad Ayub, *Friends Not Masters*, Karachi, Oxford University Press, , 1969
- Khan, Muqtedar *Future of democracy in Pakistan Amid Emergency Rule, Instability, and Regional*
- Maluks, Zulfiqar, Khalid, *The Myth of Constitutionalism in Pakistan*, Lahore, Oxford University press, 1995
- Mehmood, Safdar, Dr. *Pakistan; Political Roots and Development 1947-99*, Lahore, Oxford University Press 2000
- Mehmood, Safdar, Dr., *A Political Study of Pakistan*, Lahore :Sang-e-Meel-Publications, , 1987.
- Mehmood, Safdar Dr., *The Constitution Of 1973*, Lahore, Sang-e-Meel, 1974
- Mian, Ajmal, *A judge speaks out*, Karachi, Oxford University Press, 2004

Mirza, S.A., *Privatization in Pakistan*, Ferozsons (pvt) Ltd, Lahore, 1995.

Muneer, Mohammad, Justice. (Retired), *From Jinnah to Zia*, Lahore, Vanguard Books Ltd, 1979

Muree, Khuda Bakhsh Justice., *A Judge May Speak*, Karachi, Ferozsons, 1992.

Nazir, Hussain Chaudry, *CJ Muhammad Munir*, Lahore, Research Society of Pakistan, University of Punjab, 1993.

Qudrut, Ullah. Shahab, *Shahab Nama*, Lahore, Sang-e-meel Publications, 1995

Raza, Maroof, (Edited), *Generals And Governments in India And Pakistan*, New Delhi, Har-Annand Publications Pvt Ltd, 2001.

Rizvi, Hasan, Askari, *The Military and Politics of Pakistan 1947-86*, Lahore, Progressive Papers, 1996.

Sayyed, K.B., *Politics in Pakistan the Nature and Direction of Change*, Praeger Publishers, New York, 1980

Sayyed, K.B., *The Political System of Pakistan*, National Book Service, Lahore, 1990

Shah, Sajjad Ali, *Law Courts In A Glass House*, Karachi, Oxford University Press 2001.

Shah, Nasim Hassan, (Retd) Justice, *Constitution, Law and Pakistan Legal System*, Lahore, Research Society of Pakistan, University of the Punjab, 1999

*West's Encyclopedia of American Law*, Edition 2. The Gale Group, Copyright 2008

Zafar, S.M., *Mairay Mashhoor Maqadamy*, Lahore, Brite Book Publishers, 2003.

Zairing, Lawrence, *Pakistan in the Twentieth Century, A Political History*, Karachi, Oxford University Press, 1997

## **NEWSPAPERS**

### **(English Daily)**

- |                              |                      |
|------------------------------|----------------------|
| 1. Dawn                      | Karachi/Lahore       |
| 2. The Muslim                | Islamabad            |
| 3. The News                  | Lahore               |
| 4. The Nation                | Lahore               |
| 5. The Frontier Post         | Peshawar             |
| 6. The Pakistan Times        | Lahore               |
| 7. The Morning News          | Karachi              |
| 8. Khayan International      | (Tehran) Iran        |
| 9. The Guardian              | London               |
| 10. The Pakistan Observer    | Dacca                |
| 11. The New York Time        | New York             |
| 12. The Khaleej Times        | United Arab Emirates |
| 13. Harold Tribunes          | Paris                |
| 14. The Bangla Desh Observer | Dhaka                |
| 15. The Financial Times      | London               |

### **(Urdu Daily)**

- |                 |                |
|-----------------|----------------|
| 1. Nawa-I-Waqat | Lahore         |
| 2. Jang         | Karachi/Lahore |
| 3. Imrose       | Lahore         |
| 4. Masraq       | Lahore         |
| 5. Khabraan     | Lahore         |
| 6. Express      | Lahore         |

### **Journals**

- |                          |         |
|--------------------------|---------|
| 1. Herald                | Karachi |
| 2. News line             | Karachi |
| 3. Pakistan Horizon      | Karachi |
| 4. Third world quarterly | Karachi |
| 5. Sindh quarterly       | Karachi |
| 6. View point            | Karachi |

# **PAKISTAN LEGAL DECISIONS**

## **(SC & HIGH COURTS JUDGMENTS)**

### **PLDs**

Maulvi Tamaziudin Khan Vs Federation of Pakistan	Sindh Chief Court	1955
Federation of Pakistan Vs Maulvi Tamaziudin Khan	Federal Court	1955
The State Vs Dosso	SC	1958
Usif Patel VS Federation of Pkistan	SC	1972
Asma Jilani Vs The Government of Pakistan	SC	1972
Nusrat Bhutto Vs Chief of Army staff	SC	1977
Benazir Bhutto Vs Federation of Pakistan	SC	1988
Federation of Pakistan Vs Haji Saif Ullah Khan	SC	1989
Ahmed Tariq Rahim Vs Federation of Pakistan	LHC	1990
Ahmed Tariq Rahim Vs Federation of Pakistan	SC	1992
Muhammad Nawaz Sharif Vs Federation of Pakistan	SC	1993
Hazoor Baksh Vs Federation of Pakistan	Federa Shariat Court	1981- 1983
Al-Jehad Trust Vs Federation of Pakistan	SC	1996
Mehmod Khan Achakzai Vs Federation of Pakistan	SC	1997
Benazir Bhutto Vs Farooq Ahmed Leghari	SC	1998
Asad Ali Vs Federation of Pakistan	SC	1998
Wukala Mahaz Barai Tsahafaz Dastoor Vs Federation of Pakistan	SC	1998
Syed Masroor Ahsan Vs Ardeshir Cowasjee	SC	1998
Mehram Ali Vs Federation of Pakistan	SC	1998
Sh. Liaqat Hussain Vs Federation of Pakistan	SC	1999
Federation of Pakistan Vs Federation of Pakistan	SC	1981
Federation of Pakistan Vs Federation of Pakistan	SC	1983
Sh. Liaqat Hussain Vs Federation of Pakistan	SC	1999
Zafar Ali Shah Vs Pervaz Musharraf, Chief Executive of Pakitan	SC	2000

**CENTRAL STATUTES  
GOVERNMENT OF PAKISTAN**

<b>PLD's</b>	<b>VOLUME NO</b>
PLD 1959	XI
PLD 1962	XIV
PLD 1974	XXVI
PLD 1975	XXVII
PLD 1976	XXVIII
PLD 1977	XXIX
PLD 1978	XXX
PLD 1979	XXXI
PLD 1980	XXXII
PLD 1981	XXXVIII
PLD 1983	XXXV
PLD 1985	XXXVII
PLB 1986	XXXVIII
PLD 1988	XXXX
PLD 1989	XLII
PLD 1990	XLIII
PLD 1991	XLIV
PLD 1993	XLV
PLD 1994	XLVI
PLD 1995	XLVII
PLD 1996	XLVIII
PLD 1997	XLIX
PLD 1998	L
PLD 1999	LI
PLD 2000	LII
PLD 2001	LIII
PLD 2002	LIV

## WEBSITES

[http://workmall.com/wfb2001/pakistan/pakistan\\_history\\_zulfiqar\\_ali\\_bhutto\\_and\\_a\\_new\\_constitutional\\_system.html](http://workmall.com/wfb2001/pakistan/pakistan_history_zulfiqar_ali_bhutto_and_a_new_constitutional_system.html)

<http://countrystudies.us/pakistan/20.htm>. Retrieved 2006-11-07.

<http://www.ghazali.net/book3> , *hegemony of the political elite*, Mera Pakistan Directory, Pakistani Resource Directory, Politics in Pakistan Directory

## MISCELLANEOUS

*Amendment of interim constitution and repeal of PRODA act 1954*

DelawareChallenges ,United States ,Publishing of Islamic studies university ,November, 2007

Government of Pakistan, *Basic Principles Committee report 1955*, Karachi, (Bogra Formula) Manager of publication.

Government of Pakistan, Rashid, Rao, 29-5-76 Wrote to PM, Company, 1999.

*What is Democracy?* Lecture at Hilla University for Humanistic Studies, January 21, 2004

*The Constitutional Assembly Debate, vol I, 1956* , Manager of publications ,Government of Pakistan Press.

*President Zia's Address*, 16<sup>th</sup> October 1979, Pakistan, Ministry of Information

Sherryx, *Problems of democracy in Pakistan: A Class Analysis*, Posted by under Pakistan, socialism December 23, 2009.

