

The Lawyers Struggle in Pakistan (2007-2009):

A Social Movement Theory Approach



M.PHIL DISSERTATION

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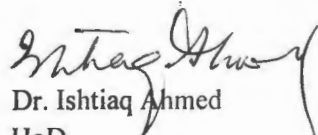
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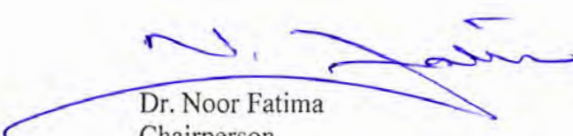


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Acknowledgement

I am extremely grateful to my supervisor, Dr Husnul Amin whose persistent guidance and intellectual rigor was a major inspiration for my research. I am very grateful to my family for their unconditional love, support and prayers especially to my mother for her cooperation and patience throughout my research.

I am greatly thankful to all my teachers for their cooperation and guidance throughout my study career. Thanks to all my friends and colleagues who provided every possible support in my research and studies plus thanks for their wishes and contribution in my career.

Dedication

I dedicate it to my parents

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List of Acronyms

CJ	Chief Justice
SJC	Supreme Judicial Council
PCO	Provisional Constitutional Order
PMLN	Pakistan Muslim League Nawaz
PPP	Pakistan People's Party
HCBA	High Court Bar Association
NRO	National Reconciliation Ordinance
PBC	Pakistan Bar Council
PEMRA	Pakistan Electronic Media Regulatory Authority
PLPBCA	Pakistan Legal Practitioner and Bar Council Act
SCBA	Supreme Court Bar Association
AIR	All India Reports
FSC	The Federal Shariat Court.
PLD	All Pakistan Legal Decisions.
PLJ	Pakistan Law Journal.
SC	The Supreme Court of Pakistan.
SCMR	The Supreme Court Monthly Reports.
PHCBA	Peshawar High Court Bar Association

CHAPTER ONE

INTRODUCTION

1.1 Background (Lawyers' movement)

The lawyers' struggle was started on 9 March 2007, the day the Chief Justice (CJ) of Supreme Court, Iftikhar Muhammad Chaudhry was deposed by General/President Pervez Musharraf. A legal reference was filed against him with Supreme Judicial Council(SJC). Legal proceeding started and on 13 March 2007, on first hearing, the CJ was manhandled by police. Positive role of media along with civil society sparked an unprecedented mobilization of lawyers to restore Chief Justice. The CJ was restored by a full court bench comprising of 13 judges on 20 July 2007. On 3 Nov. 2007 an emergency was imposed and constitution was suspended. CJ and 64 judges of superior judiciary were deposed who refused to take oath under Provisional Constitutional Order (PCO) and most of them were kept under house arrest. The reconstituted Supreme Court validated the presidential election and declared General Musharraf president for another five years.

On 27 Dec. 2007, Benezir Bhutto, Ex Prime Minister (PM) and Chairperson of Pakistan People Party, was assassinated in an election rally. General elections held in Feb. 2008 in which two political parties, PPP and Pakistan Muslim League Nawaz (PMLN) received together a majority vote and formed coalition government at federal level. Musharraf first resigned from the army chief post and later from the President post. The newly elected president, Asif Zardari, also showed reluctance to restore judges and offered fresh oath to the deposed judges. Though most of the deposed judges took fresh

oath, CJ and five other judges resisted. The remaining deposed judges were restored on March 16, 2009 amid a grand protest rally. The lawyers claimed that the struggle was not for a personality but for the institution of judiciary. The long term objectives in front of lawyers were the establishment of the rule of law, the supremacy of constitution, independence of judiciary and civilian supremacy over military which always undermined the democracy in the country.

1.2 Literature Review

Almost no literature has been produced in Pakistan with the perspective of lawyers movement as a social movement but lawyers movement has been extensively discussed with the central focus of judicial independence and rule of law in the country. Specifically, whereas much of the literature observes that judicial power often emerges from a top-down process dictated by the rational self-interest of political elites.

Abdullah Freed Khan, "The Pakistani Lawyers' Movement And The Popular Currency Of Judicial Power"¹. Overall this work covers some of the literature on the roots of judicial power generally along with the course of the lawyer's movement and its impact upon Pakistani political culture and the use of new technology of communication during lawyers movement by media.

The writer has mentioned the impression of general public about the decision of General Pervez Musharraf was very disappointing like, one of the farmers expresses his determination to support the lawyers because according to him if the Chief Justice of Pakistan is not safe then none of us is secure, on the other side it reflects a degradation of "the law" itself. Such view of a farmer proves the figurative value of the lawyers'

¹ Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010.

struggle and in its implicit understanding of the fundamental purpose of an independent judiciary. This was the general concern of the whole public and this element of justice was the motivational factor for mobilization during lawyer's movement².

Whereas the literature on the lawyers movement is concerned, the writer has pointed out the suo moto actions that the Court hears in order to check the abuse of power or misuse of authority including large-scale investigations in politically controversial cases, which angered the ruling regime and became the major reasons for extra constitutional steps of General Musharraf. He further explains the political history of Pakistan due to which Pakistanis suffered a lot especially because of the current situation of the country during the military regime of General Musharraf. Already frustrated public was waiting for such moment as said by one of the judges of superior judiciary:

"People became mesmerized, as if they'd always been longing for some such gesture for our entire sixty years. The moment it came, people jumped out of their seats"³.

The writer has mentioned the feelings of when new civilian government showed reluctance to reinstate the judges. The writer has highlighted the underlying reason of reluctance by president Zardari, because of the fear that Chaudhry might declare the National Reconciliation Ordinance (NRO) as unconstitutional, which was issued by Musharraf in 2007 under which Zardari and others exempted from corruption charges⁴. This delay made "the long march" possible and people started the slogan of "go Zardari

² Interview with Pakistani farmer, Lahore, Pakistan, July 4, 2008, cited in, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1705.

³ *ibid*, p: 1713.

⁴ *Op. cite.*, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", p: 1716.

go". The writer has mentioned the importance of media not only in educating the people regarding this issue but also in augmenting courts' ability to hold government accountable and the movement has encouraged the emergence of a new issue-based democratic politics in Pakistan.

James Traub, "The Lawyers' Crusade". This article reflects the major role of the barrister Aitzaz Ahsan who organized the crowds and the bar associations. He has also discussed the political scenario during the civilian and military government with reference to actions which were taken during their regimes that affected the democratic process, the lawyers movement has been mentioned in the same manner as witnessed in a report by the International Crisis Group, explains Pakistan's constitutional history as "a series of elaborate jurisprudential efforts to vindicate and facilitate military interventions into democratic politics"⁵.

The efforts of lawyers have been considered as the voice of civilian liberties against military regime, as they consider themselves the guardians of Pakistan's liberal traditions. History reveals that most of the lawyers remained engaged in the resistance against dictatorial rule since 1960s. Some had been jailed by Ayub, by Zia and rest of were by Musharraf; no friend of civil liberties. That's the reason the success of lawyers movement is considered the first victory over military authority in 60 years.

He has also mentioned the role of American government as a foreign intervention cannot be ignored in undermining the democratic process by supporting the authoritarian rule of General Pervez Musharraf and even had its share in the past as well, as explained

⁵ James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

by American officials: "It's a sequencing issue, one senior official explains: Musharraf was to be carefully coaxed to make concessions he could live with, like inviting Benazir Bhutto back from exile and ultimately holding democratic elections. Musharraf could not live with Chaudhry, whose very name induced a fit of spleen". "We didn't want to see Musharraf humiliated"⁶.

Farooq Tariq, "Pakistan's struggle for democracy"⁷. The writer has focused on the objective of the lawyers movement and the political scenario through out the movement. The independent working of judiciary without being influenced by either civilian or military regime, was the major task that covers all its objectives. He also highlighted the response of CJ as Chaudhry's "No" was a landmark in the history of the judiciary. Every previous military coup had been legitimized by the country's top judges. The writer has covered all the phases of the movement and stated that the most important aspect of the movement was its clear cut demand in which the Musharraf's dictatorship is clearly seen as a brutal regime trying to curb the rising consciousness of independent judicial system.

Azmat Abbas and Saima Jasamxe, "A Ray of Hope; The Case of Lawyers' Movement in Pakistan". The writers have provided the judiciary history along with the political scenario where judiciary was treated as subservient to executive for almost 60 years by both civilian and military rulers however, changed when this norm was challenged by Chief Justice Chaudhry, who declined to step aside on the orders of a serving military chief. Unfortunately, on most of the occasions, the inaction of the

⁶ James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

⁷ Farooq Tariq, "Pakistan's struggle for democracy: The lawyers' movement one year on", *Links International Journal of Socialist Renewal*, available at <http://links.org.au/node/305>, accessed, 5-7-13.

members of the superior judiciary, for vested interests, not only brought a bad name to the judiciary but also impeded reforms in the subordinate judiciary.

They have also explained that the country like Pakistan that has been a victim of extremism and violence in the name of religion, and has become the destination of international terrorist organizations, people carried out the task of correcting the wrongs of a military dictator, General Pervez Musharraf, without taking option of violent means for the Lawyers' Movement⁸.

Lawyers movement received different titles that shows the hope of public and success of the movement; "Pakistan's Black Revolution", has been termed by many as "a new beginning for Pakistan since its independence in 1947", Some term this movement as a "road to stability"; the "right direction"; some call it an example of "the power of the people"; while some recall it as the "dawn of a new and independent judiciary", while many others believe in to be the "rebirth of Pakistan" - everyone have one's own meaning of the victory of the Pakistan Lawyer's Movement⁹.

This work also revealed the importance of history that tells us that in Pakistan, not only the military rulers manipulated the judiciary for its interests, but various civilian governments also acted no different. It reflected the actions of PPP government for delaying the decision of the restoration of CJ and other judges that led to the long march of lawyers along with other opposition political parties.

⁸ Azmat Abbas and Saima Jasam, "A Ray of Hope: The Case of Lawyers' Movement in Pakistan" in *Pakistan: Reality, Denial and the Complexity of its state* (forthcoming book of Heinrich-Boll-Stiftung, in the publication series on promoting Democracy under Conditions of State Fragility), Lahore(Pakistan): Heinrich-Boll-Stiftung, 2009, P: 3

⁹ *ibid.*

Dr Noor Ul Haq, writes in "Judicial Crisis In Pakistan", This work concentrated most of its task towards judicial crisis, which started from the basic reasons of the allegation of misconduct by the then General Pervez Musharraf against the CJ of Pakistan. They have also covered the discussion about the "open letter" by the lawyer Naeem Bukhari. They have mentioned that how this situation appeared in favor of the lawyer's community and they became united. This became a challenge for the then military government as the more the General Pervez wanted to get power, the more he would get challenge after this reference. The general strike of lawyers all over the country has also been covered in this work. It also shows, how the political parties got divided on this issue especially the PPP and PML(N). The dragging of the CJ through the streets became the symbol of unity for general public. Chief Justice made public speeches and made them realize the importance of independence of judiciary. This work has also covered the comments of ICJ (International commission of Jurists), who were of the view that if this issue will not be resolved immediately, it will create problem for constitutional order in Pakistan.

Public pressure has also been covered with the help of the president of Supreme Court Bar Association during his statement in the Supreme Court; i.e., people would not tolerate any decision which is against the CJ.¹⁰

The ultimate task of bringing truly democratic government in Pakistan has not been fulfilled yet in Pakistan, it is always either civilian government or military but not democratic and contrary to its basic concept, democracy in Pakistan unfortunately always empowered the already empowered¹¹.

¹⁰ "Supreme court bar association president threatens supreme court building", cited in *Judicial crisis in Pakistan*, ed. Dr noor ul haq, August 31, 2007, p: 78.

¹¹ *ibid*, "A movement for reform", P: 89-90.

Susanne Mahrwald, Rule of Law: "The Case of Pakistan"¹². Generally this conference paper covers different issues of Pakistan along with the application of rule of law in the country, that includes the status and role of political parties and power structure for promoting democracy. The dominance of the elites or feudal families over the politics and governance institutions, hampering the Rule of Law and democracy for the sake of their own interests, diverse and complex problems particularly in FATA, parallel legal system and the gender issues etc. The role of foreign powers especially of America, influencing the democratic process for her vested interests in the form of rigging in elections and ensuring the puppet government or by supporting the military coup along with NRO, which was the painful chapter of Pakistan's political history, was the part of discussion by Imran Khan.

The most important part of this paper is the analysis of the lawyers movement from different angles under the cover of rule of law in which first of all the writer has pointed out the reasons of the weak democratic structure and rule of law in Pakistan in which she highlighted the wrong steps taken by higher judiciary in the past for giving support to military regime which showed that they didn't make sufficient use of their power. That's the reason, the writer considers the resistance of CJ against the ruling regime as a land mark in the judicial history which spurred the lawyers movement, a movement fighting for the establishment of Rule of Law.

According to Athar Minallah, one of the speakers from Pakistan continued reflecting about lawyers movement that, this movement also showed the general understanding of the importance to install an independent judiciary. In the course of this

¹² Susanne Mahrwald, "Rule of Law: The Case of Pakistan", Lahore: Heinrich-Böll-Stiftung, August 26, 2009.

movement, a new Pakistan has emerged including a vibrant civil society, a free media and active political parties. The trademark of the Lawyers Movement was the “long march” not only of lawyers and judges but also of people from different backgrounds where the major result of the movement is the “National Judicial Policy”, March 2009.¹³

He further explains the general impact of the movement which has brought optimism and a general change through it in the mind set of the people and the political leadership of the parties as well. He is convinced that democracy was a by-product of this movement, and it is still the aim of the people to protect and to strengthen the democratic institutions by establishing the rule of law.¹⁴

1.3 Objectives of Research

The current research is an attempt to explore how a single professional group may or may not lay a foundation for a social movement through mobilization and social networking within an organization and between that organization and wider society. The reflection of mix of challenge and opportunity on participation in and sustaining of a social movement is a subject matter of this research.

Further, it is to inquire that, how effectively did lawyers use framing approach for achieving their goals and finally what were the obstacles in the way of the movement that it couldn't sustain itself for wider political and social change.

¹³ Susanne Mahrwald, "Rule of Law: The Case of Pakistan", Lahore: Heinrich-Böll-Stiftung, August 26, 2009, p: 4

¹⁴ *ibid*, p:2

1.4 Research Questions

- Does social movement theory explain the emergence, mobilization, networking and march towards final outcome in the lawyer's movement?
- How did a single professional issue campaign develop mobilization to become a social movement?
- Why did the resulting social movement not sustain itself for broader political and democratic change?
- What were the framing issues in lawyers movement?

1.5 Hypothesis

This research has been used to find out, whether the social movement justifies the emergence, mobilization and outcome of the lawyers movement or it was just a voice of legal institution.

1.6 Methodology

Historical and explanatory method has been used for this research. Its a qualitative research. Findings of research has been analyzed within the theoretical framework encompassing the issue. Data has been collected from secondary sources, including news reports, newspaper articles, talk shows, commentaries and editorials.

1.7 Significance of research

Neither of the studies has dealt this topic with this respect. It may provide effective means of investigation to promote the boundaries of research on lawyer's movement by stimulating critical and creative thinking among new researchers. It , no doubt has created awareness about the basis of lawyers' struggle and its value for the institutional role in

Pakistan. Keeping in view this issue, it has become very clear by the help of this research that the social movement can happen in a society like Pakistan. This research reflects that first time an issue based movement has been started in Pakistan by the combine efforts of civil society, students, lawyers, media and politicians. This research focuses on how and why this popular mobilization on behalf of judicial power occurred and its broader effects in Pakistan.

CHAPTER TWO

SOCIAL MOVEMENT THEORY APPROACH

2.1 Term and definition of Social Movement

The term "social movement" was introduced in 1848 by the German Sociologist Lorenz von Stein in his book *Socialist and Communist Movements since the Third French Revolution* (1848), in which he introduced the term "social movement" into scholarly discussions¹⁵.

Social movement is a different social process which consists of the mechanisms through which "participants engage in collective action in which they are involved in conflictual relations with clearly identified opponents, are linked by dense informal networks and share a distinct collective identity"¹⁶.

There are some scholars who look at the impact of poverty and social class on the rise of social movements like (the work of Frances Fox Piven & Richard A. Cloward)¹⁷. While other scholars discover identity factors and the emergence of new sets of common interests that connect different peoples across great physical distances and from different cultures and political systems like Alberto Melucci focused on it in his work, "Challenging Codes: Collective Action in the Information Age"¹⁸. On the other hand,

¹⁵ Charles Tilly, *Social Movements 1768–2004*, Boulder, CO: Paradigm Publishers, 2004, p: 5.

¹⁶ Donatella Della Porta and Mario Diani, *Social Movements: An Introduction*, Cambridge: Blackwell Publishing Ltd, 2006, p: 20.

¹⁷ Frances Fox Piven and Richard Cloward, *Poor People's Movements, why they succeed, how they fail*, New York: Pantheon Books, 1977.

¹⁸ Alberto Melucci, *Challenging Codes: Collective Action in the Information Age*, Cambridge/New York: Cambridge University press, 1996.

Charles Tilly "From Mobilization to Revolution"¹⁹ and Theda Skocpol "Social Revolutions in the Modern World"²⁰, have studied social revolutions at the national and cross-national levels.

As Jasper observes, "virtually all the pleasures that humans derive from social life are found in protest movements: a sense of community and identity; ongoing companionship and bonds with others; the variety and challenge of conversation, cooperation and competition. Some of the pleasures are not available in the routines of life²¹."

Whereas Smelser view it in some other way: "shared values and norms form the basic foundations of social organization". Changes in the social structure and in the normative order are interpreted within a process of cultural evolution through which new ideas emerge in the minds of individuals. When traditional norms no longer succeed in providing a satisfactory structure for behavior, the individual is forced to challenge the social order through various forms of nonconformity²².

The work of Sydney Tarrow provides a good example of how the connections between political science, economics and sociology can help us to better understand that how, and why, it is that social movements get started. Tarrow's work combines some of the insights of economics with the macro-structural focus of political science to propose a theory that accounts for the cyclical nature of social protest activity. He defines a social movement as "collective challenges (to elites, authorities, other groups or cultural codes)

¹⁹ Charles Tilly, *From Mobilization to Revolution*, Menlo Park, California: Addison-Wesley Publishing Company, 1978.

²⁰ Theda Skocpol, *Social Revolutions in the Modern World*, Cambridge: Cambridge University Press, 1994.

²¹ James Jasper, *The Art of Moral Protest: Culture, Biography, and Creativity in Social Movements*, Chicago: University of Chicago Press, 1997, pp: 220.

²² Neil Smelser, "Analyzing collective behavior" ,in *Theory of Collective Behavior*, New York: The Free Press, 1962.

by people with common purposes and solidarity in sustained interactions with elites, opponents and authorities”²³.

sometimes a social movement process takes place in such a way that both individual and organized actors, engage in continued exchanges of resources for pursuing universal goals by keeping their autonomy and independence at the same time. The coordination of specific initiatives, defining the strategies and regulating the individual actors' conduct all depend on everlasting negotiations between the individuals and the organizations engaged in collective action.

However social movements are not just the sum of protest events or campaigns, it also takes place when collective identities develop which is strongly related with identification and the creation of connectedness. Such identity gives a sense of common goal and also share commitment to a cause which enable actors and organizations to think about themselves as mutually linked to other actors, not identical but surely compatible, in a broader collective mobilization as discussed in 'The Voice and the Eye' by Alain Touraine²⁴.

The membership criterion within social movements is particularly uneven and eventually reliant on mutual recognition among actors and the defining procedure about who is and who is not the part of the network, in fact have a major role in the emergence and determining of collective action²⁵.

²³ Sydney Tarrow, *Power in Movement: Social Movements and Contentious Politics*, Cambridge: Cambridge University Press, 1998, p: 9.

²⁴ Alain Touraine, *The Voice and the Eye: An Analysis of Social Movements*, Cambridge: Cambridge University Press, 1981.

²⁵ Op. cite, Alberto Melucci, "Meaning and action", in *Challenging Codes: Collective Action in the Information Age*, pp: 54-64.

It is very common to observe large associations of charities and other voluntary associations mobilizing on solidarity issues like, on social segregation in domestic politics, or on development or human rights issues in an international context, which generally refer as social movements but in various cases it can be described as "consensus movements". Although equally in social movement and consensus movement dynamics, actors share unity and an understanding of the world, in order to enable them to connect specific acts and events in a longer time context however second movement does not obtain a conflictual aspect. Collective goods are usually created through cooperation which does not need the recognition of definite adversaries which trying to lessen the assets or chances of one's group, the suggested solutions do not need reorganization of power or any modification in social structure but in fact their center of attention remains the service delivery, self-help, personal and community empowerment.

2.2 Globalization and Social Movements

For a longer period of time, social sciences have focused on processes and institutions within single states, societies, and economies. The concepts represented by "global" and "transnational" were very unfamiliar to mainstream social-science theories till 1990s, while the terms "International" and "world" were understood but supra-national developments could hardly be understood.

Typical theories of social movements and "new social movements" focused on national-level dynamics and mainly in the West or in "post-industrial society"²⁶. Globalization brought an apparent outcome and a challenge to conventional theories of social movements in the form of transnational social movements and global social movements

²⁶ Alberto Melucci, *Challenging Codes: Collective Action in the Information Age*, Cambridge/New York: Cambridge University press, 1996, pp:97-106.

which emerged in the late 1990s. Previously social movement theorists had focused on domestic processes and movement characteristics but it became increasingly clear that local to global and national to international linkages would have to be theorized. Therefore, in the new millennium, a growing body of literature was examining both globalization processes and transnational social movements. Like, the incident of 9/11, 2001, widened the scope of the study of Islamist movements even for the specialists of other areas. Whereas the invasion of Iraq 2003, by USA stimulated various studies on "war", "empire," and the "new imperialism" but these developments are noteworthy to the study of globalization and social movements because they raise questions about opportunities and resources for movement-building, the use of aggression in social movements and transnational networks, the affiliation of war to the global capitalist order.

According to Sidney Tarrow, the emergence of social movements in the 18th century took place because of "structural changes that were associated with capitalism" such as "new forms of association, regular communication linking center and periphery, and the spread of print and literacy"²⁷. It means social movements like revolutions are connected with modernity and capitalism; they are rooted in and are prompted by the ongoing disagreements of the capitalist world-system. In a Marxian dialectical sense, such disagreements involve both oppressive conditions and opportunities for action, resistance, and change.

The global justice, Islamist, and feminist movements are not only the part of the most prominent and visible of contemporary social movements, they also have historical

²⁷ Sidney Tarrow, *Power in Movement: Social Movements, Collective Action and Politics*, New York/Cambridge: Cambridge University Press, 1994, p: 48.

forerunners in the 18th, nineteenth, and early 20th century. For example, international movements of workers, socialists, communists, progressives, and anarchists can be connected to the global justice movement of today which Karl Polanyi called the “great transformation” during an economic period²⁸. Human rights groups also flourish in the global justice movement, and some scholars have found similarities between their moral discourse, tactics, and strategies. Social movements and civil society organizations, including human rights and women’s rights associations, environmental protection groups, and so on are regarded as active agents in the deepening of the cultural and normative features of world society.²⁹

2.3 World System Theory and Social Movements

According to world system theory, emergence, course, and consequences of social movements can be shaped depending upon the position of state within the world-system’s economic zones and its relationship with the hegemonic power. According to this theory social movements have more freedom in democratic countries as compare to non democratic.

The world-system also shapes social movements in the way that it generates grievances. For example, the global justice movement has emerged exactly to challenge the dominance of a neoliberal world order and to call for “another world.”

Before 1970s, debates on social movements emphasized their non institutionalized nature³⁰. From 1970s, scholars of social movements have expanded a dynamic body of

²⁸ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, Boston: Beacon Press, 2001.

²⁹ John Boli, "Contemporary Developments in World Culture", *International Journal of Contemporary Sociology*, vol. 46, no. 5-6, , 2005, p: 383-404.

³⁰ Alberoni Francesco, *Movement and Institution*, New York: Columbia University Press, 1984.

theory and research around the interrelated theoretical orientations which are usually known as resource mobilization, political process, and framing theories.

There is now an approval for the interconnection of political, organizational and cultural processes in social movements, with scholars arguing that the three factors namely opportunities, mobilizing structure and framing play roles of different analytic importance upon the process of the movement³¹.

Accordingly, opportunities are vital to emergence, as they reflect the comparative openness or closure of the political system and the state, the stability of the elite, and the presence or absence of elite allies. Secondly, mobilizing structures comprising of networks, associations, and patterns of recruitment, leadership, and resource mobilization play more central role as the movement develops. Most of the research have discussed the formation and development of social movement organizations (SMOs), in which research also shows that these create in small groups or informal networks. Thirdly, there is also a framing process that gives meaning to action, shows the formation of collective identities, the ways, the issues are presented are always important. Scholars have also mentioned the ongoing process of "frame alignment," in which social movement actors link their claims to interested audiences, most of the time to build more resonant and persuasive frames that helps to mobilize the people³².

These three aspects are interconnected, the structure of political opportunities can affect resource mobilization in a way that meanings, frames, and identities can be formed in connection with available opportunities while resources, audience and the political

³¹ Dough McAdam, John D. McCarthy and Mayer Zald, *Comparative Perspectives on Social Movements*, Cambridge: Cambridge University Press, 1996.

³² David A. Snow, "Framing Processes, Ideology, and Discursive Fields", in *The Blackwell Companion to Social Movements*, eds. David A. Snow, Sarah Soule & Hanspieter Kriesi, Malden, MA: Blackwell, 2004, Pp: 380 412.

context can be influenced or even changed by concerted collective action. Moreover, scholars also assess cycles and waves of protest, and "collective action repertoires" such as boycotts, mass petitioning, marches, rallies, barricading, and acts of civil disobedience. Though social movements have been continuously viewed as a collective response to deprivation, to the contradictions of late capitalism, or to the availability of resources, but the agreement that appeared in the 1990s emphasizes political processes and also view structural and cultural processes as key to understand the strategies and cycles of social protest.

The combine conceptual frameworks of the world-system and social movements help to better understand the factors behind the emergence of the transnational social movements. The opportunities, mobilizing structures, and frames are applicable to the global justice, Islamist, and feminist movements.

2.4 The origin of Social movement theory

Theoretical traditions of functionalism, Marxism and liberal-individualism became the base of contemporary social movements which is reflected in the work of early Enlightenment philosophers, especially Adam Smith, John Locke, Thomas Hobbes, Karl Marx and the French sociologist Emile Durkheim.

The concepts of anomie, social solidarity and the collective conscience, social regulation versus integration were the most extensive conceptual contributions to early social movements theory by Durkheim. According to him, when social norms of society have failed to offer a moral framework which is required to define the social roles of individuals then it is obvious that anomie exists in a said society in which a number of factors can be the cause of this collective normlessness, like natural disasters and

economic crises, or a dysfunctional division of labor, unsuccessful or an incomplete evolution from mechanical to organic social solidarity.

For Durkheim, social regulation and social integration are two critical axes that help in finding out the health of any given society. According to him, the "ideal healthy society" is one in which a moderate amount of both regulation and integration are present. In any severe case where there is either too much, or too little, of these two forces, the feelings produced in individuals are always vicious.

2.5 Collective Behavior Theory

Collective behavior theory was an early forerunner of what was later on, known as the field of social movements. Collective behaviorists emphasized upon the unconscious, reckless and spontaneous types of social organizations. Gustave LeBon's book "The Crowd" was one of the earliest studies in collective behavior which depicted the same traditions as of Durkheim's theoretical insights.

Blumer defines the life-cycle of general social movements, which begin with what he calls "cultural drifts" that are based upon changes, which occur in the fundamental values and norms of society. In view of Blumer, this change in social values brings a psychological change in individuals which, "provides the motivation for general social movements"³³. The focus upon the "life-cycle" by Blumer is mostly the result of the theoretical focus on social equilibrium inherited from Durkheim and appears somewhat mechanical. Change in social values comes into conflict with social institutions which

³³ Herbert Blumer, "Elementary Collective Groupings", in *Principles of Sociology*, ed. A. McClung Lee New York: Barnes & Nobles Inc., 1969.

brings institutional changes and ultimately the social system is brought back into equilibrium.

Another popular product of the functionalist perspective of social movements has been relative deprivation theory which was developed by Ted Gurr in the 1970s, and Turner and Killian also developed it in 1957. This theory claims that social movements are largely the result of rising expectations on the one hand and limited capabilities to actualize those expectations on the other.

The classical model further states that privileges of society brings change in social norms and works as the fundamental causal component of social movements, according this model, society is static which is portrayed by the absence of conflict. These models also implies that social movements are a just an offshoot of psychological strain rather than rational and organized attempts to change the conditions under which people live. According to McAdam, the conflict and change are essential components of modern life and social movements take place because of, "the ongoing interaction of organized contenders within a shifting politico-economic environment."³⁴

Theory of Social change of Karl Marx, also had greater impact upon the evolution of social movements. The most valuable sociological insight of this theory was a radical critique of the capitalist economy and its influence on social structures.

Although Marx didn't systematically differentiate the essential parts of social movements but produced a theory of social change that firmly situated the labor movement at the forefront of social change. According to him, this modern labor movement has been

³⁴ Doug McAdam, "The Classical Model of Social Movements Examined", in *Political Process and the Development of Black Insurgency : 1930-1970*, Chicago: University of Chicago Press, 1982.

progressed with reference to structural conditions which were produced by the modern capitalist economy and he also placed it within the framework of class conflict. Even if Marx's vision of our future was utopian, but his basic contributions provided a much needed challenge to the apolitical, status-quo oriented theories of functionalism.

Basically, Marx believed that human beings are, by their very nature, productive creatures, according to this belief, he came to the conclusion that a moment came in history when human beings produced more than they consumed and few groups of individuals amongst them started accumulating the surplus goods, or capital, the first signs of political struggle also began to emerge. So, as a result some groups accumulate more surplus goods and capital than others either through their own labor or by the labor of others. According to the theory of economic determinism of Marx, the social structures that comes out of this environment certainly reveal the material realities of the culture and because of the economic base of society, there is always a potential to have drastic change in social and political relations. Due to all these circumstances, Marx, and other revolutionary activists of the middle 19th century had predicted the upcoming disagreement between the emerging proletariat and the bourgeoisie as a result of inevitable industrialization of Europe.

Thompson's critical book "The Making of the English Working Class" is perhaps the best example of the impact that Marx has had on contemporary social movements research³⁵. Marx made us the realize the importance of how changes in the underlying structure of society could lead to changes in social relations.

³⁵ Edward Palmer Thompson, *The Making of the English Working Class*, New York: Vintage Books, 1963.

2.6 Liberal-individualism-----Resource Mobilization Theory

Liberal-individualism was effectively a conceptual offshoot of the European Enlightenment. This theory talks about human nature and the motivating principle of self-interest and stresses the individual above all else. Mancur Olson proposed a theory of social action that concretely located individual rationality at the center of social movements. He also posed a question which solidly attached the philosophical traditions of liberal-individualism to the study of social movements and eventually gave birth to what is now generally known as resource mobilization theory³⁶. Olson was basically concerned in assessing the collective action with reference to the complex relationship between individuals and groups in which Olson takes individual as the basic unit of analysis.

Olson also talks about the persons whom he called free-riders, who want to get benefits without taking participation into the movement, become the cause to aggravate the collective action, but according to him, this problem can easily be overcome by the social movement organization by giving different incentives to get their active participation. Because of a great number of social protests that exploded in the 1960s, social movement theorists have progressively focused their attention to the collective action predicament posed by Olson.

So, as a result, the lessons of an individual centered approach was merged into a larger theoretical model by Mayer Zald and other social movement theorists which integrates both macro and micro levels of analysis, like one of his works of Mayer Zald, "Looking

³⁶ Mancur Olson, *The Logic of Collective Action; Public Goods and the Theory of Groups*, Cambridge: Harvard University Press, 1965.

Backward to Look Forward; Reflections on the Past and Future of the Resource Mobilization Research Program"(1988) reflects this approach.

Generally this approach has been explained as resource mobilization perspective due to its focus on the utilization of different resources in human, economic, cultural and political form by the movement. As it considers rational consideration of individuals with reference to different costs and benefits linked with movement participation shows its close link with liberal-individualism. The everyday decisions especially by the leaders of social movements is the starting point for RM theorists.

According to Buechler, there are suppositions which RM perspective makes about social movements and it deserves closer examination³⁷. Critics are of the view that RM theorists give less importance to grievances and resource allocation especially when the process takes place at organizational level. This is justified by RM theorists because of their stress on the rational actor model of collective behavior by excluding the more socialized approach to protest movements.

As the RM model considers the persuasion of rational actors important by providing different incentives for the participation so, in order to appeal to the existing political and ideological orientations of potential sympathizers before the time they could calculate their costs and benefits of movement participation, social movement organizations usually work at framing protest issues. Thus ideological predispositions can completely influence an individual's attraction to, and support for a given protest movement.

³⁷ Steven M. Buechler, "Beyond Resource Mobilization: Emerging Trends in Social Movement Theor", *The Sociological Quarterly*, Vol. 34, 1993, p: 217-235.

In few examples it shows that collective identities are very significant determinants of individual protest than the rational calculation of costs and benefits. According to Turner, “(the workers) themselves weren’t so convinced they could win but were inspired by the strength of purpose of particular individuals.”³⁸

2.7 Framing approach to social movements and Media

Some other approaches have also been developed to study social movements which includes framing, the political opportunity approach, new social movements theory and the study of collective identity. The framing approach to social movements has been most strongly connected with the work of David Snow, William Gamson and Todd Gitlin. The term “frames” is taken from Erving Goffman which refers to the interpretive schemes that individuals take up so as to make sense of the world around them and to place themselves within it³⁹. According to Snow, frames both impart meaning to events and, “function to organize experience and guide (collective and individual) action”⁴⁰.

This framing standpoint on social movements developed as a response to the under theorization of grievances by RM and social/psychological theorists. Where RM theorists considers grievances unimportant and a constant element while social/psychological theorists take it as the psychological impacts on individuals. With the aim of attracting new participants, social movements should create such frames that are directly resonant with the frames of the individuals whom they are trying to mobilize.

³⁸ Christena L. Turner, *Japanese Workers In Protest: an ethnography of consciousness and experience*, Berkeley: University of California Press, 1995, P: 248.

³⁹ Erving Goffman, *Frame Analysis*, Cambridge: Harvard University Press, 1974.

⁴⁰ David A Snow, "Frame Alignment Processes, Micro mobilization and Movement Participation", *American Sociological Review*, vol. 51, No. 4, 1986, PP: 464-481.

According to Gamson, media have a significant role in providing material examples for the respondents, but he finds that media frames are hardly ever accepted at face value. The major focus of Gamson is upon the influence that media have on individuals' own collective action frames.

Gamson challenges the idea that the media have a direct and unmediated influence on individual collective action frames, while on the other hand Gitlin claims that the mass media do play serious role in molding the perception and opinion of public about explicit social movements.

Gitlin begins with the claim that for the success, or failure, of modern social movements media have a direct and important role for it, instead of focusing on the reception and perception of media images by individuals. For Gitlin, media frames are "principles of selection, emphasis, and presentation (which are) composed of little tacit theories about what exists, what happens and what matters"⁴¹. According to him, these "little theories" can be largely explained as pluralistic, pro-status quo, ideologically loaded and essentially hegemonic.

According to Sydney Tarrow, Gramsci and other Marxist social theorists do not give much importance to political systems in the formation of revolutionary working-class consciousness⁴². When framing theorists consider political sphere, they view it sometimes as the result of the mode of production, like Charles Wright Mills (*The Power Elite*)⁴³ or

⁴¹ Todd Gitlin, *The Whole World is Watching: Mass Media in the Making and Unmaking of the New Left*, Berkeley: University of California Press, 1980, P-47.

⁴² Sydney Tarrow, *Power in Movement: Social Movements and Contentious Politics*, Cambridge: Cambridge University Press, 1998, p: 12.

⁴³ Charles Wright Mills, *The Power Elite*, London: Oxford University Press, 1956.

else as one part among many that helps build political consciousness like William A. Gamson (*Talking Politics*).⁴⁴

2.8 The Political Opportunity Approach to Study Social Movement

The political opportunity approach works as a bridge between macro and micro levels of analysis for the study of social movements. Sydney Tarrow defines political opportunities and constraints as, "dimensions of the political struggle that encourage people to engage in contentious politics"⁴⁵. According to Tarrow, political opportunities are exterior resources for mobilizing groups which means that they are not created by social movements. Tarrow doesn't view political opportunities as an element giving benefit, or hinder the social movements.

Charles Tilly created a practical model of collective action in his book, in which Tilly described the causal model with the help of different variables that influence collective action known as revolutions. which is according to Tilly, "the displacement of one set of power holders by another"⁴⁶. His book, "From Mobilization to Revolution" is considered as one of the finest exemplars of the RM approach while at the same time many of his insights show up in a variety of different theoretical works. The most important input of Tilly to the study of social movements is the concept of "repertoires of contention." It refers to different forms of protest which can easily be observed within any given social perspective during a definite historical period.

⁴⁴ William A. Gamson, *Talking Politics*, New York: Press Syndicate of the University of Cambridge, 1992.

⁴⁵ Op. cite., Sydney Tarrow, *Power in Movement: Social Movements and Contentious Politics*, P: 19-20.

⁴⁶ Charles Tilly, *From Mobilization to Revolution*, Menlo Park, California: Addison-Wesley Publishing Company, 1978, P: 193.

The structural focus of Tilly's work is a common feature of the political opportunity approach, which according to Tarrow are "external resources" to social movements. However, an important perspective can be gained by discovering the different ways that revolutions are facilitated or hindered by external political opportunities and constraints.

2.9 Relevance to lawyers Movement

Lawyers movement in the context of social movement reflects almost different theoretical traditions in the form of functionalist theories and conflict theories that includes structural strain theory/ value added theory, resource mobilization theory and political process theory respectively.

The logic of the socio-psychological approach controls much of the research on lawyer's movement. The fundamental impulsion for movement draws from the structural crises created by the unjust decision of military government against the supreme judiciary of the country. People have already been experiencing the illegitimate rule of military in the past and its biased decisions against judiciary which hampered the process of democracy. The current issues, especially war against terrorism, started by the same military regime greatly demoralized the Pakistani nation-----was considered the compromise on its sovereignty, the case of Steel Mill, the Case of missing persons, economic stress--unemployment along with the rising of food prices, the electricity and gas load shedding, all these conditions reflected the sense of general insecurity and disappointment in the country.

While resource mobilization theory reflects in all the aspects of the movement. By focusing upon the central idea of the RMT, most of the research highlights the

importance of organizational resources in the case of lawyer's movement where the Supreme Court Bar Association not only organized the activities all over the country but also used social communications with local communities to disseminate the message of "justice". Leadership was constantly provided by the presidents of the supreme Court Bar Association during the movement.

Within civil society, activists were also activated through the professional and student organizations mainly through social networking, especially Face book, newspaper and electronic media. These organizations continued to play an important role in raising awareness regarding democracy in Pakistan and recruiting social movement followers as well.

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Lawyers associations welcomed the services of political parties for mobilizing the general public in order to muster their opinion in favor of the issue while political parties had some underlying interests as well.

If we observe the political scenario of the country at the time of lawyer's movement, most of the variables of political space based upon political process theory are reflected, for example state institutions and leaders showed reluctance for the change means that institutional capacity was limited which gave chance to movement, the disagreement between the major political parties, PPP and PML (N) and some other segments of the government upon the reinstatement of the deposed judges showed disunity among the ruling elite coalition. Direct and indirect means were used to stop or slow down the pace of the movement. Negotiations were carried out between the coalition parties which only prolonged the movement time period while coercive means were adopted to stop the grand March rally.

Much of the work of lawyer's movement is devoted towards creating frames that motivate, inspire, and demand loyalty. In particular, while individual (or rational) interests often attracted graduates to the movement initially, it was the ability of the movement to frame activism as a "moral obligation" that led to its success.

CHAPTER THREE

HISTORY AND BACKGROUND OF LAWYER

MOVEMENT IN PAKISTAN

3.1 Judiciary under Martial Law Regimes

Pakistan faced the military rulers for more than thirty years in which the process of democracy was attacked five times by the extra-constitutional emergency or martial law regimes, through either abrogating the constitution or partly or wholly suspended it. All the institutions including Judiciary suffered a lot under military dictators.

Every subsequent martial law governments followed the track of its predecessors to subjugate the judiciary with more violent and stern way and sometimes added new trends of more harmful acts for controlling judiciary. Like, General Ayub Khan, the first military dictator started getting interview of the judges of High Court. and General Yahya Khan harassed judges by making scrutiny of the assets of the judges of the superior judiciary whereas, General Zia added new thing by asking judges to take a fresh oath under Martial law. He introduced a new method of arbitrary removal of the judges by simply not inviting them to take the new oath.

General Musharraf followed the General Zia's steps. Judges took new oath under his order and he successfully made the removal of unwanted judges possible but he was a head of all willful acts of previous martial law regimes. He kept the Chief Justice of Pakistan under house arrest on the day when new oath was being given to the judges in 2000. This didn't remain the single step in his regime and he repeated it on November 3,

2007, when, General Musharraf imposed fifth martial law under the "proclamation of emergency". This time, it was not only the Chief Justice but the judges of the superior courts were put under house arrest for more than two weeks but for Chief Justice it was a period of almost more than five months. All military regimes took different measures to undermine the independence of judiciary which are discussed below.

3.1.1 Powers of the Courts

Every martial law regime enforced the new legal order either by abrogating or suspending the constitution and control the state affairs in the same manner but ironically, "the political basis for the constitution was not considered viable while its administrative rules were adequate"⁴⁷.

Judiciary was made less powerful which couldn't challenge the military governments. Neither Supreme Court nor any High Courts or tribunal would have the power to pass any order/judgment against military dictator, even the declaration of martial law or extra constitutional emergency was not questioned. First three martial law regimes established the military courts of criminal jurisdiction, which worked equivalent to existing courts in the country. Supreme Court and High Courts could not hear the appeals against any decision or order of the military courts.

Whenever courts tried to act in their real form by either reviewing the actions taken by martial law regimes and from time to time reversed the military convictions, then military regimes restricted their powers and successfully restricting the independence of the judiciary.

⁴⁷ Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*, New York: Cambridge University Press, 1995, P- 72.

In 1969 Lahore High Court ruled in a case (Mir Hassan and another Vs. The State) that "courts could operate without obstruction"⁴⁸. General Yahya's martial law government reacted by enforcing the Courts (Removal of Doubts) Order 1969, in order to remind the judges the restrictions of their powers., the Supreme Court retained the power of judicial review in the Nusrat Bhutto's case while giving validity to General Zia's martial law of 1977 under doctrine of State Necessity. Chief Justice Anwer-ul-Haq held in the said judgment that the superior courts continued to have the power of judicial review. The superior courts took Justice Anwar-ul-Haq at his words and started scrutinizing regime's actions, particularly decisions of military courts.

Though the rulings of the High Courts were creative and careful and they tried to establish their right to review regime's actions,⁴⁹ in which martial law regulations and orders were not generally touched in the process of judicial review and the judiciary remained cautious during this process. When "there was either no evidence or evidence of independent nature then the judges of High Courts interfered with the sentences of the military courts and detention cases under martial law regulations"⁵⁰.

On the other hand, the judges' optimism proved wrong when General Zia introduced the article 212-A in the constitution in October 1979⁵¹. It restricted the powers of Supreme Court and also nullified the power which was reserved for the superior courts by the Supreme court in the judgment of Begum Nusrat Bhutto's case. Even the powers of High Courts were further reduced through the Presidential Order No.1 of 1980, promulgated on

⁴⁸ Mir Hassan and another Vs The State, PLD 1969, Lahore P: 786.

⁴⁹ Op. cite., Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*, P: 175.

⁵⁰ Hamid Khan, *Constitutional and Political History of Pakistan*, Karachi (Pakistan): Oxford University Press, 2001, P: 622.

⁵¹ Constitutional (Second Amendment) Order 1979, PLD 1979 Central Statutes P: 567.

May 27, 1980. This amendment order restricted the “writ jurisdiction” of the High Courts and banned them from reviewing the judgments or sentences passed by military courts or tribunals.

This amendment was challenged in Sindh High Court and Baluchistan High Court. Although Sindh High Court declared it valid later on by majority opinion but Balochistan High Court sustained its confront. The government filed an appeal in the Supreme Court against the judgment of Baluchistan High Court. The appeal was pending and it became very difficult for Supreme Court to overrule the findings of the Balochistan High Court. In the meanwhile, Provisional Constitution Order (PCO) 1981 was issued which proved the General Zia’s victory proclamation⁵². The PCO put a formal end to the necessity regime as sanctioned by the Supreme Court in Begum Nusrat Bhutto’s case⁵³.

To punish and embarrass them further, superior court judges were required to take a new oath to uphold the PCO and not all were invited to do so. The PCO transformed martial regime into a martial state⁵⁴.

3.1.2 Changes in Judicial Structure

General Zia enjoyed the blessings of judiciary for all his political interests from the very beginning⁵⁵. He discussed with the Chief Justice of Pakistan almost all significant legal issues, including the appointments of the chief Justices of the High Courts as acting governors of their respective provinces and also got the legality of his martial law from

⁵² Op. cite., Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*, p: 180.

⁵³ Suleman Vs. President Special Military Court (case) cited in Mir Khuda Bakhsh Mari, *A Judge May Speak*, Lahore (Pakistan): Ferozsons (Pvt.) Ltd, 1990, PP: 96-120.

⁵⁴ ibid, Paula R. Newberg, *Judging the State*.

⁵⁵ Justice (Retd) Khaja Muhammad Ahmad Samdan, *Role of the Judiciary in the Constitutional Crisis of Pakistan*, Lahore: Sang-e- Meel Publications, 2004, P: 87.

judiciary and lastly he successfully removed Zulfikar Ali Bhutto through judicial process but all these supports and compromises couldn't stop him to undermine the judiciary.

Martial law orders were used for the structural changes in the Judiciary. General Zia was empowered to amend the constitution by the Supreme Court in the judgment of Begum Nusrat Bhutto's case, this opportunity was availed aggressively and he made amendments in the constitution whatever he liked. Federal Shariat Court was established to implement the Islamization program which was responsible to review the existing laws in Pakistan whether they were in conformity with the injunctions of Islam and declare their validity. Unfortunately, it couldn't work independently and most of its judgments were challenged and got changed accordingly. Like, Federal Shariat Court judged two cases, one was the 1963 Press and Publication Order and the other was 1952 Security of Pakistan Act incompatible with the principles of Islam, about which appeal was made by the regime in the Supreme Court against this decision because its political programs were in jeopardy.

In order to exert his pressure, General Zia adopted very unique procedure to remove the judges of the Federal Shariat Court, implemented with the help of article 203C of the Constitution of Pakistan, according to which a judge is appointed for a tenure of three years can be extended by the President and may be removed by him any time without showing any reason which is quite contrary to the procedure followed for the judges of the Superior Court, in this way the services of a judge of Federal Shariat Court seems to be the most unsecured service in Pakistan. In this way every judge remains under the pressure of the executive. It seemed that General Zia wanted the interpretation of Islamic injunctions as he desired not according to the findings of the Federal Shariat Court.

The process of bringing changes in the judicial structure was not stopped till the creation of a new court, he also made extensive changes in the constitutional provisions relating to the superior courts, which includes the removal of judges beyond the article 209(7). Like, a judge of a High Court may be transferred to another High Court under Article 200 and may be appointed as a judge of the Federal Shariat Court under Article 203-C, and if they don't accept the transfer he will cease to be retired. Various governments have exploited these provisions of the constitution either for getting rid of unwanted judges or for harassment and punishment of independent judges.

3.1.3 Appointment of the Judges of the Superior Courts

Pakistan followed the same system of judicial appointment in its first constitution in 1956 as was established during the time of British India, which was retained in subsequent constitutions of 1962 and 1973.

The system of the appointment of judges has continuously been manipulated by not only the military regimes but also by the civilian governments and made appointments on personal or political consideration. The martial law regimes had been more illogical and disgraceful for the appointments of the judges in the superior courts, in very few cases merit has been considered which is one of the main reasons in undermining the sovereignty of the judiciary. Like, during the very first military regime of General Ayub Khan, the gross violation of the procedure provided by the constitution, the practice of interviewing the judges before appointment to the High Courts. Dr. Naseem Hassan Shah was himself interviewed and selected by the same

board⁵⁶. In that process, the consultation of the Chief Justice of Pakistan and the Chief Justice of the concerned High Court or their participation were not considered necessary.

There were two significant judgments of the Supreme Court in the cases of "Al-Jehad Trust Vs Federation of Pakistan" (1996)⁵⁷ and "Malik Asad Ali Vs Federation of Pakistan" (1998)⁵⁸. It was to check the use of arbitrary power by the executive for appointing the judges in the superior judiciary. The Supreme Court ruled in these judgments that Chief Justice of a High Court and Chief Justice of Pakistan will be appointed on the basis of seniority in the absence of any strong reason to the contrary to be recorded by the executive.

According to the judgment, the opinion of the Chief Justices for appointment of judges of the superior judiciary was obligatory on the executive and in case of difference of opinion, it should record the well-built reason to be justifiable. But unfortunately these two verdicts could not prevent General Pervez Musharraf from abuse of the authority to appoint judges, like the appointment of next senior judge instead of Falak Sher, the most senior judge who was recommended by the Chief Justice of Pakistan showed the breach of the Supreme Court rulings in "Al-Jehad Trust Vs Federation of Pakistan" and also not in favor of the approval of the Chief Justice of Pakistan.

3.1.4 Removal of the Judges

The article 209 provides the whole procedure and structure for the removal of a judge of the superior courts which also protects the services of those judges under Article 209(7) of the constitution of Pakistan. It also restricts the removal of judges by adopting any

⁵⁶ Chief Justice (Retd) Dr. Nasim Hassan Shah, *Ahad Saz Munsif*, Lahore (Pakistan): Alhamad Publications, 1997, P: 49.

⁵⁷ Al-Jehad Trust Vs. Federation of Pakistan, PLD 1996, SC, P: 324.

⁵⁸ Malik Asad Ali Vs. Federation of Pakistan SCMR 1998, P: 119 and PLD 1998, SC, P: 161.

other procedure outside the boundary of the said Article. Supreme Judicial Council is constituted by this article. The Supreme Judicial Council can be directed by the president of Pakistan to find out the issue against a judge of the Supreme Court or a High Court. Such inquiry can be initiated on either of the allegations that he is guilty of wrongdoing or is unable to perform his duties. After conducting inquiry the President may remove the judge from his office under the recommendation of SJC.

Provisional Constitution Orders (PCOs) were enforced by military regimes, which were used for arbitrarily removal of judges and overall, almost 80 judges of the superior courts along with several Chief Justices were removed from their offices with the help of PCOs at different stages. If we notice the time period of General Zia, he issued the PCO in 1981 and removed almost more than a dozen judges of High Courts including Chief Justice of Baluchistan High Court and four judges of the Supreme Court along with the Chief Justice of Pakistan.

General Musharraf followed it in January, 2000 in which the Chief Justice of Pakistan along with six judges of the Supreme Court and seven judges of the High Courts were removed from their offices. This action was repeated again by General Musharraf during his tenure when Justice Iftikhar Muhammad Chaudhry was not only suspended in March, 2007 but also kept him under house arrest up to five days. But contrary to the previous responses of judiciary, this suspension was challenged by Justice Iftikhar in the Supreme Court, and he was restored, under the ruling of SJC.

In order to curb the independence of judiciary further, right after six months, General Musharraf took the most disappointing and historically drastic step by enforcing the PCO on November 3, 2007, in which twelve judges of the Supreme Court including the Chief Justice of Pakistan, and more than four dozen judges of the High Courts were removed

including two Chief Justices of two High Courts unreasonably. These all judges were not only deposed but were kept under house arrest for several weeks but this time period lasted till March 2008 for CJ of Pakistan. Such practice was a unique chapter of judicial and as well as political history of Pakistan which had never been adopted by any of the military dictators.

3.1.5 Manipulation of the Courts

Almost all successive military governments, manipulated the judges for getting the favorable decisions. Like, General Zia's military coup was challenged in the Supreme Court by Begum Nusrat Bhutto which was entertained and date was announced for hearing. In the meanwhile, the independent judge; Justice Yaqoob Ali Khan could not stay behind in office up to the hearing date of the petition and the new Chief Justice Anwer-ul-Haq empowered General Zia by granting the legitimacy certificate and provided consent to perform all legislative measures. General Musharraf followed the same practice in order to legitimize his coup in October 1999 and repeated his action on November 3, 2007 when his "declaration of State Emergency" was challenged in the SC, as a result he removed 12 out of 17 judges of the SC and the new reconstituted SC granted him the eligibility verdict.

Judicial process was misused by military dictators for political maltreatment. Like, in the case of Zulfiqar Ali Bhutto, General Zia's manipulation of judges facilitated him to extract from the court a death sentence for Z. A. Bhutto⁵⁹. Justice Mushtaq, who was anguished and held a feeling of resentment against Bhutto, was chosen by General Zia, and appointed as acting CJ of LHC who

⁵⁹ Anupama, *Presidential Autocracy in Pakistan*, Jaipur (India): Aalekh Publishers, 1999, P: 153.

made the selection of the bench for Bhutto's trial much carefully.⁶⁰ Under questionable proceedings, Maulvi Mushtaq and his full panel, of course, found Zulfi Bhutto "guilty" of "murder "as charged, and sentenced him to "death" in March of 1978⁶¹. This decision of Lahore High Court, was challenged with the help of an appeal by Bhutto but the same decision was endorsed by SC under another infuriated Chief Justice Anwer-ul-Haq. The Supreme Court sustained the judgment of LHC by majority opinion of four to three. One of the rebellious judges, Justice Patel confessed in his later life that he remained under heavy stress while hearing Bhutto's appeal⁶².

3.1.6 Persecution of Independent Judges and Interference in the Judicial Proceedings

It is evident from the judicial history that Army of Pakistan exerted its influence by interfering in the judicial proceedings of the court and effectively pressurized the judgments of the courts even during civilian governments, but its intervention during military regimes had been very obvious and disgraceful. For example, when General Zia established the Tribunals, in 1977, consisted of a Judge of High Court and a Brigadier from army so as to make a decision about the allegations of wrongdoings against politicians and bureaucracy⁶³.

Besides their role during military regime, army did impede in the judicial matters even during civilian governments. For example in 1996 Benazir government could not appoint

⁶⁰ Hamid Khan, *Constitutional and Political History of Pakistan*, Karachi (Pakistan): Oxford University Press, 2001, P: 598.

⁶¹ Stanley A. Wolpert, *Zulfi Bhutto of Pakistan: his life and times*, New York: Oxford University Press, 1993, P: 346.

⁶² Altaf Gauhar, *Thoughts After Thoughts*, Lahore (Pakistan): Sang-e-Meel Publications, 1998, P: 198.

⁶³ Justice (Retd) Shamim Hussain Kadri, *Judges and Politics*, Lahore (Pakistan): Jang Publishers, 1990, PP: 36-38.

justice Zahid as the Chief Justice of Sindh High Court due to stress from the army against his appointment⁶⁴.

3.2 Civilian governments and Judiciary

Judicial independence in Pakistan cannot be achieved in the presence of a powerful executive, which can easily be examined from several aspects. Jurisdiction of judiciary has always been influenced in both military as well as civilian governments. Both types of governments used to fulfill their vested interests. The basic difference between them is the range and methods of intervention in the matters of judiciary.

3.2.1 Appointment and Removal of the Judges

To ensure the independence of the judiciary the appointment of judges is of supreme importance. The problem started when the appointment in judiciary had been done on the basis of personal consideration. The very such step was taken during the government of Governor General of Pakistan, Ghulam Muhammad, who appointed Justice Munir who was the Chief Justice of Lahore High Court at that time, as the Chief Justice of the Federal Court. It was done when the first Chief Justice of the Federal Court, Sir Abdur Rashid retired in June 1954 and the seniority of the Federal Court Justice A.S.M Akram was ignored⁶⁵.

Instead of stopping this practice, the subsequent civilian governments followed the footprints of this regime, like Zulfikar Ali Bhutto politicized the judicial appointment in a way that most of the PPPs members were appointed as judges including office personals as well, with clear cut purpose that they would defend the policy and objectives of the

⁶⁴ Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, Karachi (Pakistan): Oxford University Press, 2001, P: 268.

⁶⁵ Allen McGrath, *The Destruction of Pakistan's Democracy*, Karachi (Pakistan): Oxford University Press, 2000, p: 195.

party⁶⁶. In the same regime, he appointed a junior judge as the Chief Justice of Lahore High court at the end of 1976, after the retirement of the Chief Justice of Lahore High Court who surpassed almost more than 12 judges and those were more competent than him⁶⁷.

Another tool in the hands of government is the arbitrarily removal of judges and the protection of tenure which is the most important condition needed for judicial independence. Although the constitution has provided the proper structure for it but not only military but civilian governments had been deviating from it. In the government of Zulfikar Ali Bhutto Fifth Constitutional Amendment in 1976 was passed despite the severe criticism from the opposition parties, it reduced the tenure of the CJ of the Supreme Court and High Courts to five and four years correspondingly. This step was taken to get rid of the unwanted Chief Justices of the High Courts. According to amendment they had two options either to get retire from office or to assume the office as senior most judge of the court and if the judge of a HC did not admit appointment as judge of the Supreme Court, he would be deemed retired that is the violation of the provision which provided the protection to the judges under Article 209(7) of the Constitution. This amendment was made especially to remove Chief Justice of LHC Justice Sardar Muhammad Iqbal⁶⁸.

Unfortunately, the government of Benazir Bhutto (1993) left behind all previous governments in the illogical appointments of judges in the superior judiciary. Justice Sajjad Ali Shah was appointed as the Chief Justice of Pakistan superseding his three

⁶⁶ Hamid Khan, *The Judicial Organ*, Lahore (Pakistan): Freedom Forum for Human Rights and Development, 1999, P: 63.

⁶⁷ Justice (Retd) Dorab Patel, *Testament of a Liberal*, Karachi: Oxford University Press, 2004, P: 158.

⁶⁸ Justice (Retd) Javid Iqbal, *The Judiciary and Constitutional Crisis in Pakistan: Founders' Aspirations and Today's Realities*, ed. Hafeez Malik Karachi (Pakistan): Oxford University Press, 2001, P: 69.

senior colleagues, in the government of Benazir Bhutto in 1994. She as a head of government, violated the forty years tradition of appointing the senior most judge of the SC as the Chief Justice of Pakistan. The newly appointed Chief Justice, Justice Shah was demanded to provide his written resignation in advance for, in case he failed to oblige the Prime Minister⁶⁹.

The next target of the government was the High Courts' judges, where she wanted to appoint such judges who should be loyal to her government and should be from her party yet when they were unfit for such appointments, it was exposed in front of the Chief Justice⁷⁰. Following the same planning, Benazir's government appointed 20 additional judges in the LHC at a time against the advice of the CJ of Pakistan in August 1994⁷¹.

An advocate in the Supreme Court Habib Wahab-ul Khairi filed a direct "constitutional petition (No. 29/1995)" in the SC. This petition was filed in May 1994 but it was fixed for hearing on July 16, 1995⁷². It was on behalf of "Al-Jehad Trust" testing the appointment of Justice Saad Saud Jan as acting CJ of the SC in April 1994 and required his verification as permanent CJ. He also required explanation of the articles of the constitution concerning the judiciary including the appointment of 20 additional judges to the LHC.

On March 20, 1996, the Supreme Court announced a majority judgment of four to one and interpreted a variety of articles of the constitution, in this historic case (commonly known as Judges' case) and announced the historic judgment which was highly praised as

⁶⁹ Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, Karachi (Pakistan): Oxford University Press, 2001, PP: 187-188.

⁷⁰ Ibid, Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, PP: 269-270.

⁷¹ Ibid, P- 271.

⁷² Chief Justice (Retd) Ajmal Mian, *A Judge Speaks Out*, Oxford University Press, 2004, P: 176.

a milestone at home and abroad. This judgment rejuvenated the judiciary in Pakistan⁷³. But instead of accepting it, the Federal Government under Benazir Bhutto intensely denounced the judgment and more over, one of the Federal Ministers even explained it as an act of treason and harsh statements were passed inside and outside the parliament⁷⁴. In order to fulfill the permanent vacant seats in the Supreme Court, CJ Sajjad Ali Shah recommended five judges from three High Courts in the 3rd week of August 1997. The executive particularly the PM, couldn't provide any logic for resisting this recommendation except for the reason that two of the recommended judges from LHC were not acceptable to him, quite contrary to the Supreme Court's ruling in the Judges' case⁷⁵. In order to make more obstacles in the way of recommendation, the Federal government passed a notification on August 21, 1997, under Article 176 of the Constitution aiming at reducing the SC judges from 17 to 12, as a result of the petition filed by the SCBA, government withdrew the notification on September 5 and original strength of seventeen was restored but government showed the delaying tactics upon the implementation of the recommendations of the Chief Justice.

3.2.2 Pressure on the Judges to get Favorable Decisions

To get good decisions more or less all governments in Pakistan tried to pressurize the judges. In order to fulfill this objective, the executive sometimes degraded and harassed the judges. They didn't honor the verdicts and orders of the courts.

Like, the verdict of the Chief Court of Sindh against the order of the Governor General to suspend the first Constituent Assembly of Pakistan was reversed by the Federal Court under pressure which was revealed later on by the only dissenting judge, Justice

⁷³ Al-Jehad Trust Vs Federation of Pakistan, PLD 1996, SC, P: 324.

⁷⁴ Op. cite., Chief Justice (Retd) Ajmal Mian, *A Judge Speaks Out*, P: 184.

⁷⁵ Hamid Khan, *The Judicial Organ*, Lahore (Pakistan): Freedom Forum for Human Rights and Development, 1999, P: 141.

Cornelius⁷⁶. In another instances, a former Chief Justice of LHC, Justice Kadri recalls that during Zulfiqar Ali Bhutto's regime, "all tactics fair and foul were adopted to humiliate and intimidate the judges" during the hearing of a case in which the government had interest⁷⁷.

Zulfiqar Ali Bhutto called Justice Kadri for a meeting and informed him that the government wanted the decision in its favor in all the cases which had been losing Justice refused and as a result he and his family was threatened by a prominent figure of the government Rao Rashid⁷⁸.

3.2.3 Persecution and Degradation of the Judges

Rather than giving due consideration to the judiciary the civilian governments in Pakistan always publicly degraded the judges of the superior courts. If the judges continued to resist and tried to follow the rule of law so, a variety of lawful and unlawful measures were used against them.

Once during the government of Zulfiqar Ali Bhutto in 1972, all the judges of the SC and LHC were summoned for a meeting which happened first time in history, as such judges had never been called by any head of government in Pakistan. This meeting was addressed in a very highly dictatorial style and the judiciary was criticized a lot.⁷⁹

During the Nawaz Shari's government the then prime minister, contempt proceedings were started by the SC against him in 1997. Instead of facing the court proceeding and honoring it, his government took offensive measures against the CJ of Pakistan like, the

⁷⁶ Allen McGrath, *The Destruction of the Pakistan's Democracy*, Karachi (Pakistan): Oxford University, Press, 2000, P: 177.

⁷⁷ Justice (Retd) Shamim Hussain Kadri, *Judges and Politics*, Lahore (Pakistan): Jang Publishers, 1990, P: 27.

⁷⁸ Ibid, P: 31.

⁷⁹ Altaf Gauhar, *Thoughts After Thoughts*, Lahore (Pakistan): Sang-e-Meel Publications, 1998, PP: 468-469.

distribution of pamphlet against the Chief Justice of Pakistan by the political activists belonging to the government's party and ultimately attacked the court room, at the time when the contempt proceedings were being held⁸⁰.

3.3 Constitution and Independence of Judiciary

It is very disappointing that numerous provisions of the Constitution were found contradictory to the principle "fully securing the independence of Judiciary" even it is laid down in the Objectives Resolution. Even some clauses of the Constitution dealing with the judiciary disagree with each other. For example, under Article 200(1) of the Constitution a president may transfer a judge of a High Court to another High Court without seeking the permission of the concerned judge and without seeking advice from the Chief Justice of Pakistan along with the Chief Justices of the concerned High Courts, for not more than two years and in case of refusal, he ceased to be retired under the clause 4 of the same Article. which is in direct clash with Article 209 (7) which gives constitutional security to the services of the judges of the SC and HCs.

Article 203C (5) and Article 209(7) of the Constitution also shows the same conflict where clause (5) of Article 203C talks about a judge of a High Court if he is appointed as a judge of the Federal Shariat Court, in case of refusal he is also supposed to be retired.

Under clause (4B) of Article 203-C(Clause 4B of Article 203C was inserted by General Zia in 1985 through President's Order No; 14 of 1985), a judge/CJ of FSC, can be assigned any other task or office at any time by President which he considers suitable for him. Article 203C grants solitary and stunning powers to the President. Provisions under clause 4B of the said Article are the most shameful and most dangerous

⁸⁰ Op. cite., Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, PP: 494-508.

to the independence of judiciary. Such far-reaching powers under article 203C seem ridiculous for the independence of Judiciary.

Although Article 209 tells about the process of the removal of a judge of the Superior Courts, but it does not provide any explanation with respect to a situation where the CJ of Pakistan should be a part and presiding officer of the Council specially when the Council is carrying out an investigation under the order of president, into his own capacity or he should be substituted, but in all other respects this article is comprehensive and self-explanatory.

According to the Article 180, the most senior judge should be appointed as an acting CJ of Pakistan in the absence of actual CJ of Pakistan but surprisingly it is not supported by Article 177 in case of the appointment of the permanent CJ of Pakistan and same is the case with CJ of a HC, under Article 196. Such circumstances provided an opportunity to regimes to prolong the time period of acting Chief Justices, particularly it happened in General Zia's time period in order to achieve its hidden motives by utilizing the services of acting Chief Justices and Chief Justices of their own choice which proved harmful for an independence structure of judiciary.

Articles 181 and 182 provide the procedure for the appointment of acting judges and ad hoc judges in the Supreme Court and in the same manner additional judges in the HCs are appointed under Article 197 in order to meet the temporary situation, but they were not followed in the right way and for many years, permanent vacancies had been normally filled by acting/ad hoc/additional appointments who continued for years as temporary judges.

3.4 Structure of Judiciary in Pakistan

3.4.1 Relation between Bench and Bar

The bench and bar have been described by a former Chief Justice of India as "two sides of the same coin and even if one of it gets defaced, the coin goes out of circulation"⁸¹.

According to a former Chief Justice of Pakistan, "bench and bar are equal partners as two wheels of a chariot. In order to provide smooth running, both wheel must run in coordination"⁸².

According to Justice Verma "Bar" means not merely the lawyers but also the judges. So in administration of justice, lawyers and judges are equal participants. That's why, both lawyers and judges are called "officers of the court"⁸³.

Members of the bench are drawn from the bar. So, upbringing of both is the same. For a competent judge of integrity an honest, industrious and conscientious lawyer is required.

According to Justice(Retd) Krishna, "the Bar first lost its finer values and the Bench slowly surrendered....It is the advocate of yesterday who has, without scruples, evaded or avoided tax, fixed benches, practiced communal politics, bribed the gods of politics and established good public relations and, through cute arts, cultivated clients and managed judges, who becomes the District Judge, or High Court (or Supreme Court) Justice later.

The judiciary is not a lotus which remains pure but grows out of dirt"⁸⁴.

⁸¹ Chief Justice (Retd) J. S. Verma, *New Dimensions of Justice*, Delhi: Universal Law Publishing Co. Pvt. Ltd., 2000, P: 11.

⁸² Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, Karachi (Pakistan): Oxford University Press, 2001, P: 660.

⁸³ *ibid*, Chief Justice (Retd) J. S. Verma, *New Dimensions of Justice*, P: 20.

⁸⁴ Justice V. R. Krishna Iyer, *Our Courts on Trial*, Delhi: B. R. Publishing Corporation, 1987, P: 16.

3.4.2 The Role of Bar in Protecting Judicial Independence in Pakistan

It is quite true that the lawyers enjoy more freedom than the judges and they can easily mold the public opinion as compare to judges as judges are bound to respond to criticism by the very nature of their office so the responsibility of bar comes here to protect judges from unwanted criticism.

According to the principles of Professional Conduct, they have this liberty to receive the support of the bar. During his lecture to the PHCBA on April 20, 2007, Ali Ahmed Kurd stated that lawyers are "like soldier of the court" and they have to strive for the self-esteem and freedom of the judiciary. According to Muhammad Ikram Chaudhry Advocate, "the bench cannot sustain itself respectable without an appropriate role of the legal fraternity"⁸⁵. So, in short mutual understanding and close cooperation between the bench and members of the bar are essential. Although the role of lawyers in political movements cannot be ignored but rest of their functions are their core roles to protect and strengthen the independence of judiciary.

3.4.3 Role of Bar as a supervisory body over the Judiciary

The most important role of bar is to monitor the performance and conduct of the judges along with other roles like, to guard the judiciary from external interference and for sustainable freedom of judiciary. The mechanism of bar resolutions is adopted to indicate denounce and disapproval if the actions or performance of any judicial officer is harmful to the pride of judiciary.

According to one of the principles, if the complaint is proper then it is the duty of an advocate to relieve such grievances and on the other hand try to redress legally and to

⁸⁵ Muhammad Ikram Chaudhry, "Lawyers as Custodian of Independence of Judiciary", *PLJ 1996 Magazine*, P: 24.

defend the complainant and person affected⁸⁶. The history reveals that the judicial appointments to the superior judiciary most of the time took place on the basis of personal considerations.

Since 1980s, lawyers were very active with reference to the criticism against such appointments and challenged the with the help of constitutional petitions. Sometimes the petitions were filed by individual lawyers while often by bar associations, for example the famous historic judgment in Judges 'case⁸⁷. But,, unfortunately the role of bar has become weak and its failure regarding its duty as a supervisory body over the judiciary is being confessed by the lawyers⁸⁸. In the words of a former Chief Justice: "there is a tendency among the lawyers to think that they have to be on good terms with judges. Lawyers would not like to take a stand on certain issues even if these are against the interests of the judiciary as an institution"⁸⁹.

3.5 Lawyers' Role for the Independence of Judiciary

There is no doubt that the role of lawyers in resisting the external pressure for the sake of judicial independence is very vital and this service of lawyers is more important than all other services offered by the lawyers.

3.5.1 First phase (1947-1977)

The first thirty years of Pakistan's constitutional history were not successful with reference to the performance of lawyers, that's why the role of lawyers as custodians of judicial independence was quite disappointing. Irrespective of the type of government

⁸⁶ Canon of Professional Conduct and Etiquette of Advocates, canon # 159, PLJ 1996 Magazine, P: 53.

¹⁰⁸ Al Jehad Trust Vs Federation of Pakistan PLD 1996, SC, p: 324.

⁸⁸ Muhammad Ikram Chaudhry, "Corruption in the Judicial System and its Eradication with Special Reference to Police and other Law Enforcing Agencies in Pakistan", PLJ 1996, Magazine, P: 18.

⁸⁹ Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, Karachi (Pakistan): Oxford University Press, 2001, P: 660.

whether it was military intervention curtailing jurisdictions of the courts or the political government remained silent observer like the other organs of society. No collective effort has been noticed during this critical period of the constitutional history. Lawyers even could not criticize some of the controversial judgments of the Federal Court like, "Tamizuddin Khan's case in 1955", "Governor General's Reference of 1955". According to an analyst with reference to these cases: "by giving the Governor General wide berth and offering precedents to uphold executive intervention in constitutional and legislative activities, the immediate consequences of the Federal Court rulings were detrimental for Pakistan's developing polity and particularly for legislative sovereignty. For the longer term, the court established a practice of striking unspoken bargains with those in powers so that its rulings would be obeyed and those in power would not feel defied. At a crucial time of Pakistan's history the judiciary molded this interpretation of prudence into a precedent from which it would later find it hard to depart"⁹⁰. As a result, public remained unaware of the logic used by the courts to support these cases, because of the silent role of legal community⁹¹.

Justice Kayani, the then Chief Justice of the Lahore High Court, stated his discontent upon the inefficiency of lawyers at University Law College, Lahore on March 30, 1957: "On you, therefore, rests the responsibility of molding public opinion and of expressing yourselves frankly and critically when the government misconducts itself. I am sorry to say that very few bodies of lawyers have regarded themselves with any responsibility in this matter, and I was constrained on one occasion to say in the course of a judgment – to which four other judges were signatories – that except for a few songs of mourning no

⁹⁰ Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*, New York: Cambridge University Press, 1995, P: 31.

⁹¹ Allen McGrath, *The Destruction of Pakistan's Democracy*, Karachi (Pakistan): Oxford University Press, 2000, P: 202.

bar associations had found the strength or dignity to express strongly on the taking away of the writ jurisdiction in 1955⁹².

Another precedent of the apathy of legal organization was not only the endorsement of the martial law of General Ayub Khan in 1958 and of General Yahya Khan in 1969 but the bar associations arranged functions in the honor of the martial law authorities⁹³.

The civilian government of Zulfikar Ali Bhutto was also the witness of the attack on the independence of judiciary but through constitutional means. His government passed seven Constitutional Amendment Acts, out of which five were harmful for judicial independent status.

3.5..2 Second phase (1977 to March 2007)

The second phase(1977 to March 2007) was quite different from the first one where legal community appeared to be very strong and proactive and it was satisfactory and overall commendable.

After the martial law of General Zia, lawyers started showing serious resistance, demanding the restoration of the Constitution, conducting the general elections, lifting of martial law and restoration of the powers of the judiciary. All important court decisions had been analyzing by the legal community including Professors of law through articles. The most important cases included Bhutto's trial and his conviction as well as the Supreme Court decision in Begum Nusrat Bhutto's case in which validity was given to martial law of 1977. Such circumstances created an environment which became challenging for the military regime and the legal community faced its adverse results.

Permanent benches of LHC at Rawalpindi, Bahawalpur, Multan and were set up in 1981

⁹² Malik R. Kayani, *Not the Whole Truth*, Lahore (Pakistan): Pakistan Writers' Cooperative Society, 2002, P: 51.

⁹³ Justice (Retd) Dorab Patel, *Testament of a Liberal*, Karachi: Oxford University Press, 2004, P: 103.

in order to disperse the lawyers of Lahore High Court Bar Association who were the main activists for anti-regime activities in the hub of Lahore, and that's why they were punished like this⁹⁴. Along with that the disciplinary powers of advocates which had been in the hands of Bar Councils were handed over to HC and the SC in General Zia's regime. Severe resistance and refusal to give up their powers from lawyers community forced the regime to reverse this law in 1987 and their disciplinary powers were restored. In this phase the appointment on merits was given too much importance by lawyers and challenged all those appointments before High Courts and Supreme Court in adverse cases.

In the case of General Musharraf, when PCO was issued, so six judges refused but newly constituted SC granted him the validity and tenure for three years. Again he got himself elected as a president through controversial referendum of 2002 and also issued LFO, with the help of which almost 80 articles of the constitution were amended. Both steps were challenged where SC rejected the application regarding LFO, and government issued the extension in the retirement age of the superior courts after two days.

This was not accepted by lawyers and they asked the judges of the superior courts to decline the extension but unfortunately, they didn't follow the line. The lawyers continued the protest against LFO and extension of age, they also gave deadline of February 28 2003 for declining the extension⁹⁵. March 8, 2003 was an actual retirement age of Justice Sheikh Riaz Ahmed the then CJ of Pakistan, legal community asked him to get retirement without taking extension, it was also declared that otherwise his day of retirement March 8, 2003 would be observed as a Black Day. Unfortunately, he accepted

⁹⁴ High Courts (Establishment) Order, (Punjab Amendment) Ordinance, 1981, Available at <http://punjablaws.gov.pk/laws/343.html>

⁹⁵ The NEWS Islamabad, "The Age of Controversy", February 23, 2003.

the extension and lawyers observed March 8 2003 as the Black Day in the judicial history of Pakistan.

Lawyers continued their protests and held different conventions in major cities like, Lahore, Islamabad, Karachi, Quetta and Peshawar to mobilize public opinion. Bar resolutions were also passed but LFO sustained with the help of 17th amendment adopted by a parliament. However the extension in the retirement age was dropped by the parliament and all the previous judges went on retirement.

Although it was a big success for lawyers as its leadership became more responsive but they couldn't lift themselves up above the level of political affiliation because all political parties have established their ties with lawyers. That is the main reason, that the reaction from lawyers had not been so severe in civilian governments as was during military regimes, like in one of the cases, which took place in the civilian government of Nawaz Sharif in which the SC was physically attacked by political activists belonging to PML(N) on November 28, 1997. The bar associations boycotted the court proceedings but no effective mass movement was started against the government for degrading the dignity and independence of the judiciary⁹⁶.

3.5.3 Third phase (March 9, 2007- March 16, 2009)

In the third phase of the lawyers' role was the most reactive time period in the political history of Pakistan and judiciary as well. It was the same military time period of General Pervaiz Musharraf, whose step of arbitrary removal of CJ Ifikhar Muhammad Chaudhry, on March 9, 2007 created a wave of restlessness among lawyers to such an extent that it has become a revolutionary period of Pakistan's Judicial history.

⁹⁶ Chief Justice (Retd) Sajjad Ali Shah, *Law Courts in a Glass House*, Karachi (Pakistan): Oxford University Press, 2001, P: 517.

The judicial crisis was started when the then General Musharraf took unfavorable decision against CJ. The suo motto actions of CJ became the major reason for this step specially the case of Steel Mill and the case of missing persons. Whereas the Court also started hearing the cases in order to ensure the maltreatment of power or misuse of authority including large-scale investigations in politically controversial cases, which angered the ruling regime and became the major reasons for extra constitutional steps of General Musharraf. With the help of an independent rulings from 2005 to 2007 and through reinstating Chaudhry in July 2007 the Court gained "popular legitimacy" and became capable of driving collective action⁹⁷.

As a result General Musharraf, the then President asked the Justice Iftikhar, the CJ of Pakistan to resign on the basis of alleged misconduct which was refused by the Chief Justice and he was suspended as a result and remained under house arrest in army office. Under Article 209, President General Musharraf referred the case to the Supreme Judicial Council for conducting inquiry⁹⁸.

The Chief Justice's refusal to resign in a country like Pakistan where the military had ruled politics for almost more than thirty years represented appallingly drastic break from political and social norms. In recognition of his individual efforts to uphold the legal system's fundamental commitment to freedom, justice and equality, the prestigious "Medal of Freedom" at the Harvard Law School been awarded to Justice Chaudhry who became the third person in history who received it. The New York City Bar Association

⁹⁷ Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1718.

⁹⁸ Tariq Butt, "Iftikhar ceases to be chief justice", *The News*, March 10, 2007.

awarded him, an honorary membership for this courageous step⁹⁹. The international recognition of the lawyers movement by the human rights organizations and lawyers, was quite supportive that increased pressure on the military government¹⁰⁰.

This was first time in the political history of Pakistan that the lawyers left their political affiliation and showed an unprecedented unity for the judicial cause, in which the last objective was achieved and Chief Justice Iftikhar was restored through a “historic decision” of the SC on July 20, 2007. It was done by the restless efforts and sacrifices of lawyers and the Pakistani nation.

From legal point of view, the suspension and reference against Chief Justice Iftikhar was challenged in the SC through 23 constitutional petitions. After achieving the third objective of the restoration of Chief Justice, the lawyers' organization declared their determination to carry on their effort till the establishment of rule of law and the independence of judiciary in Pakistan.

Their stand was that General Pervez Musharraf was unconstitutional President and along with it he was ineligible to contest the Presidential election of October 2007 being the Chief of Army Staff.

So lawyers selected Justice (Retd) Wajihuddin for the Presidential election as their candidate just to create locus standi. But the challenge before the Chief Election Commissioner was over-ruled and nomination papers of General Musharraf were accepted. Though the elections were allowed but Supreme Court Bench banned the

⁹⁹ Azmat Abbas and Saima Jasam, "A Ray of Hope: The Case of Lawyers' Movement in Pakistan" in *Pakistan: Reality, Denial and the Complexity of its state* (forthcoming book of Heinrich-Boll-Stiftung, in the publication series on promoting Democracy under Conditions of State Fragility), Lahore(Pakistan): Heinrich-Boll-Stiftung, 2009, p :12.

¹⁰⁰ *ibid*, Azmat Abbas and Saima Jasam, "A Ray of Hope: The Case of Lawyers' Movement in Pakistan", p: 11.

Election Commission for issuing the notification of the result till a final decision on the petitions¹⁰¹.

The government party was doubtful about the decision in their favor because of the remarks of the judges on the bench so, in this state of mind and to preempt the Court's verdict, General Musharraf promulgated Provisional Constitution Order (PCO) 2007 and declared extra-constitutional emergency in the state on November 3 2007. Constitution was suspended and judges required to take fresh oath on selection basis. Almost fifty judges of superior courts refused to take oath and all of them including presidents of SCBA; Aitzaz Ahsan, the deposed Chief Justice Iftikhar, thousands of lawyers, members of civil society, political activists, were under house arrest till March 2008. The complete boycott of new judges of the SC and HC was observed.

The role of the barrister Aitzaz Ahsan was the major one, who organized the crowd and the bar associations. The co-lawyers confessed his efforts and appreciated by saying that "it was through his intelligence that we gained the confidence of the people"¹⁰².

This was the strategic coordination of the campaign of the lawyers movement, which improved by the help of Pakistan Bar Council who conducted a National Lawyers' Convention in Islamabad on February 9, 2008¹⁰³. The resolution denounced the human rights abuses took place under emergency rule and showed the determination of lawyers to restore all the members of judiciary as per November 3, 2007.

¹⁰¹ Iftikhar A. Khan, "SC keeps Musharraf's fate in its hands", Dawn, October 6, 2007.

¹⁰² James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

¹⁰³ *ibid*

Another aspect of the lawyer's movement was its campaign for international support besides creating pressure on the Musharraf regime domestically. Chief Justice Chaudhry personally "wrote letters to officials in the United States and United Kingdom calling for their support"¹⁰⁴.

It was a shocking moment for lawyers when new civilian government showed reluctance to reinstate the judges under the president Zardari government. According to one of the scholars "Stephen P. Cohen" who writes in his 2004 book, "The Idea of Pakistan", "the political leaders wished Pakistan to be democratic, but they were not willing to make it so". The deal between two major political parties showed the same historical political scenario during the lawyers movement when they were indecisive about the restoration of judges¹⁰⁵.

Lahore High Court Bar Association on January 21, 2009 started a 10 Million signature movement, in order to get 10 million signatures on a large white cloth to be presented to the parliament at the end of long march which was later announced by lawyers' community.

It is proved by history that a dictator like Musharraf couldn't do whatever he wanted, in the presence of "an outspoken Chief Justice, a rebellious group of judges, thousands of lawyer-activists, dozens of civil society groups, opportunistic political parties, a sympathetic media, and hundreds of thousands of ordinary Pakistani protesters

¹⁰⁴ 'Open letter from the Chief Justice of Pakistan', Posted on January 31, 2008 by HRCP, Human Rights Commission of Pakistan, <http://hrcpblog.wordpress.com/2008/01/31/open-letter-from-the-chief-justice-of-pakistan/>, accessed, 5-7-13.

¹⁰⁵ James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

enforced a version of judicial supremacy against the dictator"¹⁰⁶. As judiciary had lost its name in the past because of its unpopular decisions under the "doctrine of necessity" to support many military takeover but current lawyers struggle and some popular actions of CJ has brought back the credibility of judiciary.

The Asian Human Rights Commission (AHRC) provided a great deal of recognition to the lawyers' movement for the election: "Throughout Asia there has been no parallel to this movement. It was largely because of the movement that the elections... were possible and in turn the people gave their mandate to the parties that stood up against the tyranny of the army rulers"¹⁰⁷.

Although the movement was peaceful but military regime didn't tolerate this challenge and lawyers faced the police attack upon their peaceful convention on March 17, 2007 as a result, more than fifty judges got injured in this incident.¹⁰⁸ Such violent reaction was not limited to certain areas but most of the major cities experienced it like, in Karachi some street fights took place between different groups in favor of the Chief Justice and pro government activists, outcome was more than forty dead and more than hundred injured.¹⁰⁹ In another incident, a bomb blast killed at least 12 civilians in a gathering of lawyers in Islamabad, waiting for the address of Chief Justice Ifikhar to the lawyers convention¹¹⁰.

¹⁰⁶ Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1706.

¹⁰⁷ Reza Pirbhai, "Another View of Pakistan: Men in Black", March 15, 2009, Pak Tea House, <http://pakteahouse.wordpress.com/2009/03/15/another-view-of-pakistan-men-in-black/>, accessed, 14-7-13.

¹⁰⁸ Salman Aslam, Arslan Rafiq & Wajih Ahmed, "Lahore police clash with lawyers", *The NEWS*, March 18, 2007.

¹⁰⁹ Arman Sabir & Tahir Siddiqui, "Riots disrupt Karachi calm", *Dawn*, May 13, 2007.

¹¹⁰ Baqir Sajjad Syed, "Another carnage visits capital", *Dawn*, July 18, 2007.

The print and electronic media remained very active in the lawyers' movement. Even Geo News had to face a ban¹¹¹. The role of media was very positive towards the real cause and got new inspirations to be with lawyers over the establishment¹¹². The inspirational and hopeful element in the lawyers' resistance was the involvement of the civil society in the movement. It was a record moment of history that civil society was fully motivated and participated enthusiastically. It was because of their active role that the message of lawyers' movement spread everywhere within no time and it gave credit and value to this movement due to which the other parts of society also got motivated.

An American journalist explains the current lawyers' movement in these words: "Can anyone remember anywhere in all of modern history, large numbers of lawyers leading the resistance as they did on the streets of Pakistani cities way ahead of the workers, peasants and even the university students? Pakistani police and troops rounded up the mass protests of lawyers and pushed hundreds of them into trucks on the way to the prison. Lawyers were willing to go to prison and endure beatings, while demanding the re-establishment of the rule of law and the independence of judges, right up to the Supreme Court, a rare display of professional courage and duty"¹¹³.

Various analysts emphasized that the only solution for the Pakistan is "Rule of Law" as "the only way to win hearts and minds of the people. Therefore, democracy must deliver - including justice - if Pakistan wants to go back on the path of stability"¹¹⁴.

¹¹¹ Op. cite, James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008.

¹¹² Interview with Mir Ibrahim Rahman, CEO, Geo TV, in Cambridge, Mass, Nov. 23, 2009, cited in, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1721.

¹¹³ Ralph Nader, "Pakistani Lawyers Vs American Lawyers", *The NEWS*, November 15, 2007.

¹¹⁴ Susanne Mahrwald, "Rule of Law: The Case of Pakistan", Lahore: Heinrich-Böll-Stiftung, August 26, 2009, p: 2.

After going through the above discussion, it can be said without any ambiguity that military regimes and civilian government both had greater share in undermining the independent role of judiciary and created a number of hindrances for its independent functioning which affected its prestige very badly. It had bad impact upon public who lost its confidence in the impartiality of the judiciary. The powerful executive particularly military regimes brought such detrimental measures in the structure of judiciary which gradually downgraded its level to such an extent that in 2002, the then President of SCBA Hamid Khan, put forward an application to the SC for removal of a review petition regarding the appointment of Judges in the SC and filed a "Statement at Bar". The Presidents of the Bar were of the view that they had no assurance in the independence of the SC in its present composition so the association refused to argue the review petition before the court¹¹⁵.

3.6 Why did lawyers movement emerge contrary to previous record?

After studying the whole judicial history, it has become very clear that uprightness and individual role of judges is very essential for sustaining the independence of judiciary. Although the current lawyers' struggle show commendable efforts of lawyers as a whole plus the support of all the factions of society but the remarkable role of Chief justice, Iftikhar Mohammad Chaudhry became the first sign against the traditional set up of Pakistani politics and towards the end less struggle for "rule of law" in Pakistan.

Few instances are found in history where Chief Justices took stand against the executive like the historic judgment in 'Judges' case by Justice Sajjad Ali Shah under greater pressure was one of the incredible step. So, was the justice Iftikhar who withstood the

¹¹⁵ Dawn, "Lawyers flay Supreme Court decision", November 8, 2002.

greater pressure under military dictator by not only refusing to resign but challenged his suspension in the Supreme Court and got himself restored but he also had taken some suo motto actions due to which he got popular legitimacy but those actions were not in the interests of the government and such steps had never been taken in history. Here the role of Supreme Judicial Council and Supreme Court was highly appreciative which performed according to the rule of law without considering the outside pressure contrary to its previous performance, which happened most of the time.

Although the resistance from lawyers body started emerging in the time period of 1980s which was considered the phase of awakening. They demanded the restoration of constitution and uplifting of martial law and so on under military dictator but unfortunately Supreme Court couldn't work independently and whole lawyers organization was not united for a big change in the system. Before the current lawyers struggle, resistance came up in 2003 as well against two things LFO and 'extension in the retirement age of judges' but the role of chief Justice was very disappointing at that time along with it "lawyers couldn't raise themselves above the level of political affiliation" which is the major reason in the history that reaction from lawyers had been usually very severe in military regimes as compare to civilian governments.

The current lawyers struggle is the combination of a number of factors which definitely were missing or weak in the past. Including the independent role of Chief Justice, his persistence motivated and encouraged the lawyers body to continue their struggle for the sake of justice due to which constant leadership was provided by the presidents of Supreme Court Bar Association and Pakistan bar Council who coordinated and unified the efforts of all bar councils and bar associations strategically throughout Pakistan for its

success. It was the first time that lawyers raised themselves above the level of political affiliation and worked for judicial cause. Besides the domestic pressure, international pressure worked a lot, like the international recognition of lawyers struggle by many human rights groups and bar associations. Chief Justice himself wrote a letter to official in USA and UK. Sometimes the start of the movement is marked with the response of the public against the strained circumstances of the country under the military dictator especially with reference to war on terror, missing persons' case, issue of 'lal Masjid' and finally the humiliating behavior of police with Chief Justice dragging him by the hair, which was perceived as the degradation of 'the law' itself finally spurred the movement. At the same time, the meaning of the movement created by lawyers in the mind of public which is 'the struggle for justice' along with the public awareness created by media and social network and civil society has its effective role in the success of the movement. Luckily this time most of the oppositional political parties supported the movement which made it easy to gather public for this cause.

CHAPTER FOUR

THE LAWYER'S MOVEMENT IN THE LIGHT OF SOCIAL MOVEMENT

4.1 Framing Approach

Much of the work of lawyer's movement is devoted towards creating frames that motivate, inspire, and demand loyalty. In particular, while individual (or rational) interests often attracted graduates to the movement initially, it was the ability of the movement to frame movement as a "moral obligation" that led to its success. The meaning of the movement was created in such a way that people perceived it as a struggle for "justice" and solution of all their problems that they have been encountering for last many years especially because of the military rulers which led to achieve the goal of the movement; "the rule of law and independence of judiciary" so the support of public became easy under the name of 'justice' as this is one of the most crucial and sensitive aspects of the lives of Pakistanis.

The essence of lawyer's movement is a desire to form such a society that ruled and directed by the state constitution, by establishing rule of law under properly elected civilian government. Control and reconstruction of state institutions is only one of many routes for change.

An important feature of lawyers movement's diagnostic frames is to blame the increasing influence of military regime over civilian institutions for an extensive range of social ills, which includes rising unemployment, static economic development, high debt, paralyzing political institutions and insecure environment under the war of terrorism and

so forth and further argue that this military influence has been undermining the process of democracy in the country for more than thirty years and used the judiciary support by coercive means for its vested interests. It was argued that it is a mindful Western strategy to deteriorate and manage Muslim societies for political, economic and military purposes. But on the other hand, regimes also try to limit the institutional resources and public space available for the propagation of alternative frames that could challenge regime legitimacy. The outcome is that the right path towards development and success is lying under the process of true democracy. This rationale has been provided in order to sustain the motivation and to continue the active participation of the people.

Lawyers movements expressed and propagated the "frameworks of understanding that resonate with potential participants and broader publics to obtain collective action", like movement severely criticized the authoritarian rule of General Musharraf due to which masses could not diminish the adverse effects of the policies carried out by the regime, because of the lack of formal political access. As a result, with few open channels for political option the result is societal frustration and a sense of isolation. Lawyers pointed out that the feeling of political inability intensified in the face of the "State of Emergency" and PCO and administrative processes that attempted to depoliticize civil society and prevent oppositional activities, which reverberated the previous experiences of Pakistani nation under different military regimes. In this way, lawyers addressed the major concerns of public in a best way and with the help of this resonant frame, not only a rationale has been provided for enhancing mobilization but the movement also made clear its objectives and convinced people that the solution of all their problems lie in the establishment of an independent judiciary. It is argued that as "political movements are

banned under the most authoritarian regimes, lawyer's movement becomes a natural vehicle for political discontent".

4.2 Symbols and slogans

The incident of grabbing the Chief Justice by hair, was framed as the degradation of the "law" itself and generally it was perceived that if the Chief Justice of the country is not safe then nobody would be safe here as he is considered as a symbol of dignity. It captured much of the attention of the public and ultimately it became the symbol of unity for general public. Lawyers and media played the best role for high lighting this symbolic importance of Chief Justice, which worked a lot not only for the movement but for the motivation of all the segments of the society.

One particular image captured the public imagination:

"That of the police grabbing Chaudhry and dragging him by the hair into a police vehicle on the morning of his first appearance before the SJC(Supreme Judicial Council). The events were broadcasted live via Pakistan's electronic media outlets, and newspapers published an iconic photograph of the scene"¹¹⁶.

"That photograph did it for a lot of people, and it did it for me," explained Ghazala Minallah, a civil society activist in Islamabad. "That just launched us into protest mode"¹¹⁷.

¹¹⁶ Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1713.

¹¹⁷ Interview with Ghazala Minallah, in Islamabad, Pakistan, July 10, 2008, cited in Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1713.



- *May 12. People show solidarity with the Chief Justice by burning a photo of the most hated individual in the country*¹¹⁸.

The movement showed different tactics and strategies to fulfill its objectives. The success of the movement is also dependent upon the use of publicly recognized symbols and language that show the relevance with cultural experiences and collective memories. Many of the lawyers' demonstrations opened with a poem by the late Marxist poet Faiz Ahmed Faiz:

"Promises that you make to us,
Of the day, the hour, the moment of our victory,

The promise of the promised land,
Of course, we shall wait and see"¹¹⁹.

Many of the protests during lawyers movement, exhibited a consistent repertoire of contention. In addition to marches and rallies intended to demonstrate opposition to the

¹¹⁸ 'May - Chief Justice Pakistan', available at, http://pakistan.ahrchk.net/chiefjustice/index.php?ch_id=5, accessed, 17-7-13.

¹¹⁹ Amitabh Pal, Pakistan Lawyers' Movement Shows Global Reach of Nonviolence, November 9, 2007, available at, www.progressive.org/mag_wxap110907, accessed, 16-7-13.

military action, protesters utilized other tools of dissent, like play cards denounced the Musharraf's decision "Go, Musharraf, go!". People shouted "Musharraf is a dog!" and Members of an armed police unit, wearing T-shirts that read "No Fear," walking briskly showing that "the movement was peaceful"¹²⁰.



- *District Bar Association Abbotabad*¹²¹.

Banners proclaiming support for the movement as "only an independent judiciary is the guarantee of the survival of Pakistan"(as shown in the picture as well).



- *Protest of lady lawyers in front of the Supreme Court. (Photo courtesy of the Pakistan Bar Council)*¹²².

¹²⁰ James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

¹²¹ 'Language Log: Homographic homophonic autonymic chants and signs', available at, <http://itre.cis.upenn.edu/~myl/language-log/archives/005094.html>, accessed, 17-7-13.

Even when Aitzaz Ahsan was moving towards the bar association of Okara, people were excited and shouting slogans "Who should our leaders be like?" they cried. "Like Aitzaz!" And, "How many are prepared to die for you?" "Countless! Countless!"¹²³. One of the famous slogans of lawyers was in Urdu(shown below), " Zulm k Zaabtay, hum nehi mantay, hum nehi mantay", which means "we do not accept the rules of brutality"¹²⁴.



- *May 14. A lawyers' procession on Kutchery Road in Mianwali*¹⁶⁵.



- *Strike to Protest 39 Deaths Shuts Down Karachi - New York Time*¹²⁵.

¹²² 'May - Chief Justice Pakistan', available at, http://pakistan.ahrchk.net/chiefjustice/index.php?ch_id=5, accessed, 17-7-13.

¹²³ Op. cite., James Traub, "The Lawyers' Crusade".

¹²⁴ 'May - Chief Justice Pakistan', available at, http://pakistan.ahrchk.net/chiefjustice/index.php?ch_id=5, accessed, 17-7-13.

¹²⁵ 'Strike to Protest 39 Deaths Shuts Down Karachi', available at, http://www.nytimes.com/2007/05/14/world/asia/14cnd-stan.html?_r=0, accessed, 17-7-13.



- lawyers movement The Mob and the Multitude¹²⁶.

According to Dr Maqsood ul Haq, Pakistan was created in the name of democracy and lawyers movement is the symbol of that democratic impulse vibrating in the Pakistani nation¹²⁷. When new elected civilian government showed reluctance to reinstate the deposed judges, almost 150 lawyers and political activists assembled outside the SC building in Islamabad, chanted “Go, Zardari, go!” and their continuous demand was about to bring back the judges without delay. “Do not play with lawyers' emotions ... do not test our patience,” said Hamid Khan, a prominent figure in the lawyers' movement¹²⁸.

4.3 Resource mobilizing structure

¹²⁶ ' lawyers movement The Mob and Multitude', available at, <http://mobandmultitude.com/tag/lawyers-movement/>, accessed, 17-7-13.

¹⁶⁸ Dr. Maqssod ul Hassan nuri, "Lawyers' movement in pakistan: Challenge and response", *Liberty international journal*, (July-August 2007) , cited in "Judicial crisis in pakistan", ed. Dr noor ul haq, August 31, 2007, p: 96.

¹²⁸ Sadaqat Jan, "Pakistani lawyers denounce leader of ruling party", Islamabad, July 10, 2008, http://www.foxnews.com/printer_friendly_wires/2008Jul10/0,4675,PakistanPolitics,00.html, accessed, 20-7-13.

4.3.1 Leadership role

Whereas the success of the movement depends upon the way the movement frame is created, projected and its consistency throughout the movement, its success is also dependent upon the reputation of the individual or group responsible for communicating the frame. In the case of lawyers movement, this role was best played by the reputable and trustworthy leaders; barrister Aitzaz Ahsan, Munir A Malik and vice chairman of PBC, Ali Ahmed Kurd. The role of Aitzaz Ahsan, a prominent legislator and one of Pakistan's leading constitutional lawyers was remarkable who led the movement successfully.

It is said that "political leadership becomes a critical factor" in transitions, if not a determinant one. The best part of its leadership is that it remained united throughout the movement, despite many differences they may have on other issues. For example, though affiliated to different political parties – Aitezaz Ahsan with PPP, for instance, they have ensured relative autonomy from outside influences. This has not only made them credible in the eyes of their supporters but also provided consistency to the effort without much interruption¹²⁹. Their continuous mass interaction and motivational speeches especially of Ali Ahmed Kurd and Aitzaz Ahsan appealed the public, enhanced their zeal and made this issue worthwhile. After the election, the lawyers go back to the streets, declaring a "black flag" week to push their demand for the restoration of the judges¹³⁰. It was barrister Aitzaz Ahsan who made the final decision of "long march" when civilian government showed reluctance for the restoration of the CJ and deposed judges.

¹²⁹James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

¹³⁰ibid,

A very unique aspect of the movement was that lawyers movement does not only rely on a single leader but the collection of committed individuals and also managed to rally a number of political leaders behind their cause. This notion is further supported that the experience of developed states is evident of the fact that when leaders of political parties, civil society and private sector built appropriate coalitions to collectively achieve their mutually negotiated and agreed-upon goals, they ensured a much higher ratio of success as compare to those who personalized and confined power to themselves.

The strategic coordination of the movement can also be observed in its campaign for international support in which, the efforts and the persistence of CJ, the main figure of the movement, was remarkable. He personally wrote "letters to officials in the UK and USA, calling for their support"¹³¹. His restless efforts and resistance against injustice not only awarded him the honorary membership from the New York City Bar Association and "medal of Freedom" from Harvard Law school but also encouraged people to continue their struggle till their final destination. International recognition of lawyers movement by the human rights organization and lawyers was quite appreciative which created greater pressure upon the government and also presented new challenge in the form of internationalization of the movement.

4.3.2 Role of Lawyers' Organization as a formal institute

The professional private sphere of lawyers was well organized and well equipped, with regular elections and membership. Most of the research highlights the importance of

¹³¹ 'Open letter from the Chief Justice of Pakistan', Posted on January 31, 2008 by HRCP, Human Rights Commission of Pakistan, <http://hrpcblogger.wordpress.com/2008/01/31/open-letter-from-the-chief-justice-of-pakistan/>, accessed, 5-7-13.

organizational resources in the case of lawyer's movement where the SCBA and PBC not only organized the activities all over the country but also used social interactions with local communities to propagate the message of "justice". "The Lawyers National Action Committee (LNAC) made all the central decisions for the movement with the involvement of the PBC and messages were disseminated through local bar councils very effectively across the country"¹³².

Messages were disseminated with the help of Pakistan Bar Council and local bar councils across the country. Quick and effectively mobilization was made possible because of the communication network and the movement's structure. Democratic elements were also seen throughout the movement by lawyers according to their tradition which they are following in their bar councils, where yearly elections are conducted.

The most important aspect of lawyers movement is the dependency of the lawyers movement on its own as societal support in the form of civil society organizations, which is essential for an independent judiciary to be able to withstand pressure, provided that they are indigenous, deep-rooted, constituency-based, self-organized and self-financed. The Pakistan Lawyers' Movement provides one excellent example of such a civil society organization, making a real impact on the functioning of Pakistan's political landscape¹³³.

¹³² Zahid Shahab Ahmed, 'Lawyers-led Movement for the Freedom of Judiciary and Promotion of Democracy in Pakistan (draft)', cited in "Movements and Campaigns: Pakistan's Lawyers Movement (2007-2009)", Jordyn Phelps, Pakistan, *New York Times*, August 12, 2009, <http://topics.nytimes.com/top/news/international/countriesandterritories/pakistan/index.html>, accessed, 5-7-13.

¹³³ James Traub, "The Lawyers' Crusade", Pakistan, *New York Times*, July 01, 2008, available at <http://www.nytimes.com/2008/06/01/magazine/01PAKISTAN-t.html?pagewanted=print>, accessed, 5-7-13.

Lawyers movement's future goals were reflected throughout the movement and Pakistan Bar Council made it more clear by hosting the National Lawyers' Convention on Feb 9, 2008, which was highly tactical in its focus and created a resolution outlining the movement's future goals. In the same manner, LHCBA carried out a 10 Million signature movement, which aimed at getting 10 million signatures on a large white cloth to be presented to the parliament at the end of long march of March, 2009. Political party workers, concerned citizens and lawyers participated and signed the petition¹³⁴. Such moves showed the strategic coordination of the movement which became its success.

All the participants joined the movement because of variety of incentives and goals. The objectives of lawyers and of civil society were very clear in the form of "rule of law", reinstatement of deposed judges and "independence of Judiciary" while on the other hand the objectives of political parties showed some of their own future political interests as well while movement participants were self motivated and the incentive was very much clear that was "justice" which can only be enjoyed in the form of an independent judiciary.

4.3.3 Collective Identity

Moreover, the participation in protest activities also reinforced "collective identity" of protestors. According to Gamson, a collective identity emerges when individuals' "sense of who they are becomes engaged with a definition shared by co-participants in some effort at social change"¹³⁵.

¹³⁴ *ibid.*

¹³⁵ William A. Gamson, "The Social Psychology of Collective Action", in Aldon D. Morris & Carol McClurg Mueller (ed.), *Frontiers in Social Movement Theory*, New Haven: Yale University Press, 1992, p: 55.

For example, many lawyers came to realize as participants the lawyers' resistance to illegitimate state authority since the independence of Pakistan. The activists were pointing out the Gandhi, Jinnah and Nehru as lawyers as an inspirational source to sustain their support for the movement. They also recalled the resistance of lawyers against major rulers like Zulfiqar Ali Bhutto, and General Zia.

"Professional identities" of many Pakistani judges have been affected in a similar manner. Protests of common people motivated many deposed judges to continue their struggle even against the military rule at the time when the government offered for a compromise. They felt the pain that these protestors were bearing on their behalf and realized the appreciation for their defiance, in spite of the sufferings of house arrest and loneliness. Like, CJ argued that it "was an easy decision to resign" based on the orders of his "conscience," he stated that, under the circumstances long months of house arrest and threats, "[The protestors] gave [him] the courage to continue on"¹³⁶.

While focusing on formal organizations, lawyers collaborated their efforts with social networks and informal institutions. Numerous studies, for example, "highlight the importance of social networks for movement recruitment, particularly where social ties provide bonds of trust and solidarity and encourage movement"¹³⁷.

4.3.4 Civil Society and Students association

According to RMT, the human resource in the form of workers or participants is essential, so the participation of the civil society, common people and people from other

¹³⁶ Interview with Iftikhar Muhammad Chaudhry, July 11, 2008, cited in, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1723.

¹³⁷ Doug McAdam, "Recruitment to High-Risk Activism: The Case of Freedom Summer", *American Journal of Sociology*, vol. 92, 1986, PP: 64-90.

segments of society, is the inspiring and encouraging element in the lawyers' movement. According to a columnist: "the civil society in Pakistan had never been so outraged. In every place, in every gathering, there was nothing but condemnation for what happened to Chief Justice Iftikhar"¹³⁸. The structure of professional and student associations (Students for Restoration of Democracy in Pakistan, Pakistan Youth Alliance) were used for activists to be mobilized, mainly through social networking, especially Face book, print and electronic media. It also increased the political awareness of students. By undergoing threats, beatings, and arrests only strengthened the will power of students to be persistent for political change which helped them increased their sense of unity with their fellow protesters. These organizations continued to play an important role in raising awareness regarding democracy in Pakistan and recruiting social movement participants as well.

4.3.5 Role of Electronic and Press Media

Success and failure of any event or movement largely depends upon the media projection. Same is the case with lawyers movement, the positive and unshakeable role of media as a source no doubt provided a major contribution for the achievement of the objectives of the movement.

In Lawyers movement, the institutional arrangements for moves from professional to more general public sphere through bars and media were well prepared. Media centres remain the depiction private public sphere. Lawyers organization and media started having closer ties when media faced restrictions after the declaration of emergency in the State. The electronic media played its real role by showing its severe resistance against the order to blockage the information.

¹³⁸ Shafqat Mahmood, "A Storm is Brewing", The NEWS, March 16, 2007.

The media was also trying to frame the public opinion and exposed many facts which were not formally accessible, especially the messages of lawyers were emphasized and publicized through lengthy transmissions and also covered the lawyers' movement persistently for two years. Special debate sessions were arranged with the help of proponents and opponents of the lawyers' movement, along with it, it also presented the standpoints and validity claims on pro-restoration and anti-restoration. On the other hand, regime showed its dissatisfaction upon media coverage and charged it of exaggerating and misrepresenting the facts. With the support of media, it became easy for lawyers to bring a professional issue of lawyers' private sphere into wider public sphere.

Because of all the services that media was providing to lawyers movement, it had to pay its price and the very first restriction which it faced was in June 2007 when PEMRA amendment ordinance was enforced, which put a ban on media from the live coverage of the lawyers' protest rallies. This ordinance provided another chance to lawyers and journalists to start a joint protest against it and at last government took back this ordinance. Such a joint protest was helpful in rising the institutionalized public sphere for the lawyers' movement. The process of restriction continued by the regime, like after the emergency, the private TV channels were banned. Talk shows of popular anchors of different private TV channels were banned. The enforcement of emergency was followed by crackdown specifically on lawyers and media in order to contain their joint efforts but it could not stop them from spreading the message of justice, in fact it brought them on the same platform. Such coercive means speeded up the efforts of lawyers and media towards achieving the goals of the movement.

The current age of globalization and information revolution makes it easy for its message to get across and mobilize the people so media found alternative methods to

keep their program on air and their viewers intact. At the time when the programmes were banned on cable network, free access to live streaming through internet and satellite antenna was provided. This also followed crackdown on satellite antenna sellers in major cities, but the channels did not stop reporting of the news and broadcasted their programmes in routine manner, with more strong and critical thought.



- *May 31. Members of various civil society organizations, as well as political leaders take part in a torch-bearing procession in Islamabad in support of journalist's protest against the PEMRA ordinance to curb the freedom of the press¹³⁹.*

Another distinctive approach was that the TV talk shows were arranged on footpaths, press clubs, and at premises of bar associations. These were the institutions which arbitrated critical thinking of public sphere, the same way the salons, coffee houses, and theatre were institutions of public sphere in Habermas' description¹⁴⁰. In these talk shows the anchors and the participants, mostly lawyers and journalists criticized, reasoned, and purposefully debated on the government policies more openly.

¹³⁹ 'May - Chief Justice Pakistan', available at, http://pakistan.ahrchk.net/chiefjustice/index.php?ch_id=5, accessed, 17-7-13.

¹⁴⁰ Jurgen Habermas, *The theory of communicative action*, Boston: Beacon Press, 1987.

The relationship between media and legal sphere was based upon trust and confidence. Press print remained very receptive and full of appreciation of the public interest proceedings even before the start of lawyers' movement under the suo moto actions taken by the CJ. With an extensive media coverage, the shift became visible in the CJ posture from government loyalist to a public figure. The publicity was demanding more actions from the CJ in terms of more public interest court cases which meant more media coverage. The regime clearly disliked this trend as evident in the reference filed against CJ in March 2007, one of the charges was based on the media.

Every case, implicating public authority, got commendable support from media and legal public sphere, which led to favorable public opinion of CJ, like the construction safety and urban planning case 2005, the privatization of steel mill's case in 2007, the missing persons' case in 2007 accused the army and intelligence agencies and lastly, the presidential election in 2008 implicating a president in military uniform. In each case, CJ was acting against more powerful officials than the previous ones and media was full of appreciation and encouragement for the CJ. The same media continued its support even at the time when CJ was deposed. The price they paid was crackdown on media outlets, ban on private media channels, and crackdown on journalists.

4.3.6 Role of Political Parties

In addition to these organizational support, lawyers associations welcomed the services of political parties for mobilizing the general public in order to muster their opinion in favor of the issue while political parties had some underlying interests as well. Many political parties like the PMI.(N), Pakistan Tehreek-e-Insaf, Jamaat-e-Islami, Muttahida Majlisai

Amal(MMA) and others carried out their support and participated in the Long March. All the supporters of the 'restoration of judges' participated in the Long March despite a ban on protests and rallies under Section 144 by the government.



- *May 13. Activists of opposition parties assemble for a common cause in Layyah¹⁴¹.*



¹⁴¹ 'May - Chief Justice Pakistan', available at, http://pakistan.ahrchk.net/chiefjustice/index.php?ch_id=5, accessed, 17-7-13.

- *Lawyers, Lahore Bar Association along with leaders of political parties, demanding the restoration of the pre- emergency judiciary*¹⁴².

4.4 Availability of Political Opportunities

There are different variables in determining the access to political space that may impact social movements either by "opening or closing possibilities for activism". According to Gamson and Meyer, movement responses are dependent upon recognition and interpretation of opportunities and threats¹⁴³. Most of the variables of political space are reflected in lawyers movement like the disagreement between the major political parties, PPP and PML (N) and some other segments of the government upon the reinstatement of the deposed judges showed disunity among the ruling elite coalition, the "degree of political system receptivity" to challenger groups was also zero in the form of military regime. State institutions and leaders showed reluctance for the change means that institutional capacity was limited which gave chance to movement. Direct and indirect means were used to stop or slow down the pace of the movement. Negotiations were carried out between the coalition parties which only prolonged the movement time period while coercive means were adopted to stop the grand March rally; section 144 was enforced, federal area was declared as red zone and containers were installed, extensive censorship of the media was also attempted by the government. "A focus on such structural factors is thus an additive piece of an overall understanding of lawyers movement in the light of social movement".

Conclusion

¹⁴² 'Lawyers Movement Gains Momentum', available at, <http://pkpolitics.com/2007/12/14/lawyers-movement-get-momentum/>, accessed, 17-7-13.

¹⁴³ William Gamson & David S. Meyer, "Framing Political Opportunity", in *Opportunities, Mobilizing Structures, and Framing*, eds. Dough McAdam, John D. McCarthy, & Mayer Zald, New York/Cambridge: Cambridge University Press, 1996, p: 275-90.

After analyzing the lawyers' movement, it has become clear that social movement theory explains the emergence, mobilization, networking and march towards the final outcome of the movement. This explanation enriches our understanding of the movement. It is clear that such a movement can take place in a country like Pakistan where the military has dominated politics for almost more than thirty years and where judiciary remained a rubber stamp in the hands of powerful executives for the most of its time, but besides all this such a movement explains that these societies can have Western style social movement which is non-violent in its nature. It reveals the strength of judiciary as an institute to protect itself against any external assault and to organize such a mass movement around its cause. This research also reveals the existence of strong institutions in Pakistan under the role of judiciary and media, which is unusual especially in the third world countries.

The most important result of Lawyers' movement is the "National Judicial Policy" formed in March 2009, Which has resolved all the issues aiming at bringing reforms radically in judicial institutions. It has been made very clear with its help that parliament should be stick to legislative matters because they have the role of political leadership which will be supported by lawyers in future¹⁴⁴.

The struggle of judiciary in Pakistan presents at least some proof that "judicial power has a popular currency and an ability to open up new forms of political engagement and new arenas of political power"¹⁴⁵. This explanation also shows the

¹⁴⁴ Susanne Mahrwald, "Rule of Law: The Case of Pakistan", Lahore: Heinrich-Böll-Stiftung, August 26, 2009, p: 4.

¹⁴⁵ Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1706.

emergence of strong image of judiciary in the eyes of Pakistanis besides its bad name in its previous history. It shows that how much value Pakistanis give to judiciary which was obtained by the use of its already existing powers without considering any pressure unlike its previous record and it built up the confidence of public by taking suo moto actions. So it is clear that public could easily be mobilized in the name of 'justice'. It was first time that an issue based movement started rather than on the basis of interests of any party or group.

CHAPTER FIVE

CONCLUSION

This research helps in providing the insights from lawyers movement to contribute to social movement theory, and insights from social movement theory to assist the study of lawyers movement. The emergence of lawyers movement seemed to be an opportunity for Pakistanis to show their dissatisfaction over the policies of military regime and their distrust upon the regime as well. One of the big issues which accused the government was privatization of the big industrial unit, Pakistan Steel Mill (PSM), and privatization in Pakistan had long been suggested to have more chances for negative political impact¹⁴⁶.

The change of public sphere by the lawyers' movement was helpful in creation and expression of a demand for change. This public sphere developed a network of communication, allowing thoughtfulness and producing critical public opinion. The messages were widely circulated by mass media. Lawyers were successful in widening and modifying the language of the movement to inculcate the interest of non lawyers and citizens. On the other hand, lack of institutional arrangement in political public sphere, other than media and lawyers, did not transform to the level which could have changed the lawyers' movement into a broader social movement for greater planned democracy.

The political public sphere was claimed by experienced actors in political parties. It was obvious that after the restoration, professional legal public sphere had to compress and

¹⁴⁶ John Cameron, "Privatization and the real economic development problems of Pakistan", *Journal of the Asia Pacific Economy*, vol. 2, 1997, p: 239-249.

public sphere was not equipped or ready to take over a political role, so therefore the movement went back to the political parties. The political party leaders were ready to take advantage of the existing mass mobilization but did not have the power and will to sustain the movement.

As Imran Khan, the chairman of Pakistan Tahreeki Insaaf (PTI) argued for subjective truthfulness and objective truth of what media was presenting. However it can be considered as a political move of a politician who determines that heroes fight battles and then disappear and politician take over to reap the benefits.

"We want the media to tell the truth only. Truth means don't be influenced by anyone. If Musharraf is still sitting there we all opposition parties are responsible for that. Recognize your heroes, your main hero is Justice Iftikhar and your judiciary. After that your heroes are lawyers and journalists. They are the heroes because they are bringing the truth. They have changed the Pakistan, it is new Pakistan. We need an opposition which strives for independence of judiciary, only an independent judiciary can ensure rule of law. If there is rule of law then only there be a real democracy and free elections. If there is rule of law then only we will have our basic rights and can release missing persons".¹⁴⁷

The mobilization and unity of all the segments of society altogether is difficult in a society like Pakistan which is multi ethnic and priorities of people are different from each other that shows lack of unity and lack of consensus on national issues, along with that the class system is a big hurdle in getting unity, usually the elite class is more privileged and control most of the means of production that's why in such a society most of the time the stake holders in a movement belong to lower or middle class

¹⁴⁷ Imran Khan, "Capital Talk", Geo TV, November, 24, 2007.

and it becomes difficult to get the support of elite but if they support or become the part of any movement that is just for the fulfillment of their own interests at the expense of the demands of the common people. Even the justice system in such societies support the elite interests like happened in previous judicial history of Pakistan due to which, a common belief is that our judges or judiciary is against those Generals who are dead and in favor of those who are alive or in power. Frustration increases in such societies so usually violent protests happen because the problems are not properly addressed and because of the absence of the proper platform to record the protest. Such deprived societies usually have a number of reasons to face frequent protests, for example a number of protests happened in Pakistan in last decade on the issues of gas shortages, electricity load shedding and weak policies of government on law and order to handle the bomb blasting(weaknesses of law enforcing agencies) etc. Such frequent protests futile the worth of the 'just' movement. In such a weak and vulnerable society, people can easily be exploited on the basis of their basic rights, so the movements usually fulfill the agendas of elite at the expense of the demands of the majority of the people.

Secondly for successful social movement, credible leaders should be there, for example in "dharna" of Tahir ul Qadri, he did not have any political and democratic credibility, although he had credibility in religious circle. He also tried to get the support of judiciary in order to bring strength to his 'dharna'. On the other hand, social movements are not supportive in a society like Pakistan because of its political culture where political parties are self centered and do not support or become the part of the movement even for the just cause or for the national interests, like in lawyers movement, political parties supported the movement which definitely provided the momentum but was not beyond their future

electoral interests. Public pressure, credibility of political parties and its leaders and lawyers organization contributed in the success of the lawyers' movement. The non-democratic culture in Pakistan is one of the hurdles in the way of social movement where repressive means are used to suppress the protests.

There are some positive aspects of Pakistani society which support the happening of social movements. For example, the existence of a responsive and positive civil society in Pakistan shows that the society is transforming. Such a role of civil society is still missing in most of the third world countries. With the help of civil society, lawyers movement not only created pressure upon the government to a larger extent but the support of other segments of society was also obtained.

On the other hand, such peaceful social movements can bring positive social change especially at the level of policy making regarding institutional reforms like the introduction of 'National Judicial policy' in March 2009 after the lawyers movement, having the purpose to bring radical reforms in judicial institution. In addition, legislative matters have been left entirely to the parliament, because the parliament has the role of political leadership, which will be supported by the lawyers also in future¹⁴⁸. Such social movements increase the national unity among the people on the basis of national interests along with the awareness about their rights. It also brought the sense of empowerment among people. In a society like Pakistan, it is difficult to get unity but people are quite aware of the happenings around them with the help of fast communication network in the form of an independent and free media. Role of media was quite positive during the movement unlike the political culture prevailing in Pakistan as governments used to have

¹⁴⁸ Susanne Mahrwald, "Rule of Law: The Case of Pakistan", Lahore: Heinrich-Böll-Stiftung, August 26, 2009, p: 4.

controlled media policy. Despite certain restrictions and ban on media coverage of the movement, the possibilities of talk shows on footpaths, coffee shops and outside the premises of bar councils was remarkable. Media found alternative methods to keep their program on air and their viewers intact, at the time when the programmes were banned on cable network, free access to live streaming through internet and satellite antenna was arranged. Such daring efforts by media persons and journalists shows that one of the state institute is promoting the truth and is working according to the dictates of their conscience which is unlike in such a third world country because of its prevailing corrupt culture. So, we can say that all the aspects of social movements do not fully exist in such societies due to the lack of coordination among different segments of society and closeness of political space for such movements.

Although from the very beginning, with the help of Objective Resolution of 1949, the independence of the judiciary has been protected by making it the compulsory part of the Constitution of Pakistan under the article 2-A but the independence of the judiciary has never been materialized. "It has been the object of manipulation by the executive and people used to perceive it as compliant"¹⁴⁹.

According to Hina Jilani: "failure of the judicial system to dispense justice has eroded respect for the rule of law. This has led to a tendency in the general public to circumvent the law. The perception that the judicial system does not work has become common, and is used to justify excess by the executive branch of the government."¹⁵⁰

¹⁴⁹ Hamid Khan, *Constitutional and Political History of Pakistan*, Karachi (Pakistan): Oxford University Press, 2001, P: 876.

¹⁵⁰ Hina Jilani, *Human Rights and Democratic Development in Pakistan*, Lahore (Pakistan): Human Rights Commission of Pakistan, 1998, P: 156.

The study of judicial history points out the various events and factors which weakened the independence of the judiciary in Pakistan. One of the major issues is about the establishment of Federal Shariat Court which has always been the subject of criticism and controversy right from its formation in 1985 and it was protected afterwards with the help of the controversial 8th Amendment¹⁵¹.

The way its judges are appointed and the uncertainty of their tenure are harmful for judicial independence. In this way it is unable to fulfill the standard, required for the independence as it is not in a position to uphold the pressure and influence of executive.

The system of the appointment needs to be made more efficient and transparent but unfortunately it has not been fully available yet, that is the main reason behind the frequent manipulation in order to bring about appointments either on political basis or on personal considerations. Judicial history reveals that merit is rarely considered for appointment, which remained a major factor in the downfall of the standard of judiciary. Unfortunately, Articles 177(1) and 193(1) and the verdicts of the SC, were not strong enough in order to check arbitrary exercise of the powers from executive in the appointment of judges of the superior courts. Therefore, the drastic changes are required in the existing system and procedure of appointment and the power of executive for appointing the judges of superior courts must be limited.

On the other hand, constitutional provisions have such loopholes especially with reference to the appointment of judges that it has been misapplied by the powerful executive very easily. The Constitution of Pakistan has been correctly termed "an internally contradictory Constitutional instrument"¹⁵². Unfortunately the constitution does

¹⁵¹ The Constitution (Amendment) Act 1985, PLD 1985 Central Statutes.

¹⁵² Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*, New York: Cambridge University Press, 1995, p: 27.

not provide capacity to appoint the senior most judge as the permanent CJ of Supreme Court under the Article 177 and the CJ of HC in the Article 196 due to which executive takes advantage by appointing the judges on the personal basis or on the political consideration in order to fulfill their hidden interests.

The Articles 181 and 182 of the Constitution regarding the appointments of acting judges and ad hoc judges in the SC and additional judges in the HC under Article 197 need to be amended. It has been made very clear in the Supreme Court ruling (the famous judges' case) that the "appointment of ad hoc judges against permanent seats is the violation of the constitution"¹⁵³. Almost all the judges of the HC, had to get a number of extensions for short terms before becoming permanent, which ruined the purpose of the said Article. Without any guarantee of tenures, conditions of services and privileges for the judges provided by constitution or statute, the judiciary cannot function effectively. In order to check the abuse of power efficiently. Article 200 must be amended with reference to the transfer of judges of HC. Along with it, they should be exempted being called in question by any other person besides judicial authority for their judicial action which is granted under ordinary law¹⁵⁴.

Judicial accountability is essential for Judicial independence but unfortunately, both are not without flaws in Pakistan. Judicial accountability is essential for the efficient performance of judiciary, like the Chief Justice of Malaysia has correctly said in April, 2002 that "an unaccountable judge would be free to disregard the ends that independence is supposed to serve"¹⁵⁵.

¹⁵³ Al-Jehad Trust Vs. Federation of Pakistan, PLD 1996, SC, p: 324.

¹⁵⁴ The Contempt of Court Act 1976.

¹⁵⁵ Chief Justice Tun Mohamed Dzaiddin Abdullah: "Judges as trustees must give an account for their conduct", in *Judges and Judicial Accountability*, eds. Dr Cyrus Das and K. Chandra, Delhi, Universal Law Publishing Co. Pvt. Ltd. 2005.

Judicial accountability has not been given any value in Pakistan like the SJC has not been operating effectively. The basic purpose behind its creation is to legalize and discipline the judges of the superior courts. Rather, it is in the words of a well-known lawyer, "degenerated into a judges' club meant primarily to protect rather than punish judges for their wrong doings"¹⁵⁶. Replacement of extreme option of the removal of a judge from his services under the Article 209 on the grounds of proved misconduct, but it is only for gross misconduct is required. So, by having no other alternative, it seems less effective.

The other aspect to be considered is about the public accountability, which is not allowed in Pakistan. In fact, the voices of criticism are suppressed which try to highlight the weaknesses in the administration of justice under the "ages old law of contempt of court" which has always been subjectively and selectively applied and most of the time with its help, the judges successfully suppress the truth and instead punish the complainant himself. So it can be said that the role of judges is also very important for a better change.

Behavioral independence reflects in a judge as a person. An independent judge is supposed not only to be composed and free from bias but also should be willing to defy any external pressure, to reject any temptation of corruption and to make truly independent decisions.

After going through the constitutional history of Pakistan, one can easily judge the unsatisfactory role of superior judiciary. It can be said that it is judiciary which compromised on its independence and its powers itself repeatedly.

¹⁵⁶ Hamid Khan, *The Judicial Organ*, Lahore (Pakistan): Freedom Forum for Human Rights and Development, 1999, p: 189.

A former Indian judge rightly says “the functioning of institutions and the conduct of the individual judges is the sine quo non for independence of the judiciary. The damage caused by the institution, either by its decision----- or by the conduct of the judges is far more injurious to the independence of judiciary than the external assaults”¹⁵⁷.

The role of lawyers in resisting the forces which are damaging to the independence of judiciary is more important than all other assistances or services offered by the lawyers to the court. So, the importance of bar in maintaining and protecting the independence of judiciary should be acknowledged and it must be assigned an effective role.

The movement educated the public regarding the basic concept of constitution, and the expected role of the courts and legal profession in explaining and defending it through different TV channels especially the role of Geo TV with this respect was remarkable, and demand of the copies of the constitution raised in bookstores in major cities. Similarly, Justice Ramday argued that “Judges don’t operate in a vacuum,” he explained. Rather, events on the streets served to “strengthen their conscience” to rule according to the law¹⁵⁸.

The general impact of the movement has brought optimism in the mind set of political leadership of the parties and the people. It can be said that people came to know about the value of the democratic institutions so showed their will to strengthen the democracy in Pakistan. The relations between parliamentarians and the Lawyers Movement came in front of the people which shows that the lawyers of Pakistan consider the parliament as an important pillar of government and also believe in democracy, but parliamentarians couldn't play their role as a whole unfortunately.

¹⁵⁷ Phiroza Anklesaria, "Independence of the Judiciary", *AIR Journal* 1991, P: 97.

¹⁵⁸ Interview with Khalil-ur-Rehman Ramday, cited in, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1723.

For many protestors, the lawyers movement was exclusive in its nature and structure as it appeared independently of any political party or military establishment. The efforts of lawyers to get a cooperation showed to the political parties the way towards a more indisputable and receptive democratic politics by mobilizing controversial political activity around a particular issue. On the other hand the support of political parties because of the public concern that could give them electoral benefits in future was also a sign of an rising political maturity within Pakistan's electoral market. Most of the activists identified this shift toward the "politicization of the lawyers' movement and of Pakistani society at large", which is the most important achievement of the movement. Some activists even argued that the movement was the "forerunner of a new kind of issue-based politics in Pakistan". It is revealed from the determination of all sorts of participants that they wanted strong institutions above from leaders or persons.

This Movement is an alliance for the rule of Law that is a promising development and an actual sign of change. The society of Pakistan has changed a lot in these two years and a sense of empowerment was created.

Habermas sees a strong link between judicial institutionalization and democracy. His prescription for progress is authorization of power by law, writing of constitution, and institutional development. Habermas sees the medium of law as a mechanism to keep citizens united, who are shaped by social, cultural and philosophical pluralism¹⁵⁹.

The way the lawyers were ready to bear the difficulties, facing the police violence and courting arrest for the rule of law and independence of judiciary was an inspiring moment for not only the whole nation of Pakistan but it was also appreciated and supported by

¹⁵⁹ Flyvbjerg, B. Habermas and Foucault, "Thinkers for civil society"? *The British Journal of Sociology*, vol.49, No.2, 1998, pp: 210-233.

different legal and human rights groups in the world. Fifty years ago Justice Kayani said in 1957, "It is only a good bar which can save a politically insolvent country, for here there is no public opinion, there is no electorate with a firm voice"¹⁶⁰. These golden words are still reverberated in the current judicial crisis and lawyers' movement in Pakistan.

The shift in the role of the court and its defenders from respectable instruments of the establishment to supporter of the rule of law, in the minds of public was something more universal. So it has become clear that judicial power can mold public opinion by convincing and mobilizing them for the just cause not all the time by taking side of government but also by allying with public and the media. Perhaps the most important impact of the movement is about the changes that it produced in the collective identity of all Pakistanis

For Aitzaz Ahsan, "The broader aspect of the movement is the dream that has been placed in the eyes of people in the form of a transformed state"¹⁶¹. Munir Malik argued, "The movement is to be judged on the qualitative changes in the mindset of Pakistanis that we have made. I venture to think that nobody can now bring a PCO. The common man now understands what the rule of law means"¹⁶². Such voices show that now public should respond collectively and its opinion must be sensitive and reactive against any

¹⁶⁰ Justice (Retd) M. R. Kayani, *Not the Whole Truth*, Lahore (Pakistan): Pakistan Writers' Cooperative Society, 2002, P-20.

¹⁶¹ Aitzaz Ahsan, 'Panel Discussion on Pakistan's Judiciary and Media, Harvard Kennedy School of Government', October 26, 2009, cited in, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1726.

¹⁶² Telephone Interview with Muncer Malik, Pakistan, August, 2008, cited in, Abdullah Freed Khan, "The Pakistani Lawyers' movement and the popular currency of judicial power", *Pakistan Harvard Law Review*, Vol. 123, No. 1705, 2010, p: 1726.

form of misconduct and illegal interference in the judicial affair and compel the government to comply with certain constitutional norms.

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