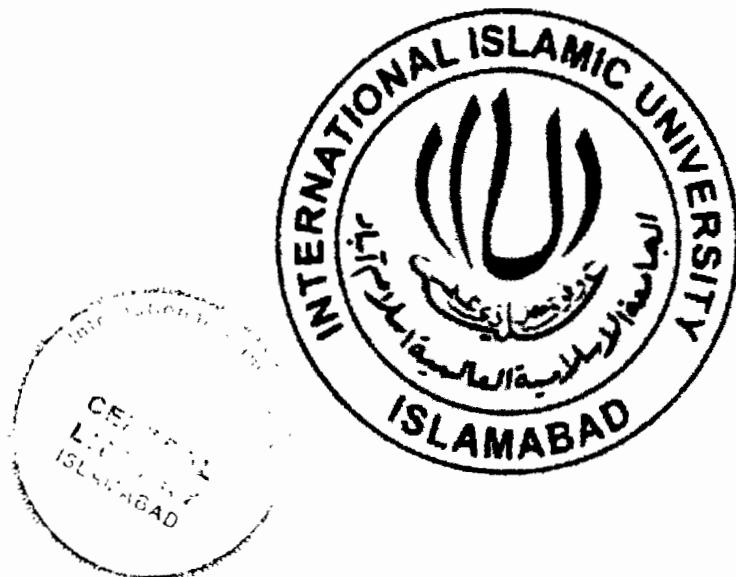


**THE ROLE OF JUDICIARY FOR DEMOCRATIC
PROCESS IN PAKISTAN DURING MILITARY
AND CIVIL GOVERNMENTS, 1999-2013**



RESEARCHER:

KISHWAR NAHEED
REG No. 17-FSS/PHDHIS/S15

SUPERVISOR:

DR SYED AKMAL HUSSAIN SHAH
ASSISTANT PROFESSOR

**DEPARTMENT OF HISTORY & PAKISTAN STUDIES
FACULTY OF SOCIAL SCIENCES
INTERNATIONAL ISLAMIC UNIVERSITY
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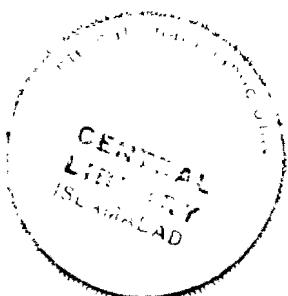
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Submitted By

KISHWAR NAHEED
PhD-HISTORY
REG No. 17-FSS/PHDHIS/S15

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Submitted by

KISHWAR NAHEED

**PhD. HISTORY
REGD. NO. 17-FSS/PHDHIS/S15**

A thesis submitted in partial fulfilment of the requirements for the Doctor of Philosophy (PhD) in the Discipline of History at the Faculty of Social Sciences, International Islamic University, Islamabad

**DEPARTMENT OF HISTORY & PAKISTAN STUDIES
FACULTY OF SOCIAL SCIENCES
INTERNATIONAL ISLAMIC UNIVERSITY
ISLAMABAD**

2022

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ

DEDICATION

This piece of research is dedicated
To
The Holy Prophet Muhammad



DECLARATION

I, KISHWAR NAHEED, hereby declare that this thesis has been put in writing by me in its entirety based on my research work under the guidance of my supervisor- Assistant Professor DR. SYED AKMAL HUSSAIN SHAH, Department of History & Pakistan Studies-Faculty of Social Sciences, International Islamic University Islamabad.

No portion of this research has been copied from any source. Mention research topic, presented in this Thesis, has not been submitted before for any degree or qualification in this or any other university or educational institution.



KISHWAR NAHEED
PhD. History
Regd. No. 17-FSS/PHDHIS/S15

FORWARDING SHEET

The thesis titled "THE ROLE OF JUDICIARY FOR DEMOCRATIC PROCESS IN PAKISTAN DURING MILITARY AND CIVIL GOVERNMENT, 1999-2013" put forward by MS. KISHWAR NAHEED, Registration No. 17-FSS/PHDHIS/S15 in partial fulfilment for the award of the Degree of Doctor of Philosophy (PhD) in History, has been completed under my supervision.

I am satisfied with the excellence of the scholar's research work, and she is now allowed to get this Thesis submitted for the finishing point as per the modus operandi of International Islamic University, Islamabad.

Signature: 
ASSISTANT PROFESSOR DR. SYED AKMAL HUSSAIN SHAH

ACCEPTANCE BY THE VIVA-VOCE COMMITTEE

Title of Dissertation: "The Role of Judiciary for Democratic in Pakistan During Military and Civil Governments, 1999-2013".

Name of Student: **Kishwar Naheed**

Registration No.: 17-FSS/PHDIHS/S-15

Accepted by the Department of History & Pakistan Studies, Faculty of Social Sciences, International Islamic University, Islamabad, in partial fulfillment of the requirements for the Degree of PhD in the Discipline of HISTORY

VIVA-VOCE COMMITTEE

Professor Dr. Zafar Iqbal

Dean, FSS, International Islamic University, Islamabad

Associate Professor Dr. Mujeeb Ahmad, Chairman, Department of History & Pakistan Studies (FSS), FSS, International Islamic University, Islamabad

Assistant Professor, Dr. Syed Akmal Hussain Shah, Department of History & Pakistan Studies, FSS, International Islamic University, Islamabad

(Supervisor)

Professor Dr. Fahkar Ul Islam, Director at Pakistan Study Centre University of Peshawar, KPK
(External Examiner-I)

Associate Professor Dr. Kishwar Sultan, Chairperson at the Department of History, Allama Iqbal Open University, Islamabad
(External Examiner-II)

Assistant Professor, Dr. Akhtar Hussain, Department of History & Pakistan Studies, FSS, International Islamic University, Islamabad
(Internal Examiner)

Dated: December 28, 2022

LIST OF ABBREVIATIONS

ACO	Anti-Corruption Operations
ANP	Awami National Party
APDM	All Parties Democratic Movement
ARD	Alliance for the Restoration of Democracy
BBC	British Broadcasting Corporation
BC	Before Christ
BDS	Basic Democracy System
BNA	Balochistan National Alliance
BNP	Balochistan National Party
BOG	Board of Governors
BPC	Basic Principles Committee
CA	Constituent Assembly
CCI	Council of Common Interest
CDA	Capital Development Authority
CE	Chief Executive
CEC	Chief Election Commissioner
CENTO	Central Treaty Organization
C-in-C	Commander-in-Chief
CJ	Chief Justice
CJCS	Chairman Joint Chiefs of Staff
CJP	Chief Justice of Pakistan
CM	Chief Minister
CMA	Chief Martial Administrator
CMLA	Chief Martial Law Administrator
CMR	Civil-Military Relations
CNN	Cable News Network
COAS	Chief of Army Staff
COD	Charter of Democracy
COS	Chief of Staff

CSP	Civil Service of Pakistan
DCC	Defense Committee of the Cabinet
DCO	District Coordinator Officer
DMG	District Management Group
DP	Defense Policy
EBDO	Elected Bodies Disqualification Order
ECP	Election Commission of Pakistan
ECW	Economic Crime Wing
FATA	Federally Administered Tribal Area
FC	Federal Court
FCA	Foreign Currency Account
FM	Frequency Modulation
FP	Foreign Policy
FSC	Federal Shariat Court
FSF	Federal Security Force
FSP	Foreign Service of Pakistan
FY	Fiscal Year
GDP	Gross Domestic Product
GE	General Elections
Gen	General
GG	Governor-General
GHQ	General Head Quarter
GNP	Gross National Product
GOP	Government of Pakistan
HDI	Human Development Index
HIPC	Heavily Indebted Poor Country
HRCP	Human Rights Commission of Pakistan
IB	Intelligence Bureau
ICCPR	International Convention for Civil and Political Rights
ICS	Indian Civil Service
IJI	Islami Jamhoori Ittehad
IJM	Islami Jamhoori Mahaz

IMF	International Monetary fund
ISI	Inter-Services Intelligence
ISPR	Inter-Services Public Relations
JCAS	Joint Chief of Army Staff
JCSC	Joint Chief of Staff Committee
JI	Jamaat-e-Islami
JSHQ	Joint Staff HeadQuarter
JUI (F)	Jamiat-e-Ulema-e-Islam (Fazlur Rehman)
JUI	Jamiat Ulema-e-Islam
JUP (N)	Jamiat Ulema-e-Pakistan (Noorani)
JWP	Jamhoori Wattan Party
KP	Khyber Pakhtunkhwa
LFO	Legal Framework Order
LGO	Local Government Ordinance
LOC	Line of Control
Lt.	Lieutenant
MI	Military Intelligence
MMA	Muttahida Majlis-e-Amal
MNA	Member of National Assembly
MOD	Ministry of Defense
MOU	Memorandum of Understanding
MPA	Member of Provincial Assembly
MQM	Muttahida (previously Mohajir) Qaumi Movement
MRD	Movement for Restoration of Democracy
NA	National Assembly
NAB	National Accountability Bureau
NACS	National Anti-Corruption Strategy
NADRA	National Database Registration Authority
NRB	National Reconstruction Bureau
NSC	National Security Council
NSC	National Security Council
NSPP	National School of Public Policy

NWFP	North West Frontier Province
PCCR	Parliamentary Committee on Constitutional Reforms
PCO	Provisional Constitution Order
PDA	Pakistan Democratic Alliance
PEMRA	Pakistan Electronic Media Regulatory Authority
PIA	Pakistan International Airlines
PMAP	Pakhtunkhwa Milli Awami Party
PML (N)	Pakistan Muslim League (Nawaz)
PML (Q)	Pakistan Muslim League (Quaid-e-Azam)
PNA	Pakistan National Alliance
PPP	Pakistan Peoples Party
PPPP	Pakistan Peoples Party Parliamentarians
PSO	Pakistan State Oil
PTCL	Pakistan Telecommunication Limited
PTI	Pakistan Tehreek-e-Insaf
PTV	Pakistan Television
SCBA	Supreme Court Bar Association
SMS	Short Message Service
UK	United Kingdom
USA	United States of America

GLOSSARY

<i>Adliya Bachao Tehreek</i>	Saving the judiciary movement
<i>Ahmadis</i>	Followers of the Ahmadiyya Movement
<i>Awami</i>	Of common people
<i>Brahmin</i>	Member of the highest Hindu caste
<i>Demos</i>	Entire person living within a city-state
<i>Fatwa</i>	A ruling on a point of Islamic law given by a recognized authority
<i>Governor Raj</i>	Administration of a Governor
<i>Hazara</i>	Persian language-speaking ethnic group
<i>Junta</i>	Public
<i>Kratos</i>	Power or rule
<i>Lal Masjid</i>	Red mosque
<i>Madrassa</i>	Seminaries (People come to learn Islam)
<i>Majlis-e-Shoora</i>	A Parliament
<i>Masjid</i>	Mosque
<i>Maxims Salus Populi suprema lex</i> <i>Salus republican supra lex-</i>	The welfare of the people is the supreme <i>law</i> The safety of the state is the supreme law
<i>Muhajir</i>	Muslim Migrants from India to Pakistan at the time of the creation of Pakistan.
<i>Naib Nazim</i>	Deputy Nazim
<i>Nazim</i>	Designation similar to a mayor
<i>Panchayat</i>	Council of Elders
<i>Salus Populi Est Suprema Lex</i>	The health (welfare, good, salvation, felicity) of the people should be the supreme law
<i>Shahray-e-Faisal</i>	Faisal Road
<i>Sunni</i>	Comes from the word Sunnah, referring to the tradition of Muhammad (SAW).
<i>Taraqi Pasand</i>	Progressive
<i>Watan</i>	The country
<i>Zila</i>	District

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ABSTRACT

Democracy in Pakistan has passed through several ebbs and flows. The military and civil governments affected the judiciary and judiciary halted the course of democracy. The key issue is this democracy required institutional balance and restraint rather than one state institution dominating others.

This research focuses on

1. The constitution and political experiences of Pakistan's struggle for democracy.
2. To link the political stability with judiciary.
3. The role of judiciary for democratic process during the civil-military regimes.

For survival of democracy, stability of political system and independence of judiciary in this research will conclude more comprehensive and coherent policy is needed to tackle these technical and political issues.

Theoretical framework for this research is divided into two sections. First, doctrine of power separation and doctrine of philosophical necessity will be discussed. Secondly the doctrine of philosophical necessity exercised in political history of Pakistan would be put under discussion.

This research will be qualitative and quantitative, both primary and secondary sources will be used. Theoretical framework will be implemented through descriptive, comparative, and analytical methods. Descriptive method used for data collection, analytical method for data analysis and comparative method for comparison of civil-military regimes 1999-2013.

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Kishwar Naheed

A handwritten signature in black ink, appearing to read "Kishwar Naheed". The signature is fluid and cursive, with the name written in a single continuous line.

INTRODUCTION

Democracy is a form of government where people living in prescribed jurisdiction are authorized to choose people of their own choice for the rule. In well-established democracies, citizens of the country or state influence elected representation of their preference for legislation and so many other favourable actions. The modest and liberal notion of democracy develops relationships between individuals and groups. It has been assumed that such connections among the masses give birth to the freedom of political choice since ancient times.

The thought of democracy started emerging in prehistoric Greece as early as the 500's BC. Nowadays, democracy as a government of the people, by the people and for the people has been developed as a worldwide saying. Democracy as a notion wants a sturdy leadership which can maintain the sanctity of the constitution and take actions for firming the civilian institutions as well as the Judiciary. Though, the idea of a democratic system required a vibrant understanding formerly for the appreciation of the roles of the higher Judiciary in its sustenance. The values laid down for the rule of law are the basic body of a democratic structure and it is created on the concepts of the sovereignty of the constitution, equality of all before the rule of the land and warranting civil rights.

Background phenomenon of Governing

The place and moment from where the idea or phenomenon has been generated are lost in time. But the history of the formation of the new Government¹ has been recorded. About 5000 years ago, the first city-states² were formulated, and some of

¹The organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usually classified according to the distribution of power within it.
<https://www.merriam-webster.com/dictionary/government>

²A city-state is an independent, self-governing country contained totally within the borders of a single city. The ancient empires of Rome, Carthage, Athens, and Sparta are considered early examples of city-states. <https://www.britannica.com/topic/city-state>.

them had developed into large governed areas in the 2nd to the 3rd millennium B.C. like the Indus valley civilization³, ancient Egypt, Sumer, and yellow river civilization⁴.

These areas created some taxonomy or typology of governing or politics. The ancient Greek philosopher Plato⁵ discusses the type of governing democracy⁶, aristocracy⁷, tyranny⁸, oligarchy⁹, and democracy¹⁰. Democracy and other models were practised and after the experience democracy was chosen for governing the areas.¹¹ In a democratic form of government, people elect their representatives to govern the country. The concept of democracy emerged in Europe after the Treaty of West Phalia in 1648¹², but the origin of democracy is 'old Greek'.

Democracy sought a socially favourable environment after the revolution of France, in 1789 when the practice of monarchy and the hegemony of the Church was not just called into doubt but often rejected and displaced¹³. Therefore, democracy

³The Indus Valley Civilisation (IVC) was a Bronze Age civilisation in the north-western regions of South Asia, lasting from 3300 BCE to 1300 BCE, and in its mature form from 2600 BCE to 1900 BCE.

⁴Huang He Valley (or in English, Yellow River Valley) was the birthplace of ancient Chinese civilization, and for that reason is often called "Mother River." The valley surrounds the principal river of northern China and is at the centre of thousands of years of Chinese history. Christian David, "Maps of Time: An Introduction to Big History," (Berkeley: University of California Press, 2004).93.

⁵Plato, (born 428/427 BCE, Athens, Greece—died 348/347, Athens), ancient Greek philosopher, student of Socrates (c. 470–399 BCE), teacher of Aristotle (384–322 BCE), and founder of the Academy, best known as the author of philosophical works of unparalleled influence. <https://www.britannica.com/biography/Plato>

⁶A form of government in which a certain amount of property is requisite as a qualification for office.

⁷Aristocracy, government by a relatively small, privileged class or by a minority consisting of those presumed to be best qualified to rule. <https://www.britannica.com/topic/aristocracy>.

⁸A government in which all power belongs to one person: the rule or authority of a tyrant.

⁹Oligarchy is a form of power structure in which power rests with a small number of people. These people may be distinguished by nobility, wealth, education, corporate, religious, political, or military control. <https://www.britannica.com/topic/oligarchy>.

¹⁰Democracy is a form of government in which the people have the authority to choose their governing legislators. <https://www.britannica.com/topic/democracy>.

¹¹Steven M Cahn, "Classics Of Political And Moral Philosophy," (New York: Oxford University Press, 2011).11-13.

¹²The Peace of Westphalia is the collective name for two peace treaties signed in October 1648 in the Westphalia cities of Osnabrück and Munster. They ended the Thirty Years' War and brought peace to the Holy Roman Empire, closing a calamitous period of European history that killed approximately eight million people. Derek Croxton, "The Peace of Westphalia of 1648 and the Origins of Sovereignty," *The international history review* 21, no. 3 (1999).25.

¹³James McMillan and James F Mcmillan, *France and women, 1789-1914: Gender, Society And Politics* (Routledge, 2002).118-121.

came up as a secular term in its nature. In Europe, however, it was after 1848 that a fatal blow was dealt with the autocratic dispensation and democracy, entwined with the spirit of nationalism, began to flourish.¹⁴ Nonetheless, until the mid-twentieth century, democracy had not smooth sailing. It had to deal with Nazi, totalitarian, and communist challenges that it eventually managed to overcome at tremendous cost in 1945. The norms of institutionalization, bureaucracy, rationality and impersonal power took root in western enlightenment and resulted in the modern state which later spread in the world gradually.

***Demos Kratos* to liberal democracy**

Democracy means government by the people, a society in which the supreme power is delegated to the people and executed as well by the people, exercised, directly or indirectly, through a system of representation that usually involves free elections periodically.¹⁵ The term democracy is derived from the Greek dialect. It is a combination of two shorter words: 'demos' means the entire person living within a city-state, and 'Kratos' means power or law. The election is the act and method of election; the right, power, or privilege of choosing.¹⁶ Democracy is wonderfully portrayed to be a way of sharing authority, practically placing it in people's hands as in the mode of a voting card. Democracy is one of the things that is hard not to like.

The word democracy is used as a metaphor for modern democracy, and the alteration of representative democracy which includes the elements such as equivalence, democratic heterogeneity in the law, elected representatives for the redress of complaints, the freedom of requisition, public liberties fair trials, basic

¹⁴Anthony D Smith, *Nationalism In The Twentieth Century* (Canberra : Australian National University Press, 1979).39.

¹⁵Merriam Webster, "Defination of Democracy," (2017: America, 2017).21.

¹⁶Francisco Seoane Pérez, "Chapter Six Kratos without Demos? European Identity and the Prospects for a Democratic Europe Francisco Seoane Pérez," *Identity: Beyond Tradition and McWorld Neoliberalism* 21(2014).111.

rights, and civil society organizations. Democracy itself could not ensure personal and political rights until and unless the government did not guarantee them.¹⁷

Some dominant principles of democracy in notable countries like the United States, the United Kingdom, and India rest upon the balance of power. The United Kingdom has a Westminster system, and the UK maintains its judicial independence and parliamentary sovereignty. United States' key features are the separation of power or the balance of power. Indian parliamentary sovereignty depends on the Indian constitution, which has the power of judicial review.

Democracy and five ways of promotion

The democracy promotion strategies are useful due to the obvious way. It is staged and reveals five ways of contentious thinking about democracy and democracy promotion that is currently rampant. First, democracy is a certain positive thing. Secondly, people learn what democracy is or what institutional type it can take. Third, democracy promotion needs to be implemented by the unification of the interests and expectations of citizens in affected countries. Fourth, through mobilizing democracy promotion around the globe, the routine and comprehensive practice of democracy throughout the western nations of democracy promoters can also be right-infused with aspiration and desire.¹⁸

Finally, promoting democracy will make people deterministic and comprehensible. In the 20th century, transformations to 'liberal democracy' have taken place in multiple stages of democracy, variously consequential after wars and revolutions, resulting in the abolition of slavery, and financial and social

¹⁷Roger Scruton, "A Point of View: Is Democracy Overrated?," *BBC News* (2013).

¹⁸Anne Wetzel, "Promoting Embedded Democracy? Researching The Substance Of EU Democracy Promotion," *European Foreign Affairs Review* 16, No. 5 (2011).63.

circumstances. International sprays of ‘democratic regression’ replacing democratic reform took also emerged from 1920 to 1930, from 1960 to 1970, and in 2010.

The First World War and the escalation of dictatorship

The First World War, the fall of the Ottoman and Austro-Hungarian empires culminated in the formation of modern democratic nation-states in Europe. Democracy advanced around in the 1920s, and the suffrage of women increased. Yet the Great Depression (1929-1939)¹⁹ caused disenchantment, and most European, Latin American, and Asian countries shifted to dictatorship or strong-man rule. ‘Fascism and Dictatorships’ also occurred in Nazi Germany, Italy, Spain, and Portugal, and in the Baltic States, the Balkans, Brazil, Cuba, China, and Japan, among others.

Second World War and the fall of the Dictatorship

The Second World War brought critical change to Western Europe. The democratization of occupied Germany, Austria, Italy, and occupied Japan American, British, and French areas served as a blueprint for the subsequent theory of reform in government. Much of Eastern Europe, however, like Germany's soviet market, collapsed into the non-democratic Soviet bloc.²⁰ The war was followed by decolonization, and again most of the new independent states had nominally democratic constitutions. India as well as Pakistan emerged as democratic countries and continue to be so. States that were once shared with the British Kingdom often adopted the British Westminster system²¹.

¹⁹ The Great Depression (1929–1939) was an economic shock that impacted most countries across the world. It was a period of economic depression that became evident after a major fall in stock prices in the United States.[1] The economic contagion began around September and led to the Wall Street stock market crash of October 24 (Black Thursday). It was the longest, deepest, and most widespread depression of the 20th century. https://en.wikipedia.org/wiki/Great_Depression

²⁰ Julian Go, "A Globalizing Constitutionalism?," *International Comparative Social Studies* (2007).85.

²¹The Westminster system is a democratic parliamentary system of government modelled after that of the United Kingdom system, as used in the Palace of Westminster, the location of the Parliament of the

Undoubtedly, democracy is the better form of government in the contemporary world. However, the dominance of a democratic system vis-à-vis other political governments stands out principally due to the doctrine of separation of powers as well as the doctrine of check and balance, which is worked out by the three arms of the government over one another. "The principle, of 'separation of powers' has the purpose to protect the citizens of the state from the hasty, tyrannical, and unrestrained powers of the rulers". Generally, Governments have three broader powers: the judicial, the executive and the legislature. These powers are performed by three different branches of government: Executive, Legislature and Judiciary. When the power of the government is broadly divided into three spheres, and activities of the government are performed by these three branches separately, it is called separation of powers. It is the concept that maintains that three powers/elements of government (executive, legislature, and judiciary) should be separated in role and responsibility and that such a separation will ensure a good and just government. This concept rests on democratic values that all branches of government are bound by the rule of law and defined powers with competencies. Democracies all over the world consider that tyranny and arbitrary rule of the Government can be minimized by implementing the separation of powers in its proper context. The liberal democracies in the world have a tradition of power sharing among the state institutions. People's liberty is ensured when the powers of the government are divided between the executive, judicial and legislative branches.

The constitution is a fundamental body of doctrine to establish models for governing any state. These principles make up together, and when these rules or principles are written down into a basic document or a set of permitted documents,

United Kingdom. The system is a series of procedures for operating a legislature. It is also used, or was once used, in most Commonwealth and ex-Commonwealth nations, beginning with the Canadian provinces in the mid-19th century. It is also used in Australia, India, Ireland, Jamaica, Malaysia, New Zealand, Singapore, and Malta. <https://www.parliament.act.gov.au/visit-and-learn/resources/factsheets/the-westminster-system>

those legal documents may be said to be the visible form of a written constitution. The constitution of the state identifies its borders and physical existence. The Constitution²² defines the structure of the country and its different institutions, law and order, the establishment of armed forces, and assures the fundamental rights of citizens.

It remains rare in the history of the evolution of the nation-state, but Pakistan has a unique history, it comes into being under legal and constitutional means (Constitutional Rights). The state has three organs, namely the Executive, Legislature and Judiciary, under the constitution each of the organs is reserved for scope action. Logically and theoretically, these three branches of the state work harmoniously for the glory of the nation-state. These three branches functioned as three brothers operated untidily. But it's unfortunate in the case of Pakistan that these three organs of the state act like stepbrothers and usurp and distort the role of each other. Each one pushes the other branch in the opposite direction. In the absence of harmony and unity of organs of state and the social order not ever hamper when justice is carried out.

In a democracy, the critical aspect was the system of self-governing justice. In Pakistani democratic institutions like parliament, political parties, and the Executive were too far from adequate. The lack of management and administration further created instability and inequality in the country. The judicial structure of Pakistan comparatively had good examples.

The existence of an autonomous Judiciary is very important to protect the constitution, enforce the rule of law in the state and ensure order. The absence of an autonomous Judiciary sooner or later leads to disorder. The Judiciary of Pakistan

²²A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed. <https://www.merriam-webster.com/dictionary/constitution>

played a dubious role in difficult situations. It guaranteed the rule of law, protecting the fundamental rights of the people and their rights to profile and connect political parties and pay to the democratic process through them.

The Judiciary is the branch of government and is administered by the Executive branch, in cases where a dispute arises as to meaning, validity or supposed breach of laws. Furthermore, it is explained that the Judiciary is considered the custodian of citizens' rights and constitutional liberties. The independence of the Judiciary is important for the development of democracy. The worth of the Judiciary expressed by H. Rahman asserts that no one touches the welfare and security of the nationals more than the Judiciary. No mass, therefore, can overestimate the importance of the apparatus of justice.²³

Article No. 10 of the Universal declaration of human rights²⁴ and the International Treaty On Civil And Political Rights article No. 14 (1)²⁵ asserts a competent, autonomous, and impartial tribunal created by statute shall allow each person to hold an impartial and public hearing. So, for the enforcement of this right, an autonomous Judiciary is necessary. It is a fact that the independence of the judicial system is up to the ability and worth of the judges who decide the fate of the issue either under pressure or free of mind.

²³ Rahman, Hursari. *Introduction to Pakistan Constitution*. East Pakistan: (Dhaka: Narayan Machine Press, 1958). 32-60.

²⁴ Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

²⁵ Article 14.1 establishes the ground rules: everyone must be equal before the courts, and any hearing must take place in open court before a competent, independent and impartial tribunal, with any judgment or ruling made public.

The emergence of Pakistan as a Democratic State

Pakistan came into being from a British colony in August 1947, with strong ethnic diversity distinct from its regional division into the west and east, two non-contiguous wings. Even so, West Pakistan (or more precisely, the Muhajir and the Punjabi) dominated the central federal government and its organizations. But on the other hand, East Pakistan had a territorially intense and politically more conscious Bengali majority.²⁶ However, the founding Muslim League, led by Quaid-e-Azam Muhammad Ali Jinnah and Liaqat Ali Khan, had feeble social and administrative roots in Pakistan. Comparably India constituted its first Constitution in 1950 but Pakistan was able to frame its first constitution in 1956 after 9 years of its independence.

The first general elections were held in India in 1952 and Pakistan conducted its first general election in 1970.²⁷ The transition to democracy in Pakistan and India begins in line with the norms of liberal democracy. Historically, Pakistan was conceived as a representative democracy with a federal system demonstrated after Westminster. Democracy, however, has not been ingrained in Pakistan's 75-year past. Pakistan faces challenges in democratic and institutional development. For the democratic process, political parties were not mature, and there was no useful role of the media to develop awareness among the masses about the rule of law.²⁸ The

²⁶ Cohen, Stephen Philip. *"The Idea of Pakistan* (Lahore: Vanguard Books Pvt. Ltd, 2005).56.

²⁷ Manohar Singh Gill, "India: Running The World's Biggest Elections," *Journal Of Democracy* 9, No. 1 (1998).112-115.

²⁸ Maya Jessica Tudor, *"Twin Births, Divergent Democracies: The Social and Institutional Origins of Regime Outcomes in India and Pakistan, 1920-1958"* (New Jersey: Princeton University, 2010).69.

practice of law bound the state institution to coordinate with each other for the democratic process and political stability. In the absence of representative parliament, it was challenging to develop democratic institutions.²⁹

Institutional and democratic development was affected due to frequent military intervention in state politics. This constant intervention created challenges for the Judges to authorize the military coup or not.³⁰ Popular in these circumstances, military takeover authorized by the Judiciary as the insight of contentious jurisprudence foundation of Professor Kelson's Theory of Revolutionary legality the courts played a particular as well as an essential part for the democratic transitional growth.³¹ The rulings of the courts had been observed in the ruling political structure. There had been several landmark decisions in the answer to the validity, credibility, and legislative potential of extra-constitutional governments. Concerns arose concerning political legitimacy, which indicates the personal honesty of the Judges.³² There have been political ramifications for their high leverage.

Pakistan was a key defaulter in parliamentary supremacy. The transfer of power to newly emerge Pakistan in 1947 was deprived of the principle of parliamentary supremacy. The Indian Parliament successfully amends and removes the power of the Governor-General to dissolve the provincial assembly. But Pakistan had remained and was reinserted into the previous constitutional setup of the British.

²⁹Tayyab Mahmud, "Jurisprudence of Successful Treason: Coup d'Etat & (and) Common Law," *Cornell Int'l LJ* 27(1994).85.

³⁰Ibid.85.

³¹Hans Kelsen, *General Theory Of Law And State* (Routledge, 2017).78.

³²Kamran, Tahir. *Democracy and Governance in Pakistan*. (Lahore: South Asia Partnership-Pakistan, 2008).96.

Therefore, the central government dissolved ten different provincial governments by using the extra powers of the Governor-General. During this era, the future of the constituent assembly was at risk, and it usually worked according to the discretion of the Governor-General or President.

The Partition of the subcontinent came into being after the Second World War, when Great Britain and Sub-Continent, both suffered from severe economic issues and demobilization. Under clause 8 of the Indian Independence Act of 1947, Pakistan got independence.³³ At that time the subcontinent was ruled by the British under the Act of 1935, which was adopted by the constituent assembly of Pakistan. After certain amendments, the Government of India Act 1935 was used as the interim Constitution of Pakistan until the constituent assemblies constituted the new Constitution for Pakistan. Quaid-e- Azam Muhammad Ali was the first Governor-General of Pakistan and the President of the Assembly. The Constituent Assembly was formed to draft a constitution and was the first parliament in Pakistan. The Assembly consisted of 69 members, more than 10 of whom were independents, and the total number of members was 79³⁴, as follows.

Table 0.1 First Constituent Assembly of Pakistan 1947

Sr.	Provinces & states	Member
1	Punjab	22
2	Eastern Bengal	44
3	NWFP	3
4	Sindh	5
5	Balochistan	1

³³Barney White-Spunner, *Partition: The Story Of Indian Independence And The Creation Of Pakistan In 1947* (New York :Simon And Schuster, 2017).69.

³⁴GW Choudhury, "Constitution-Making Dilemmas in Pakistan," *Western Political Quarterly* 8, no. 4 (1955).174.

6	Bahawalpur state	1
7	Khairpur state	1
8	FATA	1
9	Balochistan State	1
	Total	79

Source: Data is adapted from Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2017).13.

Table 0.2 Political Party position in the First Constituent Assembly 1947

Sr.	Political Parties	Member of Assembly
1.	Pakistan Muslim League	60
2.	Indian National Congress	11
3.	Others	8
	Total	79

Source: Data is adapted from Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2017).17.

The first Constituent Assembly of Pakistan held its first session on 10 August 1947 under the presidency of Jogendra Nath Mandal. On 11 August 1947, a constituent assembly elected Quaid-e-Azam Muhammad Ali Jinnah as the first President of the assembly of Pakistan. Quaid-e-Azam Muhammad Ali Jinnah delivers his historic speech in which he cleared the outline and structure of the constitution of Pakistan. He also assigned two main responsibilities to the Constituent Assembly, first to frame the future constitution and the second to function as a sovereign body as a Federal Legislature of Pakistan.

Quaid-e-Azam Muhammad Ali Jinnah visualized Pakistan as a progressive, democratic, and modern state. In 1946 in New Delhi, Quaid-e-Azam Muhammad Ali

Jinnah told the Reuters correspondent Doon Campbell,³⁵ The new State would be a modern democratic state with sovereignty resting in the people and the member of the new nation having equal rights of citizenship regardless of their religion, caste, colour or creed.

After the partition, history witnessed that the army shaped the politics of Pakistan in several ways. It mainly did so through its plan of institutional and constitutional engineering. Politically, it has followed a Unitarian approach to state-building. Its political vision focused on the leadership factor at the top, not on the participation factor from below.³⁶ It believed that an Executive President was ideally equipped with the authority and vision to lead the nation to its destiny. For half a century, the army favoured a presidential system for Pakistan.

Through a bureaucratic coup in 1954, Governor-General Ghulam Muhammad dissolved the Constituent Assembly. It formed a so-called 'Ministry of talents' as a consociation arrangement between the various ethnic-regional, industrial, landed, bureaucratic and military interests.³⁷ In the mid-fifties and nineties, the Supreme Court handed down a range of important judgments that had a major impact on the country's political growth. Some of these verdicts had been expressed as pre-judgment democracy and others resulted in retarding democracy. The Judgments had been given in these cases, Usif Patel 1955; Asma Jilani 1972, Benazir Bhutto 1988; Hajji Saif Ullah 1988 and Nawaz Sharif 1993, recognized as in favour of democracy or supporting the democratic process in Pakistan.³⁸

³⁵Bilal Zahoor and Raza Rumi, *Rethinking Pakistan: A 21st Century Perspective* (London: Anthem Press, 2020).99.

³⁶ Senator Usman Khan Kakar, interview by author, Islamabad, February 15, 2018.

³⁷Maluka, Zulfikar Khalid. *The Myth of Constitutionalism in Pakistan* (New York: Oxford University Press, 1995) 83.

³⁸Leslie Wolf-Phillips, "Constitutional Legitimacy: A Study Of The Doctrine Of Necessity," *Third World Quarterly* 1, No. 4 (1979).89.

The judgment which retarded democracy was the Molvi Tamizuddin case judgment, which invalidated the verdict of the Sindh High Court in contradiction to the Governor-General's act of dissolving the Constituent Assembly. During the Government of Bhutto, the court supported the Pakistan People's Parties (PPP) Government's act in which PPP banned National Awami Party (NAP). The Court judgment in the case of Nusrat Bhutto legitimizes the Zia-ul-Haq Martial Law, and the judgment in the case of Khawaja Tariq Rahim, ruled the end of the assemblies legitimate by the President in 1990.³⁹ The effect of this democracy, which retarded decisions on democratic progress, was diverse from those that legitimized the two martial laws, leaving a negative impact to halt the democratic process.

The consequences of this case have made the situation in the country even worse and more serious. It became the reason to spark a series of litigations challenging a variety of government acts. As far as democratization is concerned, it has played a positive part; for example, it was due to the judgment of the Court, that the Governor-General was bound not to focus all powers on him. But rather than the Court led him to create a constituent assembly of an elected representatives. It then argued that the Federal Court had taken a bold decision and played a positive role in the interests of democracy. It managed to keep the Governor-General within those limits, as he designed to formulate a constitution of even his urges. It was in favour of the process of democratization and curtailment of the powers of the Governor-General.⁴⁰

In answer, the Governor-General referred to the Federal Court in compliance with section 213 of the Indian Act. He appealed to the Superior Court for a variety of

³⁹Benazir Bhutto, *Issues in Pakistan* (Lahore:Jang Publishers, 1993).113.

⁴⁰Asmat Ullah Marwat, "The Exercise of Discretionary Powers by Governor Generals and their Impact on Constitution Making in Pakistan (1947-55)," *Pakistan Journal of History & Culture* 39, no. 1 (2018).96-101.

questions to reach its opinion. The apex court relied on the Doctrine of State Necessity to escape legal and political distance. That was how the doctrine of state need originated in Pakistan's constitutional and political past.⁴¹ Unfortunately, after that, the nation did not relinquish this ideology of the state's need to add legitimacy to what was illegal.

Termination of Elected Governments and consequences

The subsequent and unstable tenure of power, the court decision in the case of Mian Muhammad Nawaz Sharif further limited the possibility of using these powers and, in an exceptional case in Pakistani history, reinstated dissolved assemblies. Nawaz Sharif and Benazir Bhutto had testified to this ailment in the political structure. Elected leaders feared that the presidency would be politicized and exploited by interest groups. As it turned out, Ghulam Ishaq Khan and Farooq Ahmed Leghari could not sustain their presidential tenures completely free of such influences and instead of creating stability, amendments in the constitution, endangered constitutional disparity, and that created instability.

Four dissolutions in eight years gave substantial reliability to these views. Parliamentarians argue that these powers were used inconsistently and that all the dissolved governments should have to be permitted to complete their periods".⁴² Their continuation would have helped create and strengthen a tradition of electoral politics and, ultimately, a culture of constitutionalism. Whatever the pros and cons of the constitutional amendments and the resultant imbalance between the powers of the President and Prime Minister, it is not far off the mark to say that Higher Courts in

⁴¹Khalid, "Role of Judiciary in the Evolvement of Democracy in Pakistan."78.

⁴²MNA Rubina Khalid, interview by author, Islamabad, March 22, 2018.

Senator Jehanzeb Jamaldini, interview by author, Islamabad, February 27, 2018.

Pakistan were not consistent in their judgments.⁴³ For example, the dissolution judgments showed disparities in the resolution and strength with which presidential reasons for dissolution were analyzed for legality. Justice Shafi-ur-Rahman's critical analysis of the bases in the Tariq Rahim case and his wary study of the same in the Nawaz Sharif case pointed to the judge's inconsistency.⁴⁴

As to the outcome of the cases, it had previously been discussed that the Haji Saif Ullah case might be decided differently, as the dissolution had been unlawful. In the same way, while the outcome of the Nawaz Sharif case may be creditable, it made the judgment in the Tariq Rahim case decision look harsh and, at most terribly, biased. Apart from a close relationship of diverse reasons, causal factors, and conditions, one general component was the role of the President.⁴⁵

Justice Sajjad Ali Shah made a few applicable clarifications when he noted a peculiar attitude on the part of the rest of the judges towards Nawaz Sharif, as compared to Benazir Bhutto, in conditions of the tests applied, and sense of assessment of presidential grounds for dissolution. His ill feeling towards Bhutto, though, made it hard to believe that Benazir Bhutto's judgment was entirely objective and impartial. When it turned out, in terms of results, Benazir Bhutto had always been a losing party in these situations.⁴⁶ At the hearing of the cases and their decisions, for example, the views of Justice Abdul Shakur Salam and Justice Rustam Sidhwa in the case of Muhammad Sharif; Justice Shafi-ur-Rahman's role in the case of Nawaz

⁴³Summer Sultana and Nausheen Fatimah Jaffery, "Pakistan-Democracy and Political Parties 1988-99," *New Horizons* 5, no. 1 (2011).7.

⁴⁴Newberg, *Judging The State: Courts And Constitutional Politics In Pakistan*, 59.117.

⁴⁵Osama Siddique, "The Jurisprudence Of Dissolutions: Presidential Power To Dissolve Assemblies Under The Pakistani Constitution And Its Discontents," *Ariz. J. Int'l & Comp. L.* 23(2005).113-116.

⁴⁶ Mian, Ajmal. *A Judge Speaks Out* (New York: Oxford University Press, 2004).119.

Sharif; Justice Rafiq Tarar 's view in the case of Nawaz Sharif; Justice Sajad Ali Shah's conviction in the case of Sajad Ali Shah.⁴⁷

The judgments, as observed on substantively political issues of legitimacy and state structure and culture, have not only penetrated the legislative field but have also failed to provide any clear answers to the country's political dilemmas. Judicial decisions vacillated between the acknowledgement and support of the Prime Minister's system as set out in the original Constitution of 1973 and the amalgamation of the Prime Minister's and President's system after the Eighth Amendment, with a strong position for the President.⁴⁸ As a result, no consensus emerged as to the recent existence of Pakistan's constitutional structure or its potential path.

In light of the above results, it could be argued that ' the Judiciary has not played its proper role in improving the democratic structure in Pakistan under the Constitution. Pakistan might have been a different country today; if some events which distorted the course of its history had not occurred, almost all these events are attributable to the conduct and performance of the civil and military bureaucracy, the politicians, and the superior Judiciary. Most of the bureaucrats exceeded their authority or deserted to follow the Law and liaised with every ruler. Some of them, namely, Ghulam Muhammad, Ch. Muhammad Ali, Muhammad Ali Bogra, Iskander Mirza, and Ghulam Ishaq Khan, directly ruled the country as head of the Government or the State. The military overcame it four times and ruled the country for more than half of the period of its life. They subverted the Constitution and upset the democratic and political process. The politicians failed to establish democratic institutions and did not confirm themselves as capable of giving a stable political system to the country.

⁴⁷Ibid.69.

⁴⁸Abdul Hamid and Mohammad Ashraf, *The All-Pakistan Legal Decisions*, vol. 30 (Rawalpindi: All-Pakistan Legal Decisions, 1997).79.

General Pervez Musharraf's intervention in the elected Government of PML (N)

Soon there was a confrontation between the army and Prime Minister Nawaz Sharif, which resulted in the replacement of General Jahangir Karamt on 7 October 1998 and General Pervez Musharraf was appointed as the Chairman of the Joint Chief of the Staff Committee by Prime Minister Nawaz Sharif. After the operation of Kargil, the relations between the army and government were tense and the tension culminated with the removal of the PMLN government on 12 October 1999. In 1999, General Pervez Musharraf had taken charge of the country.⁴⁹ Immediately, the Proclamation of Emergency was declared, and the Constitution of 1973 was put in abeyance. General Pervez Musharraf issued a Provisional Constitutional Order (PCO) on 14 October 1999 to provide a temporary governing framework. With these arrangements, General Musharraf assumed the office of Chief Executive.⁵⁰

The military intervention in this situation was once again brought before the Supreme Court in a constitutional situation entitled Zafar Ali Shah and General Pervez Musharraf, Chief Executive officer of Pakistan. In this case, the theory of State Necessity was argued again to justify military interference. However, the limitations imposed that General Elections should be held within three years and that the authority was transferred to elected members of the people. It ordered that the main features of the Constitution of 1973 should not be modified by using any tactics.⁵¹

A military coup displaces a constitutional government through extra-constitutional means. This dichotomy does not explain the situation on the ground. It

⁴⁹Ishtiaq Hossain, "Pakistan's October 1999 Military Coup: Its Causes And Consequences," *Asian Journal Of Political Science* 8, No. 2 (2000).80.

⁵⁰Colonel (R) H. U. Qureshi, *The Future Savior Of Pakistan?*, (Lahore: Ferozsons (Pvt.) Ltd., 2003).153-160.

⁵¹"Provisional Constitution Order No. 1 of 1999," http://www.supremecourt.gov.pk/web/user_files/File/JR_Constitution_Petition_No._15_17-24_and_512_of_2002.pdf.

is argued here that a military government is, in some respects, a constitutional government. It may sound alarmist and paradoxical, but it ought not. The four military governments sought to keep the prevalent constitutional set-up intact, except for those articles and clauses related to the elective principle in one way or another.⁵²

The awareness of harmony designed by bureaucracy and method restructured in 1948 the recruitment based on competitive examination. The administration controlled, administered, and regulated the financial and institutional resources in the provinces, much to the charge of the local leadership.⁵³ The disjunction between the centre and the provinces cast its shadow on relations between the Executive and Legislature in the centre itself. It was reflected through the asymmetrical distribution of power between the migrant-led Executive on the one hand and the constituent Assembly, which had been indirectly elected before independence by the legislative assemblies of the future Pakistan provinces and was thus dominated by the 'locals', on the other hand.

The Government sought to bypass parliament whenever possible and rule through the higher bureaucracy. This dichotomy resulted in the domineering role of the Executive being dominated by migrants.⁵⁴ Parliamentary democracy collapsed four times primarily due to mismanagement, disproportionate development of the institutional matrix, and the mounting political ambitions of the Army Generals. Extensive work has been done, in one way or the other, on this discourse by experts from inside and outside Pakistan. Ikram Azam discussed the Judiciary of the country

⁵² *The Nation*, 9 April 2008.

⁵³ Lt. General (R) Salah Uddin Tirmizi, interview by author, Rawalpindi, March 1, 2018.

⁵⁴ Veena Kukreja And Mahendra Prasad Singh, *Pakistan: Democracy, Development And Security Issues* (New Delhi: Sage Publications India, 2005).67-70.

and considered it the supreme custodian of its supreme law, the Constitution and guardian of democracy.⁵⁵

Democracy is, in its essence, conditional. The ideals of the rule of law are the fundamental values of democracy. The rule of law covers the supremacy of the Constitution, equality before the law, and civil liberties. Democracy, of course, is the strongest form of government. The superiority of democracy to the other systems of government lies in the concept of the separation of powers and the resulting checks and balances that the three branches of government exercise over each other.⁵⁶

Pakistan's history of democracy is not a success story. The lack of success of elected institutions gave the state institution the ability to interfere in politics. Strengthened civil-military relations had a crucial effect on civilian governments. The power of political leaders or the national government was rooted in common support, which came only through results. Where this aspect was missing, non-representative organizations would find the void and take charge of it. In this situation, the Judiciary failed to track reform in the extra-constitutional system in the case of Pakistan.

The primary purpose of this chapter is to bring forth the significance of this study, in general, by revisiting the work done by different scholars and researchers. Apart from it, this task had been done for the discovery of new places where contributions could be possibly made. Most of the section of this chapter deals with the evaluation of the work done, in a thematic way, by different scholars using different angles, to reach the appropriate approach for the investigation of objectives and research questions. In the first section, essential concepts would be discussed, and in the next Executive, Legislature and Judiciary relations would be discussed in a thematic method.

⁵⁵Ikram Azam, *Pakistan, 1998-2003* (Belgium: Pakistan Futuristics Foundation & Institute, 2000).109.

⁵⁶ Ahmed Raza Kasuri, interview by author, Islamabad, January 29, 2018.

A renowned scholar Iram Khalid writes “*Role of Judiciary in the evolution of democracy in Pakistan* “about the growth and development of democracy during the civil and military governments.⁵⁷ Similarly, Ijaz Khan identified the major causes of militarization in the democratic and political history of Pakistan.⁵⁸ Osama Siddique analyses the background reasons for judicialization and the persistence of unstable constitutionalism in Pakistan.⁵⁹ Saeed Shafqat shed light on the reasons for military intervention in democracy in different periods and martial law eras as well as discuss how the US-Pak relationship affected the democracy in Pakistan.⁶⁰

Another best-written book *Democracy, and Governance in Pakistan* by the prominent scholar Tahir Kamran presents a connection between the Judiciary and Nawaz Sharif.⁶¹ Sajjad Ali Shah, (1995) in his book “Law Courts in a Glass House” describes and comments on some very important phases of the judicial history of Pakistan. The book also provides background events of some of the crucial events of Pakistan’s political-cum-judicial occurrences.⁶² Zulfikar Khalid Maluka (1995) provides a detailed picture of hurdles in the way of constitutionalism, federalism, and political legitimacy.⁶³ Lust for the power of the ruling elite, the army that has caused great loss to democracy has also been discussed

⁵⁷Iram Khalid, "Role of Judiciary in the Evolution of Democracy in Pakistan," *Journal of Political Studies* 19, no. 2 (2012). 6-8.

⁵⁸Ijaz Khan, "Contending Identities Of Pakistan And The Issue Of Democratic Governance," *Peace And Democracy In South Asia Volume 2*(2006).9.

⁵⁹Osama Siddique, "Judicialization Of Politics: Pakistan Supreme Court's Jurisprudence After The Lawyers' Movement," *Unstable Constitutionalism: Law And Politics In South Asia.*(New York: Cambridge University Press, 2015).7.

⁶⁰Saeed Shafqat, "Pakistan: Militancy, The Transition To Democracy And Future Relations With The United States," *Journal Of International Affairs* 63, No. 1 (2009).89-109.

⁶¹Tahir Kamran, *Democracy And Governance In Pakistan* (Lahore,:South Asia Partnership-Pakistan 2008).36.

⁶²Sayyid Sajjad'Ali Shah, *Law Courts In A Glass House: An Autobiography* (Karachi: Oxford University Press, 2001).145-167.

⁶³Zulfikar Khalid Maluka, *The Myth Of Constitutionalism In Pakistan* (Karachi: Oxford University Press, 1995).96.

Ajmal Mian, ex-chief justice of the Supreme Court narrates some very important events in the history of the Pakistani Judiciary.⁶⁴ Mushahid Hussain described that the Judiciary has essentially been a political institution that changed the course of history in Pakistan and its decisions have always had political fallout.⁶⁵ Muhammad Nasrullah Virk PhD scholar in his study under the title '*Doctrine of Necessity-Application in Pakistan-Cases of Immense Importance-A Critical Review.*' has tried to critically review and analyzed some titled cases i.e. Molvi Tamizuddin Khan's case, Usif Patel's case, Dosso's case, Asma Jilani's case, Begum Nusrat Bhutto case, Miss Benazir Bhutto, and Syed Zafar Ali Shah case. These cases have provided the way out or way in for imposing martial law in the country time and again. It is also evident from these cases that due to reasons the court of law also supported such actions, which eventually adversely affected the spirit of the constitution of Pakistan. These actions by various individuals never allowed the flourishing of democratic and political institutions.⁶⁶

Shahid Javid Burki Describes that Sharif, like Prime Minister Muhammad Khan Junejo and Benazir Bhutto before him, then appealed to the Supreme Court. Junejo and Bhutto had failed to convince the judges that the President- Zia Ul Haq and Ghulam Ishaq Khan, respectively had acted unconstitutionally. Sharif was more successful; the Supreme Court under the direction of Chief Justice Nasim Hassan Shah ruled against the President and ordered the restoration of the National Assembly to develop a democratic process in-country.⁶⁷

G.W. Choudhury stated the importance of the Judiciary in the democratic process in his book *Pakistan transition from military to civilian rule* an independent

⁶⁴Ajmal Mian, *A Judge Speaks Out* (New York: Oxford University Press, 2004).56.

⁶⁵Hussain Mushahid, "Pakistan Problem Of Governance," (Lahore: Vanguard Books, 1997).132.

⁶⁶Muhammad Nasrullah Virk, "Doctrine of Necessity-Application in Pakistan-Cases of Immense Importance-A Critical Review," *International Journal of Social Science & Education* 2(2012).8-9.

⁶⁷Shahid Javed Burki, *Pakistan: Fifty Years Of Nationhood* (New York: Routledge, 2018).37.

Judiciary is also regarded as a fundamental ingredient of democracy. According to him while the working of democratic institutions in Pakistan such as the cabinet, parliament, and political parties was far from satisfactory and had received rude setback under the direct or indirect authoritarian regimes, the role of the Judiciary in Pakistan has a better record. Even the military rulers have shown some regard for the Judiciary; similarly, judges of the Supreme Court and high courts have demonstrated courage and independence in upholding the rule of law.⁶⁸

According to Inayatullah presence of an independent Judiciary is a prerequisite for protecting the constitution and enforcing the rule of law in society and thus ensuring order. The Pakistani Judiciary has played a commendable role in very difficult circumstances.⁶⁹ Mir Khuda Baksh Marri, (former Chief Justice of the Balochistan High Court) wrote about Maulvi Tamizuddin Khan's case: Note this ill-fated judicial and Executive engineering which was perpetrated on the people of Pakistan. Had it avoided our present constitutional wrangles and successive Martial laws might not have been encouraged.⁷⁰

As in Pakistan, the Judiciary was vulnerable due to two pressure groups. One of the pressures was from the public and their expectation of the Judiciary. The second pressure was from the government side. The Judicial branch of the state expects to act as a neutral arm under the doctrine of power separation. Judiciary acts strictly to ensure justice and enforce the law & order in the state. Under certain circumstances, some pressure groups demand the Judiciary play as the opposition. But this is also true, that it is not suitable for such an organ of the state under the doctrine of power separation.

⁶⁸Golam Wahed Choudhury, *Pakistan, Transition from Military to Civilian Rule* (Canada: UBC Press, 1988).88.

⁶⁹Inayatullah, *State and Democracy in Pakistan* (Lahore: Vanguard 1997).63.

⁷⁰Mir Khuda Bakhsh Marri, *A Judge May Speak* (Lahore:Ferozsons, 1990).114-119.

In past, the Judiciary protected the President's undemocratic moves in history and military rule. This was not only the allegation on the Judiciary but in fact, the Judiciary in the case of Pakistan had faced pressure several times from the Executive and military. The historical statement of Justice Qazi Muhammad Jamil was 'The Judiciary could not counter the dictators.⁷¹ Pakistan needs a strong Political Institution which was missing in our country. In the past, the Judiciary embraced the enlarged position of the military. On all four times, it supported the military's overt assumption of authority. As it takes place in 1999 and 2007, the military takeover of General Pervez Musharraf was accepted. With the recommendation of the Chief Justice and other judges in 2009, high-speed litigation in the field of justice was carried out under the High and Supreme Court. The Federal Government and Executive faced pressure due to the moves of the Judiciary.

It is hard fact that the political managers of Pakistan could not decide to establish and implement any of the government systems. Theoretically, they announced to run the state under Islamic democracy but, practically they adopted neither democracy nor Islam. They shaped their system to manage the affairs of the state. Powers remained personality centred instead of functioning through separate institutions. The constitutions, adopted in Pakistan provide the separate role and functions of the three institutions, but in reality, the judiciary remained passive to the executive. Leading to this callous observation, it can be concluded that Pakistan's Supreme Court has followed the path of least resistance and least fidelity to constitutional principles. The courts have been the military's handmaiden in extra-constitutional assaults on the democratic order.

⁷¹ Khalid, Iram. "Role of Judiciary in the Evolvement of Democracy in Pakistan." *Journal of Political Studies* 19, no. 2 (2012). 3-7.

In Pakistan, the concept of 'Separation of Powers' could not find its place accurately. Since the establishment of Pakistan in 1947, the executive branch managed to possess judicial and legislative powers with themselves. This practice fashioned the fragile political system and unstable democracy in Pakistan. Resultantly, civilian governments had been removed from power by the Military several times. Courts were ready to justify the military takeover on the grounds, such as the 'law of necessity'. It was only after the restoration of chief justice Chaudhry in 2009 that the judicial branch started functioning on the line of the real independent institution in the country. This was considered the commencing of the separation of powers for the first time in the political history of Pakistan. This research examines political events and judicial cases from 1999 to 2013 to understand whether or not separation of powers practically exists in Pakistan.

The present work focuses on:

- i. The transfer of the judiciary from the Hindu historic era to the colonial and post-colonial eras.
- ii. The concept of Separation of Power and its commencement.
- iii. The interference of the Judiciary in political civil and military government.
- iv. The military coup in 1999 disrupted the judicial evolution process.
- v. The reaction or response of the judiciary to the military takeover.
- vi. Frequent amendments in the 1973 constitution and response of Judiciary.
- vii. The reasons or causes of military confrontation with the Judiciary, bureaucracy, and media.

The research has a more comprehensive and coherent policy that is needed to tackle this technique as well as a political issue. The survival of democracy, stability

of the political system, and independence of the Judiciary depend on, all the institutions must remain within their stated limitations according to the Constitution of 1973. This policy would stop any bumpier trip in Pakistan's political journey.

Scope and significance of the study

This study has put some light on the role of the Judiciary in fostering the democratic process in Pakistan during the civil government of PPP & PMLQ and the military regime of 1999. The current research has emphasised first, the political and constitutional experiences of Pakistan, as well as its struggle for democracy. Secondly, linking the stability of the political system with the Judiciary has further created specific debatable issues. Third, the role of the judicial system in the democratic process during martial laws and civil governments has been discussed. The research concludes that techniques and coherent and comprehensive ways are needed to tackle political matters. It is further, quite important for stabilizing the political order, independence of the judicial system and survival of democracy in Pakistan. The organs of the state are bound to follow and act on the mentioned powers according to clear limits written in the constitution of 1973. If Pakistan takes this approach to resolve the matters, then the country will be secure from further bumpy rides during its journey to political stability.

Statement of the problem

Pakistan's ambition to become a democratic state could not materialize even after a long period of 75 years. Pakistan faced many ups and downs on its way to democracy. During this journey, Pakistan has been facing the critical issue of balance of power between the state institutions. The relations between civilian governments and the military in Pakistan have never been smooth and sound. These relations have passed through several political and constitutional challenges due to various factors

responsible for it. State organs affected and dominated each other in the past 75 years. Whenever any political and constitutional crisis emerged, the military's assistance has been sought for its solution.

However, in grave cases, the military has preferred to take over the power. It happened five times in the political history of Pakistan such as in 1958, 1969, 1977 and 1999. The period covered by this research has been selected because it represents a unique instance of direct military intervention and withdrawal in Pakistan. The non-elected sub-branch of the ministry of defence dominated the elected one and shake the pillars of the political system of the country. The three state organs as Legislature, Executive and Judiciary are each reserved for sphere action.

Naturally, these three organs work hard harmoniously to strengthen democracy, but in Pakistan, unfortunately, they act alike stepbrothers and usurp to defame the functions of other branches, oppositely pushing one another. During the time phase chosen for PhD research by the scholar, Judiciary played its role as a key player. How General Pervez Musharraf used the weak elements of the Judiciary to prolong his tenure. In the second phase how the Judiciary used the weak points of the civil elected government of PPP. Was this role of the Judiciary in favour of democracy or decisions to derail democracy? The use of the Judiciary against the political opponents by General Pervez Musharraf's Executive was democratic.

This research study has assessed how the military and Judiciary have halted the course of the democratic process in Pakistan during the period from 1999 to 2013. The higher Judiciary has always been asked to play its role to resolve the constitutional problems in Pakistan. The judgments of the superior Judiciary in such matters have far-reaching negative effects on the stability of political systems, on the one hand, and the image of the Judiciary in the eyes of people, on the other. It can be

observed that the Judiciary while passing the judgments, looked to the people in power than the principle of merit and justice.

As far as, the civilian governments are concerned, they have also not played any commendable role in democratic consolidation. Inefficient and incapable civilian governments led to the chances for military interventions in the political business of the state. The purpose of this research study, therefore, was to analyze the relations between the civilian governments and the military leaders in the backdrop of the superior courts in Pakistan in the wake of the military's gaining control of power followed by their initiatives towards democratization during the period from 1999 to 2013.

The period under study in this thesis is unique in the sense that it starts with a military intervention by General Pervez Musharraf who dissolved the popularly elected government of Mian Muhammad Nawaz Sharif, followed by the longest martial law regime, a process of democratic consolidation that ended. Effects of the court judgments legitimizing the military are taking control of power and the resulting political crisis, the tension within the Judiciary, between courts and other state institutions, are analyzed in this study.

In short, the statement of the problem may be summarized in the following points:

- The civilian governments have not played any commendable role in political and constitutional development in Pakistan.
- The assistance of the military has always been sought during political and constitutional crises in Pakistan.
- The military in most cases has preferred to take over the power from civilian governments.

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- The Judiciary has also been asked to play its role in resolving constitutional problems in Pakistan.
- The judgments of the Judiciary in such matters have far-reaching negative effects on the stability of political systems.
- The Judiciary while passing the judgments looked to the people in power and the demand of the public than the principle of merit and justice.

Objectives of the Study

The study focuses on the following main objectives:

- To discuss the judicial system of Pakistan from an academic perspective.
- To explore the credibility of civilian governments established by the military based on a power-sharing arrangement.
- To describe the role and functions of the Judiciary in Pakistan from 1999 to 2013.
- To investigate the number of cases which became the source of conflict with the Judiciary.
- To analyze judicial cases in which ‘the establishment’ intervenes direct and indirect.
- To examine the role of the Judiciary in questioning the military’s taking control of power.
- To analyze the role of the Judiciary in the restoration as well as streamlining of democracy in Pakistan.

Research Questions

The present study has tried to answer questions such as, why does the military intervene? What factors compel them to withdraw? These questions are not new to the scholarly literature. However, the thesis analyses relations between civilian

governments and the military in the context of the role played by the higher Judiciary after the fourth military intervention in 1999. The research study focuses on the following three major sets of issues. The first one is, how does the military succeed in taking control and consolidating its authority in a non-professional field? Does the Judiciary counteract the military's taking control of power? Has the Judiciary ever been successful in getting an apolitical setup restored that is dismantled by the military? How does the military transform judicial verdict of legitimacy into its establishment of a dictatorial regime?

Secondly, why don't the military rulers stay longer in power? What considerations and factors shape the decision of military rulers to change the nature of their rule? Instead of stepping down from power, why does the military evolve a power-sharing arrangement with the civilians? Why do the civilians agree to the power-sharing scheme which tilts decisively in favour of the military? What role does the Judiciary play in questioning the military's interruption of a normal political business?

Thirdly, how far do the civilian regimes established by the military fulfil public expectations in terms of their being genuine and public-spirited? How does the military secure its corporate interests after transferring power to civilians? What role does the Judiciary play in giving strength to quasi-civilian or quasi-parliamentary setups?

To summarize, the study seeks to answer the following questions:

- How does the Judiciary counteract the takeover of political power by the establishment?
- What was the Judiciary's reaction against the prolonged rule of the military in Pakistan?

- How does the Judiciary maintain checks and balances during civil rule in Pakistan?
- How and why military intervene in the political process and took overpower Pakistan?

Theoretical Framework

The present research focuses on the historical background of the legal structure of Pakistan, which was introduced by the British. The research scholar deeply studied how the British designed the constitutional arrangement for Sub-Continent. Next, the researcher worked on the doctrine of power separation and Hen Keelson's Doctrine of Necessity, which was used three times in Pakistan for the justification of martial laws.

The theoretical framework for this research alienated into two chronological sections. Firstly, the doctrine of separation of power and 'the doctrine of philosophical necessity is, described with emphasis on subjects relevant to the research question. During the martial laws of Ayub khan, Yahya Khan, Zia-ul-Haq, and General Pervez Musharraf, the doctrine of 'Philosophical Necessity 'was used to justify the proclamation of martial law in the country. Under the doctrine of power separation, the owner of the Government is alienated, so the Legislature must create the laws, and then the Executive implements them and runs the administration day-to-day at the same time, while the Judiciary expresses the regulations and as well operates autonomously.

The 'Doctrine for Separation of Power'⁷², depends on recognizing the worldwide fact and reality stressed that if the absolute power is in the hands of one person or institution it will lead to dictatorship and exploitation of its authority. The

⁷²Separation of powers is a doctrine of constitutional law under which the three branches of government (executive, legislative, and judicial) are kept separate. This is also known as the system of checks and balances, because each branch is given certain powers so as to check and balance the other branches. Each branch has separate powers, and generally each branch is not allowed to exercise the powers of the other branches.

dictum by Lord Acton warns authority tends to corrupt, and complete control corrupts.⁷³ Thus, democratic states distribute the powers or authority between the state organs under the doctrine of separation of power and constitution. Unfortunately, the separation of power theory had not worked in Pakistan formerly. Higher Judiciary justifies the military takeover by using the so-called Doctrine of State Necessity⁷⁴ and eroding the political and democratic system of Pakistan. The practice of the Doctrine of Necessity in the political and constitutional history of Pakistan not only became the reason for weakening the democratic institutions of the state but also tempered the independence and authority of the Judiciary.

Research Methodology

A mixed-method approach has been adopted to conduct the present exploratory research. The study is descriptive, theoretical, and qualitative and the data collection for this study included both primary and secondary sources. The primary source is an important and valuable source to conduct and analyse the research. The primary sources include newspapers and archives of official documents of the government, the Legislature, and the Judiciary. Newspapers were consulted mainly for analysing news items and public statements of government and public office holders. The Government documents, Official reports, debates of national and provincial assemblies, reports of ministries and documents of the judgments of the Supreme Court have been consulted for data analysis.

In this regard, the research scholar visited various libraries such as the National Library of Pakistan and other state institutions to obtain relevant documents.

⁷³ John Emerich Edward Dalberg-Acton (10 January 1834 – 19 June 1902), better known as Lord Acton, was an English Catholic historian, politician, and writer. He is best remembered for the remark, Power tends to corrupt, and absolute power corrupts absolutely

⁷⁴ The doctrine of necessity is the basis on which extra-constitutional actions by administrative authority, which are designed to restore order or attain power on the pretext of stability, are considered to be lawful even if such an action contravenes established constitution, laws, norms, or conventions. The maxim on which the doctrine is based originated in the writings of the medieval jurist Henry de Bracton.

Among the federal institutions of Pakistan included National Assembly, Senate, and National Documentation Centre in Cabinet Division. Moreover, the Islamabad High Court, Supreme Court of Pakistan and Archives of Islamabad were also visited where the scholar found ample material most relevant to the topics of research.

To get in-depth information about the topic the research scholar conducted semi-structured interviews with prominent figures in Pakistan. These interviews are used to understand people's testimony about their experiences between 1999 and 2013 and to information about historical cases that they witnessed. A discussion guide or interview schedule was developed for conducting the key informant interviews and obtaining knowledge from concerned quarters. As the topics related to the recent past, the researcher contacted experts known for their balanced views on the questions under consideration. Interviews were conducted with politicians, advocates and judges, retired military personnel and those who were either involved in the processes or were witnesses to the problem under investigation.

The conduction of interviews with relevant personnel was not unfortunately easy task to be achieved. Taking time, especially from the veteran politicians, military commanders and advocates were difficult, because it needed several visits to get a respondent available and willing for an interview.

The theoretical and historical aspects of the study were dealt with through secondary resources, such as reference books, journal articles, newspaper articles, and the relevant thesis of scholars and reports. The secondary sources included both published and unpublished material on the subject. Analysis of statements, books, journals, magazines, gazetteers, newspapers, and government records was also made for the purpose. The secondary data has been extensively used in this research which has many advantages in terms of availability, time, and cost. However, care has been

made by the scholar regarding the reliability and authenticity of the secondary data used in this research. Only the work of prominent and reliable scholars and researchers has been consulted for an objective study of this thesis supplemented with existing primary records and data gathered during qualitative interviews.

The researcher was blessed to spend productive time at the College of Law at the Australian National University (ANU Australia). She received a bulk of methods and techniques of study and research being used by western students, scholars, and researchers. In contemplation of such a paramount opportunity for an external research visit based on foreign funding, the scholar regularly contacted different experts throughout the world. However, it was very difficult to find and convince the most suitable foreign supervisor to have an interest in the present topic. The efforts of the researcher bore fruit in February 2018 when a renowned supervisor of the said university agreed to accept the researcher as a visiting scholar.

Subsequently, the HEC Pakistan awarded a scholarship to the scholar for the period November 2018 to August 2019. Therefore, obtaining acceptance from a willing foreign supervisor, the required documents from the said university for a visa, getting a visa from the Embassy of Australia and release of funds from HEC Pakistan took more than one year for the scholar to take off for the target destination by that time. Furthermore, the scholar completed the first draft of the thesis duly evaluated by the supervisor at the International Islamic University at a fast pace after burning the midnight oil. While conducting a further study for a quality thesis under the foreign supervisor at ANU Australia, the scholar found ample material in the libraries of ANU Australia. The scholar was granted access to the online material available at ANU Australia. Interestingly, the online library was also linked with other renowned universities and public-sector libraries.

Therefore, in case of non-availability in ANU libraries, the scholar could generate an online request for the documents and material available in those libraries and documentation centres. This facility proved helpful in obtaining the maximum material available within ANU Australia thus saving time and cost for the scholar. The discussions with graduate students, faculty members, researchers and foreign visiting scholars enlarged the spectrum of knowledge the researcher had and provided clarity on certain aspects of the study. These interactive sessions enabled the researcher to finalize his thesis with updated knowledge, approaches, and methodologies that she learned during the study program at ANU Australia.

Moreover, the limitations of the study included mostly the unwillingness of the most relevant actors of the period under study to be interviewed. The main factors involved prominent political leaders, heads of mainstream political parties, former service chiefs, retired military generals, heads of intelligence agencies, retired justices, and renowned lawyers of the Supreme Court of Pakistan. Though the scholar was successful in interviewing two-three people from the groups, most of the relevant persons were either not accessible or found unwilling to provide their viewpoints on the topic.

However, the scholar was successful in obtaining first-hand information and views of key personnel from these groups in newspapers, magazines and talk shows on public and private sector televisions. The data gathered from these sources and the qualitative interviews have been analysed by labelling the relevant pieces and using the manual transcription method for transcribing the interviews. Only two interviews are in tap recorded form and the rest of the interviews are in written form because they do not let the research scholar record their interview. The scholar has tried his

level best to be unbiased and open-minded during the analysed of this data so that the most relevant and authentic information could be replicated in the dissertations.

Sampling

The researcher has used two different sampling techniques for the collection of samples from the selected population for the development of validity of collected data as both techniques helped to overcome the other accuracy. The researcher used the purposive technique of sampling to collect collection qualitative data. The selection of respondents was depending on who can make information about their observations and provide enriched data.

Data Collection

For a comprehensive analysis, the data was collected through both secondary and primary sources. Government papers, as well as official records, debates of national and provincial assemblies, reports of ministries and judgments of the honourable Supreme Court, have also been consulted for data analysis. Besides, the data was also collected through scheduled face-to-face and telephonic in-depth interviews. For interview purposes, the researcher developed an interview guide and the same was executed in due course of time. In the mixed population of the study total of 20 interviews were conducted which consisted of the following, 2 judges, 3 Lawyers, 9 Politicians, 2 Journalists and 3 Military personnel. The researcher examined the history and archives from a very close distance for making this document more productive.

The Hypothesis

The theory of separation of power provided the layout and plan of distribution of power among the state institutions and provided the way of accountability of co-equal branches of the state. The independence of the Judiciary as the custodian of human rights has been assured by the constitution

- Extreme political polarization provides an opportunity for direct/indirect military intervention in the political affairs of Pakistan.
- Failure to handle political affairs by the civilian governments and the resultant crises compels the Judiciary to endorse the military's taking control of power.

The Organization of the study/research outline

The present study is comprised of an introduction and five detailed chapters. The introduction highlights the scheme of the study whereas the chapters are a detailed description of the topic selected by the researcher. The structure of every chapter is highlighted below:

Chapter 1 Separation of Power: It deals with the division and separation of power in Pakistan. In this chapter, the researcher tried her level best to discuss broader powers of government such as the Executive, Legislature, and Judiciary.

Chapter 2 The Judiciary: The Cases of Extra-Constitutional and Reinforced Democratic Institutions: The chapter focuses on the imposition of the fourth martial law and its continuation till 2007. The chapter presents an analysis of the reasons for the imposition of fourth martial law, and military regimes' punitive actions against the opponents. It also evaluates the role of the Judiciary in the legitimization of martial law. The dynamics involved in the consolidation of power by the military regime included accountability, amendments to the 1973 constitution, the imposition of Provisional Constitution Order (PCO), and handling of the Judiciary and the opposition government part of this chapter. In short, this chapter discusses all the measures taken by General Pervez Musharraf against the Judiciary and political opponents.

Chapter 3 The Chaotic Political Situation of Pakistan under Judicial Hegemony: The chapter provides an overview of how the civilian stakeholders vis-à-

vis the military consolidated efforts to do away with the martial law regime in Pakistan. In other words, it focuses on how the martial law regime was pressurized to share its power with the civilians which the former did but with reluctance and a very slow pace. The NRO, the legitimacy of General Pervez Musharraf as president of Pakistan, the general elections of 2002, the Provisional Constitution Order (PCO), the seventeenth Constitutional Amendment ensuring protection to the actions taken by the military, and the lifting of martial law also constitute parts of this chapter. It also evaluates the quasi-civilian set-up under Zafar Ullah Khan Jamali, its working relationship with the military, the fifth emergency in 2007 and the assassination of PPP chairperson Benazir Bhutto. The announcement of fresh party-based general elections in 2008 along with the role played by the Superior Courts in the restoration of democracy in Pakistan makes the concluding parts of the chapter.

Chapter.4 The Mark of Judiciary the Institutional Maneuverings and Democratic Process: Focuses on the engineering of the civil bureaucracy and local government setup. General Pervez Musharraf introduced several reforms in civil bureaucracy and the local government system. He introduced the PEMRA ordinance for checking and balances on media. Musharraf faced a harsh conflict with the media on Lal Masjid (red mosque) incident.

Chapter 5 Conclusion, Findings and Recommendations: In the conclusion, the researcher presents the analyses of the data collected through primary and secondary sources, including key informant interviews, discussed throughout the previous four chapters, which makes the main crux of the thesis. The analysis is based on the political and constitutional history of Pakistan, the world-acclaimed theoretical manifestation of democracy and military rule by the political thinkers in place of democracy and the roles played by the various stakeholders in the politics of Pakistan

and the superior Judiciary from 1999 to 2013. The conclusion shows that none of the stakeholders in the country, including the electorate, have played a positive and effective role in the consolidation of democracy in Pakistan. However, based on the findings of the study, a set of recommendations has been put forward, the adoption of which will hopefully bring a positive change in the political affairs of Pakistan.

CHAPTER-1

SEPARATION OF POWER

Generally, governments have three broader powers the Judicial, the Executive, and the Legislature. These powers are performed by the Executive, Legislature and Judiciary; these are the most important branches of the government. When the power of the government is broadly divided into three spheres, and activities of the government are performed by these three branches separately, it is called separation of powers.⁷⁵ The separation of powers or trials politics is a model of democracy that involves the separation of political power. In a system where there is a separation of powers, each branch is constrained from intervening in the area of responsibility of another branch.⁷⁶

1.1 Philosophical Basis of Separation of Powers

In ancient times, the Greek philosopher Aristotle (350 B.C) mentioned that the powers of the government rest within three branches. He also addressed in his work politics that there are three elements in each constitution for which each serious Legislature must look for what is beneficial to it, if they are well organized, the Constitution must be well organized, and the differences in constitutions must lead to the differences in each of these three elements.⁷⁷

The contemporary English political theorist Locke (1632-1704) also divided the power of government into legislative, administrative, and federative. He described it as the great temptation to human frailty. Human beings want the capability of taking authority from similar people, the supremacy to make laws, and the capability to

⁷⁵ Axford, Barrie, Victoria Browne, Richard Huggins, and Rico Isaacs. *Politics: An Introduction*. (London: Routledge, 2005).289

⁷⁶Michael Meyer-Resende, "International Consensus: Essential Elements Of Democracy," *Berlin/Germany: Democracy Reporting International [DRI]* (2011).5.

⁷⁷Neil Parpworth, *Constitutional And Administrative Law* (London:Oxford University Press, 2018).19.

execute certain laws. So that they might exempt themselves from obedience to the laws they had made, and comply with the law, both in their making and in their execution for their private purposes.⁷⁸

Through the work of the French political and social philosopher Baron de Montesquieu, the doctrine of the division of powers or checks and balances between separate and co-equal branches of government. An early version of this theory was developed by Montesquieu in 1748. The final in his *Spirit of Law* of 1734 defined the principle of separation of powers, based on a system of checks and balances in government.⁷⁹

Montesquieu compares people's rights to a division of powers. Through these terms, he mentioned the value of this theory. If the Legislative and Executive authorities are combined in the hand of the same person, or the same body, or in the same magistrate, there can be no freedom; for apprehensions can arise, lest the same King or Senate should pass tyrannical laws, to enforce them in a tyrannical manner. There would be an end to everything, were the same man or the same body, whether of the nobles or the people, to exercise these three powers of enacting laws, executing the public resolutions, and trying the causes of individuals.⁸⁰ The term check and balance means that competing sovereigns (like in a democratic arrangement in a federal system) exist. Check refers to each power's ability, right, and responsibility to monitor the activities of the others, while balance refers to each entity's ability to use its authority to limit the other's power.⁸¹

The theory of the separation of powers stipulates that to prevent the accumulation of powers in the hands of a minority in a democratic structure, the three

⁷⁸Jeremy Waldron, "Separation Of Powers In Thought And Practice," *BCL Rev.* 54(2013).433-467.

⁷⁹"Khan Asfandyar wali v. Federation of Pakistan, PLD 2001 SC 607."

⁸⁰Mont Judd Harmon, *Political Thought: From Plato To The Present* (New York: McGraw-Hill, 1964).280-282.

⁸¹"Khan Asfandyar wali v. Federation of Pakistan, PLD 2001 SC 607."

primary branches of government—the Executive, the Legislature, and the Judiciary should be independent and should have equal and well-defined powers and independence.⁸²

The separation of powers is a function more closely associated with the governing presidential structure. The fusion of powers is more common in a traditional parliamentary structure. The elected Legislature is paramount in the merger of government, while the other branches are subordinate to it. Each division enjoys a substantial degree of freedom from the other branches in the separation of powers. This independence stems from the fact that each branch is elected or chosen independently of the other branches and for its continued life; none of them is bound by any of the others.⁸³

1.2 Models of separation of powers in the world

1.2.1 Separation of Power in the United Kingdom

For a fusion of power structures like that of the UK, the people elect the Legislature and then appoint the Executive. In comparison, it is not the national Legislature that chooses the Executive in the separation of powers. The Executive is chosen by certain means, such as direct popular election, election by the college of electors, etc. In a legislative system, when the term of the Legislature always ends the tenure of the Executive is chosen by that Legislature; however, the term of the Executive may or may not coincide with the Legislatures in a Presidential system.

1.2.2 Separation of Power in the United States

There are three actual distinct branches of government in the American Presidential system. The Executive branch includes the President's Office and his cabinet, which are not lawmakers. There are the House of Representatives (the lower house) and the

⁸²Ibid.2.

⁸³Barrie Axford, *Politics: An Introduction* (Routledge, 2005).345-46.

Senate (the upper chamber) in the legislative branch. We are known collectively as Congress. The branch of justice includes the structure of the Supreme Court. A branch of government has specific powers and can also influence other branches' actions. There is the nowhere total separation of powers contained in the world's constitutional structures. In the strict implementation of this theory, such overlaps are unavoidable. The characteristic of this philosophy is a system of checks and balances. Like other countries in the world, the United States tried to adopt this doctrine strictly but could not succeed.⁸⁴

1.2.2.1 The Executive

The Executive branch is headed by the President. He acts as the head of state, oversees the military, and makes political appointments under the system of checks and balances. The Executive branch has veto power over the legislative branch. The Executive branch assigns the members to the Judiciary, which also has the right to pardon. Under an oppressive regime like a dictatorship or an absolute monarchy, all governing powers are exercised by one person or a small group of people. The system of separation of powers is intended to shift certain authority from the Executive branch to protect individual freedom from tyrannical leadership.⁸⁵

The Chief of the Executive branch plays a dual role in a Presidential structure such as that of the United States, becoming at the same time the head of state and head of government. On the other hand, the Prime Minister, a member of the Legislature, leads the government in a Legislative structure such as that of the UK,

⁸⁴Gerard Carney, "The Separation of Powers in the Westminster System," *Queensland Chapter of the Australasian Study Of Parliament Group, Speech Given At Parliamentary Annexe, Brisbane* 13(1993).3.

⁸⁵[https://en.wikipedia.org/wiki/Executive_\(government\)](https://en.wikipedia.org/wiki/Executive_(government))

while a ceremonial monarch takes on the position of head of state. A President could be head of state in many countries which had a parliamentary form of government.

In a Presidential system, all state affairs are overseen by the President. The ministers are in charge of their respective departments and are solely accountable to the President. This is particularly true of authoritarian presidencies or military regimes.⁸⁶ The system of checks and balances distributes power, rather than concentrating it in one person or branch.

This prohibits one party from ever having too much influence; for instance, the American Senate passes laws so the president has the right to veto them, or the President could veto Legislation. But with a 2/3 vote Senate could override the veto. The President and Congress could also decide on a statute, but the Supreme Court finds the statute to be unconstitutional. The President may also appoint judges and other government officials, but the nominations must be approved by the Senate.⁸⁷

1.2.2.2 The Legislature

The Legislature is a legislative body with the power to make and amend legislation. Legislatures worldwide are diverse in terms of form, nomenclature, and control. Legislatures could have one (unicameral) or two (bicameral) chambers and elected or appointed members of the Legislature. Legislatures had different designations, including Parliament, Congress, Senate, National council, and National assembly. There are also country-specific names like the Sejm (in Poland), the Norwegian Storting, or the Iranian Majlis.⁸⁸

⁸⁶Vernon Bogdanor, *The Blackwell Encyclopaedia Of Political Institutions* (New Jersey: Blackwell Publishing, 1987).257.

⁸⁷Http://Www.Socialstudieshelp.Com/Lesson_13_Notes.Htm.

⁸⁸Axford , *Politics: An Introduction*.336-37.

In the nineteenth century, the Legislature had been the weapon of liberal democracy. Liberal democracy is based on the conception that people should have an important role in government, and that people's representatives should be held accountable for their actions.⁸⁹ Within a true democracy, the Legislature provides the people with the opportunity to be characterized in the democratic system as well, and by this depiction, legitimizes the general political development.⁹⁰ The key role of the Legislature is to make laws. Another role of the Legislature is to authorize and control the compilation and distribution of government funds in terms of the level of taxation, the debate, and approval of the national budget, and the monitoring of government expenditures and accounts.⁹¹

The Legislature also plays a unique educational role. It is the responsibility of individual legislators to simplify and define policy choices and to place them before the nation. They use their resources and expertise to filter information from many sources and resolve conflicting ideological positions. Their constituents are ultimately presented with some clear-cut options.⁹² Though, the evolution of a strong party system (two-party system) has undermined the independence of individual members of the Assembly. It almost guaranteed that the majority party in the Assembly would succeed in passing any legislation that it would initiate.⁹³

The increasing importance of electronic media is another factor that has affected the role of the assembly. The reporter and the anchors have now become significant analysts, and the public is looking to the media for their contact with

⁸⁹Norman J Ornstein, *The Role Of The Legislature In A Democracy* (Brighton: Institute For Contemporary Studies, 1992).9.

⁹⁰Axford ., *Politics: An Introduction*.337.

⁹¹Ibid.339-40.

⁹²"Freedom Paper, No. 3.."11.

⁹³*Politics: An Introduction*.339.

politicians. Besides, politicians also prefer to address the nation or make political statements in front of TV cameras in Parliament.⁹⁴

In Montesquieu's conception of the separation of powers, there are essentially two pillars of government, the Executive, and the Legislature. Montesquieu considers judicial power to be something that rests on the juries, whose members were drawn from the population and return to their routine when their work is done. According to Montesquieu, therefore, judicial power is invisible and even non-existent.⁹⁵

In principle, Legislative power is the sole representative power, but the Executive also has representative roles. The Executive has its factions, in the first place among those who feel that they are not well represented by the Legislature. Over the years, the Executive has also gained strength as lawmakers and policymakers.

1.2.2.3 The Judiciary

The third pillar of government is the Judiciary. In a democratic state, the Judiciary has a very important role, i.e., it safeguards the liberties of the individual and enforces the laws made by the Executive and the Legislature.⁹⁶ The Judiciary plays a watchdog role in the democratic system. Strong and independent Courts may declare an act carried out by the Executive or the Legislature unconstitutional, invalid, or otherwise. The Judiciary also keeps a country's constitution alive by reinterpreting it to adapt to changing socio-economic and political conditions.⁹⁷

Because of these important functions of the Judiciary, the United Nations endorsed the importance of an independent Judiciary by adopting the basic principles

⁹⁴Ibid.349.

⁹⁵Pierre Manent, "Modern Democracy As A System Of Separations," *Journal Of Democracy* 14, No. 1 (2003).120.

⁹⁶"Http://Www.Bookrags.Com/Essay-2004/12/4/1558/53663,"

⁹⁷Axford , *Politics: An Introduction*.338.

of the independence of the Judiciary at its seventh congress in 1985.⁹⁸ Each member of the state is expected to guarantee the independence of the Judiciary in its constitution or the laws of the country.⁹⁹ The modern principle of judicial independence is based on the doctrine of separation of powers, which requires the Judiciary to act independently of the Legislative and Executive branches of government.¹⁰⁰

There is no pure and absolute universal model of the division of powers in the world. The Judiciary of South Africa, in 1996, when clarifying the opposition to the constitution, clarified that also under representative democratic systems of government, it is normal to practice that checks and balances lead to the imposing of constraints by one arm of government upon another, and then there is no total separation. It further claimed that almost all of the globe's presidential systems remain centred on one branch of the federal government.

It occurs in various ways in different nations, such as the USA, the Netherlands, and France, members of the Executive do not agree to be members of the Legislature although this is not a prerequisite in the German separation of powers. Furthermore, because of the changed systems of checks and balances that exist in these countries, the relationship between the different branches of government and the power to influence one branch of government over the other varies from one country to another.¹⁰¹

⁹⁸"General Assembly Resolution 40/146, 1985."

⁹⁹"Basic Principles on the Independence of the Judiciary, Article 1."13.

¹⁰⁰Justice FB William Kelly, "An Independent Judiciary-The Core of the Rule of Law," (2016).27.

¹⁰¹Kate O'Regan, "Checks And Balances Reflections On The Development Of The Doctrine Of Separation Of Powers Under The South African Constitution," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 8, No. 1 (2005).120-150.

1.3 Separation of Power in India

After the partition of the subcontinent, Pakistan and India emerge as separate nation-states. Both countries shared the same system. After the independence, India had 12 general elections over five years which were held after the interval of five years. Accepted four, all the elected governments completed their term of five years. In Pakistan, democratic functions were interrupted many times for example 1947 to 1969, 1979 to 1988 and from 1999 to 2007. India was run by elected representatives of the public, but Pakistan was run by military dictators for 39 years.

India framed its first constitution in 1950 but Pakistan in 1956 after 8 years of its emergence. In 1951-1952 India held its first general elections but in Pakistan first general election was held in 1970 and resulted in the fall of Dhaka. Both countries are governed by a defined elaborated set of laws made by the Legislature or parliament-elected representatives of the public. In India, the people are more outspoken than in Pakistan and they use the media and Judiciary to rectify issues in rule of law. But in Pakistan people spent 39 years under the dictatorship they are not politically groomed and outspoken.

In India, a separation of functions rather than of powers is followed. However, a structure of checks and balances has been put in place in such a manner that the Judiciary has the supremacy to strike down any unconstitutional rules passed by the parliament.¹⁰² The Indian Constitution holds the idea of separation of powers indirectly. Even with no express provision knowing the doctrine of separation of powers in its absolute form, the Constitution does make the provisions for separation of functions and powers between the three pillars of the state. Some of the Articles from the Indian constitution:

¹⁰²Pal, Ruma. "Separation of Powers." In *The Oxford Handbook of the Indian Constitution*. 2016.118.

Article 50: This article puts an obligation on the State to separate the Judiciary from the Executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.

Articles 53 and 154: Provide that the Executive power of the Union and the State shall be vested with the President and the Governor, and they enjoy immunity from civil and criminal liability.

Articles 121 and 211: These provide that the Legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in case of impeachment.

Article 123: The President, being the Executive Head of the country, is empowered to exercise legislative powers (Promulgate ordinances) in certain conditions.

Article 361: The President and Governors enjoy protection from court proceedings. They shall not be answerable to any court for the exercise and performance of the powers and duties of their office.¹⁰³

Political Parties of both countries are unfortunately dominated by families or individuals, and they are dominating socially in their respective constituencies. These individuals and families are rich and own enough properties. They dominated the political process for generations and denied entering the new fresh faces. There was a shift observed in Indian politics. People voted for the new individual, faced, and voted out the traditional leadership. But in Pakistan status quo is continuing and people are not supportive to vote for new and fresh ones.

¹⁰³Sujit Choudhry, Madhav Khosla, And Pratap Bhanu Mehta, *The Oxford Handbook Of The Indian Constitution* (Karachi:Oxford University Press, 2016).57.

1.4 Judiciary in India

For the success of democracy impartial Judiciary is not only required but also needs for free decisions, these decisions may be unpopular and controversial but compulsory for the longer interest of the country. In India, Judiciary overturned the emergency rule of politicians the big example is PM Indira Gandhi's emergency rule. The court overturned it and strengthened the institutions. This judicial decision enables India to maintain the institutional counterbalance between the pillars of the state.

The year 1977 was very important for both the country. India was in a state of emergency and was headed toward authoritarian country. But Indira Gandhi announced the date of a new election in 1977 and changes the political future back towards democracy. But in Pakistan, the government of PPP under the leadership of Zulfikar Ali Bhutto takes an autocratic path and watered the political instability and martial law. Indian Judiciary played a vital role and paved the way for democracy. Media in India is freer than in Pakistan. In Pakistan press, the media was also under the pressure during the military dictatorship. In comparison to Pakistani media, Indian media is more secular and liberal. Its voice against the unpopular decision of the government in different phases was very clear.

On the part of India, it made itself handle better and gradually able to overcome the democratic challenges. But Pakistan is flawed due to its Islamic background and seeks to establish a hybrid Arab culture against the nature of its society. The role of religion and the military are major obstacles in the way of democracy in Pakistan. Pakistan has to move away from a military rule like India to succeed in future. According to Chandra (Associate Professor of Politics NYU), 70 per cent population of India believed that democracy is preferable to any other form

of government.¹⁰⁴ But in Pakistan, only 37 per cent population believed in democracy as a preferable form of government. The political participation of voters is also very important. In India, the number of voters is increasing throughout the years. India served the interest of the public so that it maintains the trust in democracy but in Pakistan still relatively little interest in democracy.

The Indian Army was born out of the same tradition as Pakistan's. In British India, the army enjoyed a prominent position in Indian life and even played a role in policy matters. The commander-in-chief was also the de facto defense minister and was the second most powerful person in the hierarchy after the viceroy himself. But after Independence things began to change. PM Nehru supposed that the new India was required to reconsider the role of the army and opened a policy that would confidently subordinate it to civilian power. One of the first things that occurred after Freedom, for example, was that Teen Murti House, usually the grand residence of the army chief, was allotted in its place to the Prime Minister.

Next was the series of budget cuts (resulting, among other things, in hefty cuts in army officers' generous Raj-era salaries). And when India's first army chief, field marshal Cariappa, publicly criticized the government's fiscal performance, he was straightaway rapped on the knuckles and stated not to intrude in matters that did not concern him.¹⁰⁵ Over the years an organized program was pursued to ring-fence the armed forces and their effect on Indian society. By 1970, the Indian army had finally been rendered 'coup-proof' by a comprehensive system of checks and balances that had been put in place. And that might be measured to be one of the major successes of

¹⁰⁴Kanchan Chandra, "Patronage, Democracy, and Ethnic Politics in India," *Clientelism, Social Policy and the Quality of Democracy* (2013).135-172.

¹⁰⁵Kotera M Bhimaya, *Civil-Military Relations: A Comparative Study of India and Pakistan* (Santa Monica: The Rand Graduate School, 1997).13.

the Nehru period: Ensuring the durability of democracy in India.¹⁰⁶ It's an achievement that is not sufficiently recognized; an achievement emphasized by the fact that all South Asian countries like Pakistan, Bangladesh, Burma, and Sri Lanka had experienced military coups, actual or attempted.

India maintained its apparatus of bureaucracy, civic expertise and capability as well as controlled the institution of the military. The civic institution's weakness actually affected the ability to carry out rule of law and some other internal actors. With the common narrative of post-colonial democracies, Pakistan faced many challenges as compared to India. It is prudent to remember that India has been an exception rather than the rule in the context of its continued survival as a post-colonial democracy.

1.5 The Division and Separation of Power in Pakistan

Historically, Muslims dominated the subcontinent from 712 AD till the War of Independence in 1857. Several Muslim dynasties, such as Turks, Afghans, and Lodhi ruled over the Indio-Pakistan Subcontinent during this time. The Qutub-ud-din Aebak laid the first stone of the Sultanate at Delhi in 1206 AD. Farman (decree) was issued by the Sultan of this Sultanate to rule the land. Sultan was the country's Chief Executive, Chief Judge, and sole legislator according to Symonds (1966). He focused all the powers of the state on his own, whether Judiciary, Executive, or Legislature.¹⁰⁷

The Muslim Sultan (monarch) ruled as the Chief Executive, the Supreme lawgiver, and the Chief Judge. He combined the powers of the Executive, the

¹⁰⁶Ashley J Tellis, "Securing the Barrack: the Logic, Structure and Objectives of India's Naval Expansion," *Naval War College Review* 43, no. 4 (1990).31-57.

¹⁰⁷Richard Symonds, *The Making Of Pakistan* (Islamabd: National Committee For Birth Centenary Celebrations Of Quaid-I-Azam Mohammad 1976).20.

Legislature, and the Judiciary and he governed through decrees.¹⁰⁸ The Sultans of Delhi were powerful in certain personalities without restriction. The laws of the country were their desires and whims. The region of the Sultan was divided into Subha (provinces).

It has appointed Provincial Governor / Subedar to administer the provinces. The governors were responsible for establishing luxurious and majestic courts, offering rewards to the faithful, crushing the rebels, and above all preserving the atmosphere of terror and apprehension in the minds and hearts of the subjects. Under the strong Sultan, finding the people's approval in the decision-making process was not the practice.¹⁰⁹

The Mughal Empire replaced these Turko-Afghan dynasties in 1526 when the last Lodhi ruler was defeated by Zahiruddin Babur. The Era (1526-1707) was known as the Mughal emperor's dominance and glory. They implemented the new administration and farm income scheme, which still exists in both India and Pakistan. The empire was divided into provinces and separate divisions to manage state affairs.

Although there were heads of departments like, Khan-e-Saaman (imperial household), Dewan (imperial exchequer), Mir Bakhshi (the military pay department), Chief Qazi (Judiciary), Sadru-Sudor (Religious Endowment), the empire was ruled by the decrees from the emperor who concentrated all the Executive, Judicial and Legislative powers in himself. There were no concepts of written constitutions during the entire Muslim rule right from 1206 to 1857. Affairs of the Government were run on the principles of monarchy.¹¹⁰ No written constitution was known to have existed during the Muslim rule in the period beginning from the twelfth century till the

¹⁰⁸Hamid Khan, *Constitutional And Political History Of Pakistan* (New York: Oxford University Press, 2005).3-4.

¹⁰⁹Maluka, *The Myth Of Constitutionalism In Pakistan*. 83.

¹¹⁰Ibid.83.

eighteenth century when the British became supreme in the subcontinent. The British came to the subcontinent as merchants and slowly held sway over the whole subcontinent, formally disbanding Muslim rule in 1858.¹¹¹

For governing the sub-continent, the British parliament passed the Government of India Act of 1858 and then the Government of India Council Act of 1861, the Minto-Morley Reforms of 1909, the Government of India Act of 1919, and finally the Government of India Act of 1935. The 1935 Act drew from previous Acts with some innovations.¹¹²

In the 1935 Act, the position of the Governor-General (Viceroy) was sole. As the representative of the British kingdom in India, he enjoyed final political authority and the widest discretionary powers and special responsibilities. The supreme command of the army, navy and air force was vested in him. The Governor-General had extraordinary powers of legislation. He could, however, seek the advice of a council in all matters except defense, external affairs, and the affairs which involved his special responsibilities. Though he could seek ministerial advice, he was not bound to act thereupon.¹¹³

The Act also contained a special provision stating that if the Governor-General felt that the government of the federation could not be carried on following the provisions of the Act, he could declare that his functions now extended to anyone or all of the powers bestowed in or exercisable by any federal body or authority, other than a Federal Court.¹¹⁴

According to the provisions of the Indian Independence Act of 1947, the Government of India Act of 1935 with certain adaptations became the working

¹¹¹Khan, *Constitutional And Political History Of Pakistan*.331.

¹¹²Ibid.21.

¹¹³Shahid Hamid, *Early Years Of Pakistan: Including The Period From August, 1947 To 1959* (Lahore: Ferozsons, 1993).89.

¹¹⁴Khan, *Constitutional And Political History Of Pakistan*.331.

Constitution of Pakistan. All the discretionary powers of the Viceroy (Governor-General) lapsed on 15 August 1947. The Indian Independence Act of 1947 created the Constituent Assembly of Pakistan and gave it a charge of the nation's affairs as well as the crucial task of drafting the Constitution. In the Indian Independence Act of 1947, all governmental activities were to be carried out by the cabinet which was responsible to the Constituent Assembly.

The Governor General's powers were presumed to be exercised on the advice of the cabinet. In official parlance, Pakistan emerged as a parliamentary government but, it became a virtual administrative state with vice-regal traditions.¹¹⁵ During the freedom movement, the major political parties of Indian politics included the slogan of separation of the Judiciary from the Executive. Later, both countries India and Pakistan recognized the separation of the Judiciary from Executive control. The Constitution of India incorporated in it the provisions related to the separation of powers. Article 50 reads, the state shall take steps to separate the Judiciary from the Executive in the public service of the state. The same sentiments were manifested in the 1956 Constitution of Pakistan. The state policy had its directive principles that, the state shall separate the Judiciary from the Executive as soon as possible and practicable.¹¹⁶

In Pakistan, the concept of separation of powers was signified and suggested right from independence (1947). Abdul Rashid, the then Chief Justice of the Federal Court of Pakistan expressed in 1949, that the independence of the Judiciary could only be achieved if it is separate and independent from the Executive and

¹¹⁵W-P Zingel, "Lawrence Ziring: Pakistan In The Twentieth Century: A Political History. 1997," *Orient-Hamburg* 42, No. 2 (2001). 347-349.

¹¹⁶Hamid Khan, *A History Of The Judiciary In Pakistan* (New York: Oxford University Press, 2016).113-114.

Legislature.¹¹⁷ The Governor-General of Pakistan, later President, enjoyed wide and substantial powers. He was the Executive Head of the Federation. He had the right to appoint all the important officials, including the Prime Minister, the Federal Ministers, the heads of the armed forces, the governors of the provinces, the judges of the higher Judiciary, etc. The council of ministers would hold office at his pleasure.

He had the power to promulgate ordinances. Thus, there was complete centralization of authority. The 1935 Act also permitted the Governor-General, in certain extraordinary circumstances, to dismiss a sitting Prime Minister without the advice or consent of the council of ministers. These powers were used with impunity by many of the heads of state of Pakistan. Thus, the vice-regal system which Pakistan inherited at its birth from the British was not abandoned in succeeding years.¹¹⁸

From 1947 to 1956, when the first Constitution was promulgated, Pakistan saw four successive Governors-General and three Prime Ministers. The Cabinet members were mostly selected because they were friends and cronies. This was just like in the era of absolutist monarchies.¹¹⁹ From the very beginning, the Executive tried to dominate the Judiciary. According to the Indian Independence Act of 1947, Governor-General had vast powers. He misused this power by dissolving the Constituent Assembly when it was working on amending those provisions in the Constitution under which the Governor-General had the power to dissolve the assembly and order the judges of high courts to conduct an inquiry against the ministers. This 1st amendment is intended to repeal the PRODA (Public and

¹¹⁷Sultan Babar Mirza, "The Chaudhry Doctrine: A "Small-C Constitutional" Perspective," *The Politics And Jurisprudence Of The Chaudhry Court* 2013(2005).33-41.

¹¹⁸Lawrence Ziring, *Pakistan In The Twentieth Century: A Political History* (New York: Oxford University Press, 1997).161.

¹¹⁹Ibid.176.

Representative Offices Disqualification Act) of 1949 against the abuses of maladministration and corruption in public life.

On several occasions, the Governor-General misused this authority against ministers. The dissolution of the Cabinet of Khawaja Nazimuddin in 1953 was the result of this misuse of powers.¹²⁰ The Constituent Assembly is scheduled to disassociate and prohibit the Governor-General from executing acts of dismissal of the Government. It must be a landmark in the spread of parliamentary democracy, although it proved to be a 'Judicial Coup' in Pakistan since the Governor-General would not want to surrender control of the Legislature at every cost.¹²¹ This struggle led to the dissolution of the Constituent Assembly on 24 October 1954, and the Governor-General proclaimed an end to what he described as parliamentary wrangling.

The dissolving of the Constituent Assembly at the final stage of the first constitution-making indicates the real intentions of the Executive. The action of the Governor-General was personal and not based on any democratic norms.¹²² The role of the Courts at this important moment further dismayed the nation. It validated the Governor-General's act based on the Law of Necessity.

This novel concept was introduced first time in Pakistan to oblige Governor-General Ghulam Muhammad. Justice Munir pleaded for the maxims *Salus Populi suprema lex* (the welfare of the people is the supreme law) and *Salus republican suprema lex* (the safety of the state is the supreme law). He was much impressed by the statement of Cromwell, who stated if nothing should be done but what is according to law, the throat of the nation might be cut while we send for someone to

¹²⁰"Pakistan Opposition Parties Announce Boycott Of Polls," *Time Of India News*, 12 November 2007.52.

¹²¹*Ibid.*78.

¹²²Wayne Ayres Wilcox, *Pakistan. The Consolidation Of A Nation* (New York:Columbia University Press, 1963).79.

make a law. This was the basic source of the Law of necessity before Justice Munir. Thus, the crown was placed on the head of Ghulam Muhammad. Consequently, thereupon, he could assume all powers just like the Kings in the Middle Ages used to exercise.¹²³

The first Constitution of Pakistan, promulgated in 1956, abolished the office of the Governor-General and transferred the same powers to the office of the President whose Executive powers exceeded those of the elected Prime Minister. Though the Constitution provided for a Parliamentary and federal form of government, the President retained supreme power, and the centre was more powerful than the provinces.¹²⁴

In 1958, when the first martial law was imposed in the country, the 1956 Constitution was suspended and in 1962 the military government promulgated another constitution. The Constitution of 1962 abolished the office of the Prime Minister, granting all Executive powers to the President. The Constitution also created a nonparty Legislature with some lawmaking powers. General Ayub Khan, the Chief Martial Law Administrator became President of the country. He had the power to dissolve the Assembly; he reserved the right to promulgate legislation, to issue ordinances when the assembly was not in session, and to declare an emergency. The 1962 Constitution institutionalized the intervention of the military in politics.¹²⁵

With the promulgation of the 1962 Constitution, Ayub Khan lifted martial law; but while it was civilian rule, all the political institutions in the whole system revolved around his personality.¹²⁶ The 1962 Constitution was suspended, and another

¹²³Syed Sami Ahmad, *The Judiciary Of Pakistan And Its Role In Political Crisis*, (Karachi: Pakistan: Royal Book Company, 2012).47.

¹²⁴Paula R Newberg, *Judging The State: Courts And Constitutional Politics In Pakistan*, Vol. 59 (Cambridge : Cambridge University Press, 2002).23.

¹²⁵Ziring, *Pakistan In The Twentieth Century: A Political History*.266.

¹²⁶Ibid.271.

martial law was imposed in 1969 after Ayub Khan resigned, following a mass movement against him. This was followed by the tragic events of the East Pakistan crisis, the Indo-Pakistan war of 1971, and the secession of the country's eastern wing, which now became Bangladesh. The new Pakistan which emerged after the loss of its eastern wing adopted a new Constitution in 1973.

The 1973 Constitution created a Parliamentary form of government. According to the Constitution, the Chief Executive of the country is the Prime Minister and the President as the formal head of state is bound to act on the advice of the Prime Minister. The Parliament comprises two houses, the National Assembly, and the Senate. The President had not the power to dissolve the National Assembly. The Constitution also provided for four provincial governments and the distribution of legislative power between the federation and the provinces.

However, the Constitution was not followed in letter and spirit. The provisions for provincial autonomy were never really implemented fully. The 1973 Constitution made the Prime Minister all-powerful, and the latter, through amendments to the Constitution, gained even more power. The Parliament, therefore, was a Legislature in form and name; but it lacked substance and possessed few of the powers associated with such institutions. The then Prime Minister Zulfikar Ali Bhutto who had risen to eminence in a dictatorial regime, established an authoritarian government and one-man rule, though the façade was parliamentary.

The civilian, yet autocratic rule ended in 1977 with another martial law. The army chief General Zia-ul-Haq dissolved the National Assembly and suspended the Constitution. The 1973 Constitution was not dissolved but suspended because it contained article 6 which stated that anyone who abrogated or attempted or conspired to abrogate or subvert the Constitution would be guilty of high treason. Zia-ul-Haq

instead of a new Constitution issued the Provisional Constitutional Order (PCO). The PCO not only gave the military regime the right to rule but also the right to amend the Constitution at will. The Chief Martial Law Administrator introduced the eighth amendment to the 1973 Constitution which shifted Executive power from the office of the Prime Minister to that of the President. Under Article 58(2) (b) the President had the right to dissolve the National Assembly at his discretion. The President thus enjoyed extraordinary powers equivalent to those of the colonial viceroy. The Legislature's power was reduced to that of an advisory body, and the Judiciary became a docile branch of government.

After the death of General Zia-ul-Haq in a plane crash in 1988, Pakistan embarked on a decade of democracy, in which Benazir Bhutto and Nawaz Sharif served as Prime Ministers for two terms each. But neither of them could serve a full term, for both were dismissed by the President on charges of corruption and bad governance. The incumbent Presidents used their authority under the eighth amendment to dissolve the Assemblies. The army remained the actual power broker behind the scenes. In 1997, the then Prime Minister Nawaz Sharif, through the thirteenth constitutional amendment, had the discretionary power of the President to dissolve the National Assembly and other powers removed. Parliamentary sovereignty was thus restored.

A continuing pattern in Pakistan has been that every head of state and government wants to have all Executive power concentrated in his/her hand. Muhammad Nawaz Sharif was also determined to gather all power in his hands. When policy differences arose with the army's high command, the fourth direct military rule began in the country in late 1999.

1.6 Judgments during 1999-2013

General Musharraf's coup, the declaration of emergency, and the issuance of another PCO were all validated by the Supreme Court, based on the 'Doctrine of State Necessity. Musharraf got himself elected as President for five years through a Referendum in April 2002. In the same year, he introduced the Legal Frame Work Order (LFO) which revived all the clauses of the eighth amendment and the Executive (President) became more powerful, being again vested with discretionary powers to dissolve the National Assembly, appoint the Chairman Joint Chiefs of Staff Committee, the Services Chiefs, and the governors of provinces. The seventeenth constitutional amendment (2003) reduced parliament to the level of a rubber stamp.

In the period 2002-2007, the Legislative initiative rested solely with the Executive (president). The National Assembly was able to pass only 51 bills, whereas 134 Presidential Ordinances were promulgated in the same period.¹²⁷ During a period of crisis in 2006-2007, General Musharraf who had retained the post of Chief of Army Staff along with the President began to lose his grip on power. General Elections were held in February 2008 and the Pakistan People's Party, on a wave of popular sympathy owing to the assassination of Mohtarma Benazir Bhutto, got most of the seats. However, these were not enough for the PPP to form a government on its own; so, a coalition with other parties was formed.

Again, in this new government, the President enjoyed formidable powers. But since the PPP's election manifesto had promised to strike down these special powers, on April 8, 2010, the National Assembly passed the eighteenth amendment to the Constitution which removed the power of the President to dissolve the Parliament unilaterally. It also removed the bar and a Prime Minister serving more than two

¹²⁷"SDPD,UNDP Parliament Matters, January 2008.."117.

terms. Courts would no longer be able to endorse the suspension of the Constitution; a Judicial Commission would appoint judges, and the President would no longer be able to appoint the head of the Election Commission or declare an emergency unilaterally.¹²⁸¹²⁹

The Parliament also passed the 19th Amendment to the Constitution, which was signed by the President on 1st January 2011. This created a new system for appointment in the Superior Courts aimed at neutralizing a probable source of conflict between the Judiciary and the Executive.¹³⁰ The amendment also raised the number of senior judges as members of the Judicial Commission from two to four. Also, the recommendation for the appointment of *ad-hoc* judges to the Superior Courts would be made by the Chief Justice in consultation with the Judicial Commission.¹³¹

Moreover, the amendment envisaged that in case of dissolution of the National Assembly, the members of the parliamentary committee which give final approval of the appointment of judges would be drawn from the Senate only.¹³² The main objective of the 18th and 19th amendments is to avoid a clash between state institutions. The Judicial branch, the third pillar of government, will have played a significant role in determining the country's political destiny. Its verdicts on constitutional problems diminished the sovereignty of its Parliament. Its endorsement of coups in the context of the Doctrine of Necessity not just weakened democratic processes and diminished its legitimacy and freedom.

In the past, judges had fully embraced the undemocratic activities of regimes in power and endorsed limits on judicial sovereignty. The judicial authority first began to disintegrate in 1955, when when-Governor General Ghulam Muhammad

¹²⁸ Legal Framework Order, *The New York Times*, 9 April 2010.

¹²⁹ 18th Amendment 1973 Constitution, *The Sunday Telegraph*, 9 April 2010.

¹³⁰ Supreme Court Neutralize the Issue, *Dawn*, 2 January 2011.

¹³¹ *Ibid.*

¹³² *Ibid.*

ousted Prime Minister Mohammad Ali Bogra's administration and also the Federal Court ruled that what was otherwise not lawful, must be lawful. This so-called theory of necessity has been used several times by successive higher Courts to support military coups.¹³³

Pakistan's intelligence agencies are the most important institution within the military, serving as the backbone of the army's domestic and regional politics. By expanding the reach of judicial power to intelligence agencies, the Chaudhary Court had gone too far. Instead of social control over dissidents and political opponents, the Court was expanding its power by taking up the popular cause of missing persons. The media was enthusiastic about this role and encouraged the Court to move toward further political liberalization.

Gilani's downfall marked a watershed in a long-running showdown between the Judiciary and the government that has laid bare the institutional tensions plaguing a country that has test-fired ballistic nuclear missiles but has yet to agree on how it should be run. In practical terms, democracy is finished because the balance of power between the Parliament, the Executive, and the Judiciary has been ruined, said a senior member of the Pakistan People's Party (PPP).

A thorough study of the history of democracy shows that it has often been characterized by a blatant disregard for the rule of law, both by the political executive and the legislative chambers. These two political institutions often carry out their respective powers and functions in such a manner that it tries to suggest they have unlimited powers or are above the law of the land, the constitution. Therefore, to safeguard democracy, the Judiciary must fulfil its constitutional role. The sustenance of a democratic system mainly depends on the autonomy and independence of the

¹³³Stephen Philip Cohen, "The Idea of Pakistan (Lahore: Vanguard Books Pvt. Ltd, 2005).58.

higher Judiciary. The Judiciary should interpret the constitution, settle conflicts and disputes arising in the growth of democracy, and ensure the rule of law. The higher Judiciary always protects the fundamental rights of citizens. The Judiciary, irrespective of its original jurisdiction, ensures a clear separation of powers between the government and the Legislature.

CHAPTER-2

THE JUDICIARY: THE CASES OF EXTRA-CONSTITUTIONAL AND REINFORCED DEMOCRATIC INSTITUTIONS

In 1999, General Pervez Musharraf took control of the country by revoking the civil-elected government of PMLN Mian Muhammad Nawaz Sharif. General Pervez Musharraf assumed the title of Chief Executive of Pakistan. The Judiciary was the key player during this era. The independence of the Judiciary was very important because the impartial and independent Judiciary could protect and preserve the constitution. An Independent Judiciary could unite the federating units as a written covenant and provide survival to the federation. The most recent period of military rule, under General Pervez Musharraf, ran from October 1999 to February 2008, and the civil elected government was from 2008-2013. To provide a better understanding of the Judiciary's relationship with the military and civilian governments, it is instructive to consider some events of the military and civil government period.

2.1 Validation of Military coup in *Zafar Ali Shah v. General Pervez Musharraf 2000*

The first case or petition was filed by the representatives of the Pakistan Muslim League of Nawaz before the Supreme Court under Article 184(3) of the Pakistan Constitution.¹³⁴ In this petition, they challenged General Pervez Musharraf's coup and be in pursued the restoration of provincial and national assemblies.¹³⁵ The Supreme Court entertained all these petitions and fixed a time for the hearing of these petitions on 31 January 2000. Before 31 January, the date of the hearing approached, there was

¹³⁴Reema Omer, "Authority Without Accountability: The Search For Justice In Pakistan," (Switzerland: International Commission Of Jurists, 1 October 2013).113.

¹³⁵Ran Hirschl, "The New Constitution And The Judicialization Of Pure Politics Worldwide," *Fordham Law Review* 75(2006).28-31.

a rumour and possibility of an adverse finding of the Supreme Court about the statement of Mian Muhammad Nawaz Sharif and the restoration of assemblies. This rumour panicked General Musharraf, and he issued an order on 25 January 2000 to curb the authority of the Judiciary.¹³⁶ The issue of judicial independence during military rule is often more complex than the dictatorial regimes. That military regime often uses the institution of a higher Judiciary for counteracting many of the dysfunctions which usually plague their rule.

2.2 Oath of the Judges

General Pervez Musharraf directed the judges to take fresh oaths under Provisional Constitutional Order (PCO)¹³⁷ on 26th January 2000.¹³⁸ Under the PCO oath of the Judges 2000, all courts, including Supreme Court and all provincial High Court judges are required to take fresh oaths for the office of the judges to ensure their loyalty and *Quaid Pro Quest*.¹³⁹ Around one-fifth of judges denied taking fresh oaths under PCO 2000; hence they were packed and sent home. Saeed-u-Zaman Siddique Chief Justice of Pakistan and five other fellow judges refused to accept the new oath. Because, they are on their standpoint, which was the solemn understanding which was assured by General Pervez Musharraf after his take over as Chief Executive, regarding the independence of the Judiciary and its working under the Constitution.¹⁴⁰

The chief justice and his colleagues decided that they would defend, protect, and preserve the law and independence of the Judiciary. Justice Irshad Hassan Khan and around eighty percent of other judges agreed to take an oath, and they continued

¹³⁶ Craig. Baxter, *Pakistan on the Brink*, (Karachi: Oxford University Press, 2004).104.

¹³⁷ The Provisional Constitutional Order, popularly known as PCO, is an emergency and extra-constitutional order that suspends either wholly or partially the Constitution of Pakistan—the supreme law of land. The PCO fulfils and act as the temporary order while the constitution is held in abeyance or suspension.

¹³⁸ Text of the Provisional Constitutional Order 1999.

¹³⁹ B Muralidhar Reddy, "The Musharraf Formula," *Frontline* 21, no. 23 (2004).117.

¹⁴⁰ Justice Waheed Kazi, interviewed by author, Islamabad, February 28, 2018.

to serve the Judiciary under the state and government of the military. The newly selected Chief Justice Irshad Hassan Khan heard the petitions and declared that General Pervez Musharraf's coup validates under the much-abused doctrine of necessity.¹⁴¹ In a widely publicized decision that came in May 2000, the Supreme Court sketched upon the theory of state necessity to unanimously validate the coup of October 1999 as having been necessary to spare the country from chaos and bankruptcy.¹⁴²

The Court held that it not only legitimized the military takeover but had also given a protective umbrella to General Pervez Musharraf for the engineering Constitution, Political system, and judicial arm. The Supreme Court accepted the military takeover of affairs of the state.¹⁴³ On 12 October 1999 situation rose for which the constitution provides no solution and the involvement of the armed forces over an extra-constitutional measure became inevitable, which is now validated based on the doctrine of state necessity and the principle of *Salus Populi Est Suprema Lex* as embodies in Begum Nusrat Bhutto case. The doctrine of necessity is recognized not only in Islam and other religions of the world but also accepted by eminent international jurists including Chilty and De Smith, Hugo Grotius, and some superior courts from a foreign jurisdiction to fill the political vacuum and bridge the gap.¹⁴⁴

Subordinating the Judiciary by any direct means would demonstrate a lack of respect for the constitution on the part of military rule. Though, the military establishment can't leave the Judiciary free to question their political power. As a result, the military regime finds means to undermine the influence of the Judiciary without directly confronting the body of the Judiciary.

¹⁴¹Baxter, *Pakistan on the Brink*.41.

¹⁴²Hirschl, "The New Constitution and the Judicialization of Pure Politics Worldwide."159.

¹⁴³Senator Jehanzeb Jamaldini, interviewed by author, Islamabad, February 27, 2018.

¹⁴⁴Khan, *A History Of The Judiciary In Pakistan*.325.

2.3 The judgment of the Court in NAB Ordinance Case PLD 2001 SC 607

After the military seizure of 1999, Chief Executive General Pervez Musharraf decided to circulate an ordinance to eradicate corrupt practices and corruption, and to bring back looted money from the burglars. To achieve this purpose, the National Accountability Bureau Ordinance 1999 was promulgated, which annulled the prevalent accountability law at the time, the Ehtesab Ordinance.¹⁴⁵

The National Awami Party (ANP) leader Asfandyar Khan Wali and many other petitioners challenged the 1999 National Accountability Bureau ordinance under article 184(3) of the Constitution.¹⁴⁶ This petition was heard by the four-member bench of the court under the headship of Justice Irshad. The court held that the said order was rightly promulgated and was neither ultra-vires to the Constitution nor was affected by provincial autonomy. The court had to fix with another preliminary objection raised by the petitioners to question whether the legislation exclusively had fallen within the domain of the provincial Legislature and in case the federal legislation, by promulgating the ordinance intruded upon provincial sovereignty.¹⁴⁷

The federation disagreed and proclaimed that it had the power to make laws as to the establishment of courts which would function regardless of being in federal or provincial areas reliance was placed on Article 175, Entry 55 of Part 1 of the Federal Legislative List and Entries 1, 2, 4, 46 and 47 of the Concurrent Legislative List. The scheme of Articles 175 and 203 of the Constitution validated the establishment of such courts by the federal government if they were under the supervision and control of the High Court.¹⁴⁸ Looking back at history, the court further stated that it was not

¹⁴⁵*National Accountability Ordinance , Ordinance NO. XVIII OF 1999.*

¹⁴⁶"International Commission Of Jurists, 'ICJ Concerned Over Suspension Of Chief Justice Chaudhry And The Use Of Force Against Protesting Lawyers," (2007).133.

¹⁴⁷*Khan Asfandyar Wali & others versus Federation,(2001).*

¹⁴⁸Monitoring Report, "NAO 1999 'A Valid Piece Of Law," *Pakistan Today*, August 30 2018.

the first time that the federal government had promulgated laws that established courts in the provinces (the enforcement of the Anti-Terrorism Act being a classic example).

General Pervez Musharraf introduced this to control state institutions and politicians. The higher Judiciary also helps military rule in maintaining the control of bureaucratic discipline, adopting, and implementing unpopular policies, and enhancing the legitimacy of his dictatorial regime.

2.4 Mian Muhammad Nawaz Sharif Trail under the Plane Hijack Case

On 26 October 1999, former Prime Minister Mian Muhammad Nawaz Sharif presented before the investigation team which consisted of military and civil specialists in case of dinning permission for the plane carrying the 'on duty' Chief of Army Staff General Pervez Musharraf and two hundred passengers to Karachi airport.¹⁴⁹ On 2 December 1999, the military government took another important step to amend the Anti-Terrorism Act 1997.¹⁵⁰ This amendment authorized the Anti-Terrorism Court to hear cases like hijacking, and criminal conspiracy and could award the death sentence. After this amendment, a charge sheet was filed against former Prime Minister Mian Muhammad Nawaz Sharif and six others on 8 December 1999.

The Court of Justice Shabbier Ahmed was appointed to an anti-terrorism court to hear the case of plane hijacking case against former Prime Minister Nawaz and others. After some hearings, the anti-terrorism court found former Prime Minister Nawaz guilty of hijacking the plane and terrorist acts. However, he was granted relief from the attempt of 'murder and kidnapping', and from avoiding the awarding of the

¹⁴⁹Myra MacDonald, *Defeat is an Orphan: How Pakistan Lost the Great South Asian War* (New York: Oxford University Press, 2017).201.

¹⁵⁰Sumita Kumar, "Sharif Vs. Musharraf: The Future Of Democracy In Pakistan," *Strategic Analysis* 24, No. 10 (2001).117.

death penalty. In this case, Mian Shahbaz Sharif and five others¹⁵¹ government officials were declared clear.¹⁵² The lawyers of Mian Muhammad Nawaz Sharif announced that they would file an appeal against the verdict of the Anti-Terrorism Court. The court while hearing the appeal, rejected the plea and declared the decision in favour of the Anti-terrorism court and found Mian Nawaz Sharif guilty of the hijacking of the plane. Therefore, he was sentenced to two life imprisonment terms of twenty-five years. The Anti-Terrorism Court judge Rehmat Hussain Jaffrey gave judgment to seize Nawaz Sharif's property, and assets and charge him one million rupees for hijacking and terrorism attempts. Two million fines for compensation of the PIA plane PK-805's passengers.¹⁵³

2.5 Qazi Hussain Ahmad v. General Pervez Musharraf 2002

Qazi Hussain Ahmad the leader of Jamat-e-Islami Pakistan mounted the petition to the Supreme Court against the Presidential Referendum 2002 of General Pervez Musharraf for constitutional validity and legitimization. According to the opinion of Qazi Hussain Ahmad, the act of declaring himself a President after dislodging the elected President Rafiq Tarar was illegal, unlawful, and unconstitutional however, the Judiciary validated his coup and gave him three more years to rule.¹⁵⁴ After hearing legal arguments and deliberation, the Supreme Court rejected the opposition petition in "Hussain Ahmad v. Pervez Musharraf" against the referendum.¹⁵⁵ The court unanimously gave the decision that the holding of the national referendum of General

¹⁵¹Shahbaz Sharif, the Chief Minister Sindh, Syed Ghous Ali Shah, the Inspector General Police (IGP) Sindh Rana Maqbool and the then Chairman, Pakistan International Airlines Shahid Khaqan Abbasi.

¹⁵²Staff Reporter, "Plane Hijacking, Copter Cases For Nawaz," *The Nation*, February 26 2009.

¹⁵³Charles H Kennedy, "The Creation And Development Of Pakistan's Anti-Terrorism Regime, 1997–2002," *Religious Radicalism And Security In South Asia* (2004).119-121.

¹⁵⁴Kamran, *Democracy And Governance In Pakistan*.78.

¹⁵⁵K J M Varma, "Jamaat Challenges Musharraf's Referendum Move," *News* April 3, 2002.

Pervez Musharraf was valid.¹⁵⁶ The political parties, civil society, and lawyers condemned the verdict and declared it a sad day in the constitutional & political history of Pakistan. Democracy once again was derailed by the court decision. For opposing General Pervez Musharraf, Qazi Hussain Ahmad was arrested on charges of helping militants against America.¹⁵⁷

2.6 Watan Party v. Chief Executive of Pakistan 2003

General Pervez Musharraf issued a package of numerous amendments in the form of Legal Framework Order No.2002 in August 2002 for the revival of the Constitution and General Elections 2002. The legal framework Order was challenged by the Watan Party under Article 184(3) of the Constitution 1973 which argued that the amendments through the LFO were illegal and unconstitutional.¹⁵⁸ It was also a violation of the judgment of the court in the case of Syed Zafar Ali Shah PLD 2000 SC 869. But the five-member bench of the Supreme Court rejected the petition and validated the LFO on 7 October 2002.¹⁵⁹

After the judgment of the Apex Court, lawyers and Judiciary conflicted, the Supreme Court Bar Association also gave a statement on the judgment that the present Judiciary has ceased to be independent, and this was a futile exercise. The Apex Court unanimously rejected the entire petition against the legal challenge of LFO 2002 and accepted the legal framework order 2002 as a part of the constitution in April 2003.¹⁶⁰

¹⁵⁶Qazi Hussain Ahmad, *Ameer Jamaat-E-Islami Pakistan Vs General Pervez Musharraf, Chief Executive*,(2002).

¹⁵⁷Ashutosh Misra, "Rise Of Religious Parties In Pakistan: Causes And Prospects," *Strategic Analysis* 27, No. 2 (2003).37.

¹⁵⁸Nasir Iqbal, "Plea Challenging LFO Rejected," *Dawn*, 8 October 2002.

¹⁵⁹Khan, *A History Of The Judiciary In Pakistan*.356.

¹⁶⁰Moeen H Cheema, "Two Steps Forward One Step Back: The Non-Linear Expansion Of Judicial Power In Pakistan," *International Journal Of Constitutional Law* 16, No. 2 (2018).118.

The Judiciary accepted the LFO 2002 for its interest as well, because, under the LFO, the term of judges was increased by three years. LFO was a charming settlement for judges, so they rejected the petitions of lawyers and politicians and legitimized LFO. Lawyers of the Pakistan Bar Council also launched or released a media white paper¹⁶¹ on 28 June 2003.¹⁶² They declared that the Judiciary had been working as a subordinate of the military government for the last three years.

The Judiciary was supporting General Musharraf's regime and had given a legal umbrella for constitutional dictates because judges were busy maintaining personal dossiers. In reaction to the lawyer's agitation, Chief Justice closed the offices of the Supreme Court Bar Association on the premises of the Supreme Court building.¹⁶³ In July a Draconian contempt of court ordinance was issued by the Military government, according to which criticism of the conduct of the judge was declared for the punishment by a fine of 1700 dollars or six-month imprisonment, or both. Lawyers boycotted the court proceedings and protested. Police were called to control the wrangle between the lawyers and clerks of Lahore High Court. In Lahore, High Court agitation police charged twenty-three lawyers under the 1997 Anti-Terrorism Act.

¹⁶¹The statement made was as under: ' That as President and Counsel of the Petitioner Association, it is stated as under: (1) It has been resolved by the Petitioner Association and the Pakistan Bar Council, which are the apex representative bodies of lawyers in Pakistan, that in view of the oath taken by the judges under Provisional Constitutional Order and in view of recent verdicts upholding the various orders and acts of the present military regime, the judiciary has ceased to be independent and that no substantial question of the constitutional importance should be argued before this Hon'ble court in its present composition. (2) The General body of the Petitioner Association in its Annual General Meeting held on 26 October 2002 at Lahore has unanimously condemned the enhancement of the retirement age of the judges through amendment in the Legal Framework Order, which in the view of the lawyer's community, is an unconstitutional and invalid document. The Petitioner Association has also resolved that enhancement of retirement age is the last nail in the coffin of independence and credibility of the judiciary. (3) In view of the above, it is stated with a heavy heart that arguing the present Review Petition involving serious constitutional question before this Hon'ble Court in its present composition would be a futile exercise. Hamid Khan (President, Supreme Court bar Association of Pakistan)'.

¹⁶²"White Paper on the Role of Judiciary ", ed. *Pakistan Bar Counsel* (2003).

¹⁶³"Oath of Office (Judges) Order, 2007 ", (November 3, 2007).

2.7 Pakistan Lawyers Forum v. Federation of Pakistan 2005

According to the verdict of the Supreme Court in the case of Syed Zafar Ali Shah, General Pervez Musharraf had given the solemn he would have left one office if MMA leadership had supported him in passing the 17th amendment to the constitution from the Parliament. He also appeared on television and broadcast on the radio to assure that he would leave one office.¹⁶⁴ It connected to clause No.7 of Article 41 of the Constitution by the 17th amendment just providing paragraph (d) of Article 63(1) would be valid on and after 31 December 2004. Article 63 concerns the disqualification of Members of Parliament and paragraph (d) of clause (1) reads as follows:

(1) A person shall be disqualified from being elected or elected as a member of the Parliament if. (d) He holds a benefits office in the service of Pakistan other than an office approved by law not to disqualify the holder of that office Article 41(2) of the Constitution states that the President should be eligible to be appointed as a member of the National Assembly. Therefore, if keeping a benefits office in the interest of Pakistan disqualifies a member of the National Assembly from holding office, it will also disqualify the President from using it.¹⁶⁵

Under article 41, General Musharraf could not hold two offices as Chief of the Army Staff and President of Pakistan after 31 December 2004. But he refused to give up the office and passed a bill, The President to hold another Office Act 2004¹⁶⁶ from the ruling coalition, in the following words: The holder of the office of President of Pakistan may, in addition to his office, hold another office of the profit in the service of Pakistan which will not disqualify its holder as a provider under Paragraph (d) of clause (1) of Article 63 of the Constitution or any other law for the time being in

¹⁶⁴SM Zafar, *Dialogue: On The Political Chess Board* (Lahore: Brite Books, 2004).132.

¹⁶⁵"President to Hold Another Office Act, 2004 (vii of 2004), PLD 2005 Federal Statutes 59," (2004).

¹⁶⁶Ibid.115.

force, provide that this provision shall be valid only for the present holder of the office of the President.¹⁶⁷

The opposition parties in National Assembly asked the speaker to allow them to oppose the bill and move the no-confidence vote. The opposition political parties were not accommodated, and the ruling party voted in favour of the bill and turned it into law. Under Article 184(3) of the constitution, several petitions had been filed in Supreme Court to challenge the vires of LFO 2002 'The President to hold another office act 2004' and the 17th amendment 2003 in the constitution. The five-member bench led by Chief Justice Nazim Hussain Siddique heard all these petitions and banished all these petitions by a consolidated verdict on 13 April 2005.

The Supreme Court permitted Musharraf to assume a dual office according to Article 63(1) (d) and Article 41(7) (b) of the Constitution.¹⁶⁸ In legitimizing the rule of the army and the Executive over the parliament, the above-mentioned case further strengthened the common view of the Supreme Court's subservience to the military regime. Here, in the case, the democratization, it could be safely inferred that the position of the Judiciary was not in favour of the constitution and democracy.

2.8 Judiciary under the Chief Justice of Pakistan Iftikhar Muhammad Chaudhary

The Judiciary had become active after the appointment of Iftikhar Muhammad Chaudhary¹⁶⁹ and he became a brand name. When Chaudhary became Chief Justice

¹⁶⁷Kamran Aziz Khan, "17th Constitutional Amendment & Its Aftermath: The Role of Muttahida Majlis-i-Amal (MMA)," *Pakistan Vision* 9, no. 2.127.

¹⁶⁸*Pakistan Lawyers Forum vs. Federation of Pakistan PLD 719*,(2005).

¹⁶⁹Iftikhar Muhammad Chaudhry was born on 12 December 1948 into Rajput family in Quetta, Balochistan Province, Pakistan. His father, Chaudhry Jan Muhammad, was a police constable. Before the independence in 1947 Chaudhry Jan Muhammad was posted from Jalandhar, India to Quetta, Baluchistan. He spent the rest of his life in Quetta, Baluchistan.

Chaudhry has a bachelor's in arts and bachelor's in law (LLB) from the University of Sindh, Jamshoro. He joined the bar in 1974. He was enrolled as an Advocate of the High Court in 1976 and as an Advocate of the Supreme Court in 1985. In 1989 he was appointed Advocate General, Balochistan by Akbar Bhugti, the then Chief Minister of Balochistan. He was elevated as Additional Judge, Balochistan High Court on 6 November 1990 until 21 April 1999. On 22 April 1999 he became Chief Justice of the Balochistan High Court. Besides remaining as Judge of the High Court, he discharged

in 2005, he started an ambitious program of Public Interest Litigation. The practice involved the Court's original jurisdiction, *suo motu* powers, and although the footing of Public Interest Litigation was not new in Pakistan, it was not easy as it was during the Period of Chief Justice Iftikhar Muhammad Chaudhary.¹⁷⁰

Under certain circumstances, Chief Justice opened the door of the Judiciary for the public to maintain pressure on the Government to answer about the wrongdoing.¹⁷¹ Whenever the government and state institutions were found guilty or not performing according to public expectations, Supreme Court took notice and interfered through *Suo Motu*¹⁷². This was not a new exercise in the judicial history of Pakistan but expanding the role of the Judiciary in Public Interest Litigation was a new addition. Chief Justice Iftikhar Muhammad Chaudhary setup a (Human Right Cell) HRC. The interest of Chief Justice of Pakistan Iftikhar Muhammad Chaudhary in public interest litigation and interference in the pure domain of Executive authority made President General Pervez Musharraf panic.¹⁷³

The confrontation started between the Executive and Judiciary came eyeball to eyeball when the Apex Court of Pakistan started taking petitions which purely fall in the domain of the Executive. The two cases became the cause of the tremendous rift between President General Pervez Musharraf and Chief Justice of Pakistan Iftikhar

duties as Banking Judge, Judge Special Court for Speedy Trials, Judge Customs Appellate Courts and Company Judge. Chaudhry also remained President of High Court Bar Association, Quetta, and was elected twice as a member of the Bar Council. In 1992 he was appointed as Chairman of Balochistan Local Council Election Authority and thereafter for a second term in 1998. He also worked as Chairman of the Provincial Review Board for the province of Balochistan and was twice appointed as Chairman of the Pakistan Red Crescent Society, Balochistan. On 4 February 2000 he was nominated as a Justice of the Supreme Court of Pakistan. On 30 June 2005 he became the Chief Justice of Pakistan. He is said to be the youngest Chief Justice of Pakistan, who will be serving the longest period that any chief justice has ever served in the history of Pakistan's judiciary

¹⁷⁰Werner Menski, R Alam, and Mehreen Raza, *Public interest in litigation in Pakistan* (New Jersey: Platinum, 2000).86-90.

¹⁷¹Toby Berkman, "The Pakistani Lawyers' Movement And The Popular Currency Of Judicial Power," *Harvard Law Review* 123, No. 7 (2010).200-203.

¹⁷²A *suo motu* action allows the Court, instead of a petitioner, to initiate investigation and to render judgment on a matter falling within its jurisdiction.

¹⁷³ Chief Justice (R) Iftikhar Muhammad Chaudhary, interview by author, Islamabad, March 27, 2018.

Muhammad Chaudhary was nullified for privatization of steel mill and Habeas Corpus.

2.9 Steel Mill case Watan Party v. Federation of Pakistan PLD 2006 SC 697

The Country's only mega-producer of steel structure, heavy machinery, and electrical equipment steel mill known as 'Pak Steel' was founded on 2 July 1973 with the help of the USSR. Under the program of privatization of Prime Minister Shaukat Aziz,¹⁷⁴ a step was taken to privatize 'Pak Steel'. Pakistan Steel Mill was privatized in April 2006, also amid labour union protests. The labour unions and opposition parties raised charges of corruption against the Privatization Commission. They argued that the enterprise was sold for a price lower than its land value, excluding the inventory and the equipment. On an appeal filed by the union in May 2006, the Supreme Court heard the case. The union had relied on a famous Indian case, S. P. Gupta v. Union of India (1981), to assert standing.¹⁷⁵

The Chief Justice of Pakistan Iftikhar Muhammad Chaudhary took notice and accepted the petition of Watan Party v/s Federation of Pakistan PLD 2006 SC 697 against the Pak Steel Privatization under 184(3) article of the constitution.¹⁷⁶ When the court examined this case, it found many irregularities and violations of mandatory provisions of law by the commission of privatization.¹⁷⁷ The former Chairman of Steel Mill stated, and he quoted Prime Minister Shaukat Aziz that the value of Steel Mill property is 40 billion rupees, However, Prime Minister Shaukat Aziz did not put an ear and wrapped this deal at half price of 21 billion rupees only.

¹⁷⁴Mr. Shaukat Aziz was a Citibank vice president in New York before Musharraf appointed him finance minister in 2002 and become the Prime minister in 2004.

¹⁷⁵Shoaib A Ghias, "Miscarriage Of Chief Justice: Judicial Power And The Legal Complex In Pakistan Under Musharraf," *Law & Social Inquiry* 35, No. 4 (2010).114-118.

¹⁷⁶Abul Sattar, "Killing Of Pakistani Tribal Chief Sparks Fury And Fears Of War," *The Guardian*, February 24, 2012. 2006; *Watan Party v Federation of Pakistan PLD 2006 SC 697*.

¹⁷⁷ Chief Justice (R) Iftikhar Muhammad Chaudhary, interviewed by author, Islamabad, March 27, 2018.

When this case was on hearing in the Supreme Court, Iftikhar Muhammad Chaudhary Chief Justice of Pakistan was called by General Pervez Musharraf to influence the case and accommodate PM Shaukat Aziz's interest.¹⁷⁸ But Chief Justice stated to General Pervez Musharraf, you should not worry, I will give the decision in the best interest of the public.¹⁷⁹ A full bench comprising of 9 judges of the Supreme Court led by Chief Justice of Pakistan Iftikhar Muhammad Chaudhary on 23 June 2006 avowed the privatization of Pak Steel null and void. LoA on 31 March 2006 and the shared purchase agreement on 24 April 2006 would not have any legal effect.¹⁸⁰ This decision affected the mutual interest of the business, ruling, and political elite of Pakistan, which created huge setbacks, especially for Prime Minister Shaukat Aziz because he was very keen on the privatization of the Steel Mill. Ultimately Supreme Court nullified it and alleged that Prime Minister Shaukat Aziz tried to sell the public asset at a minimum rate.

2.10 Habeas Corpus

The second thing which made General Pervez Musharraf panic and created discomfort between the Executive and Judiciary was the habeas corpus petitions. Supreme Court of Pakistan took notice of 18 missing persons including Mrs Amina Masood Janjua¹⁸¹; she was the petitioner, and her husband was missing for many years. The Human Rights Cell received hundreds of complaints against the high-handedness of the Executive, police department, and intelligence agencies. Therefore,

¹⁷⁸ Muhammad Junaid Ashraf, Faiza Muhammad, And Trevor Hopper, "Accounting Signifiers, Political Discourse, Popular Resistance And Legal Identity During Pakistan Steel Mills Attempted Privatization," *Critical Perspectives On Accounting* 60(2019).69.

¹⁷⁹ Chief Justice (R) Iftikhar Muhammad Chaudhary, interviewed by author, Islamabad, March 27, 2018.

¹⁸⁰ Ali Dayan Hasan, "Destroying Legality: Pakistan's Crackdown on Lawyers and Judges," (Human Rights Watch, 2007).127.

¹⁸¹ Tariq Hassan, "The Supreme Court of Pakistan and the Case of Missing Persons," *Asia-Pacific Journal on Human Rights and the Law* 10, no. 2 (2009).203.

in November 2007, General Pervez Musharraf did decide to curtail the powers of *Suo Moto* of the Supreme Court under the Provisional Constitutional Order (PCO).

2.11 Missing Persons and Illegal Detention Cases

During the United States' war on terror, the Musharraf regime started the practice of secretly detaining people. However, human rights organizations argued that the missing persons were mostly political adversaries from Balochistan, as opposed to members of the Taliban or al-Qaeda. The regime had been involved in a conflict with the Bugti tribe in Balochistan over provincial autonomy and natural gas revenues. Musharraf used the 'war on terror as a useful tactic in this context. Some estimated that as many as according to the calculation, 6,000 persons had been missing; however, the Human Rights Commission of Pakistan had documented only 400 persons. Chief Justice Chaudhary took notice of the disappearances. In November 2006, the Supreme Court took up the case of 41 missing persons and demanded from the Ministry of Interior to produce them.¹⁸²

On 6 February 2007, the Supreme Court took notice of police high-handedness against the family and relatives of missing persons when they tried to march towards GHQ to remind the memorandum to the Chief of the Army Staff.¹⁸³ The court directed the authorities to submit a detailed report on this issue. The Human Rights Commission of Pakistan filed the petition along with Amina Masood in the Supreme Court.¹⁸⁴ The Apex Court entertains all the petitions which were filed by the Human Right Commission of Pakistan and relatives of missing persons.¹⁸⁵

First, the Government denied accepting any information about the missing persons, but one-month later officials informed the Supreme Court that 20 persons

¹⁸²"State of Human Rights in 2006," (Karachi: Human Rights Commission of Pakistan, 2006).198.

¹⁸³"Supreme Court takes Notice of Protester's Stripping," *Dawn* 3 February 2007.

¹⁸⁴ Amina Masood, interview by author, Islamabad, March 28, 2018.

¹⁸⁵"Formation Of The Commission On Disappearance Urged," *Dawn* 9 March 2007.

had been found. The Supreme Court ordered the authorities to trace all the other disappearances.¹⁸⁶ In March 2007, the Human Rights Commission of Pakistan supplied another list of 148 missing persons to the Court, alleging that the intelligence agencies had been detaining these people as well.

The People went missing in the context of the allegation of anti-state insurgency and after some time their dead bodies were found at unidentified places in the context of a separatist insurgency in Balochistan and the war on terror. The Supreme Court of Pakistan takes notice and entertains all petitions, sending notices to federal and Provincial Governments. The Supreme Court started questioning the establishment and called high-ranked officers in front of the court under media coverage regarding enforced disappearance and illegal detention. On the very next day, the Chief Justice was suspended.¹⁸⁷ Due to the sensitivity of the matter, the Executive did not allow the Judiciary to entertain the above-mentioned cases; the Executive took this act of the Judiciary under Chief Justice Iftikhar Muhammad Chaudhary as an open challenge to them.

2.12 The Suspension of Chief Justice

On 9 March 2007, Musharraf met with Chief Justice Chaudhary for a planned meeting at military headquarters. General Pervez Musharraf dressed in military uniform, informed Chaudhary about the complaints against him regarding unlawful interference in the Quetta High Court. When Chaudhary dismissed the complaint as baseless, Musharraf said that there were other complaints as well. During this meeting, the directors of intelligence agencies, the President's Chief of Staff, and the Prime Minister entered the room.

¹⁸⁶"Pakistan: A Land of Systematic Disappearances," 2007.69.

¹⁸⁷Ghias, "Miscarriage Of Chief Justice: Judicial Power And The Legal Complex In Pakistan Under Musharraf."118.

When Chaudhary was asked to resign with dignity or face the Supreme Judicial Council, he said, "I wouldn't resign and would face any reference since I was innocent; I have not violated any code of conduct or any law, rule, and regulation; I have faith in that I am a guardian of law and I strongly believe in God who will help."¹⁸⁸¹⁸⁹ First time in the history of Pakistan a Chief Justice stared into the eye of the General and did not blink.¹⁹⁰ General Musharraf's friend and memoir author, Humayun Gauhar, said that Musharraf had lost his head and tried to fire the Chief Justice and that asking the Chief Justice to retire was a command. I don't think the refusal was ever in the Musharraf scheme.¹⁹¹

Interestingly but not surprisingly, General Pervez Musharraf responded with an iron hand and issued an order of suspension of the Chief Justice of Pakistan and declared that Chief Justice of Pakistan Iftikhar Muhammad Chaudhary had non-functioned on 9 March 2007.¹⁹² Chief Justice Chaudhary was kept at the Army House for nearly five hours virtually incommunicado. In those five hours, General Musharraf was busy in sworn off a new Chief Justice, Justice Javid Iqbal;¹⁹³ and he immediately ordered a meeting of the Supreme Judicial Council (the disciplinary committee led by the Chief Justice, established under Article 209 of the Constitution); and issued disciplinary proceedings (in the form of a reference), citing allegations of misconduct against Chief Justice Chaudhary. When Chief Justice Chaudhary was finally allowed to leave the Army House, his protocol¹⁹⁴ was withdrawn; he was not allowed to return to his chamber, and he had been placed under house arrest. Chief Justice Chaudhary

¹⁸⁸Chief Justice (R) Iftikhar Muhammad Chaudhary, interview by author, Islamabad, March 27, 2018.

¹⁸⁹"Text of Chief Justice's Affidavit," *The News* 30 May 2007.

¹⁹⁰Graham Usher, "Musharraf's Himalayan Blunder," *Al-Ahram Weekly* April 19 2007.

¹⁹¹Carlotta Gall and Jane Perlez, "For Musharraf, Reduced Power as the President," *The New York Times*, 29 November 2007.

¹⁹²Arshad Sharif, "Serious Error Found in Political Parties Order," *Dawn* August 08, 2002.

¹⁹³Baxter, *Pakistan on the Brink*.108.

¹⁹⁴Protocol means official flags and title as Chief Justice.

was denied access to legal counsel and his communications were closely monitored.¹⁹⁵

The military Government had taken this worst action under the Constitution of 1973 of Pakistan, the President could not remove the judge from the bench or office, only the Supreme Judicial Council had the authority to remove him/her if he/she found in his/her duty or misconduct. The President had no power under the constitution to remove any member or judge of the Supreme Court. So that after suspending the Chief Justice of Pakistan Iftikhar Muhammad Chaudhary, General Pervez Musharraf sent a reference to the Supreme Judicial Council for the accountability of the Chief Justice of Pakistan under Article 209 of the constitution.¹⁹⁶

This was the worst decision of General Pervez Musharraf. Iftikhar Muhammad Chaudhary already had taken the support and goodwill of common citizens by opening the doors of the Judiciary for Public Interest Litigation and filling the vacuum of unrest. The emergence of the Brand "Iftikhar Muhammad Chaudhary" changed the perception and minds of the people regarding the Judiciary and gave them awareness, of what is wrong and right in legal terms.¹⁹⁷ People became more vigilant about constitutional obligations and provisions; people became more careful about the unlawful and unconstitutional acts of the Executive. The suspension of Chief Justice of Pakistan Iftikhar Muhammad Chaudhary made the situation worsen and things started unfolding because people poured onto the streets in support of the Chief Justice of Pakistan.¹⁹⁸

In the year 2007, also scheduled as a year of general and presidential elections, judicial activism had been unwelcomed and unsuitable for the continuation of General

¹⁹⁵"International Commission Of Jurists, 'ICJ Concerned Over Suspension Of Chief Justice Chaudhry And The Use Of Force Against Protesting Lawyers."

¹⁹⁶M Ilyas Khan, "Judge Row Prompts Pakistan Democracy Questions," *BBC News* 12 March 2007.

¹⁹⁷Chief Justice (R) Iftikhar Muhammad Chaudhary, interview by author, Islamabad, March 27, 2018.

¹⁹⁸"Lawyers Protest Against Musharraf," *BBC News* 12 March 2007.

Pervez Musharraf's regime. The suspension of the Chief Justice was designed by Musharraf to curtail and curb judicial activism. But it had been proven wrong when the people, lawyers, judges, civil society, and political parties poured on road against the suspension of the Chief Justice of Pakistan, judicial independence had been brought back, the constitutionalism in the country. Lawyers played the most dominant role; they did not only protest on the streets and roads but also boycotted all court proceedings. Lawyers hundreds from every corner of the country in black coats attended rallies in Islamabad, Karachi, Quetta, Lahore, and Peshawar. This organized protest became known as the Lawyers Movement.

2.13 Adliya Bachao Tehreek

The suspension of Iftikhar Muhammad Chaudhary as the Chief Justice of Pakistan resulted in protest from the legal community of Pakistan Legal community including Senior judges and lawyers initiated the movement named '*Adliya Bachao Tehreek*' (Save the Judiciary Movement) and the aim of the movement was to reinstate the Iftikhar Muhammad Chaudhary as Chief Justice of Pakistan and to maintain the independence of the Judiciary.¹⁹⁹ The '*Adliya Bachao Tehreek*' was headed by the President of the Supreme Court Bar Association Munir A. Malik, Aitzaz Ahsan, and Ali Ahmad Kurd along with other leading lawyers.²⁰⁰

2.13.1.1 The First Hearing on 13 March 2007 by Supreme Judicial Council:

The sacked Chief Justice Iftikhar Muhammad Chaudhary appeared before the Supreme Judicial Council on 13 March 2007, on his first hearing. The hearing of the sacked Judge case had lasted for two hours and after the long proceeding, the court adjourned the case hearing until Friday 16 March. Sacked Chief Justice Chaudhary

¹⁹⁹Jordyn Phelps, "Pakistan's Lawyers Movement (2007-2009)," *International Centre on Non-violent Conflict* (2009).186-190.

²⁰⁰"Anti-Musharraf Pakistan Lawyers Win Human Rights Award," *The Economic Times* 23 January 2008.

issued a four-page press release that denounced the moves against him and urged that neither President Musharraf nor the SJC had the authority to prevent him from working. He also reported that his landline telephone had been disconnected and vehicles confiscated.²⁰¹ CJP Iftikhar Muhammad requested SJC to postpone the hearing dated 26 March because the government had restricted his lawyers and not allowed them to meet with Chaudhary. However, the SJC did not entertain it and the next date of hearing was announced by a press release to be 21 March 2007.²⁰²

2.13.1.2 Musharraf attempted to turn the attention of the public:

On 16 March 2007, during the government of General Pervez Musharraf armed mob attacked the building of the GEO news TV channel in Islamabad to turn the attention of the public from the case of sacked judge Iftikhar Muhammad Chaudhary. Because the full text of the reference against Chief Justice Pakistan Iftikhar Muhammad Chaudhary had been leaked out and the government was under pressure and avoid to published on the press.²⁰³

The main charges which were against the sacked Chief Justice of Pakistan Iftikhar Chaudhary were as follows.

- 1 CJP compelled government officials to illegally enable his son to enter medical college and then made him a Grade 18 Police Officer.
- 2 CJP was allowed to use a 1700cc car but used a 3000cc Mercedes and kept many other vehicles in service in Lahore, Islamabad, and Karachi.
- 3 CJP needed more protocol than it warranted. He called on senior officials to receive him at airports, and he even used helicopters and aircraft to perform private functions.

²⁰¹"Full Text Of CJP's Statement Before SJC," *The Nation*, 17 March 17 March 2007.

²⁰²"Seven Judges Reject PCO Before Being Sent Home," *Dawn*, 04 November 2007.

²⁰³Rifaqat Ali, "کہا کیا سے صدر نے حکومت," *BBC Urdu*, 19 March 2007.

- 4 Use of a BMW Car RAZIA 1 by his family
- 5 Different Oral and Written Orders in cases worth 55 million PKR
- 6 Asking for more perks than he was eligible for.²⁰⁴

On 20 March 2007, SJC issued a press release citing that the next hearing of reference, which was scheduled on 21 March 2007, had been postponed till 3 April 2007, and the SJC did not mention any reason for postponing the hearing the press release does not cite any reason for it.²⁰⁵

2.13.1.3 3rd April 2007:

The Supreme Judicial Council again postponed the hearing of the presidential reference against non-functional CJP Iftikhar Muhammad Chaudhary till 13 April 2007. The lawyer of sacked judge Iftikhar Muhammad, Barrister Aitzaz Ahsan, urged for an open trial of the Supreme Judicial Council's proceedings. The arguments of Aitzaz Ahsan continued for an hour. He also demanded a contrary to the in-camera hearing. On Behalf of government Barrister, Wasim Sajjad and former minister for law Khalid Ranjha appeared before the Supreme Judicial Council. Attorney-General Makhdoom Ali Khan appeared on behalf of SJC on court notice. The legal community, leaders of opposition parties, and activists assembled in large numbers outside the building of the Supreme Court during the hearing of the reference²⁰⁶

Earlier, Chief Justice Iftikhar Muhammad Chaudhary reached at Supreme Court with his attorney Barrister Aitzaz Ahsan, Hamid Ali Khan, and retired Justice Tariq Mahmood for appearing in Supreme Judicial Council for hearing the presidential reference. After the court proceedings, Barrister Aitzaz Ahsan talks to the

²⁰⁴"Text of Reference Filed Against the CJP Chaudhry ", <https://archive.is/20071106095513/http://proud-pakistani.com/2007/03/21/text-of-reference-filed-against-the-cjp/>.

²⁰⁵"Press Release by SJC to Postpone Hearing till 3rd April 2007," ed. Supreme Court of Pakistan (20 March 2007).

²⁰⁶Ibid.99.

journalists and said that he raised several objections before the Supreme Judicial Council.

Barrister Aitzaz Ahsan said that he demanded an open trial of Chief Justice Iftikhar Chaudhary during the hearing so that people had to see the reality of the charges against him. Barrister Aitzaz Ahsan held that he had also debated the constitutional standing of the Supreme Judicial Council and claimed over, that the appointment of the Acting Chief Justice was constitutional or unconstitutional.²⁰⁷ A huge number of lawyers, leaders and activists from the political parties and opposition parties were also present outside the building of the Supreme Court. All those were chanting slogans against the administration of General Pervez Musharraf.

Federal Minister for Information Muhammad Ali Durrani spoke to Geo News and alleged that the government had not parted anywhere. He supposed that the lawyers had reserved an astute decision by distancing themselves from the political parties. It would be more appropriate for the government to dialogue with lawyers to reach their point of view. He also expressed that some lawyers were in connection with the administration. He as well confessed that the lawyers' organizations were well prepared for the Chief Justice matter.²⁰⁸

2.13.1.4 13 April 2007:

On the day fixed for the hearing of the presidential reference against non-functional Chief Justice Iftikhar Muhammad Chaudhary on April 13, 2007, strict security measures have been taken in Islamabad. The government deployed extra contingents of law enforcement forces in Islamabad, although FC was in a stand-by position.

²⁰⁷Siobhan Mullally, "A Long March to Justice: A Report on Judicial Independence and Integrity in Pakistan," *International Bar Association, Human Rights Institute* (2009).127-130.

²⁰⁸Ghias, "Miscarriage Of Chief Justice: Judicial Power And The Legal Complex In Pakistan Under Musharraf."13.

Strict shadowing was also carried out on entry points and exit route points of Islamabad.²⁰⁹

A distinct traffic plan was prepared to maintain traffic flow in the capital, but traffic jams were reported in different areas of Islamabad including Faizabad, a main entry route of the city. Many political workers of the Pakistan People's Party, Muslim League (N), Jamaat-i-Islami, Awami National Party, Pakistan Tahreek Insaaf, and Jamiat-ul-Islam (Sahibzada Fazal Karim Group) assembled outside the building of Supreme Court.²¹⁰

In the meantime, Muttahida Majlis Amal (MMA) leader Qazi Hussain Ahmad and PTI Chairman Imran Khan too reached at Supreme Court to lead the demonstration. Opposition leader, MMA Secretary General Maulana Fazal Rehman, the Chairman of JUI (F) had assured that he would be taking part in the demonstration.²¹¹ The lawyer of Justice Iftikhar Chaudhary Barrister Aitzaz Ahsan argued about the position of three SJC judges Justice Javid Iqbal, Justice Chaudhary Iftikhar, and Justice Abdul Hamid Dogar. In a three-hour session, Aitzaz Ahsan finished his legal arguments on the objections and questions about the position of judges.

2.13.1.5 General address of Opposition on 6 May 2007

In Lahore city, the opposition fueled against the statute of President General Pervez Musharraf. Opposition leaders addressed the mass thousands and claimed that dictatorships would lead the country towards destruction and that the sense of

²⁰⁹Aitzaz Ahsan, "The Preservation of the Rule of Law in Times of Strife," *Int'l Law.* 43(2009).43.

²¹⁰Mohammad Waseem, "Political Parties in an "Establishmentarian Democracy"," *Pakistan's Political Parties: Surviving between Dictatorship and Democracy* (2020).146-148.

²¹¹Zahid Shahab Ahmed And Maria J Stephan, "Fighting For The Rule Of Law: Civil Resistance And The Lawyers' Movement In Pakistan," *Democratization* 17, No. 3 (2010).110-112.

democracy would be destroyed.²¹² He also said states and nations that are created on dictatorship instead of the supremacy of the constitution, the rule of law and protection of basic rights get demolished.

2.13.1.6 Karachi was under the flames

On 12 May 2007, at least 42 people had been killed; 140 were injured in riots that erupted across the city of Karachi. Roads were closed, vehicles burned, and hundreds were wounded and arrested. As soon as the plane of the CJP Iftikhar Muhammad Chaudhary touched down at Karachi airport, the city exploded in violence, especially on the popular Shahray-e-Faisal Karachi road as armed mobs fired indiscriminately at the citizens because they gathered there to receive the CJP. Iftikhar Muhammad Chaudhary had come to address the District Bar Association on the 50th anniversary of the Pakistani Supreme Court's establishment.²¹³

Most of those killed were supported by Chief Justice Chaudhary and the Pakistan People's Party (PPP). More than 800 political workers were arrested; most of them were leaders of labour unions and student organizations, who were busy in preparations to welcome Chaudhary when he arrived.²¹⁴ Human Rights Watch, a U.S.-based human rights organization, said that the violence could be due to the negligence of the government or its abetment.²¹⁵ The sequence of incidents leading up to this violence, including the statements from the provincial authorities and the arrest of hundreds of opposition activists, indicates that the government acted through its coalition partners, had deliberately sought to foment violence in Karachi.²¹⁶

²¹²Wusatullah khan, "کبنا کیا میٹیا پاکستانی کا آج," *BBC Urdu*, 12 march 2007.

²¹³"Lawyers Protest Against Musharraf."

²¹⁴Syed Mohsin Naqvi, "Deadly Violence Erupts In Pakistan," *CNN*, May 12 2007.

²¹⁵Declan Walsh, "Supreme Court Says Musharraf Can Stand," *The Guardian*, 29 September 2007.

²¹⁶Hariz Zamir Khalid Qayum "Pakistan Clashes Kill 30 in Karachi Over Top Judge," *Asia News*, 12 May 2007.

The Chief Justice was located at the Jinnah International Airport and was unable to leave due to violence and roadblocks. CJP Iftikhar Muhammad Chaudhary had been provided with the facility of a helicopter to transport him from the airport to the district bar association building. But he refused to accept the offer of the government and wished to travel along with his companions by road.²¹⁷ Eventually, Iftikhar Chaudhary did not compromise on this problem and returned to Islamabad, without addressing to district bar association and asserting that he was unwilling to leave the airport without sufficient security.

2.13.1.7 Supreme Court Additional Registrar murder issue on 14th May 2007

In Islamabad on 14 May, in the early morning, unidentified armed persons entered the house of the additional registrar of the Supreme Court, Syed Hammad Raza²¹⁸, and shot him at point-blank. The killers did not search for money or other valuables, according to his wife, Shabana Hammad. But instead asked for Hammad's room and, after killing him with a single shot to the head, made their escape perfect.²¹⁹ She said it was a targeted killing and charged the police with treating it as a robbery case to draw the focus away from the real culprits. He was very loyal to the sacked Chief Justice Iftikhar Muhammad, according to Justice Chaudhry's lawyers, and was under immense pressure from government agencies to testify or reveal details that would incriminate the Chief Justice but had declined to bow to those demands. He had been captured and interrogated for several days by an unidentified group after the

²¹⁷"Sweeping curbs on media: Amended ordinance empowers Pemra to seal premises, seize equipment Protests by journalists, rights activists," *Dawn*, 5 June 2007.

²¹⁸Syed Hammad, Raza Shaheed (9 January 1970 – 14 May 2007) born in Sharaqpur district Sheikhupura central Punjab. He did his Masters in International Relations from Quaid-e-Azam University Islamabad with gold medal and later passed competition exam to join government civil service. Additional Registrar, Supreme Court of Pakistan, was a civil servant belonging to the elite District Management Group of Central Superior Services of Pakistan. He was a close confidant of the suspended Chief Justice of Pakistan, Justice Iftikhar Muhammad Chaudhry, and served as his virtual staff officer until his gruesome murder on 14 May 2007

²¹⁹Department of State, "Country Reports on Human Rights Practices for 2007," (USA: State Department, 2008).128-132.

suspension of Justice Chaudhry.²²⁰ Hammad, an esteemed officer of the District Management Association, had impeccable professional qualifications and enjoyed high respect among his peers. He served in the province of Balochistan for several years before being called to the Supreme Court when Chaudhary became the Apex Court's, Chief Justice.

2.13.1.8 Justice Falak Sher decide to refuse to get the case

On 14 May 2007, one of the judges from the bench, Justice Falak Sher refused to hear the case and said that he had an objection to the initial selection of Iftikhar Chaudhary as Chief Justice. The court was reconstituted with the remaining 11 judges of the Supreme Court named, Khalil-ur-Rehman Ramday, Muhammad Nawaz Abbasi, Faqir Muhammad Khokhar, Mian Shakir Ullah Jan, M. Javid Buttar, Tassadduque Hussain Jillani, Sayed Saeed Arshad, Nasir-ul-Mulk, Raja Fayyaz Ahmed, Chaudry Ijaz Ahmed, Syed Jamshed Ali and two ad hoc judge Ghulam Rabbani and Hamid Ali Mirza.²²¹

2.13.1.9 Government officials submitted three affidavits against the Chief Justice of Pakistan

Government officials had filed three affidavits against Pakistan's Chief Justice. Aitzaz Ahsan attributes corruption to officials and he spoke to reporters after the full court hearing of the CJP's case. Aitzaz Ahsan stated that the affidavits of government officials had several factual errors which showed that the affidavits were fictitious and fake. He said former Punjab IG and current Sindh IG had also made errors in their affidavits, indicating that the entire episode was mala fide. It was almost difficult to decode what was real and what is false in these three affidavits which were submitted

²²⁰"Sweeping Curbs On Media: Amended Ordinance Empowers Pemra To Seal Premises, Seize Equipment Protests By Journalists, Rights Activists."

²²¹"ACJ Reconstitutes Larger Bench To Hear Petitions Of Justice Iftikhar," *Associated Press Of Pakistan*, 14 May 2007.

by Lt-Gen (retd) Hamid Javid, COS to President Musharraf, Maj-Gen Nadeem Ijaz Chief of Military Intelligence (MI), and Brig (retd) Ijaz Shah Chief of the Intelligence Bureau (IB), and the one previously filed with the full court by Chief Justice Iftikhar Muhammad Chaudhry.²²²

2.13.1.10 Administration fixes a new locus against the Chief Justice

On 11 June 2007, Law Minister Muhammad Wasi Zafar made a new reference against Chief Justice Iftikhar Muhammad Chaudhary which would be filed at an appropriate time if necessary. The Minister claimed that the new reference was related to the Chief Justice's activities since the first reference was filed on 9 March, and the facts contained in the three affidavits were submitted. He told Pakistani daily Dawn the decision to file a new reference did not in any way indicate that the first one was bad, adding that his ministry had formulated the new paper and legal experts were reviewing it.²²³ All references are true, and the government fulfils its constitutional obligations, said the law minister.

2.13.1.11 The outbreak in the house of Iftikhar's nephew on 17 June 2007

Armed men have targeted the home of Chief Justice Iftikhar Mohammad Chaudhry's nephew, Advocate Amir Rana. It was reportedly done after "someone warned him."²²⁴

2.13.1.12 The F-8 sector Islamabad attack

An explosive device was ignited on 17 July 2007 at a rally which was held to support the efforts of the Chief Justice against the President's unconstitutional moves. Fifteen people were killed, and many were wounded as the attack tore through the reception centre of the Pakistan People's Party. While the government claimed it was a suicide

²²²"Who Is Telling The Truth?," *The News*, 9 June 2007.

²²³Khan, "Judge Row Prompts Pakistan Democracy Questions."99.

²²⁴Amanullah Kasi, "Armed Men Storm Home Of CJ's Relative In Quetta," *Dawn*, 18 June 2007.

bomber, the supporters of sacked CJP Iftikhar Chaudhary accused intelligence agencies of planting the explosive material. Independent forensic experts had expressed doubt about the suicide bombers' involvement.²²⁵

2.14 Chief Justice of Pakistan v. The President of Pakistan, 2007 PLD SC 578 case

On 20 July 2007, the thirteen-member bench headed by Justice Khalil-ur-Rehman proceeded with the petition which was moved by non-functional Chief Justice of Pakistan Iftikhar Muhammad Chaudhary on 8 May 2007. Supreme Court of Pakistan commenced and concluded the case unanimously and reinstated it; the Chief Justice threw out the reference by a 10/13 majority.²²⁶ On 20 July 2007, Supreme Court declared the dismissal of the Chief Justice unconstitutional. Supreme Court of Pakistan abolished the law that could send a judge on forced leave by 10/13. This law is not a part of the Constitution of Pakistan now. Chief Justice Pakistan Iftikhar Muhammad resumed his work at the office on 23 July 2007. On the other hand, General Pervez Musharraf lost this legal battlefield²²⁷ and Supreme Court also annihilated the law that could send the judges on leave forcefully.²²⁸ These landmark verdicts of the Supreme Court prove as imputes for democracy and not only change the course of judicial history as well as restore the confidence of the people in the Judiciary as an organ of the state & custodian of human rights.

2.15 Petition against the re-election of President and dual office

This was not over there, a new magnitude, ahead-offing. General Pervez Musharraf had lost the legal battle and now the biggest challenge for him was to reelect as President, because the General Election and presidential elections were already

²²⁵Phelps, "Pakistan's Lawyers Movement (2007-2009)."109.

²²⁶"Pakistan's Top Judge Reinstated," *BBC News*, 20 July 2007.

²²⁷Somini Sengupta, "Musharraf Loses Fight Over Suspension of Judge," *The New York Times*, July 21 2007.

²²⁸"Pakistan Supreme Court Reinstates Chief Justice," *AFX News*, 20 July 2007.

scheduled for October 2007. A newly emerged independent Judiciary tried to uphold the supremacy of the Judiciary and the constitution. Civil society and media have already questioned the dual office of General Pervez Musharraf and are demanding to Apex Court to intervene in the eligibility of General Pervez Musharraf for the upcoming presidential election while he was still in military service. General Pervez Musharraf was an insignificant threat because he was aware of the potential of the Judiciary, and of what the Supreme Court could do. General Pervez Musharraf had no issue with the vote, but the problem was the Judiciary and the constitution.²²⁹

General Pervez Musharraf was already elected as a President with the uniform by amending the constitution, political engineering, and suppressing the Judiciary through the PCO “Oath of the office of judges”, under this amendment Judiciary not only threw out all petitions against his referendum but also give a legal cover to the military Executive to expand his rule. But after this event, General Pervez Musharraf could not manoeuvre the constitution and legitimize his eligibility to hold another presidential election due to the activist posture of the Supreme Court. General Pervez Musharraf vowed; that he would resign from the military position as he was elected as President before taking an oath.

2.16 Jamaat-e-Islami Vs Federation of Pakistan 2008

The opposition group, civil society, and lawyers filed a petition against the upcoming presidential election under the original jurisdiction of the Apex Court over fundamental rights. A nine-member bench of the court dismissed the petition of opposition on procedural grounds. General Pervez Musharraf's candidacy has not

²²⁹Taiyyaba Ahmed Qureshi, "State of Emergency: General Pervez Musharraf's Executive Assault on Judicial Independence in Pakistan," *NCJ Int'l L. & Com. Reg.* 35(2009).125-127.

violated the fundamental rights (Jamat-e-Islami vs. Federation of Pakistan 2008), and it's not under the original jurisdiction of the Supreme Court.²³⁰

The Court left no choice for General Pervez Musharraf; politically, it was very hard for Musharraf to defy the court if his case was taken into appeal. On the other side, lawyers decide to protest at every hearing because lawyers are infuriated due to the court's decision in the Musharraf case. General Pervez Musharraf filed officially his nomination papers to the Election Commission of Pakistan for the second term of the presidential election on 27 September. The nomination papers of Wajihuddin Ahmed for the candidacy of President against Musharraf were also filed by the lawyers.²³¹

On 6 October 2007, General Pervez Musharraf won the election for another five-year term as President through the Electoral College, which he had already engineered in 2002. As required by the Parliamentary system, Musharraf won a ninety-eight percent majority of votes from the national and provincial assemblies to defeat his only opponent, former Supreme Court Judge Wajihuddin Ahmed. The Electoral College gave Musharraf more than fifty percent of its vote. But the Election Commission did not officially declare the result because Supreme Court had stayed on this matter and the petition was pending in court.²³² The opposition government parties, except the Pakistan People's Party, submitted their resignation from the assemblies before the election. The lawyers' reaction and opposition political parties' resignations have made the political situation deteriorate for Musharraf.

²³⁰Siddique, "The Jurisprudence Of Dissolutions: Presidential Power To Dissolve Assemblies Under The Pakistani Constitution And Its Discontents."74.

²³¹John Esposito Irfan Ahmad, Emal El-Din Shahin, *Islam And Politics In South Asia* (New York: Oxford University Press, 2013).124.

²³²Hasan, "Destroying Legality: Pakistan's Crackdown on Lawyers and Judges."111.

2.17 Proclamation of Emergency 2007

On the evening of 3 November 2007, General Pervez Musharraf, acting as Chief of the Army Staff, declared a state of emergency under Article 232 of the Constitution and issued a Provisional Constitutional Order replacing the constitution of that country.²³³ Pakistan's Constitution, Article 232, allows Pakistan's President to impose a state of emergency when a condition exists that warrants its implementation was satisfied. In the event a Pakistani President declares a state of emergency, it must have to be accepted by the National Assembly within 30 days. The state-run Pakistan Television Corporation released a brief announcement that stated, The Chief of the Army Staff General Musharraf, declared a state of emergency and released a provisional constitutional order, at 6:10 am local time without providing any details. The Constitution was suspended under the order, the federal cabinet ceased to exist, and magistrates were ordered to make an oath to abide by it. Those that had failed to do so would be denied²³⁴ after this Election Commission was in control of General Pervez Musharraf; he also picked the Judiciary. When General Pervez Musharraf imposed a proclamation of emergency, he suspended some articles and put the constitution into abeyance.²³⁵

Chief Justice Iftikhar Chaudhary led seven Supreme Court justices in an emergency meeting on the evening of 3 November²³⁶ and issued an order “barring the government from proclaiming emergency rule and urging government functionaries not to implement emergency orders.²³⁷ When the Justices returned to their homes in

²³³Kalhan, “Constitution and ‘extraconstitution’: Emergency powers in postcolonial Pakistan and India.” 189-190.

²³⁴“Provisional Constitution Order No. 1 of 2007,” http://www.pakistani.org/pakistan/constitution/post_03nov07/pco_1_2007.html.

²³⁵Ibid.

²³⁶“Seven Judges Reject PCO Before Being Sent Home.”

²³⁷David Rohde, “Pakistani Sets Emergency Rule, Defying the U.S.,” *The New York Times*, November 4 2007.

the Judges' Colony, they found their houses surrounded by police, who had blocked journalists from entering and disconnected telephone lines and jammed cell phones in the area.²³⁸

Hours later, Pakistan's state television announced that three loyalist judges had taken a new oath of office, sworn to uphold Musharraf's emergency measure and that pro-government judge Abdul Hameed Doger had replaced Chaudhry as Chief Justice. This proclamation was made by him in the capacity of Chief of the Army instead of President, which was illegal and unconstitutional. There was no constitution and legal cover for his attempt at PCO in the incapacity of the Army Chief, under the PCO 2007 judges required to a fresh oath, before this in 1999, that time many judges were agreed to take the oath, but this time situation was different because due to continues attacks on judicial independence, 90% judges to refused to take an oath and they were committed. General Pervez Musharraf removed them from their respective positions. This time not only lost their positions but also their protection and security.²³⁹

General Pervez Musharraf quoted the reasons for the proclamation of emergency as first Pakistan had the worst law and order situation; terrorist attacks on state infrastructure were at their peak. Second, the activities of the Judiciary are against the Executive, challenge government policies, and demoralized state institutions. The emergency and imposition of martial law were engineered to crack down on the Judiciary. General Pervez Musharraf had introduced the PCO1 2007 and had declared that the judges of the High Court and the Supreme Court had to acquire a fresh oath under the PCO/2/2007 and that they would not have jurisdiction to go against the President, the Prime Minister or any other person who exercises power under his authority. When General Pervez Musharraf imposed this order, sixty-four

²³⁸Ibid.47.

²³⁹Kalhan, "Constitution And 'Extraconstitution': Emergency Powers In Postcolonial Pakistan And India."127.

judges refused to take the oath, under the PCO 2007, and they were put under house arrest.²⁴⁰

2.18 Wajihuddin Ahmed v. Chief Election Commissioner, 2008 PLD SC 13

The election commissioner approved General Pervez Musharraf as a reelected candidate before the presidential elections of 2007. One of its critics, Supreme Court Justice retired Wajihuddin Ahmed, challenged the Supreme Court decision. The conflict was largely over whether a military leader was legally allowed to run for the President's Office, as General Musharraf kept both the positions of President and Army Chief of Staff. In response to the request, Pakistan's Supreme Court on 28 September 2007 opened the way for President General Pervez Musharraf to try another five-year term when he challenged his reelection plans with a major legal challenge.²⁴¹

The Supreme Court heard the case of Musharraf's eligibility as a nominee and declared that the trial would possibly have to be postponed until 12 November due to a personal engagement by one of the honourable bench members.²⁴² The court reversed its decision to split on 2 November, saying that it would now reconvene on 5 November, to rapidly address the political situation. This reversal was partly due to criticism that continued delay by the Court contributed to general turmoil in Pakistan.²⁴³ Summoning on 12 November would have left a tight timetable of only three days before Musharraf's former presidential term ended on 15 November. Parliamentary elections were set to be held in February 2008, no less than one month after the initial election target date.

²⁴⁰"Pakistan Defies US With New Crackdown," *Daily Times*, 9 November 2007.

²⁴¹Walsh, "Supreme Court Says Musharraf Can Stand."

²⁴²"Musharraf Court Ruling 'Delayed,'" *BBC News*, 1 November 2007.

²⁴³Kamran Haider, "Musharraf Invokes Emergency Rule," *Reuters*, 3 November 2007

Until the court could make a decision, on the evening of 3 November 2007, General Pervez Musharraf, serving as Chief of Staff of the Army, declared a state of emergency according to Article 232 of the Constitution and released a Provisional Constitutional Order to replace the constitution of the country.²⁴⁴ On 24 November 2007, a seven-member larger bench of the Supreme Court, headed by Chief Justice Abdul Hameed Dogar, the other members were Justice Ejaz-ul-Hassan, Justice Muhammad Qaim Jan Khan, Justice Muhammad Moosa K Laghari, Justice Chaudhry Ejaz Yousaf, Justice Muhammad Akhtar Shabbir, and Justice Zia Pervez directed the Chief Election Commissioner and the government to declare Pervez Musharraf President for a second term by 1 December and said that President Musharraf should be relinquished the office of the chief of army staff (COAS) before took oath as civilian President.²⁴⁵

The court also vacated the provisional stay of the 6 October Presidential Election results that had kept the Election Commission from announcing them.²⁴⁶ General Pervez Musharraf sent the whole Judiciary home and dealt with lawyers with an iron hand; he cracked down on the lawyer's movement by sending 5000 lawyers and other activities to jail.

2.19 Electronic Media Regulatory Authority ordinance 2007

A media blackout followed, with the declaration of an emergency. Local networks such as ARY One World, GEO TV, Aaj TV, and other channels had been blocked. The media was also the party against Musharraf, so General Musharraf issued a Presidential Order to curb or curtail the power of print media and electronic media by amendment. General Musharraf contended that these networks generated confusion,

²⁴⁴Kalhan, "Constitution And 'Extraconstitution': Emergency Powers In Postcolonial Pakistan And India."17.

²⁴⁵"Supreme Court Validates Musharraf's Re-Election," *Daily Times*, November 24 2007.
329 Ibid.

misrepresented reality, were not responsible, and led to the nation's instability.²⁴⁷ The government had also been cracking down on foreign outlets such as the BBC and CNN. ARY had announced that Dubai authorities had asked the administration of the network to close its operations. No reason was given for the switch.²⁴⁸

General Pervez Musharraf issued Electronic Media Regulatory Authority Ordinance 2007. According to the details issued by the Secretary Ministry of Law and Justice Mansoor Ahmed, the ordinance would be called PEMRA Ordinance 2007. Amendments were made in several sections of the Ordinance, but an important amendment was made in Section 29. According to that amendment, the Chairman PEMRA or the Authority may seize broadcast or distribution service equipment or seal the premises which were operating illegally or in contravention of orders passed under section 30.²⁴⁹

In Sub-Section (6), the word 'one word 'ten' should be substituted, which is punishable. According to clause 4 inserted in Section 30, the license of a broadcast media might be suspended on any of the grounds specified in sub-section (1), by a duly constituted committee comprising members of the Authority.²⁵⁰ By this Presidential Ordinance several television stations, newspapers and agencies were closed and restricted. The Chairman Watan Party Zafarullah Khan had filed a petition against the move of Musharraf Superior Court Judges and media restrictions & limitations, under clause No.3 of article 184 of the Constitution and the Supreme Court has ousted the petition.²⁵¹

²⁴⁷General (R) Pervez Musharraf, interview by author, Dubai, March 5, 2018.

²⁴⁸"Gunmen Open Fire At Pak TV Channel," CNN, 12 May 2007.

²⁴⁹"Sweeping Curbs On Media: Amended Ordinance Empowers Pemra To Seal Premises, Seize Equipment Protests By Journalists, Rights Activists."

²⁵⁰"President Promulgates PEMRA (Amendment) Ordinance 2007," PakTribune, 04 June 2007.

²⁵¹Nasir Iqbal, "SC Hands Out Clean Chit To Musharraf : Emergency, PCO Validated Deposed Judges Criticised," Dawn, November 24 2007.

2.20 The Chairman of Watan Party Zafarullah Khan PLD 2008 SC615

The Supreme Court released a detailed judgment on 15 February 2008 that validated the Declaration of Emergency on 3 November 2007, the Provisional Constitutional Order No 1 of 2007, and the Office Judges Order's Oath of 2007. Chief Justice Abdul Hameed Dogar and other members of the full court bench were the judges Ijaz-ul-Hassan, Muhammad Qaim Jan Khan, Muhammad Moosa K. Leghari, Chaudhry Ejaz Yousaf, Muhammad Akhtar Shabbir, and Zia Pervez.

The Supreme Court said, In the past, Pakistan as a whole had suffered from extremism, terrorism and suicide attacks using explosives, hand grenades, rockets, and mines, including the repeated attacks on the armed forces and law enforcement agencies, which culminated on 18 October 2007 when at least 150 people were murdered and more than 500 were extremely injured in a similar attack on a public rally.

The condition leading to the issuance of the 3 November 2007 Emergency Proclamation and the other two orders referred to above was close to the situation existing in the country on 5 July 1977 and 12 October 1999 warranted the extra-constitutional measures upheld by the Pakistan Apex Court in Begum Nusrat Bhutto V. Chief of the Army Staff PLD 1977 SC 657, Sayed Zafar Ali Shah V. Pervez Musharraf the Chief Executive of Pakistan PLD 2000 SC 869 for the interest of the state and welfare of the people. This was also the fact that the Constitution was not abrogated, but merely held in abeyance.²⁵² Deposed or non-functional Judges and lawyers were not surprised by this decision of the Apex Court (The Chairman of Watan Party Zafarullah khan PLD 2008 SC615) because they know when these

²⁵²Barbara Plett, "Musharraf Imposes Emergency Rule," *BBC News*, 3 November 2007.

judges had taken a new oath under the PCO 2007 they accepted all Musharraf's actions.

2.21 Supreme Court dislodge two important petitions

The Apex Court also dislodge two important, identical petitions which were filed by Tikka Iqbal Khan PLD 2008 SC 178, he challenged the proclamation of emergency, Provisional Constitutional Order 2007, and second disposed-off of Superior Court Judges and media restrictions & limitations, filed by the chairman of Watan Party Zafarullah khan under the article of 184(3) of the constitution.²⁵³

2.22 Chief Justice Order for free and fair General Elections

Abdul Hameed Dogar Chief Justice of Pakistan issued an order to the Federal Government and Election Commission of Pakistan to conduct free and fair elections and demanded the revocation of the emergency as soon as possible. On 28 November, General Musharraf yielded to international and domestic pressure, resigned from his position as Chief of Army Staff, and lifted emergency rule on 15 December 2007.²⁵⁴ The General Elections were held in February 2008 after the assassination of PPP chairperson Benazir Bhutto. The assassination made the election result in favour of the PPP. The PPP won the 125 seats in National Assembly and the 91 seats won by the PMLN. The PPP and PMLN formed a coalition government on national consensus.²⁵⁵ As settled in PPP and PMLN accord Charter of Democracy.²⁵⁶ They have to restore the Judiciary and reinstate the deposed Judges.

²⁵³Iqbal, "SC Hands Out Clean Chit To Musharraf : Emergency, PCO Validated Deposed Judges Criticised."11.

²⁵⁴Larry P Goodson, "Pakistan after Musharraf: The 2008 Elections," *Journal of Democracy* 19, no. 4 (2008).29.

²⁵⁵Iffat Humayun Khan, *Electoral Malpractices During The 2008 Elections In Pakistan* (Islamabad: Oxford University Press, 2011).137-140.

²⁵⁶Sheila Fruman, *Will the Long March to Democracy in Pakistan Finally Succeed?* (Washington, D.C: US Institute of Peace, 2011).107-110.

In the aftermath of 2008, the PPP-led coalition Executive refused to restore the Judges due to their fear of cases of mishandling, corruption against the PPP senior members, and Asif Ali Zardari under the unconstitutional immunity National Reconciliation Ordinance (NRO).²⁵⁷ Because the PPP government knew if they restored the non-functional Chief Justice Iftikhar Muhammad Chaudhary and other Judges, he would be declared the NRO unconstitutional and would challenge the eligibility of Asif Ali Zardari.²⁵⁸ The political situation turns dramatically when the PMLN withdraws from ministers for the restoration of the Chief Justice and other Judges. Judges, civil society, lawyers, and opposition parties were set aside with PLMN until the government restored the Iftikhar Muhammad Chaudhary along with other deposed Judges on 21 March 2009.²⁵⁹

Iftikhar Muhammad Chaudhary reinstated the office of Chief Justice of Pakistan on 23 March 2009 following the retirement of Abdul Hameed Dogar as Chief Justice and the establishment of the Judiciary over years of conflict with the military and civil governments.

2.23 Judiciary after the National Election 2008

The battle for an independent Judiciary, however, did not end with the February 2008 elections. When Chief Justice Chaudhry was finally reinstated, he was met with exuberant praise and extraordinary expectations. Crowds chanted '*Chief teray Jaannisar, beshumar beshumar*' ('countless people are willing to sacrifice their life for you. Chief Justice') and expectations were high that the Supreme Court Chief Justice Chaudhary would resolve the many crises faced by Pakistan.²⁶⁰ The Supreme

²⁵⁷"Contempt & the NRO case," *Dawn*, January 25 2012.

²⁵⁸Justice Waheed Kazi, interview by author, Islamabad, February 28, 2018.

²⁵⁹Aqil Shah, *The Army And Democracy* (Massachusetts: Harvard University Press, 2014).201.

²⁶⁰Chief Justice (R) Iftikhar Muhammad Chaudhary, interview by author, Islamabad, March 27, 2018.

Court's popular appeal was largely a public rebuke to a government that was viewed as corrupt, ineffectual, and unresponsive to the basic needs of the people of Pakistan.

In the absence of an effective operational government, the people saw the Supreme Court and particularly the Chief Justice as their beacon of hope. The Supreme Court has embraced this new role. Shortly after his reinstatement, in May 2009, the Chief Justice remarked. The 170 million people of this country have pinned hopes on judges and lawyers, and they have to prove their mettle, in all fairness and with faithfulness, so that people get rights guaranteed to them under conventions and statutes.²⁶¹

Supreme Court pioneered a new era of independence of the Judiciary in Pakistan. Led by Chief Justice Chaudhary, the Supreme Court took steps to use its independence to promote the rule of law, address corruption, and restore respect for the Constitution.²⁶² Before, turning to the Supreme Court's efforts to address human rights, the primary subject matter of this was helpful to consider the Court's efforts to improve accountability and rule of law in other areas of administration and governance in Pakistan.²⁶³

2.24 Dr Mubashir Hassan v. Federation of Pakistan PLD 2010 SC 265

On December 16, the seventeen-judge bench, led by Chief Justice Iftikhar Chaudhary, had revived and overturned acquittals of people who gained from the NRO, placing PPP parliamentarians, members of the cabinet, and President Asif Ali Zardari in a dilemma. The court ordered the Federal Government to take immediate action to seek the re-establishment of original demands or claims for mutual legal assistance to prosecute cases of money laundering pending abroad. The State had lodged a petition

²⁶¹Mohammad Hussain Khan, "Chief Justice warns against corruption," *Dawn News*, 9 May 2009.

²⁶²Chief Justice (R) Iftikhar Muhammad Chaudhary, interview by author, Islamabad, March 27, 2018.

²⁶³Omer, "Authority Without Accountability: *The Search For Justice In Pakistan*."63.

for clarification against the ruling of the Supreme Court, finding the NRO unconstitutional²⁶⁴.

This questioned the court's directive to take steps to reopen money laundering cases and said that the authority to issue such directives or demands on the status of cases outside Pakistan falls strictly within the Executive's jurisdiction. The thorough judgment had been circulated by all bench judges. Three judges, Justice Sardar Muhammad Raza Khan, Justice Chaudhary Ijaz Ahmed, and Justice Jawwad S. Khawaja added supporting notes as they had all signed the verdict. Justice Khalil-ur-Rehman Ramday, on the day of his retirement, signed the judgment on 12 January. The detailed verdict said a thorough perusal of the federal and the concurrent lists persuaded us to hold that the President was not empowered to issue NRO 2007.²⁶⁵

The Supreme Court had initially directed the government to submit the NRO to Parliament for approval and make it law. Due to prevarication by MQM, the government was unable to take the mandatory majority. In the instant event, the parliamentarians had already illustrated their strong moral behaviour, by not authorizing the NRO, 2007, to become the Parliament Act. As a result, the court ruled the National Reconciliation Ordinance "null and void" on 16 December 2009. The court found that the NRO seems to be against national interests and thus contradicts constitutional provisions.²⁶⁶

Supreme Court declared the NRO unconstitutional and a violation of the equality of guarantee in Article 25 of the Constitution. General Pervez Musharraf granted preferential space to certain groups of bureaucrats and politicians.²⁶⁷ NRO was also nullified by Court on the grounds of separation of power and judicial

²⁶⁴Yasmin Roofi Ghulam Zikria, "Evaluation of Judicial Independence In Pakistan (2008-13)," *Pakistan-Bi-annual Research Journal* 56(January- June 2020).70-73.

²⁶⁵Dr Mubashir Hassan v Federation of Pakistan,(2010).

²⁶⁶"Supreme Court Declares NRO Null And Void," *Dawn*, December 17 2009.

²⁶⁷Jane Perlez, "Pakistan Strikes Down Amnesty for Politicians," *New York Times* 16 December 2009.

independence, principles of the constitution. The decision of the Supreme Court to annul the NRO was throwing the nation into political turmoil and crisis. Citing a book entitled Muhammad (PBUH) Encyclopedia of the Seerah envisages that the concept of equality in Islam is an important necessity of justice since there was no justice when there was discrimination and prejudice between the citizens.²⁶⁸ Even the NRO was not in line with Islam's injunctions.

Section 33F of the NAB Ordinance 1999, under Section 7 of the NRO, not only categorized the general public and the 'holders of public office' but also categorized the 'holders of public office' based on time limits, based on which privileges were applied to a particular class, i.e., individuals against whom the proceedings were started before 12 October 1999.²⁶⁹

Instead of removing or stopping corruption cases pending before accountability courts, frameworks for the disposal of cases would have been pursued by rising investigation agency personnel and the numeral of courts.²⁷⁰ Article 37 of the Constitution imposes upon the state a duty to ensure cheap and expeditious justice. Therefore, by invoking this clause, the government may increase the number of courts and para-legal personnel to ensure that the cases of persons convicted of different offences are disposed of promptly.

When reading various provisions of the Constitution, the Supreme Court had the authority to see with an eye that the state must perform its obligation. The court was empowered to pass relevant orders, as it considered necessary according to

²⁶⁸Mukhammadolim, "The Evolution of Islamic Politicization Process," *Int. J. of Multidisciplinary and Current research* 4(2016).52-55.

²⁶⁹*National Accountability Bureau Ordinance 1999.*

²⁷⁰Lt. General (R) Salah Uddin Tirmizi, interview by author, Rawalpindi, March 1, 2018.

Article 187 of the Constitution, and to take into account the earlier precedents for monitoring the cases pending before the courts and the number of courts.²⁷¹

In his supplementary note, Justice Jawad Khawaja noted that the idea of tuba and sincere repentance, combined with the restoration of any negative benefits and the expression of genuine regret for past excesses, offered an age-old framework for reconciliation. Supreme Court also requested the NAB (National Accountability Bureau) to reopen corruption and money laundering proceedings against President Asif Ali Zardari in Switzerland as part of the judgment. The contention between the Executive and Supreme Court became a major issue, which ultimately led to contempt of court against Prime Minister Yousaf Raza Gillani for refusing to follow the court's order. Respondent Prime Minister Yousaf Raza Gillani has been excluded from Parliament.²⁷²

2.25 Supreme Court's *suo Moto* and Liquefied National Gas

In 2010, the Chief Justice of Pakistan took a *suo Moto* notice on the matter of a contract to import Liquefied National Gas between the Government of Pakistan and a French company. Supreme Court declared it annulled after several hearings.²⁷³ The bidding process for awarding the Liquefied Natural Gas import contract was not transparent. Special Secretary Petroleum G.A Sabri informed the Court that the government-held direct talks with the supplier were in the larger interest of the country. In response, Chief Justice said the Government could not hold direct negotiations with the supplier directly. The Chief Justice also asked Sabri if he was

²⁷¹"Detailed Judgment Written By CJ Released: NRO Discriminatory, Un-Islamic: SC," *Dawn*, January 20 2010.

²⁷²"Contempt & The NRO Case."

²⁷³*Suo Motu Case No.5* (2010).

hiding the relevant facts of the case. He directed the relevant authorities to cooperate with the Court in providing sufficient facts of the case.²⁷⁴

2.26 Rental Power Project and Supreme Court

The Supreme Court has announced the verdict of the case of corruption in Rental Power Projects (RPPs) which had already been held in reserve on December 14, 2011. A two-member bench comprising Chief Justice Iftikhar Muhammad Chaudhary and Justice Khilji Arif Hussain heard the *suo motu* case.²⁷⁵ The Apex Court said that the rules and regulations were violated in these projects due to which the national exchequer witnessed losses of billions. The electricity generation system had sufficient potential, but instead of taking curative steps for its improvement, billions of rupees were spent on BHIKKI and SHARAQPUR RPPs, which proved complete failures.²⁷⁶

In March 2012, Iftikhar Muhammad Chaudhary struck down the 'Rental Power Plant' agreement by issuing an order due to a lack of transparency. Supreme Court also issued a notice of corruption charges in the Rental Power Project deal against the Minister for Water and Power Development Authority Raja Pervaiz Ashraf.

2.27 Supreme Court and National Insurance Company Limited

Transparency International wrote a letter to Supreme Court on 6 May 2011. Court took this notice and directed the Executive to investigate the allegations against the key politicians including the PPP Makhdoom Amin Fahim and PMLQ Moonis Elahi. For selling lands at a highly inflated price to National Insurance Corporation Limited and causing the loss of millions of rupees from the National Exchequer.²⁷⁷

²⁷⁴"LNG Bidding Was Not Transparent: CJ," *The Express Tribune* April 22 2010.

²⁷⁵Iram Khalid Kishwar Munir, "Judicial Activism in Pakistan: A Case Study of Supreme Court Judgments 2008-13," *South Asian Studies* 33, no. 2 (2020).87.

²⁷⁶*Ibid.*101.

²⁷⁷"Banking Court Judge Refuses To Hear NICL Scam Case," *Dawn*, July 05 2011.

On 27 December 2010, the Federal Investigation Agency registered two cases against Moonis Elahi and alleged to him that his manager had opened accounts in the Allied Bank and Dubai Islamic Bank and accused Mohsin Warraich of depositing Rs.320 million into them. It alleged Muhammad Malik had admitted to opening the accounts on Moonis Elahi's instruction. Moonis Elahi went abroad after the case was reported but returned after some time and obtained interim bail from the High Court in Lahore. On 17 March, the Court annulled the bail, and he gave up on the FIA. The trial was originally held by a special Judge for banking offences, Malik Abdul Rasheed. But he declined to proceed with the case and referred it to the LHC, who said that Moonis Elahi's counsel had attempted to manipulate the Court of Law.²⁷⁸

Later the Chief Justice of the LHC referred the case to the judge of the Session Court. Accepting Elahi's plea for acquittal, Judge Mujahid Mustaqeem said that the prosecution had failed to prove money-laundering charges against him. The verdict said the petitioner had not been named in the FIR, and his manager Muhammad Malik and other co-accused statements did not set out his role in the scam. It said bank officials concerned had also refused to make claims against the petitioner. The judgment said, the petitioner could not be kept behind bars and was entitled to acquittal in the National Insurance Company (NICL) scam.²⁷⁹

In front of the bench comprising Chief Justice Iftikhar Muhammad Chaudhary, Justice Khilji Arif Hussain, and Justice Tariq Pervez, FIA Director Legal Azam Khan admitted that their facsimile was in the FIA record even though the documents had gone missing. According to the SOCA investigation, Moonis Elahi kept foreign currency accounts at the EFG Private Bank, UK, with a balance of 1.2 million pounds Sterling, and an account at Barclays Bank on behalf of Beenish Khan

²⁷⁸Ibid.125.

²⁷⁹Nasir Iqbal, "Report On Accounts Of NICL Scam Accused Missing, SC Told " *Dawn*, October 25 2011.

the wife of Mohsin Habib Warraich had 102.307 pounds Sterling which was shifted from the EFG Bank account.²⁸⁰

Zafar Ahmed Qureshi was retired, and he could not complete the investigation because Interior Secretary Khawaja Siddiq Akbar, FIA Director General Tahseen Anwar Shah, Director FIA Lahore Waqar Haider, Regional Director Legal Zulfikar Ali had not cooperated with him despite repeated requests. The Chief Justice correspondingly wanted to know why the trial of those in detention had not yet commenced. He was informed that Habib-ullah Warraich, one of the accused in the NICL scandal, was on bail. Even though the Lahore High Court was seized with a request to put Warraich on a watch list, he and his family were quietly allowed to flee to the UK from Karachi on 6 September. "Is it not shocking?" Justice Khilji Arif remarked²⁸¹.

Zafar Ahmed Qureshi said the accused had recovered Rs. 630 million, while Rs. 420 million had yet to be recovered. The Chief Justice said he was curious why they would not refer the matter to the FIA's National Accountability Bureau. The wife and two daughters of Habib-Ullah were also beneficiaries in the land-purchased scam in which Mohsin and Privilege Farms Pvt. Ltd Company received Rs2.75 billion from the National Insurance Company Limited in the account of two land sale agreements. According to investigations, about a million rupees from the Rs. 2.75 billion had been transferred into the accounts of the three women of the Warraich family and they agreed to return Rs. 100 million to Federal Investigation Agency (FIA) authorities.²⁸² The report had been submitted to the Court in March 2013 and stated 84 million rupees had been recovered out of 500 million from the accused.

²⁸⁰Qaiser Zulfiqar, "SC To Announce NICL Verdict On Monday," *The Express Tribune* August 07 2011.

²⁸¹Iqbal, "Report On Accounts Of NICL Scam Accused Missing, SC Told".

²⁸²"NICL Scam: Wife, Daughters Of Warraich Agree To Return Rs100m," *The Express Tribune*, December 21 2010.

2.28 The Hajj corruption case and Supreme Court judgment in *Suo Motu* Case No. 24 of 2010

The Chief Justice of Pakistan, accusations by some Federal Ministers and members of the National Assembly including media reports forced the Chief Justice to take a *suo Moto* notice of irregularities and massive corruption in the Hajj arrangements. Three members of the National Assembly including two senators had requested the Chief Justice to take *suo motu* notice of rampant corruption in Hajj arrangements, including the letter of Saudi Prince Bandar Bin Khalid Bin Abdul Aziz Al-Saud and a large number of applications sent by the aggrieved Hajjis were made the basis for *suo motu* notice. Chief Justice Iftikhar Muhammad Chaudhry took *suo motu* notice of the alleged corruption in Hajj arrangements and summoned Religious Affairs Minister to appear in person before a five-member bench of the Supreme Court on December 6.²⁸³

Supreme Court issued notices to Federal Minister for Science and Technology Azam Khan Swati, who already accused the Religious Affairs Minister of involvement in the scam, secretaries of the concerned ministries (science and technology and religious affairs) chairman NAB, former DG Hajj Rao Shakeel, secretary establishment and secretary interior to appear before the bench.²⁸⁴

A five-member bench of the Supreme Court led by Chief Justice Iftikhar comprised Justice Javed Iqbal, Justice Raja Fayaz, Justice Ghulam Rabbani, and Justice Khalil-ur-Rahman Ramday had been heard in the case. In an order issued by Supreme Court Chief Justice Chaudhry, pilgrims had been deprived of their fundamental rights enshrined under Articles 9, 14, and 25 of the Constitution of the

²⁸³Qaiser Butt, "Hajj Scam: Saudi Prince Withdraws Complaint," *The Express Tribune*, December 25 2010.

²⁸⁴"Hajj Corruption Scam: Chief Justice Takes *Suo Motu* Notice," *Business Recorder* December 4 2010.

Islamic Republic of Pakistan. The Court had clubbed all the applications and complaints and turned these into a petition under its *suo motu* jurisdiction under Article 184 (3) of the Constitution 1973.

The Apex Court had directed Religious Affairs Minister Hamid Saeed Kazmi to submit his reply over the charges of corruption levelled against him, while Azam Swati was asked to furnish evidence to prove allegations, levelled against his fellow minister. After a senior Saudi official wrote to Pakistani authorities citing mismanagement and then President Asif Ali Zardari ordered an inquiry. Meanwhile, Prime Minister Yousuf Raza Gilani barred the Minister of Religious Affairs from speaking to the media, and Civil Affairs Minister Hamid Saeed Kazmi strongly refuted the allegations of the direct involvement of one minister in the alleged scam.²⁸⁵

The Supreme Court gave its verdict on the Hajj corruption scam of 2010 on 6 December 2013 and asked the Federal Investigation Agency (FIA) to take action against politicians and government officials who tried to manipulate the investigation process.²⁸⁶ A three-member bench stated that extra money was charged from the pilgrims in 2010 and asked the FIA to review the costing surplus and find out whether the pilgrims were reimbursed. The pilgrims should be paid Rs. 50,000 each if they had not already been paid. While reading out the order, the bench remarked that the scam had become a national disgrace and asked the authorities to make better arrangements with the pilgrims.

The former Federal Minister of Religious Affairs Sayed Hamid Saeed Kazmi, former Director-General Hajj affairs Rao Shakeel, and former additional secretary to

²⁸⁵Syed Shoaib Hasan, "Pakistan Hajj Scam Inquiry: Top Official Kept On Remand," *BBC News*, November 22 2010.

²⁸⁶"SC Issues Verdict In Hajj Corruption Case," *Dawn*, December 06 2013.

the ministry of religious affairs Raja Aftab-ul-Islam were accused of being involved in widespread corruption.²⁸⁷

2.29 Asghar Khan Case and Supreme Court Judgment

In the brief order released on 19 October 2012, Supreme Court stated that military intelligence created an 'Election Cell' that secretly allocated funds to supported politicians, manipulating the 1990 election outcome. Asghar Khan Case had been presented as a vindication of the PPP's charges that the 1990 vote was rigged and ordered the Federal Government to take appropriate action under the Constitution and the law against Gen (retd) Aslam Beg and Lt-Gen (retd) Assad Durrani for their means of facilitating a group of parties and candidates to ensure their success and manipulated 1990 elections.²⁸⁸

The Court ordered the FIA to investigate and prosecute those who were involved in receiving information from the ISI or the army chief.²⁸⁹ The Court also declared illegal that the notification which was issued by Zulfikar Ali Bhutto to create the Political Wing in ISI. The other important reason to reopen these applications is to show the Judiciary's raw power and moral authority to check and confront the military if the Judiciary wants to do so.²⁹⁰

2.30 Government of Balochistan and Supreme Court

Inquiring into political 'disappearances' in which suspected activists or insurgents had been detained secretly, without any public trial, was seen as risky given the power to the responsible authorities. In February, the Supreme Court ordered the ISI to produce

²⁸⁷"Corruption Scandal: Supreme Court Orders Action In Hajj Scam Case," *The Express Tribune*, December 7 2013.

²⁸⁸"Detailed Judgment In Asghar Khan Case Issued," *Dawn*, November 09 2012.

²⁸⁹Ahmad Noorani, "Asghar Khan Case: SC Passed Conclusive Judgment In October 2012," *The News*, January 2 2019.

²⁹⁰Declan Walsh, "Court Challenges Put Unusual Spotlight On Pakistani Spy Agency," *The New York Times*, February 6 2012.

seven arrested insurgents, indicating a new willingness on the part of the Judiciary to keep the influential agency accountable.²⁹¹

Further pressure occurred in September when a two-person UN delegation headed by French Law Professor Olivier de Frouville visited Pakistan. After discussion with about 100 people who had claimed that their relatives, especially from Balochistan, had been abducted but often tortured or killed, the delegation called for transparency. Some lawmakers and press editorials had condemned the visit as a threat to national sovereignty. The Chief of the ISI and the Frontier Corps Reserve Force did not consult with the delegation.²⁹²

The Judiciary was in a confrontation with the army on the issue of missing persons. Supreme Court has taken up cases of missing persons since 2006. During 2010-2011, several hearings were filed by the HRC (Human Rights Commission) of Pakistan and families of missing persons. Supreme Court established two commissions to report on missing persons from Balochistan. On the order of the Supreme Court, a few missing persons were recovered. The Supreme Court summoned and probed the Balochistan Government and security officials in these cases.

The Baloch Nationalist Leader Sardar Akhtar Khan Mengal came back to Pakistan for the recording his statement to the Supreme Court about the law-and-order condition of Balochistan.²⁹³ The Supreme Court issued interim orders to the Government of Balochistan, the Balochistan Assembly lost its constitutional power to rule because the province violated the fundamental rights of the people of Pakistan. The Supreme Court's decision placed Balochistan in a major crisis, and Nawab Aslam

²⁹¹Ibid.103.

²⁹²"U.N. Presses Pakistan Over the Fate of Hundreds of Missing People," *The New York Times*, September 20 2012.

²⁹³Sardar Akhtar Khan Mengal, interview by author, Quetta, March 13, 2018.

Raisani, the Chief Minister of Balochistan, had to seek a vote of confidence from the Balochistan Assembly to protect his government.²⁹⁴ In reaction to Court orders, the Executive alleged a Court, trying to acquire the power 58(2) (b).²⁹⁵

2.31 Audit case of Intelligence Agencies

The Supreme Court questioned whether the funds being spent by the Intelligence Bureau (IB) were subject to audit under Article 169 of the Constitution. On 16 July 2013, Supreme Court issued an order in the case of Hamid Mir and Others vs. Federation of Pakistan, to ensure the audit of each rupee spent by the Public Exchequer without exception. Attorney General (AG) Munir A Malik told the Supreme Court (SC) that the Auditor General of Pakistan (AGP) had no authority to audit amounts spent on national security matters.²⁹⁶

Pakistan Intelligence Agencies, especially the “the state within the state” Inter-Services Intelligence, were immune from any external check including the audit by the Auditor General of Pakistan. A three-member bench has heard a *suo moto* case about the alleged misuse of Rs400 million which was used by the Pakistan People's Party Government to temporarily dislodge the PMLN government in Punjab in March 2009. Chief Justice Iftikhar Muhammad Chaudhary said that we only want to channel and want to make them answerable as it would enhance our security.²⁹⁷

The Chief Justice also asked Attorney General (AG) Munir A Malik if the IB was regulated by any law such as Frontier Constabulary, Police and Rangers, etc. He said the Court had been told in the Asghar Khan case that Inter-Services Intelligence (ISI) operated under the army. The Attorney General asked the Court to allow him

²⁹⁴Mohammad Zafar, "Balochistan Assembly Session: Crisis Overcome As Raisani Wins Trust Vote," *The Express Tribune* November 14 2012.

²⁹⁵Nasir Iqbal, "Court Trying To Assume Powers Of 58(2b): Govt," *Dawn*, November 09 2012.

²⁹⁶NNI, "SC Orders ECP For Action Against Fake Degree Holders Within Two Days," *The Nation*, March 26 2013.

²⁹⁷Chief Justice (R) Iftikhar Muhammad Chaudhary, interview by author, Islamabad, March 27, 2018.

time so he could get feedback from the federation to refine his report on the topic of audits and laws regulating IB.

The Court did not want the organizations to reveal their accounts, but it wanted them to retain the ledgers at least, said the Chief Justice. He said the Constitution's order must be met and no one should have trouble implementing it. Justice Jawwad S Khawaja said: If we deviate from the Constitution, then problems will begin. Justice Azmat Saeed Sheikh remarked: There should be no compromise on the country's security. The Attorney General, in a sealed envelope, furnished with the financial adviser's reply, told the Court that Rs.400 million had been withdrawn in June 2008. Yet he said the funds were used for four of the agency's activities, contrary to Assad Kharral's claim in his news article about using the money to overthrow the Punjab Government.²⁹⁸ The AG said the sum was used to gather intelligence in FATA, to monitor anti-terrorism activities in Karachi, and the Balochistan law and order.

The Chief Justice asked. Are there no accounts for those funds? Justice Jawwad said the confidentiality and the audit varied. Confidentiality is unique at any metaphysical point, and the audit doesn't compromise confidentiality. He said several countries had properly tackled this problem. He said clarification was required regarding the authority of Pakistan's Auditor General. He further said if the government claimed confidentiality on the funds of the intelligence agencies, then the Legislature would get a law passed for it. Justice Munir contended that Article 169 of the Constitution would be read in line with Article 170. He also said: If Article 169 is

²⁹⁸Assad Kharral, a journalist of English daily, last year had published a story in which he claimed that Rs400 million IB funds were used during the tenure of Pakistan People's Party government to topple the Punjab provincial government in 2008-09.

divorced or read separately, then the AGP audits it all.”²⁹⁹ The Order of the Supreme Court pushed the Intelligence Agencies towards Accountability.

2.32 Sindh High Court Bar Association case (PCO Judges Case)

On 31 July 2009, the Supreme Court passed a judgment in the Sindh High Court Bar Association case. In that judgment, the Supreme Court declared General Musharraf’s proclamation of emergency and Provisional Constitutional Order (PCO) 2007 unconstitutional. The Court ruled that all judicial appointments made by the ‘*de facto*’ Chief Justice Doger, without the consensus of the *de jure* Chief Justice Chaudhary, were unlawful and void. After the Supreme Court’s ruling, Justice Bhinder and 100 other judges appointed by *de facto* Chief Justice Doger stood subsequently dismissed from their positions as judges of the High Courts and Supreme Court.³⁰⁰

The ousted judges filed a review appeal against the ruling in the Sindh High Court Bar Association case in the Supreme Court and challenged their dismissal. The judges said that they could not be made parties in the Sindh High Court Bar Association case and were consequently denied their right to make submissions and the right to review by a higher tribunal.³⁰¹

2.33 The 18th Amendment and judicial appointments

In 2010 the Government of PPP decided to amend the Constitution of 1973 and introduced the 18th amendment with the addition of new Article 175(a) into the Constitution on judicial appointments. Under the amendment, the power or authority of judicial appointments was shared among the Executive, Parliament, and Judiciary.

²⁹⁹Terence J Sigamony, “SC For Greater Scrutiny Of Agencies’ Secret Funds,” *The Nation*, September 06 2013.

³⁰⁰“Justice Khurshid Anwar Bhinder v. Federation of Pakistan,” (2009).

³⁰¹Omer, “Authority Without Accountability: The Search For Justice In Pakistan.”86.

2.34 Judicial Appointments before and after the 18th amendment

Until the 18th Amendment, the process of nominating the judges in High Courts and the Supreme Court was strictly controlled and dominated by Pakistan's highest judicial authority-the Pakistan's Chief Justice. The judicial selection process was a panel of judges and the same was recommended to the President by the Supreme Court Chief Justice, who could select a suitable nominee from that panel. Likewise, for the selection of judges to the High Courts, the Chief Justice of the High Court relevant recommended a panel of judges to the President, which was transformed through the Governor of the province and the Chief Justice of Pakistan. This entire process played an important role for the Chief Justice of Pakistan and also the provincial Chief Justices, although the signing authority (President and Governor) remained a formality.

Through the 18th amendment, the parliament attempted to strike a balance in the appointment mechanism through a broad legislative exercise and in a reformatory manner.³⁰² Under the new legislation, appointments to the Superior Courts were to be administered via the Judicial Commission headed by Pakistan's Chief Justice and comprising senior Supreme Court judges (two), Chief Justices and Senior High Court Judges (two), Attorney General (one), federal and Provincial Legislation Minister (one) and federal and Provincial Bar Council members³⁰³

The Judiciary Commission was to nominate judges for each vacancy. The proposals were presented to the second platform; the Legislative Committee consisted of eight members, four from the National Assembly and four from the Senate, split evenly between the government and the opposition benches. The names accepted by

³⁰² Senator Raza Rubani, interview by author, Islamabad, March 27, 2018.

³⁰³"Supreme Court Reserves 18th Amendment Case Verdict," *The Express Tribune*, September 30 2010.

the Committee were to be forwarded to the President for selection by the Prime Minister.³⁰⁴ But this procedure was challenged within a year and considered an ‘infringement’ on the independence of the Judiciary.³⁰⁵

Against the Article, the petitions were filed by Ijaz-ul-Haq, Supreme Court Bar Association, Rawalpindi District Bar Association, Advocate Nadeem Ahmad, and several other people. Supreme Court took all the petitions which were filed to challenge article 175(a) of the Constitution, which was acquired as an attack on the independence of the Judiciary. Legal observers termed the petition significant in the backdrop of Chief Justice Iftikhar Chaudhry's speech in which he had said that the Legislature could make laws only within the parameters set out by the Constitution. But the Judiciary could strike down any law found to be inconsistent with the injunctions of Islam and fundamental rights.³⁰⁶

Chief Justice Iftikhar Muhammad Chaudhary had appointed a full bench to hear petitions against the 18th Amendment. The hearing was on 24 May on the petitions filed against the 18th Amendment. The petitions were submitted by Ijaz-ul-Haq, Supreme Court Bar Association, Rawalpindi District Bar Association, Advocate Nadeem Ahmad, and several others who challenged the amendment's various clauses. Some of the petitioners had challenged Article 175 of the 18th Amendment, which deals with the appointment of judges.³⁰⁷ In response to petitions against the 18th Amendment, Federal Government raised objections to the presence of the Chief Justice on the larger bench hearing the 18th Amendment petitions.

The government said Iftikhar Muhammad Chaudhary Chief Justice, is actively involved in the selection of judges, so he should not be a member of the

³⁰⁴Waqar Gillan, "1st After The 18th Amendment," *The News*, January 13 2019.

³⁰⁵ Senator Raza Rubani, interview by author, Islamabad, March 27, 2018.

³⁰⁶"Judges' Appointment Procedure: Court Moved Against 18th Amendment," *Dawn News*, April 18 2010.

³⁰⁷"CJ Constitutes Full Bench For 18th Amendment," *The Express Tribune*, May 13 2010.

Full Court bench. In its reply, the government claimed that the Supreme Court might have interpreted the Constitution but could not nullify an amendment. It said the 18th Amendment did not affect the independence of the Judiciary, as the three pillars of the state were approved for the selection of judges. The Federal Government requested the Supreme Court to refuse and place a fine on the petition.³⁰⁸ In its verdict, Supreme Court referred this back to reconsideration along with recommendations to Parliament. Parliament accepted the recommendations partially and passed the 19th Amendment into the Constitution on 1 January 2011.

2.35 Money laundering case and sacking of PM Yousaf Raza Gillani

The second important case which was decided by the Court was the interaction with politicians, via passed the order in June. Former Prime Minister Yousaf Raza Gillani was forced to step down after he was found guilty in contempt of court for refusing to write a letter about the reopening of cases of corruption and money laundering against President Asif Ali Zardari. Supreme Court issued an order to Prime Minister to write a letter to the Swiss Government to reopen the proceedings, but Prime Minister refused to write a letter.³⁰⁹

In this regard, Supreme Court sentenced Prime Minister to symbolic imprisonment on 26 April 2012 until the rising of the Court. Further, issued orders to Prime Minister that if he would not obey the Court orders then he should give his resignation, but Prime Minister Yousaf Raza Gillani refused to resign. Court issued further orders on 19 June 2012 to disqualify him as a Member of Parliament as well as a Prime Minister.³¹⁰ The Prime Minister was head of the Executive and his removal to disobey the Court orders also bound the next newly elected one to obey the Supreme

³⁰⁸"Government Replies To 18th Amendment Petitions," *The Express Tribune*, May 28 2010.

³⁰⁹Jon Boone, "Pakistan Agrees To Court Demands On Zardari Corruption Case," *The Guardian* September 2012 2012.

³¹⁰Qasim Nauman Matthew Green, "Pakistan's Gun-Slinging Chief Justice Faces Backlash," *Reuters*, June 24 2012.

Court order. Observers had assumed Asif Ali Zardari would continue to defy the Court to limp to the end of the government's term by sacrificing one Prime Minister Yousaf Raza Gillani after the next; Raja Pervez Ashraf was widely regarded as a political lightweight and had been implicated in his separate corruption scandal.³¹¹

The five-member bench of the Supreme Court ordered Prime Minister Raja Pervez Ashraf, to appear in Court on 27 August and faced the Court. He had been ordered to confirm that he should write a letter to the Swiss authorities reviving the money-laundering case against President Asif Ali Zardari or be disqualified from remaining a Member of Parliament for refusing to obey the Court's order like his predecessor.³¹² On 18 September 2012 morning Ashraf, accompanied by senior cabinet ministers, arrived at the grand marble chamber of the Supreme Court to announce that the Law Minister had been empowered to write to the Swiss authorities.

He said he did, it for the greater interest of the country and added: "I don't want to be seen standing on the wrong side of history." The Supreme Court was also under tremendous pressure not to send two Prime Ministers home"³¹³ According to Babar Sattar, a legal analyst. "Irrespective of the legalities of the matter, I just don't think people would have the tolerance to live through this drama". After this there was no more negative consequences arise for the PPP and President Asif Ali Zardari during his term.

2.36 Fake degree, Dual nationality, and Illegal Executive appointments

2.36.1 Fake Graduation Certificates

Chief Justice Iftikhar Muhammad Chaudhry had taken notice of 54 parliamentarians' who had fake degrees. Chief Justice had taken this notice after seeing a news story in

³¹¹Boone, "Pakistan Agrees To Court Demands On Zardari Corruption Case."76.

³¹²Najam Sethi, "Pakistan's Messy Merry-Go-Round," *India Today*, August 10 2012.

³¹³"Disqualifying Another PM Not Easy," *The Nation*, June 25 2012.

the local newspaper on 30 March 2013 while expressing amusement that still no action had been taken against those fake degree holders. The Supreme Court had fixed the hearing of this *suo moto* case against fake degree holder's parliamentarians on April 1 and issued an order to the Election Commission of Pakistan and the Chairman of the Higher Education Commission, to appear before the Court.³¹⁴ Supreme Court issued an order to the Election Commission of Pakistan to initiate a step against all of those who were accused of forgery by submitting fake graduation degrees.

Under articles 62 and 63 of the constitution, those members would be disqualified from parliament for using fake documents. The Supreme Court issued an order to ECP on 1 April 2013 to de-notify the election of those parliamentarians whose educational certificates were found to be fake.³¹⁵ Election Commission Pakistan stated to Supreme Court, that the 69 parliamentarians have fake educational certificates³¹⁶³¹⁷ and ECP de-notified 27 MPs on 13 April 2013, 3 senators (elected in 2006) 2 MNAs elected in the 2008 election.

2.36.2 Dual nationality

The petition was filed under article 184(3) of the Constitution, as per article 63(1) (C) of the Constitution and section 14 of Pakistan Citizenship Act 1951; any person who holds dual nationality is disqualified from membership of Parliament.³¹⁸ Supreme Court enforced strict laws against parliamentarians, who had dual nationality. In this regard, Supreme Court invalidated the election of 11 parliamentarians including 7 PMs and 4 MNAs on 20 September 2012.³¹⁹

³¹⁴"Chief Justice Takes Notice Of 54 Members' Fake Degrees," *Samma News*, March 30 2013.

³¹⁵"SC Orders Action Against Fake Degree Holders," *Dawn*, March 26 2013.

³¹⁶"Pakistan Courts Cracks Down On Lawmakers For Fake Degrees," *The Economic Times*, April 2 2013.

³¹⁷NNI, "SC Orders ECP For Action Against Fake Degree Holders Within Two Days."

³¹⁸Khan, *Constitutional And Political History Of Pakistan*.594-595.

³¹⁹"Corruption Scandal: Supreme Court Orders Action In Hajj Scam Case."

2.36.3 Executive appointments and Supreme Court

On the ground of procedural irregularities, Supreme Court struck down the number of high-profile appointments to Executive arm agencies like Admiral (retd) Fasih Bukhari as chairman of NAB. On the plea of Chaudhary Nisar Ali Khan, the Court held that the briefing on the selection of the Chairman of the NAB had not been carried out under Section 6 of the National Accountability Ordinance 1999.³²⁰ Chaudhary Ali Raza is the President of National Bank Pakistan³²¹, Chaudhary Muhammad Ali as the chairman of the Securities and Exchange Commission of Pakistan,³²² and Tauqir Sadiq as the chairman of the Oil Gas Regulatory Authority.³²³

2.36.4 Memo gate case / Mullen memo controversy

Memo gate was the memorandum between the United States government and the PPP-led government on 10 May 2011. This memorandum was an exchange of support. The PPP-led government assured their support in counter-terrorism military operations in the wake of the killing of Osama bin Laden inside Pakistan, and in return United States would support and prevent the military coup d'état during the term of PPP.³²⁴ Pakistan People's Party government signed this memorandum through Hussain Haqqani³²⁵ ambassador of Pakistan to the United States with Mike Mullen³²⁶ the Chairman of the Joint Chief of Staff United States. Mansoor Ijaz, who

³²⁰"Chief Justice Takes Notice Of 54 Members' Fake Degrees."

³²¹"SC Orders Action Against Fake Degree Holders."

³²²"Pakistan Courts Cracks Down On Lawmakers For Fake Degrees."

³²³"Resurrection Of 'Memogate': Key Developments So Far," *Dawn News*, March 29 2018.

³²⁴Josh Rogin, "Exclusive: Secret Pakistani-U.S. Memo Offering Overthrow Of Military Leadership Revealed," *Foreign Policy*, November 17 2011.

³²⁵Husain Haqqani was born 1 July 1956; he is a Pakistani journalist, academic, political activist and former ambassador of Pakistan to Sri Lanka and the United States. Haqqani has written four books on Pakistan, and his analyses have appeared in publications including The Wall Street Journal, The New York Times, Foreign Affairs, and Foreign Policy. Haqqani is currently a Senior Fellow and Director for South and Central Asia at the Hudson Institute in Washington, D.C. and co-editor of Hudson's journal Current Trends in Islamist Ideology.

³²⁶Michael Glenn Mullen was born in October 4, 1946, he is a retired United States Navy admiral, who served as the 17th Chairman of the Joint Chiefs of Staff from October 1, 2007, to September 30,

was a Pakistani-United States businessman, leaked the news of the agreement to the media in October 2011.³²⁷ When this memo gate case was in news, the chairman of PMLN Mian Muhammad Nawaz Sharif, the political opponents of PPP filed a petition in Supreme Court to take notice of memo gate under its jurisdiction 184(3) of the Constitution on 23 November 2011. The parliamentary committee on National Security had a task to investigate the allegations which were made by Mansoor Ijaz.³²⁸

On 30 December 2011, Supreme Court held that the petition was maintainable and Supreme Court established a Judicial Commission to investigate the authenticity, origin, and memorandum's purpose. Apex Court accepted the petition under its jurisdiction of 184(3) invoked interpretation of article 9 of the Constitution,³²⁹ a threat to the independence, security, and sovereignty of the state.³³⁰ Asma Jahangir the legal counsellor of Hussain Haqqani, declared the clear victory of the military over the civil authority.³³¹

If the memorandum was found authentic, then this would be a tantamount threat to Pakistan's security, independence, and sovereignty. Army also started a probe into this memo gate scandal. On 22 December 2011, Prime Minister Yousaf Raza Gillani announced publicly they will not accept a state within the state. The PPP-led governments have announced clearly instigate disagreements with the

2011. Mullen previously served as the Navy's 28th Chief of Naval Operations from July 22, 2005, to September 29, 2007. He was only the third officer in the Navy's history to be appointed to four different four-star assignments; the other appointments being the Commander, U.S. Naval Forces Europe and Commander, Allied Joint Force Command Naples from October 2004 to May 2005, and as the 32nd Vice Chief of Naval Operations from August 2003 to August 2004. As Chairman, Mullen was the highest-ranking officer in the United States Armed Forces and diversified the top ranks of the Pentagon. He retired from the Navy after over 42 years of service. Since 2012, Mullen has been a visiting professor at Princeton University's School of Public and International Affairs.

³²⁷Saeed Shah, "Memogate' scandal deepens as American accuser threatens to tell all," *The Guardian* January 2012.

³²⁸Omer, "Authority Without Accountability: The Search For Justice In Pakistan."47.

³²⁹Boone, "Pakistan Agrees To Court Demands On Zardari Corruption Case."232.

³³⁰Butt, "Hajj Scam: Saudi Prince Withdraws Complaint."114.

³³¹"Husain Haqqani's Life In Grave Danger, Says Asma," *Dawn*, July 12 2012.

military. But the Chief of Army Staff General Kayani reiterates that the army had not aimed to stage a coup in a country. But this might another tactic of the government which was lodged to digress from the memo gate case.³³²

On 11 January 2012, PPP led Prime Minister Syed Yousaf Raza Gillani to abort the Secretary of Defense Khalid Naeem Lodhi on disciplinary and misconduct grounds. Prime Minister claimed that the Chief of Army Staff and DG ISI ducked the defence and interior ministry by their responses to the Supreme Court in the memo-gate scandal. On 23 January 2012, the legal counsel of Mansoor Ijaz, Akram Shaikh requested the Supreme Court to record the testimony of his client from Zurich or London because Mansoor Ijaz refused to come due to a security issue in Pakistan. After the refusal of Mansoor Ijaz, Hussain Haqqani filed a new petition to investigate the memo issue and request the commission to cancel the right of Mansoor Ijaz's testimony.³³³

On 26 January Supreme Court ordered the parliamentary committee for National Security to appear before the commission on 10 February 2012. The Court allowed access to the Mansoor Ijaz statement through video recording from London. Jawad Hassan the secretary of the Memo Commission, left for London on 19 February 2012 to record the statement of Mansoor Ijaz via Video.³³⁴ The legal counsel of Haqqani Zahid Bukhari stated that there was no truth behind the memo; this was just plotted to hatch to destabilize the PPP-led civil government and halt the election of the Senate.³³⁵

On 21 March 2012, Haqqani confessed to a 16-minute telephonic conversation with Mansoor Ijaz dated 9 May 2011, to discuss Mansoor's anti-state stance in his

³³² Mohammad Jamil, "Detractors Of Pakistan Should Be Exposed," (2018).

³³³ Rifat Kaleem, "Civil Military Relations During Pakistan People's Party 4 Th Regime From 2008 To 2013," *International Journal Of Humanities And Social Science* (2015).72.

³³⁴ "Resurrection Of 'Memogate': Key Developments So Far."

³³⁵ Husain Haqqani, "Early Life And Career," In *Husain Haqqani*.

writing. On 26 March 2012, Yasin Malik Chairman Jammu & Kashmir Liberation Front was permitted to give his statement to clarify allegations that were made by the Mansoor Ijaz. On 29 March Court ordered the former ambassador of Pakistan to the United States, to appear before Court and return to Pakistan. On 5 April 2012, Ahmed Shuja Pasha the former DG- ISI appeared before the commission and completed his testimony. He stated that the allegations were baselessly made by the American businessman Mansoor Ijaz. But he accepted had not written permission from the Prime Minister and President, but the Chief of Army Staff Ashfaq Pervaiz Kayani gave verbal permission to meet with Mansoor Ijaz.³³⁶

A commission for investigation memo case concluded at Islamabad High Court. Chief Justice Balochistan High court said the proceeding had been completed and very soon the commission will present and submit the final report on the memo-gate case to Supreme Court.³³⁷ When three Chief Justices investigated the memo issue and signed the report, it triggered a confrontation between military and civil authorities.

On 11 June 2012, Supreme Court constituted a nine-member larger bench for the hearing of the controversial memo gate case.³³⁸ On 12 June 2012, the probe commission submitted its report to Supreme Court and stated former ambassador to the US Hussain Haqqani found he was not loyal to the state and that the memo was real and authored by Hussain Haqqani. The court issued a legal notice to Hussain Haqqani, Mansoor Ijaz along with other involved parties on 29 June 2012. On 12 July 2012, justice Mian Shakir-Ullah Jan who was heading the nine-member larger bench

³³⁶"Pakistan US Ambassador Offers To Resign Over 'Memogate'," *BBC News*, 17 November 2011.

³³⁷*Constitution Petition Under Article 184(3) Of The Constitution Regarding Alleged Memorandum To Admiral Mike Mullen By Mr. Hussain Haqqani, Former Ambassador Of Pakistan To The United States Of America, Constitution Petitions NO. 77 TO 85, 89 & 92 OF 2011,(2012).*

³³⁸"Memogate: Supreme Court Constitutes 9-Member Bench," *The Express Tribune*, June 11 2012.

to probe the memo scandal resumed the proceedings and held Hussain Haqqani the former ambassador to the US, as the architect of the controversial memorandum.³³⁹

2.37 Muhammad Yasin v federation of Pakistan 2012

Petitioners challenged the appointment of the Chairman Oil and Gas Regulatory Authority in Muhammad Yasin v Federation of Pakistan and the Supreme Court also agreed to exercise its jurisdiction because all citizens bear the indirect taxes burden which turns fund regulatory authorities like the OGRA. The Court held the meritless appointment of the public-funded position in violation of the right to life, property, dignity freedom of profession, and protection of property.³⁴⁰

Chief Justice Iftikhar Muhammad Chaudhary maintains his position by achieving the trust of the common man, lawyers, and fellow judges against both of military Executive and civil Executive as well as the political elite of Pakistan. Chief Justice of Pakistan Iftikhar Muhammad Chaudhary affected the balance of power (political elite and military) many times, but he was also the mediator between them to maintain the balance of power in three cases between the civil Executive and military authority, first was the Sindh High Court Bar Association Case, 2nd was memo gate and 3rd Tahir-ul-Qadri case. In these cases, Supreme Court effectively mediated between civil and military authorities and avoided major institutional conflicts in both.

The role of the Judiciary as a civil rights protector can be especially prominent in interrelations with the military regime. This is because usually military regimes become apprehensive about the apparent unconstitutionality of their actions. The structural and functional legal frameworks are interdependent methods of considering judicial institutions. Like, the Judiciary can hardly play the role of citizens' rights

³³⁹"Husain Haqqani's Life In Grave Danger, Says Asma."

³⁴⁰"Resurrection Of 'Memogate': Key Developments So Far."

protector unless it enjoys structural independence from other state institutions. Similarly, the impartiality of judges is significant for their performance in conflict resolution. In addition, the scope and depth of independent decision-making of the Judiciary affect its handling of the business of its administration and social control functions. The nations expect the Judiciary to perform, such as:

- Conflict resolution between various institutions.
- Serves as a part of the administrative system.
- Protection of the rule of law is significant for criminal justice; and
- Provide symbolic legitimacy for a regime.

Nevertheless, the power of the Judiciary to grant legitimacy is an important concern for the Musharraf regime. The functions which the Judiciary performs or is expected to perform, i.e., dispute settlement, taking social control measures, performing routine administration, and role as citizens' rights protector, will affect how the Judiciary is perceived and treated by military rulers. The institution of the Judiciary is not numerous as compared to other state institutions. However, it would still be difficult for military rulers to obtain the support of even minimally skilled loyal supporters for replacing the hostile judges, particularly in the higher Judiciary.

Thus, judges may continue their services under the rule of the military. This is mainly due to their need for processing routine problems to the satisfaction of the military regime. Even the military which captures the government in previously constitutional political systems may continue the existing institutions of the Judiciary which can perform their adapted procedure in the politically non-sensitive areas, while they are radically transformed in other areas.

The military takes the advantage of the absence of strong political leadership and the failure of institutions based on their assumptions. The military is invited by

politicians to takeover when the power struggle among them reaches its climax. There is always a vacuum in the governing system which, in the case of developing countries, is filled by the military as a saviour of the country.

CHAPTER-4

THE CHAOTIC POLITICAL SITUATION OF PAKISTAN UNDER JUDICIAL HEGEMONY

Nawaz Sharif, on the morning of 12 October 1999, finally decided that his army chief would have to go like many Pakistani leaders before him. It was a very difficult task. The key posts in his administration were filled by his relatives and business partners. The chief of army staff, General Pervez Musharraf, did not fit in. Owen Bennett Jones narrated: Sharif had appointed General Musharraf in October 1998 and quickly came to regret the decision. He regarded his army chief with distaste.

The origin of the antagonism, which was mutual, lay in the snow-clad, Himalayan peaks of Kashmir. In the spring of 1999, Musharraf gave the final order for Pakistani troops to cross the line of control that separates the Indian and Pakistani armies in Kashmir. The soldiers, posing as divinely inspired Islamic militants, clambered up the snowy passes that led to one of Kashmir's most strategic locations; the dusty, run-down town of Kargil. Having caught the Indians off guard, the Pakistani troops made significant territorial gains. Tactically, the operation was a success. Politically, it was a disaster. Indians cried foul, and Sharif found himself amid a major international crisis.

General Musharraf had sent the troops to send in, Prime Minister Sharif was left with the unenviable task of getting them out. For three decades the Pakistani people had absorbed a steady flow of vitriolic propaganda about the Kashmir issue; Sharif's decision to withdraw seemed incomprehensible and humiliating. As the man who had defied world opinion and tested Pakistan's nuclear bomb, Sharif had been acclaimed as a national hero. As the man who pulled out from Kargil, he was denounced as a supine

coward. Sharif's sense of resentment was acute. General Musharraf, he complained, had marched his men to the top of the hill without considering how he would get them down again.

The generals, though, were also unhappy. By deciding to pull out of Kargil without negotiating any Indian concessions in return, they argued, Sharif had squandered a militarily advantageous position and caused a crisis of confidence within the Pakistan army. After the Kargil withdrawal, Musharraf faced a surge of discontent within the army. As he toured a series of garrisons, he repeatedly faced the same question; if Kargil was a victory, then why did we pull back? Musharraf told his men that it was the Prime Minister's fault and that the army had had no choice but to obey his order. It was a disingenuous response. Musharraf had fully consulted on the withdrawal order and raised no serious objection to it. Sharif was never in any doubt that removing Musharraf would be a high-risk exercise.

3.1 Removal of General Pervez Musharraf as Army Chief and Military's Retaliation

Nawaz Sharif, within a month or so, was moved against Musharraf while he was out of the country in Sri Lanka on an official trip. Musharraf was due to arrive back on 12 October 1999. His flight was delayed, but when they came close to Pakistan, the captain of the aircraft was informed that they could not enter Pakistani airspace and needed to go to a neighbouring country, except for Dubai. Short of fuel the plane was diverted to Nawab Shah. Meanwhile, the corps commander of Karachi, Lt. General Muzaffar Usmani, moved his troops and dislodged pro-Sharif police and civilian authorities from the airport, and Musharraf's aircraft landed safely. By the time Musharraf reached the Karachi Corps headquarters, his commanders were in control of Islamabad. Musharraf

had started planning a *coup d'état* and, as part of that plan, had appointed some of his close friends in the army as commanders in positions critical during a coup. On October 12, the coup was executed as soon as Sharif tried to fire Musharraf and replace him as army chief with the head of ISI, Lieutenant General Zia Uddin while Musharraf was out of the country. Official accounts, however, projected the coup as the military spontaneous reaction to Musharraf's ouster.

When the military back to power in October 1999 after displacing the civilian Government of PML-N ³⁴¹General Pervez Musharraf formed the National Security Council in October 1999 to determine the constitutional role of the military in the politics of Pakistan.³⁴²General Pervez Musharraf dismissed Prime Minister Nawaz Sharif but also staged a coup by ousting the people's elected Government.³⁴³Simultaneously, during his tenure as the Chief of Army Staff, Chairman of the Joint Chiefs General Pervez Musharraf then acted as the country's Chief Executive.

At the same time, President Rafiq Tarar would continue to hold his office; General Pervez Musharraf declared a state of emergency by issuing a Provisional Constitution Order (PCO) and suspended the writ of the Constitution of Pakistan on 14 October 1999. Which said: No judgment, decree, writ, order, or process whatsoever shall be made or issued by any court or tribunal against the Chief Executive or any authority designated by the Chief Executive. It further said: No court, tribunal or other authority shall call or permit to be called in question the proclamation of emergency on the 14th day of October 1999 or any order made in pursuance thereof."³⁴⁴ The Constitution of the Islamic Republic of Pakistan should remain in abeyance," and all federal and provincial

³⁴¹Ansar Abbasi, "No Martial Law In Country," *Dawn*, 16 October 1999.

³⁴²"Gen Musharraf Spells Out A Seven-Point Agenda ", *Dawn News*, 17 October 1999.

³⁴³Baxter, *Pakistan On The Brink*.223.

³⁴⁴Abbasi, "No Martial Law In Country."77.

ministers besides governors and Chief Ministers of four provinces should cease to hold office.³⁴⁵ After two days of seizing control of the Federal Government, General Pervez Musharraf took legal advice from his legal team led by Sharfuddin Pirzada.³⁴⁶

General Pervez Musharraf promised he would introduce good governance and genuine democracy in the country.³⁴⁷ After the proclamation of Provisional Constitutional Order 1999, he announced the seven-point plan ³⁴⁸and resumed himself as Chief Executive of Pakistan.³⁴⁹ During the General Pervez Musharraf era, a double standard of political setup had been observed; I divided the General Pervez Musharraf regime into two terms. First, during the military coup from 1999 to 2002, Musharraf alone enjoyed complete authority and power. In the second term, General Pervez Musharraf accommodated the civilian regime from 2002-2007 under military control. General Pervez Musharraf assured the Chief Justice of Pakistan (CJP), Justice Saiduzzaman Siddiqui that the Judiciary could continue to function under the Constitution, and the regime would not interfere with the independence of the Judiciary.³⁵⁰

Finer has explained the difference between military rule as an organization and rule by a military man as a ruler. After analyzing all the existing military regimes of the time, he described a military regime as a 'direct military regime' when the supreme Executive power is assumed by a military man even if it is a quasi-civilianized rule. The military coup can be divided into two types of intervention: the corporate coup and the factional coup. In a corporate coup, the military performs as a unified force and a

³⁴⁵, (Human Rights Watch, Word Report 2001).203.

³⁴⁶"Gen Musharraf Spells Out A Seven-Point Agenda ".

³⁴⁷K Alan Kronstadt, Defense Foreign Affairs, And Trade Division, "Pakistan's Domestic Political Developments: Issues For Congress" (2003).

³⁴⁸"Gen Musharraf Spells Out A Seven-Point Agenda ".

³⁴⁹Baxter, *Pakistan On The Brink*.34.

³⁵⁰Khan, *Constitutional And Political History Of Pakistan*.480.

corporate body which is commanded by the top leadership. However, in the factional coup, a group of military personnel attempts a military intervention and is mostly targeted against their corporate leaders, i.e., the top leadership of military commanders. Sometimes, the factional coup may also be against a civilian government.

3.2 Formulation of the National Accountability Bureau

National Accountability Bureau was formulated by the Presidential Ordinance on 16 November 1999. The National Accountability Bureau (NAB) was set up to investigate and prosecute officials involved in corruption. Its mission was to eliminate corruption through a comprehensive approach encompassing prevention, awareness, monitoring, and combating. The institution's vision statement indicates that "the National Accountability Bureau was to be a credible, effective, efficient, and dynamic anti-corruption organization created an enabling environment for a corruption-free society.³⁵¹ Functionally and independent body, it draws its financial resources from the Federal Budget.

It was supported in investigations by the Paramilitary Rangers, military personnel, and the Federal Investigation Agency (FIA)³⁵² in 2003; the Economic Crimes and Anti-Corruption Departments of the FIA were transferred to the NAB; to arrest, punish, and disqualify the guilty from holding public office and contesting elections.³⁵³ NAB was accused of creating the Pakistan Muslim League Quaid-e-Azam group at the cost of clearing mainstream political party leaders' instituted cases against them.³⁵⁴ Strong opposition candidates were kept away from the elections by securing their

³⁵¹General (R) Pervez Musharraf, interview by author, Dubai March 5, 2018.

³⁵²"Federal Investigation Agency ", *Dawn*, 30 November 1999.

³⁵³"Anti-Corruption Departments Of The FIA Were Transferred To The NAB," *Dawn* 1 August 2003.

³⁵⁴ <http://www.sappk.org,>

disqualification through Accountability Courts.³⁵⁵ Their arguments were frozen against those who cracked under pressure and joined PMLQ. In August 2002, PPP's twenty-four and P.M.L-N's thirty-three candidates were investigated. Sixty-four investigation cases were arbitrarily closed in the same year under the discretionary powers of the Chairman of NAB.³⁵⁶

The handling of political parties under institutional influences was against democratization. The contribution of military bureaucracy in governing arrangements affected the political system of Pakistan.

Table 4.1 Status of Investigations against the Politicians

Provinces	Authorized	Completed	Under Process	Closed
Punjab	135	39	58	29
Balochistan	23	12	6	5
Khyber Pakhtunkhwa	29	15	4	10
Sindh	90	46	42	2
Rawalpindi Division	33	5	19	9
Total	310	117	129	64

Source: Data adapted from National Accountability Bureau: Annual Report 2002³⁵⁷

The structure of accountability remained controversial NAB itself disapproved on several counts.³⁵⁸ There was the exclusion of serving armed forces and Judiciary from the jurisdiction of NAB. Its structural method towards corruption and outline of measures were controversial. The Chairman of NAB had unrestricted power under the NAB

³⁵⁵ Senator Raza Rubani, interview by author, Islamabad, March 27, 2018.

³⁵⁶ "NAB, Chief Denies Action against Certain Politicians," *Dawn*, 25 August 2002.

³⁵⁷ "Annual Report 2002," (National Accountability Bureau, 2003).

³⁵⁸ Senator Raza Rubani, interview by author, Islamabad, March 27, 2018.

ordinance section 9 to register or closed the case against anyone. It did not accomplish democratic values.

3.3 Political Manoeuvring by General Musharraf

3.3.1 National Reconstruction Bureau

On 18 November 1999, General Pervez Musharraf set up the National Reconstruction Bureau (NRB) to generate fundamental thoughts on the promotion of good governance to reinforce democracy through the reconstruction of government institutions within the framework of Musharraf's Seven-Point Agenda.³⁵⁹ The Bureau had also proposed the rehabilitation of local governments and the police, which had been approved by the NSC and the Federal Cabinet in August 2000. The Local Government Ordinance of 2001 was enacted by the provincial governments in August 2001. By that time, however, elections to local authorities already had taken up between 30 December 2000 and 21 July 2001.

3.3.2 Local Government System

The local self-government structure was one of the most useful systems around the world to restore democracy at the grass-root level. It had become necessary to manage the affairs of the state.³⁶⁰ This tradition was rooted not in the Middle Ages, but much earlier in history. This decentralization was carried out solely on an administrative platform the devolution of the centralized government was restored in its true spirit during General Pervez Musharraf's era; the Ordinance was used as the Provincial Indigenous Government Ordinance 2001 in the Sixth Schedule of the 1973 Constitution. The local authorities formed according to this Ordinance were based on the following five principles:

³⁵⁹General (R) Pervez Musharraf, interview by author, Dubai March 5, 2018.

³⁶⁰General (R) Pervez Musharraf, interview by author, Dubai March 5, 2018.

- Decentralization of political supremacy.
- Allocation of administrative authority
- Dispersion of power authority nexus
- Sharing of resources
- Deconstruction of management facilities³⁶¹

The local government framework aimed to give citizens authority and power at the most basic and grassroots level to improve the standard of services for national development.³⁶² The delegation of the power plan had three-tiered systems which are described below as:

- Union Council: the lowest level consists solely of twenty-one members, out of which four positions were reserved for women, and the members were elected directly.
- Tehsil Council: 2/3 of the representatives were directly elected as Naib-Nazims and 1/3 of indirectly elected representatives had reserved seats for females and peasants.
- The District or Zila Council was made up of all the Nazim representatives of the Union Council, with 1/3 seats held by women, minorities, and peasants.³⁶³

The basic structural reforms had been made in the government departments. Local authorities and the government were merged to the point where the bureaucrats were responsible for the elected Nazims. Second, the Division's administrative units had been

³⁶¹S Saleem And M Ahmed, "Political And Administrative Structure Of Local Bodies In Pakistan: A Case Study Of City District Government Faisalabad," *Berkeley J Soc Sci* 2, No. 6-7 (2012).60-65.

³⁶²Nadeem Malik, "The Modern Face Of Traditional Agrarian Rule: Local Government In Pakistan," *Development In Practice* 19, No. 8 (2009).312.

³⁶³Zulqarnain Hussain Anjum And Nuzhat Ahmad, "New Local Government System: A Step Towards Community Empowerment?[With Comments]," *The Pakistan Development Review* (2001).113.

officially abolished. Third, many services had been given to local authorities, such as education and healthcare.³⁶⁴ General Pervez Musharraf's political system was based on the devolution of power, completely bypassing the provinces. Practically, this system could not attain the objectives of good governance and the enlightenment of democracy.³⁶⁵ Musharraf militarized the state and its economy, which weakened the Government structure.³⁶⁶

The other issue was the non-party structure of local government, which set up the *baradari* structure for elections.³⁶⁷ There was already a lack of control and stability within the system, but the worst of all was a conflict of interests between local governments and regional governments, which culminated in a lack of cooperation between the national and local governments.³⁶⁸ Senator Mir Kabeer Ahmad³⁶⁹ stated another issue with the local government system was the same structure for all the provinces. Balochistan has a different tribal setup than the other areas of the country. All powers on one hand like Nazim the ultimate power of the division; he/she had the authority of black& white led to tribal conflicts, political instability, and economic disaster in Balochistan.³⁷⁰

3.3.3 General Election 2002

General Pervez Musharraf followed the inclination of his military forerunners in rulership. Like Ayub Khan and Zia Ul Haq, General Pervez Musharraf attempted to legitimize

³⁶⁴Ali Cheema, Asim Ijaz Khwaja, And Adnan Qadir, "Local Government Reforms In Pakistan: Context, Content And Causes," *Decentralization And Local Governance In Developing Countries: A Comparative Perspective* (2006).69-100.

³⁶⁵Senator Raza Rubani, interview by author, Islamabad, March 27, 2018.

³⁶⁶Shah, *The Army And Democracy*.194.

³⁶⁷Zahid Hasnain, *Devolution, Accountability, And Service Delivery: Some Insights From Pakistan* (Karachi: The World Bank, 2008).128.

³⁶⁸Marco Mezzera, Safiya Aftab, And Sairah Yusuf, "Devolution Row: An Assessment Of Pakistan's 2001 Local Government Ordinance," *Netherlands Institute For International Relations, Conflict Research Unit, Hague* (2010).138-140.

³⁶⁹Mir Kabeer Ahmed Muhammad Shahi is a Pakistani politician who is currently a member of Senate of Pakistan, representing National Party.

³⁷⁰Mir Kabeer Ahmad, interview by author, Quetta, March 22, 2018.

the martial law statute by the Constitution, and he ensured success to authorize his military statute. No doubt, General Pervez Musharraf's military coup gave a setback to the democratic political culture of Pakistan. After imminent rule, General Pervez Musharraf propagated Constitutional Provincial Order. To stay in rule, General Pervez Musharraf declared the proposal of the referendum on 8 April 2002.

Over referendum, he sought to designate himself as President. Nonetheless, as in the 1973 Constitution, the President could not be voted through a referendum. He had to vote by the National, Provincial Assemblies, and Senate. The Supreme Court did not challenge the process of the presidential referendum. The General Pervez Musharraf regime took Election Commission to its command and conversed on its concern about conducting the referendum. The Election Commission was no longer an autonomous body. I A Rahman³⁷¹ rightly said, Referendum is unconstitutional and an old lever of the military to rule.³⁷² So General Pervez Musharraf declared the General Elections for the National and Provincial Assemblies.

To shelter his place as President because General Musharraf needed political support in the National Assembly. The conduct of General Election Order 2002 was promulgated on 27 February 2002.³⁷³ On 16 August 2002, the Election Commission of Pakistan announced the election schedule, and the 10 of October was fixed as the voting day for National and Provincial assemblies' elections.

³⁷¹Ibn Abdur Rahman, also known as I.A. Rahman (born 1 September 1930 in Haryana, British India) is a Pakistani peace and human rights advocate, and a veteran communist. A protégé of the Great Urdu poet Faiz Ahmed Faiz, he became chief editor of the Pakistan Times newspaper in 1989. He is the founding chair of the Pakistan-India Peoples' Forum for Peace and Democracy. He has also been a director of the Human Rights Commission of Pakistan (HRCP) since 1990, and is a prominent human rights activist. Rehman has been influential for promoting peace in the Indo-Pakistani wars and conflicts and in Kashmir conflict as well as for other human rights issues in Pakistan.

³⁷²IA Rahman, interview by author, Karachi, August 18, 2018.

³⁷³"Pakistan Opposition parties announce boycott of polls."

3.3.4 The Political Party Act of 2002

General Pervez Musharraf replaced the political parties Act of 1962 by promulgating the Political Parties Order 2002 in June 2002. For the promotion of the democratic and federal system, and to create a conducive political environment, he amended Article 63 and blocks the way of PPP and PMLN in the general elections of 2002.³⁷⁴ Because the person convicted of any crime, charges of crime could not run for any political position and not participate in the election and set a limit on two terms of Prime Minister. General Pervez Musharraf issued in July 2002 Qualification to hold Public office order 2002 to prevent former Prime Minister Muhammad Nawaz Sharif and Benazir Bhutto to elect the office of Prime Minister in future General Elections.³⁷⁵

To shape the friendly opposition, General Pervez Musharraf put forward the MMA³⁷⁶ in the military-designed Parliament, and National Security Council to dominate the Executive. Post 9/11 the war on terror allows General Pervez Musharraf to grab the political system and shake the political infrastructure.

3.3.5 Formation of Muslim league Quaid-e-Azam and General Election 2002

General Pervez Musharraf easily formed Muslim League Quaid-e-Azam political group and party because he had strong bondage with them. General Pervez Musharraf forcefully ejected the two main political parties from the political scene and pushed the Tanga Party into ruling corridors. Muslim League Quaid-e-Azam group won the General Elections of

³⁷⁴ Senator Raza Rubani, interview by author, Islamabad, March 27, 2018.

³⁷⁵ Sharif, "Serious error found in Political Parties Order."89.

³⁷⁶ The Muttaahida Majlis-e-Amal (MMA) , "United Council of Action" was a political alliance consisting of conservative, Islamist, religious, and far-right parties of Pakistan. The alliance comprised the following notable groups Jamiat Ulema-e-Pakistan, Jamiat Ulema-e-Islam, Jamat-e-Islami, Tehrik-e-Jafaria Pakistan, Jamiat Ahle Hadith.

2002 with the collaboration of other Pro-Musharraf political parties and high patronage of the army. The Prime Minister was a rubber stamp and powers belong to President General Pervez Musharraf.³⁷⁷ Unknown power was the helping hand of General Pervez Musharraf in shaping the pro-Musharraf Government for five years in uniform and convincing the religious parties to accept him in uniform as a President. The coalition with religious political parties and MMA also provided support in passing the 17th amendment in the Constitution with the majority in the political spectrum of Pakistan.

3.4 Grande Democratic Alliance

The Grand Democratic Alliance (GDA) was a significant alliance of religious and political parties including Benazir Bhutto PPP, Pakistan Tahreek-e-Insaf Imran khan, and Muttahida Qaumi Movement (MQM) because GDA was supportive of the seven-point agenda of General Pervez Musharraf and the dismissal of Mian Muhammad Nawaz Sharif on 21 October 1999. The meeting was held in Lahore under the Chairmanship of Nawab Zada Nasrallah on 20 October 1999, and they announced their support for Musharraf. Their motive was, that the Pakistan Muslim league Nawaz paralyzed and shook the state institutions through conspiracies. GDA also expected General Pervez Musharraf to the ruthless trial and accountability of PMLN lead politicians. The order of the Supreme Court validated the 1999 General Pervez Musharraf coup to hold the General Elections within three years and transfer the power to a civilian administration. General Pervez Musharraf gave a date for the upcoming general elections on 10 October 2002.³⁷⁸

³⁷⁷Peter R Lavoy And Peter René Lavoy, *Asymmetric Warfare In South Asia: The Causes And Consequences Of The Kargil Conflict* (Cambridge : Cambridge University Press, 2009).167-197.

³⁷⁸www.caps.af/Doc/StrategicAnalysis-3.doc.

3.5 The Outline of the Constitutional Package

In January 2002 before the General Elections, General Pervez Musharraf introduced electoral and constitutional changes, which increased the number of seats in the National Assembly with the addition of 60 reserved seats for women.³⁷⁹ The rise in reserved seats for women changed the National Assembly and political structure. The order of General Pervez Musharraf changed the seat allocation among the provinces and the new number and order of the seats were as follows:

Table 4.2 Distribution of seats.

Sr.	Province	General Seats	Women Seats	No. of Seats
1.	Punjab	148	35	183
2.	Sindh	61	14	75
3.	NWFP	35	8	43
4.	Balochistan	14	3	17
5.	FATA and Tribal Areas	12	0	12
6.	Federal Capital	2	0	2
7.	Total	272	60	332

Source: General Election 2002 (Islamabad: Report of Election Commission of Pakistan, 2002) Volume No.1.95.

Twenty-five seats were reserved for technocrats and sixty for women held on a proportional representation system basis. It also reserved ten seats for the non-Muslims on a whole country constituency basis. Clause No.7 of The Conduct of General Elections Order 2002 labelled that the elections for the National and provincial assemblies would

³⁷⁹General (R) Pervez Musharraf, interview by author, Dubai March 5, 2018.

hold on to a joint electorate system, the voting age would be eighteen years, and the status of the Ahmadi to be unaffected under the 1973 Constitution. That person was ineligible for membership in national or provincial assemblies who violates Islamic Commands according to the Conduct of General Elections Order, 2002.³⁸⁰

3.6 General Election 2002 and Condition of bachelor's degree

For conducting the General Election 2002, General Pervez Musharraf set a condition of a bachelor's degree or its equivalent qualification. Hundreds of members and leaders of different political parties and office holders were disqualified. The Bachelor or equivalent degree criteria for the nomination deprived 96 percent of the population and 42 percent existed legislators. The education requirement was introduced by the military to prevent the former and leading politicians of PPP and PMLN to hold any public office and to create favourable loyal opposition. To secure the MMA Fazal-ul- Haq group in General Election, because General Zia-ul- Haq gave the equivalence to madras certificates during his tenure and General Pervez Musharraf validated it through the Election Commission of Pakistan.³⁸¹

Mainstream politicians from different political parties opposed the condition and they challenged these conditions in the Supreme Court of Pakistan in July 2002. The Supreme Court fired the appeal and gave a judgment that the conditions enforced by the administration were not in contradiction with the Constitution, as well as not against the ethics of democracy.

³⁸⁰ *Conduct of General Elections Order, 2002* (27 February 2002).

³⁸¹ *The Political Parties Order, 2002*, (28 June).

3.7 Religious Political Parties' resistance and addition of 7-B & 7-C

The joint electorate and reserved seats for non-Muslims were also the reason for resistance from the religious political parties because Ulema's opinion was it was a great loss for the Muslim country, and it also pushes towards secularism and support for Non-Muslim *Ahmadi* in Pakistan. The Ulema's and the religious group had great concern about mentioning the religious identity in the voter registration form because the Election Commission of Pakistan issued a form that had not a separate column or clause mentioning the religious identity of the voter under the joint electorate. But after the agitation from the religious group section, 7-B & 7-C were added to the original Conduct of General Elections Order on 17 June 2002.³⁸² Ahmadis in reaction decide to boycott the election.

3.8 Muttahida Majlis-i-Amal opposed Political Party Act 2002 and Constitutional Amendments

Muttahida Majlis-i-Amal (MMA) rejected the code of conduct and the Political Parties Act and the constitutional package designed by General Pervez Musharraf. The MMA Chief Maulana Shah Ahmad Nurani, turn down the projected constitutional package and absorbed the military-led Government could not proclaim the constitutional amendments but they had to only announce the free and fair elections in the country as soon as possible. Maulana Sami-ul Haq stated the constitutional package was NRB-sponsored and denial of democracy.³⁸³ The MMA leadership criticized General Musharraf for altering the unanimous Constitution of 1973, followed the dictation of the USA at the

³⁸²*The Conduct of General Elections Order, 2002*, (17 June).

³⁸³Kamran Aziz Khan, "2002 Elections in Pakistan: A Reappraisal," *Journal of Political Studies* 18, no. 1 (2011).178.

cost of the freedom of the country, Islam &, and restrictions on madrasa (seminary), masjid (mosque) for the execution of General Pervez Musharraf secular agenda.

3.9 General Pervez Musharraf's Plan for Presidential Referendum

General Pervez Musharraf unveiled his plan to elect himself as President for the next five years through the presidential referendum in April 2002. All major political and religious parties accepted the PMLQ and were against the presidential referendum because they had the opinion it was against the nature of the Constitution of Pakistan. Jamat-i-Islami challenged the presidential referendum and filed a petition in the Supreme Court, but Chief Justice Sheikh Riaz Ahmed headed the nine-member bench of the Supreme Court dislodge the petition.³⁸⁴

The presidential referendum of 27 April 2002 was validated by the Supreme Court under the powers bestowed on General Pervez Musharraf when the military coup was validated on 12 October 1999 based on the doctrine of necessity. The key political parties appeal to the public to boycott the poll and condemned the results as fraud. The civil society organizations were also merged. The Human Rights Commission of Pakistan had also stated in opposition to the referendum and declared it was a blow to the democratic footing of Pakistan and strapped towards the abyss of an absolute rule that consequently vulnerable human rights.³⁸⁵

The legal community also exhibited a proactive role in the opposition to the referendum. From the Election Commission, Justice Tariq Mahmood had resigned on April 6, 2002, to protest the referendum. The Government was quick to press the Justice

³⁸⁴Mian Dilawar Mahmood, *The Judiciary and Politics in Pakistan: A Study* (Lahore: Idara Mutalia-e-Tareekh, 1992).35.

³⁸⁵"Musharraf Regime Panicked by Surprise Secular-Islamist Deal: Analysts," *Agence France- Presse*, November 6 2002.

to issue a disclaimer. The pressure brought to bear on Justice Tariq led to his resignation from the Balochistan High Court.³⁸⁶ A presidential Referendum was held, and General Pervez Musharraf secured his position as President for five years on 30 April 2002 with a majority vote of 97 percent in favour. There were many perceptions about the rigging and fraud. PPP and PML-N rejected the results. It was alleged to Musharraf stepped down immediately and he had no moral and political authority to continue in power as a President.

3.10 General Election and Election Campaign

General Elections for National and Provincial assemblies were held in October 2002. PPP, PMLN, and other political parties alleged during the election campaign, that their political workers had been targeted, harassed, and arrested and the campaign also erupted by the Musharraf government. Only MMA remained active in public gatherings due to its anti-US, anti-Musharraf sentiment in NWFP and Balochistan. MMA named these general elections a referendum among the Islamic forces and US agents, they also requested the public to vote for them for the Islamic system and to free the state from USA influence. MMA mainstreamed the madrasa in politics because they were running seminaries, so MMA used the students as political workers for election campaigns and madrasa as elections offices.³⁸⁷

General Pervez Musharraf used the administration, intelligence agencies, the Election Commission of Pakistan, the Media, and the National Accountability Bureau for changing the loyalty of ex-parliamentarians to the King Party PMLQ. The military administration forces the politicians to join the PMLQ, and also made changes in the

³⁸⁶"Justice Tariq Led To Resignation From The Balochistan High Court.," *Dawn*, April 15 2002.

³⁸⁷Misra, "Rise Of Religious Parties In Pakistan: Causes And Prospects."49.

bureaucracy to benefit the King one. They gave media projections to PMLQ, especially on PTV. Election Commission was also busy with the projection of the king party by showing the electoral symbol of PMLQ in the advertisement on PTV.

The Chief Ministers, Governors, Chief Secretaries, and Mayors were assigned a task by General Pervez Musharraf Executive to campaign for PMLQ, and Governor houses especially Governor offices in Sindh and Punjab provinces were used as election campaign offices.³⁸⁸ International Election Observer teams observed, Military administration rigged the election before and after Election Day. Government buses and staff were used to take people to polling stations to vote PML-Q.

3.11 Election Result and Formation of PMLQ Government

The voter turnout was 40 per cent according to the Election Commission of Pakistan, which was a very low turnout as compared to all previous general elections.

Table 4.3 Party position of elections 2002

Political party	Vote	Percentage	Number of Seats
PPP	7.39	25.1	62
PMLN	3.32	11.23	14
PMLQ	7.33	24.81	77
MMA	3.19	11.10	53

Source: General Election 2002 (Islamabad: Report of Election Commission of Pakistan, 2002) Volume No.1.96.

³⁸⁸Zafar Afaq Ansari And Abdul Rashid Moten, "From Crisis To Crisis: Musharraf's Personal Rule And The 2002 Elections In Pakistan," *The Muslim World* 93, No. 3/4 (2003).56.

Under high patronage, the PMLQ won 118 seats out of 342, the PPP got a large number of seats in Parliament but through the Pakistan electoral rules, they considered the PPP 2nd with 81 seats. MMA won 183 nominations for 272 seats in the National Assembly, out of which 45 were returned. After the women's and minority seats, the total number of MMA members in the House of Commons was 59, out of 342. Twenty-nine MMA candidates for the National Assembly were deemed successful and belonged to the NWFP.³⁸⁹

The province has a total limit of 35 members of the National Assembly. They got 52 seats (19.33%) in the National assembly with 11.1 % of votes but PMLN got only 14 seats (5.14 %) in the same assembly with almost the same percentage of votes i.e., 11.23 %. After the General Elections 2002, PMLQ's newly created party nominated his candidate Zafar Ullah Khan Jamali for Prime Minister Ship from Balochistan. Chief Executive Musharraf transferred some powers to Prime Minister.³⁹⁰ With 172 votes, Jamali beat out top MMA official Maulana Fazlur Rahman (86 votes) and PPP contender Shah Mahmood Qureshi (70 votes) for the Prime Minister ship. A constitutionally mandated December 2002 vote of confidence was won by Jamali.

The Provincial governments were established in November-December. Senate was elected at the end of February 2003 and resumed function on 12 March 2003. February 2003 Senate elections bolstered the position of the ruling coalition-leading PMLQ, which oversees a simple majority in the 100-seat body.³⁹¹ The new Chairman of the Senate had powers to take over the post of President in the event of a vacancy due to illness or sudden death of the President.

³⁸⁹Aisha Shahzad, "Ethnic Politics of MQM from 1980s till Election 2002," *Pakistan Perspectives* 18, no. 1 (2013).107.

³⁹⁰Pervez Musharraf, *In The Line Of Fire: A Memoir* (New York: Simon And Schuster, 2006).367-369.

³⁹¹Ranjeeta Phukan, "Pakistan's General Elections 2002," *Finance India* 19, no. 2 (2005).111.

It was time when the Constitution of 1973 was restored with the amendments of LFO. Pakistan came back with an elected government. All the political system was controlled by the President of Pakistan and the Army Chief with an unusual combination of a democratic polity. This situation gave him overriding clout in the polity.

3.12 Provincial Government setup

In Sindh PPP won 51 seats, PML-Q 14 out of 130 general seats, and MMA got 10 seats. Instead of PPP, PLMQ wanted a coalition government in Sindh province with MQM by using different tactics in Sindh. Ali Muhammad Mehar of PML-Q was named as Chief Minister of Sindh. The PPP MPAs were forced to join the ruling party. Even the MPA from the district of Hyderabad, Zahid Bhurgeri, was kidnapped and tortured by an unknown group when he refused to switch parties.³⁹² They opened corruption and murder cases against them to pressure them. Four of them were defected due to murder and corruption charges. When they changed their decision and joined the ruling party, all charges against them were removed. In NWFP MMA won an absolute majority of 55/99 and formed a government.³⁹³

In the NWFP provincial assembly, it came forward as the single largest party. MMA had 68 members in the house of 124 after figuring independents and women reserved seats and minorities. The alliance ensured success in making the Government in NWFP with 13 % of the total cast votes.³⁹⁴ Akram Durrani became the Chief Minister of NWFP. In Balochistan, MMA achieved 14 seats out of 51. General Pervez Musharraf moved quickly for MMA and PML-Q coalition government by complying with the preconditions of MMA to release two JUI-F Ministries, Haji Bechram Achakzai and

³⁹²Bashir Ahmed Jatoi, Irfan Ahmed Shaikh, And Waheed Akber Khaskheli, "Provincial Administrative Crisis In Sindh: Case Study Of General Pervez Musharraf Era," *Grassroots* 49, No. 2 (2015).105.

³⁹³International Crisis Group, "Pakistan: The Mullahs And The Military" (2003).17.

³⁹⁴Goodson, "Pakistan After Musharraf: The 2008 Elections."57.

Sardar Hafeez Luni, who was convicted of forgery and corruption charges. MMA was also successful in gaining important ministries in Balochistan provincial cabinet.³⁹⁵

All the winning runners of MMA in the Balochistan provincial assembly were belonging to JUI (F). The collective share of all the constituent parties thus increased the number of its seats. PMLQ appeared as the second-largest party with 11 seats.³⁹⁶ Akhtar Mengal took the oath as Chief Minister of Balochistan, and the third major group was independent candidates. MMA got 18 seats after adding the reserved seats and independents who joined MMA, as compared to 21 of PMLQ in the house of 65 members. The defeat of ethnic parties like BNP (Balochistan National Party) and JWP (Jamhoori Wattan Party) was also a remarkable change. On the Provincial level, PML-Q formed the government in Punjab and Pervez Elahi was appointed as Chief Minister

3.13 Framing the Central Government

The religious party MMA formed a coalition government in the centre, formed a Government in NWFP Province and Balochistan also became a coalition partner in the provincial government. The new National Assembly leading three national parties, PPP, PMLQ, and MMA, sat in November 2002 and engaged in collation building but ultimately fail because the secular PPP and progressive religious parties rejected the constitutional engineering through LFO (Legal Framework Order).^{397,398}

The Pakistan Muslim League (Q) emerged as the dominant party in the National Assembly of Pakistan with 118 seats. The second biggest party was the PPP with 80 seats, and the third biggest was the MMA with 59 seats, none of which alone was in the

³⁹⁵Group, "Pakistan: The Mullahs And The Military."18.

³⁹⁶Muhammad Hassan And Saeed Ahmed Rid, "Political Turmoil In Balochistan During The Musharraf Era, 1999-2008," *Pakistan Journal Of History & Culture* 41, No. 1 (2020).41.

³⁹⁷K Alan Kronstadt, "Pakistan's Domestic Political Developments" (2005).16.

³⁹⁸"Musharraf Regime Panicked by Surprise Secular-Islamist Deal: Analysts."November 6, 2002.

capacity to form a government. As articulated by the PPP's top leadership for MMA, the chances of cooperation between the two parties became unlikely, which was already quite difficult.

3.14 MMA demand the step down of General Musharraf as COAS

Qazi Hussain Ahmad refused to agree with NSC and LFO but offered to elect General Musharraf as constitutional President, in cooperation with PML-Q, if General Pervez Musharraf gives a date to step down from the position of COAS. He was already involved in a strategy of collaboration with Washington that should be debated in Parliament. MMA also attempted to negotiate with PML-Q to form a coalition government in the centre but failed to achieve any agreement with PML-Q. The military regime appears to be trying to settle an agreement with MMA for the establishment of the central government; however, the talks suffered due to MMA's argument that General Musharraf should resign as COAS, and a specified date for General Musharraf to relinquish power.³⁹⁹

The partnership also wanted the termination of the pro-US policy embraced by General Pervez Musharraf. All these conditions were too high for General Pervez Musharraf to satisfy. Maulana Fazal-ur-Rahman had reservations about the package of constitutional changes made by General Musharraf, the US bases in Pakistan, and the involvement of FBI Kamran Aziz Khan. He was able to give his support to General Pervez Musharraf in return for his establishment as Prime Minister Maulana Fazal-ur-Rehman, along with General Pervez Musharraf, was interested in Prime Minister so Maulana Fazal-ur-Rehman promoted a versatile approach to the formation of a central

³⁹⁹"Pakistan's Domestic Political Developments."18.

government. Pressure from JUI-F, MMA has announced that it did not recognize anybody as Prime Minister except Maulana Fazal ur Rehman.

General Pervez Musharraf, the proposed coalition government of the PMLQ and the MMA, was in the centre.⁴⁰⁰ Second, the post-September situation would adversely impact the international sharing of power with MMA. The Second MMA was demanding the role of Prime Minister for Maulana Fazal ur Rehman, and he was unreasonable both domestically and internationally. General Pervez Musharraf enabled the PML-Q to be in rule.⁴⁰¹ The subsequent struggles of intelligence agencies, some autonomous members of the National Assembly, and multiple parties show a willingness to work in partnership with Zafarullah Jamali, who was a hand-picked person of pro-military PML-Q for the role of Prime Minister. But on the other side, GHQ also prepared the turncoats from the PPP to facilitate PML-Q to form the government at the federal level. PML-Q also received funding from MQM, which won 17 seats in the National Assembly. General Pervez Musharraf had agreed to suspend the anti-defection clauses of the Constitution to benefit the pro-military group PML-Q from forming a government at the federal level.

3.15 General Pervez Musharraf leaned to Religious Organizations

General Pervez Musharraf was fully aware of the religious sector and its power. In the past, they were a strong game-changer in the Bhutto regime. So, neutralizing the religious parties Musharraf withdrew the criminal cases against them. The military government banned public rallies and student unions, but General Pervez Musharraf permitted religious madrasas for the campaign. The Sipha Sahba Pakistan banned Sunni extremist party leader Maulana Azim Tariq, who was facing several sectarian murder charges, was

⁴⁰⁰Ibid.25.

⁴⁰¹Ashok K Behuria, "How Military Dominates The Political Space In Pakistan: A Study Of Musharraf's Rule (1999-2008)," *Journal Of Peace Studies* 16, No. 1-2 (2009).119.

assigned bail from jail after winning the election and set on the government bench in parliament.⁴⁰²

On the other hand, the military Government brought a false case against the PML-N, PPP, and suspected politicians. Aftab Ahmed Khan Sherpao, the former leader of the PPP was allowed back to the country as he was exiled on corruption charges after the General Pervez Musharraf coup. He agreed to join the pro-Musharraf contracted democratic civilian Government and become water and power minister.⁴⁰³

General Pervez Musharraf wanted to introduce a set of amendments to the constitution by the LFO to institutionalize the army and maintain political dominance. It was designed at tilting control and authority from the leader of the government throughout the parliamentary constitution to the head of the state President. Through General Pervez Musharraf, the LFO imposed restrictions on the establishment and membership of political parties for the preservation of Public Order. The MMA and General Pervez Musharraf were in a deal General Pervez Musharraf wanted the ultimate power, and legitimization as a President to institutionalise the military in politics and state institutions, and the MMA needed to become an active part of mainstream politics. So Military and MMA were on the same platform holding their interests.

3.16 National Assembly and Opposition

More than one year passed although the National Assembly was fully seated. For procedural issues body was fully convened. But the legislation was passed during this period and that was the Budget. When the National Assembly convened, the mainstream political parties and opposition parties, PPP, PML-N, and MMA claimed the restoration

⁴⁰² M Asghar Khan, *We Have Learnt Nothing From History* (Karachi: Oxford University Press, 2005).105.

⁴⁰³ Matthew J Nelson, "Pakistan In 2008: Moving Beyond Musharraf," *Asian Survey* 49, No. 1 (2009).75.

of the Constitution and the right of Parliament to review the LFO. Opposition Parties boycott and disrupt the assembly proceeding when Musharraf leads the civil Government to reject their demands.⁴⁰⁴ Initially, Government decides to go into negotiations with MMA, PPP, and PML-N but PPP, and PML-N opted for no negotiations until and unless General Pervez Musharraf stops the persecution and releases the exiled leader of the parties.

ARD also demands to end the interference of ISI in the political process. Makhdom Javid Hashmi the opposition political figure as well as the prominent leader of ARD was arrested in October 2003, after he publicized the letter of an army officer in which he criticized General Pervez Musharraf's policies. The court sentenced him to 23 years in prison on charges of sedition, forgery, and mutiny.

3.17 Opposition Government demand for the resignation of Musharraf

The political developments after the 2002 Elections paved the way for a political deadlock in parliament. The major reason for the political deadlock was the controversy over the Legal Framework Order (LFO) between Government and the opposition parties.⁴⁰⁵ LFO proposed to validate all the steps taken by the Chief Executive of Pakistan since 12 October 1999. The validation by one man instead of the parliament was the core issue between the opposition and General Musharraf.⁴⁰⁶

National Assembly was in speculation about the LFO. Opposition parties like MMA, PPPP, and PML-N had been working and advocating for the restoration of the 1973 Constitution and had been opposing the amendments made by General Musharraf.

⁴⁰⁴Khan, "17th Constitutional Amendment & Its Aftermath: The Role Of Muttahida Majlis-I-Amal (MMA)."117.

⁴⁰⁵Ian Talbot, "Pakistan in 2003: Political Deadlock and Continuing Uncertainties," *Asian Survey* 44, no. 1 (2004).102-105.

⁴⁰⁶Zafar, *Dialogue: On The Political Chess Board*.35.

The General Pervez Musharraf government wanted to have dialogues on LFO with two mainstream parties, Pakistan People's Party Parliamentarians (PPP) and Pakistan Muslim League, Nawaz Group (PML-N), but it failed to bring them to negotiations. The Government persuaded MMA and found it willing to negotiate. Each side decided to settle numerous issues, including the President's uniform, his discretionary control over the National Assembly; the establishment of the National Security Council (NSC), the legitimacy of the 2002 presidential referendum, and the enhancement of the retirement age of the justices. Consequently, the MMA and the ruling party, PML-Q, established a committee at the level of the National Assembly to agree on LFO.⁴⁰⁷

General Musharraf introduced 29 amendments under LFO into the constitution. Seven controversial points out of 29 constitutional amendments introduced by the LFO were sorted out by the two sides' negotiating teams. Those were Article 41(7) on the election of the President and the holding of two offices, Article 58(2) (b), and Article 112 on the dissolution of National and Provincial assemblies by the President and Governors. Article 152-A dealt with the National Security Council and the President's authority to nominate high-ranking officeholders, Articles 268 and 6 of the Schedule concerned provincial assemblies which, with the President's approval, required them to amend those laws. Articles 179 & 195 addressed the extension of the retirement age of the Superior Judges and Article 270-AA legitimized the 2002 Presidential Referendum along with all other amendments made after 12 October 1999 by General Musharraf.⁴⁰⁸ MMA was arguing that LFO should be recognized as invalid and all provisions of it were presented in the Parliament and got passed in it.

⁴⁰⁷David Chandler, "The Road To Military Humanitarianism: How The Human Rights Ngos Shaped A New Humanitarian Agenda," *Hum. Rts. Q.* 23(2001).13.

⁴⁰⁸Zafar Dialogue, 53-53.

MMA had several sessions of talks with Chaudhary Shujaat Hussain, Chairman of PMLQ, about LFO. However, the talks faced a deadlock whenever General Musharraf kept on serving as President as well as COAS and declined to offer any clear date for the release of his uniform.⁴⁰⁹

The PML-Q controlled Government had claimed that the LFO was a part of the Constitution as the Apex Court of Pakistan had bestowed the powers to amend the Constitution to General Pervez Musharraf after the *coup d'état* of October 1999. While the opposition rejected this argument saying that the Constitution could only be amended by Parliament with a two-thirds majority. The Government again sent an invitation to MMA for negotiations which also showed some flexibility on the issue of uniforms.⁴¹⁰

The dispute was settled between the opposition governments and ruling governments after 14 months of struggle, with the condition of an altered version of the LFO and the resignation of General Pervez Musharraf from the army commission before the end of 2004. LFO finally passed in December 2003 and became part of the Constitution as the 17th amendment.⁴¹¹ After passing the LFO, General Pervez Musharraf complies with the Pakistan Electoral College for the vote of confidence and he legitimizes his presidency till 2007 by getting about sixty percent of the votes in favour. All opposition parties unite under the ARD (Alliance for Restoration of Democracy) and accused the MMA of supporting the passing of the controversial LFO as the 17th amendment to the Constitution.

⁴⁰⁹ Interview with Qazi Hussain Ahmad in Dawn, 15 April 2003.

⁴¹⁰ Abid Ullah Jan, *The Musharraf Factor: Leading Pakistan to Inevitable Demise* (New Dehli: Pragmatic Publishing, 2005).39.

⁴¹¹ Lawrence Ziring, "Pakistan at the Crosscurrent of History (Lahore: Vanguard, 2004).365.

3.18 Formation of National Security Council

General Pervez Musharraf made a key change in the original LFO 2003 by removing the NSC because the military government created it through legislation instead of the Constitution. The bill was drafted and presented in the National Assembly in January 2004. All opposition parties opposed the bill and said the NSC was the check on Parliament, but the bill was passed in April, and opposition parties failed to prevent it.⁴¹² According to General Pervez Musharraf, the NSC would reduce the risk of military intervention in the future. JUI-F leader and position holder of NSC was absent and boycotted the inaugural session of the National Security Council so that which made General Pervez Musharraf panic and unhappy.

3.19 Shahbaz Sharif's Attempt to return to Pakistan

In May 2004, the former Punjab Chief Minister, Mian Shahbaz Sharif, managed to return, though in exile. However, after two hours through Lahore airport, he was immediately deported to Saudi Arabia.⁴¹³ Over 5000 PMLN fans and staff assembled at the airport to welcome him, but the Lahore police detained more than 2,000 workers and prevented them from going to the airport.

3.20 Mullah- Military Alliance

Later, the JUI-F Chief Maulana Fazal-ul Rahman and the military again on the same platform after negotiations and patch-up, this deal was famous as Mullah- Military Alliance.⁴¹⁴ But this alliance was not satisfactory because MMA was continuing tensions

⁴¹²Sulakshan Mohan, *Pakistan Under Musharraf* (New Dehli: Indian Publishers Distributors, 2004).211.

⁴¹³Muhammad Nawaz Shahzad and Rizwan Ullah Kokab, "Political Parties: A Factor Of Stability In Pakistan 1999-2008," *Asian journal of social sciences & humanities* 2, no. 4 (2013). 348-358

⁴¹⁴Aasim Sajjad Akhtar, Asha Amirali, And Muhammad Ali Raza, "Reading Between The Lines: The Mullah-Military Alliance In Pakistan," *Contemporary South Asia* 15, No. 4 (2006).45.

with General Musharraf, and he was in search of a trustworthy and loyal partner to administrate.

3.21 General Musharraf and PPP leadership Secret deals

At the end of 2004, General Pervez Musharraf and PML-Q were trying to patch up opposition parties. The PPP was supportive at the time of the Musharraf coup, so General Musharraf also wants to negotiate with the PPP leadership. The top leadership of the PPP and the military were in contact for future dealing.⁴¹⁵ Asif Ali Zardari, the husband of former Prime Minister Benazir Bhutto, who was in jail for 8 years under criminal and corruption charges, was assigned bail by the Supreme Court, after some time, his name was also removed from the ECL. He was allowed to leave this country. The Pro-Musharraf civil government granted a pardon to Makhdom Javid Hashmi, who was sentenced to 23-year prison.

3.22 Political Situation in Balochistan and Akbar Bugti Demands for resources

The political situation was unstable in Balochistan. Some political activists demanded the right to national resources in their province of Balochistan. Pakistan army was developing army infrastructure for the defence process. Meanwhile, Dr Shazia Khalid's rape case came to the scene in March 2005. Akbar Bugti⁴¹⁶ gave a strong response to this issue.⁴¹⁷ Later on, Akbar Bugti was murdered on 26 August 2006 in an army operation. This incident changed the political situation in Balochistan province. With the passage of

⁴¹⁵Mohamed A El-Khawas, "Musharraf And Pakistan: Democracy Postponed," *Mediterranean Quarterly* 20, No. 1 (2009).27.

⁴¹⁶Nawab Akbar Shahbaz Khan Bugti 12 جنوری 1927 – 26 اگسٹ 2006 was the Tumandar (head) of the Bugti tribe of Baloch people who served as the Minister of State for Interior and Governor of Balochistan Province in Pakistan. He also became minister of state for defence in the cabinet of Feroz Khan Noon.

⁴¹⁷Abul Sattar, " Killing Of Pakistani Tribal Chief Sparks Fury And Fears Of War," *The Guardian* 24 February 2012.

time situation became worse. Balochistan's instability did not improve till the last days of military rule.

3.23 Shuffling of Prime Ministers

General Pervez Musharraf was not satisfied with Mir Zafar Ullah Khan Jamali as Prime Minister due to his lack of enthusiasm on key issues of NSC and ineffectiveness in the continuation of General Pervez Musharraf as President. General Pervez Musharraf forced Mir Zafarullah Khan Jamali to resign. The resignation of PM Mir Zafar Ullah Khan Jamali was called a smooth Sacking. Jamali also nominated Chaudhary Shujhat Hussain as his successor; Shujhat Hussain's term was just transitional. Senator and finance minister Shaukat Aziz submitted his nomination for Prime Minister.⁴¹⁸ The opposition political parties nominated the PPP leader Makhdom Javid Hashmi as Prime Minister. Javid Hashmi could not attend the vote due to the ruling of the National Assembly speaker and Shaukat Aziz won 192 votes out of 342, while the opposition boycotted the process and chanted sham democracy.

Shaukat Aziz was a fit and suitable person for the position of Prime Minister because the military also gave preference to a task-oriented technocrat, who had a little grip over national and international politics. During 2002-2007, in these five years, the Executive promulgated 134 Presidential Ordinances, but National Assembly passed only 51 bills.⁴¹⁹ Under General Pervez Musharraf, the country converted into a semi-presidential instead of parliamentary democracy. It was not according to the will of the people. It was the authoritarian pattern of Government in which one man controlled the

⁴¹⁸Chandler, "The Road To Military Humanitarianism: How The Human Rights Ngos Shaped A New Humanitarian Agenda."57.

⁴¹⁹Sher Muhammad And Mussarat Jabeen Kousar Shafiq, "Gender Vs Party Ideology: A Study Of The Legislative Priorities Of Female Legislators Of Religious Political Parties In The12th National Assembly Of Pakistan," (2018).32.

transition process. It was a democratic regime, and all democratic instruments were working. Here it could be easily noted the transition process was designed in such a way that power-sharing was with the section of political leaders and not with civilian political leaders.

3.24 Anti-Musharraf campaign

Political parties launched the anti-Musharraf campaigns and channelized their party workers into countrywide protests and rallies. In the context of the judicial crisis, a full-fledged political crisis was the best time for political parties to compel General Pervez Musharraf into negotiations or bargaining. Pakistan People's Party and PML-N were remarked as anti and pro-Musharraf, but anti-democratic forces removed this difference between these two mainstream political parties. In 2002 PPP and PML-N came closer when Benazir Bhutto and PML-N representative Ishaq Dar started negotiations on extensive intraparty consultancy for restoring the custom of Democracy in Pakistan. Both political parties decided to join hands against the dictatorship and eliminate it forever in the future. They pledged the transformation of power from Military dictatorship to elected Parliament.

Benazir Bhutto visited Jeddah to meet with Nawaz Sharif, as well as strengthen the negotiation process in 2005. Both parties' leadership unanimously formed future strategies to ensure good governance and strengthen the real spirit of democracy. PPP and PML-N with the support of other political parties and civil society reached an agreement.⁴²⁰ The exchange of negotiations and democratic forces resulted in the

⁴²⁰Zulfiqar Ali, "Contradiction Of Concordance Theory: Failure To Understand Military Intervention In Pakistan," *Armed Forces & Society* 40, No. 3 (2014).107-110.

organization of 15 political party alliances in 2005, named as Alliance for Restoration of Democracy (ARD).

3.25 Lal Masjid & Jamia Hafsa Confrontation

Lal Masjid and adjoining madrasa for women Jamia Hafsa became an issue and created a strange situation in Islamabad. In January 2007, the administration of the Masjid started a parallel decision.⁴²¹ They conducted a raid against brothels, corrupt police officials, and suspected prostitutes. It was said that in April 2007 Islamic Court was setup. Till July 2007, there was a confrontation between the Government and the administration of Lal Masjid.⁴²²

3.26 Magna Carta of Pakistan

The Magna Carta of Pakistan was signed finally by two mainstream parties PML-N and PPP in London in 2006. This was the third important document in the political history of Pakistan after the objective resolution 1949, which dealt with almost every aspect of the Constitution of 1973, especially to revive its true spirit. It was built on the consensuses of most of the political parties for the restoration of parliamentary democracy. Both parties were committed to reversing the amendments which were made by the pro-Musharraf civil Government in the Constitution of 1973.

Benazir Bhutto and Nawaz Sharif both also agreed on the merit base judicial appointments. The Charter of Democracy appeared as a new window for the political, constitutional, and democratic process. It seems as if political parties have articulated a

⁴²¹Syed Manzar Abbas Zaidi, "'Red Trigger': Lal Masjid and Its Aftermath," *International Journal of Terrorism & Political Hot Spots* 6, no. 1 (2011).112-114.

⁴²²Adam Dolnik and Khuram Iqbal, "Lal Masjid."

process of democratic transition. The features of the Charter of Democracy are the following:

1. The original Constitution of 1973 shall be reinstated with all requirements including joint electorates, minority and women recovered seats, the reduction of the voter's age and increase in the number of parliamentary seats, and repeal of the 17th constitutional amendment accordingly.
2. The selection of provincial governors, Chief Justice, and three services Chiefs shall be made by the Executive authority (Prime Minister), as prescribed by the original constitution.
3. To give more effective representation to minorities, the number of Senate seats shall be increased.
4. With mutual consultation, the FATA shell is incorporated in NWFP (presently Khyber Pakhtunkhwa).
5. The northern region shell is treated as a special case by empowering the Legislative Council to facilitate the people for easy justice and human rights.
6. Through Provincial Election Commissions of every respective province, the local body election, on a party basis, will be held soon, and these bodies will be made answerable to the people and these assemblies.
7. Complete independence for press and electronic media will be ensured.
8. The leader of the opposition would be responsible to appoint the chairman of the Account Committee in the National and Provincial assemblies.

9. Simplicity would be practised at all levels and the Governors would be empowered to facilitate the general people.
10. Equal opportunities would be provided to a depressed class, minorities, underprivileged people, women, etc.
11. The public mandate of the Government would be respected; no extra-constitutional measures would be taken to topple any representative rule or to weaken it.
12. It was solemnly pledged that no political party would ever join a military regime or any military supporter government.
13. An open identifiable voting system would be started to reduce corruption and floor crossing.
14. All parliamentarians and senior officials including military and judicial officers would require the public to their assets and declare their income to make them accountable.
15. To promote and widen the democratic mores, the National Democracy Commission would be formed. It would educate the political actors for their capacity building on the grounds of their representation in the Legislature.
16. The Prime Minister after a mutual discussion with the Opposition leader would put forward three names to choose the Chief Election Commissioner.

- 17. To conduct free and fair elections, an unbiased caretaker government would be established while any members of the caretaking setup would not be able to take part in the coming elections.
- 18. All political parties and personalities would be able to take part in the Elections.⁴²³

General Pervez Musharraf called Nawaz Sharif and Benazir Bhutto's agreement ironic because he thinks *Junta* believed that PPP and PMLN proved themselves the worst enemies of democracy during their governments. The Information Minister Muhammad Ali Durrani stated on one occasion, that the political agreements could only be signed by elected representatives, but PML-N and PPP already rejected their political adventurism⁴²⁴ The time was not favourable for General Pervez Musharraf, so he decided to develop a political understanding of PPP and PML-N. The PPP was lenient to General Pervez Musharraf; he also showed his intention to develop a political understanding with Benazir Bhutto on many occasions. General Pervez Musharraf wanted mutual understanding but with conditions because he was conscious of his role in the next political term as President.

The former Prime Minister Benazir Bhutto was worried about the cases which were filed against her and her husband Asif Ali Zardari, and all of those were pending in National Accountability Bureau and Courts. Initially, the dialogue failed between General Pervez Musharraf and Benazir Bhutto because of Benazir Bhutto's condition for coming into Government but only excluded the latter from the political spectrum. Benazir Bhutto's concern was free acquittal from the cases against her and their husband Asif Ali

⁴²³Aslam Pervez Memon Et Al., "Political Instability: A Case Study Of Pakistan," *Journal Of Political Studies* 18, No. 1 (2011).31-34.

⁴²⁴Ali, "Contradiction Of Concordance Theory: Failure To Understand Military Intervention In Pakistan."27-30.

Zardari. She did not want to handle such cases in the future because these would have kept them away from politics.

3.27 PML-Q and MQM Alliance

After the PPP, General Pervez Musharraf on touched another choice for the formation of the next government. He prepared a stage for the coming election and Government and the purpose managed PMLQ, MQM, and some members of the PPP alliance.⁴²⁵

3.28 General Pervez Musharraf and Benazir Bhutto deal

Under domestic and foreign pressure, Musharraf offered another package to Benazir Bhutto for a patch-up. PPP was politically in a strong position due to a historic accord with PML-N a Charter of Democracy. General Pervez Musharraf wanted to legitimize his position as a President, so he later agreed to compromise with PPP conditions.⁴²⁶ Benazir Bhutto moved forward and signed an accord with General Pervez Musharraf because she knew well her political future could be mature if she could get rid of all those previous pending cases, which were filed against her and Asif Ali Zardari from 1988 to 1999 in NAB and Courts. Benazir Bhutto also knew General Pervez Musharraf's survival near the closing stages. She took the edge of this opportunity and signed a power-sharing deal with General Pervez Musharraf.⁴²⁷ General President also knew his political survival, political setup, and international matters could only be possible in a political deal with PPP. Both agreed finally on a political power-sharing deal, that deal between General Musharraf and Benazir Bhutto called National Reconciliation Ordinance (NRO).⁴²⁸

⁴²⁵Shahzad And Kokab, "Political Parties: A Factor Of Stability In Pakistan 1999-2008."96-98.

⁴²⁶S Akbar Zaidi, "Musharraf And His Collaborators," *Economic And Political Weekly* 42, No. 45/46 (2007).

⁴²⁷Husain Haqqani, "History Repeats Itself In Pakistan," *Journal Of Democracy* 17, No. 4 (2006).17-19.

⁴²⁸Muhammad Iqbal Chawla, "Era Of" Reconciliation" In Pakistan, 2006-2017: A Critical Reappraisal," *Journal Of The Research Society Of Pakistan* 54, No. 2 (2017).54-57.

In pursuance of the NRO, General Pervez Musharraf issued a Presidential Ordinance to accommodate the PPP, through this NRO General Pervez Musharraf declared null and void all the cases which were pending against the politicians, and bureaucrats, but he fixes the duration from 1988 to 1998 to avoid the PMLN.

3.29 PPP and Charter of Democracy

The deal between General Musharraf and Benazir Bhutto was considered a violation of all those agreements which the PPP signed with other political parties, especially the violation of the signed accord of the Charter of Democracy with PML-N. According to civil society and political intellectuals, General Pervez Musharraf used NRO to disunite the political parties against him, and this was the only solution for future politics that he used for dividing the political parties. The unities of opposition political parties were a big threat to him and the PML-Q government. General Pervez Musharraf could bear the Benazir Bhutto but not Nawaz Sharif and Benazir alliance. When the PML-N and other political parties criticized her, she said this is just accommodation with General Pervez Musharraf to drag back democracy and parliamentary supremacy to Pakistan.⁴²⁹

. The reality was these international game changers, and the domestic military played a vital role in the Musharraf-Benazir power-sharing settlement.⁴³⁰ General Pervez Musharraf was under pressure internationally and domestically because the Judiciary, political parties, civil society, lawyers, and as well laymen were on the road against General Pervez Musharraf's government. He also lost trust in the military, so he needed to find a way to inform of a patch-up or power-sharing deal with the PPP. General Pervez Musharraf allowed exiled Benazir Bhutto to return and participate in the election.

⁴²⁹Gilles Boquérat, "The Democratic Transition In Pakistan Under Stress," *Asie Visions* 13(2009).87-90.

⁴³⁰Condoleezza Rice, "No Higher Honour: A Memoir Of The Year In Washington," 2012. 342-344.

3.30 Announcement of next General Elections

The PML-Q-led government ended on 15 November 2007 after completing its five-year term. The process for the upcoming elections was on the right track. Mr Justice Qazi Muhammad Farooq was appointed as the new Chief Election Commissioner. He after taking over his charge proclaimed the election process would start by 21 November 2007 with the Election Commission accepting nomination papers from 21 November 2007 to 26, November.

The election of both the National and Provincial Assemblies would take place simultaneously and the final list of candidates would be published on 16 December 2007.⁴³¹ Initially, the Election Commission of Pakistan proclaimed that the election would be held on 8 January 2008.⁴³² General Pervez Musharraf appointed his ally Muhammad Mian Soomro the Chairman of the Senate, as caretaker Prime Minister during the elections period.

Various experts opinion the caretaker cabinet was being fixed with partisan Musharraf supporters and would further damage the hopes for reliable elections. There had been many rumours about the efforts of the Government to pre-rigging the elections. Around 13,500 candidates filed papers to vie for Pakistan's 272 elected National Assembly seats, and 577 Provincial Assembly seats. The National Assembly had 342 seats, with 60 reserved for women and 10 for non-Muslims. Opposition political parties were in a difficult position whether to contest the elections or to boycott the elections process by protest.

⁴³¹Fahmida Mirza, "A Milestone in Pakistan's Parliamentary Democracy," *The Parliamentarian Journal of the Parliaments of Commonwealth*, Issue one 92(2011).14-18.

⁴³²"Pakistan: A Land of Systematic Disappearances."

3.31 Pakistan under Political Crisis

The time was not in favour of General Pervez Musharraf, because he opened so many loose holes at the same time and increased difficulties against his regime. The dismissal of the Chief Justice further added fuel to the fire; political parties were already united against him, and the suspension of the Chief Justice united the lawyers, judges, civil society, and political parties.⁴³³ The Lal Masjid issue, the war on terror and the murder of Nawab Akbar Bugti; restrictions on the media, false cases against politicians; the arrest of lawyers, students, and civil society defamed General Pervez Musharraf. According to the Dawn survey, 65.2 per cent population wanted Musharraf to step down and hand over power to the civil administration.

3.32 Presidential Election 2007

President General Pervez Musharraf wanted to continue his regime. But the media and Judiciary created too many hurdles in the reelection of the President. He made a plan to elect from the present Assembly. A presidential election was held in Pakistan on 6 October 2007.⁴³⁴ Parliament elected Pervez Musharraf by an overwhelming majority. This majority was due to the absence of mainstream political party leadership. Nawaz Sharif and Benazir Bhutto attempted to return to Pakistan. Benazir Bhutto has made a dialogue with President Pervez Musharraf to return to Pakistan for participation in the General Elections.⁴³⁵ National Re-Conciliation Order was issued between the Government and PPP leader Benazir Bhutto. Under this deal PPP leader, Amin Faheem did not contest the Presidential Elections. There was a petition against Pervez Musharraf for the dual post held by him. The Superior Court was permitted to be re-elected by the

⁴³³"Musharraf Targets Key Opponents," *BBC News*, 4 November 2007.

⁴³⁴Ahmed Rashid, "Pakistan's Uncertain Year Ahead," *BBC News*, 10 January 2007.

⁴³⁵Walsh, "Supreme Court Says Musharraf Can Stand."

existing Parliament. The Election Commission checked the papers of presidential candidates and approved the list of presidential candidates on 1 October 2007. Pervez Musharraf won the elections by gaining 671 votes out of 1170.

3.33 State of Emergency 2007

Under the critical circumstances and law &order situation, General Pervez Musharraf imposed a state of emergency one time again on 3 November 2007 and launched a second coup by suspending the Constitution and assuming emergency powers in his role as both Army Chief and President.⁴³⁶ The order of emergency was lifted on 15 December. But experts find little evidence that the orders lifting led to important change, assuming they see as oppressive media curbs and a stacked Judiciary. On the day before the General action, Musharraf issued numerous rulings and made amendments to the Constitution, some of which would confirm that General Pervez Musharraf's actions under emergency rule could not be challenged by any court.

3.34 General Elections 2008 and Democratization

It was a transition towards democracy. After the presidential election, Federal Government made mind to conduct general elections. The Federal Minister of Parliamentary Affairs Sheer Afghan Niazi announced the general election of National and Provincial Assemblies on January 30, 2008. These elections were studied with interest as the battle between Islamic and religious political parties and liberal parties in the West. Many social scientists had the opinion that these religious parties were dependent variables determined by the army. The question was in mind what the future of MMA in this election would be. There was a deal finalized between Government and

⁴³⁶"Musharraf Vows Polls In February," *BBC News*, 8 November 2007.

Pakistan People's Party. The amnesty was awarded to Benazir Bhutto in corruption cases upon arrival in Pakistan on 18 October 2007.⁴³⁷

3.35 Benazir Bhutto's return, political campaign, and assassination

After the power-sharing deal or settlement with General Pervez Musharraf had been done, Benazir returned to Pakistan after 8 years of her exile on 18 October 2007. After her return, she engaged in the political campaign for the upcoming General Election. She was elected twice as Prime Minister of Pakistan, in 1988-1990 and 1993-1996. Along with another member of the PPP she was on a political campaign and there were strong chances of her selection as the next Prime Minister in the 2008 national elections.⁴³⁸ But, unfortunately, she was assassinated on 27 December 2007⁴³⁹ during the Elections campaign after her address to PPP workers in Liaqat-bagh Rawalpindi by a terrorist attack.⁴⁴⁰ After the news of the assassination of Benazir Bhutto, a massive public protest was started throughout the country that caused horrific violence and a shutdown of all services. At that time, the author was a student in the master's program at BZU Multan, and she had a final term exam. The situation was alarming; the university administration issued an order to vacate all the hostels as soon as possible. Most of the hostels were put on fire after confirmation of the news of Benazir's assassination. The Peoples student federation (PSF), which was the sub-branch of PPP, forced the students to leave the exam and protested along with them. The final exam due to this situation was postponed. In Sindh, Karachi, and Multan a serious riot occurred. Under this uncertain situation, the

⁴³⁷Zahid Hussain, *Frontline Pakistan: The Path To Catastrophe Amd The Killing Of Benazir Bhutto* (New Dehli: Penguin Books India, 2008).36.

⁴³⁸"Seven Judges Reject PCO Before Being Sent Home."

⁴³⁹Yasir Hussain, *The Assassination Of Benazir Bhutto* (Lahore: Epitome Books, 2008).245.

⁴⁴⁰Carlotta Gall Salman Masood, "Bhutto Assassination Ignites Disarray," *The New York Times*, December 28 2007.

election commission of Pakistan set a meeting for the decision of the national election, and confirmed the date, after the meeting ECP announced general election was delayed until the end of February 2008.

3.36 Election Confirmation by the Election Commission of Pakistan

General Pervez Musharraf was under pressure from democratic forces inside the country and foreign elements forced him to assure free and fair elections in the country. The Election Commission of Pakistan announced the new date for national elections on 18 February 2008. The tide against the pro-Musharraf political party resulted in favour of the PPP-led government.

3.37 General Elections 2008

It was a common belief that no party would be able to gain seats in the 2008 general elections, which were required to shape the government. During the election campaign, the Muslim League Nawaz PML-N was unable to adopt a coherent political strategy. Religious parties were not aligned as they had been in the 2002 elections. Pakistan People's Party, Pakistan Muslim League-N, MQM, Pakistan Muslim League-Q ANP, JUI as well as some other parties took part in the elections.⁴⁴¹ Some groups, such as Jamaat-e-Islami Pakistan, Jamiat Ulema-e-Pakistan, Tehrik-e-Jafaria Pakistan, Tahrik-e-Insaf, and Jamiat Ahle Hadith, did not take part and boycotted the 2008 national election.⁴⁴² The election-contesting candidate's scrutiny process was defective in Pakistan. There were no checks and balances on the loan defaulters to contest elections. There were serious

⁴⁴¹Iffat Humayun Khan, "Electoral Malpractices in Pakistan: A Case Study of the General Elections 2008," *Pakistan Journal of History and Culture* 31, no. 2 (2010).23-26.

⁴⁴²"Pakistan Opposition Parties Announce Boycott Of Polls."

allegations on the voter lists in Pakistan. Gerrymandering⁴⁴³ was a principle adopted in this election against free and fair elections.

As a first step towards reconciliation, as suggested by COD, both PPP and PML-N had completed their seat adjustments in the different 25 constituencies of the country. It seemed that both formal rivals and Prime Ministers i.e., Benazir Bhutto and Mian Nawaz Sharif were serious enough to join hands together to secure a majority of votes with each other's support. The leader of PML-N, Ishaq Dar, and PPP's leader, Makhdom Amin Fahim, have played a vital role in creating a consensus for these seat adjustments. As expected, the PPP won the elections, however, did not get an absolute majority and needed to enter a coalition with other political parties to form the Government. Consequently, the PPP started negotiations with the PML-N which won the second-most seats during the elections.⁴⁴⁴

3.38 General Election 2008 Result

Elections were held on 18 February 2008 and were considered the fairest since those of 1970. About 35.2 million people cast a vote and the turnout was 44.0 percent. The result was in favour of PPP and PML-N. Both political parties emerged two largest parties in the 2008 general elections. According to election results for 2008, the PPP won 91 seats out of 258 National Assembly seats. PML-Q was the second-largest party in terms of votes, however, captured only 41 seats. PML-N was second in terms of seats securing 67.

⁴⁴³ Gerrymandering is a practice intended to establish an unfair political advantage for a particular party or group by manipulating district boundaries, which is most commonly used in first-past-the-post electoral systems. Two principal tactics are used in gerrymandering: "cracking" (i. diluting the voting power of the opposing party's supporters across many districts) and "packing" (concentrating the opposing party's voting power in one district to reduce their voting power in other districts).

⁴⁴⁴ Muhammad Rizwan, Muhammad Arshid Rafiuddin, and Muhammad Waqar, "Democratic Milestone in Pakistan: A Serene Transition of Command from PPP to PML-N," *Journal of Humanities and Social Sciences* 19, no. 2 (2014).

MQM, ANP, and MMA secured 19, 10, and 06 seats respectively.⁴⁴⁵ PML-F could secure only 4 seats. PPP-S, NPP, and BNP-A were the parties that secured just one seat each to their credit. Eighteen seats were won by independent candidates.⁴⁴⁶

The occurrence of the assassination of Benazir Bhutto altered the electoral role and its turn in the support of the PPP and the widower of Benazir Bhutto, Asif Ali Zardari, who became the Co-Chairman of the Pakistan People's Party and later became President of Pakistan. Elections for 23 provincial and 5 national seats were delayed many times, most of which were held on 26 June 2008.

Table 3.4 National Assembly seats

Provinces	General Seats	Women Seats	Technocrats Seats	Total Seats
Punjab	148	36	15	198
Sindh	61	14	6	81
Balochistan	14	3	1	18
KPK	35	8	3	46
Capital	02	-	-	-
FATA	12	-	-	-
Total	272	69	25	375

Source: General Election 2008 (Islamabad: Report of Election Commission of Pakistan, 2008) Volume No.2.106.⁴⁴⁷

⁴⁴⁵Shabana Shamaas Gul Khattak and Akhtar Hussain, "Women Representation in Pakistani Legislatures: A Study of 2002, 2008 and 2013 General Elections," *South Asian Survey* 20, no. 2 (2013).19-22.

⁴⁴⁶Khan, *Electoral Malpractices During The 2008 Elections In Pakistan*.369.

⁴⁴⁷General Election 2008 (Islamabad: Report of Election Commission of Pakistan, 2002) Volume No.2.106.

3.39 Formation of central Government

Pakistan People's Party emerged as the largest party in general elections in 2008 but was not able to form the Government, especially at the centre. Considering the pressure of the situation, Asif Ali Zardari formed a coalition Government with PML-N, MQM, ANP, and MMA (JUI-F), at the centre as well as in the provinces contrary to the calculations of President Musharraf.

In the first phase of Government formation, the PPP proposed 11 names for the Federal Cabinet after consultation with PML-N. Among 11 names, 05 belonged to the Punjab 04 from Sindh, 01 from NWFP (KPK), and 01 from Balochistan.⁴⁴⁸ PML-N agreed to share power with every coalition party in Punjab with the same ratio as followed in the federal cabinet PPP and PML-N secure the largest votes and initially, both parties formed a coalition government under the Prime Minister ship of Yousaf Raza Gillani with a huge majority, getting 264 votes in National Assembly.⁴⁴⁹

Dr Fahmida Mirza secured 249 votes and became the first woman, Speaker of the National Assembly of Pakistan, on 20 March. Five members belonging to the PML-F remained absent from voting for PM. This was the first time in the history of Pakistan that cabinet members were sworn in with black bands on their arms which they wore as a mark of protest against President Musharraf who administered the oath to them.

⁴⁴⁸Chawla, "Era Of" Reconciliation" In Pakistan, 2006-2017: A Critical Reappraisal."178.

⁴⁴⁹Umair Javed, "Of Patrons and Elections: Constituency Politics in Contemporary Pakistan," *Economic and Political Weekly* (2012).

Table 3.5 Provincial Assemblies

Provinces	General Seats	Seats for Women	Seats for technocrats	Total
Punjab	297	66	27	390
Sindh	130	29	12	171
KPK	99	22	09	130
Balochistan	51	11	05	67
Total Seats	577	128	53	758

Source: General Election 2008 (Islamabad: Report of Election Commission of Pakistan, 2008) Volume No.2.116.⁴⁵⁰

The seats were reserved for women because women were not elected in general elections. Political parties were not given opportunities to contest the election on general seats. The half population segment was without representation in parliament. Women's representation was not ignored in the modern world.

3.40 Formation of Coalition Governments in provinces

Dost Muhammad Khosa was elected unopposed Chief Minister of Punjab with the support of the coalition partners PML-N, PPP, MMA, and PLM-N and had 109 seats in the house of 297 excluding reserved seats. Later, Shahbaz Sharif assumed the office of Chief Minister on 8 June 2008 and enlarged the Punjab cabinet by including 16 new members, of which 08 members belonged to PML-N and 08 belonged to PPP.⁴⁵¹

Qaim Ali Shah was elected as Chief Minister of Sindh. MQM boycotted the oath-taking ceremony of the Chief Minister as the party had reservations over the appointment

⁴⁵⁰<https://www.ecp.gov.pk/frmGenericPage.aspx?PageID=3054>

⁴⁵¹Lubna Kanwal, "Political Development in Pakistan: Continuity and Change During Zardari Period," *Journal of the Research Society of Pakistan* 54, no. 2 (2017).117-119.

of Shoaib Suddle as Inspector General Police, Sindh.⁴⁵² Later, a power-sharing formula reached on consensus between PPP and MQM. As a result, MQM succeeded in getting 13 ministries besides having 01 advisors and 01 special assistants.⁴⁵³ Sindh cabinet was also expanded from 21 to 41 members with the induction of 20 more ministers, of which 13 were included from MQM and 7 from PPP.⁴⁵⁴ In this way, PPP formed the coalition Government in Sindh with the support of MQM and ANP. A coalition Government of ANP, PPP, and PML-N was formed in NWFP. Amir Haider Khan was appointed as Chief Minister of the province with the support of 113 members. In Balochistan, Aslam Raisani was elected unopposed Chief Minister with the support of PPP, MMA JUI-F, and independents.

Table 3.6 General Election 2008

Party names	National Assembly	Punjab Provincial Assembly	Sindh Provincial assembly	Balochistan Provincial Assembly	KPK Provincial Assembly
PPP	87	78	65	7	17
PMLN	66	101	0	17	5
PMLQ	38	66	9	0	6
MQM	19	0	38	1	0
ANP	10	0	2	6	31
MMA	3	2	0	0	9
PMLF	4	3	7	0	0
BNP(A)	1	0	0	5	0
PPP(S)	1	0	0	0	5
NPP	2	0	3	0	0
Independents	27	35	1	10	18

⁴⁵²State, "Country Reports on Human Rights Practices for 2007."34.

⁴⁵³"MQM Succeeded in Getting 13 Ministries," *Dawn*, 1 May 2008.

⁴⁵⁴Chawla, "Era Of" Reconciliation" In Pakistan, 2006-2017: A Critical Reappraisal."126.

Contested	268	293	130	51	96
Total results	259	285	125	46	91

Source: General Election 2008 (Islamabad: Report of Election Commission of Pakistan, 2008) Volume No.2.197⁴⁵⁵

3.41 Politics and Governance of the Coalition Government

The first task of the coalition Government was to reinstate the judges along with Iftikhar Muhammad Chaudhary, Chief Justice of Pakistan. There were differences between PML-N and PPP over the procedure to restore the judges sacked by President Pervez Musharraf by declaring a state of emergency in November 2007.⁴⁵⁶ The Judiciary issue was a complex one in the prevailing situation. Sharif demanded the complete restoration of the judges through a resolution within 30 days of the formation of the Federal Government. Asif Ali Zardari backed out of his commitment after forming the Government. He was delaying the matter for political purposes. He did not want to have problems with the military that could in case reinstated judges challenged the legitimacy of Musharraf's orders.

He believed immediate reinstatement of judges would enhance the political popularity of PML-N. Subsequently, PML-N withdrew from the coalition Government in May 2008, although, continued its support to the Government in Parliament. The collapse of the coalition Government came when it was widely expected that both leaders would build consensus for the continuity of the democratic process.⁴⁵⁷ This political crisis pushed Pakistan to what the Daily Times called „the brink of disaster.

⁴⁵⁵General Election 2008 (Islamabad: Report of Election Commission of Pakistan, 2008) Volume No.2.197. <https://www.ecp.gov.pk/frmGenericPage.aspx?PageID=3054>

⁴⁵⁶Plett, "Musharraf Imposes Emergency Rule."23.

⁴⁵⁷Kanwal, "Political Development in Pakistan: Continuity and Change During Zardari Period."23.

This disagreement between PPP and PML-N over the Judiciary issue impacted Punjab politics where PML-N had a stronghold. After the resignation of Khalid Maqbool as a Governor, on 15 May 2008, the appointment of PPP stalwart Salman Taseer, as Punjab Governor was taken as an attempt by the President's camp to destabilize the PML-N Punjab Government after failing to deal with PML-Q leadership.⁴⁵⁸

This development sparked a row between PPP and PML-N, with the latter branding the appointment of Salman Taseer as a conspiracy against the Punjab Government. Nawaz Sharif and other party leaders of PML-N boycotted the oath-taking ceremony of Governor Punjab, due to their reservations about his appointment. The political situation became more aggravated when Governor vowed to galvanize the PPP in Punjab.⁴⁵⁹ It would be made a new Larkana party President Bilawal Bhutto would be invited to contest elections from Punjab. They had adopted in the last decades of the 20th century for personal ascendency, despite that both had signed the Charter of Democracy in 2006. The appointment of Taseer as Governor of Punjab was one of the factors that created difficulty in having terms between PML-N and PPP.

The alliance of political parties was the need of the hour to bring the country out of the crisis. The government appointed a committee to resolve the judge's issue through a resolution to intact the support of PML-N. The committee members were Sherry Rehman, Raza Rabbani, and Farooq H. Naek. The response from another coalition partner on the Judiciary issue was a mixed one. ANP supported the view of PML-N about deposed judges and showed their willingness to support the resolution, while Fazlur Rehman of JUI considered the stance of Sharif on the judges' issue unreasonable as the

⁴⁵⁸Khan, *Constitutional And Political History Of Pakistan*.269.

⁴⁵⁹Ian Talbot, "Military Inc. Inside Pakistan's Military Economy By Ayesha Siddiqa," (London: Oxford University Press, 2009).227.

reinstatement of judges was not as important as the other issues of the country. Practically the committee remained ineffective and did not even present the resolution in the Assembly for debate. There was also a proposal by the Government to resolve the issue through the next constitutional amendment.

Both major parties through COD determined to undo some of the constitutional changes done by the military regime of Pervez Musharraf, including 13 Constitutional Amendments that permitted the President to disband the Legislature and dismiss the Government. Co-Chairperson of PPP Asif Ali Zardari, on this occasion, said the party would try to form a government of consensus and took on the panel of all political parties. After the end of the Central Executive Committee's meeting of the party, while addressing a press conference in Islamabad, he said, I will take all political parties on board, including those who are out of the parliament.⁴⁶⁰

The PML-N and the People's Party, like other political forces of the country, pledged to establish a viable democratic system based on the principles of tolerance, harmony, and social justice to strengthen the roots of democratic culture in the country and to remove every impediment which may weaken the Democracy. Asif Ali Zardari reaffirmed his commitment by saying, The People's Party was in a comfortable position to form a stable government in Sindh. But they had the desire to cooperate with MQM as well, and I also wanted to formulate my government along with the MQM.

It was thought the future of the ruling coalition was bright in Pakistan. Asif Ali Zardari announced a policy of political reconciliation. He visited the headquarters of MQM with the belief that political parties together should resolve the problems of the

⁴⁶⁰Rizwan, "Democratic Milestone in Pakistan: A Serener Transition of Command from PPP to PML-N." 102-108.

masses of Karachi. On another occasion, he told in the news conference, "I have contacted Qazi Hussain Ahmad, Imran Khan, and Mahmood Khan Achakzai and would be having a meeting with Mian Muhammad Nawaz Sharif, the leader of Pakistan Muslim League Nawaz. He stressed that we want to form a government, but it must be one in authority.⁴⁶¹

The PPP leadership is also inclined to strengthen the Judiciary, empower the parliament, give more autonomy to the provinces, and ensure media independence.⁴⁶² Consequently, other political parties in the Parliament also played a positive role and the Prime Ministerial contender Sayed Yousaf Raza Gillani of the Pakistan People's Party, was unanimously elected. It was the spirit of unanimity that facilitated a viable change in the 1973 Constitution due to which Parliament could pass a resolution to amend it.⁴⁶³

3.42 Long March and General Pervez Musharraf Step Down

During the General Election of 2008, General Pervez Musharraf tried his best to maintain his grip, but ultimately, he suffered. The lawyer from Islamabad, Karachi, and Quetta organized a long march to force the democratic elected civil Government of PPP to take a step against General Pervez Musharraf, who was still in the office of President and reverse his unconstitutional attacks on the civil Government and Judiciary. This march started with Islamabad lawyers, human rights activists, civil society members, professionals, professors, students, retired military officers, and religious figures in a strong position to force the PPP government. PTI, PML-N, Khaksar Tehreek, National workers party, Awami League, Sindh Taraqi Pasand Party, and families of missing persons joined the long march.

⁴⁶¹Khan, *Electoral malpractices during the 2008 elections in Pakistan*.21.

⁴⁶² Senator Farhat ullah Babar, interview by author, Islamabad, 18 March 2018.

⁴⁶³Rizwan, "Democratic Milestone in Pakistan: A Serener Transition of Command from PPP to PML-N."110-112.

Despite the differences among the coalition partners, the Government succeeded in forcing President Musharraf to resign under the threat of impeachment. In the emerging situation, PML-N floats the idea of having the next President from smaller provinces but could not succeed in attaining the support of the parties of smaller provinces. The PPP has nominated Asif Ali Zardari as a presidential candidate. Asfandyar Wali considered the demand of PPP justified having its President as it was a major party in the coalition Government.

3.43 Presidential Election 2008

Pakistan had a mixed political system for governance. Pakistan is a federal state with a parliamentary system under the Constitution of 1973. But different Martial Law governments changed the governing system, some-time presidential form of Government, as in the General Ayub Khan regime; some-time semi-presidential, as in the General Zia-u-Haq regime by constitution engineering with the eighth amendment.⁴⁶⁴ It was adopted by the General Pervez Musharraf regime with some modifications. General Pervez Musharraf had to resign under the fear of impeachment by abrogation of the Constitution on 12 October 1999. President Musharraf resigned from the presidency on 18 August 2008 and exited the political stage.⁴⁶⁵ Under the Constitution, Muhammad Soomro Chairman of the Senate of Pakistan took charge as acting President on August 18, 2008, and according to constitutional requirements, the new President was to be elected within 30 days.⁴⁶⁶

⁴⁶⁴ Senator Farhat ullah Babar, interview by author, Islamabad, 18 March 2018.

⁴⁶⁵ Jan, *The Musharraf Factor: Leading Pakistan to Inevitable Demise*. 11.

⁴⁶⁶ Manzoor Ahmad Naazer, Mansoor Akbar Kundi, and Sadaf Farooq, "Assault on Independence of Judiciary in a Federal State: A Study of Musharraf Era (1999-2004)," *Dialogue (Pakistan)* 13, no. 1 (2018). 38.

The presidential election was conducted by the Election Commission of Pakistan on 6 September 2008, in Pakistan.⁴⁶⁷ The Electoral College for Presidential Elections in the Senate, National Assembly, and Provincial Assemblies of the four provinces of Pakistan. PEC announced the schedule of the Presidential Election. Political Parties have announced their presidential candidates. Pakistan People's Party's co-chairman Bilawal Bhutto Asif Ali Zardari and Asif Ali Zardari, whose party was the largest party in parliament, wanted the next President from their party.

The ruling coalition discussed Presidential Election. MQM announced the support of the Sindhi President of PPP. PML-N on 21 August discussed presidential candidates. The PPP officially nominated Asif Ali Zardari as a presidential candidate. PML-N pulled out of the coalition and announced Saeed-us-Zaman Siddique as the presidential candidate. Subsequently, Asif Ali Zardari managed to get himself elected President of Pakistan on 26 August 2008 with the support of PPP, MQM, JUI, ANP, and other coalition parties, announced by Qazi Mohammad Farooq CEC, as a successor President after General Pervez Musharraf resignation.

He won the Presidential election by 481 out of 678 votes of the federal and provincial Legislature. Asif Ali Zardari won from all provinces except Punjab province because PML-N was in a strong position. The support of the PPP for Asif Ali Zardari as a President seemed like the last nail in the coffin of General Pervez Musharraf's regime. Some experts also stated the victory of the PPP was the ultimate revenge for Democracy, Asif Ali Zardari's presidency was a triumph of electoral politics with the belief that this will lead decade's long democratic journey in Pakistan. After ten years of military

⁴⁶⁷"Date Set For Pakistan Election," *The Australian*, August 22, 2008.

dictatorship, Pakistan was on its way to parliamentary democracy. Political development paved the way for the true spirit of democracy.

3.44 Restoration of the Parliamentary constitution

After assuming authority, the first step of the newly elected Government of the PPP was to move for the restoration of democracy and to eliminate the dictatorial changes in the Constitution of 1973. The task of amending the Constitution was allocated to the Parliamentary Committee on Constitutional Reforms (PCCR).⁴⁶⁸ The newly elected civil Government wants to restore the parliamentary constitution of 1973 in its true federal parliamentary spirit. President Asif Ali Zardari gave a proposal for reforms in the constitution. A parliamentary committee was formed to work on the constitutional changes. The newly elected national assembly also passed a resolution with the consent of all stakeholders of parliament, to constitute a committee.

3.45 The Parliamentary Committee on Constitutional Reforms

After the ruling and procedure of the national assembly, The Parliamentary Committee on Constitutional Reforms" (PCCR) was installed under the chairmanship of Senator Mian Raza Rabbani from PPP and 27 members. The Parliamentary Committee on Constitutional Reforms proposed amendments to 102 articles of the constitution covering around 75 subjects in 77 seatings. However, on most of the proposals, PCCR adopted an undivided stance.⁴⁶⁹ On 31st March 2010, the Committee approved it and Pervez Ashraf, Minister for Water and Power, signed the draft. It was followed by Professor Khursheed Ahmad (JI), Syed Naveed Qamer, Aftab Ahmad Khan Sherpao (PPP-S), Baber Awan,

⁴⁶⁸ Muhammad Rizwan, Muhammad Arshad, and Muhammad Waqar, "Revitalization of Parliamentary Democracy in Pakistan under 18 th Amendment," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19.56-60.*

⁴⁶⁹ Human Rights Watch, *Human Rights Watch World Report, 2003* (Human Rights Watch, 2003).317.

Ishaq Dar, Lashkari Raisani (PPP), Ahmad Khan Abbasi, Abdur-Razzaq Taheem and Ahsan Iqbal from PML-N, Wasim Sajjad, Hamayoun Saif-ullah from PML-Q, Dr Faroq Satar from MQM, Haji Muhammad Adel from ANP, Rehmat Ullah Kakar from JUI, from the Baloch leadership was Meer Israr Ullah Zehri and Munair Khan Orakzai from FATA have signed. However, Committee Chairman Raza Rabbani signed the draft at the very end.⁴⁷⁰

3.46 Elimination of Controversial Amendments

After the promulgation of a unanimous Constitution in 1973, President General Zia-ul-Haq was the first who dictatorially distorted more than 90 articles of the Constitution in 58, (2) B, commonly known as the 8th Amendment of 1985. By following in his footsteps, General Pervez Musharraf did the same with 26 articles of the same Constitution in the shape of the 17th amendment. Both dictators strengthened their offices of the President against the position of existing Prime Ministers. PPP government, to remove the aftermath of these articles, put forward more than 100 amendments directly affecting 83 subjects to restore the original spirit of the 1973 Constitution, these are as under:

1,6,10,17,19,25,27,29,38,41,46,48,51,58,62,63 70,71,73,75,89,90,91,92,99,100,101,104,105,112,116,122,129,130,131,132,139,140,142,143,144,147,149,153,154,155,16,157,160,167,168,170,171,172,175,177,193,194,198,199,200,203,209,213,215,216,218,219,221,224,226,228,232,233,234,342,343,246,260, 267, 268, 269 and 270.⁴⁷¹

However, the most famous clauses, which had affected the augmentation of democratic culture in the country, were replaced:

⁴⁷⁰National Assembly of Pakistan, "The Report on the Constitutional (Eighteenth) Amendment Bill 2010," (Islamabad: National Assembly of Pakistan 2010).4-5.

⁴⁷¹Ibid.56.

1. If a person committed or tried to be committed the abrogation, subversion, suspension, or holding in abeyance the Constitution of the country would be dealt the crime of high treachery. I) the word collaborating would be inserted instead of the word abetting in the clause

2. Of the Constitution, and ii) after clause 2 is revised as aforementioned, the following fresh section will be placed in; (2A) enact of treachery revealed in clause (2) never shall be endorsed by any court together with the High or Supreme Court.⁴⁷²

However, it is observed that very often military takeovers or the imposition of Martial Laws had been legalized by the Supreme Court or pro-military assemblies. This practice was reduced by the Eighteenth Amendment through the insertion of the above article. General Pervez Musharraf's treachery case was an outcome of this amendment and the implication of Article 6 of the Constitution. Article 17, the under given were to be surrogated:

3.47 Liberty of associations

1. Under certain legal or moral limitations imposed by the Sovereign, every citizen in a state has the right to structure an organization or association.

2. Each political organization and party will disclose its source of income and funding.

3. In section 3 of Article 29 of the Constitution, for the term "national assembly" which takes place for the time being in terms and brackets, every organ of the Majlis-e-Shoora should be modified and, following the word National Assembly, the terms would take place for the second time, and the Senate shall nominate.

⁴⁷²Mian Raza Rabbani, *A Biography of Pakistani Federalism: Unity in Diversity* (Penang: Leo Books, 2011).168-170.

Similarly, as stated earlier, Article 58(2b) of President Zia-ul- Haq was amended by General Pervez Musharraf in his 17th constitutional amendment. The amendment was later ratified by the then rubber-stamp assembly allowing the President to dissolve the National Assembly without any grounds. However, the 18th Amendment not only removed the clause but also inserted a substitute for it.⁴⁷³ The President's power to dissolve the National Assembly will only be confined to the advice of the Prime Minister, and the Legislature will be considered dissolved at the end of forty-eight hours after the Prime Ministerial advice.⁴⁷⁴

The 18th amendment to constitution accomplished the civil rule and democracy. It was a historic moment when massive powers were transferred from President to Prime Minister. The powers of governors were transferred to provincial assemblies and Chief Ministers. Under the eighteenth amendment name of Zia-ul-Haq was eliminated from the constitution and Zia-ul-Haq LFO. The concurrent list was abolished on 8 April 2010. The amendment was restored according to the original spirit of the Constitution of 1973. Efforts were made to give sole provincial autonomy to the provinces of Pakistan. This bill faced problems from different political parties during its passage, as the note of reiteration but the National Assembly passed the bill of 18th amendment by 292 out of 342 votes on 8 April 2010. The notable thing is this during this phase; opposition as usual was constructive in bringing the original spirit of parliamentary democracy, and civil rule back to the country.

The amendment also granted enough autonomy to the provinces by altering 70, 142, 143, 144, 149, 157, 160, 161, 167, 172, 232, 233, and 234 clauses of the

⁴⁷³Ibid.188.

⁴⁷⁴Ibid.192.

Constitution. These articles empowered the provinces to deal with the affairs of electricity and natural gas and saw the National Finance Commission's dealings by borrowing legislative powers. However, the most important article which gave more autonomy to provinces was article 142 (b) and (c) allowing provincial assemblies to make laws concerning criminal, procedure, and evidence. Likewise, article 270AA offered that all contemporary laws would remain in practice until the amendments replaced them with the law of the province. The eighteenth constitutional amendment, in one way or the other, amended articles 46, 48, 75, 90, 91, 99, 101, 105, 116, 129, 130, 131, 139, 231, and 243 to restore parliamentary democracy with some major or minor modification.⁴⁷⁵

3.48 The 18th Amendment to the Constitution

The 18th Amendment to the Constitution of 1973, dated April 2010, was the most significant political and constitutional legislation adopted by the PPP-led civilian administration. It repeals LFO 2002, the 17th Amendment, and the Chief Executive Order, and declares them unlawful and undemocratic. It also amends Article 6 dealing with the historic issue of high treason, the suspension of the Constitution in abeyance, or any other step taken considered as high treason. The Court verdict to legitimize the military coup was also no longer through article 6 of the Constitution of 1973. The supremacy of Parliament and elimination of the army's role in politics are ensured by articles 238 and 239 of the Constitution.

The amendment of the Parliament would not be called into question in any Court under article 239(5) of the Constitution. The Center for American Progress (CAP)

⁴⁷⁵Anwar Shah, "The 18th Constitutional Amendment: Glue Or Solvent For Nation Building And Citizenship In Pakistan?", (2012).387-391.

expresses this amendment to the Constitution as the most dramatic de-concentration of power in Pakistan after the framing of the 1973 Constitution.⁴⁷⁶ Key steps introduced in 18 Amendment are:

3.48.1 Limits the Presidential powers

The power to override the Legislature and regulate by decree was abolished and the period from 30 days to 10 days for the President to examine bills enacted by the Parliament according to article 75 of the Constitution was extended to eliminate the undue delay on the part of the President. The right to send issues to parliament for an agreement or no vote was also passed to the President, and Prime Minister and the President's power to terminate the Assembly had also been abolished.⁴⁷⁷

In the political history of Pakistan, dictators used the referendum to legitimize their rule but after the passage of the 18th amendment, the President needed approval from Parliament for holding the referendum. President would be bound to take the advice of the Prime Minister in the appointment of Governors and the Governors would also act according to the advice of the Chief Minister. Moreover, the Governor would be the ceremonial head of the province; Executive power would be in the hands of the Chief Minister and his cabinet. In the appointment of the chairman of the public service commission and services, the President must take the advice of the Prime Minister. President had no discretionary power. All these steps were taken under the 18th amendment to reduce the risk of military intervention in the future.

⁴⁷⁶Colin Cookman, "The 18th Amendment And Pakistan's Political Transitions," *Center For American Progress*, April 19 2010 .

⁴⁷⁷Babar Sattar, "18th Constitutional Amendment & Need For Passage Of The 19th Constitutional Amendment," *Eighteenth Amendment Revisited I* (2012).166.

3.48.2 Greater role of Prime Minister and Parliament:

This amendment made the Prime Minister more powerful than ever. Under this amendment power of the President was transferred to the Prime Minister. Since the 18th Amendment, the Prime Minister was the Chief Executive Officer of the Federal Government instead of the President. The obligation of the Prime Minister to obtain the President's approval on a variety of issues had also been revised to merely notify the President, no longer needing approval.

In appointments of the provincial governor and military service chief, the President was bound to take the recommendation of the Prime Minister. The limit of two terms which was set by General Pervez Musharraf was also removed and the Prime Minister could be elected for more than two terms.

3.48.3 Judicial composition and appointments:

The power of the Prime Minister and President to appoint a judge was removed through this 18th amendment. The responsibility of judicial appointment was assigned to the Judicial Appointment Commission⁴⁷⁸ which consisted of 7 members headed by the Chief Justice of Pakistan and the Special Parliamentary Committee based on equal representation of opposition political parties and the federal government, Special Parliamentary Committee has a right to veto the decision of judicial appointment commission.

3.48.4 Balance of power between the centre and the provinces:

The longstanding demand of provinces was Provincial Autonomy which was granted through the 18th amendment, deleted the concurrent list from the fourth schedule of the

⁴⁷⁸Fakhr-Ul Islam, "The 18th Amendment In The 1973 Constitution," *The Dialogue* 8, No. 2 (2013).7.

Constitution; transferred the powers to provinces to legislate on any matter not included in the federal list. The 18th amendment also provides the proper right for provinces to legislate on those subjects enumerated in the federal list part 2 by installing the Council of Common Interest (CCI).⁴⁷⁹

The eighteen ministries were also devolved into provinces which gave them spare time for the proper accommodation of these devolved ministries. In the construction of Hydro-Electric power stations, provinces have a consultative role in any province. It also listed those future decisions by the National Finance Commission, which would periodically distribute national revenues among the centre and the provinces under article 160, in article 160 of the 1973 Constitution, two new clauses 3(A) and 3(B) were placed. Clause 3(A) did not require a decrease in the proportion of provinces below which is set out in the earlier award. Clause 3(B) deals with the proper implementation and administration of the NFC Prize.⁴⁸⁰ This provision also obliges the authorities to send a report to both provincial and central assemblies to ensure good governance. The joint platform of provincial and centre leaders, the council on mutual interests, strengthened its position.

3.48.5 Politics on Provinces and Local Government

Provincialism was a grave issue from the creation of Pakistan which led to the separation of the east wing. Under the 18th Amendment, the name of NWFP was changed and the

⁴⁷⁹Sajida Begum, Muhammad Imran Ashraf, And Waseem Ishaque, "National Plan For Devolution Of Power Under 18th Amendment: Challenges For Government In The New Pakistan," *Global Social Sciences Review* 3, No. 2 (2018).36-40.

⁴⁸⁰Mian Raza Rabbani, "Comment The 18th Constitutional Amendment: A Paradigm Shift," *Pakistan Perspective* 16, No. 1 (2011).13.

new name was Khyber Pakhtunkhwa.⁴⁸¹ The Change of name opened new doors of provincialism and insecurity in the Hazara community; they walked out against this change and demand a separate province on a linguistic basis. The Hazara ethnic minority in the NWFP strongly objected to the change of name. But the ANP was insistent on going forward. Changing the name of the NWFP led to a broader debate as to whether a way forward for Pakistan could be through the formation of new provinces. Sceptics are worried that this could contribute to further the 'Balkanization' of Pakistan.

Potentially dangerous, the PPP had floated the idea of constitutional amendments to create a new province for South Punjab,⁴⁸² for which it had considerable support. The PMLN, which was also the dominant political power in the whole of Punjab, is relentlessly opposed. It aligned the province with Punjab, Sindh, and Balochistan, in that its name would henceforth represent the label of the dominant ethnic group. However, the fact that an agreement was finally reached was seen by many analysts as a hopeful sign that less strictly confrontational 'civilian politics' would emerge.

This might prove to be much more of a power grab than a serious strategy on the behalf of the PPP. How it played out would also rely on which of the two competitors would be at the top of the elections. Local government devolution might be another issue to look forward to in the future. The 18th Amendment did not discuss the issue in full. It was not less politically controversial than the concept of establishing new provinces. For instance, the MQM wanted to set up local governments in Karachi and Hyderabad; the

⁴⁸¹Razia Musarrat, Ghulam Ali, And Muhammad Salman Azhar, "18th Amendment And Its Impacts On Pakistan's Politics," *Journal Of Sociological Research* 3, No. 1 (2012).63-66.

⁴⁸²Muhammad Mushtaq, "Regional Identities In Quest Of Separate Provinces: A New Challenge For The Pakistani Federation," *Journal Of Political Studies* 23, No. 1 (2016).145-146.

PPP vehemently opposed this.⁴⁸³ General Pervez Musharraf partly implemented this new level of government as a way of side-stepping the provinces, where the major political parties were well known.

After taking office, the PPP showed no excitement for this new level of government. Admittedly, the election terms of the existing local government institutions were permitted to expire without holding new elections.⁴⁸⁴ There had been a lot of debate as to when these elections should occur, most of which are likely to do so only after the provincial and federal polls in 2013. The Supreme Court, however, is seized with the matter so that it may still alter. But few disputes in which Pakistan needed a legitimate mechanism of local government decentralization that had credibility.

Local government is an unresolved problem for Pakistani democracy. The local government decentralization situation reveals that, with all its undoubted optimism, the 18th Amendment kept a host of constitutional and political problems unanswered. Perhaps most tellingly, the amendment did not completely resolve the problem of creating more efficient civilian-military supervision.

Not only was broader electoral reform included in its framework, although, as we've seen, there have also already been moves on either front since 2008. The amendment also enabled further work to be done and fleshed out the current legislative and administrative arrangements between the centre and the four provinces. In 2012, parliamentarians raised concerns that there was a possibility that some of the powers bestowed on the provinces after the ratification of the 18th amendment might be repudiated

⁴⁸³Katharine Adeney, "A Step Towards Inclusive Federalism In Pakistan? The Politics Of The 18th Amendment," *Publius: The Journal Of Federalism* 42, No. 4 (2012).74.

⁴⁸⁴Asmat Kakar, "Local Government And Pakistan's Reluctant Political Elite," *South Asia, LSE* (2017).27-30.

by the central bureaucrats, pointing to the development, after 2010, of several federal institutions with responsibilities for subjects theoretically delegated to them.

3.48.6 Appointments of the Election Commission of Pakistan

The amendment also provided for a more open procedure for the selection of the ECP. Eventually, the political horse-trading that followed the ratification of the 18th Amendment became serious.⁴⁸⁵ Political parties were also on the verge of particular issues, perhaps most prominently the Judiciary, where the PPP was reluctant to reinforce the authority of the pugnacious Chief Justice, Iftikhar Muhammad Chaudhry, who had already been pursuing President Asif Ali Zardari in connection with charges of corruption, by granting him the chairmanship of the Judicial Appointments Commission.

3.48.7 The seventh National Finance Commission award

As we had seen, the 18th Amendment strengthened the legislative and administrative powers of the provinces, of Punjab, Sindh, Balochistan, and Khyber-Pakhtunkhwa. In doing so, it complemented the changes to the financial settlement between the Centre and the provinces set out in the December 2009 Seventh National Finance Commission award.⁴⁸⁶ Negotiations between the centre and the provinces over previous awards had often been extremely difficult and produced unsatisfactory outcomes. The seventh National Finance Commission award was intended to be a fresh start after 15 years of deadlock on the issue. Nowhere would be a lot more important than in the case of Balochistan, where sectarian tensions frequently followed over the decades after

⁴⁸⁵Rizwan, Arshad, and Waqar, "Revitalization of Parliamentary Democracy in Pakistan under 18 th Amendment."53.

⁴⁸⁶Farzana Arshad, Fouzia Hadi Ali, and Sania Muneer, "The National Finance Commission Award and Centre-Province Relationship: A Study of Pakistani Federal Structure," *Journal of the Research Society of Pakistan-Vol 56*, no. 1 (2019).76-80.

Pakistan's birth by a rumbling uprising fueled by a host of complaints about the unjust treatment.⁴⁸⁷ Scarcely populated Balochistan is Pakistan's poorest area despite having rich natural resources, including coal, copper, and gold deposits.⁴⁸⁸

Whereas previous awards had been based solely on the size of the population of each province a criterion which favoured Punjab, by far the most populous province the seventh award brought into play a range of other criteria: low population density, poverty, role in revenue generation/collection and role in combating terrorism. Through the award, the centre increased the percentage of resources available to provinces by 10 percentage points from 47.5% to 57.5%. Below is a table setting out what the award meant for each of the four provinces in terms of their share of what is known as the divisible pool of revenues.⁴⁸⁹

Table 3.7 Percentage share of 7thNFC Awards

% Share in Divisible			
Province budget	Pool under 7 th NFC	% Reduction in share	Additional
Punjab	51.74	1.27	48
Sindh	24.55	0.39	61
KPK	14.62	0.26	79
Balochistan	9.09	(+ 1.82%)	175

Source: Data is adapted from the Government of (2010) Pakistan Economic Survey 2010–11. Islamabad: Economic Advisor's Wing. Finance Division.

⁴⁸⁷ Muhammad Hassan, "Quest for Reconciliation in Balochistan: Policies of the Pakistan People's Party Government, 2008-2013," *Dialogue (Pakistan)* 15, no. 2 (2020).55.

⁴⁸⁸ Senator Mir Kabeer Ahmed, interview by author, 22 October 2017.

⁴⁸⁹ Khalid Aziz, "Important Features Of 7th NFC Award And 18th Amendment," *The Pakistan Development Review* 49, No. 4 (2010).26.

As the table demonstrates, while all the provinces experienced a significant increase in the size of their budgets, by far the biggest beneficiary of the new arrangements was Balochistan. The award contained a host of other measures designed to strengthen the fiscal position of the provinces, including arrangements to repay large historic arrears owed by the centre to the provinces and a reduction in the centre charge to the provinces for the cost of revenue collection. The provinces had also been empowered to collect domestic or foreign loans, mostly with the approval of the central Economic Council. The award, which came into effect in the 2010/11 fiscal year that is to be applied for five years until 2014/15, represents a significant step toward greater fiscal federalism in Pakistan.⁴⁹⁰

It calls on both the centre and the provincial governments to increase their revenues to achieve a 15% tax-to-GDP ratio. But most provincial revenues came from the centre. It was also worth noting that, while the overall division of resources between the centre and provinces was improved under the seventh award. It is still a far cry from the division which prevailed under the first three awards, in 1974, 1979, and 1990, when reflecting on how this issue had contributed ultimately to the traumatic secession of Bangladesh (formerly known as East Bengal or East Pakistan) the centre was awarded 20% and the provinces 80%.

Whether such a distribution could ever really be sustainable within a federal framework was another matter. Indeed, with the centre currently wrestling with a chronic fiscal deficit, some had argued that even the comparatively modest split agreed upon under the seventh award was overambitious. Others asserted that the federal deficit had

⁴⁹⁰Raza Ahmad, "The Endemic Crisis of Federalism in Pakistan," *Lahore Journal of Economics* 15(2012).27.

been caused much more by other factors, including excessive defence spending.⁴⁹¹ However, many welcomed the seventh award as a significant move toward a more secure and equal relationship between both the centre as well as the provinces. It represents a far greater willingness and ability of the most influential province, Punjab, to be versatile than in history.

But there continue to be arguments between the provinces over the implementation of the seventh award. For example, Punjab, Khyber-Pakhtunkhwa, and Balochistan had complained that Sindh was receiving more than its fair share of General Sales Tax on goods that were coming in through its ports. The Eighth National Finance Commission, which was constituted in July 2010⁴⁹², would have a no less delicate path to tread than its predecessor. The reality is that perhaps the 18th Amendment forbids a decrease in the proportion of provinces the below set out from the prior award should be given the provinces certain assurance as the negotiations continue.

The provincial government in Balochistan had wasted little time in arguing that it would need a further boost to its revenues under the next award.⁴⁹³ Pakistan saw street protests about the state of the economy during 2012, symbolized by unprecedented mid-summer power cuts that affected both businesses and ordinary citizens. The new government would inherit a debilitating fiscal crisis at the federal level (several provincial governments, for example. Sindh was also in a parlous state). Defence spending and interest payments on the existing debt alone make up about 65% of state spending.

⁴⁹¹Qaisar Bengali, interview by author, Karachi, 27 October 2018.

⁴⁹²Begum, Ashraf, and Ishaque, "National Plan for Devolution of Power under 18th Amendment: Challenges for Government in the New Pakistan."67.

⁴⁹³Usman Mustafa, "Fiscal Federalism in Pakistan: The 7th National Finance Commission Award and Its Implications," *Working Papers & Research Reports* 2011.113-116.

Unless the next civilian government was prepared to confront the military on defence spending, which it might be hesitant to do, there was a risk that the improved settlement between the centre and the provinces in the 2010 Seventh National Finance Commission Award could unravel in the years ahead. Finally, it should be noted that each province had also agreed to its own Provincial Financial Commission award based on the seventh award. There was significant variation between provinces in the weightings given to each of the factors described above in deciding how available resources were to be distributed.

The collaboration and cooperation, on a more viable basis, between the People's Party and PML-N, started after the assassination of Benazir Bhutto on 27 December 2007 in a terrorist attack. Both parties cooperated on all major legislation, including amendments to the constitution to strengthen parliamentary democracy in Pakistan.

The thirteenth National Assembly established not less than 34 standing committees to remove public grievances related to their day-to-day routine work. These committees were authorized to hold public hearings and consult expert opinions. In fact, due to their positive alliance; the democratic role of the National Assembly could become possible. They successfully strengthened the office of the Prime Minister, the true representative of the people.⁴⁹⁴ Previously he was bound by article 46 to inform the President before taking any decision. Similarly, the President's power to ask for a reexamination of certain pronouncements of the cabinet was again curtailed by the 18th Amendment. Article 48 which had empowered the President to hold a referendum on any important issues was again bound to get the approval of the Prime Minister before

⁴⁹⁴Amjad Abbas Magsi, "Balance of Power at the Centre: The President. Prime Minister & Parliament,I in Eighteenth Amendment Revisited," *Islamabad Policy Research Institute* (2011).67-71.

holding the referendum. The power struggle between Prime Minister and the President often clogged the permanence of the democratic process in Pakistan. Presently, by reducing the powers of the Presidency up to the constitutional limits, the amendment had helped to revive the original spirit of the Constitution of 1973.

3.49 Electoral Reforms

After Pakistan People's Party assumed power in 2008. It was needed at the time for extensive reform to the electoral system so that the next election would be free and fair. The 18th Amendment introduced some reforms to the electoral system of Pakistan. It gave a role to opposition political parties represented in the appointment of a Chief Election Commissioner of Pakistan, by requiring the appointee must first be approved by a parliamentary committee following a confirmation hearing and the member of the Election Commission of Pakistan (ECP). It is required that the Chief Election Commissioner of Pakistan must be served or retired High Court Judge. The period rose from three to five years. As a result, the measures implementing the 18th Amendment were brought into force by the Election Laws Legislation in May 2011.⁴⁹⁵

Probably, no legislation applicable to the stability of future elections was calculated to improve the legitimacy of the impartial caretaker government that would rule both at the national and provincial levels for 90 days (electoral period) following the overthrow of both the national and provincial assemblies.

Under the 18th Amendment, the President should discuss with the outgoing Prime Minister and the opposition leader the selection of the caretaker government. The same would happen in the provinces. The 20th Amendment provides that if the political parties

⁴⁹⁵Ahmed Bilal Mehboob and Hamza Ijaz, *Challenges to Independence and Sovereignty of Parliament in Pakistan*, Eighteenth Amendment Revisited i (Islamabad: Islamabad Policy Research Institute, 2021).68-70.

could not agree on who should lead this government, the final decision would be passed by the Election Commission of Pakistan (ECP). A 2011 Democracy Reporting International (DRI) report identified the issues which needed attention to implementing reforms before the 2013 elections. They included disallowing the candidacy in more than one constituency in a given election, clarifying the identification requirement for registering and voting in an election, improving the procedure for tabularizing votes and publishing election results, introducing effective remedies for electoral disputes resolution and unifying election laws to increase transparency, and understanding of the Legal Framework.⁴⁹⁶

Chief Justice Iftikhar Muhammad Chaudhary scathingly described the Election Commission as useless and defunct. But other observers defied that the performance of the Election Commission of Pakistan had greatly improved since 2008. The Supreme Court directed that voting should be made compulsory; the existing first-past-the-post system should be revised. The establishment of offices near polling stations by the candidate should be forbidden, and the candidate also should not be provided transportation for voters.⁴⁹⁷

3.50 Appointment of Chief Election Commissioner (CEC) of Pakistan

Justice (R) Fakhru-din G. Ibrahim was appointed as Chief Election Commissioner (CEC) of Pakistan with the consensus of all major political parties. Justice Ibrahim is a great jurist who was the judge of the Superior Court. He had also served as Law Minister, Attorney General of Pakistan, and Governor of Sindh. The power of the Election Commission was enhanced against the previous ECP and made it more independent.

⁴⁹⁶Naazer, Kundi, and Farooq, "Assault on Independence of Judiciary in a Federal State: A Study of Musharraf Era (1999-2004)."43.

⁴⁹⁷Ibid.44.

The election commission amended the candidate's nomination papers including ownership of the company; tax-related information, foreign trips, and children studying abroad, coupled with the expense of their education, to add more credentials. The election commission also decided to place the nomination papers on websites so voters could keep, informed, and be enabled to raise any question to the ECP. Furthermore, for voters to identify their status, SMS (short message service) and website service had also been employed by the Election Commission of Pakistan.⁴⁹⁸

3.51 Caretaker Government

To create a favourable environment for conducting free and fair elections, an independent and impartial caretaker government is a constitutional prerequisite in Pakistan. It guarantees the impartiality of the polls and then the transition of power to freshly elected members of the people. The primary task of the caretaker, as a no-adherent government manager, was to ensure the prescribed work of the government. In most countries, once the Parliament has been dissolved, the government in power changes to a caretaker modus, but in Pakistan, the non-elected persons are selected abroad to structure a concierge cabinet.⁴⁹⁹

The PPP government through, the 18th Constitutional amendment, signifies the importance of caretaker governance in Pakistan. This amendment advocates neutrality, impartiality, and fair appointment procedure for caretaker government personnel. In light of legislation, the election code of conduct was in print before the commencement of the 2013 General Elections. The Election Commission of Pakistan, with the assistance of a

⁴⁹⁸Reddy, "The Musharraf Formula."67.

⁴⁹⁹Filling of Nomination Papers 25 to 31 March, Scrutiny of Nomination Papers 01 to 07 April, Appeal on ECP decision on Nomination Papers 08 to 10 April, Judgment on Appeal 16 April, Option for Withdraw all of Nominations 18 April, Final list of Candidates 19 April, Election National and Provincial Assemblies 11 May.

neutral caretaker setup, provided decorum for all political parties and the candidates who contested the elections. The Commission prohibited government officials from taking part in the campaign. After the Supreme Court's verdict, Pakistani authorities could reinforce this institution by defining the errands of the caretaker administration within the Legal Framework.⁵⁰⁰

However, it could only be guaranteed through amending the Constitution, to set out the jurisdictions of caretaker authorities. Actually, the caretaker setup is established to facilitate the citizens to take part in elections to have a suitable system of government to run the state affairs. Communicating political and civic rights, the International Convention for Civil and Political Rights (ICCPR) figures out that the political power of any government depends on the privilege of any citizen to actively participate in government affairs, including that of the right to be chosen or to rule, etc.⁵⁰¹

The Constitution determined the timeframe and procedure for the appointment of a caretaker government. However, no legislation on the functions and directives of the provincial government was available leading the Judiciary to describe the confines, powers, and functions of the caretaker government in Pakistan. The Constitutional amendments, during the prior Legislatures, had affected the appointment mechanism of the caretaker government. Presently, the 18th Amendment provides sub-articles (1a) and (1b) to article 224. Article 224(1a) eliminates the Presidential professional judgment and expands the right to engage in the appointment of the Prime Minister responsible, in discussions with the Prime Minister as well as the leader of the opposition also inset to

⁵⁰¹ Filling of Nomination Papers 25 to 31 March, Scrutiny of Nomination Papers 01 to 07 April, Appeal on ECP decision on Nomination Papers 08 to 10 April, Judgment on Appeal 16 April, Option for Withdraw all of Nominations 18 April, Final list of Candidates 19 April, Election National and Provincial Assemblies 11 May.

expire National Assembly. Similarly, article 224 (1b) provides that any member of the caretaker cabinet, including the Prime Minister, the Chief Minister, his wife, and children, etc., are not eligible to take part in the elections under their supervision.⁵⁰²

These amendments also empowered the Legislature to appoint the caretaker setup in case the Prime Minister or the Opposition leader may not agree on the names and their portfolios in the caretaker government. After their appointments, the provincial and federal caretaker cabinets are formed on the recommendations of the caretaker Chief Minister of the respective province and the Prime Minister.⁵⁰³

To ensure neutrality during the election process, the Election Commission provided a Code of Conduct for all political parties and participating candidates. The Conduct offer, All high office-bearers including the President, Prime Minister, Chairman Senate, Deputy Chairman, Speaker of the National Assembly, Deputy Speaker, federal or State Minister, etc. shall not be able to participate in the election campaign. Thus, the amendments provided an appropriate structure for an interim setup to conduct free and fair elections.

3.52 General Elections 2013 and Power Transition to PML-N

Ultimately, as scheduled, the General Elections took place in May 2013. It had been reported that the Election Commission of Pakistan, with the help of the Asian International Foundation for Election Systems, tried its best to hold the elections up to the international standard that enhanced the possibility of a democratic transition of power to

⁵⁰²Muhammad Nadeem Saeed, Abdul Qadir Mushtaq, and Shahid Latif, "Federalism, 18 th amendment and nation building in Pakistan," *Dilemas Contemporáneos: Educación, Política y Valores* 7, no. 1 (2019).75-80.

⁵⁰³Muhammad Rizwan, Muhammad Arshid Rafiuddin, and Muhammad Waqar, "Democratic Milestone in Pakistan: A Serener Transition of Command from PPP to PML-N," *IOSR Journal Of Humanities and Social Science* 19, no. 2 (2014).102-108.

the majority party rightfully. Although it was visualized in the pre-election instance that there might be rigging or manipulation of results on the day of the elections, however, except for a few mishaps, the elections proved fair and free.

As an undemocratic tradition, some of the political parties claimed rigging in some constituencies where the polls were allegedly manipulated and mismanaged finally, on 11 May 2013, polling was formally started in 69,729 polling stations across the country.⁵⁰⁴ According to official sources, 54.6 per cent of registered voters cast their votes. However, Commonwealth Observer Mission, by impinging on the credibility of the electoral process, declared these elections free and fair. During the 10th election, in the political history of Pakistan, PML-N emerged as the majority party with 124 general seats, PPP got 31 while PTI could secure 27 National Assembly seats.⁵⁰⁵ In the meantime, 18 independent candidates joined the PML-N, enabling Nawaz Sharif to form his government, for the third time, without formulating an alliance with any other political party in the Parliament.

Consequently, on 7 June 2013, he was sworn in as the Prime Minister of Pakistan. In this way, a peaceful transition from one democratically elected government to the other had been completed without any misshapes. The development, no doubt, reflected the political maturity of political leadership and civil society. The existing literature on the military taking control of power suggests that the military does so because of ill-governance, corruption of the civilian government, anarchy, and a deteriorating capacity of the civilians to run the government for the betterment of the people.

⁵⁰⁴M Bilal Akhter Lashari and Jaffer Abbas Mirza, "Pakistan Elections 2013," *Pakistan Horizon* 66, no. 3 (2013).23.

⁵⁰⁵Siegfried O Wolf, "General Elections in Pakistan 2013: Some Reflections," (2013).47.

The literature also examines the reasons and types of withdrawals which, by and large, are decided upon by the military itself. No other institution can make the military step down and allow the people to choose their rulers. Theorists have opined that the military takes advantage of the absence of strong political leadership and the failure of institutions based on their assumptions. In some cases, the military is invited by politicians to takeover when the power struggle among them reaches to climax.

When social conflict is transformed into street politics and society at large does not contend with the civilian regime. The military is the only force that possesses the capacity to restore order, at least, temporarily, but most often, halts the political process. Huntington's theories have been widely tested by ambitious military commanders for the direct takeover of political government and present the justification that the power vacuums particularly the inability of political institutions, left no option with the military except to intervene in political affairs. The democratization process for the transfer of complete authority to civilians and the sake of true democracy was thus halted once again before its consolidation into a strong and stable system.

CHAPTER-4

THE MARK OF THE JUDICIARY IS THE INSTITUTIONAL MANOEUVRING AND DEMOCRATIC PROCESS

Pakistan adopted the Government of India Act 1935 as an interim constitution after independence with some necessary amendments. In the early years of Pakistan state was run by two organs, the army, and the bureaucracy, and the foundation of the parliamentary system was based on bureaucracy. The major power of assemblies was transferred to some top bureaucrats and army men. Not only was policymaking done by bureaucrats, but the government was also run by bureaucrats. The role of the army was also very important because the bureaucrats used them for the removal and change of state heads. The Bureaucracy was the only strong institution at the time of independence.

The political fortunes of the country were designed by the bureaucracy instead of the civilly elected government. After 1958, the Military used bureaucracy as a rent-seeking institution to intervene in politics and rule the country. The survival of the bureaucracy lies in the political and military nexus. At the time of Pakistan's creation, the bureaucracy was the elite governance setup. It was the backbone and steel frame of the state. The British government designed the mechanism of bureaucracy to control subcontinent affairs. Pakistan inherited the British formula to maintain the check and balance between the Legislature and Executive by strengthening the bureaucracy. The inherited pattern developed an interest in bureaucracy, state politics and controlling state affairs.⁵⁰⁶

⁵⁰⁶Ayesha Siddiq, "Military Inc, The Politics Of Military's Economy In Pakistan," *Washington: Woodrow Wilson Centre For International Scholars* (2007).27.

The civil servants remained closely associated with Power because, in the early years, the founder father Quaid-i-Azam Muhammad Ali Jinnah and Mr Liaqat Ali Khan heavily trusted the bureaucrats, even Quaid-i-Azam Muhammad Ali Jinnah encouraged the top bureaucracy of state departments at the centre and provincial level secretaries to directly communicated with him on vigorous interest matters.⁵⁰⁷ As Governor-General Quaid-i-Azam Muhammad Ali Jinnah three out of four governors were British and Indian Civil Service Officers.

Two of the governors were used to preside over cabinet meetings and one of the governors was even capable of reallocating the portfolios without the Chief Minister's approval. These Provincial Governors wrote a letter fortnightly to Quaid-i-Azam Muhammad Ali Jinnah for brief details of provincial cabinet meetings and matters of refugee rehabilitation. Quaid-i-Azam Muhammad Ali Jinnah also used to call secretaries over the heads of ministers. After the death of Quaid-i-Azam Muhammad Ali Jinnah, Prime Minister Liaqat Ali Khan continued to take reports from provincial secretaries.⁵⁰⁸

It was eventually and virtually impossible for bureaucrats to avoid dominating the country's politics after the leadership of Quaid-i-Azam Muhammad Ali Jinnah and Liaqat Ali Khan. The leading part of politicians was finished after the demise of Prime Minister Liaqat Ali Khan and began the ascendant bureaucracy role until the military grabbed control since its partner in complicity in 1958.⁵⁰⁹

After the bureaucracy, the military was the second most organized and strong institution of the state. The First bureaucracy was stronger to control the military and

⁵⁰⁷Hamid, *Early Years Of Pakistan: Including The Period From August, 1947 To 1959*.13.

⁵⁰⁸Md Abdul Wadud Bhuiyan, *Emergence Of Bangladesh And Role Of Awami League* (Dhaka: Stosius Inc/Advent Books Division, 1982).77-80.

⁵⁰⁹Mahboob Hussain And Rizwan Ullah Kokab, "Institutional Influence In Pakistan: Bureaucracy, Cabinet And Parliament," *Asian Social Science* 9, No. 7 (2013).56-59.

later the military became powerful to dictate the bureaucracy. On 8 October 1958, President Iskander Mirza declared martial law in the country. The 1956 Constitution was abrogated, and the National and Provincial Assemblies were dismissed respectively.⁵¹⁰ It was a bureaucratic coup' because it was bureaucrat Iskander Mirza, who declared martial law. Besides, the new set-up included a secretary-general and his planning committee, which presented more authority to the civil bureaucracy than to the military.⁵¹¹

The key reason behind the bureaucratic coup was the fear of a general election that was supposed to be conducted in 1959 and resulted in a military intervention that sent Iskander Mirza into exile. Besides, why did the election have been deferred many times since 1947 and become the source of the coup? It had been observed that it was a military coup initiated by the military, fetching all power into its hands. The main reason was not the election but the projection of the military as ruler in the politics of the country under the Punjab-based praetorian oligarchy.⁵¹²

The military had gained seniority because of its awe-inspiring politico-economic place in the security state of Pakistan. Besides, it pursued political power to develop and consolidate itself as an independent player. During 1958-69, Pakistan was arbitrarily ruled by General Ayub Khan, who later got himself elected President by an illogical referendum. General Ayub Khan introduced the system of Basic Democracies and supposedly democratized the country.

General Yahya Khan assumed his office of the Chief Martial Law Administration in March 1969 after the resignation of General Ayub Khan. The military government

⁵¹⁰Hasan Askari Rizvi, *The Military & Politics In Pakistan, 1947-1997* (Lahore: Sang-E-Meel Publication, 2000).133-138.

⁵¹¹Hamza Alavi, "Authoritarianism And Legitimation Of State Power In Pakistan," *The Post-Colonial State In Asia: Dialectics Of Politics And Culture* (1990).75.

⁵¹²Javed Hashmi, "Han! Mein Baghi Hoon [Urdu: Yes! I Am A Rebel]," (Lahore: Sagar Publications, 2005).129.

under Yahiya was seen as an extension of earlier military rule. However, the General Yahiya Khan military statute in the praetorian oligarchy remained in peace in the post-General Ayub Khan period.⁵¹³ General Ayub Khan introduced a 50 % reservation for ex-servicemen in 1962. In some posts in the bureaucracy, he appointed eight army captains to the elite CSP. General Yahiya Khan was replaced by Zulfikar Ali Bhutto as President and Chief Martial Law Administrator, who's PPP, had won the majority of seats in West Pakistan in the general elections of 1970. In 1973, Bhutto assumed Constitution that established a parliamentary government.

Zulfikar Ali Bhutto assumed the office of Prime Minister and was on the lookout to curb the power of civil bureaucracy; he dismissed thirteen hundred civil servants on the charges of incompetence, and corruption and introduced reforms to control the civil services autonomy and put them under the political Executive's control. Zulfikar Ali Bhutto exploited this weakness after assuming power and set out to compensate for the power disparity between the elected and non-elected institutes of the state. As the following quote demonstrates, Zulfikar Ali Bhutto was particularly vocal in castigating the Civil Service and blaming it for the country's troubles:

No institution in the country has so lowered the quality of our national life as to what is called Naushahi (bureaucratic rule). It has done so by imposing a caste system on our society. It has created a class of 'Brahmins' or mandarins, unrivalled in their snobbery and arrogance, insulated from the life of the people, and incapable of identifying itself with them.⁵¹⁴

⁵¹³Lawrence Ziring, "The Ayub Khan Era: Politics in Pakistan, 1958-69 (Syracuse: Syracuse University Press, 1971) .92-96.

⁵¹⁴ Zulfikar Ali Bhutto, Quoted In W. Eric Gustafson, "Economic Reforms under the Bhutto Regime," *Journal of Asian and African Studies* 8 (July-October 1973), .256.

More significantly, Zulfikar Ali Bhutto removed constitutional protections for employees that had previously defended the bureaucracy from political interference. As a result, the Executive could dismiss even the most senior civil servants by issuing a show-cause notice. A Senior Lawyer Ahmad Raza Kasuri stated that the withdrawal of these constitutional protections destroyed the civil service by opening the floodgates of political interference⁵¹⁵.

Instead of establishing political control and oversight over the bureaucracy, these measures institutionalized handling by the political Executive. After Bhutto General Zia-ul-Haq established a commission for the reforms of civil service and projected several radical departures from Bhutto's system like the abolishment of all occupational groups; forming numerous technical services to lodge specialists in fields such as education, agriculture, medicine, and engineering, restoring district administration, and generating many in-service training institutions.

However, aside from ending lateral recruitment and merging the TAG into the DMG, General Zia-ul-Haq had largely taken the federal bureaucratic structure and he institutionalized military induction into the civil service, a practice that had been conducted on an *Adhoc* basis by former administrations, permanently establishing the military's existence in the bureaucracy.⁵¹⁶

Zulfikar Ali Bhutto's entry plan resulted in eighty-three military officers having been appointed to senior public service positions. Although in 1980 Zia-ul-Haq initially re-employed retired military officers on a contract basis, he ruled that ten percent of vacancies in the federal bureaucracy at BPS-17 and 18 would be kept for retired military

⁵¹⁵ Ahmad Raza Kasuri, interview by author, Islamabad, 10 March 2018.

⁵¹⁶ David Washbrook, "The Rhetoric Of Democracy And Development In Late Colonial India," *Nationalism, Democracy And Development: State And Politics In India* (1997).64.

officers. These officers would not be selected by the FPSC but by a High-Powered Selection Committee headed by Zia-ul-Haq. The committee would fill ten percent of senior vacancies BPS-19 and above in the Secretariat group, foreign affairs group, accounts group, and information group. Retired military officers were employed on a 3–5-year contract basis.

Numerous officers of the rank of brigadier and above had been inducted as federal and provincial secretaries. In 1982, eighteen out of forty-two ambassadors were retired military officers. In 1985, a serving Major General was selected to head the Intelligence Bureau, the main civilian intelligence outfit, for the first time. In 1985, ninety-eight retired military officers had been permanently inducted into BPS-17 and 18 positions, although one hundred and eleven recruited senior appointments on contract. The bureaucracy was reduced to a wholly subordinate by the regime's policy of attaching military officers to important occupations in the central and provincial managements, in public sector industries, and semi-government / autonomous administrations. Benazir Bhutto and Nawaz Sharif, both had their teams of civil servants, and were patronized, and promoted not on merit but on their perceived loyalty to their respective political lords.⁵¹⁷

Bhutto and Sharif created an air where the corrupt could get away with their outlines, through politicians, tax-evading businessmen, or self-serving civil servants. The military exploited this observation of rampant corruption to rationalize its political interventions, hiding the actual penalty area, to hold control over domestic and foreign dogma. Under Article 240 of the Constitution, Parliament decides or determines the terms & conditions of Civil Services. According to article 240, the Provincial Assemblies determined the position of provincial civil services through the act. The act promulgated

⁵¹⁷Nadeem Ul Haque, "Why Civil Service Reforms do not Work," (2007).26-28.

by the four provinces, which regulates the appointments and terms of Provincial Civil Servants Services, are essentially replicas of the Federal Civil Servants Act of 1973. The Civil Establishment Code (ESTACODE) especially, a vast compendium of laws, operating procedures, and rules and regulations that govern every aspect of the civil services of importance to civil servants are laws and rules about

- Term and conditions of services-Article 240 and 241 of the constitution and the Civil servants act of 1973.
- Appointments/recruitment, seniority, and promotions-Civil Servants (appointment, Promotion' and Transfer) Rules, 1973.
- Conduct and discipline, Government Servants (Conduct) Rules, 1964; and Government Servants (efficiency and discipline) Rules, 1973.
- Posting and transfer: Section 10 of the Civil Servants Act of 1973; and
- Appeals, petitions and representation, Section 22 of the Civil Servants (Appeal) Rules, 1977.⁵¹⁸

The Federal Public Service Commission is a constitutionally mandated body headed by the chairman and 11 members. All were presidential appointees, responsible for the recruitment of officer-level posts directly, in Federal Bureaucracy. For all federal positions and above a specified level, FPSC conduct test and examination. Each province has its own provincial Public Service Commission, which is constituted on the same line as the FPSC, responsible for the recruitment of the Provincial Public Service Commission. Article 212 of the Constitution established a special administrative body which was known by the name of Service Tribunals.

⁵¹⁸Burki, *Pakistan: Fifty Years Of Nationhood*.33.

These Service Tribunals have exclusive jurisdiction over the issues of terms & conditions of services of civil servants. The Federal Services Tribunal is headed by the Chairman and not more than three members. It has the authorization to address the complaints of civil servants against a certain order released by the department or government concerning their terms and conditions of employment. The Federal Ombudsman or Wafaqi Mohtasib had another significant regulatory authority designated under the Wafaqi Mohtasib Order in 1983.⁵¹⁹

The Bureaucracy became politicized from head to foot; most the whole of the dictatorship; the elected democratic government and the military dictatorship have been using this for their special interests in their territories. In the current time, the survival of civil services lies in political or establishment affiliations. When their affiliated political parties win the elections and form the government, they came into the limelight in important positions, and when the opposition party's Government is formed these civil servants go dormant.

In Pakistan, bureaucracy is divided into three main groups. The first group is with the ruling political party, which serves the affiliations and steers policies, minds and activities based on the master's will and aspirations. The second group is with opposition political parties; they are dormant on the back burner appointments when their affiliation party comes to Government, and they would steer in governance mechanisms.⁵²⁰

A third group is a group of establishments; these bureaucrats could not make their affiliation with any political party. Because they are pro-establishment, they always

Kalsoom Sumra, "18th Amendment And The Problem Of Cohabitation Between Bureaucracy And Elected Representatives In Local Government Of Pakistan," *FWU Journal Of Social Sciences* 11, No. 4 (2017).28-30.

⁵¹⁹Shahid Khan Abbasi, interview by author, Islamabad, 29 March 2018.

⁵²⁰Ibid.

remain busy derailing the civil Government and changing the technocracy. The Civil service has become a critical government organization where Ministers decide on policies and bureaucrats take the requisite Executive action to enforce them.

4.1 Military- Bureaucracy Nexus under General Pervez Musharraf

The Bureaucracy was the second partner in a military-bureaucracy oligarchy. This partnership was enough to keep the Military in the bay of Power. General Pervez Musharraf started it with the introduction of administrative reforms to devolve power to the grassroots level. The actualization of that plan in the form of local governments weakens the provincial Bureaucracy and Government as there was a turf war between them. In transformations between the federal government and provincial governments, this local government system becomes a tool for the Federal Government, to undermine the federal structure even further.⁵²¹

To ensure successful and practical decentralization, the National Reconstruction Bureau formed the Higher Government Reform Committee in 2001. The mission of such a committee was to formulate recommendations for the transition of power from the federal level to the provincial level. However, ground reality had shown that devolution required the transfer of powers and duties of the province to local governments, and therefore, no devolution of power had been seen from the federal level to the provincial level and at the level of local governments.

4.2 National Reconstruction Bureau and Administrative Reforms

General Pervez Musharraf operated the bureaucracy in his nine-year-long regime. Military involvement in civil bureaucracy was at its peak point. After the proclamation of emergency and resuming Power in the country, General Pervez Musharraf established a

⁵²¹Adnan Rehmat, " "Balancing Act", " *The News*, 18 September 2005.

monitoring team consisted of the army to supervise the civil administration at every level, sub-division to the district, district to the provincial level, and provincial to the federal level.⁵²² General Pervez Musharraf appointed 3500 retired and serving personnel as a member of the monitoring team to reduce corruption, monitor the Government, and increase the accountability of politicians and civil servants. ⁵²³

4.3 Appointment of Military personnel in the key position of Bureaucracy

General Pervez Musharraf appointed military officials in key positions in the civil bureaucracy like the chairman of the Federal Public Service Commission, who was responsible for recruiting federal civil servants. Army officers, which are mostly heads of many civil bodies, the position required technical expertise like the Chief Executive of the Alternative Energy Development Board, chairman of the Pakistan TeleCommunication Authority, and chairman of Pakistan Steel Mill.⁵²⁴ General Pervez Musharraf took power in the civil sector by appointing in-service and military officers to key civil positions. Even universities were headed by state-owned companies. General Pervez Musharraf designated the late Lt. General Gulzar Kayani as Chief of the FPSC, and the Federal Public Service Commission was responsible for hiring high-level public servants in the country.

⁵²²Musharraf, *In the line of fire: A memoir*.76.

⁵²³International Crisis Group. (2010, February 16). Reforming Pakistan's Civil Service (Asia Report No. 185). Islamabad and Brussels: International Crisis Group. Available at <https://d2071andvip0wj.cloudfront.net/185-reforming-pakistan-s-civil-service.pdf>. Accessed 10 Jan 2018.

⁵²⁴ "Corruption Scandals Of Musharraf Regime Put On The Shelf ,," The News, August 13, 2013, , Accessed September 18, 2017, <Https://Www.Thenews.Com.Pk/Archive/Print/632431-Corruption-Scandals-Of- Musharraf>.

To appoint a junior military officer to supervise the senior-level civil servant was the most humiliating exercise of General Pervez Musharraf's regime.⁵²⁵ The recruitments, postings, promotions, early, mid-career, and senior-level training of civil bureaucracy were placed in the hands of military personnel.⁵²⁶

4.4 Establishment of the National Accountability Bureau

Especially the National Accountability Bureau (NAB) which was an important tool for General Pervez Musharraf to manipulate the political system and he was successful in letting down and harassing the politicians. General Pervez Musharraf used the weakness of the political opponents for his benefit through NAB. The department was established by the National Accountability Ordinance in 1999 by substituting the *Ehtesab* office. The establishment was headed by Lt. General Muhammad Amjad and subsequently by Lt. General Khalid Maqbool, Munir Hafiez as well as Shahid Aziz.⁵²⁷

Also, with the establishment of the National Anti-Corruption Strategy (NACS) in 2002, 20 main prevention and management functions had been assigned to the NAB. Consequently, Anti-Corruption Operations (ACO) and the "Economic Crime Wing" (ECW) of the Federal Investigation Agency (FIA) got moved to NAB also to personnel, budget, and work pressure.⁵²⁸

4.5 Power Devolution Plan 2001

A remarkable change was made in the provincial bureaucracy through the devolution plan 2001 through the local government system. Devolution Plan was the product of the National Reconstruction Bureau (NRB), headed by retired Lt. General Tanvir Hussain

⁵²⁵"Enforced Disappearances In Balochistan," (Human Rights Commission Of Pakistan 2006).36.

⁵²⁶Musharraf, *In The Line Of Fire: A Memoir*; Ibid.70.

⁵²⁷Ibid.150.

⁵²⁸Saeed Shafqat And Saeed Wahlah, "Experimenting With Democratic Governance: The Impact Of The 2001 Local Government Ordinance On Pakistan's Bureaucracy," *Pakistan* (2005).177.

Naqvi. The NRB was designed to reshape or reconstruct state institutions. The National Reconstruction Bureau identifies the true reason for corruption and negligence in governance as bureaucracy and proposes full reformation of the Civil Services Administration.⁵²⁹ The Devolution Plan 2001, designed to hit the existing commissionerate system and weaken the provincial bureaucracy, limited their role in some significant matters like

- Revenue Collection
- civil Justice of District
- Responsible for the development and construction of the District

The devolution scheme weakened and demoralized the higher bureaucracy, and it had steadily drawn the military into local politics and administration.⁵³⁰ The Local Government System (LGS) was third time introduced by General Pervez Musharraf to hold the public institution from the grassroots level and to curtail the power and authority of the civil servants at the district and provincial levels. For replacing the bureaucracy as well as the administrative structure of all the districts, the Local Government System was the only solution for General Pervez Musharraf.

The purpose of the Devolution Plan 2001 was to systematically devolve the financial, administrative, and political powers of the districts. Tehsil, and then union council levels.⁵³¹ On 14 August 2001, the office of the Deputy Commissioner was abolished and replaced with District Coordination Officer, which was less powerful than

⁵²⁹Sajjad Ahmad And Muqarrab Akbar, "A Historical Review Of Governance In Pakistan (1947-2012)," *Global Regional Review* 4, No. 1 (2019).48-50.

⁵³⁰Ilhan Niaz, *The Culture Of Power And Governance Of Pakistan, 1947-2008* (Karachi: Oxford University Press, 2010).226.

⁵³¹Mohammad Zakir Abbasi And Razia Mussarrat, "Devolution Of Powers To Local Governments In Pakistan During Musharraf Regime," *Pakistan Journal Of Social Sciences (PJSS)* 35, No. 2 (2015).35.

a Deputy Commissioner.⁵³² Before General Pervez Musharraf's bureaucracy reforms, Deputy Commissioner was reporting to non-elected provincial bureaucracy but after the Devolution Plan 2001, the District Coordination Officer after the devolution plan 2001 was bound to report to the district-elected representative Mayor (District Nazim). General Pervez Musharraf curtails the power of the provincial bureaucracy by reassigning a large proportion of its power, and functions to local elected Governments. Similarly, the power of the District Police Officer was curtailed through the Police Ordinance of 2002.⁵³³ The District Police Officer and District Coordination Officer were both subordinate to Mayor (District Nazim).⁵³⁴ A newly established local government started disputes frequently between the civil servants and district Nazim due to confusion.⁵³⁵

This Devolution Plan 2001 impacted negatively on the functions of the civilian bureaucracy, because, elected Nazim had enormous power. In most districts, the landlords were the elected heads of districts that already had personal revenue collection and administration structures.⁵³⁶ They have full control over the police and bureaucratic matters of the district. The police department requires a fair authority to function as well as the department police is a law enforcement agency, so must keep it free and independent from the pressure of political interference.

By the Devolution Plan 2001, the bureaucracy and police turned into a personal servants of the Mayor (Elected district Nazim). Due to financial authority, the district Nazim had a monopoly over the matter of revenue of their respective districts because they had their revenue collection officers. According to the reforms, the district

⁵³²Najam Sethi, "Support The Government Position," *Daily Times News*, July 23 2007.

⁵³³Syed Tanwir Husain Naqvi, "The Triad Of Governance, Devolution, And National Prosperity," *The Pakistan Development Review* 42, No. 4 (2003).13-17.

⁵³⁴Niaz, *The Culture Of Power And Governance Of Pakistan, 1947-2008*.200.

⁵³⁵Reddy, "The Musharraf Formula."56.

⁵³⁶Niaz, *The Culture Of Power And Governance Of Pakistan, 1947-2008*.226.

Coordination Officer had no authority to collect revenue like the one previously done by Deputy Commissioner. These reforms not only weakened the civil bureaucracy sector but also demoralized it and drew the military into local administration and politics. The prime objective of the military behind these reforms was to legitimize the usurpation of power, but it resulted in confusion between a haughty bureaucracy and elected local governments. These reforms empowered the locally elected administration in the appointing and dismissal of district bureaucrats.

National Reconstruction Bureau planned the Devolution Plan 2001 to improve governance and create a people-centred Government. But the elected ones did not properly maintain district affairs and failed in management, which created immense conflict with the bureaucracy. The DCO needed first permission from the Mayor (District Nazim) before putting any matter to the provincial level. Another check on civil bureaucracy was the annual confidential report, which was written by the Chief Secretaries, so the DCO needs to perform according to the Mayor and Chief Secretary of the province. Following were the root causes of conflict between the local government and district bureaucracy.⁵³⁷

- DC was the revenue collector but after Devolution Plan 2001, it was under the authority of elected local Nazim.
- The most controversial was that Nazim had the authority to write the ACR (Annual Confidential Report) of DCO. The ACR DCO need to perform under the command of Nazim and the Chief Secretary. Nazim had also the authority to post or dismiss the DCO.

⁵³⁷Naqvi, "The Triad Of Governance, Devolution, And National Prosperity."17.

- In the substitution of DC for DCO, DC was the single most important district authority, but the DCO would operate under the supervision of the mayor. As a Deputy Mayor, DCO must request permission on any subject and legislation before sending it to the provincial government.
- As well the law-and-Order matters were no more under the DCO, but the police and Judiciary have power or authority over Law and Order.
- Law & Order maintenance was the responsibility of the Mayor and DPO was accountable to Mayor.
- Mayor was an honour and privilege to hoist National Flag on Independence Day before this privilege in DC. The DC's houses are even occupied by Nazim in different districts.
- The office of Divisional Commissioner was also nullified after the abolishment of the DC office. The authority and functions were transferred to the elected district Nazim.⁵³⁸

In short, these reforms were made to change bureaucratic trends and systems. When the local Government formed the district, bureaucrats had a view they would remain in power like the previous regimes of General Ayub and General Zia-ul-Haq. But General Pervez Musharraf had not implemented the previous system. They also complained about the behaviour of the military that had disrespected them. General Pervez Musharraf devolves the power to a broader level; he also abolished some posts and prefers the alliance with district departments like the Income Tax department and Police department.

The media plays an interesting role in this scenario; the media-built pressure on General Pervez Musharraf and continuously reported on the abolished position and

⁵³⁸Khan, *Constitutional And Political History Of Pakistan*.333.

conflicts between civil services and elected district governments.⁵³⁹ The control of the districts has always been the bone of contention among the government and bureaucracy in the political history of Pakistan. Through the Devolution Power Plan, authorized, the district's local elected government, and bureaucracy were under constant accountability and scrutiny. Which became the reason for disgrace for the Bureaucracy, Some civil servants accepted these changes, but most of them took it as a challenge and conspired to fail this new system.⁵⁴⁰ On the other hand, in many elected districts, Nazim also recorded their grievances about the civil servants. They complained about the behaviour and non-cooperation of Civil Servants, especially the attitude of the Police department.

General Pervez Musharraf had not only been fundamentally fascinated by Mustafa Kamal Ataturk but had sought to emulate him in practice; hence, he had composed the National Security Council ⁵⁴¹ as a legislative body much in keeping with the style of the Turkish political structure, which was assumed to be the legacy of Ataturk.⁵⁴² Its representatives were the President, the Prime Minister, the leader of the opposition of the National Assembly, the four provincial Chief Ministers, the Speaker of the National Assembly, the Chairman of the Senate, and the four uniformed men for example the Chief of the Army, the leader of the Joint Chiefs of Staff Committee, the Air Force and the Navy.⁵⁴³

⁵³⁹Sara Ahmad, "Perspectives On Musharraf's Policy Of 'Enlightened Moderation' in National & International Print Media (2003-2005)" (Islamabd: University Of Management And Technology, 2017).134.

⁵⁴⁰Malik, "The Modern Face Of Traditional Agrarian Rule: Local Government In Pakistan."96.

⁵⁴¹Paul Chambers And Aurel Croissant, *Democracy Under Stress: Civil-Military Relations In South And Southeast Asia* (Chiang Mai: Silkworm Books, 2010).186.

⁵⁴²Muhammad Sarwar, *Comparative Governments*, (Lahore: Ilmikitabkhana, 2001).469-470.

⁵⁴³Khan, *Constitutional And Political History Of Pakistan*.672-73.

4.6 Formation of National Security Council

The National Security Council was too functioned as a platform for discussions with the President and the Parliament on topics of national defence, along with sovereignty, dignity, security, protection of the state and conflict resolution. The creation of the National Security Council had sent a confusing impression on democracy, so because the NSC was a sign of military dominance over democratic affairs.⁵⁴⁴ A perpetual political position was thus assigned to the army.⁵⁴⁵

In 2002, the country's main training institution Pakistan Administrative Staff College for senior-level civil servants was authorized to the National School of Public Policy (NSPP), which was headed by a retired Lieutenant General. The retired Major General was appointed Director-General of the Civil Services Academy in 2006. CSA was training the fresh recruits of Pakistan's Premier Civil Services. The retired and serving military personnel were appointed even if they had not experienced civil administration, and they were allowed not only to recruit civil servants, but also, they decided the promotion, transfer, and dismissal. Under the supervision of the military number of universities were established and administrated by serving and retired army officers.⁵⁴⁶

The foreign policy of the state had not remained immune to his grabbing hand. In democratic states, foreign policy is found by civilian policymakers and then the policy is implemented with the help of civilian bureaucracy. But when the military, popularly known for aggressive episodes, starts interfering, it creates problems and disharmony with neighbouring regional states. The study of General Pervez Musharraf's foreign

⁵⁴⁴Ibid.74.

⁵⁴⁵Niaz, *The Culture Of Power And Governance Of Pakistan, 1947-2008*.112.

⁵⁴⁶Anil Kalhan, "Gray Zone Constitutionalism And The Dilemma Of Judicial Independence In Pakistan," *Vand. J. Transnat'l L.* 46(2013).97.

policy made the point quite clear. During his assertive rule, there was little space for civilians to manoeuvre.⁵⁴⁷ Having no civilian input in his foreign policy, Musharraf brought Pakistan to international isolation. The events of 9/11 provided a chance to Musharraf to come out of his isolation, yet he failed to pursue the core interests of the country through his foreign policy.⁵⁴⁸

Lt. Gen. Khalid Maqbool and Lt. Gen. Husain Shah were appointed governors of Punjab and NWFP (KPK) respectively. The military had carved out a role and position in the public and private sectors, including industry, business, agriculture, education, and scientific development; health care, communications, and transportation.⁵⁴⁹ Under Musharraf, the army finally became the country's most important player in the generation and distribution of economic resources and wealth.⁵⁵⁰

The army controlled all state institutions, civil service, foreign policy, economic policy, intelligence agencies, and other organizations. In short, the military was at the driving seat of the political system, and the subordinates were expected to follow the dictations forwarded by the upper echelon of the institution that was from the army itself. He hijacked the political system of Pakistan which was not deemed an anomaly because in most cases dictators deployed their stalwarts in the system at key positions to ensure optimal subjugation.

⁵⁴⁷Chambers And Croissant, *Democracy Under Stress: Civil-Military Relations In South And Southeast Asia*.239.

⁵⁴⁸Jamshed Khan And Asmat Ullah Wazir, "Civil-Military Imbalance In The Administration Of Pakistan: A Case Study Of Musharraf Era," *Dialogue (Pakistan)* 6, No. 2 (2011).23-25.

⁵⁴⁹Chambers And Croissant, *Democracy Under Stress: Civil-Military Relations In South And Southeast Asia*.183.

⁵⁵⁰Ibid.184.

4.7 PPP civil Executive relation with Military

There never had been much loss of intimacy between the military and the PPP before the military took over General Zia-ul-Haq in 1977 and also after the subsequent death of his founder, Zulfikar Ali Bhutto in 1979. Although their respective leaderships have consequently concluded that the other is a permanent feature of the Pakistani environment and that agreements between them will often be and could be required. One such deal allowed the return of Benazir (daughter of Zulfikar), from political exile in 2007, only to be murdered shortly thereafter. The prestige of the army, as well as its political backers, was poor by the end of the Musharraf period. The new Chief of the Army, General Ashfaq Kayani, declared that now the army will stay away from politics.⁵⁵¹

This laid the foundation for a democratic government to seize its rightful place, with prominent senior leaders, which include Asif Ali Zardari, who followed his wife Benazir as President of a PPP and, after 2008, President of Pakistan shielded by an immunity following the passage of the National Reconciliation Ordinance of 2007. Although, this didn't mean that the PPP could claim civilian dominance. Early attempts to do so effectively had been grounded. The PPP, headed by the civil government, had shown little interest in civil servants' reforms. And the country's political background, PPP was the very first political party to maintain power for 5 years from 2008 to 2013 and to be entirely democratic for 5 years.⁵⁵²

On 31 December 2009, PPP allowed the provincial assemblies to legislation on the local bodies system in their respective province, Punjab, and Balochistan, NWFP

⁵⁵¹Salma Malik, "Security Sector Reforms in Pakistan: Challenges, Remedies and Future Prospects," *South Asian Survey* 16, no. 2 (2009).29.

⁵⁵²Muhammad Rizwan, Muhammad Arshid Rafiuddin, And Muhammad Waqar, "Democratic Milestone In Pakistan: A Serener Transition Of Command From PPP To PML-N."23-26.

provincial governments criticize the Devolution Power Plan 2001 and reverse the Executive magistracy and grant the magisterial power to the district's deputy commissioner. In 2010, Balochistan provincial assembly unanimously passed a bill for the dissolution of local bodies and dismissed the Nazim by replacing them with administrators until the new election for local Government was held.⁵⁵³

In NWFP the ANP led the provincial government to introduce a draft for the local bodies which reduced the authority of Nazim and increased the authority of district bureaucracy. In Punjab, PML-N led the provincial government to introduce administrators to replace the Mayor and restored the post of Deputy Commissioner. They also decided the next local body election would be a polled on the party base. The proposed Act of Punjab Local Government Act 2010 envisaged a return of Zia's Local Government Ordinance 1979. PML-N also restored the urban-rural divide which was abolished by General Pervez Musharraf in his Devolution of Power Plan 2001.⁵⁵⁴

In Sindh, PPP and MQM both were major beneficiaries of General Pervez Musharraf's Devolution Power Plan of 2001, and coalition partners in the Sindh government, both wanting to retain the Nazim system.⁵⁵⁵ In February 2009, Supreme Court disqualified Punjab provincial Chief Minister Mian Shahbaz Sharif from electoral politics. After the disqualification of CM Shahbaz Sharif, President Asif Ali Zardari imposed a governance rule and made several key changes in Punjab, especially in Lahore civil servants through Governor Salman Taser. Governor Salman Taser made numerous postings and transfers of civil servants including the Inspector-General of Police and

⁵⁵³Kakar, "Local Government And Pakistan's Reluctant Political Elite."22.

⁵⁵⁴Amjad Nazeer, "Punjab Local Government Bill 2012," (Islamabad: The Institute Of Development Research And Corresponding Capabilities (IDRAC), 2013).118.

⁵⁵⁵M Malik And Ahsan Rana, "The History Of Local Governance In Pakistan: What Lessons To Learn?," (2019).57.

provincial Chief Secretary. But Mian Shahbaz Sharif reinstated all the appointees of Governor Salman Taser and restored his team of civil servants.

In September 2009 Prime Minister Yousef Raza Gillani upgraded 51 officers from BPS 21 to 22 and bypassed the seniority merit rule. Senior civil servants filed a petition in Supreme Court, declaring the promotion was based on nepotism.⁵⁵⁶ In July 2008, Prime Minister Yousaf Raza Gillani directed the influential Inter-Services Intelligence Agency (ISI) under the control of the Ministry of the Interior. In a matter of hours, the army forced itself to withdraw its command.

President Asif Ali Zardari declared in February 2009 also that the National Security Council, set up by General Musharraf to strengthen the position of the military throughout all areas of government policy, would be abolished. This strategy was soon scrapped, too. The military budget stays largely beyond the control of effective civilian supervision. The PPP leadership acknowledged the continued veto of the military over the policies of FATA and Gilgit-Baltistan, along with Kashmir including Afghanistan.⁵⁵⁷

In contrast, nothing had been done to fix the great economic empire that the army held. Following the assassination of Osama bin Laden in Abbottabad in May 2011 by USA Navy Seals, the PPP-led government would allow the military to describe Pakistan's response and seemed unwilling to pose questions about the humiliating security breaches that the incident exposed. Although there were undoubtedly private recriminations, only intelligent failure was admitted to the media.⁵⁵⁸ Western governments had sometimes

⁵⁵⁶ Amjad Abbas Khan And Samia Jamshed, "A Holistic View Of Local Governments Acts In Pakistan. Analysis Of Punjab Local Government Plans 2001 And 2013," *Pakistan Vision* 20, No. 2 (2019).56-59.

⁵⁵⁷ Stéphane Lefebvre, "Pakistan's Illiberal Democracy And The Inter-Services Intelligence Directorate," *National Intelligence Journal* 1, No. 1 (2009).28.

⁵⁵⁸ Savail Meekal Hussain And Mehreen Zahra-Malik, "Political Instability And Its Implications For An Effective National Counterterrorism Policy In Pakistan," *Pakistan's Counterterrorism Challenge* (2014).11.

issued contradictory messages about civil-military affairs since 2008, often encouraging the PPP-led government to exert greater influence over the military and intelligence agencies, particularly the ISI; some others, had adopted a 'business as normal' policy that seems to recognize the existing balance of power between civilians and the army in Pakistan.

4.8 Media under the regime of General Pervez Musharraf

The roots of the currently booming media industry in Pakistan stretch to the era of a dictator who came through a military coup but introduced a liberal media policy that helped to open a new epoch of the information revolution in Pakistan. Musharraf assumed government control in October 1999. At that time, only state-run electronic media PTV and Radio Pakistan were operational. A huge population of 160 million people was bound to listen to and watch what the then government wanted to offer its people on a single channel with limited content choices. Media, especially the state media, was termed as the spokesman of the succeeding governments.

Till 2001, the people of Pakistan had a single TV channel, i.e., PTV. NTM (Network Television Marketing) proved to be a bit of fresh air in the early 90s, but the conspiracies of the PTV bureaucracy ultimately led to its closure. By then, most Pakistanis, especially the urbanites of Karachi, Lahore, and Islamabad, had already switched over to cable TV.⁵⁵⁹ So when Indu's TV network started its transmission on 14 August 2001, it was a new phenomenon in Pakistan's media scene. People started taking

⁵⁵⁹Ian Talbot, "General Pervez Musharraf: Saviour Or Destroyer Of Pakistan's Democracy?", *Contemporary South Asia* 11, No. 3 (2002).15.

interest in this channel and its viewership increased manifolds within months. Then other business tycoons jumped on the bandwagon with the opening of new TV channels.⁵⁶⁰

After Indus, Geo-TV, founded by Mir Shakil-ur-Rehman, owner of the Jang Group of Newspapers, was launched in May 2002 to serve the information needs of the people of Pakistan. The channel started its test transmission on 14 August 2002, whereas regular transmission began on 1 October 2002. With the thrilling spirit and new professionalism, Geo TV has taken the freedom of speech and freedom of expression in Pakistan to unprecedented levels in Pakistan's history.⁵⁶¹

General Pervez Musharraf's liberal policy for media development was opening up new avenues of information and the advent of TV channels explosion was in its beginning in Pakistan. During its existence, PEMRA had issued eighty-three licenses to different media groups. The quantum of news channels dominating Pakistan, rose to 38 recently, while other channels were of entertainment, sports, and religious nature. No doubt, it was General Pervez Musharraf's philosophy of enlightenment in every sector of life, including media that broadened Pakistan's media scene. However, the technological boom that emerged had its significance in the process of media development in the country.

4.9 Formation of Pakistan Electronic Media Regulatory Authority

Pakistan Electronic Media Regulatory Authority (PEMRA) was formed on 1 March 2002 to govern digital media affairs. The organization's main objective had been to promote

⁵⁶⁰Zafar Iqbal, "Media And Musharraf: A Marriage Of Convenience," *European Scientific Journal* 8, No. 3 (2012).23.

⁵⁶¹Afshan Aziz And Tanweer Khalid, "Enlightened Moderation Under Pervez Musharraf Regime," *Journal Of Social Sciences And Humanities* 56, No. 1 (2017).89.

and control the establishment and maintenance of all private electronic media and distribution networks in Pakistan.⁵⁶²

PEMRA is the Chief Licensing Body in Pakistan for TV and Radio Channels. A total of 83 licenses had been authorized for satellite TV channels, along with about 38 for news, and current affairs channels (and regional news outlets). There were usually about 65 channels in service. The electronic media boom during General Pervez Musharraf's era could also be observed in the field of radio networks which expanded from a few to a massive level.

Islamabad, the capital of Pakistan, had 9 FM radio stations. Punjab had 50, Balochistan had 9, Khyber-Pakhtunkhwa had 15, Northern Areas & Azad Kashmir had 8, and Sindh had 27 FM channels. These radio stations provided news & information besides 24 hours entertainment and proved to be a catalyst for social change and national development. General Pervez Musharraf himself set a new precedent by practising the philosophy of 'media democracy' by tolerating some of the most biased sections of the national media, and by letting the people be the judge of its role. However, he could not fully comply with his philosophy as he started to gag some editors of newspapers and banned TV channels including the Geo in 2007 and 2008.⁵⁶³ The Media development process started in the General Pervez Musharraf regime which had unprecedented and unparalleled, and freedom of expression was termed the 'new establishment'. Now political and strategic wars are being fought through media whether it was building pressure on General Pervez Musharraf, a pioneer of media development, to resign or coping with the grave challenge of extremism in Pakistan.

⁵⁶²"President Promulgates PEMRA (Amendment) Ordinance 2007."

⁵⁶³Iqbal, "Media and Musharraf: A Marriage Of Convenience."

4.10 Major Upheavals during Musharraf Regime

Though the nine-year-long regime is fraught with many epochal events, some of them have left deep marks in the history of Pakistan. Such incidents are described below:

4.10.1 Election Commission Code of Conduct

EC issued a Code of Conduct for the electronic media on 8 August 2002. It was described as the election coverage on the state-controlled media should be balanced, fair, and unbiased in the respect of other things such as symbols, banners, flags, party manifestoes, etc.⁵⁶⁴

4.10.2 Operation Silence

Lal Masjid (Red Mosque) issue was the worst of its kind in the history of Pakistan. It dented peace in the entire country. The following lines shed some light on the event and the way national and international media covered it. In 1966, Lal Masjid (Red Mosque) was declared the central mosque (Markazi Jamey Masjid) of the newly established capital Islamabad of Pakistan. It was given this name because of its red colour. Maulana Abdulla's father of Maulana Abdul-Aziz and Abd-ur-Rasheed Ghazi was its first 'Imam' and 'Khatib'.

He was killed in 1998. Maulana Abdulla was very active in Khatam-e-Nabbuvat Movement in 1974. At that time Lal Masjid became the base camp of the movement. Prime Minister Zulfikar Ali Bhutto was arrested and jailed Maulana for his active role. This Masjid came under the control of the Capital Development Authority (CDA) and is supposed to be a supporter of government policies.

⁵⁶⁴"Pakistan National And Provincial Assembly Election," (EU Election Observation Mission., 2002).

After the death of Maulana Abdulla, his elder son Maulana Abdul Aziz was appointed as the Khatib of Lal Masjid, and his younger brother Abid-ur Rasheed Ghazi was the Assistant Khatib. After the incident of 11 September 2001, President Pervez Musharraf announced his support for the US-led ‘war on terror. This declaration sparked conflict with the Lal Masjid, whose leadership was openly pro-Taliban.⁵⁶⁵

The government policy, in 2006, CDA decided to demolish all the Masjid and madrasas which were not approved in its master plan. Jamia Hafsa, the largest Islamic religious institution for women in the world, with more than 6,000 students⁵⁶⁶, was also one of them. All the religious leaders of Islamabad opposed the demolition operation. On the eve, Maulana Abdul Aziz demanded that all demolished Masjids must be reconstructed, Islamic Law must be implemented in the country, and vulgarity from society must be eradicated. Before this, Maulana Abdul Aziz released a ‘Fatwa’⁵⁶⁷ that the operation of the Armed Forces of Pakistan against the Muslim militants in Waziristan is ‘*haram*’.⁵⁶⁸

The government started ‘Operation Silence’ on 3 July 2007. It took 9 days and was completed on 11 July 2007. Lal Masjid and Jamia Hafsa were besieged from 3 July to 11, 2007, while negotiations were attempted. Once negotiations failed, the complex was stormed and captured by the Pakistan Army’s Special Service Group. The conflict resulted in 154 deaths and 50 militants being captured.

This event triggered the ‘Third Waziristan War’ which marked another surge in militancy and violence in the country. During this operation, besides the national media,

⁵⁶⁵Iqbal, "Report On Accounts Of NICL Scam Accused Missing, SC Told ".

⁵⁶⁶"Court Trying To Assume Powers Of 58(2b): Govt."

⁵⁶⁷A Religious Decree Issued By a Religious Leader with Certain Qualification.

⁵⁶⁸Shujah Abadi, *Krbla-E-Muhalla Say Karbla-E- Lal Masjid Tak* (Lahore: Daniyal Publisher,, 2007).14.

world media also crowded Islamabad. Pakistani print media published special supplements, and electronic media kept on airing live coverage of the issue 24/7. The majority of the media criticized the government's decision to operation, but PTV, Dawn News, Daily Times, The Pakistan Observer, Aaj-Kal, and Radio Pakistan were supporting the operation. Geo, ARY One World, Aaj, Express-News, and other channels were covering the issue in a somehow balanced way.⁵⁶⁹

Foreign media, especially Indian and Anglo-American, was a strong supporter of the operation. Times of India, All India Radio, Zee News, Hindustan Times, VOA, BBC, Washington Post, Los Angeles Times, Newsweek, and Time supported the operation strongly. Some glimpses of the coverage by various media under English Daily Dawn supported the government's actions against Lal Masjid but queried, 'how the intelligence agencies failed to get wind of the goings-on in the Lal Masjid and the stockpiling of arms and ammunition in such large quantities.⁵⁷⁰

The Daily Times also supported the government's position and added, 'Let us be clear. No government can violate the universal principle of 'no negotiation with terrorists' and live to be praised'.⁵⁷¹ Jang Group of Newspaper's English daily The News was more critical and wrote, Once 'Operation Silence' was over, the firing stops, the dust settles down and the bodies were counted, there were bound to be many questions raised. Why didn't the government act earlier against the clerics, had that been the case, so many lives would not have been lost. Why were the Lal Masjid elements allowed so much leeway that the complex became almost like a state within a state, complete with a moral policing force which acted with impunity enforcing a rigid interpretation of Islam on the city's

⁵⁶⁹Zafarullah Khan And Brian Joseph, "Pakistan After Musharraf: The Media Take Center Stage," *Journal Of Democracy* 19, No. 4 (2008).42-46.

⁵⁷⁰"Pakistan Press On Mosque Assault," *BBC News*, July 12 2007.

⁵⁷¹Najam Sethi, "Support The Government Position," *Daily Times News*, July 23 2007 .

residents? How did so many hardened militants, reportedly some foreigners among them, make their way inside the compound situated in the heart of Islamabad?⁵⁷²

English daily The Post was worried about how the episode would affect Pakistan while writing, 'This was going to ratchet up religious sentiments, and could lead to increased polarization between the moderates and extremists in the country, the former including General Musharraf under the banner of 'enlightened moderation'.⁵⁷³ English daily The Pakistan Observer praised the government, The Government deserves credit for showing remarkable tolerance and patience and exhausting all possible avenues for peaceful settlement of the nerve-shattering crisis⁵⁷⁴

4.10.3 Presidential Election and Media response

Presidential Election the most significant threat to the Musharraf regime, came not from what the court had done, but what it could potentially do in the October 2007 presidential election. As the Supreme Court was continuously expanding its reach, the media and civil society were demanding that the Court address the constitutional question of General Pervez Musharraf's eligibility to run for election while still in military service. General Pervez Musharraf obtained a one-time exception for dual office in 2002 when he amended the Constitution, and the Supreme Court upheld the amendment. But with the Supreme Court taking an activist posture, Musharraf could no longer trust the bench to perform another constitutional manoeuvre to legitimize his eligibility for the presidential election. The Supreme Court had shown the ability to confront vital regime interests and policies and to challenge higher regime officials in each successive public interest case.

⁵⁷²"A Bloody Ends," *The News*, July 11 2007.

⁵⁷³"Pakistan Press On Mosque Assault."

⁵⁷⁴*Ibid.*

There were reports that Justice Chaudhary would be willing to move forward with the media's demands in deciding General Pervez Musharraf's eligibility as well. It was in this context that Musharraf suspended Chaudhary on March 9, 2007.⁵⁷⁵

4.10.4 Judicial Crisis

The judicial crisis started on 9 March 2007, when the Chief Justice of Pakistan Iftikhar Muhammad Chaudhary was suspended by the President of Pakistan General Pervez Musharraf. Chief Justice was charged with violating the norms of judicial prosperity, and misuse of power for seeking undue favour for his son and was also accused of interfering in the workings of the Executive branch. So Presidential reference against him was filed by the President on the advice of Prime Minister Shaukat Aziz and the reference was sent to the Supreme Judicial Council for further action.

4.10.5 Suspension of Chief Justice

It was the first time in the history of Pakistan that a Chief Justice was suspended by the President despite only sending the Presidential reference under Article 209 of the Constitution to the Supreme Judicial Council which was the constitutional body to investigate the allegation and make the decision about the suspension or removal of the Chief Justice from his office.⁵⁷⁶

Secondly, General Musharraf also appointed Justice Javid Iqbal, as the acting Chief Justice because the second most senior judge, Justice Rana Bhagwandas, was reportedly out of the country. This appointment was also controversial because different groups of the legal fraternity had contested it as unconstitutional. Even Chief Justice

⁵⁷⁵Ghias, "Miscarriage Of Chief Justice: Judicial Power And The Legal Complex In Pakistan Under Musharraf."27.

⁵⁷⁶Plett, "Musharraf Imposes Emergency Rule."101.

Iftikhar Muhammad Chaudhary himself challenged the appointment of an acting Chief Justice in his application before the Supreme Judicial Council stating. Justice Javid Iqbal had been appointed as acting Chief Justice contrary to Article 180 of the Constitution of the Islamic Republic of Pakistan which provides that acting Chief Justice could be appointed when the office of the Chief Justice of Pakistan is vacant, or the Chief Justice of Pakistan was absent or is unable to perform the functions of his office due to any other cause. The cause could be if the Chief Justice was incapable of properly performing the duties of his office by a reason of physical or mental incapacity, which was not the case over here.

4.10.6 Press and Publication Ordinance

General Pervez Musharraf also modified the Press and Publishing Order, which governs print media matters. This approach resulted in the development of media in various categories. Unless the situation remained beneficial to General Pervez Musharraf's government, he was very generous to the media. And everything changed when his influence on government was lost due to his controversial and anti-democratic measures.⁵⁷⁷

The very first move in this direction was the suspended sentence of Chief Justice of Pakistan Iftikhar Muhammad Chaudhary on 9 March 2007. He ordered the Chief Justice to step aside, but when the CJ declined, President Musharraf disqualified him and made a reference to him in the Supreme Judicial Council. This led to a gulf of contradictions here between the military dictator and the mainstream press who persisted in freedom of speech, democracy, justice, as well as the rule of law. The media recorded

⁵⁷⁷"President Promulgates PEMRA (Amendment) Ordinance 2007."

all day-to-day activities surrounding the dismissal of the Chief Justice as well as the trial of the Supreme Judicial Council.

The whole report changed public perception, and the reputation of Musharraf was thus badly tarnished. This made Musharraf angry and, instead of reforming his illegal policies, increased his pace and took a series of measures to subjugate and put the media under his influence. This was intolerable to the free media, and it carried out its ethical duties with genuine enthusiasm. Media activism drained insecurity from the country's environment and empowered the people, judges, politicians, and civil society groups to share their solidarity with the detained chief judge. A 13-member constitutional appeal court restored Chief Justice Iftikhar Muhammad on 20 July 2007.

While Musharraf publicly declared and said he would respect the decision of the Court, he did take measures that were neither democratic nor constitutional. Behind them was the furious occurrence that shook Pakistan the whole, the Lal Masjid tragedy in July 2007. Innocent girls and boys at the seminary were murdered by violent use of power. The civic life of Islamabad, Pakistan's capital and also the most modern city, was shaken. The area surrounding Lal Masjid seemed like a battleground, and ordinary people had no access to the building. War weapons and military tactics had been used to clear the Lal Masjid.⁵⁷⁸

The government wanted the media to cover the events in line with its directives and wishes. But the mass media covered the case against the whims and desires of the government. The Supreme Court and society organizations were not pleased with this move. Civil society had repeatedly called on the government to restrict the use of force, particularly military power.

⁵⁷⁸Abadi, *Krbla-e-Muhalla Say Karbla-e- Lal Masjid Tak*.12.

Just after the installation of Chief Justice Iftikhar Chaudhary including events like Lal Masjid, General Pervez Musharraf's administration lost popularity. The business was angry with the actions of the General. He went away from the government and was segregated in such a way that he would rather not imagine the actual scenario just outside of the presidency. Rather than assessing his shortcomings to manage the situation, he took measures that represented a merciless authoritarian dictator. Among all of them, the worst was the implementation of the Emergency Order of 2007.

Ex-army ruler General Pervez Musharraf declared an emergency and suspended the Constitution as Chief of Staff of Pakistan by a presidential decree issued on 3 November 2007. Besides, he issued a Provisional Constitutional Order (PCO) for the administration of state affairs. He removed the Chief Justice of Pakistan Iftikhar Chaudhary, and directed all judges of a Supreme Court, each Chief Justice of the four High Courts, including their respective judges, to take a new oath under PCO. Most of those who declined to swear an oath under PCO were discharged from service without even any compensation.⁵⁷⁹⁵⁸⁰

About 12 Supreme Court Justices and 24 High Court Judges of Sind, KPK as well as Punjab had stopped holding office. This also contributed to the revocation of human rights under section 9 of the Constitution of Pakistan. Safety measures against unlawful arrests and imprisonment according to Article 10, freedom of movement under Article 15, freedom of assembly according to Article 16, freedom of association under Article 17, freedom of expression according to Article 19, and dignity of the person had been suspended.

⁵⁷⁹"Oath of Office (Judges) Order, 2007".

⁵⁸⁰Shahid Khan Abbasi, interview by author, Islamabad, 29 March 2018.

The state was hit by protests and strikes that forced the government to reconsider its decision. Throughout the world, every civilized individual and institution had entered the voice of the nation, including civil society. The military government assumed that his Executive action would be obeyed by the citizens, so he would face no opposition to imposing his self-centred agenda as he did 8 years earlier, when he ousted an elected government to pressure the Prime Minister into exile. But this time, he had a much-unexpected reaction. The Pakistani government, politicians, ordinary people, advocates, the press, and civil society overwhelmingly rejected his order. They joined forces against this emergency and launched an unprecedented campaign to end the emergency and restore justice, universal human rights, and freedom of speech. General Pervez Musharraf's government had taken every step of the way to press this campaign. They imposed restrictions on assembly, expression, and mass protests. Power was used to disperse the protesters. Thousands of protesters were jailed and torched. They were arrested and held in detention without trial. Many of the protestors were attorneys. They were physically beaten, wounded, and transferred to far-away prisons. Their descendants were kept in the dark about where they were. There had also been instances of police and powers opening fire in several locations and of causality.⁵⁸¹

The influential figures who protested against the emergency were organizations, including students from all over Pakistan, and several right-wing and left-wing organizations from all walks of life. The government had shown itself to be deaf and dragged on such acts. It moved one step forward and pressured local cable providers to avoid broadcasting autonomous television channels such as Dawn News, Aaj, Geo News, ARY One Country, BBC Country, CNN, and Al-Jazeera. The administration used violent

⁵⁸¹Shahid Khan Abbasi, interview by author, Islamabad, 29 March 2018.

force toward journalists who would have been protesting to eliminate the emergency, reinstate the Constitution and reform the judicial system. The Government of Pakistan had also pressured the Dubai Government Administration to stop the connection of ARY and Geo Networks.⁵⁸²*

Besides, media men were forbidden from accessing those premises and encountered difficulties in the execution of their professional responsibilities, which seemed to be old-fashioned censorship. This made the situation worse. The government of Pakistan might have decided to control the country as it once was in the Stone Age in the twenty-first century. This was unjustifiable to Pakistan's people, press, and civil society. It's been a critical moment. The media had to play its position by reporting on the appropriate path to restore democracy and the Constitution. The press did not violate the canons of their discipline. They performed their duties without intimidation. They carried all the brunt as well as suffered tremendous losses as a result of their struggle. This led to general dissatisfaction among the population.⁵⁸³

Approximately 70 percent of the population publicly opposed the suspension of private Television networks; the detention of the Chief Justice; 71 percent criticized the termination of the Constitution, while 67 percent started demanding the impeachment of General Pervez Musharraf. Throughout this difficult time, the situation escalated when the government perpetuated two ordinances that restricted media operations. These directives forbade live television broadcasting of conflict and bloodshed and forbidding television operators from broadcasting programs or reports that could mock the President,

⁵⁸²"Gunmen Open Fire At Pak TV Channel."

⁵⁸³Hussain And Zahra-Malik, "Political Instability And Its Implications For An Effective National Counterterrorism Policy In Pakistan."65.

the armed services, or even just the Executive, Legislative and Judicial bodies of the government. Offenders might have been sentenced to three years in prison.⁵⁸⁴

The federal authorities had not only been limited to verbal attacks but had also taken on a variety of unruly acts. The Geo Television headquarters in Islamabad was also arrested by the police. The case went on air and was seen all over the world. The police assaulted the employees of the office, battered them with batons, and destroyed the office property. Additionally, the editor of the Daily Express of Peshawar Sohail Qalandar became kidnapped in January 2007. The climax of this story came on May 12, 2008, when detained Chief Justice decided to visit Karachi. The scoundrels freely shot at the Aaj News crew, as well as the people who saw it live.⁵⁸⁵

Many of these acts included a demand that the mainstream press should not expose the government's wrongdoings, but instead endorse them. Musharraf would not be an unwanted figure until 9 March 2007. In the region, he enjoyed much respect. He started to neglect his faults; the fall became his destiny. Sequentially, he made a series of controversial decisions. The media was playing a supervisory function in the regime. The media figured out his errors and challenged him to correct them, but instead of correcting his errors, he began to constrain the mouthpiece of the community. His unpopular decisions made him the most controversial leader.

He was attempting to chain the media. He targeted mainstream press offices and people repeatedly. He released directives that were open mostly to the media and these directives prevented the media from carrying out their duties, and journalists were often threatened with detainment. Both of these made the situation worse. At every passing

⁵⁸⁴Iqbal, "Media And Musharraf: A Marriage Of Convenience." 38-64.

⁵⁸⁵Aziz And Khalid, "Enlightened Moderation Under Pervez Musharraf Regime."13.

moment, the whole pillars of General Pervez Musharraf's administration were disrupted. Ultimately, he did not just lift the emergent situation on 15 December 2007 and decided to resign from his position on 18 August 2008.

CONCLUSION, FINDINGS AND RECOMMENDATIONS

During this research, the author found that there was a consensus within the military on four issues central to the civil-military discussion. First that the military has the capacity to provide relief to civilians during manmade or natural disasters in which civilian governments have failed so far. But they also have manipulated and politicized the issues. Second, Pakistani people trust military leadership, while having little trust in political leadership in matters of rule of law and good governance.

However, the concept of separation of powers has never really worked in Pakistan. It has been the Executive, decision-making authority in the country. Pakistan has been an Executive-dominated state in Presidential as well as Parliamentary settings. Decision-making and power most of the time had been concentrated in the hands of one person, whether under military or civilian rule. Thus, no matter what the Constitution says, separation of powers has never existed in Pakistan in practice, nor has the checks and balances system prevailed in the country.

The 1973 Constitution is based on the principle of separation of powers, thereby defining the domain of state institutions. The institution of the Judiciary has been entrusted with the power to interpret law vis-à-vis the fundamental rights guaranteed by the Constitution. Though the higher Judiciary has no power under the Constitution of 1973 to propose any legislation or participate in law-making, the extra-official consultation and personal advisory function of the Chief Justice of Pakistan had frequently been extended to the military ruler and had been continued during the civilian government.

Since the 1950s, the military had been an important institutional player. All political governments depended on it for political and security purposes. Internal and regional threats had turned Pakistan into a ‘security state’ that places the military in commanding positions. The reasons for Pakistan’s emergence as a security state are well-known. It got independence from Britain but also got into enmity with India on the Kashmir issue, which was left unresolved and both states went onto fight four wars. A permanent threat perception from India requires Pakistan to equip and modernize its military with the capability to meet internal and external security challenges. But on the other side, civilian institutions remained fragile and unstable.

This difference in preferences and priorities created an imbalance between political and military institutions. The imbalance of power in favour of the military makes civilian supremacy an upheaval task. Though all political elites had made endeavours to subordinate the military under civilian elected rulers to ensure the military’s non-intervention in politics, their attempts had made them vulnerable and ineffective against the institutional power of the military. For decades, Pakistan’s political system and culture had, for these reasons, remained undemocratic and underdeveloped, which makes it hard to establish civilian dominance and the military remains in the driving seat despite the democratic process in place.

The Military’s intervention in Pakistan’s politics is also because civilian governments failed to establish their writ in the state due to weak leadership skills and poor governance. Civilian governments from the beginning needed the military’s support for their survival. Ayub Khan took over power when he realized that civilian leadership had failed and that there was no other option left. Military leaders assumed the role of judging the civilian government and taking independent decisions to take control of the

state out of the hands of the civilian government. Whenever democratic governments had been established, politicians consistently failed to deliver. Under civilian regimes, people's lives never get better, and more than half of the population remains without basic life necessities and below the poverty line. Moreover, corruption, lawlessness, ethnic politics, and poor governance produced economic and social circumstances that promoted extremism and terrorism in Pakistan that glorified the military institution other than the civilian institution.

Military intervention and the failure of democracy complement one another. Extensive events are given in chapters number three four, and five on Pakistan's politics proving the point that elected civilian rulers concentrated to maximize their power and promote patriotism instead of building institutions and public welfare; whatever they built for supporting democracy was later destroyed by the next military intervention. The military rulers, whenever they came into power, had equally destroyed state institutions particularly the Judiciary, constitution, political parties, and electoral process, the very elements necessary for democratic development.

Few political leaders in the history of Pakistan have tried to challenge the formidable power of the security establishment but could not stand against the powerful military institution. Zulfikar Ali Bhutto was the first powerful and popular civilian political leader who tried to control military institutions, and he succeeded to a great extent. While in power, he turned out to be an autocratic ruler with little regard for political dissent. He did not allow his critics and opposition parties to challenge his authority.

Consequently, he alienated political parties that formed an alliance to contest the 1977 elections, and it was said that there was massive rigging in those elections and thus

provoking mass unrest and political agitation. The confrontation between Bhutto's government and the opposition destabilized the country and created perfect conditions for a military takeover. General Zia-ul-Haq, whom Bhutto had handpicked as the Chief of Army Staff, imposed the third Martial Law in 1977 and ruled the country until his death in a plane crash in 1988. After his death, the military disengaged from politics and this temporary disengagement provided an opportunity for Benazir Bhutto and Nawaz Sharif in the 1990s to establish civil governments.

Neither of the two parties played according to the rules of the game. They engaged themselves in politics of revenge and destabilized each other, a continuation of the politics of the PPP and anti-PPP coalition forces. It was a failure of political parties in the 1990s that both Muhammad Nawaz Sharif and Benazir Bhutto elected governments were dismissed and democracy failed to flourish in Pakistan. Democracy was again derailed in 1999 when General Pervez Musharraf sacked the democratically elected Muhammad Nawaz Sharif and defended his takeover by labelling Sharif's democracy as a 'sham democracy'.

The real reason for his intervention was his interest; the Prime Minister had dismissed him. The fact that the General was able to impose the fourth Martial Law in the country against a government that enjoyed a two-thirds majority, speaks volumes about the character of the praetorian state⁵⁸⁶. General Pervez Musharraf ruled the country as a powerful dictator. Following his predecessors, he disfigured the Constitution and empowered himself as the President of Pakistan through a sham and unconstitutional referendum. He revived the MQM, encouraged religious parties and constituted a new

⁵⁸⁶Praetorians means excessive or abusive political influence of the Armed Forces in a country. The word comes from the Roman Praetorian Guard, who became increasingly influential in the appointment of Roman emperors.

grouping of the Muslim League as PML-Q by fragmenting other parties. The 9/11 incident proved to be a blessing in disguise for Musharraf as he received economic and political support from the US and gained international recognition. Eventually, it produced consequences of its own. Pakistan's internal and external security crises erupted due to General Pervez Musharraf's support for the US. The Military's operations against Baloch leaders and to curb religious militancy exacerbated the security situation in Pakistan and also affected the military image. People began to criticize the army on various public forums. In fact, the military's image suffered a heavy blow. Benazir Bhutto's assassination in 2007, during her election campaign, further increased the resentment against Musharraf and as a result PML-Q, the party he formed, suffered a huge loss in the 2008 elections.

An important aspect of the 2008 elections was that the military, now being headed by Chief of Army Staff, General Kayani, became neutral and allowed the political process to take its natural course. It was a unique case in Pakistan's political history as intelligence agencies and the Army did not play any role, unlike in the 1990s. Their non-intervention policy encouraged Asif Ali Zardari to become President of Pakistan whose party had defeated two major parties, PML-N and PML-Q in the 2008 elections.

Asif Ali Zardari crafted broad-based political alliances and introduced a new political culture of 'reconciliation' with his opponents as a strategy to strengthen the political forces against the military establishment. There also appeared a change in the outlook of the military as well. It allowed democracy and civilian leadership to play their constitutional roles. The military wanted to restore its image by staying neutral in elections and facilitating democratic change. General Kayani accepted his Corps Commanders' decision that the army would not take over because the military in

previous years had earned a negative image due to General Pervez Musharraf's internal and external policies. Moreover, militancy and insurgency were posing threats to Pakistan, requiring the military to devote itself to national security. As we know the post-coup politics and system are characterized by conflict and dissent in Pakistan.

These conditions did not allow the government to develop its institutions and political system. Consolidating the gains has remained the priority of political leaders, which posed a threat to the system and institutions and promoted politics of patronage and corruption. Asif Ali Zardari and his government were preoccupied with strengthening their relative power positions. He had strong political support from PML-N and other coalition partners in removing Musharraf from power. Asif Ali Zardari followed the Machiavellian style of politics.

He backtracked on his promise to reinstate the deposed judges, who had created political chaos for him as he feared that they might open his corruption cases. The Army Chief, who pledged to support democracy, intervened and helped political parties and lawyers to resolve their three-year-old issue of reinstatement of judges. It was the first political interference by General Kayani. He played his role in defusing tensions in the country. His move reflected the popular opinion that expected the military to influence the government. The military and the intelligence agencies had hardly any liking for Asif Ali Zardari. They considered him a 'security risk' for the country due to his untrustworthy character and record of dubious deal-making that he could do even at the cost of the national interest.

Asif Ali Zardari knew the military concerns and transferred his constitutional power of the National Command Authority to the Prime Minister. It was for the first time in Pakistan that any President issued an ordinance to reduce his powers. Politically, Asif

Ali Zardari acted like Zulfikar Ali Bhutto, who did not like his opponents and critics. Asif Ali Zardari did not like Chief Justice Iftikhar Chaudhary because he had nullified General Pervez Musharraf's National Reconciliation Ordinance (NRO), which brought Asif Ali Zardari into power.

Moreover, Asif Ali Zadara's regime was more determined to make Parliament supreme instead of focusing on the supremacy of law because having control over the party, he could manipulate the Parliamentary majority in his favour, which he repeatedly did. Asif Ali Zardari and his government attempted to accumulate power by reducing ISI and military power. Squabbles between the Asif Ali Zardari government and the military continued to show their institutional power. Asif Ali Zardari's regime abolished the National Security Council to rule out the military's role and instead he established Defense Cabinet Committee, but Defense Cabinet Committee remained ineffective.

It met only twice after the Abbottabad raid and Salala checks post-incident by US forces. Asif Ali Zadara's regime eliminated the National Security Council to ensure political supremacy and the Parliament's power over military institutions, but he could not reduce the military's role, as the military retained residual power to influence the national security and maintained its prerogative to provide direction to the government in foreign policy issues.

This study has demonstrated that there is a new pattern in civil-military relations. Despite a democratic system, the military controls security and defence policies. In many ways, it is consistent with the old tradition that emerged in the 1950s. Since then, national security has been the priority and interest of Pakistan's military. Military top officers have always had their input on security and defence matters. General Jahangir Karamt, former COAS, proposed the idea of establishing the National Security Council but his

idea was rejected by Prime Minister Nawaz Sharif. Sharif considered his idea as an open intervention in civilian affairs and eventually General Karamt resigned to avoid conflict with political leadership.

It does not matter to the military whether there is National Security Council or not; it has continued to exercise its control over its traditional domain of policy in the areas of national security; India, Kashmir, and the nuclear issue. Instead, Asif Ali Zardari was taken as an unreliable leader and the military lost trust in Asif Ali Zardari and his government. Though the military had withdrawn from politics, it did not hand over defence, security, and foreign affairs to the Asif Ali Zardari regime.

Some army officers told the author during interviews that Asif Ali Zardari and his team were incompetent and could have jeopardized state security. The military had to keep its eyes on his government because national interests were at stake. Asif Ali Zadora's regime proved the military concerns when it accepted the Kerry-Lugar Bill that offered conditional economic aid to his government and reduced the powers of the military leaders. But military leadership did not allow the government to accept until the content was changed. The Military accepts political changes in Pakistan when it feels that its corporate interests would be protected, and the political government would keep national interests as broadly defined by keeping the military as its priority.

The present study found that the Asif Ali Zardari regime adopted a different policy to control the military. The Post-Abbottabad raid provided an opportunity for the civilian government to establish its dominance over the military because the military was under severe internal and external criticism. Asif Ali Zardari and his government believed that the most-wanted person, Osama Bin Laden, was living in Pakistan only with the help of ISI and the Army. Asif Ali Zardari needed the US' help in case of a

military coup because his government had decided to investigate the Abbottabad incident. The military reacted when a memo to this effect that was written by Husain Haqqani, Asif Ali Zardari's man in Washington representing Pakistan, was revealed.

The memo came to light when the armed forces were fighting against militants in Balochistan, and FATA and tensions were high between the US and Pakistan armies on Western borders. On Eastern borders, Indian forces were attacking the Line of Control. The Abbottabad attack raised serious questions about Pakistan's vulnerability. The incident proved that Pakistan is a fragile state internally and the military's image was tarnished after the American raid. On the other hand, Asif Ali Zardari was more ambitious to subordinate the military institution to divert the attention from his government's mismanagement and corruption, which was highlighted by the Army Chief and provided the list of corrupt ministers in the government. In addition, the ISI and Army Chiefs raised questions to the government regarding visas, which were apparently issued to the CIA operatives by Husain Haqqani. The military became offensive after the Memo gate scandal that put Asif Ali Zardari and the government in the people's court, whereby people and the media supported the military. The Judiciary played a productive role between the army and the civil government to normalize the issue and resolve the tussle.

Third, the perception is stronger in the military, from top to bottom, that politicians get united for corruption but not for state-building or national interests. Fourth, the military believes that its leadership is more competent and highly skilled, whereas civilian leadership lacks competence, sincerity, and commitment to national development. Over decades, these perceptions have contributed to the narrative that the military is absolution to Pakistan's all problems. This narrative continues to influence the

pattern of civil-military relations. The study finds out that more than the military's competence and institutional capacities; it is the national social, political, and economic environment that has created conditions for the military to intervene in politics.

The public support for the military, its positive image, and the willingness of a large section of the political elite to work and cooperate with military regimes have encouraged the military to step in. We have also argued that this supportive milieu has started to change with the structural changes in the society of free media, civil society, and stronger political consensus among the mainstream political parties on democracy and constitutional rule.

One of the important changes that influenced the shape of civil-military relations was the independence of the Judiciary. The Executive no longer controls it as it used to do in the past due to the successful lawyers' movement for the restoration of the Supreme Court judges that General Pervez Musharraf had dismissed, and house detained. It was this sign of independence of the Judiciary that the sitting Prime Minister, Yousaf Raza Gillani, was disqualified from holding office for his defiance of court orders to open the corruption case pending in the Swiss courts. Asif Ali Zardari fashioned political arrangements that depended mainly on his personality and his patronage-style politics.

Instead of taking an institutional path, Asif Ali Zardari opted for a personal style of politics and introduced 'the politics of reconciliation for his personal political goals, which greatly destabilized institutions. His regime ignored merit and appointed unqualified people to encore ministries, embassies, the Judiciary, and state institutions to serve as a protective shield for him. Moreover, the political, social, and economic policies adopted by Asif Ali Zardari's regime frustrated most sections of society. Political factions and the people, in general, became alienated from him and his style of governance, which

contributed to the hard line of the military against him on specific issues of national security. The political system lost legitimacy due to malpractices and the presence of his corrupt colleagues in government. President Asif Ali Zardari has since enjoyed constitutional immunity as President of Pakistan, so this privilege has made him free from accountability, at least as long as he has held this office. As President, he pardoned his ministers, party men and friends who had been proven guilty by the courts of corruption or other offences. The impression that his use of the presidential prerogative was that corruption was massive and that it was an organized affair directed from the top by Asif Ali Zardari. This impression, further cultivated by the military, was not far from the truth.

On the positive side, civilian leaders worked together to restore the original content and shape of the 1973 Constitution, which was disfigured by President Musharraf to enhance and exercise his presidential powers. Musharraf had brought the power of the President to dissolve parliament back into the Constitution along with amendments in the appointment of judges. He acted like an absolute ruler with the protection of the Constitution. Asif Ali Zardari as a civilian President inherited all those powers, but he opted for the restoration of the parliamentary character of the Constitution. In practice, however, it did not make any difference.

The Prime Ministers were his nominees, and he was the Chairman of the PPP which made any defection from his line impossible for the chief Executives. What makes this episode of Pakistan's political history unique is that Asif Ali Zardari survived all the challenges of corruption, bad governance, political violence, militancy, terrorism, and hostile civil-military relations that hung over his rule.

Why was he still not ousted despite the above-mentioned challenges? First, the PML-N was not willing to support any undemocratic method against Asif Ali Zardari and wanted to protect the democratic system even at the expense of massive corruption. The other reason that the author found persuasive while conducting interviews is that some military officers showed their concerns about Asif Ali Zardari's political tactics and that he could use the 'Sindh card' if he were pushed out of power. That would have been a far more serious problem for the military to control than the massive corruption of Asif Ali Zardari's regime. Pakistan had already suffered from this ethnic card in the past where many argued and blamed only the military for the separation of East Pakistan.

However, several circumstances were created by the Asif Ali Zardari regime which provided the opportunity for the military to take over the country, yet the military kept on supporting the regime even knowing that Asif Ali Zardari was working with the Americans secretly to help to bring the armed forces effectively under his control, something that the military has resisted for a long time. His efforts to consolidate power and confrontation with the military establishment and ISI have made both, the political system and state, unstable and pernicious.

Asif Ali Zardari tried to hit the military at its worst times even when the image of the military was tarnished due to the Raymond Davis case and the Abbottabad incident. There was another factor that Asif Ali Zardari was trying to exploit was American frustration with Pakistan's military over its 'non-cooperation' in defeating the Afghan Taliban, which the US believed was being supported by the ISI and military. Asif Ali Zardari assured the Americans that his policy would be different if he gets the opportunity to control the armed forces. The new military approach that emerged after Musharraf was that the military should not derail the democratic process.

However, it will be vigilant and keep its influence on civilian leadership regarding national security and foreign policy issues. This policy, since Kayani's departure, seems to have been in effect, and 'Kayani's doctrine' of not taking over the civilian government is prevailing in Pakistan. The civilian leadership has also demonstrated pragmatism and has learned to work with the military to seek its cooperation and support in the efforts against the war on terror. The military and the civilian government have realized and are • accommodating each other by recognizing that neither the state institutions would function effectively, nor would the state of Pakistan address the issues of security, stability, and economic development without their mutual cooperation. In the current milieu, only close cooperation and coordination between the civil-military establishment is in the best interest of the state and society. However, so far, the military is not taking over, because internal and external architecture has been changed, and a vibrant media and an independent Judiciary are keeping the military away from direct intervention in politics.

The military takeover of 1999 further disrupted the evolutionary process of the Judiciary. It was kept under pressure. The military government was given legal status under the Doctrine of Necessity. The Judiciary frequently resolved all constitutional issues for the military. Judgments on various political issues had resulted in mixed results and thus it showed the weakness of the Judiciary. The Provisional Constitutional Order, Legal Frame Work Order, Presidential Referendum, and dual office charge with the President and the President with a military uniform were big issues.

Hence, judgments on constitutional matters were more political than legal. Even since Pervez Musharraf came into power through an unconstitutional military takeover in 1999, he had consistently violated constitutional norms and demoralized Pakistan 's

civilian institutions. Musharraf gained legitimacy through constitutional means, political support, the support of the army, economic management, and reforms. On the assumption of power, the military government of Pervez Musharraf made some suitable changes to the 1973 constitution to clear the way for his rule and gain political loyalties. In this connection, all his reforms were given legal status in the form of seventeen constitutional amendments.

When Iftikhar Muhammad Chaudhary became Chief Justice in 2005, he started a program of public interest litigation. The Chief Justice was increasingly becoming judicially active, taking daring steps to hold the Executive branch accountable on multiple fronts. Taking practical steps to reaffirm the rule of law and independence of the Judiciary and exercising his *suo moto* powers to take judicial notices of illegal commissions of both federal and provincial governments. Particularly a series of decisions by the Chief Justice of Pakistan on key economic and social issues put the Supreme Court on a collision course with the Executive branch of General Pervez Musharraf.

The Chief Justice's decision set aside the Pakistan Steel Mills privatization in which allegations of impropriety and lack of transparency were levelled against the privatization commission. It was judicial activism at its finest. Subsequently, the Chief Justice's position on the issues further perturbed the Executive branch. The government was feeling increasingly threatened by the chief justice's brand of bold judicial activism. President Pervez Musharraf perhaps felt the chief justice was a wild card on key political and constitutional issues affecting his future, particularly wearing a uniform while President constitutionally. Subsequently, Chief Justice was removed forcibly.

When the Chief Justice was removed by President Musharraf, the legal community launched the historic movement. Its basic aims were to restore the Chief Justice and to remove his government. This movement was also supported by some political parties like PPP, PML-N, PTI, NP and members of civil society. The leaders like Aitzaz Ahsan, Ali Ahmad Kurd, Asma Jahangir and prominent lawyers provided huge support. They also continued their struggle until the impeachment of Musharraf and the restoration of the Judiciary. After a long struggle, they achieved their constitutional objectives through the impeachment of Musharraf and the restorations of the Chief Justice of Pakistan and other sacked judges. It was a step towards judicial activism. This was a turning point in the political and judicial history of Pakistan. This movement restored the dark history of the Judiciary. The movement restored Chief Justice on one hand, while the other paved the way for political liberalism.

After the imposition of the second martial law on Nov 3, 2007, Pervez Musharraf virtually wiped out the Judiciary. The level of corruption, mismanagement and abuse of power was pervasive everywhere. The court was left with little choice. This not only resulted in a complete reversal of the trend of judicial activism at the higher level but also affected the functioning of the Judiciary at the lower level.

Chief Justice Iftikhar Muhammad Chaudhary did not embark upon this journey in any planned manner. It started initially with a few cases where government authorities had acted in a patently arbitrary manner. It soon developed momentum and dynamics as there was complete decay in the system.

The strength of the Executive must be checked by the Judiciary if it goes beyond its limits. Justice should be accessible to all without prejudice. In 2007, the Judiciary under Iftikhar Chaudhary tried to reverse that trend through judicial activism. Now a

proactive Judiciary is a ray of hope for the common man. In any constitutional democracy, the powers of the government are divided, so that the Legislature makes the laws; the Executive implements them, and runs the day-to-day administration, while the Judiciary interprets the laws and operates independently.

Pakistan's founding fathers declared that the country would have a parliamentary form of government. But at various times in the country's history, Executive power had either been vested in the office of the head of state or the head of government. The 1973 Constitution and the 13th, 14th, and 18th amendments to its empowered the Prime Minister, whereas the 8th and 17th amendments shifted Executive power to the President. Thus, the seesaw between presidential and parliamentary forms of government complicated the situation regarding the separation of powers. In a purely parliamentary form of government, the Prime Minister, and his cabinet ministers from the Executive, but in a parliamentary system, the President is the Chief Executive, and then it undermines the legislators' power to keep a check on the Executive.

Pakistan has had long stretches of military rule: from 1958-1969 led by Ayub Khan, from 1969-1971 under General Yahya Khan, from 1977-1988 headed by General Zia-ul-Haq, and from 1999 October to August 2008 led by General Pervez Musharraf. In the remaining years, civilian governments have fumbled through their respective tenures, unable to prove their ability to govern firmly and honestly. The Legislature and the Judiciary have been merely rubber stamps or acquiescent institutions for most of Pakistan's history. It had often been pointed out that provincial autonomy, which upholds a federation, was never really implemented in Pakistan, though the Constitution provided for it.

This has led to disenchantment and discontent among the federating units. The most important cause of the secession of East Pakistan was the feeling among its people that they had not been given their due share in power nor their due economic rights. Even after this tragic loss of its eastern wing, the ruling elite in Pakistan had not paid enough attention to the matter of provincial autonomy and the implementation of the federal principle in a credible manner. This could lead to more problems in the country. Though authoritarian systems such as that of the former Soviet Union and the Federal Republic of Yugoslavia also claimed to be federations, democracy and federalism are closely connected. The eventual failure of the federation in Yugoslavia was to a great extent owing to a lack of democracy.

In Pakistan, after every long era of military rule, there had been short-lived periods of civilian rule. Civilian leaders had shown marked authoritarian tendencies. Laurence Whitehead has pointed out that liberalization does not automatically lead to democracy. The opposition of a dictator is the product of the oppressive regime; it has succeeded. Such opposition cannot automatically become democratic after getting into power. Democratization could only be achieved through regular, free, and fair elections and the accountability of political leadership. In the context of Pakistan, while sticking to the parliamentary system, there should be a separation of powers, with a checks and balances system has to be recommended, to ensure that untrammelled Executive power does not emerge. Pakistan's Supreme Court has taken federalism to be one of the cornerstones of Pakistan's Constitution. It is one of the key pillars on which Pakistan's Constitutional edifice is allegedly built-a prominent feature beyond the Parliament's power to amend.

The promulgation provided that, despite the abeyance of provisions of the Constitution Pakistan would be governed as nearly as could be under the Constitution (subject to PCO or other orders by Chief Executive). During his nine-year-long regime, Musharraf faced many challenges, especially those arising from Judiciary and Media. He manipulated the political system and used its weakness to his benefit. The Muslim League, which served as the King's Party, was a result of our politicians' hunger for the seat who received their accretion to power by entering the spoils system. His National Accountability Bureau (NAB) was very successful in harassing his political opponents. During his regime, the military had full reins in policymaking.

Many constitutional and legal analysts say the die was cast: the PPP failed to make the Court's offer; the Court wouldn't budge, and a second Prime Minister would be sent out packing earlier than later. Political analysts believe this could be the beginning of the end because a dysfunctional gridlock political structure between the Judiciary and the Executive is likely to pave the way for a military intervention that would seriously harm democracy.

For the prognosis, we beg to differ. This is not a question of the Constitution or law. This is a political tug-of-war between two state institutions, the Executive, and the Judiciary, headed by two strong and ambitious men, in which law and Constitution are exploited and sometimes twisted for worldly purposes. The guiding force, on the one hand, is Iftikhar Muhammad Chaudhary, Pakistan's Chief Justice, and Asif Ali Zardari, Pakistan's President, on the other. The former derives its power not from the institution of the SC but from the revolutionary past of the campaign of lawyers against a dictator; the latter derives its intensity not from the institution of the presidency, but from the experience of the PPP martyrs against two dictators.

The first attempts to expand the spectrum of its base and influence utilizing unprecedented judicial activism which is, in fact, undisguised “political populism”; the second attempts to maintain the political space of a national party which is threatened not only by conventional enemies like the opposition of the military and the Pakistan Muslim-League but also by violent new players like the media and the Judiciary. All antagonists know that any miscalculation of the intention of the other will harm them equally, as each one is in some way or the other personally vulnerable. Increasingly, the public perceives one to be corrupted by his son's errant actions and is convinced that his decisions are one-sided; the other personally is held accountable for the cronyism and corruption that had made people live unbearably poor.

Could not ignore the logic of the situation, sending a second Prime Minister home would simply denigrate their mutual standing in the minds of the public: a matter of institutional principle will degenerate into a simple, highly personal, bloody-mindedness. A third Prime Minister's nomination for the removal was expected to ridicule the patience of the electorate and put the government in the dock, and all. Nobody could afford to let the matter fall into such a denouement that causes discord and weakens their ranks.

The government is seeking to prolong the talk by deciding to file a petition for a review of the Court's judgment. This could also pass a Presidential order to pave the way for the court to do so. But by imposing scorn on its opponents, the court would strike back and trash the petition and the ordinance in a summary fashion.

27 August was not cast in stone. Yet the contours of the agreement would become apparent in September. Both sides would be able to assert victory simultaneously, one for eventually getting the letter written and upholding the supreme will of the Supreme Court

and the other for not allowing it to dig up the graves of its martyred leaders and undermine democracy.

The President who is under authority to protect the Constitution in all circumstances was not competent to enact an ordinance in the name of national reconciliation which was outside the reach of both the federal and concurrent lists of the Constitution," said the comprehensive judgment, adding that any accomplishment on the part of the President which defied the constitutional commands, including the fun dame.

The findings of the study:

As it is evident from the facts narrated in the above chapters thus far, none of the actors involved in politics could play a role that could have consolidated democracy in Pakistan including the politicians, the electorate, the presidency, the superior courts and, of course, the military as no exception. Therefore, the findings of the study have been summarized in the following points:

- The politicians have never been on the same page to strengthen the civilian state institutions, which affected democratic consolidation in Pakistan.
- The lack of legislative consensus-building capacity within the parliament never allowed the elected representatives to develop agreements.
- Politicians have always preferred street politics, politics of agitation and confrontation which led to political crises.
- The preference of politicians for their personal rather than national interest has not allowed them to truly collaborate on issues of national importance during a grave national crisis.
- The reliance of civilian governments on the military for handling political unrest has often jeopardized its popular support base.
- The involvement of the military in law-and-order issues not only threatened the cohesion of the military but also provoked it to intervene in politics.
- The professional training of military officers in the West enables them to see the balance in civil-military relations but, the politicians lack such opportunities.
- Due to its weak institution, the Judiciary has never stood up against a military takeover or an extra-constitutional exercise.

- Opposition parties not only invited the military but also approached the Judiciary to provide a way to military rule.
- The Judiciary upheld three out of four dismissals of elected governments due to military president nexus which shows its weakness vis-à-vis other state institutions.
- The appointment of judges without merit, especially in the high court has been a major factor which harmed the independence of the Judiciary in Pakistan.
- The Supreme Judicial Council has remained ineffective due to which the Judiciary in Pakistan lacks an effective system of accountability.
- Extra-judicial responsibilities of judges, especially of the Chief Justice, have often damaged the credibility of the Judiciary.
- State institutions especially the Executive and the military have crossed their demarcated limits, which affected the democratic process to flourish.
- Dispensation of justice and administration are two different skills. Therefore, judges appointed as Chief Election Commissioners (CEC) have not been able to ensure proper management during the elections.
- Due to the lack of power balance in a parliamentary system, the president and the Prime Minister did not work together to safeguard the national interest.
- The elected governments did not develop an open forum to bring civil-military relations to the knowledge of the people for developing a mechanism of public scrutiny.

- The politicians and military never realized the difference between illegitimate military interference in policy-making and the legitimate protection of the military's core interests.
- People are the ultimate source of political power, and their opinion is very important not only for democracy but also for the supremacy of the constitution. In a democracy, people elected their representatives to govern them, or citizens govern themselves. From 2002 to 2013 both political parties PMLN and PPP under the leadership of Nawaz Sharif and Benazir Bhutto and later Asif Ali Zardari struggled hard for the restoration of democracy (Charter of democracy). But both party do not pay any attention to the civic, electoral, and political education or training of people.
- In Pakistan public voted on Baradari or tribal base and personal benefits. Firstly, the public knew the political parties by their political personalities not on the ground of the manifesto of the political party. Secondly, people voted for those who have owned enough property and grip on society, even voters do not care if they are corrupt or owned bad fame in society. Voters do not ask the candidate about the election manifesto. What party will be delivered for the benefit of society if elected? When these politicians failed to deliver or fulfil their promises to different Baradari or tribes to purchase their vote for the lust for power, people lose their trust in democracy instead of politicians.

The recommendations of the study:

Based on the above-mentioned findings and analysis, the following recommendations are put forward, the adoption of which will, hopefully, bring a positive change in the political scenario of Pakistan in terms of amicable relations among the major state organs.

- The possibility of Pakistan moving forward for realising the ideals of democracy cannot be achieved unless the politicians are on the same page in terms of strengthening the civilian institutions. Moreover, for democracy to stabilize, it is important that all state institutions remain within their demarcated limits. The civilian institutions should stick to the principle of separation of powers under the Constitution. The military should focus on its professional development and avoid interference in political affairs. This strategy will help in avoiding encroachment by one state organ in the affairs of others.
- The elected governments in Pakistan should make collaborative efforts involving all political parties for increased political participation. Politicians usually try to concentrate power through centralized decision-making while putting limitations on political freedoms. Instead, political leaders should consolidate power through a partnership with potential political rivals. Cooperation among political parties does not necessarily mean that a vibrant political opposition would cease. Developing consensus will entail respect for the political authority of an elected government.
- A major challenge before the elected representatives has been their lack of legislative consensus-building capacity within the parliament. To strengthen the parliament, the political leaders need to show commitment to the principles of democracy. They should develop the parliament as a primary forum for debate on

national issues with an open mind. Confidence in electoral competition among the political parties should be matched by their performance both inside and outside the parliament.

- The experience of elections in Pakistan shows that the administrative skills of the judges are not sufficient for the effective handling of the business of CEC. Therefore, many of the problems that emerged during the elections were due to poor management and a lack of proper arrangements. Therefore, the government needs not to rely on the Judiciary as a solution for every issue. An amendment to the Constitution shall be passed by the parliament in this regard. An age limit for the CEC shall be specified and the conditions of appointment of CEC from among the retired judges need to be reconsidered.
- The engagement of the military in ruling the country has been, by and large, maintained with the support of the Judiciary. The Judiciary had never stood up against the military takeover or an extra-constitutional exercise due to its weak institutional presence. It has almost always agreed to take oath under the Provisional Constitution Order issued by military dictators. The superior courts in Pakistan must question the extra-constitutional changes and the regime change by the military. This practice will help increase judicial independence and strengthen the institution of the Judiciary vis-à-vis other state institutions.
- The Judiciary has been significantly approached by opposition political parties to give a way to military rule throughout the history of Pakistan and especially in the post-Zia-ul-Haq era. Upholding three out of four dismissals of elected governments by the Judiciary has been a significant example of complete remorse of the Judiciary towards the elected governments. The opposition political parties

need to stand against such undemocratic moves of the military or the president and not file unnecessary petitions against the sitting or dismissed government in the higher Judiciary.

- No doubt, the human being either makes or mars the institution and Judiciary is no exception. The appointment of judges without merit is one of the major factors which undermine the independence of the Judiciary in Pakistan. To have an independent Judiciary and judges of integrity, the whole system of judicial appointment needs overhauling. The judicial appointment should be made more competitive, and the processes should be more transparent. Currently, a High Court lawyer can be appointed as a judge of the High Court who, after some time, can be promoted to the Supreme Court, and can also become Chief Justice after a certain period. This system of appointment needs to be conducted through proper channels, i.e., from appointment as a magistrate and onward promotions are merit-based. The power of the Executive for the appointment of judges to the higher Judiciary must be limited.
- Indeed, judicial independence and judicial accountability are interdependent and important in Pakistan. The Judiciary in Pakistan, even if competent and independent, could never be preserved without an effective system of judicial accountability, both legal and public accountability. An unaccountable judge may be willing to disregard the principles that an independent Judiciary is supposed to follow in its judgements. Therefore, a system of judicial accountability should be developed in line with the principles of judicial independence and integrity of the Judiciary as an institution. However, irrespective of any political gains by the

government, the sole purpose of the system of judicial accountability should be the advancement of the cause of justice in society.

- Cosmetic changes are not enough to improve the image of the Judiciary unless the state managers fulfil their responsibilities towards this vital organ of the state. Only the technical steps, legislative corrections, reforms, constitutional amendments, and judicial review cannot revise the role of the superior Judiciary and make it independent in its decision-making. It needs commitment on the part of an elected government to ensure the rule of law, institute a transparent system of appointments of judges and ensure that the judicial decisions are enforced in their letter and spirit.
- The practice of appointing the Chief Justice of the High Court to other duties is in contradiction to the concept of separation of powers as enunciated in the Constitution of 1973. To maintain independence and impartiality, the serving judges of superior courts are required to avoid extra-judicial responsibilities, either official or private as much as possible. Although this practice has been disbanded through Eighteenth Constitutional Amendment, it should remain intact, and the amendment shall not be reversed in any case
- Education is vital to create awareness in public for their rights and to elect honest leadership in the election based on their party manifesto. The public needs civic education and political training for the successful process of democracy and rule of law. When people will civically be educated and trained then the state could remain the state organ within the demarcated limits given in the constitution.

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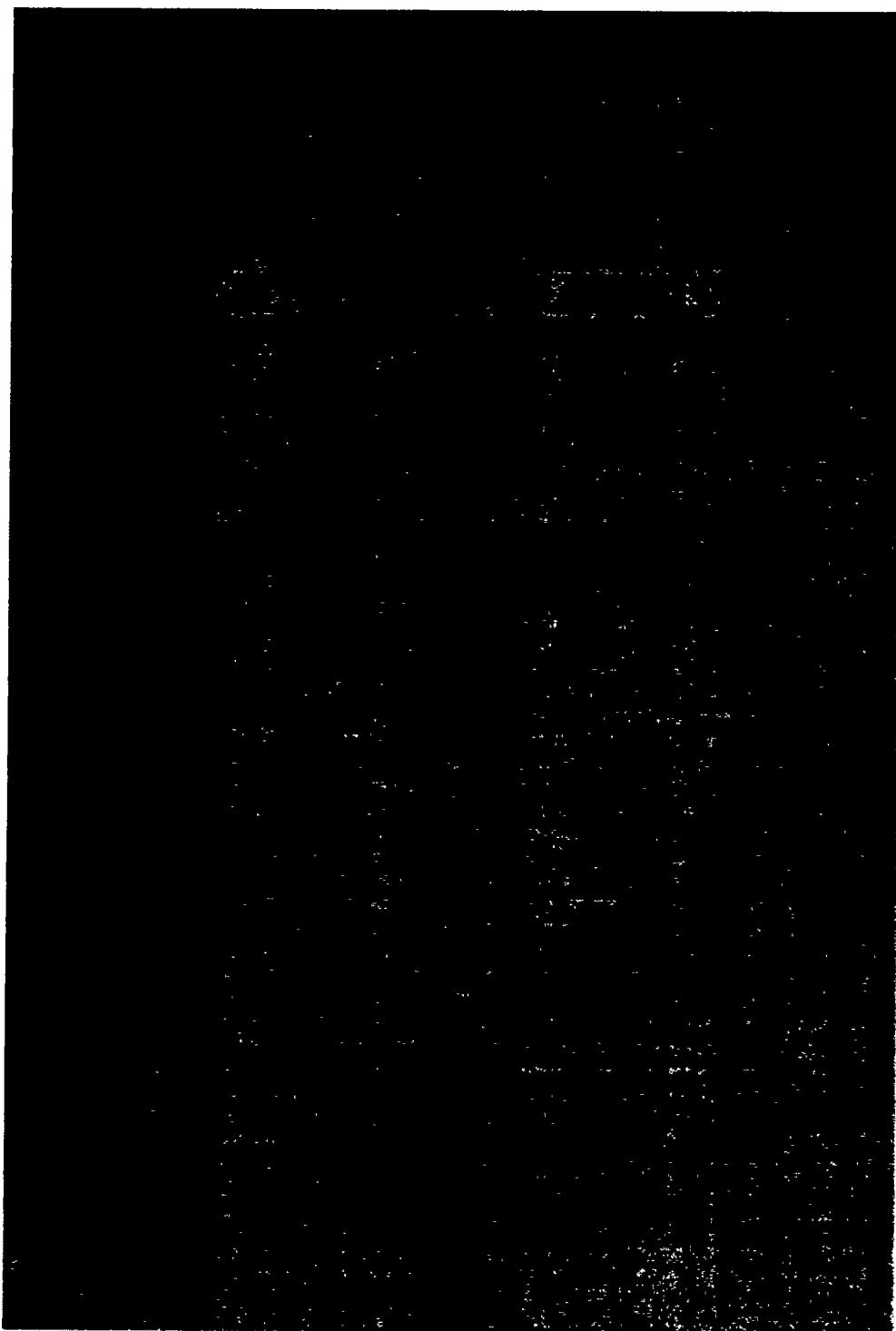
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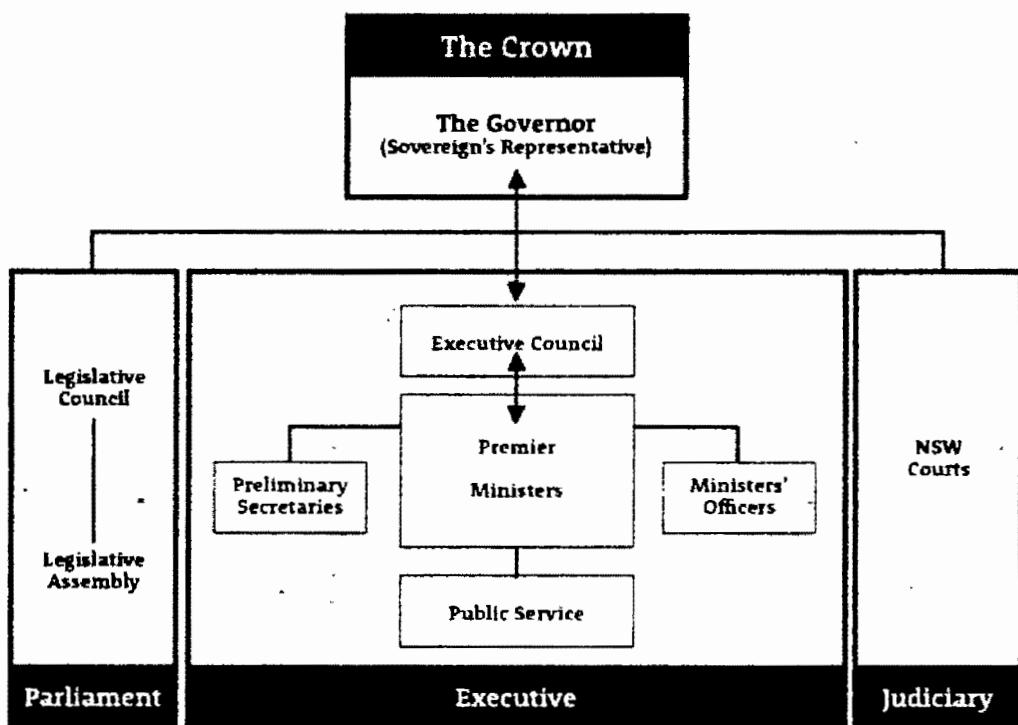
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APPENDIX I



APPENDIX II



APPENDIX III

Government of India Act, 1935.

[26 GEO. 5. CH. 2.]



ARRANGEMENT OF SECTIONS.

A.D. 1935.

PART I.

INTRODUCTORY.

Section.

1. Short title.
2. Government of India by the Crown.
3. The Governor-General of India and His Majesty's Representative as regards relations with Indian States.
4. The Commander-in-Chief in India.

PART II.

THE FEDERATION OF INDIA.

CHAPTER I.

ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES.

5. Proclamation of Federation of India.
6. Accession of Indian States.

CHAPTER II.

THE FEDERAL EXECUTIVE.

The Governor-General.

7. Functions of Governor-General.
8. Extent of executive authority of the Federation.

Administration of Federal Affairs.

9. Council of ministers.
10. Other provisions as to ministers.

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APPENDIX IV

10 & 11 GEO. 6.

*Indian Independence
Act, 1947.*

CH. 30.



CHAPTER 30.

An Act to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.

[18th July 1947.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions", and the said fifteenth day of August is hereafter in this Act referred to as "the appointed day".

2.—(1) Subject to the provisions of subsections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (2) of this section, are to be the territories of Pakistan.

(2) Subject to the provisions of subsections (3) and (4) of this section, the territories of Pakistan shall be—

(a) the territories which, on the appointed day, are included in the Provinces of East Bengal and West Punjab, as constituted under the two following sections:

APPENDIX V



THE CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Official Report

— — —
VOLUME V, 1949

(7th to 12th March, 1949)

—
FIFTH SESSION
of the
CONSTITUENT ASSEMBLY OF PAKISTAN

1949

APPENDIX VI

THE CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES (Official Report of the Fifth Session of the Constituent Assembly of Pakistan Debates)

Volume V—1949

CONSTITUENT ASSEMBLY OF PAKISTAN

Monday, the 7th March, 1949

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Four of the Clock, in the Evening, being the First Day of the Fifth Session of the Constituent Assembly of Pakistan, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

The proceedings of the Constituent Assembly of Pakistan commenced with a recitation from the Holy Quran by Maulana Abdullah-el Baqui.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President : Members who have not already presented their credentials and signed the Roll of Members may do so now.

The Honourable Sir Muhammad Zafrulla Khan (West Punjab : Muslim) then presented his credentials and signed the Register of Members.

OATH OR AFFIRMATION BY MEMBERS

The following Members then took the prescribed oath or made the prescribed affirmation of allegiance to the Federation of Pakistan :—

The Honourable Sir Muhammad Zafrulla Khan (West Punjab : Muslim).

Sheikh Karamat Ali (West Punjab : Muslim).

MOTION RE : AIMS AND OBJECTS OF THE CONSTITUTION

The Honourable Mr. Liaquat Ali Khan (East Bengal : Muslim) : Mr. President, Sir, I beg to move the following Objectives Resolution embodying the main principles on which the constitution of Pakistan is to be based :

“In the name of Allah, the Beneficent, the Merciful ;

WHEREAS sovereignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust ;

This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent State of Pakistan ;

WHEREIN the State shall exercise its powers and authority through the chosen representatives of the people ;

WHEREIN the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed ;

WHEREIN the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah ;

WHEREIN adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures ;

* Recitation of the Holy Prophet.

APPENDIX VII

2

CONSTITUENT ASSEMBLY OF PAKISTAN

[7TH MARCH 1948]

[The Hon'ble Mr. Liaquat Ali Khan.]

WHEREBY the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;

WHEREIN shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, work, opinion and association, subject to law and public morality.

WHEREIN adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

WHEREIN the independence of the judiciary shall be fully secured;

WHEREIN the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded;

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity."

Sir, I consider this to be a most important occasion in the life of this country, next in importance only to the achievement of independence, because by achieving independence we only won an opportunity of building up a country and its polity in accordance with our ideals. I would like to remind the House that the Father of the Nation, Quaid-i-Azam, gave expression to his feelings on this matter on many an occasion, and his views were endorsed by the nation in unmistakable terms. Pakistan was founded because the Muslims of this sub-Continent wanted to build up their lives in accordance with the teachings and traditions of Islam, because they wanted to demonstrate to the world that Islam provides a panacea to the many diseases which have crept into the life of humanity today. It is universally recognised that the source of these evils is that humanity has not been able to keep pace with its material development, that the Frankenstein Monster which human genius has produced in the form of scientific inventions, now threatens to destroy not only the fabric of human society but its material environment as well, the very habitat in which it dwells. It is universally recognised that if man had not chosen to ignore the spiritual values of life and if his faith in God had not been weakened, this scientific development would not have endangered his very existence. It is God-consciousness alone which can save humanity, which means that all power that humanity possesses must be used in accordance with ethical standards which have been laid down by inspired teachers known to us as the great Prophets of different religions. We, as Pakistanis, are not ashamed of the fact that we are overwhelmingly Muslims and we believe that it is by adhering to our faith and ideals that we can make a genuine contribution to the welfare of the world. Therefore, Sir, you would notice that the Preamble of the Resolution deals with a frank and unequivocal recognition of the fact that all authority must be subservient to God. It is quite true that this is in direct contradiction to the Machiavellian ideas regarding a polity where spiritual and ethical values should play no part in the governance of the people and, therefore, it is also perhaps a little out of fashion to remind ourselves of the fact that the State should be an instrument of beneficence and not of evil. But we, the people of Pakistan, have the courage to believe firmly that all authority should be exercised in accordance with the standards laid down by Islam so that it may not be misused. All authority is a sacred trust, entrusted to us by God for the purpose of being exercised in the service of man, so that it does not become an agency for tyranny or selfishness. I would, however, point out that this is not a resurrection of the dead theory of Divine Right of Kings or rulers, because, in accordance with

APPENDIX VIII

Laws (Continuance in Force) Order, 1958

Article 1

(1) This order may be called the Laws (Continuance in Force) Order, 1958.
(2) It will come into force at once and be deemed to have taken effect immediately upon the making of the Proclamation of Oct 1958 hereinafter referred to as the Proclamation.
(3) It extends to the whole of Pakistan.

Article 2

(1) Notwithstanding the abrogation of the Constitution of March 23, 1956, hereinafter referred to as the late Constitution, by the Proclamation and subject to any Order of the President or regulation made by the Chief Administrator of Sialkot, Law the Republic to be known henceforward as Pakistan, shall be governed as far as may be in accordance with the late Constitution.
(2) Subject as aforesaid all courts in existence immediately before the Proclamation shall continue in being and subject further to the provisions of this Order in their powers and jurisdictions.
(3) The Law declared by the Supreme Court shall be binding on all Courts in Pakistan.
(4) The Supreme Court and the High Courts shall have power to issue the writs of habeas corpus, mandamus, prohibition, quo warrantum and certiorari.
(5) No writ shall be issued against the Chief Administrator of Martial Law or the Deputy Chief Administrator of Martial Law or any person exercising powers or jurisdiction under the authority of either.
(6) Where a writ has been sought against an authority which has been succeeded by an authority mentioned in the preceding clause and the writ sought is a writ provided for in clause (2) of this Article, the Court notwithstanding that no writ may be issued against an authority so mentioned may send to that authority its opinion on a question of law raised.
(7) All orders and judgments made or given by the Supreme Court between the Proclamation and the promulgation of this Order are hereby declared valid and binding on all Courts and authorities in Pakistan, but saving those orders and judgments no writ or order for a writ issued or made after the Proclamation shall have effect unless it is provided for this Order and all application and proceedings in respect of any writ which is not so provided for shall stand forthwith.

Article 3

No Court or person shall call or permit to be called in question:
(a) the Proclamation;
(b) Any Order made in pursuance of the Proclamation or any Martial Law Order or Martial Law regulation;
(c) Any finding, judgment or order of a special Military Court or a summary Military Court.

Article 4

(1) Notwithstanding the abrogation of the late Constitution, and subject to any order of the President or regulation made by the Chief Administrator of Sialkot, all laws in force in the country immediately before the Proclamation shall continue in force and subject to the orders made by the President under the late Constitution, and orders made by the President under the late Constitution as are set out in the Schedule to this Order, rules, by-laws, regulations, notifications, and other legal instruments in force in Pakistan or in any part thereof, or having extra territorial validity, immediately before the Proclamation, shall, so far as applicable and with such necessary adaptations as the President may see fit to make, continue in force until altered, repealed or amended by competent authority.
(2) In this Article a law is said to be in force if it has effect as law whether or not the law has been brought into operation.
(3) No Court shall call into question any adaptation made by the President under Clause (1).

Article 5

(1) The powers of the Governor shall be those which he would have had if the President directed him to assume on behalf of the President all the functions of the Government of the Province under the provisions of Article 102 of the late Constitution and such powers of making Ordinances as he would have had and within such limitations had Article 106 and clauses (1) and (3) of Article 102 of the late Constitution been still in force.
(2) In the exercise of the powers conferred by the previous clause the Governor shall, so far as is subject to any directions given to him by the President or by the Chief Administrator of Martial Law or by any person having authority from the Chief Administrator.
(3) Nothing in this Article shall prejudice the operation of any regulation made by the Chief Administrator of Martial Law to make Martial Law regulations and where any ordinance or any provision thereof made under clause (2) of this Article is repugnant to any such regulation or part thereof the Regulation or part shall prevail.

Article 6

All persons who immediately before the Proclamation were in the service of Pakistan as defined under Clause (1) or Article 216 of the late Constitution and those persons who immediately before the Proclamation were in office as Governor, Judge of the Supreme Court or High Court, Comptroller and Auditor-General, Attorney-General or Advocate-General shall continue in the said service or in the said office on the same terms and conditions and shall enjoy the same privileges, if any.

Article 7

Any provision in any law providing for the reference of a detention order to an Advisory Board shall be of no effect.

Schedule

1. The Karachi Courts Order, 1956.
2. The Federal Capital (Essential Supplies) Order, 1956.
3. The Emergency (Security) Law Order, 1956 (Except so far as concerns of a detention order to an Advisory Board).
4. The State of Emergency Order, 1956.
5. The Essential Services (Maintenance of Powers) Order, 1956.
6. The Hoarding and Black Markets Order, 1956.
7. The Karachi Courts (Amendment) Order, 1956.
8. The Karachi Rent Restriction Act (Amendment) Order, 1956.
9. The Requisitioned Land (Concourse of Powers) Order, 1956.
10. The University of Karachi (Amendment) Order, 1956.
11. The High Courts (Benches) Order, 1956.
12. The Karachi Development Authority (Amendment) Order, 1956.
13. The Karachi Development Authority (Amendment) Order, 1956.
14. The High Court Judges (Daily Allowances) Order, 1958.
15. The Federal Capital (Power and Duties of the Chief Commissioner) (Declaration) Order, 1958.
16. The Federal Capital (Essential Supplies) (Amendment) Order, 1958.
17. The Gwadar (Government and Administration) Order, 1958 except clause (2) of Article 2.
18. The Gwadar (Government and Administration) (Application of Laws) Order, 1958.

Source: *Friends No. Masters* by Mohammad Ayub Khan. Published by Oxford University Press (Pakistan) 1961.

APPENDIX IX

INTERVIEW SCHEDULE

The Role of the Judiciary in the Democratic Process in Pakistan during Civil and Military Governments 1999-2013

1. Do you think the first constituent assembly dissolve due to these reasons?
 - Did the assembly lose the confidence of the public?
 - Is Assembly not working accurately?
2. How do you define the Political system in Pakistan and relate the stability of the political system with democracy?
3. Do you think the judiciary needs to be expanded and strengthened to reinforce democracy at the grassroots level?
4. What do you think ideology difference was the reason for Martial Law 1958-1999?
 - Why Mullahs and the judiciary joined the hands of the Military against the Bhutto Government?
5. Do you think the Media play important role in the political stability of Pakistan?
6. Do you think the "Doctrine of Philosophical Necessity" was suitable and reasonable for the Pakistani political system and democracy?
7. Do you think the Judiciary justification for the proclamation of martial law on the ground of the "Doctrine of Philosophical Necessity" was a good omen for the process of Democracy?
8. Do you agree with Judicial activism? And what do you think why Iftikhar Ch. Used the trend of *Suo Moto*
9. Is it true that structural institutional inabilities allow the Military to usurp power and dismantle the roots of democracy?
10. Do you think democratic culture and trends will be flourished only through the insurance of the federal government to guarantee the rights of different national ethnicities?
11. Do you think the security threat from India and USA is the reason for Militarization and weakening the state institutions and promoting the undemocratic culture?
12. Do you think the 18th and 21st amendments have a strong impact on democracy and the independent Judiciary?
13. Are you agreeing the lawyer movement was play important role in promoting democracy?
 - Judiciary role during the proclamation of Musharraf
 - Role of the judiciary during the lawyer movement?
14. Do you agree that the institution of the Military pushed towards the process of socialization for the understanding and acceptance of legitimacy and supremacy of civil institutions will promote democracy and democratic trends in Pakistan?
15. Do you agree with the Doctrine of Power Separation, and it will work in Pakistan?
16. Do you agree that political instability is due to a weak political setup and corrupt politicians?
17. Any suggestion