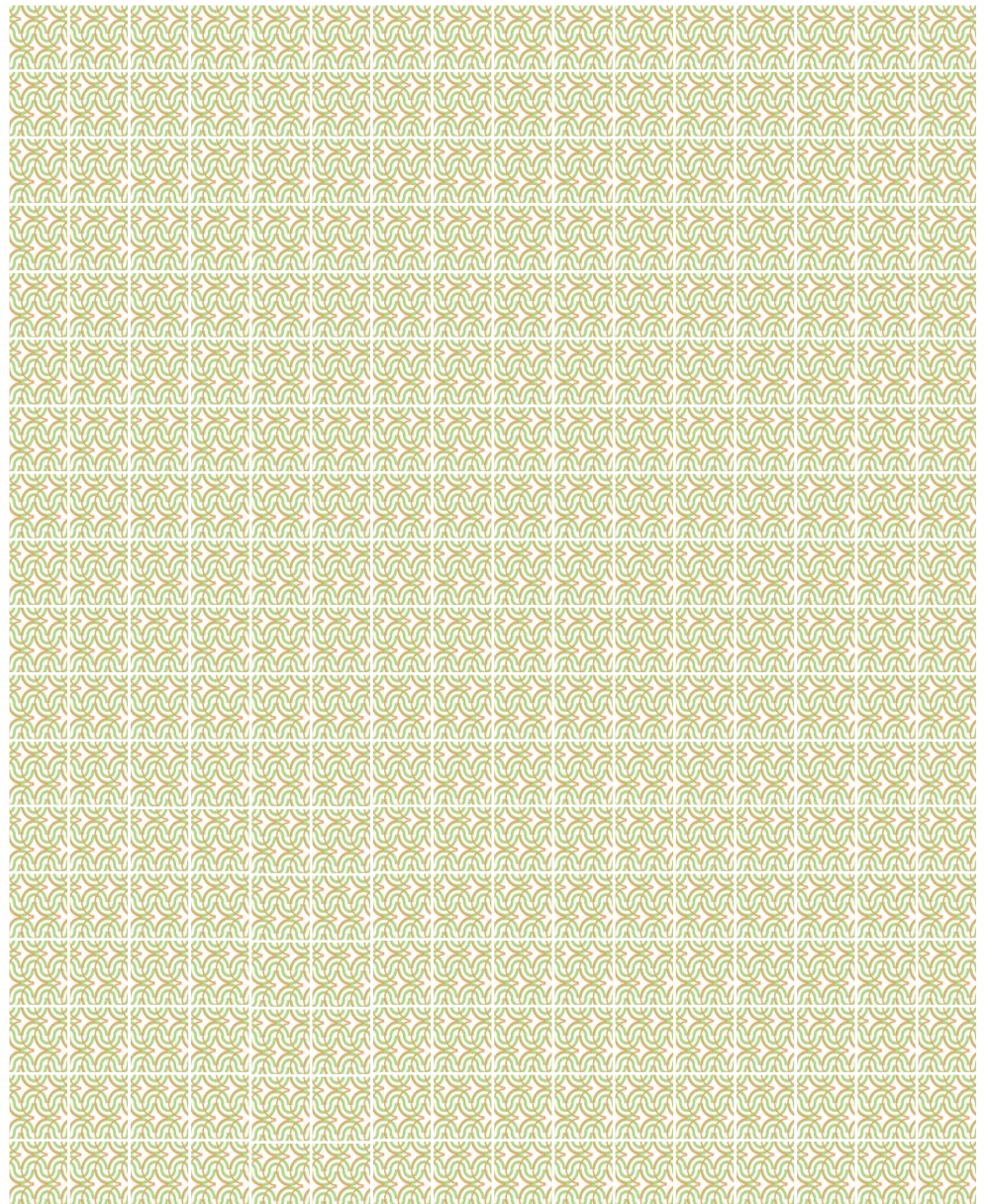


Ray of Hope:

The Case of Lawyers' Movement in Pakistan

Azmat Abbas and Saima Jasam



A Ray of Hope: The Case of Lawyers' Movement in Pakistan

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Pakistan: Reality, Denial and the Complexity of its state.

OUTLINE

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For enhanced clarity and understanding, the paper is divided into five parts respectively.

1. The first part tries to define and touch upon various social, political and non-violent movements around the World and Pakistan.
2. Part two sheds light on Pakistan's judicial history.
3. Part three highlights the major associated conflicts.
4. Part four reflects upon state power and the resistance offered to it.
5. Part five a concluding part focuses on the long term implications and hope for the future.

References

Abbreviations

The author's Profile

Azmat Abbas a Masters in Political Science from the University of Punjab, Abbas spent an academic year at the prestigious Stanford University, California, as a John S. Knight Fellow 2004. He has worked at various positions with the print and electronic media for more than 15 years. He has extensively written on religions violence, militancy, terrorism, sectarian conflict and issues of governance in Pakistan. He has also produced an 11-episode documentary series titled "**Madressahs or Nurseries of Terror?**" in 2008.

Saima Jasam is presently working with Heinrich-Boll- Stiftung, Lahore Pakistan as head of the program section. She received her master's degree in development studies from Institute of Social Studies at Hague, Netherland. She is member of various human rights and women rights organizations and is also an author of a book "**Honour Shame and resistance**". She is also a human rights and women rights activist.

A Ray of Hope: The Case of Lawyers' Movement in Pakistan

This paper dwells on one of the historic movements, namely the Lawyers' Movement, that is the latest in the history of Pakistan. The paper is directed to understand and contextualize the reasons owing to which the movement took place, along with its implications, impact and repercussions, both socially and politically. For enhanced clarity and understanding, the discussion of it is divided into five parts. The first part tries to define and touch upon various social, political and non-violent movements around the World and Pakistan. Part two sheds light on Pakistan's judicial history without which we will not be able to comprehend clearly the mammoth task the Lawyers' Movement undertook. Part three highlights the major associated conflicts. Part four reflects upon state power and the resistance offered to it, while the concluding part focuses on the long term implications and hope for the future.

Part I: Understanding the role of Movements

A movement can be defined as a series of actions and events taking place over a period of time and working to foster a principal or policy or as an organized effort by supporters of a common goal. There are many definitions of political and social movements. A political movement, in contrast to a political party, is not organized to elect members of the movement to government office: instead a political movement aims to convince citizens and/or government officers to take action on the issue and concerns, which are the focus of that movement¹. Social movements, on the other hand, are defined as a type of group action. They are large informal groupings of individuals and/or organizations centered on specific political or social issues: in other words, resisting or undoing a social change². This definition of a social movement best suits the purpose of analyzing the Lawyers' Movement in Pakistan, which is the subject of this paper.

Various Movements in the world

What happened in Pakistan from March 9, 2007 till March 16, 2009, was no small change. A country that has been a victim of extremism and violence in the name of religion, notably since the early years of independence which became more violent and organized by 1980s³, and fast becoming a hot spot destination of international terrorist organizations, undertook the task of undoing the wrongs of a military dictator, General Pervez Musharraf, without resorting to violent means through the Lawyers' Movement. This Movement or Pakistan's Black Revolution, as many call it in reference to the black uniform of the lawyers, has been termed by many as a new beginning for Pakistan since its independence in 1947. Sadly, and in contrast, the partition of India was filled with bloodshed and mayhem, although the struggle that lead to the eventual divide of the sub-continent in 1947 was by and large peaceful.

Non-violent campaigns are not unknown to the world. They have been used effectively to challenge abuses by authorities and in waging unarmed struggle for eliminating discrimination, ensuring rights, freedom and even in overthrowing colonial regimes. The Non Violent movement by the name of Khudai Khidmatgars, also known as the 'Red Shirts' during 1930's and 1940's in United India, was marked as an important movement. It had a one point agenda, to finish all feuds, only by non violent means. At one point Abdul Ghaffar Khan, leader of the Khudai Khidmatgar movement had stated:

"I should like to make it clear that the non-violence I have believed in and preached to my brethren of the Khudai Khidmatgars is much wider. It affects all our life, and only this has permanent value. Unless we learn this lesson of non-violence fully we shall never do away with the deadly feuds which have been the curse of the people of the Frontier.

¹ <http://en.wikipedia.org/wiki/social>

² <http://en.wikipedia.org/wiki/social>

³ Religious violence started soon after 1947 with regards to Ahrar's anti-Ahmadi movement, followed by 1950s language riots in East Pakistan and unrest in Balochistan.

Since we took to non-violence and the Khudai Khidmatgars pledged themselves to it, we have largely succeeded in ending these feuds. Non-violence has added greatly to the courage of the Pathans. Because they were previously addicted to violence far more than others, they have profited by non-violence much more. We shall never really and effectively defend ourselves except through non-violence. Khudai Khidmatgars must, therefore, be what our names imply pure servants of God and humanity by laying down our own lives and never taking any life"⁴.

The world is a witness to the success of the non-violent and unarmed struggles of the Orange Revolution in Ukraine in 2004. Massive protests, civil disobedience, general strikes and sit-ins resulted in holding a second round of elections that were free and fair leading to the victory of Yushchenko. Similarly, several peaceful movements that became associated with a particular colour or a symbol have occurred during the past decade in various parts of the world. Siberia adopted the Bulldozer Revolution; Kyrgyzstan the Tulip Revolution in 2005, Georgia adopted the Rose Revolution in 2003; Velvet Revolution of Czechoslovakia; the Seeder Revolution in Lebanon for the withdrawal of Syrian troops or the Blue Revolution in Kuwait in support of women suffrage, have all been peaceful and successful⁵.

These movements remained successful as they were able to ensure the support of a silent majority which was undecided, and once given the facts and information their strength grew leading towards success. This tool of sharing information and reaching out to those who were undecided played a vital role in the success of the American Revolution in the 1700s. People boycotted British imports and organized committees of correspondence, published pamphlets and newspapers; the Egyptian Revolution and Irish non-co-operation movement of the 1990s; the non-co-operation movement of Gandhi in the 1920s; Pakistan movement through constitutional means by Muhammad Ali Jinnah; the African-American Civil Rights Movements of 1950s and 1960s and the protests against the Vietnam War and, not to forget the South African struggle against Apartheid, which brought down a discriminatory regime⁶.

Reflection of some movements in Pakistan

Pakistan was created in 1947 and has witnessed various movements since then: some were ideological while others were purely religious with varying frameworks that included socialist, communist and Islamic ideologies. The movements backed by right or left wing elements or by progressive or conservative groups are not within the scope of this paper, and therefore, only a few social movements where certain sections of the society have struggled or participated will be analyzed here. Appropriate to mention here is also the fact that there have been a few new movements emerging during the 1960's and 1970's in the West, which have also been emulated by the civil society of Pakistan, such as Movements on Ecology, anti-nuclearization, Women rights and Peace.⁷ These are primarily a reaction to the demands and problems faced by a Global Village.

Women's movements have a long history that predate 1947, but after the partition of Indian Sub-Continent, the struggle continued and took on a new form and different women and Human rights groups, amongst them 'Women Action forum' came into being, and still continue to fight for the civil, social and political rights of women. It was created as a resistance to Zia-ul- Haq dictatorship in the late 1970s and continues its struggle to date. The 'peasant movement' is another example of struggle where women, landless peasants and *haris* struggle even today for their rights. Cross border peace initiatives in the form of 'Pak -India forums' are also popular, where different segments of the society participate and promote all aspects related to peace. While the revival of trade unions and student unions in Pakistan is also an encouraging sign and have been extensively documented (Butt,2009), however, not undermining the importance or the need for such movements, these struggles have specific and very focused agendas that benefit only a small section of society.

⁴ <http://www.baachantrust.org/abdulghaffarkhan>

⁵ <http://teeth.com.pk/blog/2008/09/14/>

⁶ <http://teeth.com.pk/blog/2008/09/14/>

⁷ <http://www.answers.com/topic/new-social-movements>.

The main difference between other movements in Pakistan and the Lawyers' Movement was that, for the first time in Pakistan, people working to secure rights on different forums came together to work under the banner of Pakistan Lawyers' Movement. It was owned by all: women, men, young or old, rich or poor. Religion, caste, creed, social or political affiliations did not matter. All stood side by side demanding the restoration of the deposed judiciary. The force binding them together was the demand for the Rule of Law and Free Judiciary.

Thus, in March 2007, and later in November 2007, when General Musharraf moved against the judiciary in Pakistan, he must have calculated the pros and cons of his action; he must have read the history of the judiciary, which had never opposed, even the unconstitutional actions of the powerful, and perhaps that gave him the confidence to remove the Chief Justice of the country. However, what he failed to realize was that in comparison to a knee-weak judiciary, people in general had become uncomfortable under a military ruler.

Analysts place Pakistan in the category of countries with low-density democracy, where parliaments do come into existence but election manipulation and military coups are also not uncommon. But this was the first time that a military ruler was faced by the people's power through a non-violent movement. It would not be wrong to maintain that the lawyers' leadership outwitted the military ruler and his collaborators by using tried and tested strategies, not uncommon in such movements. Thus, when we see the lawyers' leadership regularly appearing on news channels, addressing public gatherings, producing leaflets, filing petitions, writing for the newspapers, issuing press statements, forming human chains, holding sit-ins, boycotting the courts, observing black-days, circulating jokes about the rulers, writing letters of support or opposition, raising flags, writing poems, networking with political parties and civil society organizations, they were in fact applying tactics of making a non-violent movement successful. The lawyers' community also ensured that they kept the world aware of the developments in Pakistan and effectively used the internet, ensuring a sustained international pressure on General Musharraf.

Some term this movement as a road to stability; others a step in the right direction; some call it an example of the power of the people; while some mark it as the dawn of a new and independent judiciary, while many others consider it to be the rebirth of Pakistan – everyone appears to cull one's own definition of the success of the Pakistan Lawyers' Movement. However, the fact remains that for the first time in the short-history of Pakistan, a large number of the Pakistani people stood up to the executive and the military with a collective slogan 'enough is enough'.

Part II: Judiciary in Pakistan at a glance

From the day of independence of Pakistan in August 1947, the judiciary has endeavoured to match their constitutional ideas and legal language to the exigencies of current politics. Unfortunately, the judgments on various issues, especially the validity of martial laws and unconstitutional steps made Pakistan a laughing stock for the world. The frequent imposition of martial laws, abrogation and suspension of constitutions were acts of treason under the law⁸ but were frequently validated by our apex courts.

On March 21, 1955, Chief Justice Muhammad Munir of the Federal Court (the present Supreme Court of Pakistan) legalized the dissolution of the first Constituent Assembly. In *Maulvi Tamizuddin Khan versus the Federation of Pakistan*⁹, Justice Munir declared that the Assembly was not a sovereign body. He gave the ruling that the Constitutional Assembly had "lived in a fool's paradise if it was ever seized with the notion that it was the sovereign body of the state". Historians feel that Justice Munir destroyed Pakistan's constitutional basis when he denied the existence of Assembly's sovereignty, and further harmed it by not indicating where sovereignty resided.

In 1955, Governor General Ghulam Muhammad sought an advisory ruling from the Federal Court through a Special Reference regarding his powers. Justice Muhammad Munir, relying on Bracton's maxim, "that

⁸ Constitutions of Pakistan 1956, 1962, 1973

⁹ *Maulvi Tamizuddin Khan vs. Federation of Pakistan* PLD 1955, Sindh, p. 96

which is otherwise not lawful is made lawful by necessity”, and on the Roman law maxim urged by Jennings, “the well-being of the people is the supreme law” declared that, “subject to the condition of absoluteness, extremeness, and imminence, an act which would otherwise be illegal becomes legal if it is done bona fide under stress of necessity, the necessity being referable to an intention to preserve the Constitution, the state, or the society, and to prevent it from dissolution, and affirms.....that necessity knows no law.....necessity makes lawful which otherwise is not lawful”¹⁰.

In October 1958, Chief Justice Muhammad Munir called President Iskander Mirza’s dissolution of the 2nd Constituent Assembly and abrogation of 1956’s Constitution, a ‘legalized illegality’ meaning thereby that a victorious revolution and a successful coup d’etat¹¹ is a recognized legal method of changing a constitutional government. The observation by Justice Munir in Dosso versus the Federation of Pakistan¹², that a successful coup is a legal method of changing a constitution, sets the basis for the Commander-in-Chief of Pakistan Army, General Ayub Khan, to takeover the government from Iskandar Mirza. Ironically, the military takeover by General Ayub Khan on October 27, 1958, took place one day after the decision of the court was announced. Upon retirement, Justice Munir was to accept a government job in Tokyo and then a cabinet position under General Ayub Khan’s government.

It is interesting to note that the military rulers failed to even follow the rules laid down in the constitutions which they architected themselves. For instance, General Ayub Khan himself violated his own constitution by handing over power to the Commander-in-Chief of Army, General Yahya Khan, instead of the National Assembly Speaker, as was provided for the transfer of power in the Constitution of 1962. General Yahya Khan introduced a ‘Legal Framework Order’ containing the rules relating to the holding of general elections and framing of the future constitution. However, his rule ended on the 20th of December 1971, with the fall of Dacca.

In September 1977, Chief Justice of Pakistan Muhammad Yaqub Ali Khan admitted a petition by Begum Nusrat Bhutto, challenging the detention of constitutionally elected Prime Minister Zulfikar Ali Bhutto. The Bhutto government was overthrown on July 5, 1977, by the then Chief of Army Staff General Muhammad Ziaul Haq Zia, who imposed martial law within days, forced Chief Justice Yaqub Ali Khan to retire and make room for his handpicked officer of administrative cadre, Sheikh Anwarul Haq.

It has been reported in the media that the new Chief Justice took his oath of office along with other Supreme Court judges, omitting the paragraph in the oath laid down in the 1973 Constitution whereby the Supreme Court judges swear to “preserve, protect and defend the constitution”. By this contrived deliberate manner, the judges ceased to function as constitutional judges and were absolved from keeping faith with the oath they had sworn earlier¹³.

By November 10, 1977, a nine-member bench of the Supreme Court of Pakistan, headed by Chief Justice Sheikh Anwarul Haq, unanimously validated the imposition of martial law under the ‘doctrine of

¹⁰ Ref: PLD 1955 FC 240

¹¹ French for “stroke of state”, a sudden overthrow, often violent, of an existing government by a group of conspirators (in or previously in position of authority) – *Britannica Concise Encyclopedia*. Also defined as sudden unconstitutional deposition of a legitimate government usually by a small group of existing state establishment, typically the military, to replace the deposed government with another, either civil or military – *Wikipedia*

¹² “It sometimes happens, however, that the Constitution and the national legal order under it, is disrupted by an abrupt political change not within the contemplation of the constitution. Any such change is called a revolution, and its legal effect is not only the destruction of the existing constitution but also the validity of the national legal order.....Thus, the essential condition to determine whether a constitution has been annulled is the efficacy of the change...Thus, a victorious revolution, or a successful coup d’etat is an internally recognized legal method of changing a constitution.....If what I have already stated is correct, then the revolution having been successful, it satisfies the test of efficacy and becomes a basic law-creating factor”. (Ref: PLD 1958 SC 533).

¹³ ‘Judicial Murder of a Prime Minister’ Tariq Aqil; December 7, 2004; www.Chowk.com

necessity'. The judgment¹⁴ provided cover to the unconstitutional act of General Ziaul Haq and even gave him authority to make changes¹⁵ in the constitution.

Judiciary's struggle for independence?

One also finds that the judges of the superior courts asserted their independence only when they found room and no military dictator in sight to challenge. For instance, in the Asma Jilani versus the Government of Punjab¹⁶ case, the court did declare the imposition of martial law by General Yahya Khan as illegal. The court observed that the actions of General Yahya Khan were not justified by the revolutionary legality doctrine¹⁷.

Taking the issue further, Justice Yaqub Ali Khan concluded that judgment in Tamizuddin Khan¹⁸ case of 1955 and Dosso¹⁹ case of 1958 made "a perfectly good country...into a laughing stock, and converted the country into autocracy and eventually ...into military dictatorship"²⁰. He criticized the abrogation of 1956 Constitution and observed that Isikandar Mirza and Ayub Khan committed treason and destroyed the

¹⁴ Excerpts from the judgment ".....after massive rigging of elections followed by complete breakdown of law and order situation, bringing the country on the brink of disaster, the imposition of martial law had become inevitable..... the court would like to state in clear terms that it had found it possible to validate the extra constitutional action of the Chief Martial Law Administrator (CMLA) not only for the reason that he stepped in to save the country at a time of grave national crisis and constitutional breakdown, but also because of the solemn pledge given by him that the period of constitutional deviation shall be of as short a duration as possible'

'It will be seen that the declared objectives of the imposition of Martial Law are to create conditions suitable for the holding of free and fair elections in terms of the 1973 constitution, which was not being abrogated, and only certain parts of which were being held in abeyance....'

'It is true that owing to the necessity of completing the process of accountability of holders of public offices, the holding of elections had to be postponed for the time being but the declared intention of the Chief Martial Law Administrator still remains the same namely, that he has stepped in for a temporary period and for the limited purpose of arranging free and fair elections so as to enable the country to return to a democratic way of life.'

'In the presence of these unambiguous declarations, it would be highly unfair and uncharitable to attribute any other intention to the Chief Martial Law Administrator, and to insinuate that he has not assumed power for the purposes stated by him, or that he does not intend to restore democratic situations in terms of the 1973 constitution'. Ref: PLD 1977 SC, pp. 673- 674.

¹⁵ "It may not be out of place to mention that CJ Anwarul Haq had sent his decision to Gen Zia ul Haq Chief Martial Law Administrator, for prior approval. On seeing the said draft, Gen Zia got angry and returned it with remarks that "why the Chief Justice had not given him the authority to make changes in the Constitution?" The said Chief Justice got his office of the Supreme Court opened in the same evening, made the desired changes and had sent to Gen Zia again for approval. That decision was read over next day and Mr ZA Bhutto was hanged on the basis of the same decision. - (Column by Dr Safdar Mahmood: Daily Jang London dated 5th July 2007)

¹⁶ Asma Jilani Vs Government of the Punjab PLD 1972 SC, p. 139

¹⁷ "With the utmost respect, therefore, I would agree with the criticism that the learned Chief Justice (Mohammad Munir CJ) not only misapplied the doctrine of Hans Kelsen, but also fell into error that it was a generally accepted doctrine of modern jurisprudence. Even the disciples of Kelsen have hesitated to go far as Kelsen had gone...I am unable to resist the conclusion that Mohammad Munir erred both in interpreting Kelsen's theory and applying the same to the facts and circumstances of the case before him. The principle enunciated by him is wholly unsustainable." (Ref: PLD 1972 SC, p. 139)

¹⁸ Federation of Pakistan Vs Maulvi Tamizuddin Khan, PLD 1955 FC 435

¹⁹ State Vs Dosso PLD 1958 SC, p.533

²⁰ Judicial History of Pakistan; South East Asia Monitors; www.seamonitors.org

basis of representation between East and West Pakistan. Unfortunately, the decision²¹ came at a time when one military ruler was dead while the other had ceased to hold office.

A similar eventuality took place in the case of the Federation of Pakistan versus Haji Saifullah²², when the Supreme Court declared the dissolution of the National Assembly by General Ziaul Haq as invalid, but this also happened when the dictator was dead for over a year²³. It was also reported that Ejazul Haq, son of General Ziaul Haq, who also served as a federal minister under General Musharraf, was apparently angered by the court decision and publicly boasted²⁴ that had his father been alive, such a judgment could not have been delivered.

History was to repeat itself when Chief of Army Staff, General Pervez Musharraf, was to overthrow the government of Prime Minister, Mian Muhammad Nawaz Sharif on October 12, 1999. In the immediate aftermath of the coup, the judiciary was purged of judges who might have opposed the military's unconstitutional assumption of power. The purge was accomplished by requiring judges to take an oath to General Musharraf's Provisional Constitutional Order – an oath that required judges to violate oaths they all had previously taken to uphold the 1973 Constitution.

In January 2000, acting under the powers arrogated unto him as 'Chief Executive' vide the Proclamation of Emergency dated October 12, 1999, and the Provisional Constitution Order 1999, General Pervez Musharraf promulgated the Oath of Office (Judges) Order 2000 to weed-out judges of the superior courts²⁵. The reconstituted court lost no time in reversing gears. Its judgment in the case of Zafar Ali Shah²⁶ validated the takeover of the government by General Musharraf. It is, indeed, an ironic comment on the times in which we live that the then Chief Justice of Pakistan, Irshad Hasan Khan, openly flaunted and distributed the copies of his infamous judgment at international judicial conferences to demonstrate his genius in jurisprudence (Malik, 2008).

After the judgment in Zafar Ali Shah's case, the superior courts pronounced a number of decisions validating the referendum that installed Pervez Musharraf as the President of Pakistan. Notwithstanding the fact that he continued to don the military uniform and the 17th Amendment, it is interesting to note how blatantly the judges and the dictators watched each others interest. For instance, in the Zafar Ali Shah case, the Supreme Court had granted three years to General Musharraf to hold elections and restore the Constitution and, in turn, General Musharraf gave three-year extension in service to the then incumbent judges.

Though Musharraf managed to secure legal cover for his unconstitutional acts, it was, at last, not without resistance as five judges of the Supreme Court, including the then Chief Justice Saeeduz Zaman Siddiqui, declined to take a fresh oath to office. It is, nonetheless, again ironic that the ultimate challenge that Musharraf faced, which eventually lead to his resignation, came from none other than the Chief Justice, Iftekhhar Muhammad Chaudhry, who as a judge of the Supreme Court between 2000 – 2005, sat on the four pivotal benches that actually validated military takeover by General Musharraf, his referendum, his Legal Framework Order and the 17th Constitutional Amendment: that gave General Musharraf additional powers as President, and allowed him to continue as the army chief. Justice Chaudhry voted with the majority on each bench.

²¹ Asma Jilani Vs The Government of Punjab, PLD 1972 SC,p. 139

²² Federation of Pakistan Vs Haji Saifullah Khan, PLD 1989 SC ,p.166

²³ General Ziaul Haq was killed in a plane crash near Bahawalpur in August 1988.

²⁴ Pakistan Judiciary Hit by Cancer; South Asia Tribune; 7-13 September 2003, Issue 58.

²⁵ Five judges of the Supreme Court including Chief Justice Saeeduz Zaman Siddiqui, Justice Nasir Aslam Zahid, Justice Khalilur Rehman Khan, Justice Mamoon Kazi and Justice Wajihuddin Ahmed chose to decline to take oath under the said order.

²⁶ Zafar Ali Shah Vs. Federation of Pakistan – PLD 2000 SC,p. 869

There was nothing special in the rise of Iftkhar Muhammad Chaudhry to the rank of Chief Justice of Pakistan. Born to a working-class family in the Southern city of Quetta in 1948, he graduated from a local university before starting legal practice in 1974. He became qualified for legal practice at the Supreme Court in 1985, and in 1989 was appointed as Advocate General of Balochistan. Chaudhry served as a judge of the Balochistan High Court in 1990, and was elevated to the rank of Chief Justice in April 1999. He became a judge of the Supreme Court of Pakistan in February 2000 and on June 30, 2005, was appointed as the Chief Justice of Pakistan by no other but President Pervez Musharraf himself. For the next five years, Justice Chaudhry, remained a part of the judiciary that stamped legality on the military coup and many other acts of the military ruler.

It was in this backdrop that it came as a surprise when Chief Justice Iftkhar Muhammad Chaudhry refused to step down on the demand of the military ruler and decided to contest the charges. This was for the first time that a military ruler, who enjoyed the support of the international powers had been challenged by a Chief Justice and the 'No' to General Musharraf changed the status of Chief Justice Chaudhry, from the ranks of the ordinary to that of a hero.

Part III: Conflict and the struggle

Bones of contention

Important is to briefly explain the factors that led to General Musharraf's dislike for the Chief Justice, and created an environment of mistrust for the judiciary within the military establishment: the differences led to the removal of a Chief Justice who had arisen from the shadow of General Musharraf himself, and had been part of the judiciary that provided legal cover to his military coup and strengthened his hands to run the country as he pleased.

On assuming charge as the Chief Justice of Pakistan, Iftkhar Muhammad Chaudhry became the youngest ever to reach the prestigious office. The Chief Justice started taking keen interest in issues of public interest and began with the process of hearing public interest cases through suo moto actions, primarily on reports appearing in the media. He also set up an independent Human Rights Cell at the Supreme Court to hear cases of such nature. The other judges followed the Chief and soon the judges were hearing cases in which the complainant had not even approached the court for help. One of the doings that he reportedly took pride in was reducing the backlog of 26,000 cases that were pending, when he assumed the office, to 10,000. The Supreme Court lawyer Muneer A. Malik writes in his book "I must confess that I came away with the feeling that he was obsessed with speedily reducing the backlog of cases and that it would be very difficult to reconcile his obsessions with the demands of the bar that the lawyers must be given ample opportunity and time to present their case before the court of last resort" (Malik, 2008).

In a majority of the suo moto actions, the guilty turned out to be the government and its functionaries. For instance, the Chief Justice annulled the privatization of Pakistan Steel Mills terming it detrimental to the interest of Pakistan. The deal had been finalized by the then Prime Minister Shaukat Aziz at a price, which was later reported in the media, to be even less than the value of the land on which the infrastructure was built. Similarly, the Chief Justice also ordered to halt development activities in the New Murree tourist resort area that had been initiated without conducting the necessary environmental impact assessment. The issue had been raised by non-governmental organizations, environmentalists and the media that the environmental cost of the project would be extremely high, and Pakistan would lose the last surviving pine forests reserves that recharge the underground water reservoirs. The decision by Chief Justice Iftkhar Muhammad Chaudhry effectively put an end to the project.

As the Supreme Court continued to assert its independence, a conflict arose following the election of the Supreme Court Bar Association (SCBA). The pro-government candidate Malik Muhammad Qayyum, who was forced to resign as the Judge of the Lahore High Court, on misconduct charges several years ago, announced his success while the results were in favour of advocate Muneer A. Malik. A petition was filed before the Chief Justice and the court decided in favour of Muneer A. Malik, despite being pressurized by

the pro-government lawyers to favour Malik Qayyum. This was to become the most important decision since it was Muneer A. Malik serving as President of SCBA when General Musharraf removed the Chief Justice, and despite all the reservations, he convinced the Bar to support the Chief Justice.

This is the Chief Justice who hailed from Balochistan where the military had launched an operation against nationalist organizations; where hundreds of people had been taken into custody without legal justification; and where, in a large number of cases, the detentions were not even on record. Similarly, in pursuance of the so called 'war on terror' the law enforcement agencies had picked up suspects from across the country, not admitting they were being held in custody. Henceforth, the Chief Justice took note of the illegal detentions and the case became popular as the 'missing persons case'. Ensuring that the administrative and policing system deliver according to the law in such cases, it often necessitated harsh handling of officials in the court. As a result, Chief Justice Chaudhry grew increasingly unpopular within the official circles, but at the same time became a favourite of human rights groups that kept on approaching the court whenever wronged by the state. The actions of the Chief Justice sent a clear message to the government that the judiciary was beginning to carve out its independence, even if that meant taking actions that were contrary to the interest of the rulers.

Nonetheless, public confidence in the sincerity of the court actions remained rather shaky. Senior lawyer Muneer A. Malik writes in his book:

“..that there existed a level of mistrust among the lawyers' community regarding Chief Justice Iftekhar Muhammad Chaudhry, since despite his judicial activism the CJ had arisen from Musharraf's shadow. He had taken oath under Musarraf's first Provincial Constitution Order and some of the judgments of the Supreme Court (Pakistan Lawyers Forum PLD 2002 Supreme Court (SC) 853 and Qazi Hussain Ahmad case PLD 2005 SC 719 pertaining to General Musharraf's Referendum) were not encouraging for the Bar. There was a widespread feeling at the time that the on-going judicial activism of the Supreme Court was a conscious effort to raise the morale and credibility of the court in the eyes of the public, so that it could later uphold General Musharraf's attempt to get elected as President in uniform by the existing assembly without attracting too much public condemnation” (Malik, 2008).

However, things changed and the lawyers' bodies decided to support the Chief Justice when, unlike the three previous chief justices, Justice Chaudhry stood firm and preferred to face the charges against all the odds²⁷, instead of accepting the easy way out and quit as demanded by the military ruler on March 9, 2007.

The conflict begins

On February 27, 2007, advocate Naeem Bokhari of the Supreme Court, and a celebrated television host, posted an 'open letter' on the internet leveling serious allegations against the Chief Justice of Pakistan. The close association between Bokhari and President Musharraf was a fact known to all. In the letter, he accused the Chief Justice of insisting on protocol to which he was not entitled; using his influence and office to advance the career of his son; signing judgments that were not in consonance with short orders

²⁷ In Constitutional Original Petition (COP) 21 of 2007, Chief Justice of Pakistan Vs The President of Pakistan and others, the Chief Justice filed a sworn affidavit stating that Pervez Musharraf insisted that he resign but the Chief Justice resolutely said, “I wouldn't resign and would face any Reference since I am innocent, I have not violated any code of conducted or any law, rule or regulation; I believe that I am myself the guardian of law. I strongly believe in God who will help me. This ignited the Respondent who stood up angrily and left the room along with his Military Secretary, Chief of Staff and the Prime Minister, saying that others would show him the evidence. The Director General Military Intelligence, the Director General of Inter Services Intelligence and the Director General Intelligence Bureau did not show him a single piece of paper and all except the DGIB insisted that he resign. The Chief Justice was kept there against his will till past 5pm.

dictated in open court, and favouring some counsels over others. It also accused the Chief Justice of humiliating high-ranking civil servants and police officers when they appeared before him²⁸.

Referring to Naeem Bokhari's 'open letter' to the Chief Justice, Muneer A Malik writes:

"Later, it became clear that this letter was inspired and motivated by those who felt that the Chief Justice had become 'too big for his boots' and could not be expected to deliver 'positive results' in a number of far-reaching constitutional issues that were to come up before the apex court in 2007, particularly the cases relating to the holding of two offices by Pervez Musharraf (the office of the President and that of the Chief of Army Staff), the fixation of prices by pharmaceuticals and oil and gas companies, the holding of dual nationality by holders of public offices and the equivalence of degrees awarded by Deeni Madaris. It was an attempt to test the waters and lay the ground for the Reference to follow. The establishment – which considered itself as sacrosanct and above all accountability – considered that the Chief Justice was encroaching on their executive power" (Malik, 2008).

Given such wrangling, it did not come as a surprise to many when on March 9, 2007, the Chief Justice of Pakistan was called to the official residence of General Pervez Musharraf, where the military ruler charged him with misconduct and misuse of authority and asked the Chief Justice to resign from the office. Also present in the meeting were, besides Prime Minister Shaukat Aziz, the Director General of Intelligence Bureau, Director General of Military Intelligence, Director General of Inter-Services Intelligence, and General Musharraf's Military Secretary and Chief of Staff. However, Chief Justice declined to resign which enraged General Musharraf who left the room saying that DGs of MI, IB and ISI would show him the evidence, which none of them was able to do. Still, they detained the Chief Justice at the Army House for nearly five hours and DG IB, Brigadier (retired) Ejaz Shah, a close friend of General Musharraf, continuously insisted that the Chief Justice should tender his resignation.

²⁸ Excerpts of the letter; "I am not perturbed by your insistence on protocol (despite my belief that the Chief Justice would rise in the eyes of everybody if he walked from his residence to the court and hooters, police escort, flags is just fluff not the substance of an office)."

"I am mildly amused at your desire to be presented a guard of honour in Peshawar. I am titillated by the appropriation of Mercedes Benz car or is it cars...."

"I am not perturbed that Dr. Arsalaan (your son) secured 16/100 in the English paper for the Civil Services Examination, that there is some case against him in some court in Baluchistan, that from the Health Department in Baluchistan he has shifted to FIA, that he has obtained training in the Police Academy, that he reportedly drives a BMW 7-Series car, that there is a complaint against him with the National Accountability Bureau."

"I am appalled that you announce decisions in Court, while in the written judgment an opposite conclusion is recorded."

"My grievances also concern the manner in which the last and highest court of appeal is dispensing justice, under your leadership".

"The way in which My Lord, conducts proceedings is not conducive to the process of justice. In fact, it obstructs due process and constitutes contempt of the Supreme Court itself."

"I am pained at the wide publicity to cases taken up by My Lord in the Supreme Court under the banner of Fundamental Rights".

"My Lord, this communication may anger you and you are in any case prone to get angry in a flash, but do reflect upon it. Perhaps you are not cognizant of what your brother judges feel and say about you".

"I hope you have the wisdom and courage to make these amends and restore serenity, calm, compassion, patience and justice tempered with mercy to my Supreme Court."

By the time the Chief Justice was allowed to leave the Army House, his protocol had been withdrawn and later he was barred, along with his family members from leaving the house or receiving guests. This was not the first time that a Chief Justice had been removed from the office by a military dictator. The same had occurred on three earlier occasions: Chief Justice of Pakistan Muhammad Yaqub Ali Khan²⁹ was removed in 1977 by General Ziaul Haq; Chief Justice Sheikh Anwarul Haq³⁰ was removed from the office in 1981; while in the year 2000, Chief Justice Saeeduz Zaman Siddiqui³¹ was removed from office by General Pervez Musharraf.

However, the case of Chief Justice Chaudhry presented a different situation as the lawyers announced a three-day-protest and a complete strike of courts to condemn the attack on the judiciary. Protest rallies were staged across the country and lawyers boycotted the courts. On March 12, 2007, a clash took place between the lawyers and the police in Lahore, which left several people injured and set the tone for highly charged protest rallies that were to follow.

Consequently, on March 13, 2007, a large crowd turned up at the Constitutional Avenue in support of the Chief Justice, as he was brought to the Supreme Court, to be produced before the Supreme Judicial Council for the first time after his suspension. The police tried to stop the Chief Justice from moving towards the Supreme Court and blocked his way, manhandling him, pulling him by his hair and forcing him in a car. The images were broadcast live on the television channels, and the next day every newspaper carried the picture of an official of Islamabad police pulling the Chief Justice by his hair, on the front page. The live coverage of events drew the annoyance of the government, and the backlash came within days: the police entered the office of a television channel in Islamabad on March 16, 2007, causing huge losses to the infrastructure and injuries to the staff, effectively disrupting the live coverage of the police action on a protest rally.

Meanwhile, General Musharraf appointed Justice Javed Iqbal as the acting-Chief Justice of Pakistan, without requesting or waiting for Justice Rana Bhagwandas, the then senior most judge of the Supreme Court, who was on a personal visit to India. The fact became part of the heated debates in the print and electronic media, and the government was forced to appoint Justice Bhagwandas as acting-chief justice on March 22, 2007, soon after his return to Pakistan. Many felt that the restoration of the Chief Justice was only a matter of technicality, once the office was in the hands of Justice Bhagwandas, known for his courage and unbiased commitment to the rule of law.

While this situation was on, a team of lawyers that was representing the Chief Justice had filed a petition in the Supreme Court of Pakistan, challenging the decision of General Pervez Musharraf. Concurrently, the lawyers' leadership also decided to take the matter to the public and hold seminars and rallies across the country. This action of the lawyers' community, and acceptance of invitations by the Chief Justice to address various bar councils, drew harsh criticism from the government, accusing the lawyers of politicizing a legal issue.

It was highly encouraging to note that the majority of the serving judges of high courts attended the seminars or events where Chief Justice Iftikhar Muhammad Chaudhry was invited as chief guest. At

²⁹ Chief Justice Muhammad Yaqub Ali Khan assumed the office of Chief Justice of Pakistan on November 1, 1975. He ceased to hold office following certain legal amendments introduced by military dictator General Zia ul-Haq on September 22, 1977. Justice Yaqub Ali had held a previous martial law by General Yahya Khan ultra-vires to the constitution of Pakistan.

³⁰ Chief Justice Sheikh Anwarul Haq was an officer of the administrative and was handpicked by General Ziaul Haq for the job and replaced Chief Justice Muhammad Yaqub Ali Khan. However, he refused to take oath under Provisional Constitution Order, 1981, issued by General Ziaul Haq, the then Chief Martial Law Administrator, and ceased to hold office.

³¹ Justice Saeeduz Zaman Siddiqui was Chief Justice of Pakistan during the 1999 military coup by General Pervez Musharraf. He defied the demand to take a fresh oath under the Oath of Office (Judges) Order 2000 promulgated by General Pervez Musharraf. As a consequence he ceased to be the Chief Justice of Pakistan.

these fora, the Chief Justice spoke on topics ranging from supremacy of the rule of law to independence of judiciary, while the Lawyers' Movement leaders discussed the entire rule of law, attempts to muzzle the judiciary, relationship between the civil and military bureaucracy, importance of democracy and independence of judiciary, amongst other issues in highly political tones, striking a cord with the public at large.

Notwithstanding that the electronic media played an important role in the success of the visits by providing extensive live coverage. For instance, the media started coverage of the Chief Justice as he left his residence in Islamabad for Lahore, at around 9 a.m. on May 5, 2007, to address a seminar at the invitation of Lahore Bar Council. The Chief Justice was accorded a huge reception at every town on the highway leading to Lahore, and 16 sitting judges of the Lahore High Court remained present at the venue throughout the night as the Chief Justice's cavalcade arrived at the venue on the morning of May 6, 2007. It took the Chief Justice nearly 24 hours to get from Islamabad to Lahore, which would have otherwise taken around 5 hours.

A similar level of coverage was witnessed on May 21, 2007, when the Chief Justice was to address a seminar at the Karachi Bar Association, but was sent back from the Karachi airport after waiting for several hours. As usual, the news channels started the live coverage of Chief Justice, leaving his Islamabad residence, reaching the airport and getting on board a plane to Karachi. However, things were to take a sad twist as clashes erupted across Karachi between the workers of various political parties who supported the Chief Justice and the pro-Musharraf Muttahida Quami Movement (MQM), which had categorically announced that it would not allow the Chief Justice to visit Karachi.

The scenes of armed gunmen freely moving around and committing acts of violence with policemen in view, was sufficient to establish that it all carried the tacit approval, if not the all-out support of the government. The office of a news channel, which was broadcasting the activities of armed men attacking private property, came under heavy fire for several hours and the horrifying scenes were witnessed around the country. By the end of the day, more than 51 people had lost their lives with over one hundred and fifty injured, along with a huge loss to public and private property. The strikes called by the lawyers and political parties in the days to come, to protest the carnage were to paralyze the country, sending a clear signal to the military ruler that he was fast losing control.

Leading the lawyers

It would be unfair if we fail to mention the important role the lawyers' leadership played in the success of the movement, and eventually the restoration of all the members of the judiciary that were deposed by General Pervez Musharraf. While it is not possible to identify all the people who provided leadership to the lawyers across Pakistan, and consequently suffered financial and emotional losses, but those who played a role deserve deeply-felt acknowledgment. The list of such people includes the names of SCBA President 2006-07 Muneer A. Malik, SCBA President 2007-08 Chaudhry Atizaz Ahsan and SCBA President 2008-2009 Ali Ahmad Kurd, Justice (retired) Tariq Mahmood, Baz Muhammad Kakar, Ather Minallah, Hamid Khan, Hadi Shakeel Ahmad, Rasheed Rizvi and many others. The lawyers' leaders engineered a highly successful movement and achieved the difficult task of bringing different sections of the society on a single agenda – restoration and independence of the judiciary – which they achieved without firing a single shot or resorting to violent means.

International recognition

Similarly, the Lawyers' Movement also received support of the lawyers and human rights organizations from across the globe. Many bar associations and leading lawyers demanded the restoration of the deposed Chief Justice that increased pressure on the military government. At the same time, Justice Chaudhry became the third man in history to have been conferred with the prestigious 'Medal of Freedom' at the Harvard Law School, in recognition of his individual efforts to uphold the legal system's fundamental commitment to freedom, justice and equality. The past recipients of the award included the legendary anti-apartheid leader Nelson Mandela, and the team of litigants that contested Brown versus the

Board of Education, that brought an end to racial segregation at educational institutions in the United States of America. The New York City Bar Association granted the Justice Chaudhry, an honorary membership as a symbol of the movement for judicial and lawyer independence in Pakistan. The Chief Justice also received the 'Lawyer of the Year' award from the New York-based periodical *The National Law Journal* for the year 2007. This all happened while the struggle for the restoration of the deposed judiciary was in process.

Restoration of the Chief Justice

The increasing public support for the Chief Justice and the growing crowds at the hearings, coupled with charges against the Chief Justice that carried no weight, turned the tables on General Musharraf, and on July 16, 2007, the government lawyers dropped the charges of misconduct against the Chief Justice. Four days later, on July 20, 2007, a 13-member bench of the Supreme Court of Pakistan restored the Chief Justice to his position. It was the first time ever in Pakistan's judicial history that a judge removed by a military dictator was back in office, and that too at a time when the dictator who threw him out of office was still in 'command'. The restoration of the Chief Justice was celebrated jubilantly throughout the country and what pleased people the most was the manner in which the Supreme Court had asserted its independence.

Part IV: Power and resistance

On restoration, Iftikhar Muhammad Chaudhry resumed work as the Chief Justice of Pakistan on July 21, 2007. Following the restoration of the Chief Justice, preserving and enhancing the independence of judiciary became the primary objective of the Lawyers' Movement. The lawyers' community vigilantly monitored the limits of the judicial independence of the superior judiciary through public interest litigation.

Some observers criticize the Lawyers' Movement for attempting to create circumstances where the judiciary was seen as a major threat to the military establishment, and having had created a constitutional crisis by challenging General Musharraf's presidential election in the Supreme Court. However, it cannot be denied that it was the admittance of such cases for hearing, for the court to establish that the judiciary was finally independent, and secondly, had the courts declined to hear petitions against General Musharraf, it would have eroded the public confidence it had gained over the months.

During the period between July 21, 2007 and November 3, 2007, the Supreme Court dealt with several cases that had far-reaching impact, some of which are briefly explained here.

Electoral rolls case

On July 26, 2007, a Supreme Court bench I, took up a petition filed by Benazir Bhutto against the Election Commission of Pakistan, accusing the government of committing institutionalized fraud by omitting the names of 22 million voters from the electoral rolls. It was contended that the voters' list in 2002 general elections carried the names of 74 million voters, while the current list contained the names of only 52 million voters. The court gave guidelines to the Election Commission to ensure inclusion of names of the 22 million excluded but eligible voters, and to ensure that women in the FATA are not omitted from the list of voters.

Suo Moto jurisdiction and fundamental rights cases

Chief Justice Iftikhar Muhammad Chaudhry had, on several occasions, spoken on the benefits of exercising the suo moto jurisdiction to empower the people and provide relief against systematic abuse of their fundamental rights. As reported in the media, the Chief Justice said that the civil society played an important role in the struggle for the independence of the judiciary, and the onus was now on the judiciary to protect the rights of the common man, and that the judiciary should redouble its efforts³².

³² Dawn Newspaper, August 31, 2007

In one case, the court took up the complaint of a person who contended that one of his kidneys had been removed, without his consent, by the doctors working on behalf of an organized gang involved in the sale of human organs. The court took the government to task and ordered it to take action against those involved in the trade, and directed that legislation to check this evil be taken up as a top priority in the next cabinet meeting.

In another complaint, the Capital Development Authority had leased out urban lands in Islamabad and its vicinity to influential person under the guise of leases for agricultural purposes. The court ordered the CDA to conduct a survey to determine the facts and take appropriate action in case of violation.³³ Besides, the Supreme Court also took suo moto notice of several cases of women rights violations, taking some of the most influential people in Pakistan to task for human rights abuses.

Missing persons case

During the hearing of a petition filed by Human Rights Commission of Pakistan and other complainants on August 20, 2007, a Supreme Court bench directed the government to file a clear statement on missing persons still to be recovered, and warned the Director General Federal Investigating Agency to produce a missing person, Hafiz Abdul Basit, or be prepared to go to jail. Several people, including Hafiz Abdul Basit, were recovered before the next hearing of the case.

It was surprising to note that on each hearing, the authorities were mysteriously able to trace more missing people. The court was informed by the Additional Advocate General that of the 416 missing persons, as many as 181 had been traced³⁴, of which 90 belonged to Balochistan. The bench hearing the missing persons' case expressed its dissatisfaction on the efforts made to recover the missing persons, and warned that it would summon the heads of ISI and MI if the government representative was unable to inform the court about the whereabouts of the missing persons. However, the court's efforts came to a halt following the imposition of Emergency.

The return of the Sharif brothers

Two petitions were filed in the Supreme Court on August 2, 2007, on behalf of the former Prime Minister, Mian Nawaz Sharif and his younger brother, former Chief Minister of Punjab Mian Shahbaz Sharif, challenging their forced exile from the country. On August 23, 2007, a seven-member bench declared that the Sharifs had the inalienable right to return to their country and directed the government not to obstruct their return. However, when Nawaz Sharif landed in Islamabad on September 10, 2007, he was served with an arrest warrant and instead of producing him before a court of law, he was transported to Saudi Arabia against his will.

The Sharif brothers moved a contempt of court petition against Prime Minister Shaukat Aziz and others, and the court took serious notice of the events. It directed the Chairman PIA and CAA to submit details of the events that occurred on the day Mian Nawaz Sharif landed at the airport, and provide the directive under which he was transported to Saudi Arabia. The court also warned that, if necessary, the Prime Minister would be summoned to explain the reasons for non-compliance of the court orders. The contempt proceedings were pending before the court when General Musharraf imposed Emergency.

Holding of dual offices by General Musharraf

A number of petitions had been filed with the Supreme Court, challenging the holding of dual office of the President and Chief of Army Staff by General Musharraf. It was being demanded that the court should bar General Musharraf from holding two offices simultaneously as it was in clear violation of the constitution.

³³ Dawn Newspaper, October 12, 2007. Those allotted land included General Pervez Musharraf, Prime Minister Shaukat Aziz, PML-Q Chief Chaudhry Shujaat Hussain and Chairman Senate Mian Muhammad Soomro.

³⁴ Dawn Newspaper, October 11, 2007

An 11-member bench of the Supreme Court conducted several hearing in the petitions, amid increasing rumours, that a martial law might be imposed by General Musharraf to consolidate authority. However, even at a hearing conducted on November 2, 2007, the attorney general representing the government denied reports of the imposition of martial law.

Declaration of emergency by General Musharraf

However, a state of Emergency was indeed declared on November 3, 2007, by General Musharraf perhaps fearing an unfavourable verdict on the holding of the dual office, thus sending the entire judiciary home. There is no known precedent in the past to show such an action of a military dictator being challenged by the court or the public. Perhaps, it was different this time, as it was suspended by a seven-member-bench of the Supreme Court of Pakistan, which the army troops had to remove from the court and place under house arrest.

The dissent by the judiciary also showed a marked increase as compared to previous impositions of martial law. For instance in 1977, only one judge was removed from the office under the martial law, compared to sixteen judges that were removed under the Provisional Constitution Order 1981. In the year 2000, the military government removed thirteen judges under the PCO 2000, and when a state of Emergency was imposed on November 3, 2007, and judges were required to take a fresh oath under the PCO 2007, as many as 43 judges of the High Courts and Supreme Court declined.

As aptly noted by an analyst, the Lawyers' Movement had succeeded in infecting the majority of the superior judiciary with the constitutional disease of independence, and the general public had also realized that an independent judiciary was necessary for a democratic set up in the country. The political parties and the general public response to the imposition of Emergency also remained highly encouraging, and unlike the 1958, 1969, 1977 and 1999 silence, the imposition of martial law was, for the first time, faced with public resistance.

With Chief Justice Chaudhry and several other senior members of the judiciary taken into custody and later put in detention at their homes, General Musharraf appointed Justice Abdul Hameed Dogar as the new Chief Justice of Pakistan under the PCO 2007. For that matter, almost the entire leadership of the Lawyers' Movement was put in detention, other than several hundred active lawyers who were imprisoned without any resource to justice. Several leading human rights activists and members of the civil society were also among those sent to prison. Former Prime Minister Benazir Bhutto expressed her opposition to the Emergency and in defiance to the threats of an arrest, the former Prime Minister Mian Nawaz Sharif and Mian Shahbaz Sharif, landed at the Lahore airport on November 25, 2007, to a thunderous reception. Hundreds turned up at the airport to receive the exiled leaders and they moved through the city in a form of a procession for several hours, displaying the support they enjoyed among the masses.

In an attempt to strengthen grip over power, the military government also targeted the media, and soon after the imposition of Emergency, put all the news and current affairs channels off air. However, the tide of opposition to Musharraf rule continued to rise and amid intense local and international pressure, General Musharraf stepped down as the army chief on November 28, 2007, making room for the former DG ISI, General Pervez Ashfaq Kayani, as the new Chief of Army Staff. However, under continued and sustained pressure, General Musharraf lifted the state of Emergency on December 15, 2007, reaffirming his commitment to hold the general elections as scheduled on January 8, 2008. There is no doubt that the rule of President Musharraf suffered a huge setback when Former Prime Minister Benazir Bhutto was assassinated in Rawalpindi on December 27, 2007, shortly after addressing an election rally. The government blamed the Tehrik-e-Taliban Pakistan for the assassination, while the public held Musharraf for the negligence, which led to the assassination.

Impact on General Elections 2008

For many, the ninth general election in Pakistan held on February 18, 2008, were perhaps the first ever in the country's history that were issue based, with a clear agenda about what the public wanted. Before the people of Pakistan went to the polls, there was a general impression that it would be a split mandate with Pakistan People's Party (PPP) benefiting from the sympathy vote following the assassination of Benazir Bhutto. While the pro-Musharraf Pakistan Muslim League – Quaid-e-Azam (PML-Q) was believed to be in a better position as compared to the Pakistan Muslim League – Nawaz (PML-N), of the former Prime Minister Mian Nawaz Sharif. More than 20 smaller parties and the Lawyers' Movement boycotted the elections. The PPP and PML-N had voiced their support for the independence of judiciary, and Iftikhar Muhammad Chaudhry and many others believed, as stated, that this factor contributed towards their performance in the election. The PML-N had, in fact, made restoration of the Chief Justice part of their election manifesto³⁵.

By the end of the polling, it was clear that the electorate had en-mass rejected the pro-Musharraf PML-Q. The PPP secured the highest number of National Assembly seats followed by the PML-N, while the PML-Q traded far behind in the third position³⁶. It is important to note that as many as 22 former federal ministers lost their seats, while the President of the PML-Q and the Speaker of the National Assembly³⁷ were among those whose security was forfeited.

Analysts have identified five major factors that contributed towards changing the political landscape of the country, and stripping off the pro-Musharraf PML-Q of power. The following comprise these factors:

- Military operations in Balochistan and tribal regions.
- Removal of Chief Justice of Pakistan.
- Increased political awareness, especially due to the revolution in electronic media.
- The role of civil society organizations, contributing towards public awareness.
- Price hike in electricity, natural gas and petroleum products, coupled with the shortage of food items.
- Assassination of former Prime Minister Benazir Bhutto on December 27, 2007.

On March 24, 2008, the former speaker of the National Assembly, Yousuf Raza Gillani, was elected as the Prime Minister and in his maiden speech to the parliament he ordered an immediate release of all the judges, including the Chief Justice of Pakistan Iftikhar Muhammad Chaudhry. There was a general feeling that the struggle for an independent judiciary had finally achieved its objectives. But the days to follow proved the analysts wrong, and it was to require one more year of struggle to finally reach the destination. Needless to say that the Lawyers' Movement had been at the forefront of the resistance against the martial law, and with the political government installed, they were hoping to get the Chief Justice restored by a simple parliamentary resolution. However, time proved that it was not only the military but also the political governments that were not comfortable with the idea of a judiciary independent of the executive control. And hence, the struggle for a true democratic set up was far from over.

The delay by the political government in the restoration of the deposed members of the judiciary made the Lawyers' Movement realize the mistake they had made by boycotting the general elections³⁸. They realized that the transfer of power through elections to a favourable democratic government could have resulted in the restoration of the deposed judges. And that, the call to boycott the elections would not have resulted in the breakdown of the relationship between the PPP and the Awami National Party (ANP), one leading in the National Assembly and the other in North West Frontier Province (NWFP). Still, the fight was far from over as the issue of the deposed judges had successfully been placed at the center

³⁵ <http://www.pmln.org.pk/manifesto.php>

³⁶ www.ecp.gov.pk.com

³⁷ Daily Jang, February 19, 2008

³⁸ Interviews with leaders of Lawyers' Movement conducted in 2009.

of the national politics and several political parties, including the PML-N, had vowed to fight for the cause, even if that meant leaving the coalition government.

Resistance by political parties

History tells us that in Pakistan, not only the military rulers manipulated the judiciary for its interests, but various civilian governments also acted no different. The leaders of the major political parties, including the PML-N and PPP, were, as stated above, part of the struggle for the restoration of the Chief Justice. The leaders of both the parties' had publicly demanded the restoration of the deposed members of the judiciary and had even signed a Charter of Democracy that contained provisions in this regard. These commitments were equally upheld in the Murree-Bhuban declaration and the Islamabad declaration. The issue, however, remained unresolved and rested with a major scoring point, for both the parties in their election campaigns. However, things apparently came to a halt, following the initial euphoria that followed the orders of release of the deposed members of the judiciary by the new PPP elected Prime Minister on March 24, 2008. The halt apparently came from Asif Ali Zardari, the Co-Chairman of PPP. But the manner in which he manipulated and delayed the restoration of the deposed judiciary to his advantage would remain a sad chapter in the history of PPP, if not Pakistan.

While the delaying tactics were at play, the Lawyers' Movement continued struggle for the restoration of the deposed judiciary and removal of General Pervez Musharraf. However, in addition to protest rallies and token hunger strikes, the struggle, this time on, took a new turn when the lawyers' leadership announced to hold a long-march on June 14, 2008, from Lahore to Islamabad. As expected, the PPP workers and leaders were not among the huge crowd that reached Islamabad on that day. The PPP leadership continued making statements that it was only a matter of time before the judges would be restored, indicating that perhaps Musharraf was still the one in command and it would not happen as long as he was in office.

Some analysts are of the opinion that the delay in the restoration of the judges by the PPP was the result of its political insecurities: in the past it had witnessed a conflict between an emerging independent judiciary and a political party, still in the process of consolidating its executive and legislature powers as had happened between Prime Minister Benazir Bhutto and Chief Justice Sajjad Ali Shah. Thus, in order to avoid such a conflict, the PPP apparently developed a strategy to enhance the dependent judiciary by continuing with PCO Chief Justice of Pakistan and by increasing the number of judges of the Supreme Court and all the High Courts with pro-PPP judges.

With mounted pressure, Present Musharraf resigned from the office on August 18, 2008, fearing impeachment through the parliament, making way for Asif Ali Zardari to be elected President of Pakistan on September 6, 2008. Once elected, President Zardari, it seemed even stopped making efforts to hide his lack of interest in restoring the deposed judges, especially the Chief Justice. Instead, he started the blame game and held the courts responsible for his years' of imprisonment, mentioning the same, rather unflatteringly, when Chief Justice Chaudhry visited him in Islamabad in March 2008, to condole the assassination of Benazir Bhutto (Malik, 2008). However, to keep the situation toned down, the PPP employed a 'pleasing' tactic by restoring, in small numbers, the deposed judges, following the imposition of State of Emergency on November 3, 2007. This process of restoration continued for months but without any hint that it would culminate to the restoration of the Chief Justice.

While on the political front, the conflict between the PPP and PML-N grew deeper, and to the surprise of all the Supreme Court, with Justice Abdul Hameed Dogar as the Chief Justice, disqualified Mian Nawaz Sharif and Mian Shahbaz Sharif, from holding or contesting public office. The reaction from the public was perhaps unexpected for the government as protestors came out on the streets across the country. The PML-N, which had restricted itself from public criticism of the government, joined hands with the Lawyers' Movement, but all credit must go to the lawyers' leadership that prevented the movement from being hijacked by a political party.

Another long-march was announced and the lawyers' leadership announced they would leave Islamabad only after the restoration of the Chief Justice. The long march was planned to start from Quetta on March

11, 2009, and would pass through all the major cities before reaching Islamabad. The last leg of the march was to start on March 15, 2009 from Lahore, with the intent that all participants would stay in Islamabad till the restoration of the Chief Justice. To everyone's surprise, the government lost its cool and made all out attempts to prevent the lawyers from holding the long-march. As a result, a large number of political workers and lawyers were taken into custody. A ban was imposed on holding rallies and protests in two of the four provinces of Pakistan. As a consequence, the lawyers march from Quetta on March 11, 2009, under the leadership of SCBA's President, Ali Ahmad Kurd, was stopped at the Sindh border³⁹. Likewise, on March 12, 2009, the march that was to start from the Karachi super Highway to Lahore was baton charged by the police, leaving a large number of people wounded and injured⁴⁰. Concurrently, the government placed a large number of containers on the roads to Islamabad, blocking the way and cordoning off the Parliament House and the Constitutional Avenue. Life in Islamabad was brought to an uncomfortable silencing halt⁴¹.

By the morning of March 15, 2009, all possible road links between Lahore and Islamabad were blocked, with the purpose to prevent the long-march to reach Islamabad⁴². The government also placed Mian Nawaz Sharif, Atizaz Ahsan and many other leaders under house arrest, deploying heavy contingents of police outside their residences. Meanwhile, the political activists and lawyers, who reached the Lahore High Court, were baton charged and tear gased till the time the police ran out of tear gas shells. Unable to quell the determination of the protestors, the police were forced to withdraw to a safe distance⁴³. While this was on, Mian Nawaz Sharif defied the house arrest orders, forced his way through the police barriers to reach the Ferozepur Road. By the time he reached Lower Mall, those accompanying him had grown to thousands.

The scenes of huge crowds, including women and children, participating in the rally, chanting anti-government slogans and demanding the restoration of the Chief Justice were broadcast on news channels continuously. The lawyers' leadership announced that it would stage a sit-in wherever the authorities stopped them, till the time the participants were allowed to move on to Islamabad⁴⁴. Addressing the participants, Mian Nawaz Sharif expressed his resolve that the sit-in would continue till the restoration of the Chief Justice, and called on the people watching the rally, on television channels, to come out and join it⁴⁵.

Even the long march organizers did not expect such a huge supporting crowd. And to everyone's surprise, the march had hardly covered a distance of less than a hundred kilometers when Mian Nawaz Sharif and Chaudhry Atizaz Ahsan were informed that the government was ready to issue orders of restoration of the Chief Justice.

It was one of those historic nights in Pakistan when very few people would have gone to sleep without witnessing the climax which came shortly after dawn: Prime Minister Yousuf Raza Gillani announced the restoration of Iftkhar Muhammad Chaudhry to the office of Chief Justice of Pakistan. In the end, the PPP leadership perhaps realized that despite being out of power for over a decade, the party vote bank was intact, and that opposition to the restoration of the Chief Justice was costing it dearly: maybe the damage was already done?

Role of media

There have been instances in the past where the people of Pakistan would have risen against acts of military dictators and challenged them, but the flow of information was not as swift as it was this time around. General Musharraf, under his slogan of 'Enlightened Moderation', harping on pseudo democratic

³⁹ The News International, Dawn, Daily Times, Jang, March 12, 2009

⁴⁰ The News International, Dawn, Daily Times, Jang, March 13, 2009

⁴¹ The News International, Dawn, Daily Times, Jang, March 15, 2009

⁴² The News International, Dawn, Daily Times, Jang, March 15 & 16, 2009

⁴³ The News International, Dawn, Daily Times, Jang, March 15, 2009

⁴⁴ Geo, Aaj TV interviews of lawyers leaders, March 15, 2009

⁴⁵ Nawaz Sharif address to the participants of rally, March 15, 2009

norms, often boasted of the 'freedom' he had granted to the mass media⁴⁶. However, the unbiased reporting on the Balochistan crises; the military operation in the tribal region; the victimization of political opponents; the high-handed manner to quell dissent; the growing judicial crises; the disappearance (illegal detention) of hundreds of people suspected of having links with militant Islamic groups; the public anger on price hike of daily commodities and petroleum products, resulted in making the military dictator highly 'uncomfortable' with the media. And the final nail in the coffin came with the event of March 9, 2007: the scenes of Chief Justice of Pakistan being humiliated by a military dictator and later manhandled by a policeman increased public anger for General Musharraf, and strengthened the case of the Chief Justice in the court of the public.

The pressure to provide positive coverage to government activities and cut down on news regarding operations in Balochistan and FATA, already existed on private news channels, but it reached unmatched proportions following the emergence of the judicial crises in the country. The government through the Pakistan Electronic Media Regulatory Authority (PEMRA) introduced legislation aimed at muzzling the media. The process of direct and indirect harassment and intimidation continued throughout this period. Against all odds, the media continued to provide extensive live coverage of the visits of the Chief Justice to various cities. This presented the media as being a party to the uprising, with the government considering it to be their opponent, followed by a clamp down on the so-called 'freedom' granted to them by the military dictator, especially following the imposition of Emergency: Pakistan's entire electronic media went off air; even channels that broadcast cooking shows or music were not allowed to broadcast; several of the mainstream news channels remained off air for months; only those channels that submitted to the government pressure and signed a 'code of conduct' were allowed to resume transmission.

Overall, there is a general feeling that the private media had to bear the burnt for asserting its independence, objective coverage and criticism of the government policies and actions. The media, which bravely resisted the Musharraf regime was once again faced with a similar situation when it highlighted the unfulfilled promises of the civilian government under President Asif Ali Zardari. At one time President Zardari wanted to 'punish' the news channels for their 'biased' attitude towards the PPP leadership in general, and President in particular, by pulling them off-air. However, it was reported that the then information minister resigned from the cabinet refusing to obey the command of muzzling the press.

Role of civil society: Women and student unions

One of the most promising aspects of the Lawyers' Movement was the support it enjoyed in all sections of the society. It was for the first time that workers of religious parties, religio-political parties, non-governmental organizations, civil society organizations, labour unions, minority rights organizations, human rights organizations and student unions united and worked together for this one single cause. A brief look at the ideology and working of each individual group would reveal that many had worked on agendas that were in total contradiction to each other, but they worked together for the restoration of the judiciary keeping aside their differences.

Women, in particular, played a very important and significant role in the Lawyers' Movement. As Bushra Khaliq in her book states:

"These women include not only lady lawyers, members of civil society and political activists but also working class women. These women have been struggling shoulder to shoulder with their male comrades. They are equal partners in braving the brunt of the Musharraf regime's oppression, since March 2007. Along with men many of these women activists were baton-charged, tear gassed and even put behind bars as a result of imposition of Emergency Rule on Nov 3, 2007".(Khaliq,2009)

⁴⁶ As if allowing news channels to operate in the country was a favour and that allowing media freedom was the sole prerogative of the military government.

It was also extremely encouraging to see that despite the ban imposed on political activities on campuses, a large number of students ensured their participation at every occasion. Some students from the universities, catering to the affluent class who normally are not interested in 'change', participated in the protest rallies and talked to the media insisting that they should not be photographed or filmed as their parents would be annoyed. One rally participant was quoted as saying, "we want revolution but please don't tell our parents". The government also made efforts to harass students and many were booked along with their teachers for holding protest demonstrations.

Similarly, the government applied highhanded tactics to prevent other members of the civil society from supporting the Lawyers' Movement, but nothing worked. Following the imposition of Emergency, several leading human rights activists were kept in detention, which only strengthened their resolve. The Human Rights Commission of Pakistan was quick to respond and denounced the removal of the Chief Justice by General Musharraf in a statement issued within hours of the dismissal of the Chief Justice on March 9, 2007. The international networks of human rights organizations also expressed concern over the action and wrote letters to General Musharraf demanding independence of judiciary. In a letter to General Musharraf, the Secretary General of International Commission of Jurists described the removal of the Chief Justice as unprecedented and unconstitutional that threatened the independence of judiciary and rule of law in Pakistan. In fact, support came from across the globe and many bar associations and bar councils from various countries expressed full solidarity with the movement and demanded the immediate restoration of the Chief Justice. Some of those who supported the cause included the Australian Bar Association, lawyers' organizations in the United Kingdom, American Bar Association and lawyers' associations in Canada, France and several other countries.

Part V: Conclusion – A way forward

Since the independence of Pakistan in 1947, the judicial and legislative branches of Pakistan have been used by at least three Governor-Generals, seven Presidents, 26 Prime Ministers and four Chiefs of Army Staff as mere extensions of the executive branch⁴⁷. The civil and military rulers of Pakistan treated and considered the judiciary and legislature as subservient to the Executive for 60 years. This, however, changed when this norm was challenged by Chief Justice Chaudhry, who declined to step aside on the orders of a serving military chief. Some analysts feel that the struggle that ensued with the 'No' the Chief Justice said to General Musharraf, culminated on the morning of March 16, 2009, when the Chief Justice was eventually restored to his office. There are others, who still maintain that the struggle for the independence of judiciary is far from over.

The judiciary in Pakistan has been kept under absolute control by the presidents, prime ministers and army chiefs by controlling their appointments, promotions and removal from service. The three aforementioned offices have often manipulated the political processes in their favour, by coercing or at times coaxing the judiciary, and reducing it to the status of an organ of the state meant to serve the powerful. Unfortunately, on most of the occasions, the inaction of the members of the superior judiciary, for vested interests, not only brought a bad name to the judiciary but also impeded reforms in the subordinate judiciary.

Nonetheless, the people of Pakistan now appear to have high hopes and expectations from the judiciary after the success of the Lawyers' Movement. Not to mention, that the jubilant mood of the public can easily turn to anger, if the superior judiciary fails to live up to the common person's expectations and notions of an independent and unbiased judiciary, capable of dispensing justice without delay. But can the courts meet these simple, yet challenging expectations of the people, given the existing scenario where the judiciary has yet to be politically insulated from the executive and the legislature; where they are still struggling for institutional and financial independence to decide cases according to law and

⁴⁷ Pakistan: Justice Restored What Next? CRSS R04102009F05 www.crss.com.pk

without fear of repercussion in the form of loss of employment and service benefits; and to top it all, a prevailing culture of corruption at courts?

Although, it has a tough task ahead, the Supreme Court of Pakistan has already started taking steps that might produce long term benefits. For instance, the National Judicial Policy Making Committee (NJPMC) on May 16, 2009, directed all judicial officers, working in different administrative departments of the government, to immediately report to their respective high courts for further posting⁴⁸. The move would contribute towards the timely disposal of cases and could be a first step towards separating the judiciary from performing the duties of the executive. Similarly, on August 1, 2009, a 14-member full bench of the Supreme Court removed 34 judges of the Lahore High Court, for either having taken oath under the Provisional Constitution Order or being appointed on the advice of Justice Abdul Hameed Dogar, appointed as Chief Justice by General Musharraf following the state of Emergency on November 3, 2007⁴⁹.

The successful Pakistan Lawyers' Movement has immensely contributed in bringing the judiciary to the position where it stands today. Perhaps history has given the judiciary in Pakistan an opportunity to make up for the past mistakes and grow as an independent, unbiased, honest institution that upholds the rule of law and supremacy of the constitution.

For the people of Pakistan, the Movement has taught them the power of mass protests. There is now a new gained strength for the common person, and people are resorting to peaceful demonstrations to force the government to take action: this was well demonstrated by peaceful rallies that took place, demanding action against the perpetrators of lashing of a girl in Swat. The manner in which the restoration of the Chief Justice was celebrated across the country strengthened the belief among the public that through peaceful protests they can force the government to submit to their demands. However, the 'show of power' has yet to be institutionalized, and movements are still generally unorganized in Pakistan. Once the people realize and internalize this strength, it will be the beginning of a new era for a democratic Pakistan.

⁴⁸ The Daily Times, May 16, 2009

⁴⁹ The Daily Times, August 1, 2009

References

- Ahmad, Mushtaq (1970), *Government and Politics in Pakistan*, Space Publishers, Karachi.
- Ahmad, Masood (1983), *Pakistan: A Study of Its Constitutional History*, Research Society of Pakistan, University of the Punjab, Lahore.
- Afzal, Rafique, M. (2001), *Pakistan, History and Politics 1947 -1971*, Oxford University Press, Karachi.
- Ahmad, Ghafoor Professor (1988), *Phir Martial Law Aa Gaya*, Jang Publishers, Lahore.
- Ahmad, Parvez (2005), *Changing Role and Image of Judiciary in Pakistan from 1988-1999*, (PhD Thesis), Bahauddin Zakariya University, Multan.
- Arif, Mehmood Khalid (2002), *Khaki Shadows*, Oxford University Press, Karachi.
- Butt, Iqbal, Haider (2009), *Revisiting Student Politics in Pakistan*, Punchayat, Rahwali, Gujranwala, Pakistan.
- Bhutta, G. Nisar, and Nayyar A. H. (2009), *Restoring Students Unions*, Unpublished Research Paper, Sustainable Development Policy Institute, Islamabad.
- Chaudhry, G.W. (1957), *Constitutional Development in Pakistan*, Longman, London.
- Dawood, Jan, Muhammad (1994), *The Role of Superior Judiciary in the Politics of Pakistan*, Royal Book Company, Karachi.
- Hussain, Shabbir, Syed, (2001), *Ayub, Bhutto and Zia*, Sang-e-Meel Publications, Lahore.
- Hamid, Yousaf (1998), *Pakistan – A Study of Political Developments, 1947-97*, Pakistan Academy of Administrative and Social Science, Lahore.
- Khaliq, Bushra (2009), *Revisiting Women Movements in Pakistan*, in *Women in Lawyers' Movement*, Women Workers Helpline, Lahore.
- Khan, Roedad (2000), *Pakistan – A Dream Gone Sour*, Oxford University Press, Karachi, 2000.
- Khan, Hamid (2001), *Constitutional and Political History of Pakistan*, Oxford University Press, Karachi.
- Mehmood, Safdar, Dr. (1987), *A Political Study of Pakistan*, Sang-e-Meel Publications, Lahore.
- Mehmood, Safdar, Dr. (2002), *Pakistan Political Roots and Development 1947–1999*, Oxford University Press, Karachi.
- Mehmood, Dilawar, M. (1992), *The Judiciary and Politics in Pakistan*, Idara-e-Matalia Terakh, Lahore.
- Malik, A. Muneer (2008), *The Pakistan Lawyers' Movement–An Unfinished Agenda*, Pakistan Law House.
- Maluka, Zulfiqar, Khalid (1995), *The Myth of Constitutionalism in Pakistan*, Oxford University Press, Karachi.
- Rizvi, Hasan, Askari (1987), *The Military and Politics in Pakistan*, Progressive Publishers, Lahore.
- Shah, Hassan, Naseem (1999), *Constitution, Law and Pakistan Legal System*, Research Society of Pakistan, University of the Punjab, Lahore.
- Syed, Anwar (2007), *Issues and Realities of Pakistani Politic*, Research Society of Pakistan, University of the Punjab, Lahore.

ABBREVIATIONS

CDA	Capital Development Authority
CJ	Chief Justice
DG	Director General
FATA	Federally Administered Tribal Area
IB	Intelligence Bureau
ISI	Inter Services Intelligence
LFO	Legal Framework Order
MI	Military Intelligence
MQM	Muttahida Qaumi Movement
NJPMC	National Judicial Policy Making Committee
PCO	Provisional Constitution Order
PLD	Pakistan Law Digest
PML-N	Pakistan Muslim League – Nawaz
PML-Q	Pakistan Muslim League – Quaid-e-Azam
PPP	Pakistan Peoples Party
SC	Supreme Court
SCBA	Supreme Court Bar Association